BEFORE THE UNITED STATES DEPARTMENT
OF AGRICULTURE
AGRICULTURAL MARKETING SERVICE

IN RE:) 7 CFR Parts 1005, 1006, and 1007
Milk in the Appalachian, Southeast, and Florida Marketing Areas) Docket No. 23-J-0019
) AMS-DA-23-0003

RULEMAKING HEARING BEFORE

CHIEF PRESIDING ADMINISTRATIVE LAW JUDGE

CHANNING D. STROTHER, JUDGE

February 28, 2023

Volume 2 of 6

ORIGINAL

CASSANDRA M. BEILING, LCR #371
STONE & GEORGE COURT REPORTING
2020 Fieldstone Parkway
Suite 900 - PMB 234
Franklin, Tennessee 37069
615.268.1244

APPEARANCES:

For the Dairy Cooperative Marketing Association:

JOHNSON, DUFFIE, STEWART & WEIDNER
Marvin Beshore, Esq.
Attorney at Law
301 Market Street
P.O. Box 109
Lemoyne, Pennsylvania 17043
(717) 761-4540 (phone)
(717) 761-3015 (fax)
mbeshore@johnsonduffie.com

For Select Milk Producers:

MILTNER REED LLC
Ryan Miltner, Esq.
Attorney at Law
201 East Auglaize Street, Suite 1
Wapakoneta, Ohio 45895
(866) 740-5219 (phone)
ryan@miltner-reed.com

For the USDA - AMS - Dairy Program:

OFFICE OF THE GENERAL COUNSEL
MARKETING, REGULATORY & FOOD SAFETY

Brian Hill, Esq.
Senior Counsel, USDA

Michelle McMurtray, Esq.
Attorney Advisor, USDA

Lauren Becker, Esq.
Dairy Marketing Specialist

Erin Taylor, Director
Order Formulation & Enforcement Division

Rebecca Dickerson
Dairy Marketing Specialist

1400 Independence Avenue Southwest
Washington D.C. 20250

Also Present:

Dennis Tonak
Prairie Farms

** Reporter's Note: All names are spelled phonetically unless otherwise provided to the Reporter by the parties.

I N D E X

Examinations:

Exhibits:

P R O C E E D I N G S

THE COURT: All right. Let's come to order.

Mr. Beshore has got something he wanted to bring up as a preliminary matter. We'll do it off the record.

(Whereupon, a discussion off the record occurred.)

THE COURT: With that we can go on the record.

Off the record, we had a preliminary matter discussing putting -- making sure we had Mr. Hollon's exhibits in proper order. Maybe we can put that on the record.

Mr. Hollon, you're still under oath.

MR. HOLLON: Thank you.

THE COURT: Hollon. How do you pronounce your name? I'm sorry.

MR. HOLLON: Hollon, H-O-L-L-O-N. Hollon.

THE COURT: I got it right.

MR. HOLLON: You did.

THE COURT: Thank you. So you're still under oath. You're still Mr. Beshore's witness.

THE WITNESS: My notebook says page 15.

BY MR. BESHORE:

Q. Start on the first full paragraph on page 15.

A. As noted in Exhibit 28 and 29, distant supplemental milk supplies have been, are, and will be significant components to meeting the demands of pool distributing plants in the Appalachian and Southeast Orders. Examining the shortfall through Exhibit 31, Federal Order 5 Daily Average In-Area Producer Milk and Pool Distributing Plant Demand --

THE REPORTER: Can you make sure your microphone is on? It's not like it was before.

THE WITNESS: Hello. Hello.

THE REPORTER: On or closer.

THE WITNESS: I neither turned it off nor on.

THE REPORTER: I don't know. It's a lot lower than it was before. Thank you.

THE WITNESS: Okay.

Exhibit 31, FO 5 Daily Average In-Area Producer Milk and Pool Distributing Plant Demand 2019 through 2021, sharpens the picture.

The vertical bars represent in-area producer milk. That milk is produced in the marketing area and delivered to Order 5 pool distributing plants. While some milk produced in Order 5 is delivered to other order plants, the majority of deliveries are to pool distributing plants located inside the marketing area.

The horizontal line represents the demand from Order 5 pool distributing plants. Each data point is a three-year average of demand and supply for 2019 through 2021. Averaging each data point would smooth out the unusual fluctuations that might be due to situations such as weather conditions or plant closures.

Both the line and the bars reflect known seasonality factors in the southeastern orders such as demand falling off, reflective of the school calendars in the late spring to midsummer months, and recovering through the early fall into year end. The graphs also depict production tapering noticeably in the summer months due to heat and slowly recovering by the end of the fall.

The peak shortfall month for Order 5

occurred in October with a need of 4.9 million pounds per day. Using a load size of 49,700 pounds, 99 loads of supplemental milk per day were required.

Exhibit 32 --

MR. BESHORE: Okay. At this point, there's a -- this is the -- Exhibit 32 is for Federal Order 7. I think in many of the sets of exhibits you have, there's a Federal Order 6 graph of this type which is not referred to. So you've got to get to the Federal Order 7, Daily Average In-Area Producer Milk and Pool Distributing Plant Demand graph, which is Exhibit 32, Federal Order 7.

THE REPORTER: I don't have 31 marked.

MR. BESHORE: 31 is Federal Order 5.

THE REPORTER: Federal Order 5?

MR. BESHORE: Yes.

(Whereupon, Exhibit Number 31 was marked for identification.)

MR. BESHORE: I think, Elvin, we should stop when you say every exhibit, just make sure the court reporter's got it.

So 32 is FO 7. If it says FO 6, that one is skipped for the time being.

THE COURT: Counsel, can we just draw a line through FO 6 Daily Average In-Area Producer?

MR. BESHORE: Got to look to the witness for the answer to that. I believe that it is used at another point in this subsequent testimony.

THE COURT: Fair enough.

BY MR. BESHORE:

Q. Correct, Elvin?

A. Correct.

(Whereupon, Exhibit Number 32 was marked for identification.)

MR. BESHORE: So we don't need to draw a line through it, but just -- don't number it at this point.

THE WITNESS: Exhibit 32, FO 7 Daily Average In-Area Producer Milk and Pool Distributing Plant Demand 2019 through 2021, depicts all the same types of data, the marketing conditions for that order.

The largest shortfall month for

Order 7 was September, with an average daily shortfall of 6.5 million pounds per day or 131 loads. Note, this is an average daily calculation. So the shortfall would be an everyday problem for market suppliers in the designated month.

The DCMA cooperatives are the predominant suppliers in the southeastern orders. Their task in making supplier arrangements includes finding multiple suppliers, as few individual supply sources, if any, have the noted large volumes needed to fill demand, along with enough transport equipment and labor to move the milk volumes long distances and get the transport equipment back in time for the next pickup.

While we can calculate an average daily volume, the actual daily volume for weekly or holiday milk demand is rarely a level average, so arrangements made will need to accommodate variation. Supplemental milk suppliers also have their own sales and demand variation that have to be allowed for.

The transportation credit system is a key tool in making those arrangements. As currently structured, the system is modeled to direct monies to the time of most need. While there may be supplemental milk needed in months other than the payout month, the current system focuses available monies to the most needed period.

Our proposal will convert the month of February from a mandatory payout month to an optional payout month in response to the principle of directing available funds to the months most needed.

The closure of fluid milk distributing plants increases marketing costs for the remaining Southeast dairy farms.

(Whereupon, Exhibit Number 33 was marked for identification.)

THE WITNESS: Exhibit 33, Number of Pool Distributing Plants, Southeastern Orders, December 2000 and December 2022, details the trend of pool distributing plant closures using a count from December of each year. The count shows a steady decrease in all three orders: Down 10 plants, 38 percent, in Order 5; down 4, 33 percent, in Order 6; and down 17, 53 percent, in Order 7.

Assuming most farms deliver milk to

their closest plant if they can, fewer plants mean longer distances, higher haul costs from farm to plant for the remaining dairy farms. In some cases, this can mean closure of the farm. We are unaware of any new construction for fluid milk plants in the Southeast currently.

Another reason for supporting a review and update of the transportation credit provisions is detailed in Exhibit 34, Comparison of the Deficit in In-Area Milk Production and Class I and II Use December 2020 and May 2021.

(Whereupon, Exhibit Number 34 was marked for identification.)

THE WITNESS: This table outlines a comparison of the pounds of in-area milk production versus Class I and Class II use in the southeastern orders for December 2020 and May 2021. May and December are two months of the year where the market administrators routinely publish all milk production produced within the marketing area and pooled on any federal order.

Consequently, the data shows that only in May 2021, in the Florida Order, did in-area milk production meet Class I use in any of the three orders through the six comparisons. In all the other five comparisons, supply was less than demand, ranging from 67 percent to 97 percent of demand.

When Class II demand is added to the total demand, the ability to fill all orders is much lower, ranging from a low of 54 percent, Order 7, to a high, but less than full, 92 percent of orders for milk at Florida Order plants. There is no reason to think the outcome would be significantly different in any of the other ten months.

Clearly, demand is greater than in-area supply, and the southeastern orders must reach to other orders for supplemental supplies to meet demand.

Furthermore, as previously noted, the distances from which the supplemental milk is obtained continue to increase as in-area production declines and the number of farms decrease. These marketing conditions cause the transportation credit balancing funds to be depleted at a faster rate than the rate at which handlers are assessed.

A second example of the need to review and update the transportation credit system is shown in Exhibit 35, two pages, Transportation Credit System Data, Federal Orders 5 and 7, 2020 through 2022.

(Whereupon, Exhibit Number 35 was marked for identification.)

THE WITNESS: Transportation credit system information -- start over.

Transportation credit system data is reviewed here for the years 2020 through 2022 for both Order 5 and 7. The situation in these years is very similar to earlier years.

Columns 1 and 9 are the assessment rates for each of the two orders for the years shown.

Columns 2 and 10 are the Class I pounds for each of the two orders for the years shown.

Columns 3 through 5 and 11 through 13 are the total assessment dollars generated in each order, the total credits paid in each order, and the total credits claimed in each order.

Columns 6 and 14 are the total pounds claimed for each order.

And Columns 7 and 15 are the prorated percentage of claims paid in each order for each month.

Columns 8 and 16 are the total -- scratch. Columns 8 and 16 are the annual average of the prorations over the months that are eligible for making a claim for reimbursement.

Based on this data, showing claims for partial reimbursement for transportation made to fill distributing plant demands for milk, significant volumes of supplemental milk are needed in the southeastern order.

In the Appalachian Order, for the three years shown, milk that met the definition for transportation credit eligibility totaled 912.033 million pounds or approximately 18,364 tankers of milk, using a 49,700 payload, milk that would never be needed if enough local milk was available. The loads per year were: in 2020, 5,374; for 2021, 6,347; and for 2022, 6,642, a steadily increasing trend.

While getting a transportation credit is a desirable outcome, credits are deliberately constructed to pay out less than the total hauling cost, and they are not a reason, standing alone, to seek distant milk supplies unless absolutely necessary.

Note that in Order 5, 100 percent of all claims made were paid. This too is a desirable outcome. But as we will show in later testimony, the current transportation credit payout calculations are woefully underfunded, as they have not been reviewed or updated since the 2006 hearing and, thus, fall far short of providing a reasonable partial reimbursement of current, actual transportation costs.

The Southeast Order data for the same three-year period shows 2.663 billion pounds of milk or 53,590 tankers were accompanied by a claim for transportation credit. There were claims for 15,869 tankers of supplemental milk made in 2020, 19,505 in 2021, and 18,217 for 2022. For all the same reasons, this situation too would not occur unless absolutely necessary to fill a demand order.

Furthermore, in the Southeast Order, only 74 percent of all claims made were paid over the three-year period, as the level of reimbursement was compromised by too few dollars available to pay all claims.

Columns 7 and 8 and 15 through 16 show the percent of prorated transportation credit payments monthly for the months in which payments were made and the annual average for both orders for both years.

The Federal Order 5 paid all claims in both years, as shown in Columns 7 and 8. However, Federal Order 7 paid only 90 percent, 67 percent and 66 percent, Columns 15 and 16, of eligible claims submitted.

