

## UNITED STATES DEPARTMENT OF AGRICULTURE

In the Matter of: )  
 )  
 ) Docket No.  
 THE NORTHEAST MILK MARKETING ) AO-14-A70-DA-02-01  
 ORDER )  
 )

Virginia Room  
 Embassy Suites Hotel  
 1900 Diagonal Road  
 Alexandria, Virginia

Tuesday,  
 September 10, 2002

The above-entitled matter came on for  
 hearing, pursuant to notice, at 8:30 a.m.

BEFORE: HONORABLE DOROTHEA BAKER  
 Administrative Law Judge

APPEARANCES:

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## P R O C E E D I N G S

8:30 a.m.

JUDGE BAKER: Please come to order. My name is Judge Baker, and I have been assigned to conduct this hearing.

It is a public hearing in which interested persons may participate. It relates to proposed amendments to a tentative marketing agreement and order and has a docket number before the secretary of Agriculture. It's AO-14-A70-~~DA dash 0201~~ **DA-02-01**.

In order to assist the participants, I will review some of the procedural matters applicable to hearings of this type.

They are public hearings, and all persons have the right to present relevant and material evidence. They are not adversarial in nature. Nevertheless, judicial decorum is anticipated.

We have a court reporter who is contractually obligated to stenographically record these hearings. He is to assure that all exhibits are properly numbered and stamped. Therefore, if you have exhibits to be offered, please allow him sufficient time to do so. As set forth in the notice of hearing, four copies of exhibits are required for the official record.

1           The government does not furnish copies of the  
2 transcript for distribution. If you wish a personal copy  
3 of the transcript, it is suggested that you make  
4 arrangements with the court reporter at the earliest  
5 possible time. However, the transcript and all exhibits  
6 will be available for examination and copying in the  
7 Office of the Hearing Clerk, United States Department of  
8 Agriculture, South Building, Washington, D.C.

9           I shall now ask representatives of the  
10 government. Will copies be available elsewhere for  
11 examination?

12           MR. STEVENS: Your Honor, in the back of the  
13 room there are copies of the various documents --

14           JUDGE BAKER: Yes. I was speaking of the  
15 transcript of the entire proceeding.

16           MR. STEVENS: Okay.

17           MR. TOSI: Yes. Good morning, Your Honor.  
18 What we've been doing recently and at least for the last  
19 six or seven hearings that we've done, once we've received  
20 the transcript, we post it on the Internet so that it --  
21 it's available to everyone. And we -- and we've been  
22 using the date of when we post the transcript on the  
23 Internet to trigger the deadlines for the submission of  
24 corrections to the record and deadlines for filing briefs.

1                   JUDGE BAKER: Okay. That's a good innovation.  
2 I'm glad to know it. Thank you.

3                   MR. TOSI: Thank you, Your Honor.

4                   JUDGE BAKER: So everyone can look at the  
5 Internet.

6                   Among the more important procedural matters  
7 which I shall request that you follow is that each time  
8 you rise to speak, please state your name, address, and  
9 representation, if any. If you forget to do this, I shall  
10 find it necessary to interrupt you and request that you do  
11 so.

12                   With respect to procedural matters, I shall be  
13 glad to answer them at any time.

14                   The hearing sessions will run from 8:30 in the  
15 morning to approximately 5- or 6:00 in the evening. We  
16 shall have a 15-minute break in mid-morning, an hour for  
17 lunch, and a 15-minute break in the afternoon.

18                   This public hearing is to consider changes in  
19 the Northeast Federal Milk Marketing Order. Proposals  
20 will include establishing marketwide service payments to  
21 offset the costs of balancing the market's class one  
22 needs; establishing year-round shipping standards for  
23 supply plant pool qualification; establishing a standard  
24 that at least two days' milk production of a dairy farmer

1 be physically received at the pool plant before the  
2 balance of production is eligible for diversion;  
3 establishing limits on the amount of milk that a pool  
4 plant may divert; eliminating the split plant feature for  
5 pool supply plants; and making minor changes to reporting  
6 and payment dates.

7 After the initial notice of hearing was  
8 published, the United States Department of Agriculture  
9 announced a supplement to the notice of public hearing  
10 whereby there will be considered an additional proposal  
11 which seeks to amend the unit pooling provision by  
12 specifying that a secondary unit pooled plant must be  
13 located within the marketing area and process at least 60  
14 percent of total producer milk receipt as class one or  
15 class two products.

16 Details of these proposals are set forth in the  
17 notice of hearing published in the "Federal Register" on  
18 Thursday, August 1, 2002, Volume 67, Number 148,  
19 commencing at page 49887. And with respect to that  
20 supplemental notice, that is published in the "Federal  
21 Register," Volume 67, Number 159, Friday, August 16, 2002,  
22 commencing at page 53522.

23 Copies of these "Federal Register"s which  
24 contain the notice of hearing and the proposals to be



1 also been made available to me certain other data,  
2 including a certificate relative to officials notified.  
3 These certificates are dated August 1 and August 16, 2002,  
4 both of which have been signed by Joyce M. McPherson,  
5 docket clerk. Said certificates reflect notification to  
6 the governors of a number of states. These certificates  
7 are identified and admitted into evidence as Exhibit 2 and  
8 2-A.

9 (The documents referred to  
10 were marked for identification  
11 as Exhibits 2 and 2-A and were  
12 received in evidence.)

13 JUDGE BAKER: At this public hearing, all those  
14 who wish to testify and give relevant and pertinent  
15 information will be permitted to do so.

16 At the conclusion of the hearing, I will  
17 certify the record. I have had no part in the formulation  
18 of the proposals, nor do I participate in the corporation  
19 of the disposition of these proposals after I have  
20 certified the record.

21 As previously mentioned, this is a public  
22 hearing that will consider proposals that would amend  
23 certain pooling and related provisions of the Northeast  
24 Order. These proposals previously referenced include

1 establishing marketwide service payments to offset the  
2 cost of balancing the market's class one needs and  
3 modifying the pooling standards of the order.

4 Pooling proposals include establishing year-  
5 round shipping standards for supply plant pool  
6 qualification; adding a touch-base provision that would  
7 establish a standard that at least two days' milk  
8 production of a dairy farmer be physically received at a  
9 pool plant in order to be eligible for a diversion;  
10 establishing limits on the amount of milk that a pool  
11 plant may divert; eliminating the split fund provision;  
12 and revising certain reporting and payment provisions.

13 This administrative action is governed by the  
14 provisions of Section 556 and 557 of Title V of the United  
15 States Code and therefore is excluded from the  
16 requirements of Executive Order 12866.

17 The hearing is called pursuant to the  
18 provisions of the Agricultural Marketing Agreement Act of  
19 1937, as amended, and the applicable rules of practice and  
20 procedure governing the formulation of marketing  
21 agreements and marketing orders.

22 The purpose of the hearing is to receive  
23 evidence with respect to the economic and marketing  
24 condition which relate to the proposed amendments as set

1       forth in the notice of hearing and any appropriate  
2       modifications thereof to the tentative marketing  
3       agreements ~~or~~ **of** the order.

4               As previously mentioned, also there will be  
5       taken evidence to determine whether emergency marketing  
6       conditions exist that would warrant omission of a  
7       recommended decision under the rules of practice and  
8       procedure. Actions under the Federal Milk Order Program  
9       are subject to the Regulatory Flexibility Act. This act  
10      seeks to ensure that within the statutory authority of a  
11      program, the regulatory and informational requirements are  
12      tailored to the size and nature of small business.

13              For the purpose of the act, a dairy farmer or,  
14      more correctly, a dairy farm is a small business if it has  
15      an annual gross revenue of less than \$750,000. And a  
16      dairy products manufacturer is a small business if it has  
17      fewer than 500 employees.

18              Most parties subject to a milk order are  
19      considered as a small business. Accordingly, interested  
20      parties are invited to present evidence on the probable  
21      regulatory and informational impact of these hearings on  
22      small businesses. Also, parties may suggest modifications  
23      of these proposals for the purpose of tailoring their  
24      applicability to small businesses.

1           The amendments to the rules proposed herein  
2           have been reviewed under Executive Order 12988, Civil  
3           Justice Reform. They are not intended to have a  
4           retroactive effect. If adopted, proposed amendments would  
5           not preempt any state or local laws, regulations, or  
6           policies unless they present an irreconcilable conflict  
7           with this rule.

8           Witnesses give their testimony upon oath or  
9           affirmation, after which they are subject to cross  
10          examination. Any evidence which is immaterial,  
11          irrelevant, or unduly repetitious will be ruled out of  
12          order if it is not of the sort on which responsible  
13          persons are accustomed to rely.

14          After conclusion of the hearing and at a date  
15          to be announced, all interested parties have the  
16          opportunity to submit briefs which may include proposed  
17          findings of fact based upon the record made here, proposed  
18          conclusions, and a proposed order. Such briefs may be  
19          filed by persons whether or not they have been in  
20          attendance at the hearing.

21          Also, a date to be announced prior to the close  
22          of the hearing is that interested parties may suggest  
23          proposed corrections to the transcript. These should be  
24          submitted in four copies to the Office of the Hearing

1 Clerk, United States Department of Agriculture.

2 If anyone objects to the admission or rejection  
3 of any evidence or to any other ruling by me at the  
4 hearing, he shall state briefly the grounds thereof and an  
5 automatic exception will follow. Only objections made  
6 before the judge may be relied upon subsequently in the  
7 proceeding.

8 I shall now ask for appearances by the parties,  
9 and I will go around the room to do that.

10 Now, as to who appears on behalf of the Agency.

11 MR. STEVENS: Your Honor, my name is Garrett B.  
12 Stevens. I'm with the Office of General Counsel with the  
13 U.S. Department of Agriculture.

14 Accompanying me here today is Sharlene Deskins,  
15 who is also with the Office of General Counsel.

16 JUDGE BAKER: Thank you.

17 MR. TOSI: Thank you, Your Honor. My name is  
18 Gino Tosi, T-O-S-I. I'm with the Agricultural Marketing  
19 Service, Dairy Programs, USD -- excuse me, Order  
20 Formulation Branch of USDA. And I'm accompanied by three  
21 colleagues.

22 JUDGE BAKER: Thank you, Mr. Tosi.

23 MR. ROWER: Your Honor, I'm Jack Rower, R-O-W-E  
24 -- E-R. And I'm with Dairy Programs also.

1 JUDGE BAKER: Thank you, Mr. Rower.

2 MR. RICHMOND: Good morning, Your Honor. Bill  
3 Richmond, R-I-C-H-M-O-N-D, USDA Dairy Programs also.

4 JUDGE BAKER: Thank you, Mr. Richmond.

5 MS. FEUILLET: Good -- good morning. My name  
6 is Erin Feuillet, F as in Frank-E-U-I-L-L-E-T. I'm with  
7 Dairy Programs.

8 JUDGE BAKER: Thank you very much. Does that  
9 conclude those who are appearing on behalf of the  
10 Department?

11 (No response)

12 JUDGE BAKER: It apparently does. Are there  
13 any representatives here from local, state, county  
14 governments who wish to enter their appearance?

15 (No response)

16 JUDGE BAKER: Let the record reflect that there  
17 is no response.

18 I shall now go around the room for appearances  
19 by others, and I'll take the desk immediately behind Mr.  
20 Stevens.

21 MR. ENGLISH: My name is Charles English. I'm  
22 with the law firm of Thelen Reid and Priest, 701  
23 Pennsylvania Avenue, Northwest, Suite Hundred -- 800,  
24 Washington, D.C., 20004. I'm representing New York State

1 Dairy Foods, Inc. for this proceeding.

2 With me representing the company also are Wendy  
3 Levine from Thelen Reid and Priest, and then as  
4 consultants Dave Arms and Carl Conover.

5 And then there will be individual company  
6 representatives: Bill Fitchett, Jim Buelow, and Rich  
7 Miller.

8 JUDGE BAKER: Thank you very much, Mr. English.  
9 And these other individuals whom you mentioned will always  
10 identify themselves when they get up --

11 MR. ENGLISH: Of course, Your Honor. Yes.

12 JUDGE BAKER: Thank you.

13 MR. ENGLISH: I will probably be doing the  
14 primary speaking from the microphone here. Others will be  
15 speaking from the witness stand.

16 JUDGE BAKER: Very well. Thank you, Mr.  
17 English.

18 Mr. Rosenbaum?

19 MR. ROSENBAUM: Yes. Steven -- Steven  
20 Rosenbaum with the law firm of Covington and Burling, 1201  
21 Pennsylvania Avenue, Northwest, in Washington, D.C. I am  
22 representing the International Dairy Foods Association.  
23 And with me is Dr. Robert Yonkers of the association.

24 JUDGE BAKER: Thank you very much. Is there

1 anyone else in this tier who wishes to enter his  
2 appearance?

3 (No response)

4 JUDGE BAKER: Is there anyone in the back of  
5 the room over here?

6 (No response)

7 JUDGE BAKER: Let the record reflect that there  
8 is no response. We shall now start on the left-hand side  
9 of the room.

10 Yes, Mr. Beshore?

11 MR. BESHORE: Good morning, Your Honor. Marvin  
12 Beshore, B-E-S-H-O-R-E, an attorney. My office is 130  
13 State Street in Harrisburg, Pennsylvania. I'm here  
14 representing the Association of Dairy Cooperatives in the  
15 Northeast, which consists of eight cooperatives:  
16 ~~AgraMark~~, **Agrimark**, Inc.; Dairy Farmers of America, Inc.;  
17 ~~Dairy League~~ **Dairylea** Cooperative, Inc.; Land O' Lakes,  
18 Inc.; Maryland Virginia Milk Producers Cooperative  
19 Association, Inc.; Oatka Cooperative, Inc.; St. Albans  
20 Cooperative Creamery, Inc.; and Upstate Farms Cooperative,  
21 Inc.

22 We are the proponents of several proposals in  
23 the hearing and we will have a number of witnesses who  
24 we'll identify at -- at the time. And we'll also be

1 calling Dr. Charles Ling from the Department as a -- as a  
2 witness.

3 JUDGE BAKER: Very well. Thank you, Mr.  
4 Beshore.

5 Is there anyone else who wishes to enter his  
6 appearance? Mr. Vetne?

7 MR. VETNE: Good morning. My name is John  
8 Vetne, V as in Victor-E-T-N-E. I'm an attorney. My  
9 offices are at 15 Powow Street in Amesbury, Massachusetts.  
10 I'm entering an appearance on behalf of Friendship  
11 Dairies.

12 With me is Warren Shanback of Friendship  
13 Dairies.

14 JUDGE BAKER: Thank you, Mr. Vetne.

15 Is there anyone behind you who would like to  
16 enter his appearance?

17 (No response)

18 JUDGE BAKER: Let the record reflect that  
19 there's no response. As time goes by, if anyone wishes to  
20 enter his appearance, please let me know.

21 I have previously indicated data which I have  
22 preliminarily to this matter, namely the notice of hearing  
23 and certificate of officials notified. I understand that  
24 there is usually additional data in the form of

1 notification to the newspapers and interested parties. If  
2 anyone has that, would they produce it now, please?

3 MR. STEVENS: Yes, Your Honor. We have -- we  
4 have press releases for each of the notice of hearings --

5 JUDGE BAKER: Thank you.

6 MR. STEVENS: -- a copy of those and copies to  
7 the reporter.

8 JUDGE BAKER: Thank you.

9 MR. STEVENS: We have -- we have identified  
10 ~~---(inaudible)---~~ **the** certificates for officials  
11 **notified.**

12 JUDGE BAKER: Yes.

13 MR. STEVENS: -- make sure we get them all.

14 JUDGE BAKER: Very well.

15 (Pause)

16 MR. STEVENS: Your Honor, there's one  
17 additional document, which is the determination of mailing  
18 of the notice of hearing to interested parties signed by  
19 the ~~market administrator~~ **Market Administrator** which we  
20 would like entered. And I have -- I have sufficient  
21 copies of that.

22 JUDGE BAKER: Very well. Would you give me a  
23 copy and the reporter a copy and we'll get them identified  
24 and entered.

1 MR. STEVENS: Okay. So you need the notices.

2 (Pause)

3 JUDGE BAKER: Very well. Thank you.

4 (Pause)

5 JUDGE BAKER: What has been handed to me are  
6 certificates relative to the announcement of a hearing to  
7 amend the Northeast Marketing Order, an AMS news release  
8 and a supplemental one. The first one is dated July 30,  
9 2002. The supplemental one is dated August 15, 2002.  
10 They are identified and entered into evidence as Exhibit 3  
11 and 3-A.

12 (The documents referred to  
13 were marked for identification  
14 as Exhibits 3 and 3-A and were  
15 received in evidence.)

16 JUDGE BAKER: Also handed to me is a document  
17 executed by Eric Rasmussen, ~~market administrator~~ **Market**  
18 **Administrator**, dated September 5, 2002, relative to -- to  
19 determination pertaining to the mailing of notice to  
20 interested parties.

21 (The document referred to was  
22 marked for identification as  
23 Exhibit 4 and was received in  
24 evidence.)

1                   JUDGE BAKER: Very well. Thank you. Before we  
2 start with the consideration of the proposals, Mr.  
3 Beshore, am I correct that you will proceed with Proposal  
4 1 in that order?

5                   MR. BESHORE: Your Honor, Proposal 1 is -- is  
6 not -- is not our proposal. We do --

7                   JUDGE BAKER: Not your proposal. That's --  
8 that's true.

9                   MR. BESHORE: We do have a suggestion --

10                  JUDGE BAKER: I'm sorry. Yes.

11                  MR. BESHORE: -- that I'd like -- like to make  
12 for -- for the order of proceeding.

13                  JUDGE BAKER: All right.

14                  MR. BESHORE: Proposal 7, which is one of our  
15 proposals, is a proposal for marketwide service payments.  
16 And it is the proposal which is going to involve the  
17 greatest number of witnesses and the most complex data and  
18 discussion. We would suggest that it would make a lot of  
19 sense to take that proposal first at the hearing while  
20 everyone's fresh and -- and able to delve -- delve into  
21 the subject matter well. And when that's completed,  
22 proceed with the other -- with the other proposals, some  
23 of which -- a number of which go together and -- in  
24 various groupings. They all generally relate to either

1 administrative provisions of the order or to pooling  
2 provisions of the order.

3 I've spoken with a number of the other -- other  
4 participants with respect to this suggestion. ~~WE~~ We don't  
5 have unanimous agreement but there's -- there's some  
6 consensus at least that this may -- may be a good way to  
7 proceed. And we'd like to suggest that to Your Honor.

8 JUDGE BAKER: Very well. Yes? Yes, Mr. Vetne?

9 MR. VETNE: Yes. John Vetne for Friendship  
10 Dairy. Speaking as the non -- non-unanimous party to whom  
11 Marvin had some contact, I -- I agree that marketwide  
12 service issues should be considered in one segment of the  
13 hearing and that pooling issues should be considered in  
14 another.

15 I also think it doesn't make a lot of sense to  
16 isolate individual pooling proposals. They're all  
17 interrelated and I -- and they should be heard in -- in  
18 one segment, not necessarily any particular order but as  
19 is convenient for the witnesses.

20 However, my suggestion was to put marketwide  
21 services at the end when everybody is tired and -- and do  
22 pooling when everybody's fresh. In -- in part because my  
23 client has -- has a conflict at the end of the week and --  
24 as do I. Mine can be rearranged with some difficulty.

1           But as a fall back, we think -- Marvin  
2           suggested this -- to -- to accommodate my schedule as well  
3           as Warren Shanback's, if -- if marketwide services goes  
4           first, then we would settle with having Warren goes  
5           towards the beginning of the pooling parade of witnesses  
6           early on Thursday or late Wednesday, whenever it comes.

7           JUDGE BAKER: Very well. Yes, Mr. Rosenbaum?

8           MR. ROSENBAUM: Your Honor, we -- we do not  
9           oppose Mr. Beshore's suggestion that marketwide service  
10          payments go first. However, there may be some witnesses  
11          who want to testify about Proposal 7 who aren't -- don't  
12          live in the area and won't be here today and possibly not  
13          even tomorrow. And so I would think it only fair that if  
14          someone shows up on Thursday, for example, morning to  
15          testify on Proposal Number 7 that they be permitted to do  
16          so.

17          I don't think Mr. Beshore objects to that, but  
18          I -- I want that -- I think that should be part of the  
19          understanding.

20          Our principal witness is here and we would go  
21          forward at the appropriate time ourselves. But there are  
22          individual members of the association who are not --  
23          not here at this time.

24          JUDGE BAKER: Very well. Thank you, Mr.

1 Rosenbaum.

2 MR. ENGLISH: Charles English for New York  
3 State Dairy Foods, who has Proposals 1, 2, and 3. And we  
4 are certainly prepared to put those proposals after seven.  
5 Again, I think Mr. Rosenbaum's point is -- is well taken.  
6 There may be some witnesses. I would expect them not to  
7 be the most significant witnesses in terms of the time and  
8 complexity of their testimony. They're going to be really  
9 significant in that their interests are -- are  
10 dramatically affected.

11 But I would think that in terms of the  
12 significant complex witnesses for Proposal 7, I think most  
13 of those are already in the room. If not -- I think -- I  
14 think they are.

15 And then I certainly am prepared with the  
16 caveat that at some point some of the -- the witnesses on  
17 Proposal 7 are businessmen who may have very, very --  
18 **short** statements on the pooling issues or reporting issues  
19 and they might make those all at the same time. Again,  
20 they are not the consultant economist witnesses and I'm  
21 sure that -- that that can be accommodated.

22 But I -- I think that it makes a lot of sense  
23 as the proponents of Proposals 1, 2, and 3 to put those  
24 and group those as Mr. Beshore has suggested. There's

1 administrative proposals, there's pooling proposals, and  
2 to have those come after Proposal 7 with the caveat that  
3 Mr. Shanback has a conflict and can't stay 'til Friday but  
4 we find a way of -- of accommodating him.

5 JUDGE BAKER: Very well. Thank you, Mr.  
6 English.

7 As most of you know, it's my goal, ~~but that~~  
8 everyone who wishes to testify in these proceedings can do  
9 so. Obviously, there are conflicts in schedules which  
10 everyone has. This hearing was noticed, I believe, about  
11 August the 1st. And hopefully everyone has rearranged his  
12 schedule so that he can participate in it.

13 And certainly, Mr. Rosenbaum, anyone who shows  
14 up and wants to testify with respect to Proposal 7 can do  
15 so.

16 We are now ready to -- we will proceed on  
17 Proposal 7 after we ascertain if the Government has any  
18 general data they wish to offer at this time.

19 MR. STEVENS: Might I say in regards to the  
20 scheduling, I just would like to the record to reflect  
21 that, certainly, as far as the Department is concerned,  
22 and I -- I think I speak for the group also, that if there  
23 are dairy farmers who are here and want to testify that  
24 they should be accommodated with regard to their schedule

1 as best as can be done. And any requests that the -- that  
2 the -- that that be taken into account.

3 JUDGE BAKER: We -- we -- we shall do so, Mr.  
4 Stevens, and there has never been a time when any witness  
5 who wanted to testify has not been permitted to testify in  
6 any hearing in which I presided. That shall continue to  
7 be the rule.

8 MR. STEVENS: Thank you, Your Honor.

9 JUDGE BAKER: You're welcome. Now, does AMS  
10 have any general data which it wishes to offer?

11 MR. STEVENS: Yes, we do, Your Honor.

12 JUDGE BAKER: Do you want to proceed?

13 MR. STEVENS: We'd like to call Peter  
14 Fredericks to the stand.

15 JUDGE BAKER: Very well. Sir, would you step  
16 forward?

17 Whereupon,

18 PETER FREDERICKS

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

21 JUDGE BAKER: Would you be seated, please?  
22 Please spell your name for the court reporter?

23 THE WITNESS: Peter Fredericks, F-R-E-D-E-R-I-  
24 C-K-S.

## DIRECT EXAMINATION

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BY MR. STEVENS:

Q Mr. Fredericks, by whom are you employed?

A I'm employed by the Northeast Market Administrator's Office, Federal Order Number One.

Q Could you give us a brief description of your duties?

A I'm an assistant to the ~~market administrator~~ **Market Administrator** at the office. I'm responsible for the -- the preparation of the statistical reports and market information reports that are -- that are released by the Northeast Market Administrator's Office.

Q How long have you been employed by the ~~market administrator~~ **Market Administrator**?

A I've been employed by the Northeast Market Administrator's Office since its inception in January of 2000, and prior to that, to one of the predecessor orders, the former New York-New Jersey Order, in June of 1993.

Q And -- and what was your employment prior to that time?

A Prior to that time I spent some time working for a supermarket firm in upstate New York. And prior to that I was -- worked for the New York State Senate in the state of New York.

1 Q All right. In your capacity in the ~~market~~  
2 ~~administrator's~~ **Market Administrator's** office, were you  
3 contacted -- or did you prepare certain documents for this  
4 hearing?

5 A Yes, I did.

6 Q And did you bring them with you today?

7 A Yes, I did.

8 Q Are they available at the back of the room for  
9 the participants to use?

10 A Yes, they are.

11 Q Could you -- could you just describe generally  
12 for us a document that you -- the document that you have  
13 brought?

14 A The document is entitled, "The Compilation of  
15 Statistical Material and Requested Data." There is an  
16 appendix -- index inside the first cover.

17 The first part of it is general statistical  
18 information. That is released by our office on a regular  
19 basis. And the second part of it is a series of special  
20 data requests from -- from three different entities that  
21 requested data ~~for~~ **from** us.

22 MR. STEVENS: Your Honor, I would like this  
23 marked for identification. I believe it's Exhibit 5, is  
24 it?

1                   JUDGE BAKER: That's correct, Mr. Stevens. It  
2 shall be so marked.

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

6                   BY MR. STEVENS:

7                   Q     Now, in the -- in the preparation of this  
8 document, did you also prepare an errata sheet or a sheet  
9 of corrections?

10                  A     Yes, I did. And the -- that is also entitled,  
11 "Corrections to Compilation of Statistical -- Material and  
12 Requested Data." It's a one-page sheet that is also on  
13 the back table.

14                  MR. STEVENS: Your Honor, could I have that  
15 marked for identification as 5-A, maybe? Or whatever -  
16 - whatever number you would like to --

17                  JUDGE BAKER: Very well. That's the errata  
18 sheet?

19                  MR. STEVENS: It is. And it's --

20                  JUDGE BAKER: Very well. That shall be marked  
21 as 5-A.

22                                   (The document referred to was  
23                                   marked for identification as  
24                                   Exhibit 5-A.)

1 BY MR. STEVENS:

2 Q Now, in order to assist the parties, would you  
3 -- would you just -- I think -- I'm assuming that the  
4 parties who are interested have copies of this. And if  
5 you could go quickly through the errata sheet, I think  
6 that would help people to understand what the -- what the  
7 -- what changes have been made to the document before we  
8 testify concerning it.

9 A Okay. The first correction, on pages one, two,  
10 and three, there's a --

11 Q Let me interrupt you just -- do you have an  
12 extra copy of that -- of the errata sheet? Okay. Just  
13 give us a minute to get copies of it --

14 A I'm sorry.

15 Q -- if you will.

16 (Pause)

17 BY MR. STEVENS:

18 Q All right. Could you go through the  
19 corrections?

20 A Okay. Number one, on pages one, two, and  
21 three, there's a -- a missing footnote that references to  
22 a category called "Other States" which indicates the  
23 states that are included in that category, the states of  
24 Colorado, Idaho, Kentucky, Michigan, Minnesota, Nevada,

1 North Carolina, Rhode Island, South Carolina, Tennessee,  
2 Utah, Wisconsin, and West Virginia. Were states that were  
3 included in that category some time during the period of  
4 January 2000 through July 2002.

5 On page -- number two, page 22, the tables  
6 called "July 2002 Pool Handler Listing." McNamara --  
7 McNamara, Patrick doing business as McNamara's Dairy.  
8 Qualified plant status should be a producer handler, not  
9 exempt distributing plant as it is reported on the  
10 document.

11 On page 22 of the July 2002 approved handler  
12 listing, Perrydale Farm's qualified status should be  
13 exempt distributing plant, not a producer handler as  
14 listed on the document.

15 On page 22, July 2002 pool handler listing,  
16 Morningstar Foods plant in Gustine, California should be  
17 removed from this list.

18 Number five, on page 31 of the July 2002 pool  
19 handler map, Map Number 90 on the map showed a pool --  
20 should be a pool distributing plant symbol, not a  
21 partially regulated distributing plant symbol.

22 Number six, on page 33 of the July 2002 pool  
23 handler map index, -- Oakhurst Dairy's qualified status  
24 should be pool distributing plant, not a PR, partially

1 regulated, plant.

2 On page 33, July 2002, pool handler map index,  
3 Land O' Lakes 9(c) cooperative, plant location should be  
4 Carlisle, Pennsylvania.

5 On page 34 of the July 2002 pool handler map  
6 index, Stearns Dairy doing business as Mountain Dairy  
7 should be spelled "Stearns," S-T-E-A-R-N-S.

8 Number nine, on Appendix 2-A, pages 49, 50, and  
9 51, the footnote should be, "Bulk milk includes bulk whole  
10 milk, bulk nonfat milk, bulk raw milk, bulk cream, bulk  
11 skim condensed, and bulk concentrated milk."

12 Number 10, Appendix 2-B on page 52, bulk milk  
13 includes bulk whole milk, bulk nonfat milk, bulk raw milk,  
14 bulk cream, and bulk skim condensed.

15 Number 11, Appendix 2-C on page 53, bulk milk  
16 includes bulk whole milk, bulk nonfat milk, bulk raw milk,  
17 bulk cream, and bulk skim condensed.

18 And number 12, Appendix 9, page 80, the title  
19 of the table is changed to, "Diversions from Northeast  
20 Order Handlers to Other Order Pool Plants and Diversions  
21 from Other Orders to Northeast Order Pool Plants."

22 Number 13, Appendix 10 on page 81, the  
23 corrected spelling of St. Albans Cooperative Creamery.  
24 "Cooperative is spelled incorrectly."

1           And the last one, Appendix 14 on page 85, the  
2 pound symbol at the "Total Whole Milk Powder and Other  
3 Order" column is a typographic error and does not apply to  
4 anything on that table.

5           Q     Now, on that last item, would you like to put  
6 an errata sheet on it for the errata sheet?

7           A     Number 10 should be Number 14.

8           Q     All right. Let's -- let's go through the  
9 document, if you will. There is a table of contents, but  
10 I'd like you to start at page 1. Describe what that  
11 document is?

12          A     Page one is a table that shows the ~~proceeds~~  
13 **receipts** of producer milk by state for the period of 2000  
14 to 2002, July 2002. Okay. It breaks out the different  
15 states that have producers in the order and the volume of  
16 producer milk from each of those states.

17          Q     Okay. Show us how it works for a particular  
18 year and month. I see that it -- it has columns for the  
19 states, it has a vertical column with the months, and a  
20 total --

21          A     Okay.

22          Q     -- which represents years, I believe. Years  
23 starting with 2000 and going to 2002.

24          A     I'll start with the top series of numbers.

1 January 2000 for the state of Connecticut, go across to  
2 the right. January 2000 of the Connecticut, there's four  
3 -- there is producer receipts from the -- from Connecticut  
4 producers was 41,854,412 pounds for the January 2000.  
5 January 2001, the receipts for Connecticut were  
6 38,883,834. For 2002, January 2002 for Connecticut,  
7 37,845,823.

8 State of Delaware, January 2000, receipts --  
9 producer receipts were 15,293,605. January 2001 for the  
10 state of Delaware, producer receipts 11,384,587. January  
11 2002 for Delaware producer receipts, 14,402,720.

12 Q Okay. So --

13 A Et cetera.

14 Q -- so -- and the other columns are similar for  
15 the other states?

16 A That's correct.

17 Q And you have totaled each year?

18 A Totaled each year ~~and at~~ the bottom, correct.

19 Q And what's the significance of the footnotes?

20 A The footnote -- two notes. One, this is a --  
21 this is dated as reported of handlers at the time of the  
22 pools. And the second footnote is made -- mentioned as  
23 restricted data. Restricted data means that if there are  
24 less than three handlers or plants reporting producer

1 information in this particular state, we do not reveal  
2 that for purposes of confidentiality. That data would be  
3 then lumped into the "Other States" category, combined.

4 Q So the -- confidentiality is that with -- with  
5 less than three reported it, they would know what the  
6 others' numbers were? They could figure that out?

7 A They could determine that perhaps, correct.

8 Q All right. Could you go to page two, please,  
9 and describe what that document is?

10 A Page two reports the number of producers by  
11 state, again for the period of 2000 -- 2000 to July of  
12 2002. The number of pool producers from each of the  
13 respective states.

14 Q And reading across, it lists the states. And  
15 reading down, it reads -- it reads the months for these  
16 years?

17 A That's correct.

18 Q What's the significance of the footnote?  
19 Footnotes, I should say.

20 A Footnotes are the same as they were on the  
21 first table. That is that information as reported at time  
22 of the calculation of monthly price, pool time. And the  
23 second one is that there's restricted data for -- for  
24 states if there's less than three handlers, three plants

1 which are lumped together in the "Other States" category.

2 Q So why don't you -- could you just read across  
3 the top line for Connecticut and maybe Delaware just to  
4 describe how it works?

5 A In January 2000, 229 producers from the state  
6 of Connecticut. In January 2001, there are 209 producers  
7 from the state of Connecticut pooled on the order. In  
8 January of 2002, there are 195 producers from the state of  
9 Connecticut.

10 January 2000 from the state of Delaware, 107  
11 producers. January 2001 from the state of Delaware, 85  
12 producers. January 2002, 90 producers in the state of  
13 Delaware.

14 Q All right. And the -- and the rest of the  
15 document reflects that for the other states for the period  
16 of time enumerated there?

17 A That is correct.

18 Q Let's go to page three. What's represented  
19 there?

20 A It's a table entitled the "Daily Average Output  
21 of Producer Milk per Farm by State for the period of  
22 January 2000 to July 2002." I'll tell you how it's  
23 calculated.

24 Q All right.

1           A     The -- this number is calculated by taking the  
2     -- the information from Table 1, the total volume for the  
3     state of Connecticut, dividing it by the information in  
4     Table 2 for this respective month --

5           Q     All right.

6           A     -- of number of farms, divided by the number of  
7     days in the month. So for January of 2000, state of  
8     Connecticut, the daily average output per farm following  
9     that method was 5896 pounds of milk. For January 2001,  
10    state of Connecticut's daily average output per farm was  
11    6002 pounds. January 2002, Connecticut, 6261 pounds.

12          Q     Okay. And the -- and the other states are  
13    represented for the months enumerated?

14          A     That's correct.

15          Q     And what's the significance of the footnotes?

16          A     The same as the prior two tables. That is,  
17    information based on report at pool time and restricted  
18    data, that is less than three handlers or plants, included  
19    in the "Other States" category for averaging purposes.

20          Q     I direct your attention to page four. What  
21    -- what's represented there?

22          A     Page four, entitled "Producer Prices and  
23    Producer Production Summary for the Period of January 2000  
24    through July 2002." There are several different columns

1 of data here, and I'll start with them on the left and go  
2 through them.

3 The first column is the "Statistical Uniform  
4 Price Announced at the Suffolk County, Massachusetts,  
5 Boston, Zone in the Northeast Order."

6 The second column -- January 2000, for  
7 instance, that number was \$12.35.

8 The second column, "Producer Price  
9 Differential," is the producer price differential  
10 applicable in the Suffolk County Massachusetts zone. For  
11 January 2000, that number, for example, was \$2.30.

12 The next three columns, "Butter Fat Price,"  
13 "Producer Protein Price," and "Other Solids Price," refer  
14 to the prices that farmers, producers would have received  
15 for their components of butter fat, protein, and other  
16 solids during that point in time. So for example, in  
17 January of 2000, the producer butter fat price was 0.9366  
18 cents per pound, dollars per pound. Protein price was  
19 2.1677 dollars per pound. And the other solids price is  
20 0.0503 dollars per pound.

21 The next column, the "Number of Producers --  
22 The Number of Producers Pooled on the Order" during that  
23 month and time. The first number there, 18,009, indicates  
24 for January of 2000 there were 18,009 producers pooled on

1 the order that month.

2 The following -- next column, "Average Daily  
3 Delivery," is the average daily delivery of -- of all  
4 those farms calculated in a method that I kind of referred  
5 to before, which is basically -- which is taking the total  
6 volume of milk pooled, divide it by the ~~18,000~~ 18,009,  
7 divide it by the number of days in the month, to come up  
8 with 3843 pounds daily average production.

9 Remaining three columns, "Butter Fat," "True  
10 Protein," and "Other Solids" with the average component  
11 test for the entire pool for that month and time. For  
12 example, January 2000, the average butter fat test was  
13 3.79 percent. The average true protein was 2.99 percent  
14 for January 2000. The average other solids for January  
15 2000 was 5.59 percent.

16 Q All right. You've already explained the  
17 footnote?

18 A Yes, I have.

19 Q Page five, could you explain what's contained  
20 there?

21 A Page five, entitled "Producer Receipts by  
22 Classification for the period January ~~2002~~ 2000 through  
23 January -- to July 2002." This is the assigned  
24 classification at -- at pool time, and it shows the volume

1 of milk at pool time in the various classes and the total  
2 -- total receipts at that time of the pool. For instance,  
3 January 2000, Class 1 pounds assigned to Class 1 were 900  
4 million -- 905,503,608, representing 42.2 percent of the  
5 total pool receipts.

6 Class 2 volume for January 2002, for example,  
7 was 316,772,976, or 14.8 percent of the total -- total  
8 pool receipts.

9 The Class 3 volume was 587,010,192, or 27.4  
10 percent of the total pool receipts.

11 The Class 4 volume was 336,299,091, again for  
12 January 2000, representing 15.6 percent of the total  
13 receipts.

14 The total pool receipts for January 2000 in the  
15 Northeast Order was 2,145,585,867.

16 And again, there's a footnote which mentions  
17 that this is reported at time of calculation of the  
18 monthly statistical price.

19 Q And for each year and for part -- partial year  
20 2002, there's a total and an average, is there not?

21 A That's correct.

22 Q And that would be represented at the bottom of  
23 each of the columns?

24 A That's correct.

1           Q     Moving to page six, could you describe what's  
2 contained there?

3           A     Page six, entitled, "Class 1, 2, 3, and 4  
4 Prices and Advanced Pricing Factors of Suffolk County,  
5 Massachusetts, Boston for the period January 2000 through  
6 September 2002." There's a number of different figures on  
7 this table, and I will go through them group by group.

8                     All this information is information that has  
9 been -- previously released -- released by **our** office and  
10 price announcements available on our Web pages, available  
11 to producers, handlers, et cetera.

12                     The first set of numbers, the Class 1 mover  
13 -- price mover and advanced pricing factors are factors  
14 that are used to determine the -- the base Class 1 price  
15 for that month, the base class -- base skim price.  
16 There's a butter fat factor in the January 2000 that was  
17 0.9854. There's a Class 3 skim milk price of \$6.57. A  
18 Class 4 skim price of \$7.72. And the base skim price for  
19 that month was \$7.72. That is the higher of the Class 3  
20 or Class 4 skim price.

21                     The next three numbers under the Class 1 price  
22 heading, there's a skim fat -- skim value of \$10.97 on an  
23 hundredweight basis, butter fat price of \$1.1079, and a  
24 butter -- and a combined price at 3.5 percent butter fat

1 of \$14.15.

2 The next four figures under the Class 2 price,  
3 there's a butter fat factor or price of \$0.9436 per pound.  
4 Nonfat solids are \$0.9356 per pound. A skim milk price of  
5 \$8.42, dollars per hundredweight. And a Class 2 price at  
6 3.5 percent butter fat of \$11.43.

7 The next five numbers under the Class 3 price  
8 heading, there's a butter fat value of 0.9366, a protein  
9 price of point -- of two dollars, ~~0.1677~~ **\$2.1677** dollars  
10 per pound. Other solids, 0.0503 on a dollars per pound  
11 basis. There's a skim milk -- skim price of \$7.02 at  
12 dollars per hundredweight. There's a Class 3 price of 3.5  
13 percent butter fat of \$10.05.

14 The next four prices together under the Class 4  
15 price heading, there's a butter fat factor of \$0.9366 per  
16 pound. Nonfat solids, \$0.8574 per pound. A skim milk  
17 price of \$7.72 per hundredweight, and a Class 4 price at  
18 3.5 percent butter fat of \$10.73.

19 Section ~~1050~~ **1000.50** A through O of the order  
20 spells out the method of calculation of these prices.

21 Q Each year is averaged and the partial year 2002  
22 is averaged?

23 A That's correct.

24 Q What's the significance of the footnote?

1           A     The footnote announces that these prices do not  
2 include the milk promotion processor assessment or the  
3 Northeast Dairy Compact Over Order Obligation at the time  
4 that that was in effect or the ~~market administrator's~~  
5 **Market Administrator's** administrative assessment.

