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	)	Docket No. 23-J-0019
Marketing Areas	)	
	)	AMS-DA-23-0003

RULEMAKING HEARING BEFORE
CHIEF PRESIDING ADMINISTRATIVE LAW JUDGE
CHANNING D. STROTHER, JUDGE

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Volume 3 of 6 Volumes

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

TABLE OF CONTENTS

LIST OF EXHIBITS

(Whereupon, the following proceedings were transcribed as follows.)

* * * * * *

THE COURT: This is continuation of the formal rule-making hearing and Milk in the Appalachian Southeast and Florida Marketing areas, docket number 23J00119, we're in Franklin, Tennessee at Franklin Marriott, whatever the rest of it is, I don't think I need to go on record with anything else. It is March 1st, welcome everybody. Any preliminary business? Yes, Mr. Hill, for AMS.

MR. HILL: Yes, there is one preliminary matter. Yesterday, there was an item marked for identification as exhibit number 10, but it was not entered into the record as evidence because AMS needed to look over the numbers.

THE COURT: Yes

MR. HILL: AMS looked over those numbers, they are correct, and there's no problem if that needs to be moved into evidence at this point

THE COURT: Any objection to entering exhibit 10 into evidence? Hearing none, exhibit 10 is entered into the record.

(Whereupon, Exhibit No. 10 was marked for evidence.)

THE COURT: Any other preliminary matter? Seeing none, we'll resume with Mr. Hollon. Mr. Beshore, this is part 2, the second part of the trip.

MR. BESHORE: Actually I have just two, I'd like to ask Mr. Hollon to address two questions on examination of part one that had been asked of him by Ms. Taylor, if we could?

THE COURT: Any objection? Proceed Mr. Beshore.

MR. BESHORE: Okay. Thank you.

CONTINUED REDIRECT EXAMINATION OF PART ONE

BY MR. BESHORE:

Q. So, Mr. Hollon, do you have exhibit 36?

A. I do.

Q. Okay. You were asked how the numbers, some of the numbers on exhibit 36 were calculated, do you recall that yesterday?

A. I do.

Q. Okay. Can you talk about that, please?

A. Yes. There are six boxes of calculations and they're all done the same way. So I'll just use 2020 and Fed Order 5, so that'll be the top row. The 58.5 is calculated by taking 00436 divided by 00745, for 58.5 percent. And in Fed Order 5, all of the credits were paid, they were not subject to proration, so that 58.5 percent times a hundred percent says that's what the receiver would get of the credit calculation. And again, those steps are in, the same in all the boxes.

Q. Okay. So that's comparing the current mileage rate in the order with the MFR mileage freight rate according to the DCMA proposal?

A. Yes.

Q. Okay. Thank you. And you were then, you were also asked, with respect to exhibit 44, and some of those numbers were generated, do you recall that?

A. I do.

Q. Okay. Can you address that, please?

A. Yes. The 0.00042 is incorrect, and the calculation should be 3.67 plus .209, and then that sum divided by 497 hundredweights, and that would give 00780.

Q. Okay. So the last number at the bottom of the column of figures on exhibit 44 should be .00780?

A. Yes. And if you would move over to exhibit 46.

Q. Okay.

A. Calculation of mileage rate factor 2020 through 2022, and if you would run your finger across the December 2021 row, you will see all of those steps with the calculation and would come up in the mileage rate factor column of that number, 00780, and there would be 36 examples on this table.

Q. And that is exhibit --

A. 46 --

Q. -- 46?

A. Correct.

Q. Okay. Were there any other items that you were asked to follow-up on that you have --

A. I don't think so, but we'll find out shortly.

Q. Those are the questions I have on redirect on part one, Your Honor. And if there's any other cross, we're done with any other cross on part one, we'd be prepared to go, proceed with part II of Mr. Hollon's testimony?

THE COURT: Any recross since there was certain corrections made, AMS? By the way, I remind you that you're still under oath. Mr. Hollon.

MR. HOLLON: I'm reminded, thank you.

RECROSS EXAMINATION OF PART I

BY MS. TAYLOR:

Q. Good morning, this is Erin Taylor from AMS. I just had a few more questions, I just want to clarify for the record; in your statement, you talked about, particularly on page 20, I can paraphrase a little bit, talked about how proponents would file for as much eligible Transportation Credits because there's financial incentive to do that, I just wanted to -- how do I phrase this question? But there is an option for people to, is there not an option for people to choose whether to file for Transportation Credits or they may want to instead divert off of that milk?

A. Say that one more time.

Q. Let me rephrase. In the order system, as it's set up with Transportation Credits now, you cannot get Transportation Credits on milk -- you cannot divert off milk that can receive Transportation Credit?

A. Correct.

Q. So there can be situations where a handler may choose not to get a Transportation Credit on what would be eligible milk because instead they want to divert off that milk?

A. That is correct.

Q. Okay.

A. So some of the folks who will be testifying shortly do that calculation and make that decision.

Q. Okay. And then I wanted to look at your exhibit 43, and I particularly want to talk about the 3.67, which is what DCMA is proposing as the base haul rate?

A. Yes.

Q. This is your information on the survey you did?

A. Yes.

Q. And so we went back and looked at the amount of milk that received Transportation Credits in orders 5 and 7 during those two months of September and October, and that information is on exhibit 7 that the market administrator put together.

A. (Nodded affirmative.)

Q. And I rough estimated that that was about 317 million pounds for those two months combined, that's the data on the exhibit 7. And if I do the calculation on exhibit 43, on your number of loads times your average load weight, I come up with about 146 million pounds, so less than half of what actually received Transportation Credit. I'm trying to understand if DCMA -- I'm trying to understand why it's such a lower number than the say 80 percent of milk that DCMA represents is being pooled on the Orders?