No party can claim that the current transportation credit system is excessive or yields a payment greater than actual cost. Two of the most critical components in computing the transportation credit payment amount are the base diesel fuel price and the base haul rate per mile charged by transport carriers.

These two components are key in the process of updating the mileage rate factor. As noted in the 2014 final rule for the 2006 hearing, were $1.42 per gallon of diesel fuel and a base haul rate of $1.91 per mile.

Today, those same factors, which DCMA is proposing as part of the updating process, are $2.26 per gallon for diesel fuel and $3.67 per loaded mile for the base haul rate.

Updated data, which we will present

shortly, Exhibit 46, Calculation of Mileage Rate Factor 2020 and 2022...

MR. HILL: Mr. Hollon, you said Exhibit 46. Did you mean 36, or you did mean 46?

THE WITNESS: It's an exhibit we're going to come to.

MR. HILL: Okay. It's in our packet.

THE WITNESS: And in our sequence, it's going to be 46.

MR. HILL: Okay.

THE WITNESS: But that doesn't help the court reporter.

THE REPORTER: Do I have it?

MR. BESHORE: Everybody, take a minute to find it. It's among the copied exhibits you have by the title, but it's misspelled.

(Whereupon, a discussion off the record occurred.)

THE COURT: Back on the record.

THE WITNESS: Updated data which we will present shortly, Exhibit 46, Calculation of Mileage Rate Factor 2020 through 2022, could increase the mileage rate factor by approximately 65 percent and, if adopted, provide a reimbursement much closer to the current actual cost.

Additionally, as noted earlier, the reimbursement process is compromised by the fact that the assessment rate that funds the transportation credit systems is insufficient to fully pay the claims made by milk suppliers.

Exhibit 36, Comparison of Portion of Class I Transportation Cost to Amount Covered by Federal Order Transportation Payment 2020 through 2022 --

(Whereupon, Exhibit Number 36 was marked for identification.)

THE WITNESS: -- combines the updated MRF calculation that DCMA will propose and the shortfall caused by the need to prorate payments.

For 2020, in both orders, the annual average miles rate factor calculation was .00436, that would be $0.00436, per hundredweight per loaded mile against a DCMA-proposed cost of $0.00745 per hundredweight per loaded mile, accounting for 58 percent of the cost incurred by the buyer.

For Order 5, this rate, albeit short of estimated cost, was paid to the claimant. But in Order 7, the reimbursement payment was further reduced to only 52.6 percent of the allowable rate due to the proration impact.

In 2021, following the same logic, an estimated mileage rate factor of $0.00760, the final payments amounted to 59.9 percent of calculated costs in Order 5 and 40 percent in Order 7.

And in 2022, with an estimated mileage rate factor of $0.00817, the final percentage of cost covered was 63.8 percent for Order 5 and 42.3 percent for Order 7. Clearly, an updating of the transportation credit components needs serious review.

It is instructive to note that pounds claimed is a good barometer of total market need, as it is in the claimants' best interest to file for any and all eligible milk. If 100 percent of all claims were paid, one would want to collect as much reimbursement as possible. And if the payments are prorated, everyone is prorated equally. So if a claimant chose not to submit an eligible pound, the benefit would accrue to a competitor.

Additionally, some short season supplemental milk contractual agreements that I have been familiar with from both the viewpoint of seller and buyer have provisions that allow the buyer to take less milk than the maximum contracted, but with a stay home fee paid to the seller for volumes not taken.

This allows the seller to return -- a return on milk not taken, short notice, and the buyer to save on some of the premium cost and all of the freight cost on milk not taken. This allows the buyer to better manage the amount of supplemental milk actually purchased and transported.

So combining the fact that suppliers purchase milk that is transportation credit deficit, choose to contract for more than they think they will need so no customer is short their orders and agree to pay for milk they don't even take, we have a good indication that the market is short and can use the benefit of updating the transportation credit system.

(Whereupon, Exhibit Number 37 was marked for identification.)

THE WITNESS: Exhibit 37, Example of Shortfall in Current Transportation Credit Cost Coverage, will demonstrate how much the existing provisions have become eroded.

Four different supply/demand scenarios are outlined, contrasting the return from existing transportation credit calculations and the updated transportation credit calculations as proposed by DCMA. The four scenarios are typical sources for supplemental milk arrangements and would be representative of many actual arrangements.

Scenario 1, the methodology is identical for each of the other three scenarios, compares a load of milk from Muleshoe, Texas, a common west Texas supplemental supply location to the Southeast, with a delivery plant located in Atlanta, Georgia.

Column 1 titles the base constants of the calculation.

Row A lists the location where the load of supplemental milk originated from.

Row B, the location where it was

delivered.

Row C lists the miles between each location.

Row D, 85 miles, is from the current provisions and is the number of miles used to reflect the haul obligation of the supplier.

Row F is the DCMA suggested provision of using a 15 percent reduction in the total miles of the haul.

Row G and H are the Class I differential, first for the shipping location and following for the delivery location.

The calculation in Columns 2 and 3 -- scratch that sentence.

The calculation section is in Columns 2 and 3. Column 2 reflects calculations based on the annual average current provision mileage rate factor; and Column 3, the same calculations, but using the annual average DCMA provision mileage rate factor for 2021 of $0.00762.

Row J. The mileage rate factor is the resulting calculation from using the provision language and the four factors in the table above.

Calculations in Column 2 flow from

the existing mileage rate factor and Column 3 from the proposed mileage rate factor. The mileage rate factor times adjusted miles row performs the two multiplications, one using miles less 85 provision and the other less 15 percent of miles.

The next row, difference differential, Row L, is the result of subtracting the supply location differential from the delivery location differential. The difference in differential is then subtracted from the mileage rate factor times adjusted miles calculation and then multiplied by the tank weight per hundredweight of 500, Row O. Transportation credit payment is the final calculation.

For the Muleshoe to Atalanta scenario, the resulting payment from the use of current factors is $1,843, and from the proposed factors, $3,180, a shortfall of $1,337. The existing transportation payment covers only 58 percent of the credit payment, as calculated using the proposed MRF factors.

The other three examples all follow the same calculation steps. For the Rensselear, Indiana, location, the current provision payment would cover 25 percent of the payment, as calculated by the updated MRF provision. From Lancaster, Pennsylvania, the coverage would be 54 percent, and from Orrville, Ohio -- scratch. I'm going to start this sentence completely over.

The other three examples follow all the same calculation steps. For the Rensselear, Indiana, location, the current provision payment would cover 25 percent of the payment, as calculated by the updated MRF provision. From Lancaster, Pennsylvania, the coverage would be 54 percent, and from Orrville, Ohio, 35 percent.

These from/to choices are representative -- again. These from/to choices are representative of the market as a whole, and in no case does the current payment come close to reimbursing the payment required today.

Construction of the Mileage Rate Factor.

DCMA proposes several changes to the mileage rate factor to update its calculation from the last time changes were made. The calculation process for computing the transportation credit was initially a static fixed rate formula where all the components were fixed unless changes were made at a hearing. This greatly limited the ability of the payment amount to reflect changing market conditions.

The formula construction was later changed to allow the mileage rate factor to adjust monthly with changes in diesel fuel prices, which allowed some reflection of more current changes in transportation costs. Adjusting hauling cost rates for changes in fuel costs is a common practice in the industry. The DCMA proposal continues that practice.

At this point, we will reconstruct the mileage rate factor with more current data. Once reconstructed, we will use it to calculate assessments necessary to fund the transportation credits as historically applied for by handlers and show to what extent the newly calculated funds cover the applied-for credits.

We will make certain choices for time frames and the cost of milk associated -- and the cost of milk movement associated with the chosen time frames. Obviously, different time frames will yield differing results, and it is our task to justify our choices. We understand that the movement of these time frames, a few months forward or backward, will yield slightly different results, but the general results will be the same.

The process we used to compute adjustments to the MRF was to seek a recent period where diesel fuel prices were reasonably constant, establishing a base diesel fuel price.

Then we surveyed base haul rates during that period, reviewing the miles per gallon for combination trucks from the Federal Highway Administration data -- sorry. Back up.

Then we surveyed base haul rates during that period, reviewing the miles per gallon for combination trucks from the Federal Highway Administration, in parentheses, supporting that data by industry experience where necessary, closed paren, and finally, survey the tank size of transport equipment used to haul supplemental milk into the southeastern orders.

Once done, the resulting changes were reviewed against the assessment rate to determine at what level it should be set at to ensure that eligible transportation costs could be paid. The entire process was also reviewed to ensure that a balance has been established between the need for adequate reimbursement rate versus a rate that might incent uneconomic activity, given competitive conditions in the marketplace.

Mileage Rate Factor Components, Base Diesel Rate.

To track diesel fuel costs and calculate a base diesel rate, the DCMA proposal supports continued use of Energy Information Administration of the United States Department of Energy, EIA, data. It is a common dairy industry fuel cost reference and is readily available.

EIA publishes weekly diesel price data for nine U.S. sub-regions. Given the geographic alignment, the continued use of the Lower Atlantic and Gulf Coast EIA regions in computing the monthly MRF would be appropriate for the Appalachian and Southeast Order marketing areas.

The EIA Lower Atlantic region is comprised of the states of Virginia, West Virginia, North Carolina, South Carolina, Georgia, and Florida.

The EIA Gulf Coast region is comprised of the states of Alabama, Mississippi, Arkansas, Louisiana, Texas, and New Mexico.

Exhibit 38, three pages...

MR. BESHORE: 38 is the graph.

THE WITNESS: Okay. I'm backing up. Exhibit 38, Weekly Number 2 Diesel Prices, Lower Atlantic, PADD 1C, Gulf Coast, PADD 3, Retail Prices, Dollars per Gallon.

(Whereupon, Exhibit Number 38 was marked for identification.)

THE WITNESS: And Exhibit 39, four pages. Weekly EIA Diesel Fuel Prices, Lower Atlantic and Gulf Coast Regions, 2020 through 2023.

MR. BESHORE: These two exhibits are flip-flopped in order in the materials. The graph is one page, and the data that's on the graph are four pages prior.

MS. TAYLOR: Elvin, for clarity, can you just state if it starts October 12, the table?

THE WITNESS: Uh-huh.

MS. TAYLOR: And goes through April 18?

THE WITNESS: It actually starts on January 6.

MS. TAYLOR: January 6. I have the page wrong. Okay.

THE COURT: Let's go off the

record.

(Whereupon, a discussion off the record occurred.)

THE COURT: All right. Let's go back on the record.

MR. BESHORE: Exhibit 39 is Weekly EIA Diesel Fuel Prices Lower Atlantic and Gulf Coast Regions, 2020 through 2023. So it's four pages of these weekly price data.

The first page runs from January 06, 2020, through October 5, 2020. Second page, October 12, 2020, through July 12, 2021. Third page, July 19, 2021, through April 18, 2022. And the fourth page, April 25, 2022, through January 2, 2023.

(Whereupon, Exhibit Number 39 was marked for identification.)

THE COURT: Let's go off the record again.

(Whereupon, a discussion off the record occurred.)

THE COURT: We can go back on the record.

THE WITNESS: I'm not sure where we stopped.

Exhibit 39, four pages, Weekly EIA Diesel Fuel Prices Lower Atlantic and Gulf Coast Regions, 2020 through 2023, show the steps and results of establishing the proposed base diesel fuel rate.

DCMA reviewed weekly diesel fuel prices for 2020 and 2022. When graphed, the weekly prices for May 4th, 2020, through November 9, 2020, stood out as a 28-week period of relatively stable prices. Visually, these weeks had the best combination of low fluctuation in price and a longer time span for stable prices.

Diesel fuel prices for the two regions averaged $2.262 per gallon with a median price of $2.244, supporting the adoption as a stable period. Note that the current MRF calculation uses a base diesel rate fuel price of $1.42 per gallon. This difference demonstrates the need to update the factors in the calculation, and the DCMA proposal supports using $2.26 as the base diesel price.

Miles Per Gallon, Combination Trucks.