6           Q     All right. I direct your attention to page  
7 seven through 18, I believe. What's contained in those  
8 pages?

9           A     These tables entitled, "Plant Classification  
10 Information," start off with year 2000 and work through  
11 2002 information. It indicates the name of the -- of the  
12 plant and the status of the plant. That is, looking at  
13 the first -- first -- page seven information, Pooled ==  
14 **Distributing** Plants, as you go through you'd see other  
15 classifications of plants. Indicates what city the plant  
16 is located in, the state, the Class 1 differential for  
17 that plant.

18                     And if there's a "one" in the -- filled in  
19 under the month, that means that -- they were that status  
20 of plant during that point in time. If there's a blank in  
21 an area, that means they were not that type of plant  
22 during the month. For example, on page seven, look down  
23 at the -- the third entry there, Christianson Dairy, a  
24 company in North Providence, Rhode Island. You notice

1 that it's blank under the month of July. If you turn over  
2 to page nine, under the "exempt distributing plant"  
3 heading, the third entry down, Christianson's Dairy, North  
4 Providence, Rhode Island, there's a "one" in the July box.  
5 They were an exempt distributing plant during that month.

6 Q A This table operates in that fashion for -- for  
7 the period of time ~~reported~~, **reported**.

8 Q **2000, 2001, and there's a partial 2002?**

9 A That's correct.

10 Q All right. I direct your attention to page 19.  
11 What's contained on that page?

12 A Page 19 is a list of cooperatives with  
13 producers pooled on the Northeast Order as the month of  
14 July 2002. It lists the -- the name of the cooperative.  
15 And there is a footnote that indicates those cooperatives  
16 that do not have a USDA Capper Volstead voting  
17 determination.

18 Q All right. I direct your attention to page 20.  
19 What's contained on page 20?

20 A Page 20 is our pool handler listing for the  
21 month of July 2002. It's a snapshot of one month in time.  
22 This is information that we publish monthly and is put up  
23 on our Web page. It lists a number of -- of -- I'll go  
24 through it from left to right.

1           Plant ID is actually an internal number that we  
2 use for internal purposes. The next column is the name of  
3 the plant or the name of the -- the handler. The third  
4 column over, "Qualified Status," is -- is noted whether  
5 it's -- what the qualified status of this is and those --  
6 those --

7           Q     The footnote. Does the footnote describe what  
8 the -- what that -- what those -- those letters mean?

9           A     Yes, it does.

10          Q     Okay.

11          A     The next column, "Plant Location," is the  
12 location of the plant. The next column is the state of  
13 the -- the plant is operated in. And the county of the  
14 state that the plant is operated in.

15                   "FIPS Code" is a -- is a -- is a geographical  
16 identification indicated there in the next code.

17                   The plant differential is the differential that  
18 exists for that plant in that county.

19                   And adjustment from the base differential is --  
20 is the amount that this differential for this existing  
21 plant is -- how -- how much lower it is from the base  
22 differential of the Northeast Order.

23          Q     And this -- this table runs from page 20 to 24  
24 and describes July 2002?

1           A     Correct.

2           Q     Let me direct your attention to page 25.  
3     What's contained there?

4           A     Page 25, entitled, "The Northeast Order Non-  
5     Pool and Other Order Pool Plant List," lists plants that  
6     were classified as non-pool or ~~or~~ **other order** plants  
7     that received Northeast Order milk.

8                     The first column, again, "Plant ID," is an  
9     internal number that we use for accounting purposes.

10                    The second column lists the name of the plant.

11                    The third column, "Qualified Status."

12           Q     Is that -- that described by the footnote, the  
13     number having significance identified in the footnote?

14           A     Yes, the footnote identifies the status of the  
15     plant.

16                    The next column, "Plant Location," is the -- is  
17     the geographic location of the plant, followed by what  
18     state it is in as well as the county.

19                    Following column there, the "FIPS Code," again,  
20     is a geographic combination -- code used to identify the  
21     location on a county basis.

22                    "Plant Differential" is the following column  
23     for that applicable plant.

24                    And the -- the last column over is "Adjustment

1 from the Base Differential." To take an example, the  
2 first one, Aldrich Dairy, the plant differential for that  
3 plant is \$2.10. That is \$1.15 less than the base  
4 differential of the Northeast Order.

5 Q And that table runs for how many pages? It  
6 runs -- it's just a one-page table?

7 A It runs --

8 Q It runs for --

9 A -- page 30.

10 Q This is for July of 2002?

11 A Just one month in time, July 2002.

12 Q All right. Let me direct your attention to  
13 page 31. Tell us what's contained on that page?

14 A This page is a map of the Northeast Marketing  
15 area pool handler locations for the month of June 2002.  
16 There's -- there are symbols on the map that correspond to  
17 the -- the symbols underneath that title indicating the  
18 type of plant.

19 Q Okay. What does the shaded area represent?

20 A The shaded area represents the defined  
21 marketing area of the Northeast Order.

22 Q And the -- the symbols are identified on the  
23 page what the various symbols mean?

24 A Yes, they are.

1 Q And what's the significance of the footnote?

2 A This map -- the footnote indicates the handlers  
3 within the primary supply region of the Northeast  
4 Marketing area, this area. There are additional pool and  
5 distributing **and** supply plants located at this point in  
6 time outside of this geographic area representing this  
7 map. We just simply didn't have the ability to put a map  
8 of the U.S. up on a --

9 Q So it has additional pool distributing and pool  
10 supply plants located in other states: Minnesota, Utah,  
11 and Wisconsin?

12 A That's correct.

13 Q Now, this -- the numbers are reflected on the  
14 following table, are they not?

15 A That's right. It's an index.

16 Q Okay. So using this map, then going to the  
17 next page, to 32, 33 through 35, you can identify by  
18 number what -- what the plants -- well, you tell us what  
19 you can identify?

20 A Okay. Taking the first one, page 32, the first  
21 entry there, the number "one" on the map corresponds with  
22 the number "one" on the plant map itself. The index  
23 number corresponds to the number "one" on the map.

24 The next column over there is the qualified

1 status of the plant. That time it was the pool supply  
2 plant. I'm looking at the first one.

3 Q Right.

4 A The plant's name is ~~AgraMark~~ **Agrimark**. The  
5 location was West Springfield. The plant -- in  
6 Massachusetts. The differential at that point at the  
7 plant was \$3.00 and the adjustment for the base  
8 differential is 3.25 -- I'm sorry. It was 25 cents from  
9 the -- from the base differential.

10 Q Okay. And you can do that for each of the  
11 numbers and the symbols there based on -- using the -- the  
12 information on page 32 through 35?

13 A That's correct.

14 Q And you've identified the various -- the -- the  
15 qualified status with a footnote, have you not?

16 A Yes. The qualified status is identified in the  
17 bottom.

18 Q The code -- the -- the -- the letters refer to  
19 a specific type of plant or farm or whatever is referred  
20 to there?

21 A That -- that's correct.

22 Q Okay. Let me direct your attention to page 36.  
23 Tell us about what's contained there?

24 A This is entitled, "The Northeast Marketing Area

1 Non-Pool Manufacturing and Other Order Pool Plant  
2 Locations for the Month of December 2001." Again, it has  
3 symbols on the map of these other types of plants. Pool  
4 manufacturing and other order pool plants.

5 Q Now, the table that follows from page 37 to  
6 page 41, similarly to the -- to the previous description,  
7 this -- this describes the -- the numbers correspond to a  
8 plant name and a location on the -- on the map on page 36?

9 A That is correct.

10 Q Give us an example of that, would you?

11 A An example would be --

12 Q Take -- take the first one.

13 A Okay. Number one, Plant Map Number One,  
14 qualified status is a five, non-pool manufacturing. The  
15 plant name is Aldrich Dairy. The location is Verdonia,  
16 Pennsylvania, the state of Pennsylvania. Differential of  
17 2.10. The adjustment from the base differential was a  
18 negative \$1.15. And that, again, would have been located  
19 on the number "one."

20 Q Am I correct in assuming that that's outside  
21 the defined marketing area?

22 A Yes, it is.

23 (Pause)

24 BY MR. STEVENS:

1 Q And the footnotes -- the footnote on the table  
2 -- on the various tables, page 37 through 41, describes  
3 the type of plant?

4 A That is correct.

5 Q Let me -- let me bring you back to the -- to  
6 the map for a second on page 36. There's a footnote  
7 there. That -- what's the significance of that?

8 A That indicates that there are additional pool  
9 manufacturing and other order --

10 Q Let me stop you there.

11 A Sorry.

12 Q Additional non-pool --

13 A Not --

14 Q -- manufacturing plants?

15 A That -- that's correct. Additional non-pool  
16 manufacturing and other order pool plants are located in  
17 the states of Georgia, Idaho, Indiana, Iowa, Michigan,  
18 Minnesota, Nebraska, North Carolina, Ohio, Tennessee,  
19 Utah, and Wisconsin at this point in time, December 2001,  
20 that were not on this map.

21 Q This is -- this is a month, the month of  
22 December 2001?

23 A That's correct.

24 Q Okay. Let me direct your attention to page 42.

1           A     Page 42, entitled, "The Northeast Order  
2     Selected Reporting and Payment Dates for the Year 2000."  
3     Again, this information is available on our Web site and  
4     it is mailed to handlers. It specifies selected reporting  
5     and payment dates as -- as specified in the -- in the  
6     order payment requirement procedures. On the left-hand  
7     side it indicates what the report is or what the payment  
8     is. And the top -- the top column, the pool month. And  
9     the bolded letters there indicates the month -- the pool  
10    month in question. The boxes underneath refer to the  
11    month and date that something is required for the  
12    corresponding report.

13           Q     So reading across, you can determine -- on page  
14    42, you can determine when the handler reports are due for  
15    each month as represented there?

16           A     That is correct.

17           Q     And reading down, you can -- you can determine,  
18    in let's say the month of January 2000, what date each of  
19    the various reports represented on the left-hand side are  
20    due?

21           A     That is correct.

22           Q     And the -- this information is contained on  
23    page 43 for 2001, is it not?

24           A     That is correct.

1 Q And on page 44 for 2002?

2 A That is correct.

3 Q Now, you have -- just let me -- on -- on page  
4 44, you have some references there on the left to -- I  
5 believe those are order provisions, are they not?

6 A Those are order provisions that -- that specify  
7 in this case the -- the release of the producer price  
8 differential statistically uniform price.

9 Q The appropriate references would be -- could be  
10 referred to the information on page 42 and 43 also?

11 A That is correct.

12 Q What's the significance -- you have "holidays"  
13 down there. What's the significance of -- of that at the  
14 bottom of each of these pages? What's -- why -- why do  
15 you have that on the document? Does that affect when --  
16 when the payments are due?

17 A That is -- that does not affect -- you know,  
18 I'm uncertain of why -- why those are there, to be honest  
19 with you. Let me look at a month and see if I can  
20 determine what's going on.

21 (Pause)

22 BY MR. STEVENS:

23 A I think they're for informational purposes  
24 only. I'd -- I'd have to verify that and --

1 Q All right.

2 A -- can I get back to you?

3 Q Certainly. I -- and -- or we can take a break  
4 and we can get an answer or we could -- or we could do it  
5 at a later time. I'm just wondering whether there's any -  
6 - any particular significance to those dates as to why  
7 they're on there. What I hear from you in testimony is  
8 that -- that they're there for informational purposes  
9 unless you -- unless you have additional testimony on that  
10 in the future?

11 A That's correct.

12 Q Let's turn to page 45. What's contained on  
13 page 45?

14 A Forty-five begins --

15 Q Let me stop you here before we -- before we  
16 begin that. The information up to page 42 is information  
17 that your office prepared for use of the parties in this -  
18 - in this hearing?

19 A That is correct.

20 Q Does it come from statistics of the ~~market~~  
21 ~~administrator~~ **Market Administrator** and the U.S. Department  
22 of Agriculture?

23 A Yes, it does.

24 Q Was it prepared by you or pursuant to your

1 supervision for this hearing?

2 A Yes, it was.

3 Q Is it presented in favor or opposed to any --  
4 any specific proposal?

5 A No.

6 Q Now, with respect to the -- to the documents  
7 that we're going to now go through, pages 45 through 65,  
8 how did those come to be prepared?

9 A There --

10 Q Forty-five through 65.

11 A They were prepared at -- at the request --

12 Q Let me -- let me amend that. I'm sorry.

13 Forty-five through 77 if you look at the second page of  
14 the -- of the table of contents. The question is, who --  
15 who -- who requested those documents?

16 A I just want to make sure --

17 (Pause)

18 BY MR. STEVENS:

19 A Tables on the pages 45 through 77 were prepared  
20 at the request of Friendship Dairies, Incorporated.

21 Q They asked you to prepare that information for  
22 use at this hearing?

23 A Yes, they did.

24 Q Does that come from -- does this information

1 come from records at the Department of Agriculture or the  
2 ~~market administrator's~~ **Market Administrator's** office?

3 A Yes, they do.

4 Q Prepared by you or pursuant to your  
5 supervision?

6 A Yes, they were.

7 Q Are they -- are they prepared for or against  
8 any proposal by you?

9 A No.

10 Q All right. Let's start with page 45. Describe  
11 what that information is?

12 A Page 45, entitled, "Supply Plants Operating  
13 Under the Northeast Order." There's three sets of data  
14 here. The first -- the first set from May of 2001 lists  
15 the operating handler. That is the supply plant operating  
16 handler under the order at that time, May 2001. The plant  
17 location and the differential in place.

18 Taking the first one as an example, ~~AgraMark~~  
19 **Agrimark**, Cabot, Vermont, was a supply plant operating in  
20 May 2001. The differential for that plant was \$2.60.

21 And the middle set of information is -- is the  
22 same but for the month of November 2001. Again, supply  
23 plants operating under the order, their name, location,  
24 and differential for two -- November 2001.

1           The bottom list of plants is the supply plants  
2           operating under the Northeast Order for May of 2002 that  
3           are operating, the handler name, location, and the  
4           differential.

5           Q     All right. Page 46?

6           A     Page 46, entitled, "Total Volume of Bulk Milk  
7           Received in Northeast Order Pool Supply Plants for  
8           Selected Months." There are three months' data reported  
9           here: May 2001, November 2001, and May 2002. The total  
10          pounds based on the criteria in the title.

11          Q     Okay. What's the significance of the footnote?

12          A     The footnote indicates what was included in  
13          bulk milk, includes transfers and diversions of bulk raw  
14          milk, bulk whole milk, bulk nonfat milk, bulk lowfat milk,  
15          and producer milk. And those are all class -- categories  
16          that are spelled out in the order language.

17          Q     All right. Page 46?

18          A     That -- that was 46.

19          Q     Excuse me? Oh, I'm sorry. Forty-seven. I  
20          -- I misspoke.

21          A     Forty-seven, entitled, "Total Volume of Section  
22          1001.12, in paren, (B), Bulk Milk Received in Northeast  
23          Order Pool Supply Plants for Selected Months." On the  
24          left-hand side is the type of handler indicated based on

1 information in Section 1001.12(b). Those are categories.  
2 Dairy farmer for other markets, other order, partially  
3 regulated, and unregulated plants. There's three months  
4 with data: May 2001, November 2001, and May 2002.

5 Due to restricted data issues, things were  
6 combined in many cases with the dairy farmer for other  
7 markets classification.

8 Q Yeah. As the footnote says, for producer  
9 handler plants, right?

10 A Producer handler plants, in all instances it  
11 was included in the dairy farmer for other markets  
12 category.

13 Q And -- and there are other restrictions aren't  
14 there?

15 A That's correct.

16 Q There's other restricted data. What's that?

17 A Where there are double asterisks present, those  
18 volumes also were included in the dairy farmer for other  
19 markets category, again due to confidentially -- reasons.

20 Q And these -- these type of handler -- they are  
21 -- they are defined in the order, each of these -- each of  
22 these handlers?

23 A That's correct.

24 Q All right. And -- and Section 1001.12(b)

1 describes the bulk milk, what is included in the bulk  
2 milk?

3 A 1000.12(b) describes those plant designations.

4 Q Okay. And -- and the bulk milk footnote?

5 A Sorry. The bulk milk includes bulk raw milk,  
6 bulk whole milk, bulk nonfat milk, and bulk lowfat milk.

7 Q As provided in the -- as provided in the order?

8 A Correct.

9 Q Page 48?

10 A Entitled the "Total Volume of Section  
11 1000.9(c), Cooperative as Handler Bulk Producer Milk  
12 Received at Pool Supply Plants for Selected Months." And  
13 there are three months in question: May 2001, November  
14 2001, and May 2002, with total pounds for each -- for each  
15 occurring month.

16 Q Okay. And Section 1000.9(c) describes what a  
17 cooperative ~~is~~ **as**, a handler is?

18 A That's correct.

19 Q In that -- in that section. All right. Page  
20 49?

21 A Page 49, entitled, "Non-Pool Plants, ~~paren~~  
22 (Other Order or Unregulated) with Bulk Milk Transfers to  
23 Plants Regulated under the Northeast Order May 2001."  
24 Then there's a line that mentions total non-pool bulk milk

1 transfers to Northeast Order pool plants, which is the  
2 volume in this case May 2001, 24,196,563. And found below  
3 that is a listing of those non-pool plants transferring  
4 milk.

5 Q And their location?

6 A And their location, yes.

7 Q And -- and is -- does -- how is bulk milk  
8 defined in this table? What -- what does -- what does it  
9 include?

10 A Bulk milk in this table is defined on -- on the  
11 corrections page, number nine, in the supplies -- you  
12 noted my corrections there for --

13 Q All right. So as described on the corrections  
14 page --

15 A Number nine. Bulk milk includes bulk whole  
16 milk, bulk nonfat milk, bulk raw milk, bulk cream, bulk  
17 skim condensed, and bulk concentrated milk.

18 Q And what is bulk milk?

19 A Bulk milk is --

20 Q Is it --

21 A -- packaged milk.

22 Q Excuse me?

23 A Simply not packaged milk.

24 Q All right. Turn to page 50.

1           A     Fifty is the same -- same -- same request as --  
2     as -- as page 49 but for a different month. At this point  
3     in time, it's November of 2001.

4           Q     As -- as 51?

5           A     As is 51.

6           Q     For what month?

7           A     For May of 2002.

8           Q     Okay. Page 52?

9           A     Titled, "Total Volume of Bulk Milk Transfers by  
10    Non-Pool Plants, ~~paren,~~ (Other Order or Unregulated) to  
11    Northeast Order Pool Distributing Plants for Selected  
12    Months," the months being May 2001, November 2001, and May  
13    2002, with associated pounds for those three periods.

14          Q     And -- and bulk milk as it's used here is  
15    described on your correction sheet?

16          A     Yes. Correction Number 10. Bulk milk includes  
17    bulk whole milk, bulk nonfat milk, bulk raw milk, bulk  
18    cream, and bulk skim condensed.

19          Q     How about page 53?

20          A     Titled, "Total Volume of Bulk Milk Transfers by  
21    Non-Pool Plants, ~~paren,~~ (Other Orders or Unregulated) to  
22    Northeast Order Pool Supply Plants," three month years in  
23    question here: May 2001, November 2001, and May 2002,  
24    with associated pounds for those respective periods.

1 Q All right. And how is bulk milk defined here?  
2 Is it on the correction sheet?

3 A Yes, it is. Correction Number 11. Bulk milk  
4 includes bulk whole milk, bulk nonfat milk, bulk raw milk,  
5 bulk cream, and bulk skim condensed.

6 Q Describe what's on page 54?

7 A Entitled, "Partially Regulated Plants with  
8 Route Dispositions in the Northeast Order for the Month  
9 May 2001," and total route dispositions is given. And the  
10 list of those partially regulated plants underneath.

11 Q And the same information for November 2001 is  
12 on page 55?

13 A That is correct.

14 Q The same information for May 2002 is on page  
15 56?

16 A That is correct.

17 Q Describe what's on page 57?

18 A Entitled, "Partially Regulated Plants under the  
19 Northeast Order with Packaged Fluid Milk Transfers to Pool  
20 Distributing Plants for the Month of May in Year 2001."  
21 Total transfers in pounds -- the partially regulated  
22 plants with packaged milk transfers listed underneath.  
23 And the receiving pool distributing plants under that.

24 Q So the first list is the plants that

1 transferred the milk?

2 A That's correct.

3 Q And the second is the receiving pool  
4 distributing plants?

5 A That is correct.

6 Q Total transfers in pounds for May 2001?

7 A That is correct.

8 Q Is the same type of information contained on  
9 page 58 for November of 2001?

10 A Yes, it is.

11 Q And on page 59 for May of 2002?

12 A Yes, it is.

13 Q Turn your attention to page 60. What's  
14 contained on that page?

15 A Entitled, "Total Additional Pounds of Partially  
16 Regulated Distributing Plant Milk Pooled under the Terms  
17 of Proposal Number 8 for the Period of January 2002  
18 through July 2002."

19 Q Okay. What's the significance of the -- of the  
20 footnote?

21 A There is restricted data in the month of March.  
22 Again, less than three handlers would have -- would have  
23 qualified under this -- terms of this proposal, which  
24 Proposal 8 is one of the proposals of this hearing.

1 Q Does that mean that there would be a number  
2 there?

3 A There would be a number if the month of March  
4 is --

5 Q It would not be zero?

6 A It would not be zero, that is correct.

7 Q And that's under Proposal 8, right?

8 A That is correct.

9 Q And on page 61, is it the same information  
10 under Proposal 9? Or not?

11 A Page 61, entitled "Total Additional Pounds of  
12 Partially Regulated Distributing Plant Milk Pooled under  
13 the Terms of Proposal Number 9." Yes, looking at Proposal  
14 9.

15 Q I didn't mean to confuse you by my question,  
16 certainly, but -- but the title of that document describes  
17 what that information is?

18 A That is correct. The period January 2000 and  
19 July 2002. January 2002 to July 2002.

20 Q All right. January 2002 to July 2002?

21 A That's correct.

22 Q Thank you. Page 62?

23 A Entitled, "Volume of Producer Milk Ineligible  
24 for Pooling on the Northeast Order under Proposal Number

1 6, Diversion Limitation, January 2001 through July 2002."  
2 It lists the months -- years and months in question,  
3 ineligible pounds, zeroes, and some asterisks.

4 Q And the significance of the asterisks?

5 A Again, there would be a number in that case but  
6 it is restricted data due to confidentiality concerns.

7 Q Less than -- less than three handlers?

8 A That's correct.

9 Q All right. How about the information on page  
10 63?

11 A Entitled, "Volume of Producer Milk Ineligible  
12 for Pooling on the Northeast Order under Proposal Number  
13 3, ~~Dispersion~~ **Diversion** Limitation, for the period January  
14 2001 through July 2002." The year and month in question,  
15 the volume of milk. Some -- some months there is volumes,  
16 other months there are asterisks. Some months are zero.

17 Q September zero -- September 2001 is zero.  
18 October of 2001 has an asterisk. There are other -- there  
19 are other numbers for different months?

20 A Correct.

21 Q The asterisks means restricted data?

22 A That is --

23 Q Less than three handlers. It's restricted  
24 data?

1           A     That is correct.  It's restricted data.  Less  
2     than three handlers.

3           Q     Strike that other comment there.

4                     (Pause)

5                     BY MR. STEVENS:

6           Q     How about page 64?

7           A     Entitled, "Total Volume of Milk Received at  
8     Northeast Order Pool Distributing Plants for Selected  
9     Months."  The month and year in question:  May 2001,  
10    November 2001, May 2002.  The total pounds for that  
11    period.

12          Q     All right.  What's the significance of the  
13    footnote?

14          A     The footnote indicates what is included in  
15    those pounds.  It includes bulk producer milk, bulk whole  
16    milk, bulk lowfat milk, bulk reduced fat milk, and bulk  
17    nonfat milk.

18          Q     All right.  What's contained on page 65?

19          A     "Total Volume of Producer Milk Received by  
20    Northeast Order Pool Distributing Plants for Selected  
21    Months."  The month and year in question, the total  
22    pounds.  Month of May 2001, November 2001, May 2002, and  
23    associated pounds for those -- for those periods.

24          Q     All right.  How about what's contained on page

1 66?

2 A "Entitled Total Volume of Section 1000.9(c),  
3 ~~Cooperativist~~ **Cooperative as** Handler Producer Milk  
4 Received in Northeast Order Pool Distributing Plants,  
5 Selected Months." The month and year in question: May  
6 2001, November 2001, and May 2002, and the corresponding  
7 pounds for that period.

8 Q A cooperative and a handler ~~is~~ **as** defined under  
9 Section 1009.c?

10 A Correct.

11 Q Tell us what's contained on page 67?

12 A Entitled, "Bulk Transfers by Pool Supply  
13 Plants, the Northeast Order Pool Distributing Plants,  
14 Selected Months." Again, the month-year in question: May  
15 2001, November 2001, and May 2002, and the total pounds  
16 for those associated months.

17 Q What's the significance of the footnote?

18 A The footnote indicates what was included in  
19 this case. Includes bulk raw milk, bulk whole milk, bulk  
20 nonfat milk, bulk lowfat milk, bulk skim condensed, bulk  
21 milk concentrate, and bulk cream.

22 Q Tell us what's on page 68?

23 A Entitled, "Volume of Milk Diverted from  
24 Northeast Order Distributing Plants to Non-Pool, ~~in paren,~~

1 (Unregulated Plants), for the Month of May 2001." First  
2 entry, total diverted to non-pool plants in pounds, and  
3 then following that is the -- is a list of receiving non-  
4 pool plants that received that.

5 Q Okay. Is the same information on page 69 for  
6 November 2001?

7 A That is correct.

8 Q And how about the information on page 70? Is  
9 that the same for May 2002?

10 A That is correct.

11 Q Tell us what's contained on page 77? 71, I'm  
12 sorry. Can't even read.

13 A Entitled, "Total Volume of Bulk Milk Diverted  
14 from Distributing Plants to Pool Plants under the  
15 Northeast Order, May 2001." The first entry, total  
16 diverted to pool plants in pounds. Following that is the  
17 pool plants, the names, and their locations.

18 Q What's the significance of the footnote?

19 A Footnote indicates that the diverting would be  
20 both pool distributing and pool supply plants. The  
21 receiving ones, excuse me.

22 Q Okay.

23 A The ones that are receiving that. The pool  
24 plants would be --

1 Q Go ahead.

2 A -- would be distributing plants and pool supply  
3 plants.

4 Q The -- the -- the number describes the amount  
5 diverted to pool plants?

6 A That's correct.

7 Q The pool plant description describes the  
8 receiving plants?

9 A Pool plant description -- describes the  
10 receiving, correct.

11 Q And they could be either pool distributing  
12 plants or pool supply plants?

13 A That's --

14 Q I believe I should say either/or. It includes  
15 pool supply plants and pool supply -- I'm sorry.

16 A That's --

17 Q It includes pool distributing plants and pool  
18 supply plants?

19 A That is correct.

20 Q And is that similar to the information  
21 contained on page 72?

22 A That's correct.

23 Q That's for November of 2001?

24 A Correct.

1 Q And is that similar to the information on -- on  
2 page 73 for May of 2002?

3 A That is correct.

4 Q Okay. Describe for us what's on page 74?

5 A Page 74, entitled, "Total Volume of Producer  
6 Milk Diverted to Non-Pool Plants under the Northeast Order  
7 for May of 2001." Top entry, the total diverted to non-  
8 pool plants in pounds. Listed underneath is receiving  
9 non-pool plants.

10 Q Okay. And similar information is -- well, let  
11 me -- let -- what's the significance of the footnotes?

12 A There's two footnotes, one indicating a split  
13 plant designation for -- for two plants on that list. And  
14 there's a note on the bottom that indicates non-pool  
15 plants include exempt plants, partially regulated, --  
16 unregulated, and other order plants.

17 Q Now, is similar information contained on page  
18 75 for November of 2001?

19 A That is correct.

20 Q And for May of 2002 on page 76?

21 A That is correct.

22 Q Describe for us what's on page 77?

23 A Entitled, "Volume of Cooperative 9(c) Handler  
24 Producer Milk Deliveries to Northeast Order Pool Plants,

1 Selected Months." Pool period in question, month and  
2 year, May 2001, November 2001, and May 2002, and -- and  
3 the -- the products represented in that -- for that --

4 Q Some -- the sum of the products?

5 A The sum of the products for that -- for that  
6 request, yes.

7 Q Is that in pounds?

8 A That is in pounds.

9 Q And what's the significance of the footnote?

10 A The footnote in -- indicates that includes  
11 deliveries to pool distributing plants and pool supply  
12 plants.

13 Q Okay. Now, let me refer you to the  
14 information, pages 78 through 84. You received a request  
15 to prepare that information?

16 A Yes. We received a request from New York State  
17 Dairy Foods to prepare the information in those tables.

18 Q As -- as with the information you prepared for  
19 Friendship, from your records or the Department of  
20 Agriculture or the ~~marketing administrator's~~ **Marketing**  
21 **Administrator's** records?

22 A That is correct.

23 Q By you or pursuant to your supervision?

24 A That is correct.

1 Q Not for or against any proposal presented here?

2 A That's correct.

3 Q All right. Why don't you take us through,  
4 starting with page 78, Appendix 7? Tell us what that  
5 information is?

6 A Page 78, entitled, "Total Pounds of Milk and  
7 Number of Producers Pooled by Section 1000.9(c),  
8 Cooperative as Handler, for the Period July 2001 through  
9 July 2002." There's the year and the month in question on  
10 the left, starting with 2001.

11 Second -- the first column of numbers indicates  
12 the total volume pooled, total pounds pooled.

13 The third column, number of producers --  
14 indicates the number of producers that that represents.

15 Q All right. Tell us what's in Appendix --  
16 Appendix 8 on page 79?

17 A Entitled -- page 79, entitled, "Plant Transfers  
18 of Bulk Fluid Milk from Northeast Order Pool Plants to  
19 Other Order Pool Plants and Bulk Transfers from Other  
20 Order Pool Plants to Northeast Order Pool Plants for the  
21 period January 2001 through June 2002." The left is the  
22 pool period, the month -- the year and the month.

23 The first two sets of data indicate transfers  
24 to other order plants. And the sub-heading underneath

1 that is the receiving order -- orders and then the pounds  
2 of milk that would go along there.

3 Q Okay. For -- so January of 2001, six and 30  
4 refer to order number six and order 30?

5 A That's correct. The receiving orders.

6 Q And the numbers in the document refer to the --  
7 to the various orders in that way?

8 A That is correct. The next column is -- there's  
9 an asterisk on the six and 30 because that, again, is  
10 restricted data. Less than three handlers or plants  
11 reporting for the order.

12 The middle two columns, "Transfers from Other  
13 Order Plants," that is milk coming back into the Northeast  
14 Order, indicates the numbers that this transferred milk  
15 was coming from and the pounds of milk that that accounted  
16 for.

17 The final column, "Net Movements, Transfers  
18 Less Receipts." In this case, for January 2001, there's  
19 an "N/A" because we had restricted data on the transfers  
20 out.

21 Q When that number is a positive number, what  
22 does that mean?

23 A That the amount of milk that was going out  
24 exceeded the amount of milk that came back in. The

1 transferred milk going out exceeded the transferred milk  
2 coming into the Northeast Order.

3 Q And when it's a negative?

4 A The opposite will be true. The amount of  
5 transferred milk coming into this order exceeded the  
6 volume of transferred milk that was go -- going out in  
7 that particular month.

8 Q Okay. I direct your attention to page 80,  
9 Appendix 9.

10 A Appendix 9 had a change in the title noted in  
11 the corrections page, and I will read that corrected  
12 title. The title now is, "Diversions from Northeast Order  
13 Handlers to Other Order Pool Plants and Diversions from  
14 Other Orders to Northeast Order Pool Plants."

15 Q Okay. It's still the same time period?

16 A Same -- I'm sorry. That's correct. Still the  
17 same time period.

18 Q All right.

19 A The pool period and year and month are  
20 referenced on the left-hand column. The first set of  
21 numbers is diversions to other order plants. Those are  
22 the receiving orders. Indicated as before, the order  
23 number ~~530~~to = 5, 30, or 33, et cetera.

24 The next column, there's an asterisk because it

1 is restricted data.

2 The middle two columns is diversions from other  
3 orders. And underneath that is the shipping orders. That  
4 is milk coming back -- diverted milk coming back to the  
5 Northeast Order, the associated pounds. In this instance  
6 in January of 2001, we have "N/A"s as the net movements,  
7 diversions out less receipts due to the restriction data  
8 in January 2001.

9 Q All right. And -- and using the information,  
10 if I'm describing this correctly, in Column 3 and Column  
11 5, an arithmetical computation there will bring you to the  
12 -- to the amount listed in the last column?

13 A Is it two and four you're referring to? Column  
14 --

15 Q I referred to it as three because I was  
16 counting the pool --

17 A I'm sorry. Okay. You're right.

18 Q -- but you know what I'm saying. It's the  
19 pound --

20 A Yes.

21 Q -- the pound column under diversions to other  
22 pool plants and the pound column under diversions from  
23 other orders. That is arithmetical -- the computation is  
24 -- is -- results in -- in the number in the last column?

1           A     That is correct.

2           Q     And the same is true for the previous exhibit,  
3 Appendix 8, is it not?

4           A     That is correct.

5           Q     All right.  And -- and you described the  
6 material in the footnotes, the restricted data and the  
7 "N/A," non-applicable, where restricted data is included,  
8 I -- I'm assuming?

9           A     That is correct.

10          Q     All right -- too far here.

11                   (Pause)

12                   BY MR. STEVENS:

13          Q     Okay.  Are we at page 81?  Tell us what's  
14 contained on page 81?

15          A     Page 81, entitled, "Estimated Monthly Payments  
16 to Qualifying Cooperatives for Proposed Marketwide Service  
17 Payment for the Period January 2001 to June 2002."  Left-  
18 hand column is the year and month in question.  The next  
19 column, "Estimated Qualifying Pounds," is the -- is -- is  
20 -- is our estimate of the qualifying pounds based on the -  
21 - on the criteria in the proposal that would qualify for  
22 the -- for the payment.

23                   The next column is the "Estimated Total Funds  
24 Deducted from the Producer Settlement Fund" at a rate of

1 six cents per hundredweight, which is simply taking the  
2 pounds in Column 1, multiplying at a rate of six cents a  
3 hundredweight.

4 The third column, entitled, "Estimated Impact  
5 on Producer Price Differential on a Cents Per  
6 Hundredweight Basis," brought out to four decimal places.

7 Q What's the significance of the material at the  
8 bottom of the -- of the table? Starting with the handlers  
9 ~~qualify~~ **qualifying**?

10 A The information on the bottom indicates that  
11 when we did this analysis we looked at the qualifying  
12 requirements of the proposal and these were the handlers  
13 that would have qualified under the proposed regulations.  
14 And I'll note that there is a corrected spelling in the --  
15 in the word "Cooperative" in St. Albans Cooperative  
16 Creamery. It happens to be a footnote -- I'm sorry,  
17 corrected page number -- number 13 on the corrections  
18 document.

19 Q All right. Could you tell us what's contained  
20 on Appendix 11 on page 82?

21 A Entitled -- page 82, entitled, "Class 1 Sales  
22 by Northeast Order Pool Distributing Plants Inside and  
23 Outside the Northeast Marketing Area for the period  
24 January 2001 to July 2002." The first column is the year

1 and month in question.

2 The next column, entitled, "Total Class 1 Sales  
3 in the Marketing Area." In January 2001, for example, it  
4 was 862,143,207.

5 The next column, "Class 1 Sales by Northeast  
6 Order Handlers and Other Federal Order Markets." For  
7 example, January 2001, the volume was 2 -- 11,026,025  
8 pounds.

9 The next column, entitled, "Class 1 Sales by  
10 Northeast Order Handlers in Non-Federal Order Markets."  
11 Entitled -- I'm sorry. January 2001 is an example of  
12 80,793,557.

13 And the final column to the right entitled,  
14 "Total Class 1 Utilization," is a summary of those three -  
15 -

16 Q So it's the sum of the --

17 A -- prior columns.

18 Q -- of the other three columns?

19 A That's correct.

20 Q What's the footnote? What's the significance  
21 of the footnote?

22 A The footnote indicates that this data does not  
23 include route sales by partially regulated distributing  
24 plants, exempt plants, and producer handlers. We are not

1 -- we do not publish this data.

2 Q Take us through the information on Appendix 12,  
3 page 83, please?

4 A Page 83, entitled, "Sales of Packaged Fluid  
5 Milk Products in the Northeast Marketing Area from Plants  
6 Regulated by Other Federal Orders for the Period January  
7 2001 through July 2002." This data is reported to us by  
8 other federal orders.

9 The column on the left reports the year and  
10 month in question. And then there are four -- I'm sorry,  
11 three -- four headings along the -- along the top there.  
12 One is the Appalachian Order, Order Number 5; the Upper  
13 Midwest, Order 30; the Mideast Order, Order 33; a category  
14 called "All Other Orders"; and a total on the right.

15 The -- the three individual orders,  
16 Appalachian, Upper Midwest, and Mideast, were included  
17 because at some point in this year and a half period of  
18 time, January 2001 through July 2002, they had figures  
19 that were -- that were not restricted data. In all other  
20 cases, there's a double asterisk where their -- their data  
21 was restricted less than three handlers, three plants.  
22 And those figures were included in the "All Other Orders"  
23 total.

24 Q Okay. So -- so when I look for 2001 at the

1 bottom of the "All Others -- All Other Orders" column and  
2 there's 7.7 million, I believe, pounds represented there,  
3 that includes the restricted data also in -- in aggregate  
4 with everything else?

5 A That is correct.

6 Q And that would be true for 2002 also?

7 A That is correct.

8 Q And the footnotes describe the orders in  
9 addition to the ones shown on the table?

10 A That is correct.

11 Q Could you tell us what's contained on Appendix  
12 13, page 84?

13 A Page 84, entitled, "Sales of Packaged Fluid  
14 Milk Products in the North" -- I'm sorry, "in the Mideast  
15 Marketing Area from Plants Regulated in the Northeast  
16 Order, Period January 2001 through July of 2002." Left  
17 column, the year and month in question. Year, January  
18 through July of 2002 -- January 2001 through July of 2002.  
19 And the total pounds that are associated with the  
20 respective months.

21 Q All right. Now, you -- you -- referring now to  
22 -- to the rest of the pages here, you got requests from  
23 Association of Dairy Cooperatives in the Northeast. You  
24 have a request from them. You have a request, I -- I

1 believe, that was from both New York State Dairy Foods and  
2 Association of Dairy Cooperatives in the Northeast. So  
3 now I'm referring to Exhibits 14 through -- I'm sorry.  
4 Appendix 14 through 17, pages 85 through 88.

5 A That is correct.

6 Q And -- and those were prepared by you or  
7 pursuant to your supervision?

8 A Yes.

9 Q From records of the ~~market~~ **Market** Administrator  
10 at Department of Agriculture?

11 A Yes.

12 Q And they're not presented for or against any of  
13 the proposals, are they?

14 A No.

15 Q All right. Let's just go through those real  
16 quickly. The -- the Exhibit 14 on page 85?

17 A Entitled, "Milk Powder and Butter Production at  
18 Selected Plants Associated with the Northeast Order for  
19 the Months of May and November, Period of 1992 through  
20 2002."

21 The left-hand column indicates the month and  
22 year.

23 The next column, total milk receipts at the  
24 plant. I'll take May '92 as an example. About 332

1       **323,910,899** pounds.

2                   The next column, total cream receipts,  
3       **4,748,060.**

4                   The next column --

5           Q       Is a total of the first two?

6           A       Is -- correct. Is a combination of -- total of  
7       the first two of May -- May of '92 of -- example of  
8       **328,658,959** pounds.

9                   The next column, entitled, "Total Skim Milk  
10       Powder Manufactured." Example, May '92, of **128,425,719.**

11                   The next column, "Total -- Total Whole Milk  
12       Powder and Other Powder" of, for example, May '92, of  
13       **64,518,136.**

14                   And the following column -- final column to the  
15       right, "Total Butter Manufactured," for May '92 example is  
16       **8,141,988.**

17                   And just to make a note, on the corrections  
18       --

19           Q       Right.

20           A       -- document, the -- the pound symbol in the  
21       "Total Whole Milk Powder and Other Powder" category does  
22       not apply to anything. It was a typographic error.

23           Q       Doesn't have any significance in the document.  
24       There is no footnote corresponding to that?