A. Okay. Well, I didn't have access to everybody's data, we only had access to the members, and we asked them during that during that time period to give us their information, so that was, the rows of information that we had that averaged out to 358 in one month and 361 in the other month, so I don't have anymore information to share. I could say with some degree of confidence that probably not every load that received a

Transportation Credit was arranged or made or was made from a member of co-op.

Q. So I'm just trying to figure out where the milk is, so I guess then you're saying that a lot, DCMA only controls about 50-percent of the milk, supplemental milk that gets brought in?

A. I don't know.

MS. TAYLOR: I think that's it for this part.

THE COURT: Mr. Beshore?

MR. BESHORE: If I could follow-up on the last question.

FURTHER REDIRECT EXAMINATION

BY MR. BESHORE:

Q. Did you have the opportunity, Mr. Hollon to look at the array of data that was assembled from DCA -- DCMA members that's represented in exhibit 43 yesterday afternoon?

A. Yes.

Q. Okay. And from your position as know as an economist, did you have any observations about that array of data in terms of whether it appears to be representative of the costs during that period of time, do you have any comments on that?

A. Yes. If you -- if you look in the middle box and you look at the average rate per mile for the September period, it was 3.60, if you look at the median, half above, half below, was 3.58, that tends to lead you to think that there's not a wide variation in the numbers. And if you look at the other column, 3.75 average, 3.61 median, same thing. And so certainly there were some that were lower than others and some that were higher than others, but in general, the range was reasonably narrow.

Q. You don't have any -- because this data was assembled on an anonymous, on a basis by the -- it was assembled by the DCMA administrator?

A. Correct.

Q. By request of cooperatives?

A. Correct.

Q. In a manner that cooperatives were exchanging information with each other, but just with the administrator of DCMA correct?

A. Correct.

Q. Okay. And it was aggregated by you into the data on exhibit 43, correct?

A. Correct.

Q. Okay. From your position as an economist and observing, being experiences with these markets over that period of time, assuming that it only represents about half of the total credit transactions during that period of time as Ms. Taylor indicated, would it still appear to you to be a representative cost, is it your testimony that it's a representative cost for that period of time?

A. That's correct.

MR. BESHORE: Okay, that as all I have.

THE COURT: I hate to ask any re-recross? It feels dangerous to put this on the record, but even though this is a formal rule-making, I am not inclined to intervene unless there's an objection to any stylistic questions as to leading questions or beyond the scope or things like that, so I think -- I will assume that it's in the interest of the record as long as it's within the scope of the original notice as the regulations tell me I should be cognisant of that I think everybody's all right and I don't, without objection, I'm not going to myself enforce rules as to redirecting beyond the scope, so I'll trust Counsel to handle that, for all I know, it may be in the interest of the other side for certain things, I want the decision-maker to have as complete record as possible.

Okay. So are we ready for part two of this witness, Mr. Beshore?

MR. BESHORE: Yes, we are. Can I have,

I have just a couple of preliminary notes before we go into part two. We have made available, in the back of the room, some additional sets of the exhibits. We were short yesterday. There were a number of sets of exhibits there, hopefully there's more available to persons who may be here who are interested in following that. I would also say that there are two, several exhibits that are also available for distribution this morning, which are -- represent correction -- corrected exhibits that will be noted in part two of Mr. Hollon's testimony. They include the regulatory, proposed regulatory language for proposals 3, 4 and 5, there were some very small tweaks, errors in that language that we have changed with corrected exhibit that Mr. Hollon will cover in his testimony. And there's also a latter, single-page exhibit that -- that's been replaced because it had some inaccuracies in it, that's also available in the back.

(Whereupon, Exhibit No. 57 was marked for evidence.)

Mr. Hollon, as we've numbered in advance, starting with 57, the exhibits that he references in his testimony, so I would ask that since we've used consecutive numbers, starting with the one that's next for exhibits, that is testimonial statement, that we not mark it as an exhibit until, not give it a number until we're at the end so that it's chronological, it's sequential, because I've already used 57 for other exhibits. Would Your Honor --

THE COURT: I'm not sure I quite follow. Mr. Hill has come to the platform.

MR. HILL: I thought that we already numbered the second part of his statement as number 13, did you not?

MR. BESHORE: We did

THE COURT: We did.

MR. BESHORE: My bad.

THE COURT: Doesn't mean we can't --

MR. BESHORE: Already 13.

THE COURT: I guess, as far as convention for -- we've got two corrected exhibits, I guess we had not identified the corrected exhibits at all, right? We had identified the testimony of this witness, part two, I mean, we could --

MR. BESHORE: They'll be substituted, let's say.

THE COURT: Yes, we could substitute it or we could make it exhibit 13A, for instance. I don't know that there's a need for the, if all we're doing is inserting exhibit numbers in the text of the pre-filed statement, right, Mr. Hill has again risen to help me with this dilemma.

MR. HILL: I don't think since we haven't read anything into the record on 13, it seems to me that we can just substitute it.

THE COURT: Very well. Well, and I think this is -- this is in the transcript, so we made a record of what we're doing. So I would say that, I don't know what we do, need to do from now on, but we'll substitute out what was previously labeled for identification exhibit 13, and will substitute the similar statement, but with exhibit numbers filled in.

MR. BESHORE: Okay. All I had meant to say was that the blanks in the exhibit 13, the numbers were now known and he would read them as we proceed.

THE COURT: Appreciate that. Your witness.

PART 2 OF ELVIN HOLLON

DIRECT EXAMINATION

BY MR. BESHORE:

Q. Are you ready to proceed with part 2 of your testimony, Mr. Hollon?

A. I am.

Q. Please proceed.

A. "Distributing plant delivery credits. Our second set of proposals deal with establishing a Distributing Plant Delivery Credit system, DPDC, very similar in operation to the existing Transportation Credit Balancing Fund that partially reimburses the cost of transporting milk from farm to market where the farm, with limited exceptions, is located in the marketing area of the southeastern Orders and where the plant is a pool distributing plant on the southeastern Orders. We will provide more specific information about farm and plant location later in our testimony. The DPDC is proposed for all three southeastern Orders."