The DCMA proposal supports using miles per gallon fuel efficiency data from the U.S. Department of Transportation, Federal Highway

Administration, Statistics, Washington, D.C., Annual issues, Table VM-1, available at http://www.fhwa.dot.gov/policyinformation/statistics.cfm as of January 12, 2020, for combination trucks. This information is shown on Exhibit 40, Table 4-14M, colon, Combination Truck Fuel Consumption.

It was on the back.

THE REPORTER: It's on the back of one of the exhibits?

THE WITNESS: It's on the back.

THE REPORTER: And that's Exhibit 40?

THE WITNESS: 40.

THE REPORTER: Thank you.

(Whereupon, Exhibit Number 40 was marked for identification.)

THE WITNESS: The definition for a combination truck per FHWA is, quote, "a power or tractor unit with one or more semi-trailers or converted trailers by means of a converter gear," closed quote. This definition describes a dairy transport tanker.

This data is readily available and

has been used in previous hearings for this purpose. However, there is a lengthy lag in the reporting.

The most recently published miles per gallon rate is 6.0478 for 2019. An estimate was made to calculate a value for 2022 by using the five-year change in miles per gallon per year for 2014 through 2019. The five-year average was 0.0430 per year and ranged from a high of 0.0958 to a low of 0.25 -- starting over. 0.0252 in 2018. Adding 0.0430 to the 2019 published 6.0478 and then repeating that process for each year resulted for 2022 in a miles per gallon estimate of 6.1770.

Consulting with members of DCMA that maintain transport operations would indicate a miles per gallon of 6.2 for 2022 would be a reasonable fleet average across an operation with varying transport tasks and varying ages of equipment.

It should be noted that the higher the presumed combination truck fuel economy, the lower the mileage rate factor. The proponents' proposal to use a miles per gallon fuel economy rate on the upper end of the likely range is an additional protection against the possibility of establishing a rate which promotes uneconomic movements of milk.

Base Haul Rate.

To determine a base haul rate, DCMA members were surveyed for their actual haul rate experience during September and October 2020. This period was months of heavy supplemental milk purchases. Hence, many haul bills were generated. The sample period was within the weeks of May 4, 2020, to November 9, 2020, the same period that the average fuel rate was drawn from, $2.26 per gallon.

Members were asked to provide a day, date, transport firm and its location, the state from which the milk was purchased, the plant delivered to, the load weight, the miles traveled, the rate per mile, and the total amount billed for that haul. The data was aggregated by the DCMA administrator to retain confidentiality purposes, and summary data was provided for this record.

Exhibit 41, DCMA Haul Cost Survey September and October 2020 --

(Whereupon, Exhibit Number 41 was marked for identification.)

THE WITNESS: -- is an example of the data survey form for review. There were 1,225 observations in September and 1,726 in October. Purchases were made from nine states: Indiana, Kansas, Maryland, Michigan, New York, Oklahoma, Ohio, Pennsylvania, and Texas. All are traditional sources of supplemental milk purchases over various periods of time for various customers across the Southeast Orders.

Exhibit 42, Plants Included in DCMA Haul Cost Survey September 2020 --

(Whereupon, Exhibit Number 42 was marked for identification.)

THE WITNESS: -- lists by order the plants, cities, and states where information was drawn from. As you can see, the geographic reach is expansive. Of the nine DCMA members, two did not have any data to report, as they did not procure any supplemental milk supplies for which a transportation credit could be claimed.

Exhibit 43. Transport Haul Survey DCMA Members, September and October 2020.

(Whereupon, Exhibit Number 43 was marked for identification.)

THE COURT: Let me ask the witness a question.

It's got a very similar title to Exhibit 41. Is that really the same document?

THE WITNESS: No.

THE COURT: All right. Thank you.

THE WITNESS: Oh, okay. One of those is an example of what the survey form would have looked like.

MR. BESHORE: That's 41.

THE WITNESS: That's 41. And 43 is a summary of all of the data.

THE COURT: Very well. Sorry for the interruption.

Off the record.

(Whereupon, a discussion off the record occurred.)

THE COURT: Back on the record.

THE WITNESS: Exhibit 43, Transport Haul Survey DCMA Members September and October 2020, is a summary of the haul cost survey and generated several specific data points for the updating of the MRF. The total number of observations for the two-month period was 2,951. The average load weight was 49,665 pounds. The rate per loaded mile averaged from a low of $1.27 per mile to a high of $6.88 per mile and averaged $3.67 per mile.

Loads traveled an average of 818 miles, with some as close as 272 miles and some as distant as 1,490 miles. The average bill for the transport cost on a load of supplemental milk was $3,003.

Calculation of Mileage Rate Factor.

With all the components of the MRF determined and updated, Exhibit 44, Sample Calculation Mileage Rate Factor Per DCMA Proposal --

(Whereupon, Exhibit Number 44 was marked for identification.)

THE WITNESS: -- combines them into a sample MRF calculation as outlined in Section .83 of each order, using all the defined rounding directions from the order language.

Using Exhibit 45, December Market Administrator Announcement of Advanced Class Prices and Pricing Factors --

(Whereupon, Exhibit Number 45 was

marked for identification.)

THE WITNESS: -- as a starting point, the EIA average diesel price for the Lower Atlantic and Gulf Coast regions for the most recent four weeks is posted in the announcement as $3.553 per gallon. From that price, subtract the base diesel price of $2.26, as determined by DCMA, resulting in the change, in this case increase, in diesel fuel prices from the base price of $1.293 per gallon.

Divide the base diesel price by the combination truck miles per gallon factor of 6.2 to yield a change in haul cost per loaded mile due to fuel of $0.209. The base haul cost per loaded mile determined by the DCMA survey was $3.67 per mile.

Adding the adjusted fuel cost per loaded mile to the base haul cost yields an adjusted haul cost per loaded mile of $3.879.

Dividing the adjusted haul cost per loaded mile by the average load size from the DCMA haul survey of 497 hundredweights results in a mileage rate factor of $0.00780.

It should be noted that the higher the presumed quantity of milk on a typical load, the lower the resulting mileage rate factor. The proponents' proposal to round up the quantity of milk on a standard load is an additional protection against the possibility of uneconomic milk movements.

Exhibit 46, Calculation of Mileage Rate Factor 2020 through 2022 --

(Whereupon, Exhibit Number 46 was marked for identification.)

THE WITNESS: -- compares the proposed MRF calculation for each month with the actual MRF calculation as announced by the order in the Announcement of Advanced Class Prices and Pricing Factors.

The current published MRF factor averages 59 percent of the actual cost as calculated by DCMA for 2020 through 2021. Obviously, holding the base components of the MRF calculation constant has been a significant cause for the transportation credit payments to fall short of the actual hauling costs incurred.

Note that the portion of the DCMA MRF represented by fuel costs has varied with actual market costs. But the portion represented by other costs in the base haul rate of $3.67 per mile, such as purchasing and maintaining equipment, labor, benefits, management and overhead, are constant in the formula in spite of the fact that they have certainly increased since the 2020 data survey was done.

Additionally, the shortfall does not reflect the fact that transportation payments have been subject to proration when assessment collected were insufficient to pay all claims. The shortfalls in both orders can be reduced by reviewing and increasing the assessment to an amount that is sufficient to fund the claims presented.

As we have shown in earlier testimony, the MRF is well short of current costs, so that in the Southeast Order, the funding for transportation credit claims is prorated down to as low as 32 percent of claims being paid. Comparing the current MRF with the cost-updated DCMA proposal shows how much the MRF has eroded.

MR. BESHORE: At this point, we would ask that the table on page 28 of the statement be presented in the record as if read without Mr. Hollon reciting each numeral.

THE COURT: Yes. I mean, the

statement itself is Exhibit 12?

MR. BESHORE: 12, yes.

THE COURT: That's 28. I don't see any reason trying to read the table into the record. Thank you, Counsel.

MR. BESHORE: Okay. Thank you.

THE REPORTER: Am I marking something or not?

THE COURT: No.

THE REPORTER: Okay. Thank you.

THE WITNESS: Column 1 of this table recaps various MRF calculations made using the DCMA data for the full calendar years 2020 through 2021.

For 2020, the proposed mileage rate factor calculation of $0.00745 per mile versus the actual MRF of $0.00436. And for 2021, the calculations were $0.00762 versus $0.00457. For the two years combined, the updated average was $0.00754 versus $0.00447 per hundredweight per mile.

Over the two years, the updated MRF's single month high was $0.00780 in December of

2021. There was a minimum value of $0.00737 in November 2020.

Column 3 provides additional comparisons for reference by increasing the announced mileage rate factor by 50 percent. With a 50 percent increase, in every month the comparison remains well below the adjusted DCMA proposal, MRF calculations.

Assessment Rate Change.

Exhibit 47, two pages. History of Transportation Credit Balancing Fund Assessment, 2000 through 2022, Appalachian and Southeast Orders.

(Whereupon, Exhibit Number 47 was marked for identification.)

THE WITNESS: Exhibit 47, History of Transportation Credit Balancing Fund Assessment, 2000 through 2022, Appalachian and Southeast Orders, details the history of transportation credit payment assessments since 2000. In this 22-year period in the southeastern orders, it changed several times; four times in the Appalachian Order, twice up and twice down, and three times in the Southeast Order, all increases.

The current assessment rate in the Appalachian Order of $0.07 per hundredweight was set in May 2021 as a decrease from the prior month's assessment of $0.10. The maximum rate remains at $0.15 per hundredweight set in December 2006. Market conditions in the order allowed the market administrator to reduce the rate, as authorized by regulation, to $0.07.

In the Southeast Order, the current assessment is $0.30 per hundredweight, which is the maximum allowable under the order. This rate was set in May 2008 with an increase of a dime from then current maximum assessment rate of $0.20.

Having adjusted the mileage rate factor and discussed the results of those adjustments for 2020 and 2021, we need to determine what level of assessment on Class I pounds in the two orders is necessary to fund the transportation credits at a level adequate to avoid prorating the payments, if possible, while generating money necessary to fund the MRF at a level reflecting current costs as much as possible.

Exhibit Number 48, Transportation

Credit Assessment and Payment Detail, Federal Order 5 and 7, 2020 through 2022 --

(Whereupon, Exhibit Number 48 was marked for identification.)

THE WITNESS: -- lists the actual historical data necessary to support various assessment rates to fund the transportation credit payments supplied by the market administrator.

For our purposes, we will utilize data from 2020 and 2021, including the 12 months of assessments and 8 months of payment for each year. Of particular interest is the federal order Class I pounds, the dollars of credits paid and claimed.

Note that while Order 5 has more Class I pounds than Order 7, the dollars claimed and paid in Order 7 are much greater. This is due primarily to the greater distance between Order 7 and the necessary supplemental milk supplies and the decrease in in-area milk production.

In order to support the need for increased transportation credits, Order 7 currently has twice the maximum assessment, $0.30 per hundredweight versus $0.15 per hundredweight, as in Order 5. Both orders pay and collect in the same months.

The Appalachian Order does not need to prorate its payments and has reduced its assessment, as previously noted. Not so in the Southeast Order, however, where payments were prorated three of the eight months in 2020 and six of the eight in 2021, with October paying only 32.21 percent of claims made.

Columns 1 through 7 contain data for Federal Order 5, with Column 1 the monthly assessment rate.

Column 2, the Class 1 pounds.

Column 3, the dollars generated by the assessment.

Column 4, the total credits paid.

Column 5, the total dollars claimed.

Column 6, the total pounds claimed.

Column 7, the prorated percentage of claims paid versus claims made.

The data repeats for Order 7. Each table includes annual totals where needed for future use.

We used the proposed DCMA-calculated MRF with all the updated components and data from

Exhibit 49, Federal Order 5 Transportation Credit Mileage Rate Factor Scenarios, 2020 through 2022...

(Whereupon, Exhibit Number 49 was marked for identification.)

THE WITNESS: 49 is Order 5. It looks like it from here. And the other side would be Order 7, I think.

THE REPORTER: Order 7? This is --

THE WITNESS: Well, one is 5 and one is 7.