1           A     That is correct.

2           Q     And there are some footnotes there, right,  
3     which --

4           A     Yes.

5           Q     -- which qualify the information contained in  
6     the exhibit?

7           A     That is correct.

8           Q     All right. Turning your attention to page 86,  
9     Appendix 15. Describe that for us?

10          A     Page 86, entitled, "Producer Deliveries to the  
11     Pool Distributing Plants for the Period January 2001  
12     through June 2002." The first column is the year-month in  
13     question.

14                 The next column, entitled, "Percentage of  
15     Cooperative 9(c) Producer Milk Receipts Delivered to  
16     Distributing Plants." And the percentage that is  
17     indicated there.

18                 The next column to the right is, "Percentage of  
19     Proprietary Handler Producer Milk Receipts Delivered to  
20     Distributing Plants."

21          Q     Okay. And they -- they list by month, by year,  
22     all of 2001 and part of 2002?

23          A     That is correct.

24          Q     There is an average for 2001 and there's a six-

1 month average for 2002?

2 A That is correct.

3 Q The -- the information in the columns is  
4 qualified by the footnotes?

5 A That is correct.

6 Q Let me direct your attention to page 87.

7 JUDGE BAKER: Mr. Stevens?

8 MR. STEVENS: Yes?

9 JUDGE BAKER: Will this witness be through in  
10 the next few minutes? Because this is come -- there comes  
11 a time when we need our recess.

12 MR. STEVENS: I'm -- I'm certainly willing to -  
13 - a recess. We can continue this.

14 JUDGE BAKER: How long? How much longer do you  
15 think he'll take?

16 MR. STEVENS: Well, I only have two more  
17 exhibits, and then --

18 JUDGE BAKER: All right.

19 MR. STEVENS: -- I might ask that we just  
20 finish these two and then he'll be subject to cross  
21 examination after our break, if that's --

22 JUDGE BAKER: All right.

23 MR. STEVENS: -- if that would be --

24 JUDGE BAKER: That's fine.

1 MR. STEVENS: -- agreeable?

2 JUDGE BAKER: Fine. Thank you.

3 MR. STEVENS: Certainly.

4 BY MR. STEVENS:

5 Q Now, remind me where I was. Page 87?

6 A Page 87.

7 Q Is that right?

8 A Page 87, entitled, "Producer Account and  
9 Percent of Total Producer Milk Receipts Accounted for by  
10 'Other States' Category for the Period January 2000  
11 through June 2002." In the left-hand column we have the  
12 year in question followed by the month in question. Total  
13 pool producers.

14 And the next column in the grayed shaded area  
15 indicates producers in the "Other States" category. In  
16 January of 2000, there were -- there were -- there were  
17 not any that we had restricted data for in the other  
18 states. No pounds, no percent.

19 If you jump down to January of 2001, for  
20 example, there were 481 -- states -- I'm sorry. There  
21 were 481 producers that fell into the "Other States"  
22 category due to restricted data nature. They represented  
23 663,955,070 pounds, or 3.1 percent of the total pooled  
24 receipts. The Footnote Number 5 there indicates for what

1 states the restricted data was included.

2 Q And the footnotes on the -- on the extreme  
3 right of the shaded area there describe or qualify the  
4 information contained in the exhibit?

5 A That is correct.

6 Q All right. I believe we're at page 88, Exhibit  
7 -- Appendix 17. Could you describe that information,  
8 please?

9 A Page 88, entitled, "Cooperative and Non-  
10 Cooperative Member Share of Producer Receipts and  
11 Producers." On the left-hand side we have the year and  
12 month in question.

13 And under the heading, "Producer Receipts,"  
14 this is the market total. That is the total pool volume  
15 at that month.

16 "Volume of Milk," the next column, in the  
17 cooperative that the cooperative members -- producers who  
18 are members of cooperatives represented in the second  
19 column.

20 The third column, "Non-Cooperatives." That is  
21 producers who are not members of a cooperative as  
22 represented by those figures.

23 And the -- the first shaded area, "Percent of  
24 Receipts Cooperative." For the month of January 2002, for

1 example, cooperative members represented 73.8 percent of  
2 the total pool receipts. Non-cooperative producers  
3 represented 26.2 percent of the total pool receipts.

4 Q Correct me if I'm wrong. That's -- that's an  
5 arithmetical computation from the first three columns?

6 A That is correct.

7 Q As is -- as is from the next three columns and  
8 those computations?

9 A That is correct.

10 Q Could you describe the significance of the  
11 footnote?

12 A The footnote notes that this is information  
13 reported at time of the pool. It's -- it's handler-based  
14 numbers at pool time.

15 MR. STEVENS: Anything else? That's all I have  
16 on direct, Your Honor.

17 JUDGE BAKER: Very well. Thank you. That  
18 concludes the direct testimony of Mr. Fredericks.

19 Prior to our morning recess, may I see by a  
20 show of hands how many have questions of Mr. Fredericks?

21 (There was a show of hands.)

22 JUDGE BAKER: There are quite a number, yes.  
23 Very well. We'll take our morning recess, a 15-minute  
24 recess, at this time. Thank you.

1 (Brief recess)

2 JUDGE BAKER: Could we please come to order  
3 after our morning recess?

4 During that time a question was raised as to  
5 when we anticipate our luncheon hour. And that's  
6 anticipated around 12:30, as -- as nearly as -- as we can  
7 make it.

8 Mr. Fredericks is on the stand and has  
9 completed his direct testimony with respect to what has  
10 been marked for identification as Exhibit 5 and 5-A. We  
11 can now ask for cross examination. Who would like to --  
12 yes, Mr. Rosenbaum? Yes.

13 CROSS EXAMINATION

14 BY MR. ROSENBAUM:

15 Q Mr. Fredericks, I wonder if I could have you  
16 turn to the first page of Exhibit 5? By that, I mean the  
17 page that says, "page one." Which is entitled, "Receipts  
18 of Producer Milk by State." Is that --

19 A Yes.

20 Q Now, am I right that this is a compilation of  
21 the quantity of milk pooled on the Northeast Order?

22 A That is correct.

23 Q And it -- this is a statement ~~---~~(inaudible) **in**  
24 **terms of pounds, I assume?**

1           A     That's correct.

2           Q     Now, I want to focus initially on your very  
3 last piece of information -- milk pooled from other  
4 states. Do you see that? For the three years indicated.  
5 No, still on the same page.

6           A     Yes, yes.

7           Q     And your footnote states -- the second of the  
8 two footnotes states that restricted data is included in  
9 "Other States," correct?

10          A     Correct.

11          Q     Now, am I correct that for the year 2001 the  
12 only state that is -- included in "Other States" on the  
13 grounds of it being restricted data is Rhode Island?

14          A     Well, Rhode Island would be in every month.  
15 I'd have to check and see if there was any other ones in -  
16 - in the year 2001 --

17          Q     Well, I see West Virginia for the month of  
18 June. And let me just ask a wrap-up question. Am I  
19 correct that the only -- let me back up a bit.

20                 The -- the document lists a number of states by  
21 name, correct?

22          A     Correct.

23          Q     And then it has a category, "Other States,"  
24 correct?

1 A Correct.

2 Q And for the year 2001, am I right in stating  
3 that the only time that one of the named states is --  
4 ~~(inaudible)~~ **ends up being included in "Other States"** is  
5 -- is with respect to the state of Rhode Island for every  
6 single month and with respect to the state of West  
7 Virginia for the month of June?

8 A That would be correct.

9 Q Okay. So that ~~---(inaudible)---~~ and to get a  
10 ballpark sense of things, we know that Rhode Island --  
11 ~~(inaudible)~~ **production in the** year 2000 ~~---(inaudible)~~  
12 **was only a little less than 2 million** pounds of milk a  
13 month, correct?

14 A That's correct.

15 Q So something along the order of that is  
16 included in "Other States" for the year 2001, correct?

17 A That is correct.

18 Q And some ~~---(inaudible)---~~ **similarly we know**  
19 **that** production in West Virginia ~~---(inaudible)---~~ **while**  
20 **it varies** a bit. But -- it's ~~---(inaudible)---~~ **something**  
21 **2, 3, 4 million pounds**, something in that nature, correct?

22 A That is correct.

23 Q Okay. All right. Now, if you could turn --  
24 ~~(inaudible)~~ **with me** now to Appendix 16? You might want

1 to keep your finger on the previous page because I -- I do  
2 have -- my initial question relates to the two documents  
3 and how they correspond to each other.

4 This Appendix 16 == **appears** on page 87, lists  
5 total == **pool** producers and then lists how much comes  
6 from other states, correct?

7 A That is correct.

8 Q And there is an indication there for the number  
9 of pounds that come from other states, correct?

10 A That is correct.

11 Q And am I correct that that in fact is the same  
12 ~~== (inaudible) ==~~ **data** that had appeared back on page one  
13 under the heading, "Other States"?

14 A That is correct.

15 Q Okay. And so for Appendix 16, we have -- we  
16 know that other states for the year 2001 includes Rhode  
17 Island for every month and West Virginia for June of 2001.  
18 And we have a rough sense of the quantity involved based  
19 upon the questions I asked you previously, correct?

20 A That is correct.

21 Q Now, focusing on Appendix 16, am I correct in  
22 interpreting that as indicating that in the months of May,  
23 June, and July of 2001, over 100 million pounds of milk  
24 was shipped into and pooled on the Northeast Order from

1 other states?

2 A That is correct. From the other states that  
3 are footnoted in -- in number six there.

4 Q And -- and -- and by "other states" in this  
5 context, you mean states that are not geographically part  
6 of the Northeast Order, correct?

7 A With the exception of Rhode Island, which is  
8 one of those that would be included in that number.

9 Q All right. And indeed, in the peak month of  
10 June, over five percent of all of the milk pooled in the  
11 Northeast Order came from states located geographically  
12 outside the order, is that correct?

13 A That is correct, again, with the -- the  
14 adjustment for Rhode Island.

15 Q And -- and one might have to make a couple  
16 million pound adjustment to -- to account for Rhode  
17 Island, correct? Assuming Rhode Island production was  
18 the same in 2001 as it had been in 2000 when the data was  
19 not restricted?

20 A That is correct.

21 Q Now, I assume you agree with me that the spring  
22 is generally thought of as the time when milk production -  
23 - milk production is at its peak, correct?

24 A That's -- that's true.

1           Q     And the fall is when milk production is at its  
2     -- at -- is lowest, correct?

3           A     That is correct.

4           Q     And if we look at the fall now, what we see is  
5     that in November only 13 million pounds of milk came in  
6     from other states, correct?

7           A     That is correct.

8           Q     And so that about 90 million pounds **of** milk  
9     more comes into the Northeast Order in the spring, the  
10    time when supplies are greatest, as compared to the fall  
11    when supplies are the lowest, is that right?

12          A     In this particular year, in those particular  
13    months in question, that appears to be correct.

14          Q     And we know that, taking June for example --  
15    actually, taking any of the months, May, June, or July,  
16    that milk comes in from as far away as Idaho, Michigan,  
17    Minnesota, Utah, and Wisconsin, correct?

18          A     Milk from producers in those states was pooled  
19    on this order, not necessarily coming in.

20          Q     Actually -- and -- and you corrected me and  
21    I'll get to that point in a minute. I appreciate that  
22    correction.

23                    Now, have you looked at Proposal Number 7?

24          A     Yes.

1           Q     And assuming that this milk coming in from  
2     these other states is going to a Class 3 or 4 plant that -  
3     - that meets the qualifications of Proposal 7, then a  
4     marketwide service payment would be made with respect to  
5     this other state milk, correct?

6           A     If -- if the -- these volumes of other states  
7     were included on pooled reports of handlers that we've  
8     indicated will qualify, yes, that would -- would be --  
9     payments would be made on that.

10          Q     Now, you corrected me a minute ago when I  
11     mistakenly said the milk was shipped into the order. In  
12     fact, you've indicated, I believe, on -- on page 45 what -  
13     - what -- which supply plants are associated with the  
14     Northeast Order, correct?

15          A     For those months in question, yes.

16          Q     And you've included in that list for the year  
17     2001 -- well, let me -- let me -- for May 2001, which is  
18     one of the months we just got through looking at, there's  
19     a plant in Minnesota that's a supply plant in the  
20     Northeast Order, correct?

21          A     That's correct.

22          Q     And -- and the implication of that is that a  
23     farmer would ship milk -- let me rephrase that.

24                   A farmer located in -- in Minnesota would ship

1 milk to a plant located in Minnesota. The milk would be  
2 processed there into Class 3 or 4 product. And that plant  
3 would qualify for a six-cent marketwide service payment to  
4 be drawn out of the Northeast Order under Proposal Number  
5 7, is that right?

6 A So long as that plant in question in Minnesota  
7 or wherever met the pooling requirements of the order.  
8 That is, the other order requirements.

9 Q And the same would be true for the Land O'  
10 Lakes plant located in Wisconsin, correct?

11 A That is correct.

12 Q And the -- so we've got, what, two plants in  
13 Minnesota and one plant in Wisconsin that qualify as  
14 supply plants. And accordingly, milk shipped to them from  
15 a farmer located across the street from that plant so to  
16 speak would qualify for the marketwide service payments  
17 under Proposal Number 7, is that correct?

18 A Again, if they -- if they met the other  
19 qualification standards for the order, Northeast Order,  
20 those plants.

21 Q Okay. Well, we -- we know they already qualify  
22 as supply plants or you wouldn't have put them on the  
23 list, correct?

24 A That's right. For these months as noted here,

1 correct.

2 Q Do you -- still sticking with page 45, do you  
3 know which of these supply plants -- take May of 2001 -  
4 - are owned by cooperatives and which ones are not?

5 A Do I personally?

6 Q Yes.

7 A Yes.

8 Q Could -- could you go through them one by one  
9 and tell them co-op or non-co-op?

10 A That information could be obtained from other  
11 documents that we've -- we've submitted here.

12 Q Well, if **you** could do it, I'd appreciate it if  
13 you'd just go ahead and do it.

14 A I -- I can't do that. This is -- we weren't --  
15 this request was -- was for something else. I won't do  
16 that.

17 That can be obtained from other documents that  
18 we -- we've submitted.

19 Q Do you -- do you do it by -- by comparing page  
20 45 to the list that appears elsewhere of the co-ops? On  
21 page 19?

22 A You -- no. It could be determined from  
23 information on -- on page 16.

24 Q How does that information tell you whether or

1 not the plant's a co-op or not?

2 A Correct. Let me think a second. That -- what  
3 I was -- what I was thinking is that that's a -- that  
4 indicates whether they're a pool supply plant or -- or  
5 whatever. That does not indicate their ownership status  
6 of a -- as a cooperative.

7 I -- I guess there isn't a direct list that  
8 says -- in the documents. I stand corrected. There is  
9 not something in -- in -- in the documents here that tells  
10 you specifically what those plants are. Ownership of  
11 those plants.

12 Q Well, simply by comparing names. I mean, we --  
13 we know the first three plants are ~~AgraMark~~ **Agrimark**  
14 plants and ~~AgraMark~~ **Agrimark** is listed on page 19 as a --  
15 as a cooperative with producers pooled on the Northeast  
16 Order, correct?

17 A You could make that assumption, sure.

18 Q Okay. Well, using that approach, you've got  
19 three ~~AgraMark~~ **Agrimark** plants listed on page 45 as supply  
20 plants, correct?

21 A Correct.

22 Q And ~~AgraMark~~ **Agrimark** is listed as a  
23 cooperative on page 19, correct?

24 A Correct.

1           Q     You've got Dairy Farms of America having a  
2     plant on page 45 and they are also listed on page 19,  
3     correct?

4           A     That's correct.

5           Q     And next is MK Produce Corporation, which is  
6     listed on page 45 as a supply plant but is not listed on  
7     page 19 as a cooperative, correct?

8           A     That's correct.

9           Q     And do you know in fact that they're not a  
10    cooperative?

11                   (Pause)

12           MR. STEVENS: Your Honor, I -- I -- I don't  
13    -- I don't -- I don't really want to make an objection. I  
14    guess what I'm -- what I'm driving at is that the  
15    documents are presented for the use of the parties here at  
16    the hearing. The witness may or may not have personal  
17    knowledge of the answer to the question that's being  
18    asked, but the documents are presented for the parties to  
19    use to -- to -- to decipher this information.

20           JUDGE BAKER: That's what Mr. Rosenbaum is  
21    trying to do. He's trying to find out what supply plants  
22    were owned by cooperatives and which ones were not.

23           MR. STEVENS: Well, let him ask the  
24    cooperatives. Let him ask the individual companies and --

1 and -- and they would be the ones to give out that  
2 information, not the market administrator.

3 JUDGE BAKER: Yes, but if the ~~market~~  
4 ~~administrator~~ **Market Administrator** knows, why would he be  
5 reluctant to reveal that information?

6 MR. STEVENS: Because the co-ops may object.

7 JUDGE BAKER: Well then, they should object.  
8 But maybe they don't object. I -- I don't know. I don't  
9 want to get into evaluating this other than whether Mr.  
10 Fredericks knows as a fact whether or not some of these  
11 supply plants are owned by co-ops or not.

12 BY MR. ROSENBAUM:

13 Q Back to my question. Do you know whether MK  
14 Trading Corporation is a co-op or non-co-op?

15 MR. STEVENS: Your Honor?

16 JUDGE BAKER: Yes?

17 MR. STEVENS: The question -- I mean, I'm --  
18 I'm getting from the question that the -- the question is,  
19 do they own the plant. The question of who owns the  
20 plant, it could be owned by a number of entities. It may  
21 not be 100 percent owned by a cooperative. I don't know.

22 MR. ROSENBAUM: Your Honor, this is -- this is  
23 called coaching the witness, I think, Your Honor. Either  
24 the witness knows or he doesn't know. We can --

1           MR. STEVENS: Well, I can direct him not to  
2 answer also if we want to -- we want to play that game.  
3 But -- but the point here is that these -- these documents  
4 are presented for the use of the parties. Let the parties  
5 ask the entities as to their business operations.

6           This -- this individual is not in a position to  
7 know the percentage of ownership of a -- of a company of a  
8 plant. And so to -- to ask him, does the co-op own the  
9 plant, he may or may not know that. I -- I -- I don't  
10 know that he does know it.

11           JUDGE BAKER: Well, now you have made a  
12 representation that Mr. Fredericks is not in a position to  
13 know whether or not these supply plants are owned by co-  
14 ops. You've made that representation.

15           And Mr. Rosenbaum, without representation, I  
16 don't know what else we can do.

17           MR. ROSENBAUM: Your Honor, I don't yet know  
18 whether the witness knows the answer to the question or  
19 not. And -- and if he has information that's useful for  
20 the hearing, I think I'm entitled to ask him about it.  
21 I'm drawing upon the information that he's provided but  
22 I'm seeking some -- I'm seeking to elucidate that, which  
23 is the whole reason why we allow cross examination with  
24 respect to the data put in by the ~~market administrators~~

1       **Market Administrators.**

2                   JUDGE BAKER: Well, let's see what the witness  
3 knows and what he believes can be discerned from this  
4 document which has been identified as Exhibit 5 and 5-A.

5                   BY MR. ROSENBAUM:

6           Q       Let me -- let me rephrase the question in a way  
7 that may make it simpler. You described who the operating  
8 handler is with respect to each of these plants, correct?

9           A       That's correct.

10          Q       Okay. Let me -- and am I correct that with  
11 respect to MK Trading Corporation and Fleur de Lait -- I'm  
12 sure I'm mispronouncing that -- and Queensboro Food  
13 Products, those three are listing -- listed as being  
14 operating handlers of supply plants as of May 2001 but do  
15 not appear on page 19 with respect to your list of  
16 cooperative -- with producers pooled on the order?

17          A       That's correct.

18          Q       All right. Have you conducted any -- strike  
19 that. Have you made any determination whether any non-co-  
20 op supply plant would qualify for marketwide service  
21 payments under Proposal Number 7?

22          A       Yes. We went -- we looked at the criteria in  
23 the Proposal Number 7 and evaluated all handlers against  
24 that criteria. And the ones that -- that met -- met

1 the criteria were the ones that we listed on --

2 (Pause)

3 ~~BY MR. ROSENBAUM:~~

4 A -- on Appendix 10, page 81.

5 Q I appreciate that. And the conclusion one  
6 would draw is that you do not list as qualifying for the  
7 payment MK Trading Corporation or Fleur de Lait or  
8 Queensboro, correct?

9 A That's correct.

10 Q And those are the three entities that appear on  
11 page 45 as being supply plants and yet do not appear on  
12 page 19 as being cooperatives, correct?

13 A That is correct.

14 Q And conversely, am I correct that every supply  
15 plant listed on page 45 that is operated by a cooperative  
16 is listed on page 81 as qualifying for the marketwide  
17 service payment?

18 A The supply plant is not but the cooperative is.  
19 Cooperative handler.

20 Q The -- the -- every time that a co-op is the  
21 operator -- strike that.

22 You make that clarification because the  
23 qualifications with respect to the entity as a whole as  
24 opposed to an individual plant, is that right?

1           A     That's correct.

2           Q     Now, on page 54 of Exhibit 5 you list some  
3 partially regulated plants, correct?

4           A     Yes.

5           Q     And these would be Class 1 plants, is that  
6 correct?

7           A     These would be partially regulated distributing  
8 plants, yes.

9           Q     But by definition, a partially regulated plant  
10 is a Class 1 plant, correct?

11          A     That's correct.

12          Q     All right. And accordingly, these plants are  
13 selling Class 1 milk just like any fully regulated Class 1  
14 plant would be, correct?

15          A     They are selling Class 1 milk but they're not  
16 fully regulated, that's correct.

17          Q     Okay. And you include as owning the partially  
18 regulated plants Maryland and Virginia Milk Producers, a  
19 cooperative, is that correct?

20          A     As -- as an association with the Marvamaid  
21 facility -- plant in Newport News, that's correct.

22          Q     Okay. And they are one of the co-ops who would  
23 qualify for marketwide service payments according to your  
24 list on page 81, correct?

1           A     That is correct.

2           Q     And similarly, you list Upstate Milk  
3 Cooperative as operating a -- a partially regulated Class  
4 1 plant on page 54?

5           A     Correct.

6           Q     And they are also an entity that would qualify  
7 to receive marketwide service payments according to your  
8 list on page 81?

9           A     That is correct.

10           MR. ROSENBAUM: That's all I have at this time,  
11 Your Honor.

12           JUDGE BAKER: Thank you, Mr. Rosenbaum.

13           Mr. Beshore, did you have some questions?

14           MR. BESHORE: Yes, I do. Thank you, Your  
15 Honor.

16                           CROSS EXAMINATION

17           BY MR. BESHORE:

18           Q     Mr. Fredericks, I'd like to first go to your  
19 correction sheet, if I might, for a moment. Taking  
20 Correction 9 and -- my question relates to the footnote  
21 that is noted in -- in Correction 9 and -- and similar  
22 footnotes appear on many of the tables which itemize a  
23 number of specific categories of -- of bulk -- bulk  
24 commodities with different identifications. And they're

1 quite precise, apparently. There are quite a number of  
2 different categories.

3 And I'm wondering -- I don't know that there is  
4 any particular significance to any of these categories,  
5 but I wonder if you could tell us what the difference is  
6 for the record, please? For instance, Footnote 9  
7 identifies bulk whole milk, bulk nonfat milk, and bulk raw  
8 milk. How are those categories differentiated,  
9 particularly bulk whole milk versus bulk raw milk?

10 A Bulk whole milk or bulk nonfat or lowfat milk  
11 describes in our system plant transfer of bulk quantities  
12 of these products. Bulk raw milk would be -- could be  
13 diversions of Cooperative 9(c) milk or proprietary handler  
14 milk to supply plants.

15 Q Well, so, is bulk whole milk -- when something  
16 is identified as bulk whole milk, does that mean that it -  
17 - that it -- it has necessarily been received at a plant  
18 and then processed in some way and transferred to another  
19 plant?

20 A It's come to a plant.

21 Q Okay. Is it -- does it imply that it has been  
22 processed in any way, standardized or pasteurized?

23 (Pause)

24 BY MR. BESHORE:

1           A     I'm not certain.

2           Q     Okay. But bulk raw milk means milk that was  
3 delivered directly from the farm to the given plant?

4           A     That's correct.

5           Q     Now, what is bulk concentrated milk?

6           A     That obviously has gone to a plant and has --  
7 has had some of the water removed from it and it is  
8 shipped in a bulk form.

9           Q     And how -- how's that differentiated from bulk  
10 condensed or bulk skim condensed?

11          A     I don't think I list concentrated milk. I  
12 think it's bulk condensed milk or bulk skim condensed.  
13 And -- and --

14          Q     Well, Footnote 9 -- or -- I'm sorry.  
15 Correction 9 has as its last category there bulk  
16 concentrated milk. And I just wonder, what's the  
17 difference between bulk concentrated milk and bulk  
18 condensed milk, if there is one?

19          A     They're synonymous in this -- in this -- in  
20 this case here.

21          Q     Bulk skim condensed would be just what it  
22 implies; that is, the fat -- the butter fat having been  
23 skimmed off?

24          A     Skimmed off, correct.

1 Q Okay. Thank you. Now, could you turn to page  
2 19 of Exhibit 5 which is titled, "Cooperatives with  
3 Producers Pooled on the Northeast Order, July 2002." The  
4 -- am I correct that these cooperatives listed on page 19  
5 are not necessarily handlers under the order?

6 A That is correct.

7 Q Would all of the cooperatives who are handlers  
8 be the -- be listed on page 18 under the section "9(c)  
9 Handlers List"?

10 A Yes, they would, for that respective month that  
11 you're -- you're talking about, month and year you're  
12 talking about, correct.

13 Q But for -- for July 2002, if you compared the  
14 list on page 19 with the list of 9(c) handlers on page 18  
15 identified with a -- with a "one" for July of 2002, "one"  
16 meaning that they were a handler for that month?

17 A That's correct.

18 Q Okay. Any -- any handler not listed on page 18  
19 but also listed on page 19 as a cooperative which was not  
20 pooling its members' milk, is that correct?

21 A That is correct.

22 Q Okay. There's an asterisk and, forgive me if  
23 you explained this in direct from -- with Mr. Stevens,  
24 several of these cooperatives have asterisks noted on them

1 as not having a USDA Capper Volstead voting determination.  
2 What -- what does that mean?

3 A The Capper Volstead Act provides certain rights  
4 and privileges to co-ops that meet the qualification  
5 criteria, and that's -- that's what we've noted here.

6 Q Does that mean that in a -- in a referendum  
7 under the order those organizations are not entitled to  
8 vote for their members, the ones that do not have a Capper  
9 Volstead voting determination?

10 A That is -- that is one thing it means.

11 Q Now, if one of those organizations is a --  
12 listed as a cooperative, you say, with producers pooled,  
13 if they're a -- if they're on this list, they're not a  
14 handler, they can't vote. What are they doing with  
15 respect to the marketing of their members' milk under the  
16 order, if anything?

17 A I'm not certain what you're -- what you mean,  
18 what are they doing.

19 Q Does this list indicate or imply that the  
20 organizations are engaging in any -- any marketing  
21 activities under the order? The list on page 19?

22 A It doesn't imply that they are or they are not.

23 Q Are there any cooperatives which are operators  
24 of pool plants but not 9(c) handlers under the order? Let

1 me -- if they are, would they appear on -- on the plant  
2 listing that -- that you have provided here?

3 A Yes.

4 Q So we could -- we could review that and  
5 determine whether any of these organizations which are not  
6 9(c) handlers but are nevertheless listed as co-ops happen  
7 to be handlers as the operator of a plant?

8 A That's correct.

9 Q Okay. Do you happen to know how many -- how  
10 many cooperatives are listed on -- on page 19?

11 A I think it's like --

12 Q We -- we could all count them. I'm sorry?

13 A Eighty or 81 or 79 to 81. I can't remember.  
14 It does change a bit from month to month.

15 Q Thank you. Now, going to -- going to page 25,  
16 which is the non-pool and other order pool plant list for  
17 July 2002, I -- I just -- I noticed -- happened to notice  
18 on here that Coulter -- Coulteryon Dairy in Pittsburgh is  
19 listed as a non-pool manufacturing plant. Are you -- is  
20 that a correct -- correct designation for that facility?

21 (Pause)

22 BY MR. BESHORE:

23 A I believe it is. If -- if -- I'll verify that  
24 -- that is that case. If you know something different

1 that points in that direction, then I'll verify that.

2 Q Well, I think there's a distributing plant by  
3 that or a similar name in the western Pennsylvania area  
4 and I thought that's what -- that's what that might be.

5 If you go to page 31, which is the geographic -  
6 - the map of the June 2002 handler -- handler list? I --  
7 I was having trouble matching up the map -- some of the  
8 map numbers with the list. And I don't know if I'm  
9 looking at the right list or the wrong list.

10 But for instance, Number 160 in western  
11 Pennsylvania or 158 in north central Pennsylvania or 156,  
12 northeastern Pennsylvania, I -- the following list ends at  
13 150, at least in my copy of the exhibit.

14 A The -- that index that goes with that map on  
15 page 31 is sorted by alphabetic name of the -- of the  
16 plant.

17 Q Oh, I gotcha.

18 A The map number is not a sequential number. So  
19 the --

20 Q So that 160 is on there and I -- I wasn't  
21 reading it right. Okay. Thank you. That -- that helps.

22 Could you turn to the payment -- "Selected  
23 Reporting and Payment Date" table on page 42, 43, and 44?

24 (Pause)

1 BY MR. BESHORE:

2 Q If you look at the lines for payment to, and  
3 I'm just starting with the year 2000, payment to producer  
4 settlement fund and payment from producer settlement fund,  
5 the third and fourth lines down on the -- on that document  
6 on page 42, there are three months during the year when  
7 the -- the date for payment in and the date for payment  
8 out is the same day, if I'm reading it correctly. Is that  
9 -- is that accurate?

10 A That's correct.

11 Q Okay. And does that present a problem in  
12 administration of the producer's settlement fund which  
13 Proposal 4 is intended to address?

14 A Eric Rasmussen, the ~~market administrator~~ **Market**  
15 **Administrator**, is going to testify in more detail about --  
16 about Proposal 4 --

17 Q Okay.

18 A -- with -- with this calendar composition at a  
19 later time. If -- if it's okay, I'll defer questions  
20 then. Is that --

21 Q To the boss? Defer to the boss? That's fine.

22 A Defer to the boss.

23 Q Okay.

24 A Thank you.

1           Q     In any event, the table shows that under the  
2 present order regulations the date for funds to come in  
3 and go out is the same day?

4           A     That is absolutely correct, yeah.

5           Q     Okay. Now, turning to page 46.

6                     (Pause)

7                     BY MR. BESHORE:

8           Q     I want to make sure that I understand the  
9 makeup of -- of these numbers. The document -- the table  
10 is titled, "Bulk Milk Received at Northeast Order Pool  
11 Supply Plants." Does that include and is it limited to  
12 milk physically received at those facilities?

13          A     What else are you implying?

14          Q     Milk that is, you know, diverted from or deemed  
15 received. From one side of a split plant to another, for  
16 instance.

17          A     That scenario you just mentioned could occur.  
18 I'd have to look at the data for those respective months  
19 to see if there were any one instance occurring in those  
20 months in question.

21          Q     Okay. Well, I understand the footnote that  
22 said that it includes transfers and diversions of -- of  
23 bulk milk, which I understood to be diversions to the  
24 supply plant.

1 A Right.

2 Q And you're not certain whether it also could  
3 include diversions from the supply plant to a non-pool  
4 plant?

5 A That could be included in there.

6 Q Okay. Are --

7 A It would --

8 Q -- are you --

9 A -- diversions.

10 Q Are you going to be -- can you determine  
11 whether those -- whether any transactions of that sort are  
12 in fact included in those numbers?

13 A Diversions of -- of milk from a supply plant to  
14 a --

15 Q Non-pool plant.

16 A -- non-pool plant? In -- let me think. That  
17 would be included in that number.

18 Q It -- it would be?

19 A Yes.

20 Q Okay. So those numbers then represent the  
21 total supply of milk associated with those supply plants  
22 received or diverted from?

23 A That's correct for bulk milk.

24 Q Okay. Thank you. Now, if you'd turn to page

1 49?

2 (Pause)

3

4 BY MR. BESHORE:

5 Q In this -- in this case, do I understand from -  
6 - from the title that the 24 million pounds reflected from  
7 these sources, from these non-pool plants, in May 2001 was  
8 milk physically received at the non-pool plants and  
9 delivered to Order 1 pool plants?

10 A That's correct.

11 (Pause)

12 BY MR. BESHORE:

13 Q Okay. Would you turn to page 57, please?  
14 Appendix 3-B?

15 (Pause)

16 BY MR. BESHORE:

17 Q This table shows transfers of packaged fluid  
18 milk products from the list of partially regulated plants  
19 to the listed pool distributing plants, is that correct?

20 A That is correct.

21 Q Now, if one of those partially -- one of the  
22 transfer or partially regulated plants had itself received  
23 packaged milk from another facility and had retransferred  
24 that packaged milk to a pool distributing plant under

1 Order 1, would those movements be included in these -- in  
2 this table?

3 A I'm going to have to verify that for you. I  
4 believe that would be a crew -- correct since we're  
5 talking about packaged transfers. But I'm -- but I'm  
6 uncertain whether that would --

7 Q Okay. Well, let me ask it another way and  
8 maybe -- maybe it won't clarify it, but it's more  
9 precisely -- to more precisely indicate what I'm  
10 interested in.

11 Is there any -- any language which would  
12 segregate or identify in any way in these statistics the  
13 source of the packaging, what plant packaged the milk  
14 which was transferred from the partially regulated plant  
15 to the pool distributing plant?

16 (Pause)

17 BY MR. BESHORE:

18 A No, there's not.

19 Q Okay. If you'd -- if you'd turn then to page  
20 61, Appendix 4-B?

21 (Pause)

22 BY MR. BESHORE:

23 Q Mr. Fredericks, this -- this exhibit indicates  
24 that if Proposal 9 were adopted as you understand it and

1 it was applied to -- to the operations partially regulated  
2 distributing plants during the months of January through  
3 July 2002, additional pounds would be pooled under the  
4 order?

5 A That's correct.

6 Q Okay. Does that indicate, as it apparently  
7 would, that at least three additional plants -- since  
8 you've showed the volumes, at least three additional  
9 plants would have become pooled under the order that were  
10 not presently pooled?

11 A That is correct.

12 Q Do you know how many additional plants would --  
13 would have become pooled under Order 1 if Proposal 9 were  
14 -- were adopted during these months?

15 A Off the top of my head right now I don't know  
16 the exact number. I know it's more than three. If -- if  
17 -- if need be, I can get that by a later date.

18 Q Might -- might they be some of the partially  
19 regulated plants with packaged milk transfers as shown on  
20 the preceding tables at pages 57, 58, and 59?

21 A Yes -- yes, they would be.

22 (Pause)

23 BY MR. BESHORE:

24 A Let me restate that. It could include some of

1 those partially regulated plants listed on pages 57, 58,  
2 and 59.

3 Q Or, I assume, other partially regulated plants  
4 that are shown as having -- as being partially regulated  
5 during those months on your table of -- plant  
6 classification information earlier in the exhibit?

7 A Yes.

8 Q Okay. Now, the -- the months that are shown on  
9 page 61 are -- let me ask this. Would those -- would  
10 those plants have become pooled as supply plants because  
11 Proposal 9 relates to the supply plant definition?

12 A Yes, they would have become pool supply plants.

13 Q Okay. So if Proposal 9 were adopted, plants  
14 that are presently partially regulated distributing  
15 plants, such as those shown on pages 57, 58, and 59, may  
16 have become pooled under the order as pool supply plants,  
17 correct?

18 A Some of those, correct. Yep.

19 Q Okay. And during the months shown on page 61,  
20 those are, what, 10 percent shipping months for supply  
21 plants under the order?

22 A Were supply plants -- that is correct.

23 Q So basically, this would indicate that -- and  
24 presently, a -- a partially regulated distributing plant

1 must distribute 25 percent of its packaged fluid milk  
2 products in the marketing area to become fully regulated?

3 A Twenty-five percent is the -- is the --

4 Q Is the --

5 A -- cutoff number.

6 Q -- the number. In essence, Proposal 9 would  
7 reduce that to 10 percent in the months of January through  
8 July at least and make it -- make them supply plants? If  
9 they reached 10 percent.

10 A It would lower the number, that's correct.

11 Q I gather there was no request to have those  
12 calculations made for months with higher supply plant  
13 performance requirements? The date on page 61. It was  
14 just requested for those months and that's why you did it  
15 for those months?

16 A It was requested and by agreement with the --  
17 the requesting parties, this was the months that we  
18 determined that were -- ~~when~~ **going** to provide 2002 data.

19 Q Okay. Since those plants are qualified supply  
20 plants, if you use the full months, there'd be a different  
21 set of qualification criteria for the amount of packaged  
22 milk that had to be distributed to -- to become fully  
23 regulated?

24 A That is correct.

1           Q     Now, if you'd turn to page 62 and 63, which are  
2     -- are your -- which represents information that you  
3     prepared to show the potential impact of Proposals 3 and  
4     6. Is it correct that with respect to Proposal     --  
5     Proposal 3 were to be adopted, milk would have been  
6     ineligible for pooling -- milk presently pooled under the  
7     order would have been ineligible for pooling in every  
8     month except the month of September 2001?

9           A     That is correct.

10          Q     The asterisks just represent less than three  
11     handlers, as the footnote indicates?

12          A     That is correct.

13          Q     And with respect to Proposal 6 on page 62,  
14     there would only have been four months -- January,  
15     February, August, and September 2001 -- when milk would  
16     have been ineligible for pooling?

17          A     That is correct.

18                     (Pause)

19                     BY MR. BESHORE:

20          Q     Could you turn to page 80, please, Mr.  
21     Fredericks?

22                     (Pause)

23                     BY MR. BESHORE:

24          Q     Now, with -- with respect to this information,

1 does -- the title indicates that these are diversions from  
2 Northeast Order handlers to other order pool plants. Does  
3 that include both distributing plants and supply plants  
4 under other orders?

5 A Under the other orders, correct.

6 Q If the milk is diverted to an other order  
7 distributing plant, does it remain pooled into Order 1 or  
8 does it become pooled under the other order?

9 A It remains pooled under Order 1.

10 Q Is there a limitation to that to the extent to  
11 which it is not classified as Class 1 at the -- or is  
12 there any limitation to that in terms of how it's  
13 classified at the other order distributing plant?

14 A Do you mean the limitation on the amount of  
15 diversions?

16 Q I'm interested in where the milk's -- milk's  
17 pooled, and I guess if you've got -- a diversion is a -  
18 - is a delivery directly from a -- from farms, correct?

19 A That's correct.

20 Q Okay. Now, if it's delivered to an other order  
21 distributing plant, under some circumstances it would be  
22 pooled under the other order, right?

23 A That's right. The -- I mean, the -- the -- the  
24 diversion from this order could be pooled under the other

1 order if it, you know, met -- met the criteria, basically,  
2 of the other order that is the receiving plant --

3 Q Well, by definition, those are other order  
4 plants, right?

5 A Could you restate the question?

6 Q Well, my -- what I'm really trying to learn is  
7 whether these movements remained pooled under the -- on  
8 the originating order or whether some of these volumes  
9 became pooled at the destination order.

10 A These volumes on this table all remained Order  
11 1 milk. They were not pooled on the other order. That  
12 would have been --

13 Q Okay. That's the "Diversions To" column?

14 A That's correct.

15 Q Or set of columns. How about the "Diversions  
16 From" column?

17 A Similar scenario, except for those were  
18 diversions from the other orders as listed in that first  
19 column.

20 Q And they remained pooled under the other  
21 orders?

22 A That is correct.

23 Q So, the extent those are diversions to  
24 distributing plants, they would have been at requested

1 Class 2 or 3 utilizations in order to attain pooling  
2 status from the originating order?

3 A That -- that's right.

4 Q Would you turn to page 85, please?

5 (Pause)

6 BY MR. BESHORE:

7 Q Okay. Now, this -- this table was assembled at  
8 our -- our request by your office, correct?

9 A That's correct.

10 Q And is it correct that the -- the shaded  
11 columns, which are the disposition columns as opposed to  
12 the receipt columns, represent the volumes of milk that  
13 were used to produce the indicated product?

14 A That is correct.

15 Q Okay. And although the label says -- the  
16 heading says, "Pounds of Product," it's not pounds of  
17 product manufactured, it's pounds of milk used to produce  
18 the indicated products?

19 A That is correct.

20 (Pause)

21 BY MR. BESHORE:

22 Q Now, what's -- could you turn to page 86,  
23 please?

24 (Pause)

1 BY MR. BESHORE:

2 Q Again, this was a set of -- of data you  
3 compiled at -- at our request. If one wanted to estimate  
4 the -- first of all, this table just represents pounds --  
5 proportions of milk delivered to distributing plants. It  
6 doesn't reflect the classification of the milk in any way,  
7 correct?