"Regulatory support for the distributing plant delivery credit. Historically, the USDA, in addressing the mission of generating sufficient revenue to ensure an adequate supply of milk, has relied upon the Class (inaudible/phone rings) differentials to attract milk where needed. The Reform Decision provided the following definition for the differential: The adopted Class I pricing surface" -- sorry, start over, "the adopted Class I pricing structure utilizes USDSS model results adjusted for all known plant locations and establishes differential levels that will generate sufficient revenue to assure an adequate supply of milk while maintaining equity among handlers in the minimum prices they pay for milk bought from dairy farmers."

There is a long Internet site that we'll just say is on the page.

"In this hearing, we're not suggesting a revision of the differential prices in the Orders. What we are proposing is the establishment of a Distribution Plant Delivery Credit system as an allowable market-wide service program to assist in meeting the objectives of assuring an adequate supply of milk."

"In the southeastern Orders, as we have seen, USDA has long supported the use of outside-of-the-area Transportation Credits to supplement the Class I differential and inter-Order blend differences in attracting milk to the Class I markets. This market-wide service program assists the regulatory goal of moving milk to the highest use classification, hence the higher value. The Distributing Plant Delivery Credit system, which we are proposing is specifically authorized in the Act's market-wide service payment' provisions, which allow order terms for the purpose of transporting milk from one location to another for the purpose of fulfilling requirements for milk of a higher use classification. 7 U.S.C. 608c(5)(J)(iii). The DPDC, as proposed, specifically targets payments directly to the service provided, that of transporting milk from one location to another. Since DPDCs are specifically limited to milk, which is delivered to pool distributing plants, by definition, this is a movement of milk to the highest use classification."

"We have demonstrated in earlier testimony regarding the updating of the existing Transportation Credit system that the southeastern Orders draw significant volumes of milk from in-area sources to meet pool distributing plant needs. Exhibits 28, 29 and 30 for Order 5, the in-area deliveries account for 54-percent of needs; for Order 6, in-area production meets 82-percent of needs; and for Order 7, in-area production supplies 44-percent of needs. Obviously, the converse percentage of these numbers is drawn from other areas, negotiated for and partially paid for with the assistance of the existing Transportation Credit system."

"While the TCBF provisions have covered some cost of supplemental milk, the Southeastern Orders, which themselves cover a very broad geographic area with sparser farms delivering to fewer distributing plants have never provided transportation compensation for the market-wide service of obtaining in-area milk for Class I needs on a year-round basis. This year-round transportation cost burden has fallen on the handlers supplying the Class I needs to the market, predominantly the DCMA cooperatives and their members, through a reduced price or higher hauling charge. It is time to address this year-round market-wide service with order provisions that compensate deliveries to distributing plants in a fashion similar to this system, which has compensated handlers for imports of supplemental milk."

"Exhibit 57, producer milk originated in Federal Order 5 marketing area by pooling order."

(Whereupon, Exhibit No. 58 was marked for evidence.)

"Exhibit 58, producer milk, originating in Federal Order 6, marketing area by pooling order.

(Whereupon, Exhibit No. 59 was marked for evidence.)

A. And "exhibit 59, producer milk, originating in Federal Order 7 marketing area by pooling order, demonstrate that the producers located in each of the southeastern Orders, deliver nearly all of the local milk to the local Order. For the Appalachian Order, approximately 90-percent of local milk delivers to the local Order. For the Florida order, the data shows the nearly 95-percent of local milk deliveries to Order 6. For the southeast Order, slightly less than 75-percent of the local production delivers to an Order 7 plant. Note, that in each situation in the three Orders, the second largest delivery Order is another southeastern Order. DCMA proposes it is time that locally produced milk be on at least equal footing to imported milk, if not better footing. After all, locally produced milk will travel fewer miles to milk plants than imported milk, and as such, the lower travel miles are more supportive of healthy environment. "

"DCMA proposes to address these cost inequities through a program of Distributing Plant Delivery Credits, DPDC, detailed in proposals 3, 4 and 5 at this hearing. The detailed view of the market structure, particularly the number and location of plants and data on milk production, substantiates the timeliness and necessity of the Delivery Plant Distribution Credit."

"Market structure supporting the creation of a distributing plant delivery credit. The milk supply in the southeastern Orders' marketing area continues to constrict. Earlier testimony and exhibit 22, number of total farms and in-area farms, Appalachians, Southeast and Florida Orders 2000 and 2015 o 2022, demonstrates this trend. In-area farms for the period shown decline every year in all three Orders. In only a single year comparison, 2021 versus 2022, the in-area decrease for Order 5 was 1.8 percent, for Order

6 was 10.9 percent, and Order 7 was 28.4 percent. This trend is becoming a downward spiral where fewer local farms mean less local milk, and less local milk is available to support a local, viable processing system. Without question, the most economical supply of milk for the Southeast consumers and processors is milk produced in the southeastern Orders' marketing areas. Consequently, the trendline of losses of in-area farms is undesirable and the DCMA proposal designed to help curb the declining trend should be accepted."

THE COURT: We're off the record while the reporter and the witness confer to make sure we have the right exhibit numbers.

(Whereupon, Exhibit No. 59 was marked for evidence.)

(Whereupon, Exhibit No. 60 was marked for evidence.)