THE REPORTER: 5 is on the back.

THE WITNESS: Okay. So we're doing 5 now.

THE REPORTER: Oh, they both say 5.

THE WITNESS: Order 5 is 49. Order 7 is 50.

Exhibit 49, Federal Order 5 Transportation Credit Mileage Rate Factor Scenarios, 2020 through 2022, to create several assessment alternatives. This exhibit was created by the market administrator for 2020 and 2021 using two different annual average MRFs in place of the monthly announced MRF.

Exhibit 50, Federal Order 7, Transportation Credit Mileage Rate Factor Scenarios, 2020 through 2022 --

(Whereupon, Exhibit Number 50 was marked for identification.)

THE WITNESS: -- is the same calculations but for Order 7. The objective is to determine and contrast the impact of changing in the MRF on the total transportation credit payment and the resulting impact on the level of assessment needed to fund payments.

Because the proponents will request that February become an optional payment month, we will show calculations forward from this point with no payments in February.

Each table contains: Column 1, the pool period; Column 2, the announced mileage rate factor; Column 3, the actual transportation credit claims paid that month.

The next column, Column 4, the same transportation credit pool calculation but using an MRF of $0.00642, from the summary table below, representing the lowest mileage rate factor for

2020 and 2021 multiplied by 150 percent.

Column 5 is the monthly total federal order transportation credit payment using this MRF.

Column 6 is the difference between the actual payment, Column 3, and the calculated payment using this MRF, Column 5.

Column 7 is an MRF of $0.00754 from the summary table representing the annual average MRF for the two-year period computed by DCMA, as discussed previously in this testimony.

Columns 8 and 9 represent the same calculations as outlined for Columns 5 and 6 using Scenario 2 MRF.

Viewing the three scenarios will give representative views of the dollars generated by the current MRF and two alternative calculations using a low and high alternative MRF.

Exhibit 50 is a duplicate set of calculations for Federal Order 7.

Columns 5 and 8 of each table yield summary dollars using an annual average MRF as calculated above that are necessary for computing the level of assessment to fund the transportation credit systems. I'm going to read that sentence again.

Columns 5 and 8 of each table yield summary dollars using an annual average MRF as calculated above that are necessary for computing the level of assessment to fund the transportation credit payments.

For Order 5, using the MRF of $0.00642 and the total pounds submitted for transportation credit payment, an annual total of $4.31 million would be generated in 2020 and $5.4 million would be generated in 2021. Performing the same calculation but using an MRF of $0.00754 generates $5.468 million in 2020 and $6.866 million in 2021.

For Order 7, using the MRF of $0.00642 and the total pounds submitted for transportation credit payment, an annual total of $18.12 million would be generated in 2020 and $21.76 million would be generated in 2021. Performing the same calculation but using an MRF of $0.00754 generates $22.584 million in 2020 and $27.250 million in 2021.

These totals can now be used to estimate an assessment rate that would generate monies to cover the increase in the MRF and avoid any proration of payments. This calculation is outlined in Exhibit 51, Estimated Transportation Credit Assessment Rates, Changing Federal Order Mileage Rate Factor to $0.00642 and $0.00754, Federal Orders 5 and 7, 2020 through 2021.

(Whereupon, Exhibit Number 51 was marked for identification.)

THE WITNESS: For 2020, in Federal Order 5, the $0.00642 MRF generated $4.31 million, an increase of 2.266 million more than the existing MRF. Divided by the calendar year 2020 Class I pounds of 3,931,555,220 resulted in an assessment rate necessary to enable the full value of the MRF to be paid of $0.11 per hundredweight.

The same calculation for calendar year 2021 for Order 5 resulted in a rate of $0.14 per hundredweight.

For calendar year 7 -- no. Sorry. For Order 7 in calendar year 2020, an assessment of $0.56 would be needed to pay the full value of the MRF, and in calendar year 2021, an assessment of $0.70 would be needed to accomplish the same.

Shifting to the MRF of $0.00754, which is the average of calendar years 2020 and

2021, with fully updated data, the same calculation as above returns assessment rates needed for Order 5 in 2020 of $0.14 per hundredweight and for 2021 of $0.18.

For Order 7, the calculated values for the 2020 assessment would be $070 -- scratch. $0.70 and for 2021 of $0.88.

Exhibit 52. Summary of Class I TCBF Assessment Necessary to Fund Credits, Federal Orders 5 and 7, 2020 and 2021.

(Whereupon, Exhibit Number 52 was marked for identification.)

THE WITNESS: DCMA proposes to increase the assessment in the Appalachian Order from a maximum of the current authorized rate of $0.15 per hundredweight to $0.30 per hundredweight. The provisions, as written in Section 1005.81, will all remain unchanged except that the maximum rate will be set at $0.30 per hundredweight.

For the Southeast Order, the current maximum authorized assessment of $0.30 per hundredweight is proposed to increase an additional $0.30 per hundredweight to $0.60 per hundredweight. As in the Appalachian Order, all the provisions of Section 1007.81 will all remain unchanged except that the maximum rate will be set at $0.60.

DCMA members reviewed an extensive amount of available data and calculations in order to arrive at the proposed assessment levels. Each member reviewed its own business plans and options and collectively reached the proposed rates based on their collective evaluation of marketing conditions.

We expect that in the Appalachian Order, the initial assessment change will likely be reduced swiftly, as the maximum amount proposed, open paren, $0.30 per hundredweight, closed paren, should be more than sufficient to pay estimated claims. But the maximum assessment will also allow for a level of cost increase to be reimbursed via the transportation credit in the near future.

Exhibit 53. Calculation of Total Dollars and Percentage of Claims Paid DCMA Proposal Federal Order 5.

(Whereupon, Exhibit Number 53 was marked for identification.)

THE WITNESS: Those two --

we're not going to use the ones highlighted in yellow.

THE COURT: Off the record.

(Whereupon, a discussion off the record occurred.)

THE COURT: Okay. Back on the record.

While we were off the record, we sorted out some of the exhibits for my benefit and the hearing reporter's benefit. We'll continue with this witness.

THE WITNESS: Exhibit 53, Calculation of Total Dollars and Percentage of Claims Paid for DCMA Proposal Federal Order 5, displays these results from the proposed assessment of $0.30 per hundredweight.

Columns 1 through 6 were actual order data as published.

Column 7, the new assessment rate.

Column 8, the total dollars in the assessment pool, including any remaining dollars from December 2019.

Column 9, the monthly mileage rate factor as calculated by DCMA.

Column 10, the total claims requested

at the new rate, including February.

Column 11, total claims paid at the new rate, including claims paid for February.

Column 12, the percent of claims paid, including claims paid in February.

Column 13, the total claims paid at the new rate, not including claims made in February.

Column 14, the percent of claims paid, not including claims made for February.

The annual totals as displayed in Column 8 show the cumulative assessment from the new rate as $23,033,948.44 versus $6,939,617.54 currently.

The new assessment total is somewhat inflated, as calculations in Columns 11 and 13 show fewer dollars would have been needed to fund all claims and the market administrator could reduce the assessment rate, as is being done currently, or waiving it entirely if conditions warranted, open paren, Sections 1005.81 and 1007.81, closed paren.

Nonetheless, for Order 5, the new assessment rate of $0.30 per hundredweight appears adequate to fund all claims at this time and likely well into the future.

The details shown by Column 11 and 13 are intended to demonstrate the possible benefits of converting February from a mandatory payment month to a requested payment month. The impact of this is only apparent in a time period when payments are prorated, which is not the case thus far, nor anticipated in the near future for Order 5.

Columns 11 and 13 show clearly the impact of the increased mileage rate factor on total payments made for the 2020 through 2021 time period and with or without payment made in February.

Column 11 shows that $13.3 million would be generated and paid with the updated mileage rate factor and slightly less $12.1 million if no payment were to be made in February. All claims made would be made with no proration, the same situation as current, but with more dollars.

Not so for the Southeast Order, as data and calculations indicate that even with an increased mileage rate factor and the proposed assessment of $0.60 per hundredweight, proration of payments will still result, but total dollars paid will be increased.

Exhibit 54, Calculation of Total Dollars and Percentage of Claims Paid per DCMA Proposal Federal Order 7 --

(Whereupon, Exhibit Number 54 was marked for identification.)

THE WITNESS: -- outlines this in detail. Each column is labeled the same as the previous exhibit for Order 5.

Column 8 shows an assessment level of about $38 million versus a previous actual amount of $19 million.

Columns 12 and 14 show the result of the new assessment in terms of percentage of claims paid.

In 2020, the same total dollars were paid out since there were prorated months that zero out the assessment pool. But in the months paid, there is one more month of 100 percent payment, and October had a slightly higher -- scratch.

But in the months paid, there is one more month of 100 percent payment, and October had a higher percent of claims paid if February is a nonpayment month. This depicts more dollars to the months needed, as expected.

In 2021, the payment scenario is similar. Considering the comparison between the payment status of February, one more month returns a full payment of claims, and the remaining months pay one more month with a higher payment and two with the same. While not the perfect answer to the market situation, it is nonetheless a significant improvement over current conditions.

As referenced earlier, DCMA proposes to change the payment status of February from a mandatory payment month to a requested payment month. Both Order 5 and 7 -- handlers could petition the market administrator to make payments in February if they felt it necessary in order to deliver milk, as requested by distributing plants. Handlers would be responsible to provide data and rationale to the market administrator to support the request.

As indicated in Exhibit 53 and 54, it is likely that the requested assessment made by proponents will still generate prorated payments for transportation credits in Order 7 in the fall months when needed, for supplemental milk is greatest. By changing February to an optional payment month, more monies to make payments will be deferred to the period of most need.

DCMA also requests that the mileage adjustment made within the payment formula in Section 82(d)(3)(iii) be changed from a flat mileage deduction of 85 miles for loads delivered directly from farms to distributing plants to a percentage basis.

Proponents offer the mileage for which payment may be made be reduced by 15 percent, then multiplied by the mileage rate factor. This step would be taken for every claim submitted by a handler.

A 15 percent reduction is an appropriate value to initiate this change in the payment calculation. Data submitted by DCMA indicates an average haul mileage of 818 miles, open paren, Exhibit 43, closed paren, for the period that data was collected.

The current 85-mile deduction represents 10.4 percent of an average haul, and in keeping with federal order policy of less than full reimbursement of cost, the 15 percent reduction would be a conservative initial change.

In the future, this percentage would be subject to adjustment by the market administrator if requested and justified by handlers. By making the mileage percentage adjustment subject to market administrator review, the industry has a more responsive method to better tailor the transportation credit program to market conditions without asking, preparing, and funding a hearing yet still be responsible to make the case for a change in the program.

Additionally, this change would more equitably and similarly treat long haul and short haul loads, and every haul would get some benefit of the transportation credit program. The current use of a flat mileage deduction heavily penalizes shorter hauls and, in some cases, completely eliminates a payment even though there is a cost.

Also in some cases, albeit few, a handler might choose a longer haul in order to collect a larger payment than a shorter haul that might be eliminated or reduced due to the 85-mile limit. Thus, the provision as written in this case would violate the policy intent of encouraging the shortest haul possible.

While not definitive proof that this

circumstance may be occurring, the fact that the minimum distance supplemental milk moved in the orders was 272 miles during the September and October period lends some credence to this concern. Open paren, see Exhibit 43, closed paren.

Lastly, proponents make no change to the language Section 82(d)(2)(iv) and 82(d)(3)(vi). The result of this paragraph, when there is a positive difference, computed by the paragraph immediately prior will result in a reduction in the value of the credit payment. And if there is a negative difference, no subtraction is made, leaving no residual adjustment to the mileage payment calculation.

Given the current state of milk production, farm numbers and plant numbers, we see no need to change these paragraphs.

MR. BESHORE: So that concludes Mr. Hollon's testimony for Part 1.

And I would propose at this time that we take a break and that when we resume, with Your Honor's permission, we'd like to interrupt Mr. Hollon's testimony to present the testimony of three dairy farmer witnesses who are here today.

We'd like to accommodate them.