8 A That is correct.

9 Q Okay. Now, if one wanted to estimate the --  
10 the utilization of the milk received at distributing  
11 plants just on an aggregate marketwide basis, would 90  
12 percent utilization for Class 1 at distributing plants on  
13 an aggregate marketwide basis be a fair estimated Class 1  
14 utilization, in your judgment?

15 A In my judgment, a range of, say, 85 to 90  
16 percent would be -- would be -- for -- for -- that is a  
17 stand-alone Class 1 distributing plant, not system or unit  
18 plants which we have in the Northeast Order.

19 Q Right.

20 A If you need a more accurate number, I can  
21 provide that.

22 Q Okay. Eighty-five to 90 percent would be the  
23 range --

24 A That's correct.

1 Q -- for stand-alone distributing plants. Okay.

2 (Pause)

3 MR. BESHORE: Thank you, Mr. Fredericks.

4 JUDGE BAKER: Thank you, Mr. Beshore. Are  
5 there other questions for Mr. Fredericks? Mr. English?

6

7

CROSS EXAMINATION

8

BY MR. ENGLISH:

9 Q Mr. Fredericks, I'd like to start, actually,  
10 with Proposal 9 for a moment and some of the questions  
11 that Mr. Beshore asked.

12 In preparing the table and in looking at  
13 Proposal 9, you concluded, did you not, that one or more  
14 plants presently regulated as partially regulated plants  
15 would now qualify as a supply plant under Part (c) of  
16 1001.7, correct?

17 A That's -- you're referring to the information  
18 presented at page 61?

19 Q Yes.

20 A Yeah, that's correct.

21 Q So hypothetically speaking, a -- let me back  
22 up. Would you agree with me that there are partially  
23 regulated plants that are -- whose volume is included on  
24 page 61, under the assumption that Proposal 9 is adopted

1 or whatever the terms of Proposal 9 would be if it were  
2 adopted, that are what you would call a distributing  
3 plant?

4 A Currently a partially regulated distributing  
5 plant.

6 Q And a distributing plant is defined under Part  
7 1000.5 of the order as being a plant that is approved by a  
8 duly constituted regulatory agency for the handling of  
9 Grade A milk at which fluid milk products are processed or  
10 packaged and from which there is route disposition or  
11 transfers of packaged fluid milk products to other plants,  
12 correct?

13 A That's correct.

14 Q If Proposal 9 is adopted, would such a plant be  
15 both the distributing plant under 1000.5 and a supply  
16 plant under 1000.6?

17 A Both a distributing plant and a supply plant --

18 Q Yes.

19 A -- question?

20 Q Yes. Does it not still meet the definitions of  
21 1000.5, which is a national definition for a distributing  
22 plant, but would also now meet the definitions of  
23 1001.7(c) as applied to 1000.6?

24 A When -- I'll answer those things in two parts.

1 I may need to come back with you for some more data. I --  
2 my -- my understanding is when you -- when you hit one of  
3 the -- one of the criteria, that's which you become and it  
4 ends at that point. But I'm going to have to --

5 Q But wouldn't it be the case that you'd now have  
6 a conflict with the milk regulation and you'd essentially  
7 be both things at once?

8 A I -- I can't answer that.

9 Q Okay. Fine. Going to page one of Exhibit 5  
10 and starting with the columns for Maine, do you -- would  
11 you agree with me that there was a change in the  
12 regulatory status of a facility in Maine affecting the  
13 Maine producer milk from January to February of 2001, that  
14 a plant became a fully regulated facility under the order?

15 I'll help you out. Oakhurst Dairy was not a  
16 fully regulated plant under Order 1 until February of  
17 2001, is that correct?

18 (Pause)

19 BY MR. ENGLISH:

20 A That is correct.

21 Q So for instance, that would explain -- let me  
22 back up. In May of 2000, there's 44.9 million pounds of  
23 producer milk for Maine and in May 2001 there's 56.4  
24 million pounds of producer milk. There wasn't suddenly 12

1 million new pounds of milk being produced in Maine,  
2 correct?

3 A That is correct.

4 Q At least a significant portion of that  
5 difference would be associated with that plant becoming  
6 fully pooled on Order 1, correct?

7 A I would assume that would probably be the case.

8 Q Looking at Virginia for 2000, there's a  
9 significant drop from April to May. Is there a plant  
10 explanation for that as well? There's a drop of almost 17  
11 million pounds, and I assume that there weren't 17 million  
12 pounds less milk being produced in Virginia in July than  
13 in June.

14 A Without looking at the list of pool plants and  
15 handlers for that month in question as well as perhaps  
16 other orders, neighboring orders, I couldn't -- I couldn't  
17 tell you exactly what was behind that change.

18 Q Turning to Rhode Island, for 2002, in the total  
19 there's a zero even though there's restricted data January  
20 through July. Is -- is that zero an error and it should  
21 be restricted or should we conclude that there's zero milk  
22 in Rhode Island now for 2002?

23 A Restricted data.

24 Q Turning to the Other States data, and you're

1 welcome to look at page 87 which I think is what -- a  
2 delineation of this. And looking at West Virginia for a  
3 moment, West Virginia has two months in which it is part  
4 of the restricted data. When I look at 87, I did not see  
5 West Virginia -- a footnote including West Virginia. To  
6 the extent it was omitted in page 87, would it be correct  
7 that it was part of data in 87 for June 2001 and January  
8 2002?

9 A January 2002 it is footnoted in Footnote Number  
10 8.

11 Q All right. I apologize. I missed that one.

12 But the -- but it's -- Footnote 6 is continuous  
13 for a period of months in 2001. To be correct, there --  
14 West Virginia at least for the month of June should have  
15 been listed?

16 A To be correct, you -- you -- you appear  
17 correct. That is right.

18 Q Going to 87 and the first -- the **only early**  
19 months, August through November of 2000, the first months  
20 when -- when that milk appears, there's a Dannon facility  
21 out in Utah that is regulated under this order, correct?

22 A That is correct.

23 Q Would it be correct to assume that -- that  
24 since the Utah facility was pooled in each of those four

1 months but alternative plants were pooled otherwise,  
2 including Idaho in August and November, that it would be a  
3 fair characterization to assume that -- that that Utah  
4 facility made a bulk of its September and October number  
5 or at least that it's not larger -- much -- significantly  
6 larger than the September number when looking at July and  
7 November?

8 A Could you please repeat?

9 Q Sure. Would it be a fair characterization,  
10 without divulging the exact size of the Dannon facility,  
11 to -- to state that the Dannon facility probably does not  
12 process more than 2.7 million pounds of producer milk  
13 given that was the volume in September and October but  
14 there was significantly more volumes in August and  
15 November?

16 (Pause)

17 BY MR. ENGLISH:

18 Q Let me put it another way. Would it be fair to  
19 say that the bulk of that milk that is pooled in August  
20 and November above 2.6 million was Idaho milk?

21 A You know, without looking at the detail I  
22 cannot say that definitively.

23 Q Tables 1 through 3 -- pages one through three  
24 do not include by definition non-pool producers, correct?

1           A     That's right.  These are pool -- pool producers  
2 represented here.

3           Q     Can a producer for the same month be a producer  
4 on Order 1 and also a producer on another order?

5           A     That is possible.

6           Q     Do you know for a fact whether that occurs in  
7 this market?

8           A     In what month?

9           Q     In this market.  Any -- at any time.

10          A     Yes, that has happened ~~one~~ a time.

11          Q     So the provision for a producer for other  
12 markets does not necessarily exclude a producer from --  
13 from qualifying simultaneously on at least two orders  
14 under -- under the Federal Order Program, correct?

15          A     The Northeast Order provision that specifies  
16 that does not really speak to that, correct.

17          Q     So if we're -- if we look later at data from  
18 other ~~market administrators~~ **Market Administrators** with  
19 respect to -- to number of producers from, say, the state  
20 of Pennsylvania, we couldn't simply add that to the number  
21 of producers pooled under this order from Pennsylvania and  
22 have a true picture of the number of producers because we  
23 may be double counting some, correct?

24          A     On the producer count that is correct.

1 Q As to milk, however, that wouldn't be double  
2 counted, correct?

3 A That's correct.

4 (Pause)

5

6 BY MR. ENGLISH:

7 Q Turning to page 19 and the questions -- some of  
8 the questions that were asked by Mr. Beshore, to the  
9 extent that cooperatives -- I'm looking at the footnote  
10 for a moment. The footnote and those that are noted for  
11 the footnote merely means that those entities have either  
12 not applied for Capper Volstead status for voting and  
13 other order issues or if they applied, conceivably they  
14 were turned down, correct?

15 A That is correct.

16 Q It does not mean that those entities are not  
17 necessarily Capper Volstead entities? It doesn't mean  
18 that -- that -- just because they have an asterisk doesn't  
19 mean a determination has been made that they are not  
20 Capper Volstead entities, correct? Because they may not  
21 have applied?

22 A They may not have applied and they may not  
23 qualify, that is correct.

24 Q And notwithstanding the question from Mr.

1 Beshore that if they aren't a number one on page 18 and  
2 they're listed on 19 that the milk's not being ~~approved~~  
3 **pooled**. Nonetheless, the heading is cooperatives with  
4 producers pooled under the Northeast Order. So at least  
5 some of the milk represented by those entities would be  
6 pooled?

7 A That's right. The milk of those producers that  
8 are members of those cooperatives is being pooled on this  
9 order.

10 Q On page 46, you were asked a series of  
11 questions by Mr. Beshore about what was included in those  
12 numbers and deemed received was -- was part of this issue  
13 when you talked about diversions. But I don't think you  
14 talked about transfer milks. If milk was received at  
15 these plants listed on page 46 but transferred, it would  
16 also be reported here, correctly -- correct?

17 A That's correct.

18 Q Turning to page 49.

19 (Pause)

20 BY MR. ENGLISH:

21 Q These 24,196,000 pound -- 24,196,563 pounds,  
22 how would that milk be accounted for by the order?

23 (Pause)

24 BY MR. ENGLISH:

1           A     We -- we -- in our statistics, do you mean?

2           Q     Yes.

3           A     We have a -- we have a -- an "Other Order"  
4 category on our statistics we publish.

5           Q     Would the milk be pooled under the order?

6           A     It would be "Other Order" milk, so -- so it  
7 would be pooled on -- you're asking whether it would be  
8 pooled on this order or the other order?

9           Q     Well, it's also unregulated, so it says other  
10 order or unregulated. So to the extent it's unregulated  
11 milk, would you --

12          A     That wouldn't be pooled.

13          Q     It would not be pooled. Would it be priced  
14 under this order?

15          A     I'm not certain how that gets priced, to be  
16 honest with you.

17          Q     If it's not priced under this order, does your  
18 office even audit what is paid on this kind of -- milk of  
19 this kinds of nature, this kind of transaction?

20               (Pause)

21               BY MR. ENGLISH:

22          Q     Aren't these transactions basically outside the  
23 order?

24          A     They are. They are.

1 Q Okay.

2 A And you know, I'm not certain, to be honest  
3 with you. I'm not involved in the audit function at all  
4 and I can't verify that 100 percent.

5 Q But you believe that those transactions are  
6 basically outside the order?

7 A Correct.

8 Q When there are transactions outside the order,  
9 whether they are from non-pool plants to pool plants or in  
10 reverse, from pool plants going to non-pool plants, do you  
11 know whether there are times in which the prices received  
12 by the handlers are less than what it would otherwise be  
13 order minimums?

14 A There conceivably could be times.

15 Q For instance, if in the flush month a pool  
16 plant needs to dispose of surplus milk, it may dispose of  
17 that milk and receive whatever the market will bear,  
18 correct?

19 A That is correct.

20 Q And what the market will bear may very well be  
21 less than, say, Class 3 or Class 4 price, correct?

22 A That is correct.

23 Q Mr. Rosenbaum asked you a series of questions  
24 about who might be eligible or who was eligible to receive

1 these payments. And turning to page 81 for a moment and  
2 your calculation of estimated total funds deducted from  
3 producer settlement fund at six cents per hundredweight.  
4 For that column or, I guess, for the estimated qualifying  
5 pounds, can you answer Mr. Rosenbaum's question as to  
6 whether or not those estimated qualifying pounds included  
7 pounds pooled from outside the marketing area?

8 A If they were ordered -- if there was pounds  
9 that were pooled on this order, yes, they would be  
10 included.

11 Q So in other words, when you did this  
12 calculation, you didn't do anything to exclude by -- by  
13 way of example milk that was pooled from Minnesota but  
14 physically delivered to a manufacturing plant in Minnesota  
15 and didn't actually be delivered to this order? When you  
16 did these calculations, you didn't make any mechanism to  
17 exclude that if it was one of these qualifying entities?

18 A That is correct.

19 (Pause)

20 BY MR. ENGLISH:

21 Q On page 82 -- and this is a question that goes  
22 beyond page 82, so it's -- what does it mean by sales of -  
23 - of -- of -- of packaged -- of Class 1? I take it that  
24 was -- that is not including packaged milk transferred to

1 a facility and then sold. This would be milk received as  
2 bulk and packaged and then sold as Class 1 for these  
3 pages, correct?

4 A That -- that'd be correct.

5 MR. ENGLISH: Thank you, sir. That's all I  
6 have at this time.

7 JUDGE BAKER: Thank you very much, Mr. English.  
8 Are there other questions? Mr. Vetne?

9 CROSS EXAMINATION

10 BY MR. VETNE:

11 Q I'm John Vetne, appearing for Friendship. Mr.  
12 Fredericks, first I want to express my gratitude for you -  
13 - your work here in putting all this stuff together for  
14 us.

15 You received a number of data requests from  
16 Friendship that aren't included here, correct?

17 A There is some requests that are not included in  
18 the data as presented.

19 Q And some of that was not included because of  
20 discussions with your office and either me or -- or Warren  
21 Shanback because it would have been difficult to assemble  
22 for some period and representative data or representative  
23 months was included instead?

24 A That is correct.

1           Q     And some of the material wasn't eventually  
2 assembled because there was an evolution in the proposals  
3 that actually made it from some proponent's desk to the  
4 hearing notice? There were proposals that weren't  
5 accepted for hearing?

6           A     That is correct.

7           Q     And some requests -- data -- requests came to  
8 your office before the -- the final elimination and they  
9 became not relevant?

10          A     That -- that would -- correct.

11          Q     Okay.

12          A     Your terms.

13          Q     And some of it just involved data that you  
14 didn't have or didn't have assembled in a certain form and  
15 couldn't produce, correct?

16          A     You're talking about the data that was not  
17 contained here?

18          Q     Yeah.

19          A     Yes.

20          Q     Okay.

21          A     Fair assumption -- fair statement.

22          Q     I, like Marvin, had a little bit of question on  
23 the difference between bulk raw milk and bulk whole milk.  
24 Is the only difference between the two raw milk being from

1 a farm and bulk whole milk being -- having hit a plant at  
2 one point and it may also be raw?

3 A That's right. It's how our database enumerates  
4 it and -- exactly right.

5 Q Okay. If -- if milk were received and  
6 standardized to 3.25 percent butter fat and then  
7 transferred, would -- would that be included in the bulk  
8 whole milk?

9 A Bulk whole milk.

10 Q Okay. So the bulk whole milk could be both raw  
11 unstandardized as well as standardized?

12 A It could be. The point is the plant, as you  
13 mentioned.

14 Q If you'd turn with me to page 47 of Exhibit 5,  
15 please? The data for November of 2001 is the most  
16 complete data that we have that's broken out into various  
17 sources of 12-B milk. And for November where we have at  
18 least one other category, the volume of dairy farmers for  
19 other markets milk is only 344 million pounds.

20 My question to you, would it be fair to say  
21 that the volume of dairy farmer for other market milk  
22 would -- would generally be a small number for the other  
23 months also as a portion of the aggregate?

24 A The -- in every month, dairy farmer for other

1 markets also includes producer handler data. So I'd, yes,  
2 definitively say that without looking at the numbers.

3 Q Do you know or have a recollection from your  
4 data whether combined dairy farmer for other market and  
5 producer handler data from month to month can vary  
6 considerably, say from 300 million pounds -- I mean,  
7 300,000 pounds to several million pounds?

8 A It can vary, yes.

9 Q Can it vary by the extreme amount that I  
10 described? To your recollection. And I'm not asking you  
11 to testify to something that you can't recall. I'm just  
12 asking if you do have a recollection.

13 A I know it did vary. Whether -- whether -- I  
14 can't exactly recollect the numbers whether -- the  
15 variation that is presented in this table does not stick  
16 in my mind. I -- I do simply know it does vary and I can  
17 verify that if that's a question, those -- that data.

18 Q Thank you.

19 (Pause)

20 BY MR. VETNE:

21 Q If you recall, Chip English asked you some  
22 questions about plants that might meet both the  
23 definitions for distributing plants in Section 5 of the  
24 general provisions and supply plants in Section 6 of the

1 general provisions. Do you recall that series of  
2 questions?

3 A Yes, I do.

4 Q Okay. Are you aware that since the advent of  
5 order reform and even previous to order reform that at  
6 least one plant, the Friendship Dairy plant, has at times  
7 served as a supply plant meeting the Section 6 definition  
8 and at all times meeting the Section 5 definition of a  
9 distributing plant?

10 A I'm not aware of that.

11 Q You're not aware of that? Are -- are you not  
12 aware that Friendship Dairies has some Class 1  
13 distribution?

14 A Yes.

15 Q From its plant?

16 A Yep.

17 Q And has always had some Class 1 distribution  
18 from its plant?

19 A Yep. I'm aware of that.

20 Q Okay. And are you not also aware that  
21 Friendship has at times qualified as a supply plant?

22 A I'm aware of that.

23 Q Okay. So during those times when it qualified  
24 for a supply plant, it has met both the definition of a

1 supply plant, one that supplies others with -- with bulk  
2 milk, as well as distributing from its own plant?

3 A The way you just led me through, I understand  
4 and I agree with. I'd have to look at the provisions to -  
5 - to --

6 Q Right. And during those times when it served  
7 as a supply plant, it met the seven -- Section 7(c)  
8 definition of a supply plant while simultaneously meeting  
9 the Section 5 general definition of a distributing plant,  
10 correct?

11 A You know, if you pointed out a month in  
12 particular in question, I could go through and --

13 Q In any month when -- when -- when Friendship  
14 qualified as a pool supply plant, which it has in the  
15 past, correct?

16 A That's correct.

17 Q During that month, Friendship was also a  
18 Section 5 distributing plant. If you look at Section 5 of  
19 the order, it's not the pool distributing plant provision,  
20 it just -- just a plant that has distribution.

21 MR. STEVENS: Your Honor, I don't want to  
22 object, but I'd like to point out for the record that -  
23 - that certainly Mr. Vetne's client could testify to these  
24 matters. I think the witness has expressed some

1 reluctance to -- to make statements that he's not sure of.  
2 Certainly, John's witnesses are in a better position to  
3 state that for the record.

4 JUDGE BAKER: Mr. Vetne, do you agree with Mr.  
5 Stevens' statement?

6 MR. VETNE: Well, I'm not sure that Mr.  
7 Shanback can describe how the market administrator's  
8 office applies its provisions. That's why I'm asking this  
9 witness if he knows.

10 MR. STEVENS: Well, the point is not how he  
11 applies his provisions. The point is whether -- whether  
12 your witness is -- is willing to testify for the record  
13 that they -- that they have qualified during certain  
14 months with certain status.

15 MR. VETNE: Yeah, they're willing to.

16 MR. STEVENS: Well, there you go. There's your  
17 answer.

18 JUDGE BAKER: What -- what is it you're  
19 suggesting that Mr. Vetne do?

20 MR. STEVENS: Well, I -- I -- I'm suggesting  
21 that he present it through his own witness and not ask the  
22 market administrator's witness to speculate as to the  
23 status of his client's plant during any given month during  
24 the year during the course of the hearing.

1 JUDGE BAKER: Well, I don't think speculation  
2 is of value ~~for~~ **to** the ~~secretary~~ **Secretary** in arriving at  
3 a decision. But if the witness knows something is a fact,  
4 then there should be no objection to it.

5 MR. STEVENS: I agree with that. But I think  
6 the witness has expressed some uncertainty as to the  
7 status of the plant, which is why I made the comment.

8 BY MR. VETNE:

9 Q Mr. Fredericks, do you have the order language  
10 in front of you?

11 A Yes, I do.

12 Q Okay. And can you refer to General Provision,  
13 Section 1000.5?

14 A Yes.

15 Q Okay. And from your knowledge of Friendship's  
16 operations, is it not a fact that Friendship is a Section  
17 5 and has been a Section 5 distributing plant for many,  
18 many years?

19 (Pause)

20 BY MR. VETNE:

21 A Yeah, it -- it -- I agree with you. It appears  
22 to meet the general distributing plant definition as -- as  
23 you -- as laid out here.

24 Q Okay.

1 (Pause)

2 BY MR. VETNE:

3 Q If you could turn for a moment -- I lost it.  
4 I'm looking for the -- oh, yeah. Here we go. Page 18 and  
5 19, please.

6 (Pause)

7 BY MR. VETNE:

8 Q Now, the -- the -- on page 19, the co-ops that  
9 are not asterisked are -- are co-ops that have made an  
10 application under 7 CFR Part 900 for certain privileges as  
11 a qualifying co-op to vote on behalf of their members. We  
12 -- we went through that. That's correct?

13 A Right.

14 Q Okay.

15 A There were other parts of that act that -- that  
16 -- that, you know, I'm not speaking about but that is one  
17 of the provisions that they --

18 Q Yeah. Now, the list of Section 9(c) handlers  
19 on page 18 is shorter than the list of co-ops without an  
20 asterisk on page 19. Is it not a fact that many of the  
21 co-ops on page 19 are included in a -- multi-co-op  
22 organization on page 18? For example, Allied Federated  
23 Cooperative includes as it -- its component parts several  
24 smaller cooperative associations which are independently

1 Capper Volstead-qualified co-ops?

2 A That is correct.

3 Q So if -- if there -- to the extent that there  
4 are co-ops on page 19 that have no asterisk but we don't  
5 find them listed on page 18 under Section 9(c) handlers,  
6 ~~there~~ **they** are co-ops that are marketing their milk  
7 through either another cooperative association or through  
8 a -- a federation or a combination of co-ops on page 18?

9 A Or perhaps with -- with a proprietary handler.

10 Q Or they market their milk as a qualified  
11 cooperative association through a proprietary handler, is  
12 that what you're saying?

13 A That's right. Their milk is pooled by the  
14 proprietary handler.

15 Q And for that purpose, would you please turn to  
16 page 86? The second column on page 86 would include  
17 Capper Volstead-qualified voting cooperatives whose milk  
18 is pooled by proprietary handlers, correct?

19 A That is correct.

20 Q Okay.

21 A For -- for those co-ops that are pooled by a  
22 proprietary handler.

23 Q Okay. So the second column on page 86 makes no  
24 judgment as to whether the milk is independent producer

1 milk or cooperative milk. It could be either milk pooled  
2 by the -- proprietary handler?

3 A That is correct.

4 Q And the data represented in the second column  
5 of page 86 further could include some milk by cooperative  
6 associations who have not elected to apply for voting  
7 qualification and other privileges under Part 900?

8 A That is correct. That could apply for Column 2  
9 or 3.

10 Q Okay. Now, if you'll turn with me for a  
11 moment, please, to page 61?

12 (Pause)

13 BY MR. VETNE:

14 Q And in earlier response to questions, you  
15 indicated that the pounds of milk shown as additional  
16 pounds on page 61 includes milk of partially regulated  
17 distributing plants that would become pooled under  
18 Proposal 9. Would it be fair to say that the predominant  
19 utilization of those additional pounds that you've  
20 identified would be Class 1?

21 A That's probably a fair statement.

22 Q In preparing this data, you did not include in  
23 your consideration of whether or not to include the pounds  
24 any determination on whether those partially regulated

1 distributing plant made bulk shipments of producer milk by  
2 diversion or transfer to someone else's distributing  
3 plant, am I correct?

4 A That is correct.

5 Q And would you also agree with me that a bulk  
6 transfer for diversion of raw milk is -- is a function  
7 that more or less defines a supply plant?

8 A That's one -- one thing they certainly do,  
9 correct.

10 Q Okay. So the data in 61 -- on page 61 could  
11 include plants that have no transfer or diversion function  
12 with respect to supplying milk to distributing plants of  
13 other parties?

14 (Pause)

15 BY MR. VETNE:

16 Q Want me to repeat that?

17 A Repeat that, please.

18 Q Okay. The data in -- on page 61 could include  
19 partially regulated distributing plants that do not for  
20 any of those months -- did not for any of those months  
21 supply any raw or assembled milk in bulk to someone else?

22 A Without looking at the data, I couldn't tell  
23 you for certain that that's the case or not.

24 Q Okay. But we do have on page 49, for example,

1 non-pooled plants that made bulk transfers to plants  
2 regulated under Order 1, correct?

3 A That's correct.

4 Q And for the same month, on page 57, we have a  
5 list of partially regulated plants that made packaged milk  
6 transfers. Do you see that?

7 A Yes.

8 (Pause)

9

10 BY MR. VETNE:

11 Q To the extent -- and we're going to move  
12 through three pages here. To the extent that the data on  
13 page 61 would include plants that are on page 61 because  
14 they supplied milk to a distributing plant --

15 A You're talking about plants on page 57?

16 Q I'm talking about the pounds on page 61. Some  
17 partially regulated plant that would become regulated  
18 under Proposal 9, okay, and that volume.

19 A Yep.

20 Q To the extent that that regulation was  
21 triggered by transfers to pool distributing plants of  
22 packaged fluid milk, right? We can look at page 57 and  
23 compare it to page 49 to see whether any of those  
24 partially regulated plants also made bulk transfers.

1 (Pause)

2 BY MR. VETNE:

3 A You could -- you could -- you could do that.

4 Q Pardon?

5 A Yes, that would --

6 Q Yes, okay. And you know, for what it's worth,  
7 none of the plants -- the partially regulated plants that  
8 made packaged milk transfers on page 57 also made bulk  
9 milk transfers on page 49. You don't have to go through  
10 the list.

11 A I'll take your word for that. I haven't -- I  
12 haven't looked myself, but.

13 Q All right. Okay. I have a -- a modest  
14 request. Maybe you can do it before the hearing ends. Is  
15 it possible on page 61 to qualify that data further by  
16 including only in that -- the volume that would be  
17 produced on page 61 the volume of plants that had  
18 distribution that also performed the traditional supply  
19 plant function of supplying bulk milk by transfer or  
20 diversion to someone else's distributing plant?

21 What -- my objective here is don't necessarily  
22 want Exhibit -- Proposal 9 to regulate partially regulated  
23 plants solely on their basis of distribution. But Exhibit  
24 -- Section 7 refers to supplying other plants. Section 6,

1 definition of supply plant refers to both supplying milk  
2 to other plants. So I'm looking to find -- find partially  
3 regulated plants, if any, the volume that would become  
4 pooled by plants that serve both function, that have some  
5 bulk milk shipments to someone's Order 1 distributing  
6 plant and have -- route disposition that would meet the  
7 Proposal 9 definition.

8 So if you could look at that after you get off  
9 the stand and let me know off the record if you're able to  
10 qualify this page any further, I'd appreciate that.

11 A Will do. Agreed.

12 Q Thank you very much.

13 JUDGE BAKER: Mr. Vetne, how close are you to  
14 concluding your questioning?

15 BY MR. VETNE:

16 Q I have one more question for you. Are you  
17 going to be around here to be recalled when we get to the  
18 pooling provisions if we have some further questions on  
19 Exhibit 5?

20 A Yes.

21 MR. VETNE: Thank you. I have no further  
22 questions now.

23 JUDGE BAKER: Very well. Thank you. It is  
24 time for our afternoon lunch hour. We'll take an hour.

1 And I have been informed that the hearing room will be  
2 locked during luncheon recess and that it will be safe to  
3 leave materials in the room.

4 When we return, Mr. Fredericks, I hope you have  
5 energy enough to resume the stand in case there are any  
6 more questions.

7 THE WITNESS: If I have to return, I'll be  
8 here. Yes. Thank you.

9 JUDGE BAKER: Very well. Thank you. You can  
10 take an hour for recess -- luncheon.

11 (Whereupon, at 12:30 p.m., the proceedings were  
12 adjourned for lunch, to reconvene at 1:30 p.m., the same  
13 day.)

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A F T E R N O O N   S E S S I O N

1:30 p.m.

Whereupon,

PETER FREDERICKS

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

JUDGE BAKER: The meeting will come to -- on the stand. And are there any additional questions of Mr. Fredericks? Mr. Beshore?

MR. BESHORE: Thank you, Your Honor.

CROSS EXAMINATION

BY MR. BESHORE:

Q Mr. Fredericks, page 82, Appendix 11 of Exhibit 5, could you go to that for a minute?

1           I want to -- I want to ask you a couple of  
2           questions about -- about this table. And it's -- it's in  
3           response to what I -- what I understood you to -- to  
4           answer in questions from Mr. English earlier. The -- the  
5           first column labeled, "Total Class 1 Sales in the  
6           Marketing Area" on this exhibit represents what? Could  
7           you tell us what all -- what all is in that number?

8           A     It's the pool distributing plant sales -- Class  
9           1 sales within the geographic boundary of the marketing  
10          area, the Northeast marketing area.

11          Q     Okay. And that would represent all sales --  
12          all route distribution in the marketing area by pool  
13          distributing plants regardless of the sources of the  
14          product being distributed?

15          A     That is correct.

16          Q     Okay. The total Class 1 utilization, which is  
17          the right-hand column, is a different number than producer  
18          milk classified as Class 1 under the order for that  
19          particular month, is it not?

20          A     That is correct.

21          Q     Okay. And one of the reasons for that may well  
22          be that pool distributing plants distributed in the  
23          marketing area packaged product which they receive from  
24          plants outside the marketing area but distributed in the

1 marketing area?

2 A That is one factor, yes.

3 Q Okay. So that if pool distributing plants  
4 receive packaged fluid milk products from, for instance,  
5 partially regulated distributing plants, say a plant in  
6 Pennsylvania that's regulated by the Pennsylvania Milk  
7 Marketing Board and only partially regulated by Order 1.  
8 If it transferred milk to a fully regulated Order 1  
9 distributing plant which then redistributed those sales in  
10 the Order 1 marketing area, they would be reflected in the  
11 totals in this table?

12 A In the table on page 82, that's correct.

13 MR. BESHORE: Okay. Thank you.

14 JUDGE BAKER: Thank you, Mr. Beshore. Are  
15 there other questions of Mr. Fredericks? Yes?

16 MR. ARMS: My name is David Arms. I'm an  
17 economic consultant for the New York State Dairy ~~Votes~~  
18 **Foods**. I just have a few clarifying questions, Your  
19 Honor, I'd like to ask.

20 JUDGE BAKER: Indeed.

21 CROSS EXAMINATION

22 BY MR. ARMS:

23 Q In Exhibit 5, page eight, you list under "Pool  
24 Supply Plants," for example, H.P. ~~Wood~~ **Hood** Company in

1 Vernon and the Friendship Dairies in Friendship? Under  
2 the pool supply plants on page eight?

3 A Yes.

4 Q Would you agree with me that the listing  
5 January through July and retention of pool supply plant  
6 status in those months might have occurred because they  
7 had automatic pooling grandfathered to them under the  
8 prior New York-New Jersey Order? In other words, if they  
9 fully qualified in the preceding months, July -- the old  
10 order used to refer to July. If they fully qualified the  
11 previous fall, they were then subject to automatic pool  
12 status without sending -- without shipping additional  
13 quantities of milk in that period?

14 A That is correct, when the order was -- the  
15 inception of the order -- Northeast Order in January of  
16 2000.

17 Q Right. So it stands to reason that that is why  
18 they retained the pool supply plant status at least with  
19 respect to Vernon for those months?

20 A I would suspect that is the correct answer,  
21 yes.

22 Q Okay. As far as August, the same data shows  
23 that the Hood Vernon plant is not listed as a pool supply  
24 plant, isn't that correct?

1           A     That's correct.

2           Q     Its status -- do you know what its status  
3 shifted to in -- in your data? Let me ask the question  
4 this way. Isn't it true that the Hood Vernon plant became  
5 a pool distributing plant commencing in August of that  
6 same year?

7           A     That is correct.

8           Q     And with respect to the Friendship plant, that  
9 plant shifted to non-pool status, did it not?

10          A     That is correct.

11          Q     Is it your knowledge or would you again agree  
12 with me that as far as the Hood Vernon plant that it  
13 qualified beginning in August as a pool distributing plant  
14 simply by virtue of its exercising unit pooling status?  
15 In other words, hitching on with the Agawam -- the Hood  
16 Agawam plant to qualify as one during those months?

17          A     I'm aware the Hood Vernon and Hood Agawam plant  
18 are considered a -- a unit --

19          Q     A unit.

20          A     -- plant, correct.

21          Q     Normally when you think of pool distributing  
22 plants listed as being primarily plants that are Class 1  
23 bottling plants, isn't that correct?

24          A     That's correct.

1           Q     In the case of some plants in the Northeast  
2     Order, however, isn't it true there are some plants that  
3     do qualify for producer distributor plant status that in  
4     fact have very heavy milk utilized in other classes  
5     besides Class 1, such as Vernon?

6           A     Please rephrase your question.  Producer  
7     distributor, is that --

8           Q     Well, you -- you agreed with me, I think, that  
9     in most people's minds a pool distributing plant is  
10    primarily a Class 1 bottling plant?

11          A     That's correct.

12          Q     Okay.  In the case of -- of the Hood Vernon  
13    plant, would you consider that plant a -- in the same  
14    category as primarily Class 1 bottling plant?

15          A     No, I would not.

16          Q     It qualifies by virtue of its linkage in unit  
17    pool status to become a pool distributing plant?

18          A     That's correct.

19          Q     Is that also true with respect to some of the  
20    other plants that you've listed here under "Pool  
21    Distributing Plant Status"?  For example, can you tell us  
22    how the Dannon Company in West Jordan gets classified as a  
23    pool distributing plant?

24          A     It simply meets the pool distributing plant

1 order -- order requirements, order regulations based on --  
2 based on the -- on the -- on the requirements of the  
3 order, route sales, et cetera.

4 Q Is the Dannon plant primarily a Class 2  
5 operation?

6 A They -- they -- there's -- there's different  
7 products that are made at that plant.

8 Q Okay. Are there other plants in this list or  
9 other handlers in this list that have plants that are pool  
10 distributing plants that in fact have a lot of  
11 manufacturing in them?

12 A I'm aware of at least one.

13 Q Could you point it out for the record, please?

14 A I -- I can't divulge the name of the plant.  
15 That's -- that's -- information.

16 (Pause)

17 BY MR. ARMS:

18 Q Do you think that there -- the same situation  
19 might be true with respect to any of the Crowley plants  
20 listed? For example, ~~Artport~~ **Arkport**?

21 A I'm not going to divulge the name --

22 Q Okay.

23 A -- of the handler that -- that -- that's doing  
24 that.

1           Q     But you have essentially agreed with me that  
2 most -- most of the plants listed as producer distributing  
3 plants are essentially Class 1 bottling plants but there  
4 are exceptions, is that correct?

5           A     That's correct.

6           Q     Incidentally, I want to clarify one other thing  
7 in Table 1. Going back to the pool producers, the listing  
8 of producers by state. I want to make sure -- **Peter**, get  
9 it straight in my mind that this listing of pool milk by  
10 state where it may involve producers who are pooled under  
11 more than one order in a given month, that this table  
12 reflects only the pool milk that was pooled under this  
13 order and not any of the pool milk from the same producers  
14 that may have been pooled under another order. Is that  
15 true?

16          A     That is correct.

17          Q     The listing of pool supply plants on page 16.  
18 In response to questions raised by Attorney Rosenbaum, you  
19 didn't identify this -- the -- whether certain plants were  
20 proprietary or cooperative with respect to MK Trading,  
21 Queensboro Farm Products, and Fleur de Lait in New  
22 Holland, isn't that correct? You didn't identify them as  
23 either cooperative or proprietary?

24          A     That is correct.

1 Q Okay. With respect to Detrick's Milk Products,  
2 LLC, in Newbury Center and Dairy Marketing Services, LLC,  
3 in Middlebury Center --

4 ~~A It's in Reading.~~

5 Q -- that's listed for the year 2002, can you  
6 tell us the distinction here between these two plants that  
7 were before listed as Detrick's Milk Products, LLC in both  
8 cases? Why one is now listed as Dairy Marketing Services,  
9 LLC? And can you tell us the significance of that?

10 A No -- no, I can't. That's -- this information  
11 is derived from what is reported to us. Changes in  
12 handler names or operating handlers is -- is -- is  
13 information we get and it's --

14 Q I guess I'm asking for clarification in the  
15 record that there may be an instance here where it's  
16 neither fish nor fowl. Let me explain.

17 MR. BESHORE: Your Honor?

18 JUDGE BAKER: Yes.

19 MR. BESHORE: The -- Mr. Gallagher will testify  
20 and certainly is going to be available to -- with  
21 knowledge of -- of those matters. Mr. Arms could inquire  
22 of him at the time.

23 JUDGE BAKER: Very well. Thank you, Mr.  
24 Beshore.

1 MR. ARMS: I -- I'm raising the question  
2 because Attorney Rosenbaum's questioning was proprietary  
3 or co-op. And I'm just simply asking, is it not true that  
4 in this case -- and there have been changes in its status,  
5 but it's a case of joint ownership by both proprietary and  
6 cooperative interests.

7 JUDGE BAKER: Very well. If the witness knows  
8 and can answer, that is fine because more than one person  
9 may have information and that doesn't preclude testimony  
10 by someone else on the same subject. But I do not know  
11 the extent of this witness's knowledge, **Mr. Arms**.

12 MR. ARMS: Okay. We'll go on to a different  
13 question, then. I'm satisfied that we can ask about these  
14 matters with Mr. Gallagher when he takes the stand.

15 JUDGE BAKER: Mr. Beshore indicates you can.  
16 Is that right, Mr. Beshore?

17 MR. BESHORE: That is correct.

18 JUDGE BAKER: Very well. Thank you.

19 BY MR. ARMS:

20 Q With respect to Table Number 46, I'm not --  
21 this involves a listing of the volume bulk milk received  
22 at ~~northeast~~ **Northeast** pool supply plants. Perhaps this  
23 question was raised, but I -- again, for clarification, is  
24 my understanding correct that these -- this volume

1 includes other source milk that may have been received at  
2 these supply plants either from non-pool sources or other  
3 -- or sources from other orders? Other order plants?

4 A It could include that if that was a form of  
5 diversion or a transfer from another order.

6 Q I'm sorry?

7 A It could include that if it was in the form of  
8 a diversion or a transfer.

9 Q So in fact, at pool supply plants, this could  
10 involve substantial quantities of source -- from sources  
11 other than just co-op 9(c) milk? And it does include co-  
12 op 9(c) milk at these plants too, does it not?

13 A That's correct.

14 Q With respect to page -- the table on page 48,  
15 tagain, this refers to bulk milk, I assume? Milk -- all  
16 sources of milk received as so-called 9(c) cooperative  
17 milk only at the -- at pool supply plants, is that  
18 correct?

19 A That's correct.

20 Q This volume, again for purposes of  
21 clarification, may include milk beyond the actual  
22 membership of the 9(c) unit involved, is that correct?

23 A That is correct.

24 Q For example, it may receive -- it may include

1 9(c) milk -- milk that's in a 9(c) unit that is from  
2 independent producers, not members of a cooperative but  
3 they're inside the unit? And might it include also  
4 smaller cooperatives who are members of the same 9(c)  
5 unit?

6 A That is correct.

7 Q With respect to page -- the table on page 61,  
8 Does this -- is it my understanding this table purports to  
9 show the additional milk that would be pooled under the  
10 Northeast Order were Proposal 9 adopted?

11 A Yes. For -- for the partially regulated  
12 distributing plants. And it would add -- by changing  
13 their regulatory status from partially regulated to fully  
14 regulated, it would essentially add this Class 1 volume to  
15 the pool. If it was Class 1 volume at that plant as  
16 additional volume.

17 Q Could we possibly have a situation, though,  
18 where the additional plant might have -- there might ~~be~~ --  
19 **become then** a fully regulated producer -- a pool  
20 distributing plant but also have high amounts of  
21 manufacturing milk in it?

22 A I'm not sure about high amounts of -- of supply  
23 -- of manufacturing milk but certainly some portion.

24 Q Would you agree with me that the present order

1 requires a 25 percent qualification rule for producer  
2 distributor plants?

3 A That's correct.

4 Q On page 63?

5 (Pause)

6 BY MR. ARMS:

7 Q Is my understanding correct that this purports  
8 -- this table purports to show the volume of milk that  
9 would be depooled pursuant to the diversion limits that we  
10 propose for -- under Proposal Number 3?