A. "Exhibit 60, milk production, Federal Order 6, May 2021, provides a clear example of why the DCMA proposed DPDC program is necessary to more efficiently and effectively attract milk to distributing plants in the southeast. As shown on the map, significant milk production in Order 6 is located in the center of the state with the primary market for this supply due south, approximately 230 miles into the Miami Metropolitan year. This milk is differential friendly" -- sorry, repeat. "This milk movement is differential friendly as the Class I differential in the middle counties of Order 6 is $5.40 per hundredweight and that from Miami is $6.00 per hundredweight. So the Order pricing provides $0.60 of transportation assistance inadequate, but better than no assistance in getting milk where it is needed. But when total production exceeds total demand from the Miami plants, there is no alternative but to move the milk north where there is available demand, in Orlando, 46 miles away, or Orange City, 76 miles away; however, there is no transportation assistance from the differential in shipments to these locations, as all are in the same $5.40 per hundredweight zone, even though there is a transportation cost to move milk to those markets. The DPDC system would recognize this cost and the need for the milk to these markets and provide partial assistance to offset some of the transportation cost.

"Compounding the transportation situation in the southeast is the sharply declining numbers of pool distributing plants. The following set of maps and legends for January 2000 and December 2022 depict this picture in detail. Exhibit 61, four pages, pool distributing plants, January 2000, FO 5, 6 and 7 is constructed as follows: The shaded areas in red is Order 5; the shaded area in blue is Order 7; and the shaded area in green is over 6. Each of the 14 states are labeled. Each pool distributing plant is represented by a number and a color pinhead shaped icon. If the color is blue, the plant was in business the entire period of January 2000 to December of 2022; orange means the plant closed prior to December 2022, and green means the plant was a pool distributing plant, PDP, in January 2000, but not in December 2022."

"Exhibit 62, three pages, pool distributing plants. December 2022, Federal Order 5, 6 and 7 is a similar depiction that only shows PDPs that were in business in 2022. The blue icon has the same meaning, business the entire period. And the orange icon identifies the plant operating in 2022, which was not in existence in 2000."

"There are 73 plants located on the map for January 2020 --

MR. HILL: Mr. Hollon, could you hold on one second for the court reporter?

(Whereupon, Exhibits No. 61, 62 and 63 were marked for evidence.)

MR. HILL: Sorry for the interrupting.

A. "Exhibit 62, three pages, pool distributing plants in December 2022, Federal Order 5, 6 and 7 is a similar depiction that only shows PDPs that were in business in 2022. The blue icon has the same meaning, in business the entire period; and the orange icon identifies a plant operating in 2022, which was not in existence in 2000."

"There are 73 plants noted on the map/legend for January 2000 and 39 on the 2022 map, a reduction of 47-percent. Of the 39, eight started up some time in the period and 31 operated over the entire span. In 2000, every state, but Missouri, had at least two plants. Note that Missouri has more than two plants in the state, but the others are pooled in the central order. In 2022, only seven of the states have more than two plants; four have one plant, and Alabama has no plants. Assuming farms and their cooperative are rational and would choose to deliver to their closest plant, if possible, delivery miles and costs become significantly greater as plant locations become more distant. The reduction in farms and plants puts at risk the long-held marketing relationships that have supported the availability of fresh local milk to consumers and school children everywhere in the Southeastern United States. Both sets of exhibit, milk production and plant numbers, solidly support the concept that the DPDC should be implemented to assist an assuring adequate supply of milk to southeastern consumers. The DPDC program allows for all handlers to have similar benefits in meeting that objective."

"Marketing rational for distributing plant delivery credit. Marketing factors, which support the credit of the DPDC include, number one, the current Class I differential structure is not sufficient to meet day-to-day market situations in the southeastern Orders and the DPDC will somewhat alleviate that problem due to the shrinking number of farms and plants as just reviewed, costs to serve the pool distributing plants have increased and there is a need to meet those needs differently through the Order system."

"The North/South only makeup of a locked-in place differential surface does not work when milk moves counter to or not in sync with the differential surface. We have referred to one situation involving large milk supplies in Central Florida where market needs move South into Miami plants have the benefit of differential, but similar needs to the north derive no benefit from the Order. Similarly, one of the few growing milk supplies in the southeast Orders is in Southwest Georgia, but markets for that supply regularly mover long distances, both south into Florida, as well as north into Atlanta, or northeast into South Carolina. To the extent that milk moves into a lower-priced zone, north and northeast, not only is the transport cost large, but price revenues are lost from the regulated price as milk is sold from a higher individual location farm supply to a lower differential level plant location."

"We're not proposing a change in the differential structure. Differentials, by their very nature, can only incentivize milk to move in one direction. Fixed differentials not only are not equipped to attract milk in multiple directions, they can and do actually penalize efficient and necessary movements of milk against the differential grain. Fixed differentials do not have self-adjusted components like the Transportation Credits and the DPDC we are proposing. Our proposal results in a more modern system with a combination of differential and Transportation Credit to attract milk to where it is is needed and compensate in part of the movement."

"In addition, substantial differential changes may require a more-than-regional hearing process. This circumstance prevents the opportunity to focus only on changes for a unique regional situation. Our proposal will allow for change without the national conversation being a factor."

"Many of the original milk sheds under the undergirding the current differential structure have generally declined and new ones have taken their place. Population growth has increased and moved into -- scratch, start over -- "Population growth has increased and moved more so into the southeast since the differential structure was put into place. Both of these developments point to the appropriateness of addressing the issues on a regional basis. Our proposal reflects those changes and provides some relief."

"The monies that constitute the order blend price absorb all of the differential value and offer no funds to specifically meet increased transportation costs. The TCBF system, which operates apart from the pool differential values, offers specifically targeted funds to meet transportation costs. Our proposal adopts the same principles for in-area producers and their milk supply."