THE COURT: Okay. So your proposal is that any cross of this witness will take place after the other three witnesses?

MR. BESHORE: And after he presents the rest of his testimony, which is Part 2.

THE COURT: Any objection?

(No verbal response.)

THE COURT: Hearing none -- sorry.

MR. HILL: No objection, Your Honor.

THE COURT: Thank you, AMS.

Okay. So we should take a ten-minute break now, I think.

MR. BESHORE: 15?

THE COURT: Take 15. Okay. Be back at 3:15.

MR. BESHORE: Thank you.

(Recess observed.)

THE COURT: Okay. We're back on the record.

Mr. Beshore is standing at the lecturn.

MR. BESHORE: Thank you, Your Honor.

At this time, DCMA calls as its next witness, Rodney Purser.

THE COURT: Okay. Mr. Purser, I'll swear you in.

RODNEY PURSER

was called as a witness, and after having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. BESHORE:

Q. Now, Mr. Purser, have you prepared a three-page statement of the testimony you intend to present?

A. Yes, I have.

MR. BESHORE: And, Your Honor, we have distributed the copies we have available of Mr. Purser's statement, and I'd like to ask that that be marked as the next consecutive exhibit number, which is 55.

THE COURT: Okay. The exhibit is marked -- the statement of Rodney Purser is marked Exhibit 55 for identification.

MR. BESHORE: Yes. Thank you.

(Whereupon, Exhibit Number 55 was

marked for identification.)

BY MR. BESHORE:

Q. And would you prepare to present your testimony, please, Mr. Purser.

A. Okay. Would you like me to spell my name and my address as well?

Q. We ought to do that. Yes.

A. My name is Rodney Purser. R-O-D-N-E-Y P-U-R-S-E-R. My address is Post Office Box 10, Marshville, North Carolina 28103.

Q. And were you sworn in?

A. I'm sorry?

Q. Were you sworn in by --

A. Yes.

Q. Okay. Thank you.

THE COURT: Yes. I swore the witness in.

MR. BESHORE: Yes. Thank you.

BY MR. BESHORE:

Q. You may proceed.

A. Good afternoon. My name is Rodney Purser, proud owner of White Rock Farms in Peachland, North Carolina. I'm a first-generation dairy farmer, having started my dairy in the spring of 2013. I, alongside my employee team, milk 750 cows every day.

Since my start, I've been a proud member of Maryland and Virginia Milk Producers Cooperative Association. I was fortunate to be appointed to Maryland and Virginia's Board of Directors to fill a vacancy about four and a half years ago. Since then, I have been elected by my peers for a three-year term, with hopes to continue my leadership within our cooperative for years to come.

I am also a board member of the Dairy Cooperatives Marketing Association, Incorporated, commonly referred to as DCMA.

Maryland and Virginia owns five milk processing plants, two of which are fluid plants pooled in Federal Order 5. One is in Newport News, Virginia, and the other in High Point, North Carolina. The milk from my farm is typically shipped to Asheville, North Carolina, and other locations within North Carolina. During the late summer and fall when milk is typically short, my milk at times has traveled to Atlanta, Georgia.

I fully support the DCMA proposals being considered today, including:

Proposal 1, which seeks to update the

transportation credit provision in the Appalachian milk marketing order;

Proposal 2, which seeks to update the transportation credit provisions in the Southeast milk marketing order;

Proposal 3, which seeks to establish distributing plant delivery credits, intra-market transportation credits, in the Appalachian milk marketing order;

Proposal 4, which seeks to establish distributing plant delivery credits, intra-market transportation credits, in the Florida milk marketing order, and;

Proposal 5, which seeks to establish distributing plant delivery credits, intra-market transportation credits, in the Southeast milk marketing order.

My support for these proposals is based on my personal experience with transportation costs, as I have reviewed my monthly milk statement from my cooperative. I have two hauling costs listed on my statement. One is for the assembly of milk, and the other centers around the costs of transporting the milk from my farm to the plant.

I am focused today on the cost of transporting my milk and not the assembly of my milk. In my decade of dairy farming, my transportation haul rate has gone up approximately 50 percent in supplying the local market.

My local market used to be Charleston, South Carolina, but with the plant closure, my local market is now Asheville, North Carolina. I understand that there have been several plant closures in the Southeast in recent years, like Charleston, South Carolina; New Bern, North Carolina; and Richmond, Virginia.

Secondly, as a board member of Maryland and Virginia Milk Producers Association, I understand that there are extra hauling costs incurred when my milk and fellow member milk must travel past their local delivery destinations to further destinations.

Internally, Maryland and Virginia Milk Producers Association refers to this cost as a hauling subsidy, and that cost is shared by myself and fellow dairy farmers each month. A distributing plant delivery credit would provide real help for me and my fellow dairy farmer members, as described in the DCMA proposals, 3 through 5.

Maryland and Virginia must move milk into the Southeast from outside the federal order regions since there is not enough milk produced in the region to satisfy consumer demand. I understand that milk must also travel further distances due to the continuously shrinking number of plants available to process milk in our region, accompanied by shifting seasonal demand.

What I have witnessed is that the current location differentials at the destination plants and the current transportation credit program do not generate enough dollars to cover the true cost of moving that milk further distances. This creates an additional cost to the hauling subsidy that is shared by myself and my fellow dairy farmer members.

This justifies the need to update the current transportation credit, as requested in DCMA Proposals 1 and 2.

I have personally experienced the compounding issues our current transportation credit system is causing the Southeast dairy farmer. We need to have the Southeast federal orders changed to sustain the dairy farmers in the

Southeast to supply fresh milk to the fluid processing market.

For all those reasons, I fully support the proposals to appropriately amend the inter-market transportation credits in the Appalachian and Southeast federal milk marketing orders and adopt distributing plant delivery credits, intra-market transportation credits in the Appalachian, Florida, and Southeast federal milk marketing orders. Thank you very much.

Q. Mr. Purser, I have just one additional question for you.

This hearing, as published in the notice of hearing and as noted at the beginning, one of the issues that is present in the hearing is whether the Department of Agriculture should use expedited or emergency hearing procedures to address these issues.

In view of your experiences with transportation costs for hauling milk, as you've detailed in your testimony, do you have any thoughts that you'd like to share with respect to whether expedited procedures should be used for these issues?

A. Yes. I believe that expedited

procedures would be appropriate, given the pressures that Southeast dairy farmers have from transportation that is contributing to a lower mailbox price, a lower take-home price for all of us.

Q. Thank you. Thank you very much.

MR. BESHORE: That's all I have on direct. Mr. Purser would be available for questions from any other interested parties.

THE COURT: Okay. I believe that AMS gets to go next if they have any.

CROSS-EXAMINATION

BY MS. TAYLOR:

Q. Good afternoon, Mr. Purser. Thanks for coming and testifying today.

A. Thank you. Good afternoon.

Q. Just a few questions.

So you are located in North Carolina. You ship your milk in the market. You ship your milk within the market. So your milk is not eligible for any form of transportation credits currently in the system.

A. That's correct.

Q. Okay. And then what you -- the second page of your statement, you allude to the fact that under the current system, it doesn't generate enough dollars to cover the true cost of moving milk further distances. Excuse me. Bringing in that supplemental milk from further out.

A. Right.

Q. And it creates an additional hauling cost subsidy that's shared by you and your fellow dairy farmers.

Is it right to interpret that to say that you are helping to pay for that milk come in through a deduction on your check that's -- because that cost is shared by your entire co-op?

A. I would say that's fair. I would say that there is a burden on southeastern dairy farmers to provide the milk to the market that they don't currently make. So we pay to haul the milk that we make as well as the milk we don't make.

Q. Right. And I'm not sure you can answer this question, but since you are on the Board of Maryland and Virginia, I'll ask it. And if you can't answer the question, that's fine.

But similar to what I asked before, can you speak to any efforts that your co-op has tried to undertake to garner some of the reimbursement for the extra transportation costs through the market itself instead of -- since you can't seem -- aren't getting that transportation cost reimbursement through the federal order program?

A. Sure. Without getting into specifics --

Q. Sure.

A. -- I would say that our co-op always tries to get all of the dollars available out of the marketplace to benefit our dairy farmer members.

MS. TAYLOR: That's all I have. Thank you.

THE COURT: Do we have examination by any other participants or representatives of participants?

(No verbal response.)

THE COURT: Going once, going twice...

(No verbal response.)

THE COURT: Seeing no one that requests to ask additional questions, Mr. Beshore has risen. He apparently has some redirect.

Mr. Beshore?

MR. BESHORE: I do not have any redirect. I would just ask that Exhibit 55 be received into the record.

THE COURT: Okay. Any objections to Exhibit 55 being received into the record as evidence?

(No verbal response.)

THE COURT: Hearing and seeing none, Exhibit 55 is made a part of this record.

You may step down, Mr. Purser. Thanks for coming today.

MR. BESHORE: DCMA calls as its next witness, Marilyn Calvin.

And Your Honor, I believe that Ms. Calvin's three-page statement has been made available, and hopefully...

THE COURT: I have that one.

MR. BESHORE: Very good. I would request that it be identified for the record as Exhibit 56.

THE COURT: Testimony of Marilyn Calvin is identified as Exhibit 56.

(Whereupon, Exhibit Number 56 was marked for identification.)

THE COURT: Raise your right hand, please, Ms. Calvin. I'll swear you in.

(Whereupon the witness was duly

sworn.)

THE COURT: Your witness, Mr. Beshore.

MR. BESHORE: Thank you.

MARILYN CALVIN

was called as a witness, and after having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. BESHORE:

Q. Ms. Calvin, do you have -- has your prepared testimony been -- in the document that's been identified as Exhibit 56?

A. Yes.

Q. Okay. And are you prepared to proceed with it now?

A. Yes, I am.

Q. Thank you. First, give your name and address and then proceed with your testimony if you would, please.

A. Marilyn Calvin. M-A-R-I-L-Y-N C-A-L-V-I-N. My address is 9899 Lawrence 1107, Mount Vernon, Missouri 65712.

As I said, my name is Marilyn Calvin. My son, Kenlee, and I operate Thunder Ridge Dairy located at Mount Vernon, Missouri. I am a first-generation dairy farmer. We began dairy farming in 1972 with 80 acres and five cows.

Today, my son, our long-time employee, and I milk 200 cows and raise replacement heifers on a 160-acre intensive grazing system. We farm an additional 400 acres of corn sileage, haylage, hay, and pasture.

Since we first moved to the farm in 1972, we have been farmer owners of Mid-America Dairymen, which later became Dairy Farmers of America, DFA, in 1988.

In recognition of the increased costs my farm is facing, I appear here today to testify in support of the proposals put forth by the Dairy Cooperative Marketing Association, DCMA.

My goal as a dairy leader has always been to serve the farming community and dairy farm families. I currently serve on DFA's Southeast Area Council and as vice chair of Midwest Dairy Association Ozarks Division Board. I am a past DFA corporate board member, chair of Lawrence County USDA Farm Service Agency Committee, and served on the agriculture advisory boards of U.S. Senator Roy Blunt and U.S. Congressman Billy Long.

I have been honored with a variety of

awards, including being the first female inductee into the Missouri Institute of Cooperatives Hall of Fame.

In my home state of Missouri, dairy farmers have really struggled over the last 16 years. Milk production throughout the state has declined by nearly half, 49 percent, since 2006. Additionally, licensed dairy herds have declined by more than half, 69 percent, since that time.

Q. Okay. So Ms. Calvin, you have a table in Exhibit 56, which will be made a part of the record, and you don't need to read that verbatim, but you can just continue with your statement after the table.

A. Thank you.

Q. It will be in the record. Thank you.

A. Southern Missouri, a region commonly referred to as the Ozarks, is part of the Order 7 marketing area and has regularly supplied Class 1 markets in Order 7 for many years. The Ozarks should be one of the best places in the United States to dairy farm, not only because of the access to some of the best markets, but also the ability to raise forage and pasture.

However, because of rising input costs and volatility in milk prices, especially during the past two years, we continue to see fewer dairy farms and less milk production in the region.