11 A That is correct.

12 Q And is it not true that this volume that you've  
13 used in here includes 9(c) milk diversions?

14 A Yes, that would be correct.

15 Q And within those 9(c) milk categories, is --  
16 might there be large quantities of independent milk as  
17 well?

18 A There could be if that 9(c) unit pooled  
19 included -- included non-member producers on their unit --  
20 I'm sorry, as -- as a part of their pooling report.

21 Q This table doesn't intend, does it, to indicate  
22 in any way that actions might be taken by the handlers  
23 involved to find ways that this milk would not be  
24 depooled?

1           A     That's absolutely correct.

2           MR. ARMS:   Okay.  I would like the record to  
3     show that this -- also from my view point, this data  
4     that's been presented has been one of the most outstanding  
5     I have seen in federal order proceedings and that Peter  
6     should -- is commended on my part anyway for the work that  
7     he has put into this, Your Honor.

8           JUDGE BAKER:  Very well.  Thank you.

9           MR. ARMS:  That concludes my questions.

10          JUDGE BAKER:  Thank you.  I'm sure you  
11     appreciate those comments.

12          THE WITNESS:  Thank you, Dave.

13          JUDGE BAKER:  Are there any other questions?  
14     Mr. Beshore?

15                                CROSS EXAMINATION

16           BY MR. BESHORE:

17          Q     One other question, Peter.  The table on page  
18     61, would it be possible for you to provide us with a list  
19     of the plants that were included in those volumes?  It's  
20     more than three plants by virtue of the fact that the  
21     volumes are -- are noted.

22          A     Excuse me.  It is more than three plants but  
23     revealing the -- given -- given the names, you could --  
24     you could -- we decided not to do that because that would

1 be revealing. By looking at the changes on a month-to-  
2 month basis, you could back into quite easily volumes by  
3 people who come and go on that list. And for that reason,  
4 you could -- you could determine confidential information  
5 about those -- those plants quite easily.

6 Q Could you do it for the month of March only?  
7 Wouldn't -- wouldn't vary from month to month, we couldn't  
8 back into anything that way.

9 A One selected month?

10 Q Or -- or a list that doesn't identify by  
11 months. All plants that were included in any month but  
12 doesn't identify --

13 A For one selected month you could -- we could do  
14 that.

15 Q Or -- or just a list of -- you know, of all  
16 plants without any indication of which month or months  
17 they included. That would be even more preferable, I  
18 think.

19 A Okay. That's possible. That's not revealing.

20 Q Okay. Thank you. I appreciate it.

21 JUDGE BAKER: Are there other questions for Mr.  
22 Fredericks?

23 (No response)

24 JUDGE BAKER: Let the record reflect that there

1 are none.

2 Thank you very much, Mr. Fredericks.

3 THE WITNESS: Thank you.

4 JUDGE BAKER: You've been a most patient  
5 witness.

6 THE WITNESS: Didn't have much choice, did I?

7 (Laughter)

8 (Whereupon, the witness was excused.)

9 JUDGE BAKER: Very well. Mr. Stevens?

10 (Pause)

11 MR. STEVENS: Your Honor, for the record, we  
12 have -- I think we have a dairy farmer witness who is  
13 under some time concerns and wants to be able to leave the  
14 hearing room to leave town at four. He has to be at the  
15 train station at 4:00.

16 JUDGE BAKER: Is he here?

17 MR. STEVENS: I believe he's here now. And we  
18 have two other witnesses with statistical material, but  
19 we're certainly willing to -- to accommodate the dairy  
20 farmer or do whatever Your Honor wishes.

21 JUDGE BAKER: Very well. We'll -- we'll be  
22 very glad to accommodate him, then.

23 MR. BESHORE: Yeah, we'd like to hear from him.

24 JUDGE BAKER: All right. Thank you. I don't

1 know his name or who he is, so I hope he'll step forward.  
2 Whereupon,

3

ERIC OOMS

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

6

(Pause)

7

JUDGE BAKER: Mr. Stevens, you realize that 5  
8 and 5-A are just identified, they're not admitted into  
9 evidence?

10

MR. STEVENS: Oh, I certainly want to move them  
11 into evidence, Your Honor. I'll be happy to do that when  
12 we get back on.

13

JUDGE BAKER: Very well.

14

THE WITNESS: Hello.

15

JUDGE BAKER: Hello.

16

MR. STEVENS: Your Honor?

17

JUDGE BAKER: Yes?

18

MR. STEVENS: With your gentle prompting, I  
19 would like to move into evidence Exhibits 5 and 5-A at  
20 this time, if I could?

21

JUDGE BAKER: All right. What has been marked  
22 for identification as Exhibits 5 and 5-A, the document  
23 from which Mr. Fredericks has testified extensively is  
24 being -- are being moved into evidence. Are there any

1 questions or objections with respect thereto?

2 (No response)

3 JUDGE BAKER: Hearing none, Exhibits 5 and 5-A  
4 are hereby admitted and received into evidence.

5 (The documents previously  
6 marked for identification as  
7 Exhibits 5 and 5-A were  
8 received in evidence.)

9 MR. STEVENS: Thank you, Your Honor.

10 JUDGE BAKER: You're welcome. The witness has  
11 been sworn.

12 DIRECT TESTIMONY BY MR. OOMS

13 THE WITNESS: Okay. Good afternoon. And I  
14 thank you for the opportunity to submit these comments  
15 regarding Proposals 5, 6, and 7. My name is Eric Ooms and  
16 my family -- my father, two brothers, and I operate a 350-  
17 cow dairy farm in Columbia County, New York. I also serve  
18 as the county president of Columbia County Farm Bureau, am  
19 chair of the New York Farm Bureau Young Farmer Committee  
20 as well as on the State Board of Directors and State Dairy  
21 Advisory Committee. I'm here representing New York Farm  
22 Bureau today.

23 New York Farm Bureau is a not-for-profit  
24 32,000-member organization whose primary mission is to

1       serve and strengthen agriculture. We are a statewide  
2       organization that represents the interests of dairy  
3       farmers, both members and non-members of dairy  
4       cooperatives, based on our grassroots policy development  
5       process.

6               New York Farm Bureau has a member-driven  
7       structure that leads the organization to take positions on  
8       public policy issues. We have a long established dairy  
9       advisory committee comprised of dairy farmer members,  
10      varying herd sizes and geographically dispersed throughout  
11      the state, which has carefully considered the various  
12      proposals that are the topic of this hearing for the  
13      Northeast Order.

14             New York Farm Bureau's Dairy Committee has  
15      decided after deliberation to support the proposals being  
16      forwarded by the Association of Dairy Cooperatives in the  
17      Northeast. New York Farm Bureau supports the Dairy  
18      Committee's representation -- recommendations and would  
19      like to offer comments in support of the following  
20      proposals.

21             Proposal Number 5. New York Farm Bureau fully  
22      supports the pool plant revision proposal set forth by the  
23      Association of Dairy Cooperatives of the Northeast, which  
24      would require that pool plants must ship into Order 1

1 during the months of January through August and December  
2 or in an amount not less than 10 percent of the total  
3 quality -- quantity of milk that is received at the plant  
4 or diverted to it during the month.

5 New York Farm Bureau also supports allowing the  
6 ~~market administrator~~ **Market Administrator** the flexibility  
7 to adjust shipping percentages if necessary in accordance  
8 with the orderly marketing of milk.

9 Proposal Number 6. New York Farm Bureau  
10 supports the Association of Dairy Cooperatives' proposal  
11 regarding producer milk provisions which, among other  
12 requirements, would establish diversion limits similar to  
13 those in the other orders of not more than 80 percent  
14 diversion during the months of September through November  
15 and 90 percent during the months January through August  
16 and December.

17 Both Proposals 5 and 6 seek to reward those  
18 producers that provide the market with milk when it is  
19 needed. The current regulations make it too easy for  
20 handlers physically located in other regions to collect  
21 our orders' higher Class 1 price without the commitment  
22 that is necessary to meet the overall needs of the order.  
23 These two proposals taken together will help ensure the  
24 orderly marketing of milk in all uses and classifications

1 in the ~~northeast~~ **Northeast**.

2 Just real quickly, my family has a dairy farm  
3 about 10 miles inside New York state. We've been  
4 providing milk for the New England market for about 47  
5 years now, since they put in a bulk tank. And we realize  
6 based on our experience when the order -- when there was  
7 33 orders, we were able to participate in the higher order  
8 but we had a commitment to the order. And basically,  
9 we're asking that, you know, similar -- people with  
10 similar commitments would also be able to take advantage  
11 of the higher Class 1 price. Anyway, I digress.

12 Proposal Number 7. The New York Farm Bureau  
13 fully supports the reestablishment of the marketwide  
14 service payments to provide compensation in the marketwide  
15 pool for the services provided by qualifying entities to  
16 balance the Class 1 market. New York Farm Bureau is  
17 concerned that the costs of balancing the Class 1 market  
18 are currently not equitably shared within the milk  
19 marketing system.

20 Order 1 is the largest Class 1 market in the  
21 federal milk order system and cooperatives are unduly  
22 disadvantaged in Order 1 currently -- in Order 1.  
23 Currently, there are so many independent producers.  
24 Eighty percent of independent, non-cooperative milk is

1 classified as Class 1. Clearly then, the cooperatives are  
2 unfairly shouldering the necessary balancing of the milk  
3 market.

4 Proposal Number 7 would allow qualifying  
5 organizations that are balancing the milk market to  
6 receive six cents per hundredweight on qualified milk  
7 volumes pooled. New York Farm Bureau members and policies  
8 strongly support financially viable cooperatives.  
9 Therefore, we concur with the American -- the Dairy  
10 Cooperatives Group and respectfully request that you --  
11 that the ~~market administrator~~ **Market Adiministrator**  
12 reestablish marketwide service payments in Order 1.

13 Thank you for your time and consideration.

14 JUDGE BAKER: Thank you, Mr. Ooms, for your  
15 input and your interest in the hearing. Are there any  
16 questions? Mr. Beshore?

17 CROSS EXAMINATION

18 BY MR. BESHORE:

19 Q Mr. Ooms, you alluded to the New York Farm  
20 Bureau member-driven structure in your statement and to  
21 the Dairy Advisory Committee. Can you give us a little  
22 more -- just a little more information with respect to who  
23 all was represented in the Dairy Advisory Committee in  
24 terms of herd sizes, geographically --

1           A     Sure.

2           Q     -- dispersed throughout the state, and -- and  
3 marketing affiliation?

4           A     Mm-hmm. We have, I would -- I'm thinking about  
5 between 15 and 20 members who are -- Dairy Advisory  
6 Committee. I know for a fact I'm all the way located in  
7 the very eastern part of the state. Our chairman is Mr. -  
8 - we ship our milk to ~~AgraMark~~ **Agrimark** cooperatives. The  
9 chairman of the committee is -- we milk 350 cows.

10                     The chairman is Harry Fifi, who's from northern  
11 New York, I believe Franklin County. He milks about 85 or  
12 90 cows and he ships to the Allied Milk Cooperative.

13                     We have -- on the far western part of the  
14 state, we have a young farmer who's in Cattaraugus County  
15 milking -- just started up and they're milking about 200  
16 cows. And I believe that they are DFA members.

17                     And then the rest are all in between. We have  
18 a couple of 70-cow members and I know there's a member  
19 from Delaware County who -- Roger Hamilton who ships to  
20 ~~Greleg~~ **Garellick** Milk Producers in Massachusetts, so he's  
21 an independent.

22                     We have definitely a representation of all  
23 shapes and sizes, which is why we have a fairly large  
24 committee, so.

1 Q And the committee took input from all those  
2 sources and varied perspectives and --

3 A The four I mentioned -- the four people I  
4 mentioned were all on the -- in the discussion of whether  
5 or not to support this testimony. There were more, but  
6 that's -- just gives you an idea of the geographic and --  
7 and member representation. But they were all represented  
8 in the discussion as well as in our policy development  
9 process.

10 MR. BESHORE: Thank you.

11 JUDGE BAKER: Thank you, Mr. Beshore. Are  
12 there other questions for Mr. Ooms?

13 (No response)

14 JUDGE BAKER: There appear to be none. Thank  
15 you very much for your **input**.

16 THE WITNESS: Thank you.

17 (Whereupon, the witness was excused.)

18 JUDGE BAKER: We're now back to Mr. Stevens, I  
19 believe.

20 MR. STEVENS: Okay. The next witness we would  
21 like to call is Paul Huber.

22 JUDGE BAKER: Very well.

23 Whereupon,

24 PAUL HUBER

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

3 DIRECT EXAMINATION

4 BY MR. STEVENS:

5 Q Mr. Huber, could you state your name for the  
6 record and spell your name, please?

7 A Yes. Paul Huber, H-U-B-E-R.

8 Q And where are you employed, Mr. Huber?

9 A I'm the ~~assistant market administrator~~  
10 **Assistant Market Administrator** for the Mideast Marketing  
11 Area, Federal Order 33. In Cleveland, based in Cleveland.

12 Q Cleveland, Ohio?

13 A Yes, sir.

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

15 A I've been the assistant for about a year and a  
16 half. And I've been employed with that order and ~~as its~~  
17 predecessor orders for 28 years.

18 Q All right. What are your duties as the  
19 ~~assistant market administrator~~ **Assistant Market**  
20 **Administrator**?

21 A I help oversee the operations of all three  
22 offices. We have an office in Indianapolis and Detroit  
23 plus the one in Cleveland.

24 Q And in your prior employment in the office, I -

1 - I supposed you've done just about everything that's to  
2 be done in a ~~market administrator's~~ **Market Administrator's**  
3 office?

4 A I wouldn't say that, but I was involved in data  
5 processing for several years.

6 Q Did you -- did you prepare certain documents  
7 and bring them with you today?

8 A Yes, I did.

9 Q And at whose request did you prepare the  
10 documents?

11 A I believe it was Charles English.

12 Q All right. You got a request to prepare  
13 documents. You prepared them and brought them with you  
14 today?

15 A Yes.

16 Q I have two documents. The first one -- I'll  
17 ask that they be marked. I'll identify them.

18 The first one I'm looking at is "Producer Milk  
19 by State, 2000 to 2002." And that's a two-page document.  
20 You have a copy of that?

21 A Yes, I do.

22 Q I provided one for the judge and for the  
23 reporter, the requisite copies. I believe I would mark --  
24 like this marked -- and there are copies in the back of

1 the room available for use of the parties.

2 JUDGE BAKER: Exhibit 6.

3 MR. STEVENS: May I have this marked as Exhibit  
4 6, Your Honor? Thank you.

5 JUDGE BAKER: Yes, indeed. Thank you.

6 (The document referred to was  
7 marked for identification as  
8 Exhibit 6.)

9 BY MR. STEVENS:

10 Q And there's a one-page document entitled,  
11 "Class 1 Route Disposition, Mideast Order 33 Handlers into  
12 Northeast Marketing Area." Do you have a copy of that  
13 with you?

14 A Yes, I do.

15 Q Provided one for the judge and -- requisite  
16 copies for the reporter. And there are copies available  
17 in the back of the room. I'd like this marked for  
18 identification as Exhibit 7.

19 JUDGE BAKER: It shall be so marked.

20 (The document referred to was  
21 marked for identification as  
22 Exhibit 7.)

23 BY MR. STEVENS:

24 Q All right. Let's -- let's begin with -- with

1 the document -- the two-page document marked for  
2 identification as Exhibit 6. Could you describe for the  
3 record what's contained in the exhibit?

4 A Yes. It's a listing from January 2000 to July  
5 2002, of the sources of producer receipts production by  
6 state in the Mideast marketing area.

7 Q Okay. Could you -- and -- and on the left-hand  
8 side are the months and the year, representing the years  
9 2000, 2001, and the partial -- or is it --

10 A Two -- through July of 2002.

11 Q July. And then it has a recitation by the --  
12 by the months. Am I correct in saying that this is  
13 similar to a document that is contained in Exhibit 5?

14 A Yes.

15 Q Why don't you explain -- just take us through  
16 it and explain -- pick a month, a year, and explain one  
17 with probably one -- with more numbers than less. But  
18 pick one you'd like to describe for the record and tell us  
19 what -- what information is contained in the exhibit?

20 A Okay. If you take Iowa, for instance, you see  
21 we had receipts from Iowa producers beginning in September  
22 of 2000. The footnotes would indicate that there were  
23 receipts from other states that were restricted due to the  
24 number of producers. We make an attempt to just list them

1 at -- in an adjoining or a state nearby.

2 I believe Footnote 2 would indicate that there  
3 was some South Dakota milk included.

4 Footnote 3 would indicate some Kansas milk.

5 In the month where, for instance, Kansas, prior  
6 to the footnoted months of July 2001 and August 2001, we  
7 had enough producers that Kansas was not restricted. So  
8 they had their own column beginning in November 2000  
9 running through June of 2001. And you would see even  
10 similar data in some other states.

11 Q So -- so the -- where the zeroes are, that --  
12 that is a zero? That represents no -- no milk? On this  
13 document, if there's a zero --

14 A Yes. In the -- in the case of Kansas, for  
15 instance, it would indicate no milk except in the case  
16 where there were less than three producers or restricted  
17 data, in which case we would have it under another state  
18 as footnoted.

19 Q Okay. And when there's a blank in the -- in  
20 the -- in the form, what does that indicate?

21 A We -- we do not have that data yet.

22 Q Now, as it says at the bottom of the first  
23 page, if I'm reading this right, this was prepared by the  
24 Mideast marketing -- ~~market administrator's~~ **Market**

1 **Administrator's** office, 9/4/02?

2 A That's correct.

3 Q Is that correct? And -- and -- and the  
4 information in this document is subject to the footnotes  
5 on the second page?

6 A Yes, both pages -- the footnotes are on the  
7 bottom of the second page for both pages.

8 Q So the -- the footnotes apply to both pages?

9 A That's correct.

10 Q And the numbers refer to what -- what footnote  
11 applies where?

12 A Yes.

13 Q Now, these were prepared by you or pursuant to  
14 your supervision?

15 A Yes, they were.

16 Q And they come from official records of the  
17 ~~market administrator's~~ **Market Administrator's** office or  
18 the U.S. Department of Agriculture?

19 A Yes, they do.

20 Q And are they presented -- are they presented in  
21 favor or opposed to any proposal here?

22 A No.

23 Q All right. Let me -- let me take you to the  
24 document that's marked for identification as Exhibit 7.

1 It's a one-page document. What's -- what's the title of  
2 the document?

3 A "Class 1 Route Dispositions, Mideast Order 33  
4 Handlers in ~~the~~ to Northeast Marketing Area."

5 Q The note at the bottom says it was prepared by  
6 your office, 9/4/02?

7 A That's correct.

8 Q Why don't you take us through the document and  
9 explain what's contained there?

10 A This would represent Order 33 handlers who had  
11 sales into the Order 1 or the Northeast marketing area.  
12 And this would be the -- the amount of those route sales.

13 Q So, in May of 2002 there were 2,534,443 pounds?

14 A Yes.

15 Q And -- and the document reads that way down by  
16 the years and across with the months?

17 A Actually, down by the months and across by the  
18 years.

19 Q You're -- you're better than I am at up and  
20 down.

21 And the totals are at the bottom --

22 A Yes.

23 Q -- for 2000, 2001, and partial 2002?

24 A That's correct.

1           Q     Now, these were prepared by you or pursuant to  
2 your supervision?

3           A     Yes, sir.

4           Q     They come from official records of the ~~market~~  
5 ~~administrator's~~ **Market Administrator's** office of the U.S.  
6 Department of Agriculture?

7           A     Yes, they do.

8           Q     And are they presented for or against any of  
9 these proposals?

10          A     No, sir.

11                 MR. STEVENS: I offer the witness for cross  
12 examination, Your Honor.

13                 JUDGE BAKER: Very well. Are there any  
14 questions? Yes, Mr. English?

15                         CROSS EXAMINATION

16                         BY MR. ENGLISH:

17           Q     Thank you, Mr. Huber. Just -- just for the  
18 record, my request to you -- to your office included a  
19 request for information about sales of packaged product  
20 from the Northeast Order into Order 33, correct?

21           A     Yes, it did.

22           Q     And that was submitted by Mr. Fredericks as  
23 page 83 in Exhibit 5, correct? You asked -- your office  
24 asked him -- his office to put that evidence in for your

1 office, correct?

2 A That's -- that information ~~that~~ **if** we had would  
3 have come from him, so we thought it best that it come  
4 from their office.

5 Q That's -- I just wanted to complete the -- that  
6 was the scope of the request to my -- from my office to  
7 your office, correct?

8 A Yes.

9 MR. ENGLISH: Thank you.

10 JUDGE BAKER: Thank you, Mr. English. Are  
11 there other questions for Mr. Huber? Yes, Mr. Beshore?

12 CROSS EXAMINATION

13 BY MR. BESHORE:

14 Q Mr. Huber, with respect to Exhibit 6, would you  
15 expect that some of the pooling patterns for milk on Order  
16 33 will change in August with the interim final order  
17 which became effective August 1, 2002?

18 A I couldn't speculate on that. They're --  
19 they're doing the -- **August pool** right now and we don't  
20 have that information yet.

21 Q Okay. Among -- among other changes that were  
22 made in that interim final order were the elimination of  
23 the so-called free ride period for pooling milk through  
24 the supply plants, is that correct?

1           A     That's correct.

2           Q     Okay. So that -- whereas during the periods  
3 depicted on Exhibit 6, handlers were free to associate  
4 milk with supply plants during the months of -- corrected  
5 me if I'm wrong here -- January through July in any  
6 amount?

7           A     Yes, it was unlimited.

8           Q     Okay. So that when you see in perusing the  
9 exhibit large amounts of increased poolings from some  
10 sources during those spring months, that was facilitated  
11 by provisions of Order 33 which are no longer in effect?

12          A     The provisions may -- the provisions have  
13 changed.

14                 MR. BESHORE: Thank you.

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

17                 (No response)

18                 JUDGE BAKER: There appear to be none. Thank  
19 you very much.

20                 Oh, you did -- oh, Mr. Vetne?

21                         CROSS EXAMINATION

22                 BY MR. VETNE:

23           Q     John Vetne, attorney for Friendship. You  
24 indicated that you're -- you're doing the August pool now.

1 You have received, however, handler reports already for  
2 the August pool?

3 A That's correct.

4 Q And have you noticed that some plants that  
5 filed a report as handlers for July and earlier months did  
6 not file a report for August because they went off the  
7 pool?

8 A I have not been in the office. They're doing  
9 pool right now. I don't know what reports have been  
10 filed.

11 Q Okay. You're -- you're not aware, for example,  
12 that Stockton Cheese Plant in Illinois didn't file a  
13 report as a pool supply plant for the month of August?

14 A I don't believe they have, but I've not been  
15 back at the office.

16 Q Are you aware of when -- when the Stockton  
17 Cheese Plant became a pool plant in Order 33?

18 A I believe it was -- I think it would be late  
19 summer, I think, of 2000. I could be off a month or two.

20 Q Do you have Exhibit 6 in front of you? Can you  
21 look at the Illinois ~~stating~~ **state** listings and -- and  
22 maybe make a better educated guess as to what -- what  
23 their first month was?

24 (Pause)

1 BY MR. VETNE:

2 A The numbers speak for themselves.

3 Q I'd agree. Thank you.

4 JUDGE BAKER: Very well. Are there any other  
5 questions?

6 (No response)

7 JUDGE BAKER: There appear to be none. Thank  
8 you very much.

9 (Whereupon, the witness was excused.)

10 MR. STEVENS: Your Honor?

11 JUDGE BAKER: Yes?

12 MR. STEVENS: I'd move that the documents  
13 marked for identification as Exhibits 6 and 7 be entered  
14 into evidence.

15 JUDGE BAKER: Very well. Are there any  
16 questions or objections with respect to the admission into  
17 evidence of what have been marked as Exhibit 6 and 7?

18 (No response)

19 JUDGE BAKER: Hearing none, Exhibits 6 and 7  
20 are hereby admitted and received into evidence.

21 (The documents previously  
22 marked for identification as  
23 Exhibits 6 and 7 were received  
24 in evidence.)

1                   MR. STEVENS: Your Honor, I'd like to call to  
2 the stand Ms. Ely?

3                   JUDGE BAKER: Very well. Ms. Ely, please?

4                   (Pause)

5 Whereupon,

6                                   GAYLE ELY

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

9                   JUDGE BAKER: Thank you.

10                   (Pause)

11                                   DIRECT EXAMINATION

12                   BY MR. STEVENS:

13                   Q Ms. Ely, could you state your name and spell  
14 your name for the record, please?

15                   A Gayle, G-A-Y-L-E, Ely, E-L-Y.

16                   Q By whom are you employed?

17                   A By the ~~market administrator~~ **Market**  
18 **Administrator's** office for the Southeast and Florida  
19 marketing areas, Order 6 and 7.

20                   Q And what is your position in that office?

21                   A Assistant ~~market administrator~~ **Market**  
22 **Administrator.**

23                   Q Could you tell us what your duties are?

24                   A My duties are to oversee the various functions

1 of the market administrator office, particularly  
2 administrative, information technology, and market  
3 information.

4 Q And starting today, one of your duties is to  
5 present testimony in a federal milk order hearing, isn't  
6 it?

7 A Mm-hmm, mm-hmm.

8 Q Welcome. Did you -- did you prepare certain  
9 documents that you brought with you today?

10 A Yes. Under my supervision, yes.

11 Q Okay. At whose request were those documents  
12 prepared?

13 A Charles English.

14 Q And you brought them with you today?

15 MR. STEVENS: Your Honor, I guess I'd like  
16 marked for identification a document. It consists of two  
17 exhibits and a cover sheet which I'm happy -- I -- it  
18 would be fine if the witness read it into the record. It  
19 explains the background for the testimony for the  
20 exhibits. And -- and the exhibits, there is one exhibit  
21 which I think goes from page two through page 42 and that  
22 is one -- that is one document with that many pages. And  
23 then the -- then the last page --

24 JUDGE BAKER: -- page 43 -- oh, 43 --

1           MR. STEVENS: No, then the last page is a  
2 separate -- I don't want to call it "exhibits" unless  
3 we're going to mark them as exhibits. So I think it  
4 probably would be fine if we just marked the whole thing,  
5 if it's agreeable with the -- with the group if we mark it  
6 as one exhibit, which would be Number 8.

7           JUDGE BAKER: Eight.

8           MR. STEVENS: And it has -- it has three parts  
9 which we will explain.

10          JUDGE BAKER: Very well. What you have handed  
11 me and described shall be marked for identification as  
12 Exhibit 8. And the various parts will be explained as we  
13 go along then, Mr. Stevens. Thank you.

14                                 (The document referred to was  
15                                 marked for identification as  
16                                 Exhibit 8.)

17          BY MR. STEVENS:

18           Q     Okay. With that, would you -- would you -- do  
19 you have a copy of the exhibit with you?

20           A     Yes.

21           Q     Why don't you go through the first page there  
22 and -- and please read that -- those paragraphs into the  
23 record? And then we'll continue from there.

24           Q     Okay. "The accompanying exhibit is entered

1 into testimony in the Federal Milk Marketing Order 1  
2 hearing in Alexandria, Virginia, on September 10th, 2002,  
3 at the request of Charles English. The exhibit consists  
4 of copies of the Federal Milk Marketing Order 7, Public  
5 Producer Milk by ~~County Slash State~~ **County/State** report  
6 for the months of March and August 2000, March and August  
7 2001, and March 2002, and data pertaining to Class 1 route  
8 sales into Federal Orders 6 and 7 since January 2000 that  
9 originated from plants located in Federal Order 1 for  
10 months in which such data is not restricted for  
11 confidentiality reasons.

12 "The Public Producer Milk By ~~County Slash State~~  
13 **County/State** report lists total pounds of producer milk  
14 pooled on Federal Order 7 by state and county of origin  
15 for all counties in which there are three or more  
16 producers, The release of similar data for Federal Order  
17 6 is restricted for confidentiality reasons due to the  
18 fact that fewer than three handlers account for the total  
19 volume of milk marketed on that order.

20 "Data related to Class 1 route sales in Federal  
21 Orders 6 and 7 by plants regulated on Federal Order 1 is  
22 presented for those months since January 2002 in which  
23 three or more Federal Order 1 plants supplied product to  
24 those markets. Similar data regarding Class 1 route sales

1 into Federal Order 1 by plants located in Federal Orders 6  
2 and 7 for all months since January 2002 is restricted due  
3 to the presence of less than three handlers selling  
4 product into Federal Order 1."

5 Q Thank you. Now -- and you've described it very  
6 well. I must say, I'm out of questions, although lawyers  
7 are never out of questions. So -- one is. In terms of  
8 the public producer milk by county and state, pages two  
9 through 42, that's as you described it. In other words,  
10 it's -- it's information on the total pounds of producer  
11 milk pooled on Federal Order 7 by state and county of  
12 origin?

13 A That's correct.

14 Q And as -- and as you then further stated --

15 A That's correct.

16 Q -- in your statement? And -- and 43 -- well,  
17 let's -- let's look at that for a minute. It -- just go  
18 through -- pick a state and just go through one -- one of  
19 the columns there. Tell us what information is there that  
20 --

21 A What page are you --

22 Q -- you've already told us?

23 A -- what page are you on?

24 Q Start on page two, if you will.

1 A On page two, okay.

2 Q Pick a county in Alabama and just -- just read  
3 across --

4 A Okay.

5 Q -- and tell us what --

6 A Okay.

7 Q -- what's represented there?

8 A This is data from March 2002 and for all milk  
9 producer **milk**

10 Q You're talking about page two now, right?

11 A Yes.

12 Q March 2000?

13 A 2000, I'm sorry. March 2000.

14 Q Okay.

15 A Starting with the state of Alabama and then  
16 reading across, you have a county name. For instance,  
17 Baldwin.

18 The next column is -- should have a heading,  
19 "Code." It's not exactly lined up. And that simply a  
20 FIPS code for that county. It's a geographic locator  
21 code.

22 The third column is number of farms, and that  
23 heading should be moved over.

24 And the fourth column is the total pounds of

1 milk that originated from that county in Alabama.

2 Q And that -- and that follows -- that pattern  
3 follows for all the states and the counties that are  
4 represented in those pages?

5 A That's correct.

6 Q And you did say something about that -- that if  
7 the information is restricted, that is if there's less  
8 than three handlers, you -- you do not report the  
9 information?

10 A If there are less than three producers in a  
11 county, we do not report that information. If there are  
12 less than three handlers in the state, we do not report  
13 that information.

14 Q Okay. Now, on the -- on the last page, page  
15 43, the one -- document entitled, "Class 1 Route Sales  
16 into Federal Order 6 from Federal Order 1," again, why  
17 don't you just take one of those horizontal columns and  
18 describe the information that's contained there?

19 A This is, "Class 1 Route Sales into Federal  
20 Order 6, the Florida Marketing Area, from Federal Order  
21 1." Reading across you have it regulated by federal  
22 order. So you see a "one" in -- in all of those rows.

23 Class 1 sales are into Order 6, so those are  
24 all the same for all the rows.

1           The third column is the year and the month. So  
2 the first one would be August of 2000.

3           Q     Okay.

4           A     The number of plants that were selling into  
5 Order 6 in that month were three and the total pounds is  
6 listed under "Product Pounds."

7           Q     And the same information in the second group  
8 there is reported for Class 1 route sales into Federal  
9 Order 7 --

10          A     That's correct.

11          Q     -- from Federal Order 1?

12          A     That's correct.

13          Q     And -- and the same description would apply to  
14 the columns that are contained in that part of the page?

15          A     That's correct.

16                MR. STEVENS: I submit the witness for cross  
17 examination, Your Honor.

18                JUDGE BAKER: Very well. Are there any  
19 questions? Yes, Mr. English?

20                                CROSS EXAMINATION

21                BY MR. ENGLISH:

22           Q     Again, let me thank you for putting this  
23 together.

24                When you sent this data -- when your office

1 sent this data to me originally, they sent every month,  
2 correct?

3 A That's correct.

4 Q And -- and for your purposes or your --  
5 purposes, I -- I chose the representative month, correct?

6 A That's correct.

7 Q And have I since had a discussion with you that  
8 in order to match up with some representative months up  
9 here that I might want some different months?

10 A That's correct.

11 Q If I were to show you, and maybe I'll ask Mr.  
12 Stevens. But if I were to show you the data for June and  
13 October of 2000, June and October of 2001, and June of  
14 2002, and if I were to then provide additional copies for  
15 the record, could you at least confirm that this is the  
16 data you sent me for those months?

17 A Yes.

18 (Pause)

19 MR. ENGLISH: For the record, this is the  
20 producer data that appears on pages two through 42 of what  
21 is marked as Exhibit 8. And it's 40 pages of material for  
22 June and October of 2000, June and October of 2001, and  
23 June of 2000 -- 2002.

24 And, Your Honor, I guess whether you want to

1 make it Exhibit 9 or 8-A or whatever you want to do, then  
2 I will submit -- I will commit to you that by tomorrow  
3 morning you will have enough copies for the record and for  
4 the parties.

5 JUDGE BAKER: Very well. I haven't seen it,  
6 but from what you describe, it would be appropriately  
7 marked Exhibit 9 for identification.

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

11 JUDGE BAKER: Have you seen it, Mr. Stevens?

12 MR. STEVENS: He showed it to me briefly. What  
13 is -- what is the title of it? Is it --

14 MR. ENGLISH: Basically, it's just the  
15 additional -- it's -- it's the same data, the "Public  
16 Producer Milk by County and State, Two or More Producers  
17 Per County, Federal Order 7," for different representative  
18 months. June and October as opposed to March and August.

19 MR. STEVENS: Okay. What years?

20 MR. ENGLISH: 2000, 2001, and 2002. Basically,  
21 the exact same data but -- but for different months.

22 BY MR. ENGLISH:

23 Q Is that -- is that the data that -- that your  
24 office provided me?

1           A     Yes, it is.

2           MR. ENGLISH: Your Honor, could I then, subject  
3 to maybe showing to Mr. Stevens and -- and obviously  
4 making representation that the copies I make will be  
5 accurate and complete, can I go ahead and -- and do that  
6 and have Exhibit 9 submitted based upon that?

7           JUDGE BAKER: Very well. You're moving it into  
8 evidence?

9           MR. ENGLISH: I will so move and I guess once  
10 everybody has a chance to see it -- I mean, I think -- I  
11 think she's established the foundation today and then once  
12 I can provide copies for the record, I will make that  
13 motion I think to be fair to let everybody see it at that  
14 time.

15          JUDGE BAKER: We'll defer that until you so  
16 move it, then, Mr. English.

17          MR. ENGLISH: Thank you, Your Honor.

18          JUDGE BAKER: You're welcome. Are there other  
19 questions for Ms. Ely?

20          MR. BESHORE: I have, Your Honor.

21          JUDGE BAKER: You have one. All right. Mr.  
22 English.

23          (Pause)

24          JUDGE BAKER: Mr. Beshore? Mr. English has

1 one, I think, but --

2 MR. ENGLISH: No, I'm done.

3 JUDGE BAKER: Oh, you don't have one? I'm  
4 sorry. Mr. Beshore?

5 CROSS EXAMINATION

6 BY MR. BESHORE:

7 Q Ms. Ely, does your office publish the producer  
8 county source data each month?

9 A No.

10 Q Okay. I'm not quite sure I kept up with what  
11 months we now have or are -- will likely have in the  
12 record. But what months do you -- do you publish -- do  
13 you --

14 A We publish --

15 Q -- routinely compile the data?

16 A We -- we publish total data each month. In  
17 other words, total number of producers but not by state  
18 and county. We do that, I believe, in May and December.

19 Q In May and December you routinely do?

20 A Yes.

21 Q Okay. Has -- have the May and December -- has  
22 that information been -- is that among the information  
23 that has been -- you've been asked to provide here?

24 A No.

1 Q Okay.

2 A No, I was asked for specific months.

3 Q March and October?

4 A Yes.

5 Q March --

6 A Actually, originally, the request was for  
7 representative months, but that was not specific. So we  
8 were -- we gave all of the months since 2000 that was not  
9 restricted.

10 Q Okay. And is that what you have now been asked  
11 to identify for producer --

12 A No, I was asked to identify representative  
13 months of June and October.

14 Q Okay. In addition to --

15 A For 2000 --

16 Q -- in addition to the March and August --

17 A Yes.

18 Q -- information? So we're now going to have  
19 March, June, August, and October?

20 A That's correct.

21 Q Okay. During -- I just have two questions. In  
22 order to be pooled on -- on Order 6, a producer's got to  
23 deliver, what, 60 percent, 70 percent, 80 percent of the  
24 production to a -- pool plant?

- 1           A     A producer?
- 2           Q     Yes.
- 3           A     Ten days.
- 4           Q     Year round?
- 5           A     Yes.
- 6           Q     On Order?
- 7           A     Order 6.
- 8           Q     And that's uniform year round?
- 9           A     That's correct.
- 10          Q     Okay. Is it -- what is it in Order 7?
- 11          A     It's four days in the long months and 10 days  
12                in the short months. And I don't have in front of me what  
13                months those are exactly, but it's four and 10.
- 14          Q     And are the diversion limitations the  
15                reciprocal of those delivery requirements, essentially?
- 16          A     Yes.
- 17          Q     Do both Orders 6 and 7 have transportation  
18                credits by which the pool provides payments to producers  
19                for the service of supplying milk to the market?
- 20          A     No. Only Order 7.
- 21          Q     Only Order 7. Okay. Are those payments  
22                applicable throughout the year or only in certain months?
- 23          A     Only July through December.
- 24                MR. BESHORE: Okay. Thank you.

1 JUDGE BAKER: Thank you. Are there any other  
2 questions for Ms. Ely? Mr. Vetne?

3 CROSS EXAMINATION

4 BY MR. VETNE:

5 Q John Vetne. In response to the question by  
6 ~~Mark~~ **Marv** Beshore, you said Order 7 provides for payments  
7 to producers for marketwide services, is that correct?  
8 Producers get paid?

9 A Transportation credits are provided to those  
10 who bring supplemental milk in.

11 Q And that goes to dairy farmers or to handlers?

12 A It goes to handlers.

13 Q Not -- not to producers?

14 A I'm sorry. No, not to producers. To handlers.

15 MR. VETNE: Thank you.

16 JUDGE BAKER: Very well. Are there any other  
17 questions? Mr. Stevens?

18 REDIRECT EXAMINATION

19 BY MR. STEVENS:

20 Q I just want to make sure. I -- I did ask you  
21 the -- if you prepared these documents?

22 A Yes, under my supervision.

23 Q Did I ask you that question?

24 A They were prepared under my supervision.

1 Q And -- and from records of the -- of your  
2 office or the Department of Agriculture?

3 A Yes.

4 Q And they're not presented for or against any  
5 proposal, are they?

6 A No, they're not.

7 MR. STEVENS: That's all I have, Your Honor.

8 JUDGE BAKER: Very well. Thank you. Are there  
9 any other questions for Ms. Ely?

10 (No response)

11 JUDGE BAKER: There are none. Thank you very  
12 much.

13 (Whereupon, the witness was excused.)

14 MR. STEVENS: May I ask that Exhibit 8 be moved  
15 into evidence?

16 JUDGE BAKER: Exhibit 8 has been moved into  
17 evidence. Are there any questions or objections with  
18 respect thereto?

19 (No response)

20 JUDGE BAKER: Let the record reflect that there  
21 is no response. Exhibit 8 is admitted and received into  
22 evidence.

23

24 (The document previously

1                                   marked for identification as  
2                                   Exhibit 8 was received in  
3                                   evidence.)

4                   JUDGE BAKER: Mr. Stevens, does that complete  
5                   the government's presentation?

6                   MR. STEVENS: Your Honor, I believe it does at  
7                   this time. I would reserve the right to -- there may be a  
8                   need further into the hearing to present some more  
9                   statistics. I'd just like to reserve that right. Other  
10                  than that, we are finished.

11                  JUDGE BAKER: Very well. Thank you. Mr.  
12                  English?

13                  MR. ENGLISH: The government is aware and I  
14                  mentioned this to at least one other participant. Your  
15                  Honor, the same -- the request I made that -- that Mr.  
16                  Huber and Ms. Ely just presented testimony on was also  
17                  made to the Order 5 market administrator, the Appalachian  
18                  Order. I'm not sure through my miscommunication or what,  
19                  I -- I have received the data but apparently no one from  
20                  that office has appeared to put that evidence into the  
21                  record. And it's my understanding that they're not  
22                  planning on actually appearing.

23                  It is the identical kind of data prepared, to  
24                  my knowledge, in the same fashion as the other data, and

1 perhaps another witness from USDA could put it in after  
2 whatever discussions.