"The DPDC Transportation Credit system has the following operational dynamics and advantages: A, it provides the ability to target funds specifically to the cost of transportation within the market. B, it has self-adjusting features to allow for built-in fine tuning of changing market situations such as rapid

increases or decreases in fuel costs or plant closures.
C, it's cost reimbursement through the market order system are transaction-based and easily and confidentially verified by the Market Administrators.
D, it assures that the handlers get the reimbursements only when they do the work.
E, it assures that all market participants pay identical assessments and receive similarly calculated payments for transporting milk.
F, it provides a transparent payment calculation that will assist all market participants in making future market plans of changing fuel costs.
G, it provides partial payment to counter differential movements where the cost is not recognized by the existing differential price surface, but nevertheless is incurred.
It provides -- H, it provides a reimbursement system superior to over-order prices, which are challenging to maintain and even more challenging to increase. Having a portion of transportation costs within the order pricing system treats all suppliers and buyers equitably. Handlers are generally more capable of passing through to packaged fluid milk wholesalers/retailers Class I prize changes, which are specifically outlined on Federal Order price

announcements."

"General function of our proposed distributing plant delivery credit. Distributing Plant Delivery Credits will function similarly to the current and proposed to be amended Transportation Credits in Orders 5 and 7. A new source of funds will be created in each Order, and those funds will be used to incentivize movements of farm milk to pool distributing plants in each order. The source of DPDC funds will be a new assessment on Class I producer milk."

"Adding a new flat Class I assessment will not disturb the current Class I differential surface in each Order, yet will provide additional funds that will be strategically directed to those handlers actually delivering milk to Class I plants. Since the DPDC's are mileage-based, there's greater cost for reimbursement the greater the distance that milk moves."

"As with the existing Transportation Credit Funds, TC, DPDC funds will be separate from the producer pool funds there, and thus there will be no impact on each Order's blend price, and no impact on the quantity of reserve milk supplies that can be associated with each Order."

"If monthly DPDC funds are insufficient

to pay all DPDC claims, the payments will be prorated like the current Order 5, Order 7 Transportation Credit process."

"As with the existing transportation assessment -- start other, "As with the existing Transportation Credit assessment provisions, DPDC language in each Order will contain a range of permissible DPDC Class I assessment rates. The range of rates will be specific to each Order, and the provisions will provide guidance for the Market Administrator on how to set the DPDC assessment rate within the allowable range. The Market Administrator will also be able to completely waive DPDC assessments for one or more months, if deemed preferable to lowering assessment rate. The payment calculation will be the same for all three Orders."

"Net shipment provisions will be utilized to assure that handlers do not pump milk in and pump milk out on the same day and collect DPDC payments on two volumes. Each Order will contain a provision allowing the Market Administrator to disallow DPDC claims if they determine that certain milk movements were persistently and pervasively uneconomic. Handlers will have an opportunity to explain why any suspect milk movements occurred in advance of any disallowance of the

DCDP claims by the Market Administrator. This action will be similar in intent with the provisions of 1030(13)(f)(4) where the Market Administrator can initiate an investigation on their own to review action by handlers that might be considered unreasonable. Also, the knowledge that a transaction might be negatively viewed by the Market Administrator will provide some level of oversight."

"Calculation of assessment, list eligible counties that qualify for payment and the allowance of pol supply plants to receive a payment. Calculation of assessment: The provisions for the DPDC are nearly identical for all three Orders, however, three areas where they differ are in the level of assessment for each Order reflecting market conditions in each one, the definition of what producer milk qualifies geographically for the payment of DCDP and in Order 5 the inclusion of milk deliveries from pool supply plants as qualified recipients."

"In order to determine assessment rates, the cost to operate the DPDC system must be determined. At the simplest point we would need Mileage Rate Factors, MRF, and miles to apply it to. To determine the MRF a base haul rate is needed as a constant of the formula. We described a survey of DCMA members who planned for supplemental milk purchases and the cost to do so in our testimony for Proposal 1. That testimony is directly supported in exhibit 43. Supplemental milk purchases are most typically single stop loads from single farms and the payments are based directly on rate per mile charges. Assembly costs are not a factor in the negotiation. However, for inside the market milk hauling, assembly costs are a function. There is a range of plans in the Orders that define charges for milk assembly. That may include stop charges, fixed minimum charges, volume discounts, possibly a simple flat weight per hundredweight, and likely other factors. We concluded that accounting for these variations would be difficult to impossible to do so in an acceptable manner, so we decided to use the same MRF that would be calculated each month by the Market Administrator or the TCBF system. For our purposes, it would likely be less than the inside the market rate, so it is a conservative choice and completely transparent. This choice solved the question of how to determine the MRF for use and calculate an assessment value in a fair and reasonable fashion."

"Since there is no existing program to measure historical inside the market delivery activity, we asked the Market Administrator to determine the miles traveled to deliver milk to processors each month. They were able to aggregate the supply data to a county level, and then associate each county level to supply its actual plant destination and measure the miles traveled."

"DCMA provided the mileage rate factor to the cost calculation based on the updated process we proposed for TCBF changes. We used $0.00754, the two-year average for the period that we had survey data for and a percentage of miles to make payment on, 85-percent. Our proposal language provides a bracket range with a percentage mileage pay of 75 to 95-percent, adjustable my Market Administrator discretion. The choice of 85-percent for the initial assessment was based on DCMA members sense of current market conditions. The 85-percent of total miles incurred instead of the actual total miles reflects traditional Federal Order practice of regulated payments be targeted to lesser than actual cost."