Lessening dairy farms and a reduced amount of milk places a bigger burden on those of us still in business, given milk must now travel further to meet the needs of consumers.

Our monthly hauling costs have gone from $0.735 per hundredweight in 2021 and $0.85 per hundredweight in 2022 to $1.04 per hundredweight in January 2023. On average, this has increased the hauling costs to our dairy around $9,000 over a two-year period.

Because most of us in the Ozarks lack access to enough quality soil to grow the crops required to feed our herd, we must make substantial grain purchases to supplement our feed needs. The cost of feed has also increased over the last few years. A 24-ton truck load of feed used to cost $6,500, but today costs $10,500, adding an additional $12,000-per-month feed cost for our farm.

In addition to feed, other costs have risen. These include at least a 50 percent increase in fuel, fertilizer, and crop inputs.

Finding suitable labor has always been challenging in the dairy industry, but wage rates have starkly climbed as business around us increase their pay to recruit.

In addition, we suffered a severe drought in 2022, which caused us to lose crop production on our farm and made procurement of quality hay and silage costly.

These rising input costs have created a financial strain on our dairy and other producers throughout my region, contributing to the decline in milk production.

With less milk produced in the area, raw milk is required to move further to service the consumer needs in Order 7. At times of the year, supplemental milk is even needed to be brought in from outside Order 7 to fulfill raw milk demand. Additionally, the rates paid to haulers for delivering milk have gone up in the face of higher fuel, labor, and other input costs. Given the expanding population in the southeastern part of the country, these issues will just continue to grow.

These factors create a greater financial burden to be borne by myself and other dairy farmers. I urge USDA to recognize the increased input and hauling costs farms like mine are facing and take prompt action to allow the farmers, through their cooperatives, to share this burden more fairly within the dairy supply chain.

Since December, Class III and IV milk futures for February and March have declined by more than $4 per hundredweight, which means my check's blend price will be that much lower. While milk prices are weakening, my input costs remain elevated, increasing economic pressure to my dairy.

Even with all of these challenges, we continue to try to do everything right on our dairy farm. We always strive to care for our dairy herd and to produce high-quality milk for the consumer.

Thank you for letting me appear here today and testify about an issue that is of great importance to me, my family, my dairy cooperative, and DCMA.

Q. Thank you, Ms. Calvin. I have just another question or two for you.

One of the issues that the government is required to consider in addressing this hearing is how it will affect small businesses, and small businesses -- you've been at the hearing. You've probably heard this. Small businesses in dairy farms are considered to be farms with less than $3,750,000 in annual sales.

Would your farm be a small business farm with those criteria?

A. Yes, it is. It is a small business farm.

Q. Is that true for most of the farms in the southern Missouri region?

A. Yes.

Q. You've also heard us discuss the question of whether -- the issue in the hearing of whether the Department of Agriculture should expedite the decision-making process to the greatest extent possible and use emergency procedures to address the issues in this hearing.

Do you have any thoughts about that, given your testimony?

A. I would say with the decline of dairy farms and milk production in my area, it is of immediate importance.

Q. Thank you.

Where does your milk get delivered to?
A. My milk typically goes to Hiland Dairy in Springfield, Missouri.
Q. And about how far is that from your farm?
A. It's 37 miles.
Q. Okay. And with that hauling distance, the cost that you've indicated, $1.04 per hundredweight is what you incur?
A. Yes. That's what my hauling rate was in January.
Q. Very good. Thank you very much for your testimony.
MR. BESHORE: I have no further questions for Ms. Calvin on direct.
THE COURT: Okay. Does anyone else have any questions for this witness?

CROSS-EXAMINATION

BY MS. TAYLOR:
Q. Good afternoon.
A. Good afternoon.
Q. Thank you for coming to testify today.
A. You're welcome.
Q. Just one quick question.
In your statement, on the top of the

second page, you say on average -- you talk about your increased hauling costs. And on average, the increase is about $9,000 over a two-year period. So that's cumulative over two years?

A. No. If you compared my hauling cost in January of 2021 to my hauling cost in 2023, my hauling cost actually increased by $9,000 per year from -- my hauling cost for 2023 would be $9,000 per year, than it was in 2021. It figures out to about $765 a month --

Q. Okay. That's what I was wondering.

A. -- on average for my hauling cost.

Q. Okay. Thank you.

And since you're located in the Federal Order 7 marketing area and you ship your milk to a plant in the area, your milk is not eligible currently for any type of transportation credit.

A. Correct, but I still have to pay for the milk that comes from outside of Federal Order 7 into my location.

Q. Through your cooperative system.

A. True.

Q. That's all I have. Thank you.

A. Uh-huh.

THE COURT: Any other parties

or party representatives have examination of this witness?

(No verbal response.)

THE COURT: Okay. I assume you want to move into evidence Exhibit 56?

MR. BESHORE: Yes.

THE COURT: The prepared statement, the testimony of this witness, Mr. Beshore?

MR. BESHORE: Yes. I move Exhibit 56.

THE COURT: Any objections?

(No verbal response.)

THE COURT: Exhibit 56 is made a part of this record.

MR. BESHORE: Thank you.

DCMA calls as its next witness, Glen Tweed.

THE COURT: Okay. I'll swear in the witness.

(Whereupon, the witness was duly sworn.)

THE COURT: Your witness, Mr. Beshore.

MR. BESHORE: Thank you.

GLENN TWEED

was called as a witness, and after having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. BESHORE:

Q. Mr. Tweed, would you first give us your name and address. You don't have to give the street address, but tell us your name and address, where you're from.

A. Okay. I'm from Limestone, Tennessee. Address for the farm is Lola Humphreys Road, Limestone, Tennessee. My name is spelled G-L-E-N-N T-W-E-E-D.

Q. And what county or counties is your farm located in?

A. We farm in two counties, Washington County and Greene County.

Q. Washington County and what was the second county?

A. Greene County.

Q. Greene County.

Tell us a little bit about your dairy operation.

A. My son and myself milk 200 cows. Farm 700 acres of corn, hay, and pasture. We have one part-time employee. We've been milking 39 years and are a first-generation dairy also.

Q. So tell us a little bit about dairy farming in Greene and Washington Counties while you've been in dairy in those counties.

What's it like today? What was it like when you got there? How many herds are there? What are the herd sizes? That sort of thing.

A. We've probably lost 80 percent of the dairies in the last 20 years. There's three dairies in my home county where we milk and probably, I think, eleven in Greene County.

Q. And when you first started dairying, about how many were there in those two counties?

A. Probably a hundred or more.

Q. So where does your milk go?

A. It goes to Milkco in Asheville, North Carolina.

Q. Are you a member of a cooperative?

A. Yes, Appalachian. And I'm also a director, been a director for four years.

Q. Okay. And that's Appalachian Dairy Farmers Cooperative?

A. Yes, sir.

Q. Okay. And is Appalachian Dairy Farmers

Cooperative a member of DCMA?

A. Yes.

Q. Okay. As a board member at your cooperative, what have you learned -- just as a member of your cooperative, what have you learned about the requirements for your cooperative to acquire supplemental milk supplies to balance the market?

A. We work on that every time we meet. It's a big challenge, one of our biggest challenges along with the hauling problem.

Q. Okay. And when you say balancing is a challenge, can you tell us a little bit more about that?

A. Well, the milk's not hard to find, but getting haulers is really hard, really difficult.

Q. Do you have to go out of the area to get the milk needed for your customers to balance the cooperative supply itself?

A. Yes, sir.

Q. And now, tell us -- well, your milk goes to Milkco at Asheville, you said.

A. That's correct.

Q. Okay. About how far is that from your farm?

A. That's about 80 miles.
Q. Okay. And what does that cost you today for that haul?
A. Basic rate with the fuel is about $1.70.
Q. $1.70 per hundredweight?
A. That's correct.
Q. How has that rate changed over the last several years?
A. We had a 40 cent increase first of February. And I've got some notes here. January 2017 was 91 cents; January '18 was $1.08; '20 was $1.07; '21 was $1.05; '22 was $1.21; and February on is going to be $1.70.
Q. Okay. So just recently you had a 0.40 per hundredweight increase.
A. That's correct.
Q. So how does that cost impact a dairy farm such as yours?
A. Tremendously. It's a big chunk of the baseline profit.

I've got one note here. Let me share it with you. January 2017, the haul was 4.5 percent of the 3-5 price. Going by February projections on milk price, the haul rate will be 7.3 percent of the 3-5 price. So that's almost -- not hardly double.

Q. So it's almost double as a percentage of your gross --

A. Of the 3-5 price.

Q. Okay. 3-5 percent butterfat price.

A. Yes.

Q. And that's representative of the gross price you get before you pay any expenses for it.

A. That's right.

Q. If you know, how much does that hauling expense reflect your operation, your cost -- or your bottom line after other expenses? If you take your other expenses off --

A. Well, I talked to some other producers to get an average. The average to produce milk is like 80 percent. So that leaves you roughly 20 percent. And you're taking the 8 percent off the 20 percent. So, you know, that's more than a third of your net profit just for hauling.

Q. So are there hauling services readily available in your area for your farmers?

A. No. We had a hauler die in December, and we were very, very close to having producers pour out milk.

Q. So you've been here at this hearing

today, have you, Mr. Tweed?

A. Yes, sir.

Q. Okay. So you've heard us talk about the small business farms and the importance of the small business issue for this hearing.

Is your farm a small business within that category of less than 3.75 million in gross sales?

A. Yes, sir. And we have 71 producers in our co-op and 97 percent of those are small business.

Q. In your cooperative, the Appalachian Dairy Farms Cooperative.

A. Yes.

Q. How about the farms in your counties, Washington and Greene County? Are they mostly small or maybe all small businesses in your view?

A. I'd say an average of 75 cow, 70, 75. We have a couple 200 cow producers, and the rest would be 50 to 60, 70, 80.

Q. Is the largest dairy in your locality there about 200 cows or so?

A. 250.

Q. 250. Okay.

What's your view on whether the USDA

should treat the issues in this hearing with urgency and take care of addressing it with expedited emergency hearing procedures?

A. It's absolutely. It can't come quick enough.

Q. Thank you, Mr. Tweed.

MR. BESHORE: No other questions on direct, Your Honor.

THE COURT: Does anyone else have an examination of this witness?

CROSS-EXAMINATION

BY MS. TAYLOR:

Q. This is Erin Taylor. I guess I'll first ask if there's anything else you wanted to share other than what you shared with Mr. Beshore.

A. No, but -- one thing. I had a producer call me. He was thinking of expanding, and he's put that on hold. He said, "I don't need to expand if I don't have a hauler." And that's pretty much each producer you talk to. You know, why spend money if you're not going to be able to get your milk hauled.

Q. Right. In your cooperative, you have 71 producers?

A. Yes.

Q. Can you speak to: has that been consistent over the past few years, or has there been a decline in the number of farms in your co-op?

A. Yes. We started, like, five years ago, I think, with about 140 members. So we're down to half in five years.

Q. Okay.

A. And most of those have quit. They have not -- some of them have changed, but most have quit farming, quit milking.

Q. Quit milking altogether?

A. Yes.

Q. I just want to be clear. You were talking about, it takes about 80 percent of what you make to produce the milk itself.

A. That's feed, repairs, machinery, taxes. Yeah, everything expense-wise, but hauling.

Q. Okay. So everything on the farm, basically.

A. Yes.

Q. Okay. And so of the 20 percent you have left -- to pay yourself, I presume.

A. And the haul bill.

Q. And the haul bill. And a third of that

goes to your hauling right now.
A. In April, going by the projected price, it will be 7.9 percent of 3-5 price.
Q. And all of that has to come out of the 20 percent?
A. That's correct.
Q. You said starting in February of this year, your haul rates went up $.40?
A. Yes.
Q. And so that's based on the same things we are discussing here, fuel, labor?
A. Beg your pardon?
Q. Just trying to put on the record what the cooperative said is the reason for increasing your haul charge 40 cents. I'm assuming that's because of increased fuel rates, in your hauler, increased labor cost to your hauler, et cetera.
A. And we just weren't going to have a hauler. I mean, we just wouldn't continue at the old price.
Q. Okay.
A. We didn't have a choice.
Q. Okay. And I'll ask you the same question I asked the other farmers.
You're located in the marketing area,

and you ship your milk in the marketing area?