3           Again, I -- I have the material. I don't have  
4 it physically with me today. I was expecting someone to  
5 show up with the material. And if somebody wants other  
6 months other than March, June, August, and October, I'd be  
7 perfectly prepared to add them because I have all the  
8 months. It's just a question of how big the document will  
9 be.

10           But I guess, with the parties' indulgence, it's  
11 the same kind of data, it's the kind of data that is  
12 published although not necessarily for these particular  
13 months. And with no objection or whatever -- how  
14 everybody wants to handle it, I'd like to handle it in the  
15 most expeditious way to -- to get that material into the  
16 record so that we have as complete a picture as possible  
17 of where milk, you know, may be sourced from and going to  
18 for -- for the various orders that are or around Order 1.

19           I'm not sure if Mr. Beshore has an objection or  
20 not. I mentioned it to him a moment ago. It's data more  
21 than anything else. And -- and hopefully, someone from  
22 the USDA could put it in.

23           JUDGE BAKER: Have you talked to Mr. Stevens  
24 about it?

1           MR. ENGLISH: Yes. When I -- when he kept  
2 saying that he only had two more witnesses, I kept saying,  
3 no, you have three. That's -- that's when I started  
4 talking to him about it.

5           JUDGE BAKER: Mr. Stevens, is there any  
6 possibility you all can get together on this?

7           MR. STEVENS: I -- I think there is. I don't  
8 know what the feeling of the parties is in terms of the  
9 introduction of the -- of the -- of the material. You  
10 know, if the material were in my possession and there was  
11 some objection of the -- of the -- of the parties here to  
12 its admission, I'd certainly ask that it be made an offer  
13 of proof and be -- and be -- and be admitted in that -- in  
14 that way and let the department sort it out during the  
15 course of the rulemaking.

16          JUDGE BAKER: Mr. English, that is a --

17          MR. ENGLISH: Let -- let me hear from Mr.  
18 Beshore. I think if there's somebody who has an  
19 objection, it might be he. I don't know.

20          MR. BESHORE: Well, yeah. I'm not sure  
21 exactly what the data is. I haven't seen it.

22                 There are -- there are sort of two categories  
23 of data that comes into these hearings from the ~~market~~  
24 ~~administrator's~~ **Market Administrator's** office. One is

1 material routinely prepared and regularly published data  
2 which everyone understands and knows about and has seen  
3 and regularly sees. Others is -- the other category is  
4 custom-prepared data at the request of hearing  
5 participants which is put together for purposes of this  
6 hearing.

7           And I think it is at the least helpful and  
8 quite possibly essential to have a witness to explain the  
9 preparation of the customized for the purpose of this  
10 hearing data, not to question its integrity or  
11 authenticity or anything like that, but to understand it.  
12 And I don't know whether -- which category the information  
13 that Mr. English is referencing falls into, frankly.

14           MR. ENGLISH: Well, again, Mr. Beshore, I've --  
15 I've described it as -- as specifically as I can. It is  
16 identical in form to the data just presented by Ms. Ely  
17 for Exhibit 7. It's the producer milk by state and  
18 county. I volunteered to produce other -- other months if  
19 you prefer other months. But I was going to propose to  
20 put in March and June and August and October. And that is  
21 routinely collected data and it apparently is routinely  
22 available data as long as it's not confidential.

23           I acknowledge it is not necessarily the months  
24 that are deemed to be representative, but if you want a

1 different month, I'm perfectly happy to add to it. And  
2 then it is the same kind of data that is page 43 ~~or~~ **of** 43,  
3 which is the sales by plants in Federal Order 1 into  
4 Federal Order 5. And I guess that data may very well  
5 already be in the record in some form.

6 I'm not really sure if I need that because I  
7 think, frankly, Exhibit 5 has that. So we can simplify  
8 this right now and I will cut that out. And that's -- if  
9 that specially prepared because I think that's covered in  
10 Exhibit 5, page 83.

11 So what I'm looking at right now is the kind of  
12 data that is producer milk by state and county which is  
13 now in the record for Order 1, in the record for Order 33,  
14 in the record for Order 7, not in the record for Order 6  
15 because it's confidential. And so therefore, just to  
16 complete the picture, I wanted it for -- for this order.

17 And I, frankly, think it's almost in the nature  
18 officially noticeable material. So I'm not sure there's,  
19 you know, really great grounds about here.

20 And I will -- if you want me to, Mr. Beshore,  
21 I'll give you the whole document as I received it in PDF  
22 form on my computer. So I'll do whatever, you know, can  
23 be done there.

24 JUDGE BAKER: Well, is there anyone else who

1 wishes to be heard on this? Mr. Vetne?

2 MR. VETNE: I don't have a burning desire to be  
3 heard on -- on this particular data set. But I'm -- but  
4 I'm concerned that all the angst concerning this data set  
5 -- I think statistical material such as this that is  
6 published by a ~~market administrator~~ **Market Administrator**  
7 needs only be authenticated. I don't think you need to  
8 ~~sponsor~~ a **sponsoring** witness to -- to explain it. Most of  
9 us understand this stuff. Sometimes we don't. But then  
10 it's a question of, wait, I think it ought to be -- if  
11 it's available, it ought to be marked, it ought to be  
12 received as is data that I will be requesting later either  
13 by official notice or -- or by actual documents.

14 JUDGE BAKER: Very well. Mr. English, at the -  
15 - oh, excuse me. At the very least, you could make an  
16 offer of proof of it in the absence of Mr. Stevens  
17 agreeing to its authenticity.

18 MR. ENGLISH: I'm -- I'm ~~actually~~ **obviously**  
19 hoping that I can deal with the authenticity, Your Honor.  
20 I certainly hope that we can get over that. And I -- I  
21 obviously want to notify the participants I didn't know of  
22 this a half hour ago, an hour ago. I now know of it and I  
23 will do my best to -- to correct it.

24 I think the one thing I'm unable to do,

1       apparently, under the circumstances for this particular  
2       week is have somebody from that office here. Now, you  
3       know, maybe I can get the data at the Dairy Division and  
4       have Dairy Division put it in in some way. And -- and all  
5       I can do is move on that school.

6               Obviously, I'm going to ask for a minimum of  
7       offer of proof. But I think it's really very, very  
8       important for -- for this record. And I guess I can't  
9       really foresee why it is that this data, which legally had  
10      almost no questions asked of it in terms of Orders 33 and  
11      6 and 7, would not be admissible for Order 5.

12             JUDGE BAKER: Well, if you describe it, Mr.  
13      English, it does seem to refer to data which would be  
14      helpful to the ~~secretary~~ **Secretary** in formulating the  
15      decision in this matter. At the very minimum, it can be  
16      the subject of an offer of proof.

17             Now, does that bring us to the consideration of  
18      Proposal Number 7? I think that it does.

19             Am I correct that that was submitted by the  
20      Association of Dairy Cooperatives in the Northeast for  
21      Proposal 7?

22             MR. BESHORE: Yes, it was.

23             JUDGE BAKER: Very well. And the proponents  
24      are going to go forth?

1 MR. BESHORE: We are -- we are prepared to  
2 proceed.

3 JUDGE BAKER: Very well. If you would do so,  
4 Mr. Beshore?

5 MR. BESHORE: Okay. If -- if I may, I would  
6 like to just note for everyone's information, at the  
7 beginning of our presentation here that we will have five  
8 witness presentations by four witnesses in support of  
9 Proposal 7. And we will begin with Mr. Ed Gallagher from  
10 ~~Dairy League~~ **Dairylea** Cooperative, who will present an  
11 introduction -- an introductory overview of the market and  
12 its characteristics.

13 After Mr. Gallagher, we will call Dr. Charles  
14 Ling of the USDA Rural Business Cooperative Service to  
15 present and discuss the study that he has published with  
16 respect to the costs of balancing milk in the northeast  
17 market.

18 After Dr. Ling, Bob Wellington from ~~AgraMark~~  
19 **Agrimark** will testify with respect to all of the policy  
20 issues relating to the proposal and the -- and the details  
21 of the proposal and how it works as well as provide  
22 information with respect to ~~AgraMark~~ **Agrimark**  
23 Cooperative's balancing services in them northeast and its  
24 own operations and costs.

1           After Bob Wellington, Dennis Shad from Land O'  
2           Lakes will testify, presenting information with respect to  
3           Land O' Lakes' operations in Order 1, its balancing  
4           operations, its costs, and also aggregate information from  
5           the association members with respect to the daily  
6           fluctuations in deliveries that they provide to Class 1  
7           distributing plants in Order 1.

8           Finally, Mr. Gallagher will -- will testify  
9           again with respect to the operations of ~~Dairy League~~  
10          **Dairylea**, DFA, and DMS in the northeast, their balancing  
11          services with respect to the operations of -- of the --  
12          all of the seven balancing plants that were -- data from  
13          which was already presented by Mr. Fredericks, and with  
14          respect to some other -- other issues with -- concerning  
15          Proposal 7.

16          So that's our presentation from beginning to  
17          end. I offer that so that we know what's -- everyone  
18          knows what's coming and we can shape the presentation, you  
19          know, in that manner.

20          JUDGE BAKER: Very well. Thank you for your  
21          explanation. And I think everyone looks pleased, so we  
22          may as well progress. And you can call Mr. Gallagher.

23          MR. BESHORE: Okay. Would you take the stand,  
24          Mr. Gallagher? Have you been sworn?

1                   With Mr. Gallagher, there's a written statement  
2                   and a set of exhibits which are available.

3

4

5                   Whereupon,

6

                  EDWARD GALLAGHER

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

9

                  MR. BESHORE: Your Honor?

10

                  JUDGE BAKER: Yes?

11

                  MR. BESHORE: Do you have copies of the --

12

                  JUDGE BAKER: Yes, I do. Thank you.

13

14                   MR. BESHORE: Thank you. Before Mr. Gallagher  
15                   proceeds, I would like to ask that the written testimony  
16                   of Edward Gallagher be marked for identification as  
17                   proposed Exhibit --

17

                  JUDGE BAKER: Ten.

18

19                   MR. BESHORE: -- Ten and that the exhibits of  
20                   Mr. Gallagher which are separately -- separately compiled  
21                   be marked for identification as proposed Exhibit 11.

21

                  JUDGE BAKER: They shall be so marked.

22

                  (The documents referred to

23

                  were marked for identification

24

                  as Exhibits 10 and 11.)

1 JUDGE BAKER: And the witness has been sworn.

2 MR. BESHORE: Thank you. Thank you, Your  
3 Honor.

4

5

DIRECT EXAMINATION

6

BY MR. BESHORE:

7

8

Q Mr. Gallagher, would you please state your --  
your name and your business address, please?

9

10

11

A My name is Edward Gallagher. My business  
address is 5001 Britton Field Parkway, Syracuse, New York,  
13221.

12

13

14

15

16

Q Okay. Now, before we go into your -- your  
testimony and you describe your present employment  
affiliation, could you please tell us your educational  
background and some of the professional experience you  
have had in -- in your chosen field of endeavor to date?

17

18

19

A Sure. I grew up on a dairy farm in central New  
York. The farm is still in the operation of my family.  
My brother and his family operates it.

20

21

22

23

24

I went to school at Cornell University.  
Graduated with a degree in farm business management and  
agricultural economics. While I was a senior at Cornell,  
I began work at the former New York-New Jersey Federal  
Milk Market Administrator's Office, where I worked for 12

1 years through a variety of positions including cooperative  
2 relations specialist, agricultural economist, and chief of  
3 research.

4 While at DMA's office, I attended graduate  
5 school at the Ohio State University, getting a degree -  
6 - a Masters degree in agricultural economics.

7 In 1996 I was hired by ~~Dairy League~~ **Dairylea**  
8 Cooperative and have been employed by them to date. My  
9 current position is their vice president of planning and  
10 regulatory policy.

11 Q And perhaps you indicated this, but your  
12 degrees are from what institutions in what field?

13 A A Bachelors from Cornell in farm business  
14 management and agricultural economics and a Masters from  
15 the Ohio State University with a degree in agricultural  
16 economics.

17 MR. BESHORE: Before Mr. Gallagher proceeds  
18 with his testimony, I would like to offer him as an expert  
19 in the fields of agricultural economics and dairy  
20 marketing and offer him for voir dire with respect to  
21 those fields.

22 JUDGE BAKER: Are there any questions or  
23 objections with respect to this request to Mr. Beshore?

24 (No response)

1           JUDGE BAKER:  Apparently, there are none.  No  
2 request has been made for voir dire.  Your request is  
3 granted, Mr. Beshore.

4           MR. BESHORE:  Thank you.

5

6           BY MR. BESHORE:

7           Q     Now, Mr. Gallagher, before proceed with your  
8 written testimony which refers to your set of exhibits,  
9 could you just identify briefly for us the -- the  
10 documents that are compiled in Proposed Exhibit 11?

11          A     Certainly.

12          Q     Thank you.

13          A     I've got two -- one -- one set of exhibits that  
14 are basically made up of two groups, figures, and tables.  
15 And I've listed the figures consecutively and then the  
16 tables consecutively.  The first figure is data -- is --  
17 is a comparison of the three mega milk regions in the  
18 United States:  California, the upper Midwest, and the  
19 Northeast.  And it compares their square mileage of land  
20 mass, the total amount of milk produced in those states,  
21 and a simple calculation to determine production  
22 concentration that I am calling pounds per square mile.

23                   The data for milk production came from ~~mass~~  
24 **NASS** data and the square mileage information came off of

1 an encyclopedia Internet site. I'm not quite sure which  
2 one, but if you don't like the numbers you can find your  
3 own Internet site and recalculate.

4 The Figure 2 is a -- a map that was put  
5 together by the New York State Department of Agricultural  
6 Markets that I borrowed from them, and I believe it  
7 appeared a few months ago in the "Choose Reporter." And  
8 it is just an -- identification of the mega milk regions  
9 in the United States.

10 Figure 3 is a map of the ~~federal milk marketing~~  
11 **order Federal Milk Marketing Order** system to date. And I  
12 downloaded that off of the Dairy Division Web site.

13 Figure 4 is data that I put together based on  
14 Federal Order Number 1 data that shows the average daily  
15 deliveries to Class 1 for the order for two years.

16 Figure 5 is similar data but for Class 3 and  
17 Class 4 combined.

18 And Figure 6 just shows one year of  
19 information, daily deliveries of Class 1 compared to daily  
20 deliveries to Class 3 and Class 4. Again, that's all data  
21 that I borrowed from the MA's office and published -- that  
22 was published in their annual statistics.

23 On the tables, Table 1 just ranks the ~~federal~~  
24 **Federal** orders by their in-area population. And the data

1 source is the "Federal Order Market Statistics 2001 Annual  
2 Summary."

3 Table 2, same data source, ranks the ~~federal~~  
4 **Federal** orders by producer receipts pooled in Class 1.

5 Table 3, same data source, ranks the orders by  
6 producer receipts pooled as Class 2.

7 Table 4, same data source, ranks the orders by  
8 milk, skim and cream, used to produce fluid cream under  
9 federal orders.

10 Table 5, same data source, ranks producer  
11 receipts pooled as Class 3.

12 Table 6, same data source, ranks producer  
13 receipts pooled as Class 4.

14 Table 7 is a table out of -- that I copied out  
15 of the "Federal Order Market Statistics 2001 Annual  
16 Summary." It's page 17.

17 And Table 8 is a table that I put together with  
18 the help of some of my colleagues. It just identifies  
19 selected proprietary plants that have their own producer  
20 supplies and operate in the northeast milk shed.

21 Q Thank you. Would you then proceed with your  
22 testimony, Mr. Gallagher, with respect to Proposal 7?

23 A Hello. My name is Edward Gallagher. I appear  
24 here today on behalf of the Association of Dairy

1 Cooperatives of the Northeast, known as ADCNE. Our  
2 members are ~~AgraMark~~ **Agrimark**, Inc.; Land O' Lakes, Inc.;  
3 Maryland and Virginia Milk Producers Cooperative  
4 Association, Inc.; St. Albans Cooperative Creamery, Inc.;  
5 Upstate Farms Cooperative, Inc.; Dairy Farmers of America,  
6 Inc.; ~~Oatka~~ **O-AT-KA** Cooperative, Inc.; and ~~Dairy League~~  
7 **Dairylea** Cooperative Inc. No comma in ~~Dairy League~~  
8 **Dairylea** Cooperative Inc.

9 Collectively, ADCNE members represent more than  
10 65 percent of the producers pooled under the Northeast  
11 Order. On behalf of ADCNE, I want to thank USDA's Dairy  
12 Division for honoring our request, convening this hearing,  
13 and listening to our testimony that will present what I  
14 think is undisputed evidence of disorderly marketing  
15 conditions on the Northeast Order and the need to take  
16 quick, concise, and immediate emergency action to resolve  
17 these conditions.

18 As I stated earlier, I am the vice president of  
19 planning and regulatory policy for ~~Dairy League~~ **Dairylea**  
20 Cooperative. During this hearing I am representing ~~Dairy~~  
21 ~~League~~ **Dairylea**, Dairy Marketing Services, and the  
22 Northeast Area Council of Dairy Farmers of America. My  
23 business address is 5001 Britton Field Parkway, Syracuse,  
24 New York, 13221.

1 Dairy Marketing Services is a milk marketing  
2 and membership joint venture between ~~Dairy League~~ **Dairylea**  
3 and Dairy Farmers of America. This business venture  
4 markets all of the milk produces by ~~Dairy League~~ **Dairylea**  
5 and the Northeast Area Council of Dairy Farmers of  
6 America. Although a ~~Dairy League~~ **Dairylea** employee, I act  
7 in a consulting basis with both Dairy Marketing Services  
8 and the Northeast Council of Dairy Farmers of America and  
9 am involved in their day-to-day business operations.

10 ~~Dairy League~~ **Dairylea** Cooperative represents  
11 2400 dairy farmers, most of whom are pool producers under  
12 the Northeast Order. The Northeast Area Council of Dairy  
13 Farmers of America represents 2200 dairy farmers with most  
14 being pool producers under the Northeast Order.

15 Dairy Marketing Services is the pool handler  
16 for ~~Dairy League~~ **Dairylea** and the Northeast Council of  
17 Dairy Farmers of America. And ~~Dairy League~~ **Dairylea** and  
18 Dairy Farmers of America are members of the Association of  
19 Dairy Cooperatives of the Northeast, as I mentioned  
20 earlier.

21 The makeup of the Northeast milk market is  
22 unique. The Northeast Federal Order was created in the  
23 merger of the New England, New York-New Jersey, and Middle  
24 Atlantic Federal Orders during the federal order reform

1 process. There's a number of characteristics that make it  
2 unique among federal orders.

3 The Northeast is the densest mega milk region.  
4 Its milk shed includes most of the states of New York and  
5 Pennsylvania, the third- and fourth-largest milk-producing  
6 states in the United States. But it also includes the  
7 states of Vermont -- excuse me, the state of Vermont, the  
8 13th largest milk-producing state. The combined -- area  
9 and milk production of the -- contiguous states of New  
10 York, Pennsylvania, and Vermont does not equal the size of  
11 the two other mega milk-producing regions in the United  
12 States, that of California and the upper midwest states of  
13 Wisconsin and Minnesota. And you can see that on Exhibit  
14 11, Figure 1.

15 And a footnote that reads in 2001 the states of  
16 New York, Pennsylvania, Vermont, Minnesota, Wisconsin, and  
17 California produced 89.6 billion pounds of milk. This  
18 represents 54 percent of the milk produced in the United  
19 States. These three mega milk-producing regions are  
20 expected to garner a larger share of the U.S. milk market  
21 through this decade. And I say, see the map depicting the  
22 mega milk regions that is Exhibit 11, Figure 2.

23 Back to the main part of the testimony.  
24 However, on a milk production per square mile basis of

1 land mass, these three contiguous northeastern states make  
2 up the densest milk production region of its size in the  
3 country, the Northeast's largest population base and Class  
4 1 market.

5 The Northeast Order marketing area is depicted  
6 on the federal order map shown as Exhibit 11, Figure 3.  
7 The Northeast Order includes the eastern seaboard  
8 metropolis that includes the city of Boston, New York,  
9 Philadelphia, Baltimore, and Washington. Approximately  
10 51.6 million people live within the geographic boundaries  
11 of the marketing area. This region has the largest  
12 population base of any ~~federal~~ **Federal** order in the  
13 country. It contains 20 million more people than the next  
14 largest ~~federal~~ **Federal** order marketing area population  
15 base. That can be seen on Exhibit 11, Table 1.

16 The Northeast Order, the handlers it regulates,  
17 and the cooperatives that provide the services assuring  
18 that the market order functions properly and efficiently  
19 serves the largest Class 1 market in the country and  
20 perhaps in the world. During 2001, 10.6 billion pounds of  
21 milk was ~~approved~~ **pooled** as Class 1 under the Northeast  
22 Order. That can be seen on Exhibit 11, Table 2.

23 This was almost 60 percent more Class 1 milk  
24 than the next largest Class 1 market. The 10.6 billion

1 pound Class 1 market was larger than the entire quantities  
2 of milk pooled in seven of the remaining 10 ~~federal~~  
3 **Federal** orders.

4 Additionally, the Northeast Order is the  
5 largest Class 2 market in the United States and perhaps in  
6 the world. It pools twice as much Class 2 milk as the  
7 next largest Class 2 market under the ~~federal~~ **Federal**  
8 orders, which can be seen on Exhibit 11, Table 3.

9 Many pool distributing plants also process  
10 Class 2 products such as cream-based products. In 2001,  
11 handlers under the Northeast Order distributed 775.8  
12 million pounds of food cream products. This was the  
13 largest amount under any -- under any federal order,  
14 making up almost 50 percent of all the fluid cream  
15 products under federal orders and represented more than  
16 four times the amount produced and pooled under any other  
17 federal order. That can be seen on Exhibit 11, Table 4.

18 Class 2 is more than pool cream. For instance,  
19 New York and Pennsylvania are leading producers of cottage  
20 cheese, yogurt, and candy and confectionery products, all  
21 Class 2 products.

22 Unlike other Class 1 markets, specifically the  
23 Appalachian, the Southeast, and Florida orders, the  
24 Northeast also is home to a strong manufacturing sector.

1 The Northeast Order ranks first among all ~~federal~~ **Federal**  
2 orders in the amount of Class 4 milk that is pooled and  
3 ranks fourth in Class 3 pounds pooled. And this can be  
4 seen in Exhibit 11, Tables 5 and 6.

5 The huge population base supports a large  
6 number of plants. The diversity and demographics that  
7 exist in the Northeastern U.S. has provided a strong  
8 economic environment that has created a very strong  
9 processing and manufacturing sector.

10 Presently, there are 75 pool plants and 184  
11 non-pool plants serving the Northeast Order. Referring to  
12 Footnote 2, this information was taken from the Order  
13 Number 1 Northeast Area Pool Handler Location Index, June  
14 2002, counting pool distributing plants, pool supply  
15 plants, partially regulated plants, and other ~~federal~~  
16 **Federal** order plants located in a state that makes up the  
17 marketing area, Maine, or West Virginia. And also, the  
18 Northeast Marketing Area Non-Pool **Manufacturing and Other**  
19 **Pool** Plant Location Index for December 2001, which was  
20 entered as an exhibit by Peter Fredericks earlier this  
21 morning.

22 A handful of these plants are operated by dairy  
23 cooperatives. The remaining plants are owned and operated  
24 by proprietary businesses. Although the makeup of the

1 operators within the industry has changed over time,  
2 historically the Northeast Federal Order has had a very  
3 large number of proprietorially operated milk plants.  
4 Relative to other ~~federal~~ **Federal** orders, the Northeast  
5 has more pool handlers, 62, and more distributing plants,  
6 also 62, than any other ~~federal~~ **Federal** order in the  
7 country. That can be viewed on Exhibit 11, Table 7.

8 Keep in mind that a pool operator can operate  
9 more than one plant, either pool or non-pool.

10 A review of Table 7 shows that the Northeast  
11 Order has 26 percent more distributing plants than any  
12 other order and has more than double the distributing  
13 plants than the high Class 1 utilization markets.

14 Many proprietary marketing options. An  
15 additional characteristic that makes the Northeast quite  
16 different from the dairy industry in any other part of the  
17 country or any other ~~federal~~ **Federal** order is the  
18 tremendous quantity of milk that is not marketed through  
19 dairy cooperatives. In the Northeast, a dairy farmer does  
20 not need a dairy cooperative in order to have a milk  
21 market. The tremendous number of competing proprietary  
22 milk plant operators and the even larger number of plants  
23 they operate has created an environment where there are a  
24 tremendous number of competitive marketing options for a

1 dairy farmer.

2 Historically, proprietary -- proprietary plant  
3 operators had to develop their own dairy farmer milk  
4 supplies to meet a majority of their milk needs. This  
5 still holds true today.

6 The Northeast is home to the largest non-member  
7 population in the U.S. Presently in the Northeast Order,  
8 approximately 42 proprietary handlers have their own milk  
9 supply. And this is evidenced in Exhibit 11, Table 8.

10 Of these, 27 operate Class 1 distributing  
11 plants. And referring to Footnote 3, please note a few  
12 handlers operate more than one plant.

13 The USDA exhibit, "Cooperative and Non-  
14 Cooperative Member Share of Producer Receipts and  
15 Producers, January 2000 to June 2002, presented earlier  
16 today by Peter Fredericks, that depicts the number of and  
17 pounds produced by cooperative member and non-member --  
18 excuse me, cooperative member and non-cooperative  
19 producers, is very telling of the uniqueness of the  
20 Northeast Federal Order.

21 In June of 2002, 4310 dairy farmers whose ~~work~~  
22 **milk** was pooled under the Northeast Order did not belong  
23 to dairy cooperatives. This represented 25.3 percent,  
24 more than one-quarter, of the producers under the

1 Northeast Order. This milk represented 503.4 million  
2 pounds, a huge quantity. In fact, for 2001, almost 5.9  
3 billion pounds of milk was delivered to handlers under the  
4 Northeast Orders by producers that were not members of  
5 dairy cooperatives.

6 I believe that the Northeast Order has more  
7 milk produced by non-members than any other ~~federal~~  
8 **Federal** order in the country. In fact, the amount of milk  
9 supplied by non-members' ~~two to~~ proprietary plants ~~sunder~~  
10 the Northeast Order represents more milk than was pooled  
11 in three ~~federal~~ **Federal** orders that year: the Western  
12 Order, the Arizona-Las Vegas Order, and the Florida Order.

13 The Northeast is also high -- home to a high  
14 concentration of dairy cooperatives. Dairy farmers in the  
15 Northeast have quite a wide variety of marketing  
16 operations, as evidenced by the 32 proprietary milk  
17 companies that have their own non-member milk supply.  
18 However, discussion of the plethora of marketing options  
19 would not be complete without including information about  
20 independent dairy cooperatives.

21 The Northeast is home to about 78 of the 208  
22 dairy cooperative in the U.S., almost 40 percent.  
23 Referring to Footnote 4, what's taken from the Order 1  
24 Cooperative List, ~~and it is~~ **entered as** an exhibit by Peter

1 Fredericks, and the USDA ~~FCS~~ **RBCS** publication, "Farmer  
2 Cooperative Statistics, 2000."

3 Each of these 78 cooperatives compete in their  
4 own way to maintain or grow their membership roles. Each  
5 cooperative is active in the ~~northeast~~ **Northeast** milk  
6 procurement arena. This being the case, dairy farmers in  
7 the Northeast have about 110 different business entities  
8 to choose from when looking for a milk market.

9 Turning this around a little bit, the 78  
10 cooperatives and 4310 non-members provide 4388 options  
11 from which the 259 milk plants, which is the 75 pool  
12 plants and the 184 non-pool plants, can purchase their  
13 milk. Referring to Footnote 5.

14 Actually, the plant purchasing options are  
15 quite a bit greater than that when you consider that in  
16 any given month on average 1000 dairy cooperative members  
17 could exercise their option to leave the cooperative and  
18 change their milk market.

19 Continuing with the information about the  
20 Northeast cooperative structure, many have fewer than 100  
21 members, a number fewer than 20. Some of these  
22 cooperatives have joined ~~Dairy League~~ **Dairylea** or Allied  
23 Federated Cooperatives or another large cooperative as  
24 member cooperatives or remain independent but ship their

1 milk through a cooperative organization.

2           However, others, such as Broomville Farms, ==-  
3 **HP** Farmers, and Middlebury Cooperatives, to name just a  
4 few, are truly independent marketers. By this I mean that  
5 every year they place their milk out to bid and market to  
6 the highest bidder. Usually cooperatives such as these  
7 contract with a Class 1 proprietary plant and ship their  
8 milk to that plant just about every day.

9           Season -- the -- excuse me. Seasonality issues  
10 not unique to the Northeast Order. The Northeast Order  
11 Class 1 sales run along a predictable seasonal pattern.  
12 They are at their highest levels when schools are in  
13 session, at -- at their lowest levels in the summer.  
14 Exhibit 11, Figure 4 graphically depicts this. This graph  
15 shows Class 1 deliveries per month divided by the days in  
16 each month for 2000 and 2001. Effectively estimating the  
17 average deliveries per day pooled as Class 1, the seasonal  
18 nature of the Class 1 demand can be seen.

19           Exhibit 11, Figure 5 is another graph. This  
20 one depicts the seasonal nature of the ~~northeast~~ **Northeast**  
21 producer deliveries that are pooled in Class 3 and Class 4  
22 using the same methodology as used for Class 1. The graph  
23 shows average deliveries per day pooled in the two  
24 manufacturing classes. Again, the predictable and

1 expected seasonality is shown. Milk receipts are highest  
2 in the spring time, remain high through the summer, slump  
3 in the late summer and fall, and rise again for the year-  
4 ending holidays.

5 Exhibit 11, Figure 6 combines data from the two  
6 -- previous graphs to show for 2001 both average daily  
7 deliveries pooled as Class 1 and average daily deliveries  
8 pooled in Classes 3 and 4. As you see, the two groups  
9 trend differently by season.

10 As the average daily Class 1 receipts decline  
11 in the spring and summer, average daily Class 3 and 4  
12 receipts increase. In the fall, as the average daily  
13 Class 1 receipts rise, average daily Class 3 and 4  
14 receipts decline. Especially during the autumn months,  
15 tremendously different delivery patterns exist for the two  
16 groups.

17 In closing, the diversity sets the ~~northeast~~  
18 **Northeast** apart. The diversity created by the ~~northeast~~  
19 **Northeast** geography, population base, relative  
20 concentration of milk production, and the milk plants that  
21 have chosen to invest is a tremendous asset to the  
22 Northeast dairy economy and its region's dairy farmers.  
23 This diversity has set the Northeast Order apart from any  
24 other Class 1 market in the country and from any other

1 marketing order, for that matter.

2           Among other things, this is due to the  
3 ~~northeast~~ **Northeast** geography that makes it home to the  
4 densest milk production area of any mega milk-producing  
5 region in the country. Its population base, the largest  
6 of any ~~federal~~ **Federal** order in the country, anchored by  
7 the huge metropolis along the northeastern seaboard.  
8 Dairy demand from this population base that creates the  
9 largest Class 1 and 2 markets maybe in the world and more  
10 of the largest Class 3 manufacturing regions in the United  
11 States. Its need to balance what is likely the world's  
12 largest Class 1 market by supporting the largest Class 4  
13 market under ~~federal~~ **Federal** orders. Resulting in  
14 diversity that creates opportunities for 259 milk plants  
15 to thrive within the region, including 32 proprietary  
16 companies that buy milk directly from dairy farmers.

17           There's a huge non-cooperative producer milk  
18 supply, likely the largest in the country and larger than  
19 some ~~federal~~ **Federal** orders. And a cooperative presence  
20 that's almost 40 percent of this -- country's dairy  
21 marketing cooperatives operate in the region.

22           JUDGE BAKER: Thank you, Mr. Gallagher. That  
23 brings us to almost 3:30, which is time for our afternoon  
24 recess. And I'm sure there will be questions for you when

1 you return.

2 Thank you. We'll take a 15-minute recess at  
3 this time.

4 (Brief recess)

5 JUDGE BAKER: We are back in order after our  
6 afternoon recess.

7 Mr. Gallagher has completed his presentation,  
8 is that correct, Mr. Beshore?

9 MR. BESHORE: Yes. And Mr. Gallagher is -- is  
10 available now for cross examination.

11 JUDGE BAKER: Very well. Thank you. Are there  
12 any questions for cross examination for Mr. Gallagher?  
13 Yes, Mr. Rosenbaum?

14 MR. ROSENBAUM: Your Honor, I'd prefer to go  
15 forward with the USDA people in the room.

16 JUDGE BAKER: Pardon me?

17 MR. ROSENBAUM: I said I would prefer to have  
18 the USDA people in the room.

19 JUDGE BAKER: Oh, I -- I would, too.

20 (Pause)

21 JUDGE BAKER: Mr. Richmond is here.

22 (Pause)

23 JUDGE BAKER: Did you want to proceed, Mr.  
24 Rosenbaum?

1 MR. ROSENBAUM: Yes, Your Honor.

2 JUDGE BAKER: Thank you.

3 CROSS EXAMINATION

4 BY MR. ROSENBAUM:

5 Q Steven Rosenbaum for the International Dairy  
6 Foods Association. Mr. Gallagher, you -- you may have  
7 said this already but it's not in your written testimony.  
8 How long have you been with ~~Dairy League~~ **Diarylea**?

9 A Almost seven years. It'll be seven years in  
10 February.

11 Q So, 1995?

12 A '96.

13 Q 1996.

14 A February '96.

15 Q All right. Now, Proposal Number 7, of course,  
16 would be one that would put a marketwide service payment  
17 provision into the Northeast Order, correct?

18 A Correct.

19 Q And you would agree with me that as of today  
20 there are no ~~federal~~ **Federal** orders that have such  
21 provisions?

22 A I'd characterize that because I believe there's  
23 at least one ~~federal~~ **Federal** order and possibly a couple -  
24 - possibly another that has some sort of marketwide

1 service -- services elements to it. But none like what we  
2 are asking for.

3 Q What orders do you have in mind?

4 A Well, the Southeast Orders have the  
5 transportation differential. And to me, that is a  
6 marketwide service program. And the -- I believe there's  
7 an assembly credit in the Upper Midwest Order which I look  
8 at as a marketwide service program.

9 Q Okay. No other order has a provision whereby  
10 six cents would be deducted from the pool and go to Class  
11 3 and 4 handlers, is that correct?

12 A No, that's not even what -- what would happen  
13 necessarily under our proposal, either.

14 Q Well, I mean, you're proposing six cents would  
15 go to any Class 3 or 4 handler who met the requirements  
16 set forth in Proposal 7?

17 A It would -- it would -- let me just -- there's  
18 -- there's going to be another witness later that will --  
19 will get into a lot of the specifics about the particular  
20 proposal. But just to be -- enlighten a little bit, any -  
21 - any handler regardless of whether they operate a, you  
22 know, a Class 3 plant, a Class 4 plant, or a Class 1  
23 plant, has the opportunity to qualify under our proposal,  
24 just that there are certain parameters they have to meet.

1           So it's not just a proposal for a Class 3 or  
2           Class 4 cooperative. It could be proprietary, it could be  
3           a cooperative handler that could qualify.

4           Q     Can you -- can you identify any proprietary  
5           handlers currently in the Northeast that would qualify  
6           under the qualification requirements set forth in Proposal  
7           Number 7?

8           A     Not that currently pool milk that I'm aware of.

9           Q     Okay. How -- how many handlers are there on  
10          that order?

11          A     Based on that statistic from the annual  
12          summary, there were 62 that were listed in that.

13          Q     All right. And how many of those are  
14          proprietary, do you know?

15          A     No, I don't -- no, I don't know.

16          Q     All right. Do you know how many plants were  
17          operated by the proponents?

18          A     Sure. Let's see. ~~AgraMark~~ **Agrimark** has three  
19          plants. The DMS Joint Venture has two plants. Land O'  
20          Lakes has one. So that's six. St. Albans is seven.  
21          Maryland-Virginia, one that is within the area. That's  
22          eight. And Upstate -- Upstate has one distributing plant  
23          that's a pool plant. That's nine. And then ~~Dairy League~~  
24          **Dairylea** and ~~Oatka O-AT-KAa~~ and Niagara Cooperative are

1 joint venture owners of ~~Oatka~~ **O-AT-KA** Cooperative. So I  
2 suppose that's 10, I guess. I don't know.

3 Q Are there --

4 A -- for you or should I count --

5 Q Well, are the remaining 52 plants proprietary  
6 plants?

7 (Pause)

8 BY MR. ROSENBAUM:

9 A I'm hesitating because I'm just trying to think  
10 through the marketing region real quick. You know, I  
11 don't know what to call the plant in Ogdensburg, New York,  
12 or the plant in Chataugay, New York, because I believe  
13 those are owned by dairy cooperatives. Certainly, the  
14 plant in Ogdensburg right now is operated by a dairy  
15 cooperative. And the plant, I believe, in Chataugay is  
16 owned by a dairy cooperative but not operated by a dairy  
17 cooperative. So I don't know how you want that defined.

18 Q Well, is it fair to say that approximately 50  
19 of the 62 plants in the order are proprietary plants --

20 A -- certainly a clear majority are proprietary  
21 plants. I think that's part of what I was trying to get  
22 through in my -- in my testimony, that a clear majority of  
23 the plants are proprietary plants.

24 Q And so far as you know, none would qualify

1 under Proposal 7?

2 A As I said, as -- as my knowledge of -- of who  
3 is a pool handler now, I am not sure if any will. But in  
4 fact, I guess based on Peter Fredericks' exhibit, he  
5 indicated that it would just be the ADCNE members that  
6 would qualify, who market more than probably I don't know  
7 what.

8 Q And you're not --

9 A Oh, and -- excuse me. And Allied Federated  
10 Cooperatives. Probably combined, we probably market  
11 almost 70 percent of the milk in the order, or more.

12 Q But they're -- they're a member of your group,  
13 too, right?

14 A No, they're not.

15 Q They're not. All right. With that one  
16 exception --

17 A Correct.

18 Q -- everyone who qualifies is a member of your  
19 group, correct?

20 A To my -- to my knowledge.

21 Q Now, since you go back to the mid '90s, are you  
22 aware of the fact that -- that there had been a -- I think  
23 what was called a cooperative service payment provision in  
24 the New York-New Jersey Order?

1           A     Yes, I'm aware there was one.

2           Q     And are you aware that that went out of  
3 existence January 1, 2000?

4           A     Yes, I am.

5           Q     And so that the Northeastern Order has lived  
6 without such a provision for the last two and a half years  
7 at this point in time, correct?

8           A     Sure.

9           Q     Now, your -- your group, ADCNE, attempted to  
10 convince USDA to put a marketwide service payment  
11 provision into the soon-to-be created Northeast Order, is  
12 that correct?

13          A     During ~~federal~~ **Federal** order reform?

14          Q     That's right.

15          A     Yes.

16          Q     And in fact, back in 1997 when USDA was  
17 soliciting proposals for what to do as part of the order  
18 consolidation -- let me back up. The order reform as  
19 mandated by Congress included the creation of fewer but  
20 larger orders as compared to those that existed prior to  
21 the time that legislation was passed in 1996, correct?

22          A     Correct.

23          Q     And as a result, what had been the New York-New  
24 Jersey Order, which had cooperative service payments, was

1 necessarily going to join with some other orders that  
2 didn't have it, correct?

3 A That didn't have cooperative payment  
4 provisions, correct.

5 Q Okay. And your group urged USDA to have either  
6 a cooperative service payment or a marketwide service  
7 payment in the newly created Northeast Order, correct?

8 A Yes, we did.

9 Q And in fact, your group proposed back in 1997  
10 that that payment be six cents a hundredweight, correct?

11 A I can't remember the rate, but we did propose  
12 some type of program. If you're reading something from --  
13 from something we sent in, then I -- I take it as you're  
14 being -- you're correct with the six cents. But I can't  
15 remember the specific --

16 Q Do you recall it was two cents for co-op --  
17 originally it was two cents for co-op services and then  
18 four cents for what was called marketwide services?

19 A I -- I can't remember exactly, but it wouldn't  
20 surprise me if that's what we asked for.

21 Q Okay. And do -- and do you recall that -- that  
22 USDA, when it came out with its proposed rule in 1998,  
23 rejected that?

24 A Yes.

1           Q     Now, do you -- do you recall that there was the  
2 opportunity after the proposed rule came out to submit  
3 comments or suggestions or revised proposals? That was  
4 open to everyone?

5           A     Yes.

6           MR. BESHORE: Your Honor, if I -- I'd like to  
7 interrupt at this point and object. The -- the record of  
8 the informal rulemaking process mandated by Congress under  
9 the ~~Fair~~ **FAIR** Act is -- is history. It's public record to  
10 the extent it was published in the "Federal Register." I  
11 really do not see the utility in this proceeding of asking  
12 Mr. Gallagher to attest to the ~~secretary's~~ **Secretary's**  
13 past actions or the Association of Dairy Cooperatives of  
14 the Northeast's requests that were not adopted.