"Then using the 85-percentage of miles paid, the same MRF as used for the TCBF calculation. $0.00754 average, and the Market Administrator generated miles, a total cost estimate was calculated for the dollars of costs incurred by the DPDC dividing the cost by the Class I pounds yielded an assessment estimate for the evaluation. Again, the DCMA members evaluated the calculations and selected assessment levels from each order reflecting that Orders marketing conditions. For Order 5, our proposal suggests a maximum assessment of $0.60 per hundredweight with the initial level set at $0.55 cents per hundredweight for Order 6, the suggested maximum is in $0.85 -- start over again, "For Order 6, the suggested maximum is $0.85 per hundredweight with an initial setting of $0.80 cents per hundredweight, and for Order 7, a maximum setting of $0.50 cents per hundredweight with an additional setting of $0.45 per hundredweight.)

"Exhibit 63, analysis of assessment and cost for the DPDC proposed Federal Order 5, 2020 through 2022 is a result of this process the Federal Order 5 and initial assessment rate of $0.55 cents per hundredweight. Note our proposal suggests a maximum rate of $0.60. This initial request, based on the calculations above, is designed to be a conservative, but also reflect our goal in instituting the DPDC system. There are provisions in each set of Order language allowing for a review of market conditions and the assessment rate and the possibility of adjustment by the Market Administrator if conditions warrant after a year of operation."

Exhibit 63 is constructed as follows, the operational month and year is the first column. The second column is total dollars of the assessment, using the Market Administrator generated miles, less 50-percent multiplied by the mileage rate factor. The next column is the total pounds that could qualify for the DPDC system followed by total value of the credits at the two different MRF values. Final column is the monthly difference between assessment and the total value at the $0.00754 MRF, which is our focus. If the final column is a positive number, the assessment covered all the cost of the miles claimed, and if a negative, there would be prorated payments. For Order 5, in 2020, assessments exceeded credits by $243,059, were less than assessments by $2,158,885 in 2021, and also less by $1,464,269 in 2022. Several factors will impact our estimates on miles necessary to fill demands and fuel costs. More miles and higher fuel costs will result in shortfalls and monies to pay in prorated payments. "

"Exhibit 64, analysis of assessment and cost for the DPDC proposal Federal Order 6, 2020-2022, is the result of this process for Federal Order 6 with the initial proposed assessment rate of $0.80 per hundredweight. For 2020, assessments exceeded credits by $1,890,199, and were less than assessments by $126,928 in 2021 and again exceeded then by $1,045,997 in 2022."

(Whereupon, Exhibit No. 64 and No. 65 were marked for evidence.)

A. "Exhibit 65, analysis of assessment and cost for the DPDC proposed Federal Order 7, 2020 through 2022 is the result of this process for Federal Order 7 and initial assessment rate of $0.45 per hundredweight. For 2020, costs exceeded assessments by $4,805,090 and assessments exceeded credits by $403,241 in 2021 and again exceeded them by $1,503,386 in 2022."

THE COURT: Off the record.

(Pre-marking upcoming exhibits.)

A. I'd like to make a comment on these three tables that are not in my written testimony, simply point out that when the last column is a negative number, that indicates there will be prorated payments in that month, and the Market Administrator data as presented by Mr. Herbert showed that, so we were satisfied with our numbers and our ability without calculating all the way down to a prorated percent. So we examined those columns and felt comfortable with the assessment levels that we had chosen.

"What producing milk qualifies for a

DPDC payment? The definition of what producer milk qualifies geographically for the payment DPDC is obviously different for each Order. The DCMA members recognize that with fewer farms and fewer pool distributing plants, milk regularly crosses the state and Federal Order borders to fill orders to the fewer available plants in the most economical manner. So, there was considerations given by to allowing milk from one Order to qualify for payments from a delivery from another Order."

"Provisions in Order 5 allow for milk the receive the DPDC payment from milk produced on farms located in the marketing area of Order 5 or Order 7. Additionally selected counties in Virginia and West Virginia that are not located in any Order boundary and deliver to Order 5 pool distributing plants will be allowed to receive DPDC payments. The out-of-any-order counties must provide proof satisfactory to the Market Administrator that the county is not a part of a milk shed that regularly supplies milk to the Order."

(Whereupon, Exhibit No. 66 was marked for evidence.)

MR. HILL: Mr. Hollon, I, I just want to note that you used the words not in that sentence that was, I don't believe in the sentence, so. I believe that you said "the county is not a part of a milk shed," and your written testimony is a part of the milk shed.

MR. BESHORE: Read that sentence again.

MR. HOLLON: Which sentence?

MR. BESHORE: "The out of order.

BY MR. HOLLON:

A. "The out-of-any-order counties must provide proof satisfactory to the Market Administrator that the county is part of, is not -- no. That is a part of a milk shed that regularly supplies milk to the order." Okay, Thank you.

"Exhibit 66, list of counties not in the marketing area to include as eligible for distributing plant delivery credit payment, Appalachian order, exhibit 67.

(Whereupon, Exhibit No. 67 was marked for evidence.)

A. "Exhibit 67 proposed counties to be added to Federal Order 5 for DPDC eligibility is a map of the proposed counties. Additional witnesses will discuss the rational to satisfy the inclusion of these counties based on historical marketing arrangements."

"Provisions in Order 7 allow for milk to receive a DPDC payment for milk produced on farms located in the marketing area of Order 7 or Order 5 and delivered to Order 7 pool distributing plants."

"Provisions in Order 6 allow for milk to receive a DPDC payment for milk produced on farms located in the marketing areas of Order 6 and selected counties in Georgia that are located in Order 7 and delivered to Order 6 pool distributing plants. The counties selected had been part of a milk shed that has historically delivered to Order 6 pool distributing plants."

(Whereupon, Exhibits No. 68 and No. 69 were marked for evidence.)

A. "Exhibit 68, List of counties not in the marketing area to include as eligible for distributing plant delivery credit payment, Florida Order, lists the counties so noted for Order 6. Exhibit 69, Proposed counties to be added to Federal Order 6 for DPDC eligibility is a map of these counties. Additional witnesses will discuss the rationale to satisfy the inclusion of these counties including historical marketing arrangements and somewhat new milk production trends that clearly impact current and future supply situations."