A. Yes.

Q. So you're not currently eligible to receive any transportation credit --

A. No.

Q. -- assistance?

A. No.

Q. But you would be under the proposed distributing plant delivery credit?

A. That's what they tell me, yes.

Q. That's a good way to phrase that.

But speaking to another point Mr. Beshore made, your co-op does bring milk in from outside the marketing areas to help balance --

A. Yes. That's a big problem. You know, I spoke earlier. We deal with that every meeting. That takes up most of our time at the meeting.

Q. And the members of the co-op bear the extra cost of getting that milk in?

A. Yes. The balancing cost from month to month is listed on our statement.

Q. It's listed on your statement.

So that's in addition to the buck seven?

A. Yes. Yes.

MS. TAYLOR: Okay. That's all the questions I have.

THE COURT: Are there questions for this witness on behalf of any other participant?

(No verbal response.)

THE COURT: Seeing and hearing none, Mr. Beshore, do you have any redirect, so to speak?

MR. BESHORE: I do not have any redirect unless Mr. Tweed has any further thoughts that he'd like to present before he's excused.

THE WITNESS: Not really. Only, if we don't get some help with hauling, we're going to lose more producers. There's just no doubt in my mind. It has to be -- we have to have help.

MR. BESHORE: Very good. Thank you. Thank you for coming down here and testifying, Mr. Tweed.

THE COURT: Any recross based on that?

MS. TAYLOR: No.

THE COURT: Very well. Okay.

We didn't have a written statement, so there are no exhibits to move into the record.

Okay. You may -- thank you for coming. You may stand down.

And we will bring a previous witness back on.

MR. BESHORE: Yeah. We have a -- Mr. Hollon is prepared to resume the stand. Procedurally, we had some discussions, and I think Mr. Hill perhaps has a request.

MR. HILL: Yes. I think it is the position of the Agricultural Marketing Service to question Mr. Hollon on the first part of his statement first before moving on to the second part of his testimony.

THE COURT: Does DCMA have a position on that?

MR. BESHORE: We're perfectly agreeable to that.

THE COURT: Okay. So that would mean you would do your cross, whatever we're calling it now.

MR. HILL: That is correct. Yes.

THE COURT: Very good.

MR. BESHORE: The witness is very agreeable to that procedure also.

THE COURT: Mr. Hill, the witness is yours.

ELVIN HOLLON

was recalled as a witness, and after having been previously duly sworn, testified as follows:

CROSS-EXAMINATION

BY MS. TAYLOR:

Q. Elvin, you really challenged me to listen and do math and write all at the same time.

A. I hope you spent all your time listening.

Q. The problem is, if we get back after this and I can't figure out how you did something in a column, I can't call you and ask you. So I have to sit here and figure out the math at the same time. So --

A. I agree.

Q. -- I have a few questions on your exhibits, I think.

If we can turn to Exhibit 43 -- excuse me. Let's start with 36. I want to start with that one.

A. 36. Okay.

Q. It's titled Comparison of Portion of Class I Transportation Cost to Amount Covered by Federal Order Transportation Payment 2020 to 2022.
A. Yes.
Q. Okay. So I'm trying to figure out where this 58.5 percent came from. It's marked Percent of Updated Mileage Rate Factor Covered by Actual Mileage Rate Factor, and I couldn't figure out what I was dividing to get to that.
A. It's been a while since I did this, so I would probably have to look at my laptop.
Q. That's fine. We can talk about it tomorrow if you can figure it out later.
A. Yep.
Q. Figuring out that 58 and a half percent. Likewise the 52.6 percent, et cetera, there. Just trying to understand where that math is so we could talk about that form tomorrow.
A. Okay.
Q. Then I did want to turn to -- yeah, 43. This is your Transport Haul Survey DCMA Members.
A. Yes.
Q. And I just want to be clear for the record. This was of seven of the nine -- this survey had information from seven of the nine DCMA

cooperatives. Am I right about that?

A. That is correct.

Q. Okay. And can I ask why it was -- did the two not get transportation credits; why we don't have nine out of nine?

A. One did not have any arrangements for supplemental milk. In fact, I think two did not -- both did not have arrangements for supplemental milk, so they had no data to submit.

Q. Okay. And so the 2,951 observations, that was every load. I just want to make sure we're understanding that this is the full universe of whether they got transportation payments during these two months.

A. Yes. We asked members to look at their records during those two months and give us all of the data. One of the other exhibits said fill in this column, this column, this column, this column. And then we went back and looked at those columns.

Sometimes we did some math work and went back to the person who submitted it and said, "Hey, look. This multiplied by that doesn't quite work out." And we cleared all of those examples.

Q. Okay. And this is for September,

October of 2020, which I know we all hate to look back on, but we were in the middle of this global pandemic, and I am just wondering if -- we all know that that impacted dairy supply and demand.

Could that lead to, somehow, enhanced costs during that time or you had to reach out farther to get milk from various resources because of the COVID impact or, you know, is that a good time period to use or not?

A. Okay. Do you remember the diesel chart, diesel fuel chart?

Q. Yes.

A. Let's go back to there. Exhibit 38. Actually, if you remember, you don't really have to have it in front of you.

Q. Okay. I got it.

A. Okay. So to make this analysis work, you need data from a comparable period. And so comparable period is where diesel prices are relatively constant over a period of time. It's pretty hard, as you can tell from this chart. From then until close to now, there would actually be another period to survey.

So we wanted to get cost data for a period when diesel cost averaged $2.26, and during that time period -- so that was the first domino, was to say, you know, here is the period. Diesel costs are relatively constant. So tell us what your costs were in those things that we ask. You know, we ask for the weight of the load, the number of miles, you know, what was your total all-in cost.

So if we had picked any other period, it would be harder to have a freight cost adjuster because your base would either be so small or, you know, not consistent.

So, then, to your second question, I don't have a clear answer, but I don't know that it totally would have mattered because that was the most important thing, was to have as recent a period as we could find that, you know, would allow for a substantial amount of data.

Q. Okay. And on this, you have your load weight, which is 49,000 pounds. And typically, you use the 48,000, as has been standard. So you guys are proposing to increase that at this point?

A. Again, that was -- during that time period, during the data we collected, that's what the load weight was.

Q. Okay. And then turning to Exhibit 44, which is on the back of 43.

A. This is the sample calculation.

Q. Yeah. And again, I was listening and doing math at the same time. So this might be a pretty obvious answer, but I can't think of it right now.

The last number at the bottom, the .00042.

A. Uh-huh.

Q. Can you remind me what that number is again?

A. Well, it's supposed to be the number, as you calculate all the way down, what the mileage rate factor was. Looks like there's an extra zero in there, though.

Q. Okay. That might be why I couldn't figure it out.

A. Yeah, that does. I think probably the data entry person messed that one up.

Q. Okay. We've all been there, but can we check it tonight and maybe for the record come back on it and --

A. Well, I can tell you for sure tonight this one is wrong.

Q. Okay.

A. I'll get the right one.
Q. Okay. Great.
A. And then this was solely an example of just showing how the calculation process works.
Q. Right. I just want to make sure that the math makes sense. And all the numbers, so we did need to know the numbers, and then we could follow up. Okay.
Moving to your statement, which is, for the record, Exhibit 12. On the bottom of --
A. Okay.
Q. This is just for clarity. You talk about exhibits submitted for the 2006 hearing, and I just want to make it clear that that's the same hearing you referenced on page 8 when you did the federal register cite for that, which is the 2006 hearing published a proposed rule in 2014, 75 Federal Register 12985.
A. I think the answer to that is correct, but that hearing is also one of the few that's on the website that you can drill all the way down to the exhibits and go all the way through the witnesses and find, you know, that exact information. Whatever that is, is where this came from.

Q. Yes. I just want to make sure it's clear because it wasn't cited there that that's what we were talking about.

On the next page, 5, that middle paragraph, talking about how fuel costs have increased, et cetera. And then you state, "This increase consumes assessment dollars and pushes the payment rate for transported miles to be prorated."

So I just want to make sure the record is clear. In your conclusion, you're saying fuel cost has been increased so much and the assessment rate we collect during the months doesn't cover it all. Is it because fuel is so high? That's why the proration especially in the Southeast -- well, in the Southeast, you know, is so low?

A. Yes.

Q. Okay. On page 11, you had entered Exhibit 19 that was data compiled by MilkPep? Can you just explain what MilkPep is for the record?

A. Sort of.

Q. To the best of your ability?

A. It's a slice of the dairy promotion activities. And if I understand it right, it was a piece that was funded for specifically to study some demand issues. And this particular chart drilled down into Class I demand by regions. And that's the best I can give you.

Q. Okay. And on page 16, talking about how DCMA are the prominent suppliers of milk in the Southeast and prior arrangements to pull in supplemental milk.

In the last sentence of that first full paragraph, it says, "Supplemental milk suppliers also have their own sales and demand variation that have to be allowed for."

Could you just expand on what you meant by that?

A. Sure. The -- first of all, it refers to the person who is supplying the supplemental milk to someone trying to buy some from the Southeast. So, you know, a Southeast co-op makes an arrangement with an Order 30 co-op and says, "We would like to purchase milk." Well, one of the considerations is, the Order 30 co-op has their own sales and marketing program.

And, you know, during that period of time, do they show excess milk in their supply/demand balance, or do they know that their customer has a demand curve that will fit? And so they might come back and say, "Well, I can sell you this much at this price."

Q. Uh-huh.

A. And so perhaps the confusing thing is that the supplier is the supplemental milk supplier selling into the Southeast through one of the co-op members.

Q. Okay. Turn to page 21. And I think this speaks to what we were just talking about.

A. Page 21.

Q. Meaning different people.

That first full paragraph.

"So combining the fact that the suppliers purchase milk that is transportation credit deficit."

A. Yes.

Q. "Choose to contract for more than they think they will need so no customer is short on their orders and agree to pay a fee for milk they don't even take, we have a good indication that the market is short and can use the benefit of updating the transportation credit system."

I guess when I read through that, it's a lot of different pieces and I needed you to just further elaborate on what you meant by that paragraph.

A. Okay. Well, first of all, you will get some more elaboration from the marketing witnesses tomorrow.

Q. Okay.

A. Mr. Covington, Mr. Herting, and Mr. Smith.

Q. Okay.

A. So the first phrase, this transportation credit deficit is pretty well -- all of the buyers do their own calculations as to what they think T-credits are going to be. And it doesn't take too much effort to say, well, best we can tell, Order 7 is going to prorate and Order 5 is going to pay. So you know that there's not as much coming as it might calculate out, and you make the best estimate you can of how much you're going to get. And so --

Q. Can I ask one clarifying question again?

So suppliers that purchase milk, purchasing milk, in that case, are you talking about --

A. DCMA member.

Q. -- a DCMA cooperative purchasing milk, per your last example, from an Order 30 co-op?

A. Yes.
Q. Okay. That's what I was --
A. Okay.
Q. Making sure I had that correct.
A. So the folks who do that, and again, some of them will be, you know, testifying tomorrow, they make their estimates of how much they're going to need, when they're going to need it, and then what are some of the possibilities where it can come from? If they're going to qualify for a transportation credit, how much might it qualify? Well, you know, last year it was 100 percent in September and almost 100 percent, you know, in October and 30 percent in November. I mean, they will go through that process in order to purchase.

And, you know, my experience has always been that if you're a supplier of a customer, you want to try to have a little more than what they would want, if you can. And you don't want to contract for more than that. That's the pretty serious bet to do that. And many times you may make a commitment for a little more than you need, to make sure that you have enough.

And in some cases -- this is not as

predominant as it used to be -- but, you know, they were taking pay what lacked -- the take or pay fee. And so you worked it out with the buyer in Order 7, worked it out with the seller in Order 30, that I'm going to agree to five loads a day. And if I only take four, I'll pay you something, but you keep it. And so that was -- those were those examples.