15                     This is a different proposal, a different  
16 hearing, a different procedure, a different time, a  
17 different market, a different place, and I think we should  
18 go forward.

19           MR. ROSENBAUM: Your Honor, the very -- the  
20 very questions that Mr. Beshore identified are the ones  
21 that I'm exploring with this witness, whether the  
22 conditions are the same or different. This -- this goes  
23 to the heart of the matter.

24           JUDGE BAKER: I -- I think that you are asking

1 him whether or not he recalls after the Department  
2 rejected these marketwide payments, then were not comments  
3 received with respect thereto. Is that what you're  
4 getting at?

5 MR. ROSENBAUM: I'm trying to get at what the  
6 position has been of his organization on these issues.  
7 And I'm about to get into questions regarding whether we  
8 have any changed conditions, which is the very heart of  
9 his testimony, I think.

10 JUDGE BAKER: All right. Because it does  
11 reflect what his organization has been doing or has done,  
12 whether there's any change in his --

13 MR. BESHORE: I didn't hear any questions about  
14 whether there are changed conditions or anything of that  
15 sort.

16 MR. ROSENBAUM: I've got -- I've got to lay the  
17 predicate.

18 BY MR. ROSENBAUM:

19 Q My question was whether you recall the  
20 organization submitted comments with a revised proposal in  
21 response to the proposed rule in 1998 in which you once  
22 again asked for six cents per hundredweight, this time  
23 entirely as a marketwide service payment?

24 A Yeah, that sounds correct.

1           Q     Okay.  And do you recall that that was also  
2     rejected by USDA?

3           A     There certainly have been changed conditions  
4     since either of the earlier two submissions.

5           Q     I'm about to --

6           A     During --

7           Q     -- I'm about --

8           A     -- during ~~federal~~ **Federal** order reform, the  
9     immensity of the tasks and challenge before USDA was  
10    tremendous.  And they were very focused on -- on some very  
11    political issues that they maneuvered and navigated  
12    through very well, in my opinion, and came out in the  
13    right place.  But it took many, many people-hours to get  
14    there.  And because they spent so much time on a number of  
15    things, it is my opinion that there were a number of  
16    things they just couldn't get to and couldn't -- didn't  
17    have the time to fully review and reflect upon.  And I  
18    believe marketwide service provisions was one of them.

19          Q     I think my question was whether you recall that  
20    your proposal was rejected, and I don't think I heard an  
21    answer to that.  Was the answer "yes" or "no"?

22          A     I don't think they had a chance to fully review  
23    it and so they didn't implement it.

24          Q     Okay.  It's -- all right.  Now, let's look at

1 your testimony. On page one you -- you talk about how the  
2 northeast is the densest -- strike that.

3 You talk about how the milk shed includes most  
4 of the states of New York and Pennsylvania and also  
5 Vermont. And you talk about the extent to which they  
6 produce substantial quantities of milk, correct?

7 A Correct.

8 Q I take it that was also true back in 1988 and  
9 1999?

10 A Correct.

11 Q And obviously, the combined square mileage has  
12 not changed, correct?

13 A I'm sure there's a little bit of erosion but  
14 probably didn't change the number very much.

15 Q And on page two you talk about the -- the --  
16 what you described as being the northeast's largest  
17 population base. And that -- that -- that was the same --  
18 that was true also back in 1988 and 1999, correct?

19 A Sure. I'm sure it was.

20 Q I think I misspoke myself. That -- that was  
21 true in 1998 and '99, correct?

22 A Sure. Then, too.

23 Q All right. And the degree to which the  
24 Northeast Order would pool more Class 1 milk than any

1 other order, that was also something that was known back  
2 in 1998 and '99, correct?

3 A -- repeat that question?

4 Q Yes. You talk in the second full paragraph on  
5 page two about the fact that the Northeast Order pools  
6 more Class 1 milk than -- than any other federal order,  
7 correct?

8 A Correct.

9 Q And that was something that was -- people knew  
10 that was going to happen back in '98 and '99, correct?

11 A You mean, based on the combination of the  
12 orders?

13 Q Right.

14 A Sure. I think so.

15 Q Okay. And the same is true for the fact that  
16 it would be the largest Class 2 market? That was known  
17 back in ~~1988, '89~~ 1998, '99, as well, correct?

18 A Maybe. I don't know. Possibly. I mean, the  
19 Class 1 -- the Class 1 thing was a little bit more known  
20 because of the -- the pattern of the sales of the Class 1  
21 distributors. The pooling relationships for Class 2  
22 doesn't necessarily mean that you could necessarily guess  
23 that that would be the case but maybe you could have.

24 Q All right. And -- and the percentage of milk

1 that was going to belong to non-co-op members, that -- you  
2 say that 25.3 percent is non-co-op in the Northeast Order,  
3 is that correct?

4 A Correct.

5 Q And once again, that -- that was a -- the --  
6 the amount that USDA had predicted would be the case back  
7 in ~~1988~~ 1998 and ~~1989~~ '99?

8 A I don't know what they predicted.

9 Q The -- the percentage itself has not changed  
10 since then, has it? By any significant --

11 A I -- to a significant -- probably not to a  
12 significant degree.

13 Q There's been no significant decline in co-op  
14 membership since the ~~1988, 1989~~ 1998, '99, in the Northeast  
15 Order?

16 A I hope not. I hope we're growing.

17 Q Well, I'd rather have your -- the facts rather  
18 than your hope.

19 A I don't have the statistics. I don't know.

20 Q All right.

21 (Pause)

22 BY MR. ROSENBAUM:

23 Q On -- on Proposal Number 7, am I correct that a  
24 -- that if a -- if a handler operated a cheese plant and

1 operated it at 100 percent capacity year round, would that  
2 handler qualify for marketwide service payments?

3 A I don't know. You'd have to give me some more  
4 parameters on what that cheese plant was doing and what  
5 they did with their milk supply.

6 Q Well, I'm assuming that their milk was less  
7 than -- less than -- less than 65 percent of it went to  
8 Class 1 use and that they met the minimum requirements of  
9 -- of Proposal 7 with respect to how much milk to handle.

10 A That would mean that they'd have to pool milk.

11 Q Right.

12 A They'd have to meet the pool supply plant  
13 definition.

14 Q Right.

15 A That in the fall of the year they'd have to  
16 have 20 percent of their producer supplies transferred or  
17 diverted to Class 1. And if they met those provisions and  
18 they met the other parameters that we would have set up,  
19 then they could qualify, yes.

20 Q Okay. So that if -- if there were a Class 3  
21 cheese plant that runs full out, meets the minimum  
22 requirement to be a supply plant, that's now in the order,  
23 they would qualify for marketwide service payments without  
24 changing their behavior at all? Well, if your proposal

1 were adopted.

2 A Keep in mind I -- I don't think there is -- and  
3 theoretically, we can come up with a lot of different  
4 scenarios and we can spend a lot of time discussing them.  
5 But I'm not aware of a cheese plant at this point -- our  
6 proposal would meet those qualifications. Most cheese  
7 plants don't have their own producer supply. So they  
8 don't pool milk so they wouldn't be able to qualify.

9 Q Are there Class 3 plants pooled on the order  
10 today?

11 A Yes, there are.

12 Q And am I correct that for a Class 3 plant your  
13 proposal does not add any performance requirements  
14 whatsoever? As long as it's already --

15 A Sure.

16 Q -- a supply plant --

17 A -- sure -- sure there are. First of all, if --  
18 if they're carrying a large enough producer supply that  
19 they're meeting the shipping provisions, they've --  
20 they've shown that they've got an association with the  
21 Class 1 market. And if they're of that size that they can  
22 meet this qualification, they are likely doing some  
23 balancing for the market.

24 And additionally, you -- if you read further

1 into that, there is some requirement of a -- I'll call it  
2 the "call" provision, based on my former Order 2  
3 background. The first call goes to the -- goes to the --  
4 those handlers that would be receiving marketwide service  
5 payments when Class 1 is short.

6 So there are certainly additional requirements  
7 in this theoretical example of a cheese plant.

8 Q Well, let me go through the requirements. You  
9 -- you have to meet the supply plant requirements, is that  
10 right?

11 A Yeah. Excuse me for a second -- coach my --  
12 you want me to go through with that or you want me to wait  
13 for Bob to testify to it?

14 MR. BESHORE: Well, we do have -- as I  
15 indicated at the outset, in an attempt to maybe streamline  
16 some of the examination -- although I don't want anybody  
17 to be cut off -- there is -- one of the witnesses, Mr.  
18 Wellington, is going to testify both on direct and of  
19 course be available to cross examination about all the  
20 detailed operations of Proposal 7, qualification criteria,  
21 et cetera. Mr. Rosenbaum will certainly be able to ask  
22 him about that and Mr. Gallagher will come later again to  
23 testify.

24 But I don't want to cut him off. He's

1 certainly entitled to inquire of Mr. Gallagher's knowledge  
2 of the market and the proposal with respect to how it  
3 worked. But he's going to have lots of opportunities to  
4 inquire of extremely knowledgeable people.

5 JUDGE BAKER: Very well. That's very gracious  
6 of you, Mr. Beshore.

7 Mr. Rosenbaum, you heard that and can be guided  
8 accordingly.

9 MR. ROSENBAUM: I will, Your Honor.

10 JUDGE BAKER: Thank you.

11 THE WITNESS: I just -- I know Bob has been  
12 working really hard on his statement and I don't want him  
13 to have to cut anything out.

14 (Laughter)

15 (Pause)

16 MR. ROSENBAUM: That's all I have at this time,  
17 Your Honor.

18 JUDGE BAKER: Thank you, Mr. Rosenbaum. Are  
19 there other questions for Mr. Gallagher? Mr. Vetne?

20 MR. VETNE: I'm not sure whether this is best  
21 addressed to Ed Gallagher or to Marvin Beshore. But for  
22 me to know to -- to whom to address questions, it would be  
23 good to have a little preview of the general subject  
24 matter of the witnesses to follow, including your

1 subsequent testimony.

2 For example, a witness to describe the general  
3 operations of -- of ADCNE and, you know, how it supplies  
4 the market and where its customers are. Is that you or is  
5 that somebody else or is that you later?

6 JUDGE BAKER: Perhaps you'd better ask Mr.  
7 Beshore, Mr. Vetne. I think you did sort of outline it  
8 originally for him.

9 MR. BESHORE: I -- I did attempt to provide a  
10 preview -- I thought I did -- that Mr. Vetne might be  
11 asking for. But first of all, you know, the -- the  
12 association is not an operating entity. It's a group of  
13 seven, you know, **seperate** operating entities.

14 Mr. Gallagher is directly employed or  
15 affiliated with -- with several of those and he will be  
16 presenting later very detailed information with respect to  
17 the operations of ~~Dairy League~~ **Dairylea**, DMS, and DFA. So  
18 if that's of any help, those particular questions are best  
19 addressed later to Mr. Gallagher.

20 But I don't want to cut any of these gentlemen  
21 short in their -- in their questioning here. I just tried  
22 to direct them somewhat.

23 JUDGE BAKER: Very well. Mr. Vetne, it would  
24 seem reasonable that after the presentation by the

1 proponents of their Proposal Number 7, if you still have  
2 questions, you could ask for the recall of a witness or go  
3 into whatever questions you might have.

4 MR. VETNE: Right. I'll defer for now. Thank  
5 you.

6 JUDGE BAKER: Very well. Thank you, Mr. Vetne.  
7 Are there any other questions? Yes, Mr. Arms?

8 MR. ARMS: Yes, Your Honor. I just have a  
9 couple clarifying questions.

10 JUDGE BAKER: Very well. Thank you.

11 SPEAKER: Use a mike and identify yourself.

12 MR. ARMS: Following the rule, I will identify  
13 myself again. My name is David Arms. I'm economic  
14 consultant to the New York State Dairy Foods Group.

15 CROSS EXAMINATION

16 BY MR. ARMS:

17 Q Ed, in your statement or in cross, I've  
18 forgotten which, I believe you likened the cooperative  
19 payment under Proposal 7 as being similar to that which  
20 applies in certain southeastern orders in the way of  
21 transportation credit allowances from the pool, is that  
22 correct?

23 A Let me just clarify something, David. They're  
24 -- they're not cooperative payments. They're marketwide

1 service payments. And any handler that meets the  
2 requirements is eligible to receive them. They weren't  
3 designed exclusively to be paid just to dairy  
4 cooperatives.

5 And I -- I alluded to there are other  
6 marketwide services that exist in ~~federal~~ **Federal** orders.  
7 But I don't believe that there is any specifically  
8 structured the way that we have structured ours.

9 Q Isn't it true that, for example, under Proposal  
10 -- under Order 5, the Southeastern Order, that in fact  
11 ~~Milk Galleries~~ **milk handlers** paid -- I believe -- seven  
12 ~~dollars~~ **cents** per hundredweight all year long? It is then  
13 essentially placed in escrow within a reserve and --  
14 (inaudible) -- July through November only and in the form  
15 of transportation allowances. Isn't that correct?

16 A Sounds about right. I don't know if all the  
17 exact nuances you spoke about are correct. But that is a  
18 vastly different market than this market. I testified to  
19 the uniqueness of the ~~northeast~~ **Northeast** market. And  
20 because it's unique, it requires a different solution to  
21 this externality which we're faced with. And so we came  
22 up with a different solution. It's not -- we're not  
23 trying to shoe horn something, create another order into  
24 ours. It maybe wouldn't work as well in our order.

1           Q     Well, I guess that's where I was confused  
2     because I felt in your statement that you were -- likened  
3     -- comparing the two as similar and providing marketing  
4     services. And I'm asking you, is there not a big  
5     difference from the standpoint that it is regarding the  
6     transportation allowances that they are in effect paid by  
7     handlers rather than, as well as, deducted from the  
8     uniform price computations?

9           A     I'm glad we had this conversation so we could  
10    clarify that. That's correct. And if you'd like to make  
11    a proposal to have us amend our proposal to charge

1 Class 1 instead of charging the pool, we -- we would  
2 consider that.

3 Q As further clarification and on evidence that --  
4 -- on data that was presented earlier by Peter Fredericks  
5 and in response to my questions regarding the operations  
6 of ~~Detrick's~~ **Dietrich's** Milk Products, could you clarify  
7 for the record the status -- the change in status of the  
8 two plants involved at ~~Newbury~~ **Middlebury** Center and at  
9 Reading, Pennsylvania first as ~~Detrick~~ **Dietrich** Milk  
10 Products, LLC and now as something a little different and  
11 how that has flowed through? I understand that from a  
12 response that -- can you identify us as to those points.

13 A Are you referring to a specific exhibit that  
14 Peter had that had different names?

15 Q It list -- the listings that he had under "Pool  
16 Supply Plants" that showed ~~Detrick's~~ **Dietrich's** Milk  
17 Products in different regulatory status during the years  
18 2000, 2001, and 2002.

19 A Okay. The current -- currently, both the  
20 ~~Detrick's~~ **Dietrich's** -- are pool supply plants. One is  
21 under Dairy Marketing Services and one is under ~~Detrick's~~  
22 **Dietrich's**, LLC. And maybe more for -- I say -- what --  
23 why -- why are they different instead of the same? I  
24 don't know. Variety is wonderful, so we just sort of --

1 when we had the option to make the Middlebury Center plant  
2 a pool supply plant based on its operation. We decided  
3 just to keep it as ~~Detrick's~~ **Dietrich's**, LLC, and not make  
4 it DMS. We could have made it DMS. We just -- wasn't any  
5 -- wasn't any strategic reason behind that.

6 Q What I'm trying to clarify is that, isn't it  
7 true that the ownership of ~~Detrick's~~ **Dietrich's** Milk  
8 Products, LLC, involved a three-way ownership essentially  
9 with two cooperatives, namely ~~D&E~~ **Dairylea**, DFA, Dairy  
10 Farmers of America, and the third party being ~~Detrick's~~  
11 **Dietrich's**, a proprietary operator, so that it was in fact  
12 a blend of both the cooperative and proprietary ownership.  
13 Is that correct?

14 A And it's correct, and the operative word is  
15 "was." Those plants are now owned by Dairy Farmers of  
16 America.

17 Q So its status has changed from being --

18 A That's what your question is, yeah.

19 Q I'm just trying to get at it to clarify for the  
20 record because we -- we have different types of ownerships  
21 over this period and we also have different regulatory  
22 status shifting from pool status, then to non-pool status,  
23 and then -- now back to pool status for -- I don't know  
24 that it applies to both plants, however.

1           A     Okay.  Is that a question?

2           Q     Yeah.  My question was is whether you could  
3 clarify in detail what was referred that you -- by Mr.  
4 Beshore that you would be able to answer for the record  
5 and clarify for the record the regulatory status of those  
6 two plants.

7           A     I think I just did.  They're both pool supply  
8 plants.  Is that -- I'm trying to answer your question --

9           Q     Okay.  ~~How currently are~~ **Currently they are--**

10          A     Yes.

11          Q     Okay.  Do you notice that in the listing for  
12 the year 2002, which is the current year, they have listed  
13 the two under different corporate identities?

14          A     Yeah.  I just -- I just talked about that.

15          Q     Well, the -- they're not -- they're not the  
16 same.  You said that they were just -- I believe you  
17 answered me by saying that they both principally have a  
18 certain ownership status.

19          A     Right.  But the -- the name of the company  
20 hasn't changed.

21          Q     The -- but the ownership has?

22          A     Yes.

23          Q     So now, for the record, we all understand that  
24 they are solidly cooperatively owned?

1 A Yes.

2 MR. ARMS: Thank you.

3 JUDGE BAKER: Very well. Are there any other  
4 questions for Mr. Gallagher? Yes, Mr. English?

5 CROSS EXAMINATION

6 BY MR. ENGLISH:

7 Q Do you have Exhibit 5 with you -- the ~~market~~  
8 ~~administrator~~ **Market Administrator** -- Order 1's data?

9 A Yep.

10 Q Okay. If you could go to Figure 5?

11 A What page is that?

12 Q I'm sorry. I'm going back and forth. Exhibit  
13 -- your Exhibit 11, Figure 5. I want you to have that in  
14 front of you, and I want you to have Exhibit 5 in front of  
15 you. And I'm going to ask questions about Figure 5.

16 A What -- which of my exhibits?

17 Q Figure 5.

18 A Yep.

19 Q It's your graph --

20 A Yep.

21 Q -- that shows Federal Order -- it's Exhibit 11.

22 A Yep. Got it.

23 Q And this is Class 3 and 4 receipt per day.

24 A Yep.

1           Q     Is -- is this based upon a ~~federal~~ **Federal**  
2     order of statistics of producer receipts or actual  
3     receipts at those plants?

4           A     Producer receipts.  It's the data that you'd  
5     get out of the ~~Glen~~ **blend** PPD announcement by class.

6           Q     So by way of example, if you open up to page 80  
7     on Exhibit 5?

8           A     Page 80?

9           Q     And look down at October 2001.  You have net  
10    movements for October of negative 29,794,000, which is as  
11    I understand it means that that much more milk moved into  
12    the order from outside, correct?  In terms of diversions?

13          A     I'm reading the title.  Hold on for a second.

14                   (Pause)

15                   BY MR. ENGLISH:

16          A     Yeah, but I believe -- okay.  Yeah.  It wasn't  
17    pooled here, though.  It wasn't --

18          Q     No, that's my point.  It's not pooled.  So that  
19    -- that difference of milk on a monthly basis compared to  
20    your per day basis is not reflected on Figure 5, correct?

21          A     Yeah, but you don't know how much of that went  
22    to a Class 3 or Class 4 plant, either.

23          Q     Okay.  But that milk was available for Class 3  
24    or 4?

1           A     Oh, I don't know.  Could have been.

2           Q     Similarly, if there were -- if there's producer  
3 milk that the data reflects produced in these states that  
4 was pooled elsewhere, that milk would not be available to  
5 show up on Figure 5.  Whether or not it would actually or  
6 not, it would simply not be available, right?

7           A     So this is pooled milk on Order 1 that was  
8 diverted to other order pool plants?

9           Q     No, I'm now going to milk produced in the state  
10 of New York that was pooled on Order 5.

11          A     Okay.

12          Q     Because it's pooled on Order 5, from your  
13 answer to my question earlier, it doesn't show up in  
14 Figure 5 at all, right?

15          A     Correct.  This is only Order 1 pool milk in  
16 -- in Figure 5.

17          Q     So you have not attempted at all in Figure 5 to  
18 create a chart that would show milk produced in the states  
19 for the marketing area that was received as Class 3 or  
20 Class 4?

21          A     I haven't, no.

22          Q     Is it true that diversions from other orders  
23 are required first to be assigned to Class 4, if -- if  
24 available?

1           A     I believe that's correct, yeah.

2           Q     So to the extent you had net diversions from  
3 other orders of 29,794,847, it is more likely than not  
4 that it would be in Class 4?

5           A     Let's -- let's think -- say it went to Tuscan  
6 Farms in Union, New Jersey of all places. They don't have  
7 any Class 4. They have whatever they have. It's a Class  
8 1 distributing plant. They probably make some Class 2  
9 there. Probably first get assigned to Class 2, and then  
10 if all the Class 2 was used up, I think how they work it,  
11 it gets into Class 1. So I -- you know --

12          Q     But it's not showing up as eligible milk  
13 available in this pool regardless, correct? However, it's  
14 being classified. It's not going to show up other -- you  
15 know, on Figure 4 or Figure 5?

16          A     No -- no, that page 80 chart, it's not eligible  
17 milk in the pool. You're right.

18          Q     So to the extent that -- that Figure 4 -- if --  
19 assuming it went to Class 1, under your assumption, other  
20 than -- rather than Class 4 under mine, it's -- it's not  
21 going to show up there either, correct?

22          A     No.

23          Q     Even though there was 29 million pounds for the  
24 month --

1           A     Correct.

2           Q     -- available?

3           A     It wasn't an identification of, say, packaged  
4     sales within the marketing area.  It's just producer  
5     receipts pooled as Class 1.  So it would only cover the  
6     pool receipts of Federal Order 1.

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

8           JUDGE BAKER:  Thank you.  Mr. Arms?

9           MR. ARMS:  David Arms, economic consultant.

10                                   CROSS EXAMINATION

11           BY MR. ARMS:

12           Q     You answered in response to questions by Mr.  
13     English --do you use specifically Tuscan Farms as an  
14     example of a very large ~~factory~~ **handler** mostly Class 1.  
15     Is that correct?

16           A     I did refer to them, yes.

17           Q     Yes.  And you indicate that for plants such as  
18     this wouldn't have Class 3 or 4, right?

19           A     I would -- I don't -- I don't know the specific  
20     operation of the plants.  But relative to Peter  
21     Fredericks' testimony earlier, the -- they're going to  
22     have 85 to 90 percent Class 1.  I would say just based on  
23     that, I know they do some Class 2.  They're not going to  
24     have much anything else.

1 Q Isn't it true --

2 A -- something, I suppose.

3 Q Okay. I'm sorry?

4 A I said, other than what may end up in  
5 inventory.

6 Q Yes, in inventory isn't it true that the order  
7 requires a pool distributing plant that ~~inventories ending~~  
8 **inventory**, bulk milk -- all bulk milk is assigned to Class  
9 4, is it not?

10 A In -- in -- inventory.

11 Q Prior to be assigned as -- required -- to --  
12 Class 4 under the rule of the Northeast Order Agreement.

13 A That is in -- ending inventory?

14 Q Yeah.

15 A Yeah.

16 Q So it's all ~~pooled marketing order~~ **Class 4**,  
17 correct?

18 A Sure. But I don't think it's going to be very  
19 much milk in a Class 1 plant.

20 Q Like in this particular market that you  
21 referred to, would you agree that Tuscan Farms -- the size  
22 of that **order handler**, probably exceeds the incoming  
23 volume of ~~the some sum~~ of the smaller orders that would be  
24 a part of this. Would you agree with that?

1           A     I -- I -- I don't have any knowledge of that.  
2     If you want to testify to that later, sure, go ahead.  But  
3     I don't know.

4           Q     It is possible, is it not, a very large share  
5     of the milk that might come in ~~under the covered~~ **from**  
6     **another** order is assigned to the Class 4 at the receiving  
7     plant, such as Tuscan, is that correct?

8           A     No, I'm not going to -- I'm not going to agree  
9     with that.  I'm sorry.  You can testify to that, or you  
10    have, I guess.  I don't know.

11                   MR. ARMS:  Thank you.

12                   JUDGE BAKER:  Are there other questions of Mr.  
13     Gallagher?  Mr. English?

14                               CROSS EXAMINATION

15                               BY MR. ENGLISH:

16           Q     I'm sorry.  Let me go back to the -- your  
17     assumption that it could be in Class 1.  Is it not true  
18     under most federal orders, especially those to the south,  
19     that if milk was diverted and used as Class 1, it would  
20     not be producer milk under that other order and therefore  
21     wouldn't be treated as diverted in the first place?

22           A     It may -- you may be right about that.  If  
23     you're reading from the order --

24           Q     -- yeah --

1           A     -- take it that you're -- that you're reading  
2     it correctly.

3           Q     So that would mean that it's unlikely to be  
4     Class 1, correct?

5           A     My point isn't necessarily it was going to be  
6     Class 1.  It's not necessarily going to be Class 4,  
7     either.  That's --

8           Q     But -- but in terms of being Class 1, it's not  
9     likely, correct?

10          A     Probably not.

11                     MR. ENGLISH:  Thank you.

12                     JUDGE BAKER:  Thank you.  Are there any other  
13     questions of Mr. Gallagher?  There appear -- oh, yes.  Mr.  
14     Tosi?

15                                     CROSS EXAMINATION

16                     BY MR. TOSI:

17           Q     Hi.  Thanks for coming to the hearing.  I need  
18     to ask you just a couple of questions so that I'm -- I'm  
19     clear about what I can ask you.

20                     Can you --

21           A     You can ask me whatever you want.

22           Q     Okay.  Either -- either as your -- in your  
23     capacity here speaking on behalf of the Northeast  
24     Cooperatives or as ~~Dairy League~~ **Dairylea** or the other

1 capacities that you mentioned in your testimony, can you  
2 talk about any over order premiums or how milk -- how you  
3 buy and transact milk either on behalf of the entire group  
4 or your organization specifically?

5 A Yeah. A lot of that I'm going to get into  
6 later in my testimony about how DMS balances which I'm  
7 going to do after we go through the lineup of Dr. Ling,  
8 Bob Wellington, and Dennis Schad. And I'm going to come  
9 back and talk about that.

10 Q Okay. Are -- are you able or -- or would you  
11 be willing to answer any questions regarding some -- I'm  
12 not quite sure how to characterize them, but questions  
13 that would get at the -- the theory behind marketwide  
14 service payments?

15 A Sure. Again, Bob Wellington's going to --  
16 going to testify to that pretty extensively when he gets  
17 here. And then I'll be up again afterwards if there are  
18 any other questions he hasn't cleared up in his testimony.  
19 I'd be more than happy to answer -- or if you'd like, I  
20 can answer them now.

21 Q Okay. Well, I think I'll -- I'll just hold  
22 back on that.

23 A Okay.

24 Q One of the questions that I wanted to ask was

1 in response, I think, to a question by Mr. Rosenbaum. You  
2 seem to have expressed the opinion that the Department did  
3 not fully consider the marketwide service proposals that  
4 were offered by the Northeast during order reform.

5 A That's --

6 Q Was that your testimony?

7 A That was my -- testimony based on just an  
8 opinion I had. You guys were extremely busy with a lot of  
9 things and I -- I -- I -- I'm not sure -- I mean, you can  
10 tell -- you can tell me if I'm wrong. You didn't have as  
11 much --

12 Q I was just curious as to how you formulated  
13 that opinion or --

14 A I just -- I -- I just know with talking with  
15 you guys and talking with others in the Department that  
16 you spent a lot of -- rightfully so -- a lot of time on a  
17 lot of things. And it was just such a massive change  
18 that, certainly, we didn't have the -- the time to have  
19 this kind of discussion like we're having today. That  
20 didn't go on to any great degree. And so that, to me,  
21 tells me that maybe you guys were just too busy with other  
22 things that maybe you didn't get the chance for -- to  
23 hear all -- all -- everything we had to say about it.

24 Just -- you know, I'm not -- I'm not trying to

1 -- please don't think I'm trying to pick a fault or  
2 anything.

3 Q No, no.

4 A I'm just saying you just --

5 Q I just wanted to ask -- I just wanted to  
6 understand the nature of the opinion.

7 Just regarding your written statement or your  
8 testimony, you -- I think you did an excellent job of  
9 describing very interesting features of -- of the  
10 Northeast marketing area in general. And I -- I was  
11 curious here as -- if you could just hypothetically  
12 consider these things.

13 If, for example, we had a marketing area or  
14 region that did not necessarily exhibit, for example, the  
15 volume of Class 1 milk or the population base, the number  
16 of plants, the different marketing options, and some of  
17 the other things that you've pointed out there, would the  
18 notion of balancing still be important to a market that  
19 perhaps didn't have those unique features that you  
20 described here for the Northeast?

21 A That's a -- that's a very good question. I  
22 believe it still would. The solution to a particular  
23 markets balancing issue may not be the same as what we're  
24 offering. I think this -- this solution that we've

1 offered, I think, fits our market. It may not fit a  
2 market as maybe theoretically you're describing. But  
3 still, balancing would be important in that market.

4 Q Okay. Regardless of unique features of a  
5 market, would -- would you -- would you think that it  
6 would be important that in a market that would exhibit a  
7 large percentage of non-member milk versus cooperative  
8 milk always be an example of perhaps the need for a  
9 marketwide service payment?

10 A I -- I would believe so, yeah. If you -- if  
11 you look at -- if you look through the Northeast where  
12 there -- you know, I don't know for the largest -- where  
13 the greatest number of non-members and -- I think we do.

14 But you look through the northeast and you  
15 really look at who's doing the balancing on a continuous  
16 basis, and we'll get into all this stuff with some of the  
17 other witnesses, I think you're really going to find that  
18 it's really the cooperatives that are stepping up and --  
19 and operating that milk balancing grid.

20 Q Okay. So then, in and of itself, there's  
21 nothing particularly special that the ~~northeast~~ **Northeast**  
22 has a high density of production, you know, per square  
23 mile or the fact that it's a large -- large population?  
24 That -- that in and of itself really doesn't speak to the

1 notion of cost of balancing and the need perhaps to  
2 consider some way to compensate for that?

3 A Well, the population does because that creates  
4 the huge Class 1 demand that needs to be balanced. These  
5 things that I talked about weren't just reasons -- weren't  
6 just reasons why we need balancing, reasons why I think we  
7 need a unique solution that would be different than  
8 another marketing order solution.

9 Q Okay. In some of the other cross examination  
10 that you underwent, and I think it's also supported in  
11 part by Mr. Fredericks' Exhibit 5 on page 81, where at  
12 least the market administrator's office is trying to apply  
13 Proposal 7 historically. I'm counting about seven  
14 different entities, all cooperatives, that would qualify  
15 for the six cents per hundred that's part of Proposal 7.  
16 Would that be correct?

17 A Yes.

18 Q Okay. Now, all -- keep that in mind, and then  
19 I'll relate this back to your testimony. You did an  
20 excellent job of depicting the diversity of marketing or -  
21 - excuse me, the -- the large number of marketing options  
22 in the northeast **Northeast**. You note in your testimony  
23 that there are, for example, 184 non-pool plants.

24 A Yes.

1           Q     And -- and when we -- when we look at that with  
2     respect to how they're plotted out in Exhibit 5, they seem  
3     to be scattered --

4           A     Throughout the ~~northeast~~ **Northeast**.

5           Q     -- throughout the ~~northeast~~ **Northeast** and --  
6     and in areas that we would describe as high-price zones,  
7     if you will?

8           A     Yes. Well, let me back up. They're scattered  
9     throughout the ~~northeast~~ **Northeast** in all kinds of price  
10    zones.

11          Q     Right. In all kinds of price zones. Thank  
12    you. I'm sorry. I didn't want to put words in your  
13    mouth.

14                   I guess, in that regard, while any one of these  
15    184 plants that are not co-op, well, any one of them may  
16    not be individually important but the notion that 184 of  
17    them collectively, taken as a whole, would you consider  
18    them to be -- their existence and the fact that they're  
19    buying milk to maintain their operations to be performing  
20    a -- an important balancing function for the Northeast  
21    Market?

22          A     Definitely so. When I -- I come back and I  
23    talk about how DMS balances, I'm going to talk about how  
24    DMS uses its portfolio theory of all the milk plants in

1 the order to help mitigate our balancing costs.

2 MR. TOSI: That's all we got. Thanks.

3 JUDGE BAKER: Thank you very much. Are there  
4 any other questions of Mr. Gallagher? Mr. Beshore?

5 MR. BESHORE: Just a couple of questions on  
6 -- on redirect.

7 REDIRECT EXAMINATION

8 BY MR. BESHORE:

9 Q With respect to the -- the differences in the  
10 ADCNE proposals here versus those advanced during the  
11 market reform process, ~~Fair~~ **FAIR** Act informal rulemaking  
12 process when we didn't have the -- the forum we do today.  
13 Are there some -- some important data sets that were  
14 developed after that process and that we're providing here  
15 today that we -- and that were developed in response to  
16 the Department's comments in those -- in those decisions  
17 that we have available here today, such as the study that  
18 was done by Dr. Ling?

19 A Absolutely. Almost an interactive process, I  
20 would say, that if we coached a little bit and saying help  
21 -- you guys need to come up with additional information  
22 and we've gone back and gotten that information.

23 Q We tried to respond to the, you know, the  
24 comments that were made there both in the employment area

1 and in the final decision?

2 A Absolutely.

3 Q Did we have at that time the information that  
4 we have today with respect to the -- of course, we didn't  
5 have Order 1 as we do today, right? So **we had** no data  
6 from Order 1 at all?

7 A Correct.

8 Q I mean, current Order 1.

9 A Correct.

10 Q Okay. So we didn't have the data that Peter  
11 Fredericks has already presented.

12 With respect to where the non-members in the  
13 order ship their milk day in or day out or where the  
14 cooperative members in aggregate deliver their milk day in  
15 and day out, correct?

16 A Correct.

17 Q Okay. We also didn't have the day of the week  
18 delivery data, which hasn't yet been presented but which  
19 was submitted to the Department with request for the  
20 hearing, showing those types of balancing activities,  
21 correct?

22 A That's -- that's correct.

23 Q Okay. And Mr. Schad's going to -- going to  
24 present those -- that information?

1           A     Yes, he is.

2           Q     Okay. Now, we also did not have at that time  
3 the information Mr. Fredericks presented with respect to  
4 the aggregate operations in terms of receipts of  
5 manufacturing with the seven cooperative balancing plants  
6 in the ~~northeast~~ **Northeast**, correct?

7           A     That is also correct.

8           Q     Are those some of the differences between the -  
9 - just some of the differences between where we were  
10 several years ago and where we are today?

11          A     They're some of the huge differences.

12          MR. BESHORE: Thank you.

13          JUDGE BAKER: Thank you. Are there any other  
14 questions of Mr. Gallagher?

15                 (No response)

16          JUDGE BAKER: Apparently there are none. Thank  
17 you very much, Mr. Gallagher.

18          THE WITNESS: Thank you.

19                 (Whereupon, the witness was excused.)

20          JUDGE BAKER: Mr. Beshore, do you wish to  
21 continue presenting your witnesses?

22          MR. BESHORE: Yes. At this time we are asking  
23 Dr. Charles Ling to testify. Now, he is -- he has been  
24 requested to come and present testimony by parties other

1 than -- than ourselves. But if it's agreeable with him,  
2 we would -- and with Your Honor, we would like to ask him  
3 to testify at this time.

4 JUDGE BAKER: Very well. Mr. Beshore, prior to  
5 that, did you intend to move into evidence exhibits marked  
6 for identification 10 and 11?

7 MR. BESHORE: I -- I did, and I would like to  
8 request that at this time.

9 JUDGE BAKER: Are there any questions or  
10 objections with respect thereto?

11 (No response)

12 JUDGE BAKER: Hearing none, Exhibits 10 and 11  
13 are hereby admitted and received into evidence.

14 (The documents previously  
15 marked for identification as  
16 Exhibits 10 and 11 were  
17 received in evidence.)

18 Whereupon,

19 CHARLES LING

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

22 MR. BESHORE: Before Mr. Ling begins his  
23 testimony -- the study, which is "RBS Research Report 188"  
24 -- the publication, I should say, "Cost of Balancing Milk

1 Supplies, Northeast Regional Market, RBS Research Report  
2 188," United States Department of Agriculture, Rural  
3 Business Cooperative Service, copies of which Dr. Ling has  
4 brought along and provided for the reporter and made  
5 available to everyone in the -- in the room. I would ask  
6 that it be marked for identification as Exhibit 12 in this  
7 hearing.

8 JUDGE BAKER: Very well. It shall be so  
9 marked.

10 (The document referred to was  
11 marked for identification as  
12 Exhibit 12.)

13 MR. BESHORE: And I know Dr. -- Dr. Ling has a  
14 short statement which he would proceed with. I think I  
15 would like to, as a -- as a formality but an important  
16 one, before he even proceeds request that his testimony be  
17 taken as that of an expert in his field of agricultural  
18 economics and dairy manufacturing plant operations. I  
19 don't know that we need to do any more than -- than offer  
20 -- before he even testifies for somebody with Dr. Ling's  
21 known and acknowledged background and experience. And I  
22 would so offer him at this time.

23 JUDGE BAKER: Be unusual before any testimony -  
24 -

1           MR. BESHORE: I understand. It's an unusual --  
2 we have an unusually well-qualified gentleman.

3           JUDGE BAKER: Could we not wait until he gives  
4 his qualifications?

5           MR. BESHORE: We're --

6           JUDGE BAKER: Would that be --

7           MR. BESHORE: I'm certainly -- I'm certainly  
8 willing to do that.

9           JUDGE BAKER: Very well. Otherwise I think  
10 we'd set a precedent that we could just come in and say,  
11 so-and-so is an expert and we're not going to tell you why  
12 he's an expert.

13          MR. BESHORE: Okay.

14          JUDGE BAKER: Thank you.

15                   DIRECT EXAMINATION

16          BY MR. BESHORE:

17           Q     Would you -- would you proceed with your --  
18 your brief statement of background, Dr. Ling? And after  
19 you get through the first -- first paragraph there, we'll  
20 go through this formality that I just initiated.

21           A     Okay. My name is Charles Ling, I am an  
22 economist with Services Program of USDA's Rural Business  
23 Cooperatives Service, RBS. Serving as program leader for  
24 dairy aspect program since 1988. For about five years

1 prior to joining Rural Cooperative services in 1978 I was  
2 an agricultural economist (inaudible) with **Federal Order**  
3 **2, Milk Administrator's office** in New York City. I  
4 received my BS degree from (inaudible) **National Taiwan**  
5 **Univeristy and Masters and PhD from the Univeristy of**  
6 **Connecticut, all in economics.**

7 I'm going to testify (inaudible) **as I'm called**  
8 **to testify as the author of** cost of balancing the  
9 ~~Northeast Region Market~~ **milk supplies; northeast regional**  
10 **market -- RBS (inaudible) Research Report 188** which is  
11 cited as the supporting argument for Proposal Number 7 of  
12 this hearing.

13 Q Now --

14 JUDGE BAKER: Now -- now, Mr. Beshore.

15 BY MR. BESHORE:

16 Q Okay. At this point I would just like to ask  
17 another question or two in amplification --

18 JUDGE BAKER: Very well.

19 BY MR. BESHORE:

20 Q -- of your background. Have you been involved,  
21 Dr. Ling, in studies of the operations of -- of dairy --  
22 milk manufacturing plants?

23 A For almost 20 years, yes.

24 Q Okay. And have you studied the operations of

1 such plants from coast to coast and north to south in the  
2 United States?

3 A That's correct.

4 Q And you've studied the -- the costs of  
5 operation of such plants at -- in great depth and over all  
6 those years, is that correct?

7 A That's correct.

8 MR. BESHORE: Okay. With -- with that, I would  
9 offer Dr. Ling as an expert in the fields I referenced of  
10 agricultural economics and dairy manufacturing plant  
11 operations.

12 JUDGE BAKER: Are there any questions or  
13 objections with respect to the request that Dr. Ling be  
14 declared an expert in the fields of agricultural economics  
15 and dairy plant operations?