"Eligibility of deliveries from Order 5 pool supply plants for distributing plant delivery credits. A witness for DCMA member Maryland and

Virginia Milk Cooperative Association will discuss the unique operation of a pool supply plant in Order 5 and its supply to pool distributing plants."

"Analysis of competitive impact of DCMA proposals. Competitive Pairs Analysis. As an important part of our process, we review the impact of our proposed increase in Transportation Credit Balancing Fund and Distributing Plant Delivery Credit funds assessments on the competitive position of pool distributing plants in the southeastern Orders, knowing that the cost of milk is the largest cost item of the product mix in the pool distributing plant. Our analysis involved a selection of plants in the southeastern Orders and for each plant possible competitive plants that may be located inside the Orders or outside the Orders."

"DCMA members suggested the chosen relationships to examine based on their ongoing market knowledge. We examined the impact on 17 possible competitive pairs for Order 5 plants, 10 pairs for Order 6, and 26 pairs for Order 7."

"While it might be possible to make comparisons from every plant to every plant, the selected pairs are a satisfactory representation of the market. The pairs evaluated compare southeast Order plants for nearly ever state in the Orders and potential competitor plants from outside of the region to the Northeast, North, Northwest, West Northwest and West. We made no attempt to individually analyze every possible business transaction for the plants, such as, for example, there might be limited backhaul transactions, an extensive maintenance project at one plant that might temporarily move products to another plant for a short period of time or extraordinary weather events. Also, it is of course not possible to in anticipate new entrants in the marketplace for packaged milk -- for packaged products, which might establish new competitive relationships. However, where some of these factors exist, such as back hauls, we would expect the impact to be reflected in the composition of the average line haul as reported by the DAT work that will be explained by a later DCMA witness."

"To make the comparison, we've constructed the following equation: Plant A, located in a southeastern Order has its milk cost, the value of its Class I differential, plus the assessments for the transportation and delivery credit funds. Plant B, if located outside of the southeastern Orders has its Class I differential plus transport cost to move packaged milk products to the market Plant A. Plant B has no Transportation Credit fund assessments. If Plant B is located in one of the southeastern Orders, its cost is its transportation and delivery credit fund assessments, plus its own Class I differential, plus the transport cost to move packaged milk products to the market of Plant A as calculated by the DAT data."

"Exhibit 17 (sic)."

MR. HILL: What number did you --

MR. HOLLON: 70.

(Whereupon, Exhibit No. 70 was marked for evidence.)

A. "Exhibit 72, two pages, comparison landed cost packaged milk elected locations, southeastern Orders details this calculation for 53 competitive pairs and is constructed as follows: Each row, beginning with Athens, Tennessee is, a set of pairs that we determined to be significant choices to review. Columns 1 through 5 represent data for the destination plants in the southeast Orders, showing city, state, order, assessment and Class I differential. Column 6 through 10 are the potential competitor plants showing city, state, order, assessment and Class I differential. Columns 11 and 12 are transport data from the DAT analysis showing miles between the locations and transport costs and dollars per hundredweight that would be a component of the cost structure. Columns 13 through 15 are the summary values of the analysis. Column 13 shows the sum of the assessment, plus Class I differential for the southeast Order plants, column 4 plus column 5. Column 14 is the corresponding competitor plant's sum of the assessment, if it is located in one of the southeastern Orders, plus its Class I differential, plus the transport cost as calculated by the DAT analysis. (Column 9 plus column 10 plus column 12.)"

"Column 15 is the result of subtracting column 13 from column 14. A positive result in column 15 indicates the competitive plant did not have a cost advantage at the DCMA proposed assessment level versus the southeast Order plant."

"Note the assessment used for this analysis is the sum of the two credit systems proposed by DCMA, allowing us to review the results from the position of maximum impact of the assessments. The combined updated assessments plus the DPDC assessments, are $0.90 per hundredweight for Order 5, 85 per hundredweight for Order 6 and a $1.10 per hundredweight for Order 7."

"The average cost advantage retained by in-area plants across all 53 comparisons was $2.10 per hundredweight, $2.10 per hundredweight divided by the number of gallons in a hundred pounds of milk equals $0.189 per gallon spread. The smallest in-area plant advantage was $0.44 per hundredweight for $0.379 per gallon. Order 5 comparisons showed an average in-area advantage of $1.69 per hundredweight. The average advantage for Order 6 plants was $3.07, and for Order 7, the average advantage was $2.18."

"Our analysis indicates that the assessment levels proposed by DCMA do not result in placing the in-area southeast Order pool distributing plants at a competitive advantage to their competitors."

"Request for emergency hearing procedures. Particularly because of the current inflationary economic environment and since transportation costs have not been updated for more than 15 years and the market structure has changed dramatically due to plant closures the loss of dairy farms, it is important that these requested order amendments be effective on an expedited basis so that this objective may be most effectively addressed.

EXAMINATION MR. BESHORE:

Q. Mr. Hollon, would you go back to the last sentence on page 18 of exhibit 13 and re-read that, I think it was read incorrectly?

A. "Our analysis indicates that the assessment levels proposed by DCMA do not result in placing the in-area southeast Order pool distributing plants at a competitive disadvantage to those competitors."

Q. "Disadvantage," not "advantage?"

A. Yes.

Q. Thank you. Now, I have just a couple of questions about the testimony you've just read, and then we have some additional testimony about other exhibits that you can identify in this testimony. First of all, if you go to page 11?

A. Yea.

Q. For reference, on the second line to section "1030(13)(f)(4)," do you see that?

A. I do.

Q. Okay. I don't think you explained this in your testimony, that -- what does that refer to? Does that refer to another provision in another Federal Order?