Q. Okay. Thank you.

On page 25, where we're talking about the new miles per gallon. At the very bottom, your testimony says, "The proponents' proposal to use a miles per gallon fuel economy rate on the upper end of the likely range is an additional protection against the possibility of establishing a rate which promotes uneconomic movements of milk."

I was just a little confused of what you meant by "the upper end of the likely range."

A. I think we chose 6.2, and our average was a little less than that. The paragraph before?

Q. Yeah.

A. One, two, three, four lines over.

"Resulted for 2022 in a miles per gallon estimate of 6.177."

So we rounded that up to 6.2 and suggested that.

Q. Okay. I did go through the math to figure out how you got to that. That was adding .0430 every year from 2019 on.

A. 2019 was the last piece of data that we had.

Q. Yeah.

A. And so we thought we would try to make an estimate. And there may be a more current number that's now available. I don't know the answer to that. If there is, I expect the department will use it.

Q. Right.

A. If there's a 2022 that's available.

But how to get to there is exactly that. We took that average and just added it across.

Q. Okay. On page 28 and 29.

A. 28 and 29?

Q. Yes.

A. Yes.

Q. Starting with the table that's on 28 and then your paragraph that talks about the table, and I think at this point my brain might have stopped working and -- for a second to contemplate, and I was trying to think. Okay. So what -- I'm trying to figure out what the point of this current times 150 percent column was.

A. To show how inadequate it was.

Q. How inadequate the current was?

A. And even increasing it by that amount would not be satisfactory, would not return nearly enough. If you were dealing with -- you know, in math you say, "Well, gee, I'm going to give you a 50 percent raise." And you say, "Hey, that sounds pretty good." But in this case, that doesn't sound very good.

Q. Okay. Because your proposed cost based on your current factors. For example, in 2020, it was .00745.

A. Yep.

Q. But if you just said take the current rate, increase it by 50 percent, that's still less than that.

A. Correct.

Q. Okay. Okay. So this is just merely for --

A. Information.

Q. Highlight that point you were trying to make. So illuminate the point you were trying to make.

A. Yes.

Q. Okay. On page 36, this is where you're talking about changing the current mileage exception from a flat 85 miles to 15 percent.

A. Yes.

Q. You say a 15 percent reduction is an appropriate value. Illuminate why that number is appropriate.

A. Well, first, less than what you think it is, is typical federal order policy and good policy. And so then you have to figure out what's your less. So we went back to our mileage survey and said, well, the average over two years was 818 miles. And 85, as a percentage of that, is about 10. So in order to try to be conservative but still get some improvement in the situation, we chose 15.

Q. Okay.

A. It has its basis in some of the data that we collected, but again, there's some element of choice that went with that.

Q. And that number, whatever it is, 85 miles, 15 percent, to have that certain mileage that is not reimbursed through the program is to represent sort of the local haul that historically under federal orders is the producers' responsibility to get their number.

A. And so 15 percent would represent that as opposed to a flat 85.

Q. So, in fact, doing it this way, instead of the 85-mile exclusion, your longer hauls would get less of a reimbursement now because they would only get 85.

A. They reduced the -- the longer hauls were reduced by 15 percent.

Q. Right.

A. But also, the shorter haul would have some opportunity for a payment.

Q. Right.

A. Go back to Mr. Tweed's example. You know, his group is in a pretty local and small area, and perhaps some of those options would return zero. Well, that seems to be not -- doesn't seem to be fair. Let's put it that way. So a percentage seems to meet that.

Q. Okay. And then the proposal as you've put -- DCMA has put forth, it says that the M.A. could adjust that percentage based on a request.

A. Correct.
Q. And the M.A. would do some type of investigation. So do you have thoughts on what the M.A. should be looking at when he or she looks to change that percentage?
A. Sure. Yeah. It would be the same general process that happens with maybe changing diversion limits. You know, that's another -- maybe the only other place in the system that that can be done. And it rarely starts from going down. It starts from the industry going up and say, you know, we think this number is inadequate.
So if the calculation, as it exists, with reducing by, you know, 15 percent consistently results in the prorations or the -- or more prorations or bigger prorations, well, coming back to a hearing is really a daunting task. And so if you change 15 to 10, then you're going to increase the mileage rate factor.
So it would be up to the industry to come back and say, you know, first of all, the evidence of a lot of prorations has got to mean that the assessment is not -- is inadequate. So the way to make it be more adequate or less inadequate is to change 15 to 10 percent. And

then it's going to be a bigger number.

Q. Okay. On the next -- your last page.

A. 37?

Q. Yes, page 37. Still talking along this, the same topic.

As written in the provision -- "the provision as written in this case would violate the policy intent of encouraging the shortest haul possible. While not definitive proof that this circumstance may be occurring, the fact that the minimum distance supplemental milk moved into Orders was 272 miles during September and October of 2020," according to your Exhibit 43, it "lends some credence to this concern."

And I guess I just need you to, like, complete the circle on that problem for me.

A. We did not have any actual data that suggested that, but the fact that the miles are that short leads credence, leads the possibility that there may be some choice in picking your mileage and picking not. So having the percentage would lessen the idea of a short haul not paying anything at all.

And so if I was in a situation where I did my calculation with 85 miles and it resulted in X, but, gee, if I went like another 100 miles and got, you know, a credit that was bigger, I would do that.

Q. Okay.

A. But we don't want to encourage that, if we can avoid it.

Q. Okay. That -- thank you. That makes sense.

So you're just saying you don't want to incentivize them choosing a longer haul to get a credit instead of a shorter haul which would be more efficient and, you know, the more obvious place for you to come get it. So your percentage limitation is that of a flat rate --

A. Yes.

Q. -- in order to do that.

A. Yes.

MS. TAYLOR: So that is my questions for today. I would like to reserve my right. I might have more questions in the morning once I have more time to process.

THE WITNESS: Would you remind me of the first thing I was supposed to -- I got the second one.

MS. TAYLOR: Yes. That was --

MR. BESHORE: Exhibit 36.

MS. TAYLOR: Yeah, Exhibit 36. There's percentages in that exhibit.

THE WITNESS: Okay. All right.

MS. TAYLOR: 58.5 percent. And that, I couldn't quite get the math --

THE WITNESS: Got it. Okay.

MS. TAYLOR: -- to work. Thank you.

THE WITNESS: You're welcome.

THE COURT: Any objection to that, Mr. Beshore, that this witness will be here, be available in the morning?

MR. BESHORE: No objection to further cross. Anytime he's still available.

THE COURT: Any examination of this witness by any other participant or representative -- sorry. Any other examination -- that's loud. One more time.

We have counsel stepping to the lecturn for some examination.

CROSS-EXAMINATION

BY MR. TONAK:

Q. I have a couple of questions concerning your Exhibit 32.

A. Yes, sir.

Q. There is a top line on that graph that is, I believe, identified as Pool Distributing Plant Demand for 2019 through 2021. And I also see -- and this is for Federal Order 7. I also see in the lower left corner a block that says Source: Federal Order 5.

Now, did you prepare this exhibit?

A. I did. So the title is correct. The source is incorrect.

Q. Okay. And could you tell us where on the volumes for the Pool Distributing Plant Demand for these 2019, 2021 average came from?

A. I got this graph and the information from the market administrator. This is the exact graph that was in Mr. Herbert's...

Q. Okay.

A. With the correct source at the bottom.

Q. And so this is market administrator information. You don't have any knowledge of the individual months, pool distributing plant demand, or anything of that nature; is that correct?

A. That's correct. I was more interested in discerning information about the daily volume from this chart than I was knowing that.

MR. TONAK: Okay. Thank you.

THE COURT: Any examination by any other participants, representatives of participants?

(No verbal response.)

THE COURT: Any redirect, Mr. Beshore?

MR. BESHORE: I do have a couple questions on questions that were asked.

REDIRECT EXAMINATION

BY MR. BESHORE:

Q. If you look at page 5 of your statement, Elvin, that's where you were asked a question by Erin Taylor, whether the prorationing referenced there was caused by fuel prices.

Do you remember that?

A. Yes.

Q. Now, in view of your updating of the MRF, which includes factors other than fuel; is that correct?

A. Correct.

Q. Okay. Would it be fair to say that the prorationing that we've seen of the transportation credits, in Order 7 particularly, are influenced at least as much by nonfuel costs today as fuel costs?

A. They will both have an impact and, yes, I would agree, that it's a noticeable impact.

Q. The deficit in the credit versus current costs is composed of all the nonfuel costs that you've cited as well as fuel costs.

A. Yes.

Q. So Exhibit 32 that Dennis Tonak just asked you about, just for clarification, that Exhibit 32, do you have that?

A. I do.

Q. Okay. That was completely prepared by the market administrator, and you just used it as an exhibit that you presented, right?

A. It was completely prepared by the market administrator except the incorrect --

Q. Source.

A. -- source. That's right.

Q. Okay.

A. And again, it was in Mr. Herbert's exhibits this morning.

Q. Right. Okay.

MR. BESHORE: Okay. I think those are all the redirect questions I have at this time. We do have a couple of things to follow up on that we'll undertake overnight.

And I would like to suggest at this point, Your Honor, although it's not 5:00, that this would be a good time to break for today before we launch into the second part of Mr. Hollon's testimony.

THE COURT: Okay. Anyone in the room have any thoughts on that? I don't personally have a very good idea of how we're doing on time. My sense is that we're doing okay.

Anyone object to breaking now and resuming, I guess, at 9:00 tomorrow?

MR. HILL: I don't know if we have any of the farmers in the room. I think that's one question I would like to find out.

MS. TAYLOR: That want to testify.

MR. HILL: That want to testify.

THE COURT: I'm sorry. I missed it.

MR. HILL: I guess no hands shot up. I was checking to see if there were any other farmers in the room who would like to testify today.

(No verbal response.)

MR. HILL: I guess not.

THE COURT: Did everyone hear that?

(No verbal response.)

THE COURT: Okay. Seeing no responses, would now be a good time to -- I mean, the witness is still on the stand, but we have broken this into two. But I want to consider whether we should admit into evidence the exhibits that we have from this witness, so far.

And Mr. Beshore, of course if you have any thoughts on that. I mean, I realize we have identified 13, which you're going to talk about tomorrow. So maybe we ought to exclude that for now, but --

MR. BESHORE: I'm satisfied to follow the procedure that Your Honor suggested at the opening of the hearing, and that is to allow examination with respect to all of the witnesses' exhibits until the end and receive them all at that time. I think that's -- there may be some more questions tomorrow about some of these exhibits, and that's fair enough, I think. So --

THE COURT: Very well. It's not what I don't remember. It's what I remember that never happened, Mr. Beshore.

I do have a note to myself here that -- I wasn't sure whether we ever admitted Witness Johnson's statement into the record.

MR. BESHORE: I think we did. If not, I would move it.

THE COURT: Any objection to Mr. Johnson's statement?

(No verbal response.)

THE COURT: It's Exhibit 11 to be entered into the record. This may be redundant but so be it. Okay. Mr. Johnson's statement, Number 11, in case we didn't admit it previously, as an exhibit.

Okay. You can step down.

THE WITNESS: Gladly.

THE COURT: We'll be all back tomorrow morning. Is 9:00 good for everybody?

Okay. We will convene Wednesday, the 29th -- Wednesday, March 1st. At 9:00.

With that, this hearing is adjourned. Off the record.

END OF DAY 1, VOLUME 2.

C E R T I F I C A T E

STATE OF TENNESSEE)
COUNTY OF WILLIAMSON)

I, Cassandra M. Beiling, LCR# 371, a Notary Public in the State of Tennessee, do hereby certify:

That the within is a true and accurate transcript of the proceedings taken before the Chief Presiding Administrative Law Judge, Channing D. Strother on the 28th day of February, 2023.

I further certify that I am not related to any of the parties to this action, by blood or marriage, and that I am in no way interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set my hand this 20th day of March, 2023.

____
Cassandra M. Beiling, LCR# 371
Notary Public State at Large
My commission expires: 3/10/2024