16 (No response)

17 JUDGE BAKER: There are none, and your request  
18 is so granted, Mr. Beshore.

19 MR. BESHORE: Thank you.

20 BY MR. BESHORE:

21 Q You may proceed with your testimony, Dr. Ling.

22 A ~~RBS-Rural Business Cooperative Services is~~  
23 ~~charged by the Cooperative Marketing Act of 1996 with~~  
24 ~~conducting economic studies regarding Cooperative~~

1 ~~associations. Section 3B2 -- (inaudible) -- of the act~~  
2 ~~directs it to conduct studies with the economic, legal,~~  
3 ~~financial, social, and other -- (inaudible) -- corporation~~  
4 ~~-- corporation and publish the results thereof. Such~~  
5 ~~studies shall include the analysis of the organization,~~  
6 ~~operation, financial problems and management of~~  
7 ~~Cooperative associations. 7 USC Section 49.53.~~  
8 ~~----- Cost of buying milk supplies -- (inaudible) --~~  
9 ~~northeast regional market -- (inaudible) -- previous~~  
10 ~~research -- (inaudible) -- is one of the research studies~~  
11 ~~published by RBS. Looking at the report, we find -- we~~  
12 ~~find that we -- (inaudible). Cost -- (inaudible) --~~  
13 ~~estimates.~~  
14 ~~----- In the 1994 market information -- (inaudible) --~~  
15 ~~-- for the milk marketing orders in the northeast --~~  
16 ~~(inaudible) -- exhibit No. 12.31 -- milk deliveries --~~  
17 ~~what kind -- (inaudible) -- indicates that June deliveries~~  
18 ~~-- (inaudible) -- in September. (Inaudible) -- cycle --~~  
19 ~~(inaudible) -- processing plants -- (inaudible) -- cycle~~  
20 ~~of -- (inaudible).~~  
21 ~~----- Two categories -- (inaudible) -- processing~~  
22 ~~plant -- (inaudible) -- only experienced by the processing~~  
23 ~~plant. (Inaudible) -- constitutes seasonal results.~~  
24 ~~(Inaudible) -- Exhibit Number 12, Figure 2. (Inaudible).~~

1 ~~In September and October, those results are --~~  
2 ~~(inaudible).~~  
3 ~~----- (Inaudible) ----- of taxes, licenses, insurance,~~  
4 ~~and administrative costs. (Inaudible) -- represented by~~  
5 ~~the -- (inaudible) -- caused by fluctuating -- prices --~~  
6 ~~results also includes -- (inaudible) -- the total amount~~  
7 ~~increase -- (inaudible) -- estimated to be zero --~~  
8 ~~(inaudible).~~  
9 ~~----- (Inaudible) -- total cost -- (inaudible) -- are~~  
10 ~~estimated at \$11.6 million and the volume of --~~  
11 ~~(inaudible) -- is 20 percent of -- (inaudible).~~

12 **RBS Cooperative Services is charged by the**  
13 **Cooperative Marketing Act of 1926 with conducting**  
14 **economic studies regarding operations of cooperative**  
15 **associations. Section 3(B)(2) of the Act directs it**  
16 **"To conduct studies of the economic, legal,**  
17 **financial, social, and other phases of cooperative,**  
18 **and publish the results thereof. Such studies shall**  
19 **include the analyses of the organization, operation,**  
20 **financial and merchandising problems of cooperative**  
21 **associations." (7 U.S.C. § 453)**

22 **Cost of Balancing Milk Supplies: Northeast**  
23 **Regional Market (RBS Research Report 188) is one of**  
24 **the research studies published by RBS. The report**

1 defines the minimum volume of milk needed to balance  
2 supplies for fluid uses and develops a methodology  
3 for determining the cost incurred by plants that  
4 perform the supply balancing function. Costs  
5 reported in the report are estimates.

6 Based on the 1994-99 market information of the  
7 three Federal milk marketing orders in the  
8 Northeast, monthly milk deliveries are higher than  
9 the annual average during January through June and  
10 peak in May (exhibit #12, table 1). Milk deliveries  
11 decline sharply from June to July and star  
12 relatively low throughout summer and fall, and  
13 bottom out in November.

14 The seasonal pattern of fluid demand is quite  
15 different. It peaks in September and maintains a  
16 higher than average level through fall and winter  
17 until March. The lowest fluid consumption month is  
18 June. The seasonality index shows that fluid demand  
19 in June is 11 percentage points lower than it is in  
20 September. Besides this annual cycle of fluid uses,  
21 processing plants have a weekly cycle of fluid  
22 demand.

23 Two categories of milk reserves, operating and  
24 seasonal, are required to meet fluctuating fluid

1 needs. Operating reserves ensure a sufficient  
2 supply for the daily fluctuating fluid demand  
3 encountered by processing plants. The reserves also  
4 cover shrinkage and returns of packaged products  
5 ordinarily experienced by processing plants.  
6 Seasonal reserves are necessary because of the  
7 nature of milk production and fluid milk demand. If  
8 producers supplying the market raise a sufficient  
9 number of cows to produce enough milk in the lower  
10 milk producing months in the fall to fully satisfy  
11 the highest fluid demand and operating reserves in  
12 that same season, then more milk will be produced  
13 than is needed in other seasons. The extra volume  
14 produced in these other seasons constitutes seasonal  
15 reserves.

16 The sum of operating and seasonal reserves  
17 represents the necessary reserves - the minimum  
18 standby milk volume needed to satisfy fluid demand  
19 year-round. Assuming that the operating reserve is  
20 10 percent of fluid demand, the volume of necessary  
21 reserves ranges from 2.9 million pounds per day in  
22 October to 8.6 million pounds in June (Exhibit # 12,  
23 table 2). Necessary reserves in June are equivalent  
24 to 33 percent of the fluid demand for that month.

1 In September and October, those reserves are 10  
2 percent of fluid demand, representing the required  
3 operating reserves only.

4 To process the peak daily volume of necessary  
5 reserved of 8.6 million pounds of milk requires  
6 three butter-powder plants, each with a daily  
7 capacity of 3 million pounds of milk. A butter-  
8 powder plant with this capacity would cost an  
9 estimated \$28 million. The annual total capital  
10 cost of land, building, machinery and equipment, and  
11 the estimated overhead of taxes, licenses, insurance  
12 and administrative cost, are estimated at \$3 million  
13 a year, or \$9 million for the three plants.  
14 Prorating the cost to the milk volume represented by  
15 the unused capacity because of the fluctuating  
16 necessary reserved, the allocated annual fixed and  
17 overhead cost for reserve balancing is \$2,991,166  
18 (exhibit #12, table 3).

19 Under-capacity use caused by fluctuating  
20 necessary reserves also increased butter and powder  
21 manufacturing plant costs. The increased plant cost  
22 range from 4 cents per hundredweight of milk  
23 manufactured in May to 83 cents per hundredweight in  
24 October. Expanding these extra costs by the total

1 volume of necessary reserved, the total monthly  
2 increase in the manufacturing costs due to reserve  
3 balancing is estimated to be zero in June and ranges  
4 from \$94,755 in May to \$836,460 in December. Total  
5 extra manufacturing cost for balancing necessary  
6 reserves for the entire year is estimated at  
7 \$6,745,641.

8 Fixed and overhead costs prorated to the milk  
9 volume of unused capacity and the manufacturing cost  
10 increases on the actual processed volume due to  
11 unused plant capacity are combined to constitute  
12 total reserve-balancing costs. The three butter-  
13 powder plants would incur total annual costs of  
14 reserve balancing estimated at \$9.7 million to  
15 maintain necessary fluid reserves under the  
16 assumption that the volume of operating reserves is  
17 10 percent of fluid demand.

18 If the operating reserve is 20 percent of fluid  
19 demand, the peak daily volume of necessary reserved  
20 is estimated at 11.8 million pounds of milk or the  
21 equivalent of four butter-powder plants, each with a  
22 daily capacity of 3 million pounds of milk (Exhibit  
23 #12, table 4). The allocation annual fixed and  
24 overhead cost for reserve balancing is \$3 million

1 per year (Exhibit #12, table 5). Total extra  
2 manufacturing cost due to under-capacity use of the  
3 plants for balancing necessary reserved for the  
4 entire year is estimated at slightly less than \$8.6  
5 million. The annual total costs of reserve  
6 balancing are estimated at \$11.6 million, if the  
7 volume of operating reserved is 20 percent of fluid  
8 demand.

9 This concludes my statement, and I would be  
10 happy to answer questions.

11 JUDGE BAKER: Thank you very much, Dr. Ling.  
12 Are there any questions? Mr. Beshore?

13 BY MR. BESHORE:

14 Q Yes. First of all, Dr. Ling, were you  
15 requested to make yourself available as a witness here by  
16 a party other than -- than my clients?

17 A The administrator of Agricultural Marketing  
18 Service sent a memo to the administrator of the  
19 ~~(inaudible)~~ **Rural Business Cooperative Service** studies to  
20 request that I be able to testify to assist in ~~(inaudible)~~  
21 **fully understanding** the data and assumptions of this  
22 report. My administrator approved it.

23 Q So your boss told you you were supposed to  
24 come?

1           A     Yes.

2           Q     Okay. Thank you for -- for appearing. First  
3 of all, in your -- in your report, which has been  
4 identified as -- as Exhibit 12, in the highlights at the  
5 preamble, was there a correction you wanted to note with  
6 respect to the -- the base years of the Northeast market  
7 information that you used?

8           A     Yeah. The highlights -- the ~~fourth~~ **first** line  
9 of ~~(inaudible)~~ **the highlights** is based on 1994 through  
10 1999. That's when I copyrighted -- (inaudible) -- index.  
11 I used ~~--(inaudible)-- and --12 months-- six months as~~  
12 ~~--(inaudible)-- at six months~~ **a 12 month moving average**  
13 **method. When you use a 12 month moving average, you lose**  
14 **six months of data at the beginning and six months at the**  
15 **end.** So I used six -- six years' data to get data for  
16 this for five years ~~(inaudible)~~ **span.**

17          Q     Okay.

18          A     And I -- all the numbers I used in the -- in  
19 the report, five years. Only the -- I mean, excuse me,  
20 the ~~(inaudible)~~ **seasonality index calculation is** six  
21 years.

22          Q     Okay. Let's -- let's look then at Table 1,  
23 which is the seasonality indices to which you just  
24 referenced. If you can --

1 (Pause)

2 BY MR. BESHORE:

3 Q The information on Table 1 is the -- a basic  
4 building block for your study here, is it not?

5 A Now, that's the table that shows the -- the  
6 discrepancies between --

7 JUDGE BAKER: Is that Table 1 or Table 5?

8 MR. BESHORE: Table 1. We're --

9 JUDGE BAKER: Oh.

10 MR. BESHORE: -- trying to rotate the Power  
11 Point back to --

12 JUDGE BAKER: Oh, I see.

13 MR. BESHORE: -- back to Table 1.

14 JUDGE BAKER: Thank you.

15 (Pause)

16 BY MR. BESHORE:

17 A Okay. So the -- this table shows the  
18 discrepancies between milk deliveries and -- and the  
19 ~~(inaudible)~~ **fluid demand**.

20 Q So how did you calculate -- these are -- these  
21 are indices as opposed to actual poundages, correct?

22 A That's correct.

1 Q Okay. And how did you calculate the -- the  
2 indices for the "Producer Milk Deliveries" column, January  
3 through December?

4 A Okay. I -- as I said before, I used six years.  
5 That's 72 months' data. I used 12 months -- **moving**  
6 average to catch the trend line. That would give you  
7 trend line according to -- trend. And you divide the  
8 actual volume against the trend line. That would  
9 ~~(inaudible)~~ **give you a trend**, the trend and that would  
10 give you this seasonal variation -- variation in the time  
11 series data.

12 Okay. And then for each month, say January  
13 -- you have five years indicated -- if you have at least  
14 five years for January and ~~end~~ **add** up five years for  
15 February and five years for March and so on. And then you  
16 adjust it to make sure it's -- add up, ~~obviously~~ **averaged**,  
17 to 100. That's how the -- the -- ~~(inaudible)~~ -- people  
18 ~~(inaudible)~~ **input on a computer to calculate** ~~(inaudible)~~ **a**  
19 **seasonality** index.

20 Q Okay. Is it -- so --

21 A The same thing ~~(inaudible)~~ **for calculating the**  
22 **seasonality index for fluid demand.**

23 Q Okay. So the raw numbers that went into the  
24 indices for producer milk deliveries were the producer

1 milk deliveries -- by the market administrators for former  
2 Orders 1, 2, and 4 during those years, correct?

3 A That's correct.

4 Q And the fluid demand numbers were the -- the  
5 same numbers for -- for fluid demand numbers or fluid  
6 requirements numbers --

7 A Class 1, Class 1 milk under the three orders.

8 Q During the same time period?

9 A Yeah, that's correct.

10 Q Okay. Now, when you come up with the indices  
11 that are based on six years of -- of data, is it fair to  
12 understand that within those -- those years there may be  
13 years that have spikes that are higher, that have -- that  
14 vary with higher spikes and lower valleys than the -- the  
15 average of the total period of time?

16 A That's correct.

17 Q So this is -- these indices, which were then  
18 used to calculate the cost of balancing the Class 1 market  
19 are smoother than -- than the real world may be at some  
20 times?

21 A That's correct.

22 Q Now --

23 A The -- the index used in the ~~letter~~ **latter**  
24 ~~(inaudible)~~ **calculation** it's only the -- the index for

1 deliveries as was -- as used for calculating season --  
2 seasonal ~~results~~ **reserves**.

3 Q Okay. If we go to -- go to Table 2?

4 (Pause)

5 BY MR. BESHORE:

6 Q Now, in Table 2, first of all, Tables 2 and 3  
7 are calculations based on the assumption of a 10 percent  
8 operating reserve and -- and Tables 3 and 4 are comparable  
9 tables but based on a 20 percent operating reserve, is  
10 that correct?

11 A Tables 2 and 3 are based on an assumption of 10  
12 percent -- operating reserves was 10 percent. Table 4 and  
13 5, under the assumption that ~~(inaudible)~~ **operating**  
14 **reserves is 20 percent**.

15 Q But in each case, the tables have the same --  
16 same set of columns and similar calculations --

17 A That's correct.

18 Q It's just that the reserve assumption is  
19 different?

20 A That's -- that's correct.

21 Q Okay. Let's just look at Table 2, then. By  
22 the way, the reserve assumptions you were -- could be  
23 verified -- the correct reserve assumption could be

1 verified by actual operations in the marketplace, could it  
2 not?

3 A That's correct. This is just 10 percent, ~~30~~ **20**  
4 percent, just assumptions. It's -- when I -- I had a  
5 previous report. When I did the previous report, I -- we  
6 used some literature and -- (inaudible) -- different  
7 ~~(inaudible)~~ **economist were arguing** and how many percent  
8 should be operating reserve. And I -- I just picked two  
9 numbers, 10 and ~~30~~ **20** percent, to use.

10 Q Now, if -- if you assume with me, Dr. Ling, for  
11 a moment that data will be presented later in this hearing  
12 on behalf of the ADCNE cooperatives which shows that they  
13 are required to deliver to their distributing plant  
14 customers peak volumes which are 117 percent or 118  
15 percent of the average volumes in terms of daily  
16 fluctuations, would that factual information, assuming  
17 it's -- it's accurate, imply the need for a 20 percent  
18 operating reserve for the fluid market?

19 A You're talking about if you -- the reserve is  
20 118 percent of --

21 Q One hundred seventeen or 118 percent, yes.

22 A Of -- of the monthly average?

23 Q Of the --

24 A Monthly daily average?

1 Q Of the monthly average, yes. Monthly daily  
2 average. The peak daily demand is 117 percent of --

3 A -- if ~~(inaudible)~~ **your 18% is Class IV** if  
4 you're talking about ~~(inaudible)~~ **class needs** you're 18  
5 percent above the monthly average?

6 Q Yes.

7 A And it's Class 1 --

8 Q Demand.

9 A -- representing Class 1. And on top of that  
10 you need to add the, you know, shrinkage and returns.

11 Q Okay.

12 A And under market order -- I think if I -- I  
13 ~~have a Northeast Market Order -- Northeast Order for have~~  
14 ~~not worked for the Northeast Market Order for~~ ~~(inaudible)~~  
15 **a long time**, when I was employed by market administrator  
16 before 1978. I think shrinkage was two percent. I mean --  
17 --

18 Q The allowance?

19 A -- allowed two percent. So it's -- 20 percent.

20 Q Okay. Okay. With that -- with that assumption  
21 and understanding that Tables 2 and 3 and 4 and 5 are  
22 similar but just with different operating reserve  
23 assumptions, let's go to Table 4, which is the equivalent  
24 table too using 20 percent. Let's look at -- look at

1       how you utilized the seasonality indexes to calculate the  
2       -- what's calculated on Table 4, the necessary reserves.

3               The first two columns are simply the indexes  
4       that we just looked at on Table 1.

5               A     It's a repeat of Table 1, yes.

6               Q     Okay. Now, the third column from the -- from  
7       the left, can you tell us what that information is?

8               A     Okay. It's January -- let's see. January for  
9       five years, 1995 through 1999.

10              Q     The average producer milk deliveries for  
11       January --

12              A     Yeah.

13              Q     Okay.

14              A     February is -- February for 1995 to 1999.

15       That's five -- five year average. That's actually in  
16       Footnote 1, five year average, 1995 to 1999.

17              Q     Okay. And so the fluid demand, the fourth  
18       column, is -- is the same information, a five-year average  
19       demand in those orders?

20              A     That's correct.

21              Q     Plus the Class 1 utilization?

22              A     Class 1 utilization, that's correct.

1 Q Now, the column that's -- that's the fifth  
2 column, "Operating Reserves," how was that column  
3 calculated?

4 A That's simply 20 percent of -- 20 percent of  
5 the previous column.

6 Q So Column 5 is 20 percent of Column 4?

7 A That's correct.

8 Q And assuming that 20 percent is an operating  
9 reserve needed, you are calculating that you'd need an  
10 additional 5700 million in January -- 5700 million pounds  
11 per day in the market as a whole for the reserve?

12 A Yeah. 5,700,000 pounds per day in January and  
13 5 million --

14 Q 5.7 million pounds, yeah.

15 A That's correct.

16 Q Okay. And staying on January then, what is the  
17 seasonal reserve, Column 6? How is that calculated?

18 A Okay. You -- you have to look at the Column 5.

19 (Pause)

20 BY MR. BESHORE:

21 A If -- if you -- if you need to satisfy that  
22 -- (inaudible). If you need to satisfy ~~(inaudible)~~ **fluid**  
23 **demand** and also operating reserve, 20 percent operating  
24 reserve or ~~(inaudible)~~ **total** as that -- that -- if you add

1 -- ~~full~~ **fluid** demand and the operating reserve, that's the  
2 highest among the (inaudible) **total month**. And if you --  
3 if you -- (inaudible) -- can fully satisfy -- ~~489~~ **fluid**  
4 **demand** and 20 percent operating reserve, then you don't  
5 have any seasonal reserve for those months. So in  
6 October, seasonal reserve is zero.

7 Q Okay.

8 A But when -- and -- go back to Column 1 because  
9 the seasonality of milk deliveries, you're -- you have  
10 higher production in ~~---month~~ **other months**. Suppose you  
11 have the same == **herd** and then you will have seasonal  
12 reserve as a result.

13 Q So in order to have the net amount you need for  
14 Class 1 in October, fluid demand and operating reserve, in  
15 order to have that net amount produced from the average  
16 herd of cows in this area, that herd of cows is going to  
17 generate -- going back to January, going to produce an  
18 additional 2.688 million pounds per day which you've  
19 identified as a seasonal reserve?

20 A That's correct.

21 Q And in each month going down, in the spring  
22 flush period, the seasonal reserve generated just by the  
23 same herd that you need for -- to satisfy 100 percent of  
24 the fluid market in October, it -- in May and June it will

1 have generated more than 6 million pounds per day of  
2 seasonal reserve milk?

3 A That's correct. Based on the seasonality  
4 index, Column 1.

5 Q Okay. And if you've got 6 million pounds  
6 seasonal reserve in -- in June, that's 6 million pounds a  
7 day, an excess -- seasonal reserves in June that's not  
8 needed for fluid operating -- for fluid demand or  
9 operating reserve, somebody's got to have facilities or  
10 some way of handling that 6 million pounds a day?

11 A Yeah. That's correct. Also, the operating  
12 reserve too -- operating reserve based on the --

13 Q Okay. Now, the necessary -- the next two  
14 columns have the -- the heading above them, "Necessary  
15 Reserves." And Column 7 is -- is milk volume. How is  
16 that calculated?

17 A That simply is Column 5 and Column 6. You have  
18 that on the table. That's -- that's the necessary.

19 Q Okay. So the necessary reserve is the sum of  
20 the operating reserves and the seasonal reserves on each  
21 month?

22 A That's correct.

23 Q Okay. Column 8 then is -- under "Necessary  
24 Reserves" is titled, "Percent Fluid Demand."

1           A     That's the -- you divide Column 7 by Column 4.  
2     That's the percentage you get.

3           Q     Just a ratio of --

4           A     Just a ratio.

5           Q     -- Column 7 to Column 4?

6           A     That's a ratio of how much reserve you need to  
7     satisfy --

8           Q     The net -- the net fluid demand in Column 4?

9           A     Yeah.

10          Q     So, on the basis of Order 2 -- Order 1, 2, and  
11     4 data for the five-year period of time, in -- in June,  
12     just to make sure you have enough milk supply Class 1  
13     market net in October, you need 45 percent more milk in  
14     June, is that correct?

15          A     That's -- yeah, that's correct, according to my  
16     calculation.

17          Q     Going then to the last two columns which you  
18     have headed, "Total Reserves," can you tell us what those  
19     are?

20          A     Total reserves is just -- I divided ~~Column~~  
21     **Class 3** and ~~Column 4~~ **Class 4 milk** - market ~~(inaudible)~~ of  
22     **the total market** my -- my view that this is -- necessary  
23     reserve for the Class 3 and Class 4 milk is ~~(inaudible)~~  
24     **what I call it** extra reserves. This milk ~~==~~ **is pooled** and

1 the market order and they are ~~extra~~ **actual** reserve that  
2 can be called upon in case there's a shortage in the  
3 market in this ~~core~~ **call** provision and the market order.  
4 And so in a sense it's -- the source of half of the  
5 reserve, extra reserves.

6 Q Basically, that column is just the -- the total  
7 volume --

8 A Of Class 3 and -- I mean, 3 and 4 --

9 Q The total volumes -- the total volumes of the  
10 orders --

11 A Of less --

12 Q -- less the amounts that you have previously  
13 identified as needed for fluid demand operating reserve  
14 and seasonal reserves? Is that -- am I right?

15 A That's correct.

16 Q Now, is -- does Table 4 then depict the -- the  
17 volumes of milk which need to be handled in order to  
18 balance the Class 1 market in this aggregate marketplace?

19 A That's correct.

20 Q Okay. Let's go to Table 5, then, if we can.  
21 Table 5 is titled, "Estimated Cost of Balancing Necessary  
22 Reserves Assuming 20 Percent Operating Reserves, Northeast  
23 Orders." Again, it's on a monthly basis and there are  
24 seven or eight columns here.

1           The first column is identified as, "Unused  
2           Capacity Caused by Fluctuation in Necessary Reserves."  
3           Can -- and -- and I note in that column you've got a zero  
4           in June. Can you tell us what's -- what's in Column 1?

5           A     If you -- if you go back to Column -- I mean,  
6           Table 4, that's the highest volume -- Column 7. Necessary  
7           reserve -- reserves is highest in June. And so if you  
8           have, I assume, all of the ~~(inaudible)~~ **powder plants** to  
9           take care of all of those ~~---(inaudible)---time of milk~~  
10          **11.8 million pounds of milk.**

11          Q     Okay. So --

12          A     So you have -- capacity is zero. Okay. Now,  
13          January I have ~~3.4~~ **8.4 million pounds** in necessary  
14          reserve. And ~~7.8~~ **11.8** minus ~~3.4~~ **8.4** I think should come  
15          out to 3.4.

16          Q     Okay.

17          A     So that's -- that's how I calculated it.

18          Q     Okay. So you determined, in -- in going to  
19          Table 5 then, that in June -- on Table 4 in June, the peak  
20          month of necessary reserves, you needed plant capacity to  
21          handle 11.7 million pounds per day?

22          A     That's correct.

1 Q Okay. And you used the configuration of four 3  
2 million-pounds-a-day butter == **powder** plants to handle  
3 that 12 million pounds a day of milk?

4 A That's correct.

5 Q Okay. So when you have the plants which are  
6 going to be full in June, in January you have 3.4 million  
7 pounds of unused plant capacity necessary in June but not  
8 -- but not used in January. One of the plants is -- the  
9 equivalent of one of the plants is completely idle in  
10 January, correct?

11 A Just about, yeah.

12 Q And the unused capacity in the other months is  
13 shown respectively down Column 1 on Table 5, correct?

14 A That's correct.

15 Q Now, what is -- what is Column 2, which is  
16 called, "Unused Capacity, Percent of Peak Necessary  
17 Reserves"?

18 A Okay. The peak necessary reserve volume is  
19 11.8. And your January unused capacity is 3.4 million.  
20 So 3.4 million is ~~39~~ **29** percent of 11.8. The numbers  
21 ~~(inaudible)~~ **around 29**.

22 Q So that's just a ratio --

23 A That's a ratio of -- to the highest capacity  
24 you need to ~~(inaudible)~~ **balance**.

1 Q And again, in June at the peak of the flush  
2 when you need all the plant capacity and it's full, it's  
3 zero unused?

4 A That's correct.

5 Q Let's go to Column 3, "Fixed and Overhead Costs  
6 of Reserve Balancing." And you -- you touched on this in  
7 your -- in your prepared testimony. Can you explain how  
8 that -- how those numbers were calculated?

9 A Fixed and overhead is -- that's included -- to  
10 build a new plant, say 3 million pound a day plant, plus  
11 the -- I think I say licenses ~~(inaudible)~~ **over - and other**  
12 overhead.

13 Q The body of your publication details the -- the  
14 line items that go into that calculation, correct? That go  
15 into that estimate?

16 A Yeah. That includes -- just a ~~---(inaudible)---~~  
17 ~~---cost of ---(inaudible)---~~ **total capital costs of land,**  
18 **building, incinerator machinery,** and equipment --  
19 equipment and estimated overhead and taxes, licenses,  
20 insurance, and reserve cost.

21 Okay. I used 28 million for a new plant for 3  
22 million pounds a day. This is a very conservative --  
23 number because some new plants now for that volume, to my

1 knowledge, cost -- are costing 40 and 50 million --  
2 million pounds -- million dollars.

3 The reason I used \$28 million for the plant is  
4 ~~they just started in 2000~~ **I did a study in 2000,2001** if  
5 you recall, between late 1990s to -- up to now -- up to  
6 now, not -- to my knowledge, no -- no -- no new  
7 ~~(inaudible)~~ **butter-powder plants** was built in this  
8 country. And I -- there were some extensions but no  
9 ~~(inaudible)~~ **new** plant. So I didn't -- I couldn't get the  
10 ~~(inaudible)~~ **a hold of** more up-to-date numbers. And ~~20~~ **28**  
11 million was based on a study I did for the co-op that was  
12 building a plant back in 1994.

13 I could have used conversion in the releases to  
14 -- you know, to adjust it to a more current number but I  
15 might -- if I did that, if I had done that, I might be  
16 accused of ~~inverting~~ **inflating** cost. But 28 million was a  
17 -- number I got from consulting with ~~a new~~ **an engineering**  
18 company.

19 So if my number is low, you can plug in your  
20 own numbers and calculate your own cost.

21 Q But it was -- it was a firm number that you had  
22 --

23 A Back in 1994.

1           Q     -- in '94, and in your judgment it represents a  
2 fairly conservative cost for the present day of this plant  
3 capacity?

4           A     That's correct.

5           Q     From that you came up with what figures?

6           A     Twenty-nine percent of the capacity. And -- if  
7 you have four plants with an estimated --

8                     (Pause)

9                     BY MR. BESHORE:

10          A     Those four plants -- let me see.

11                     (Pause)

12                     BY MR. BESHORE:

13          A     Okay. A plant -- if you opened at full  
14 capacity, 100 percent of the overhead and fixed cost is  
15 assumed by ~~(inaudible)~~ **total volume**. Okay. If you -- so  
16 -- and there's unused capacity that -- for January is 29  
17 percent. And just ~~(inaudible)~~ **allocate** the overhead -- 29  
18 percent of the overhead and fixed cost to give you unused  
19 capacity.

20          Q     Twenty-nine percent of the -- of --

21          A     Of the fixed and overhead --

22          Q     Cost per month?

23          A     Per month is assigned to the unused capacity.

1           Q     Okay.  And then each month you just assign --  
2           the calculated reserve percentage in Column 2, the  
3           calculated unused capacity, percent of the necessary  
4           reserves in Column 2, you apply to the fixed and overhead  
5           costs of the -- of the plant and that gives you Column 3?

6           A     That's correct.

7           Q     And of course, in June when the plant's full,  
8           there's zero cost attributed to the unused capacity  
9           because it's all being used?

10          A     That's correct.

11          Q     And the -- the sum of the columns on an annual  
12          basis then for 12 months is just in excess of \$3 million,  
13          as you reported in your -- your summary earlier?

14          A     That's -- that's correct.

15          Q     Now, the remainder of the columns of Table 5  
16          here have a super -- have a heading over all of them that  
17          is, "Plant Cost Increases on the Actual Processed Volume  
18          Caused by Unused Capacity."  I think you explained that in  
19          your summary, but are you -- you're saying that every  
20          pound of product -- when your plant isn't running full, it  
21          costs you more money to produce every pound of product per  
22          -- per unit than it would if it's full?

23          A     That's correct.  Because the cost of the plant  
24          can be -- the direct cost of the plant can be ~~(inaudible)~~

1 **variable, what's called** variable costs. But a lot of them  
2 ~~(inaudible)~~ **semi-variable, semi-fixed that affects** the  
3 cost of the ~~(inaudible)~~ **throughput**. If you ~~---~~~~(inaudible)~~  
4 **== your throughput is more than the semi-fixed** costs  
5 ~~(inaudible)~~ **and semi-variable costs** ~~(inaudible)~~ **per-unit**  
6 would be higher.

7 Q Okay. Now, you detail that in your -- in your  
8 report, which is Exhibit 12. And I don't want you to go  
9 through it and, you know, repeat that methodology. But  
10 just understand the concept that these are cost increases  
11 on the actual processed volume because of the unused  
12 capacity?

13 A That's correct.

14 Q Okay. Now, the first column you calculated per  
15 pound of butter or powder, you have a Footnote 1 which  
16 says, estimated to increase by 0.1 cent per pound of  
17 product per percentage of point of ~~unused plant capacity~~.  
18 Can you explain how you derived that -- that rate of  
19 increased cost?

20 A Back in 1993, I did -- me and my assistant did  
21 a study ~~on --- based on the --- use of ---~~ **based on 9 years**  
22 **of plant** cost data. And ~~(inaudible)~~ **we ran a regression**  
23 **analysis** on the cost of ~~(inaudible)~~ **manufacturing** butter,  
24 powder, and cheese and try to see if it's -- what's --

1 what effect the cost, ~~cost would give me~~ **plant cost per**  
2 **unit**. And we have various different variables in there.  
3 And it's ~~(inaudible) -- capacity -- (inaudible)~~ **multiple**  
4 **regression analysis including capacity calculation scale**  
5 **to plant and some other variables.**

6 And the -- the -- the -- **reason coefficient**  
7 associated with capacity ~~(inaudible)~~ **calculation came out**  
8 **as standardized -0.1**. And that means for -- it -- this  
9 can be interpreted as ~~(inaudible)~~ **what I said in the**  
10 **courtroom**, if you are -- if you are ~~(inaudible) -- if you~~  
11 ~~--(inaudible)~~ **-0.1, I think it's in the actual**  
12 **calculation, that means if you increase your plant**  
13 **capacity** used by one percent ~~(inaudible)~~ you just reduce  
14 cost per unit of product by 0.1 cent. And that's pretty  
15 consistent across this type of ~~(inaudible)~~ **butter-powder**  
16 **and** cheese plants.

17 So I -- instead of going to ~~(inaudible)~~  
18 **actual, getting plant cost data**, I just see how -- how it  
19 affected -- how the variation in capacity used affects end  
20 cost. I just used the -- used the -- the number for  
21 simplicity purpose, I guess.

22 Q So you used the factor that you had derived  
23 from previous studies of multiple plant operations?

24 A Yeah, for nine years in time.

1 Q Over a nine year operating period in time?

2 A And the data cover 1993 to -- 1983 to 1991.

3 Q Okay. And in your -- in your judgment in your  
4 field, was that a reliable number to use to estimate the  
5 cost of balancing in this marketplace?

6 A I believe so. Otherwise I wouldn't have used  
7 it.

8 Q Now, another -- we could say that 0.1 cent per  
9 pound -- per percentage point of unused plant capacity is  
10 one cent per pound for each 10 percent of unused plant  
11 capacity?

12 A That's correct.

13 Q Okay. So when you -- looking in the January  
14 line then, when you've got 29 percent of capacity not used  
15 because the milk's not available, it's going to the Class  
16 1 market, that translates into a 2.9 cent per pound  
17 increased cost over --

18 A For the remaining --

19 Q -- for the remaining -- and -- and the same  
20 -- the same on down the line through --

21 A For every month.

22 Q And again, in June when the plant's full, the  
23 costs are what -- what they are and there's nothing  
24 attributed to the cost of balancing?

1           A     That's correct.

2           Q     Okay.  Going to the next column, "Converted to  
3     Per Hundredweight of Milk."  And it has Footnote 2 on it:  
4     assuming per hundredweight of milk generates 4.48 pounds  
5     of butter and ~~0.13~~ 8.13 pounds of nonfat dry milk can be  
6     made.  Are those accepted yield factors in -- for producer  
7     milk of average test?

8           A     That's for long time has been used in CCC's  
9     computation for the price of bulk whole milk.

10          Q     Okay.  So they're the -- the CCC yield factors  
11     that --

12          A     That's correct.

13          Q     -- have been used for many years.  And you used  
14     -- used those yield factors to convert the Column 4 costs  
15     in cents per pounds to cents per hundredweight?

16          A     That's correct.

17          Q     Okay.  So January, every hundredweight of milk  
18     that was actually put through the plant, the cost because  
19     there was unused plant capacity was 36 cents greater than  
20     it would have been in June when the plant was full?

21          A     That's correct.

22          Q     And the same thing down -- straight down  
23     through the fall months when it's even emptier.  In  
24     September, the costs per hundredweight are 62 cents per

1 hundredweight of actual through but greater than they are  
2 in June, correct?

3 A June is --

4 Q June is zero, so it costs 62 cents more per  
5 hundredweight --

6 A Yeah, that's correct.

7 Q -- in September, ~~63~~ 62 cents more per  
8 hundredweight in October?

9 A Mm-hmm. That's correct.

10 Q Now, Column 6 is called, "Per Daily Necessary  
11 Reserve Volume, Dollars Per Day." Can you --

12 A That's the ~~26~~ 36 cents times the -- let's see.

13 (Pause)

14 BY MR. BESHORE:

15 A I believe it's Column 5 times the --

16 (Pause)

17 BY MR. BESHORE:

18 A -- necessary reserve in Table 4.

19 Q That's -- it's Table 5 of Table -- Column 5 of  
20 Table 5, the cents per hundredweight, multiplied times the  
21 Column 7. the milk volume of necessary reserves in January  
22 on Table 4, correct?

23 A I think that's correct.

1 Q So in -- in January then, the cost -- the --  
2 the cost attributable to the necessary reserve volume was  
3 \$30,000 -- 30,000 period and \$36 per day?

4 A That's correct.

5 Q In the market. And of course, in June when  
6 plants were full, there's no cost attributed to that --  
7 balancing need but in September and October, it -- the  
8 cost increases to in excess of \$37,000 per day?

9 A That's correct.

10 Q Cost of balancing the entire market?

11 A That's correct.

12 Q And again, Table -- that Column 6 is volume  
13 -- is the rate in Column 5 of Table 5 times the volume in  
14 Column 7 of Table 4, correct?

15 A Can you repeat that again?

16 Q Yes. Table 6 on -- Column 6 of Table 5 is a  
17 product of the rate in Column 5 of Table 5 times the  
18 volume of necessary reserves in Column 7 of Table 4?

19 A That's correct. That's correct.

20 Q Now let's go to Column 6. Column 6 in Table 5  
21 is the dollars per month --

22 A No, that's Column 7.

23 Q I'm sorry. Per -- Column 6 is per monthly  
24 necessary reserve volume.

1           A     That's the title ~~(inaudible)~~ **per-day**. Yeah.  
2     Okay. Go ahead.

3           Q     Six is per day, 7 looks like 6. No wonder I  
4     was confused. Okay. Seven is dollars per month. So it's  
5     the per day times the number of days per month, is that  
6     correct?

7           A     That's correct.

8           Q     Okay. And then the final column, Column 8?

9           A     That's the total of Column 3 and Column 4.  
10    Column 7, I mean.

11          Q     Total reserve balancing cost?

12          A     That's the -- total fixed cost and -- and the  
13    total cost of ~~(inaudible)~~ **balancing, total plant**, total --  
14    cost for balancing.

15          Q     And in January, the cost -- federal reserve  
16    balance and cost for the market is \$1,232,707 for January?

17          A     That's correct.

18          Q     And the annual cost then, Table 5, the sum at  
19    the bottom of Column 8 is \$11,567,210, right?

20          A     That's correct.

21          Q     So your conclusion then that -- is that the  
22    cost of balancing milk supplies, the necessary reserves  
23    for the Class 1 market in the Northeast, assuming a 20  
24    percent operating reserve is required, is \$11.567 million?

1           A     That's correct.

2           Q     Was your study, which has been marked as  
3 Exhibit 12, subjected to review of --

4           A     It's Exhibit 12.

5           Q     Exhibit 12, I'm sorry. Was it reviewed by  
6 other persons prior to publication?

7           A     We have an ~~individual -- (inaudible)~~ **clearance**  
8 **channel**. I'm the -- I'm the author of the report, so we  
9 have to go through Department ~~(inaudible)~~ **clearance**  
10 process.

11          Q     And the methodology that's used in that Exhibit  
12 12, your study, is that methodology that -- similar  
13 methodology has been utilized in prior -- prior studies  
14 and has been recognized as -- as an accepted methodology  
15 at least for identifying the reserve balance and cost?

16          A     I think I'm the first one to ~~(inaudible)~~ **come**  
17 **up with the methodology**.

18          Q     But you have published some prior studies and  
19 you've cited --

20          A     That's ~~(inaudible)~~ **1985**.

21          Q     -- references.

22                 MR. BESHORE: May I have --

23                 (Pause)

1 MR. BESHORE: Thank you very much, Dr. Ling. I  
2 have no other questions on direct examination.

3 JUDGE BAKER: Thank you, Mr. Beshore. Are  
4 there any other questions of Dr. Ling? Yes, Mr.  
5 Rosenbaum?

6 MR. ROSENBAUM: Your Honor, it's 5:40. I don't  
7 know whether you want to continue at this point. I think  
8 it's -- I know Your Honor had indicated you would be  
9 ending between 5:30 and six, and I don't think we're going  
10 to finish with Dr. Ling today.

11 JUDGE BAKER: Well, what -- what are the wishes  
12 ~~(inaudible)~~ **of everyone, what about you** Mr. Rosenbaum?

13 MR. ROSENBAUM: I'd prefer to start in the  
14 morning.

15 JUDGE BAKER: Oh, would you prefer to start in  
16 the morning? Are there others who wish to question Dr.  
17 Ling? Mr. Vetne. Would you all prefer -- Mr. English.  
18 Do you want to do it now or do you want to start in the  
19 morning?

20 MR. BESHORE: Your Honor, may we inquire of Dr.  
21 Ling what he might prefer?

22 JUDGE BAKER: That's a good idea, yes.

23 (Laughter)

24 JUDGE BAKER: Dr. Ling?

1           THE WITNESS:  If I can help people in this  
2 matter (inaudible) **with what I did in my report** I'll be  
3 happy to come back.

4           JUDGE BAKER:  Very well.  Apparently  
5 (inaudible) **it sounds to me** we're going to be starting  
6 tomorrow morning with Dr. Ling.

7           Before we recess this evening, I'd like to ask,  
8 is there anyone in the room who wishes to give testimony  
9 tonight and who will not be here tomorrow?  This is an  
10 opportunity for anyone to testify who will not be here  
11 tomorrow.

12                   (No response)

13           JUDGE BAKER:  Let the record reflect that there  
14 is no response.

15           It is 5:45, and according to the wishes of the  
16 participants then, we'll recess until 8:30 tomorrow in  
17 this room.  Thank you all.

18                   (Whereupon, at 5:45 p.m., on Tuesday, September  
19 10, 2002, the proceedings were adjourned, to reconvene at  
20 8:30 a.m., on Wednesday, September 11, 2002.)

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