A. There is a provision in Federal Order 30 that has been there for a long time that deals with pooling rules, if you will, and out-of-area milk, gives the Market Administrator the authority on their own to investigate if they think a pooling arrangement is being made that's improper and uneconomic.

Q. Okay. So when you were saying "section 1030," you meant that was "7CFR section 1030, "which is Federal Marketing Order 30 from Chicago, regional, upper midwest regional area, correct?

A. Correct.

Q. Okay. Also on page 11, the paragraph under "calculation of assessments," the sentence refers to "In Order 5 the inclusion of milk deliveries from pool supply plants as qualified recipients," now we're going to go into the Order language proposed, but is it correct that what you're referring to there is that Order 5 is the current situation where there's a pool supply plant involved in it?

A. Yes.

Q. In the Orders?

A. Yes.

Q. Okay. Even though the language in our proposals pool supply plants is present in all Orders, 5, 6 and 7?

A. Yes, that is correct.

Q. Okay. Let's go to your exhibits, which were not addressed, exhibits in the exhibit packet, which were not addressed in your testimony. And I call your -- let's, first discuss an exhibit that is titled "Comparison of the Cost of Farm to Plant Delivery with and Without the Distributing Plant Delivery Credit," do you have that?

A. Yes.

Q. Okay. And I would note for everyone, we have a substituted exhibit for this, that is a packet that was presented yesterday had some errors on this, some of the numbers were in error on this, now that document's not been admitted into evidence or anything, so we should be, everyone should be referring to the document we had in the back, and it's been distributed, re-distributed today, which we would ask to be marked as exhibit 71.

(Whereupon, Exhibit No. 71 was marked for evidence.)

Q. Mr. Hollon, you made sure that the court reporter and Judge Strother and the Government folks and other interested parties had the corrected exhibit, correct?

A. Correct. Yes.

Q. Okay. Let's talk about, talk about the exhibit then. Can you just walk us through the exhibit and tell us what it shows?

A. The general purpose of this exhibit is just to demonstrate that the portion of cost covered by the credit and the differential ends up at 85-percent, and that was our target all along to pay on 85-percent of the miles, and so it shows three different characterizations, one is where the demand plant and the supply plant are in the same location or location differential zone. It shows where the, where the demand plant is less than the farm differential and where the demand plant is greater than the farm differential.

So, in the first example, it's a look into the plant in Dacula, Georgia, processing plant from Oglethorpe County, Georgia, that mileage is 395 miles, 85-percent of that is what would receive the payment, that's 336 miles, $0.00817 I think is the most current mileage right factor that was published at the time I put this together, and that multiplies out cost for a 500-weight load or 50,000-pound load of $1,614. The potential credit would cover 85-percent of that cost, 1372, and that number would be derived by walking through the payment calculation, and the two differentials are the same, so there would be no adjustment, up or down, by the differential. So you would end up with a credit payable of 1372, and that again is 85-percent of the cost. If you're in a situation in the middle where the demand plant is in Hammond, Louisiana, the milk supply is in Sandersville, Georgia and that is 568 miles, and you have 85-percent of the miles at 483, multiply by the mileage rate factor and the per hundredweight, yea, per hundredweight of the load, you end up with a cost of $2,320. The credit calculation would come out to $1,972, and there would be no adjustment here for differentials because the farm differential is higher than the plant differential, so that subtract any positive difference language would result in a zero adjustment and you would end up with 1972 or again 85-percent of the calculated costs.

Q. If I could just interrupt you there. That example is similar to the Florida transaction that you discussed in your testimony, correct?

A. It is. It is.

Q. Okay. Central Florida moves North to distribute plants in a lower, same or lower costs?

A. Yes.

Q. Same or lower differential?

A. Correct.

Q. Okay. Thank you. And the third example then Nashville to, Glascow to Nashville?

A. In that example, calculations work their way all the way down, but noting that in this case the farm differential is in the 260 zone, the plant differential would be in 290 zone, so the differential would offer $1.50 of compensation. The credit payable then would be reduced because the differential carries some of the value to again result in an 85-percent payment.

Q. Very good. Let's go then to exhibit 7, document to be marked as exhibit 72, which is titled Federal

Orders 5, 6 and 7, In-Area Producer Milk and Pool Distributing plants October 2022."

(Whereupon, Exhibit No. 72 was marked for evidence.)

Q. Actually is there a second page with a list of plants associated with that exhibit?

A. This was created at DCMA's request by the Market Administrator, it was included in Mr. Herbert's presentation yesterday and the information, the geography shaded in read or pink is Order 5; blue is Order 7; green is the Florida Order. You can see outlying counties in all of the geographies. You can then see dots representing pool distributing plants, and the colors of the dots. If the color of the dot is red -- let me back up, and say then, that you have demand points and supply points and miles between the two, and so in the Market Administrator office, they did an optimizer run and said how can we move all of the milk to its closest demand point. And those demand points could receive any amount of milk possible, they were not constrained, the goal here was to have every, see what the result would be if every farm moved to its closest market. And so, if the dot is colored red, that says that that plant, the resulting end of minimizing or having every plant move to its closest market would only get 50-percent or less of the milk that it had demanded during this month, it had received during this month. If the red dot is yellow, the plant would receive between 50 and 100-percent. If the dot is green -- well, blue, would be 100 to 200-percent of what their actual receipts were. And if it's dark blue or black, it would get more than 200. And so, as you look over the map, you see a few, but some of each color. And that would indicate that not every farm can go to its closest plant, not every plant can get its closest milk supply, so both of those are disorderly and that that would be something that the order system is designed to try to improve on and our proposal would also help to offset some of that cost of the plants who did not get anywhere close to their supply, and the farms who had that cost.

Q. Would it be a fair observation to say that because there are more red dots than any other color, that within the southeastern states there is not a lot of milk close to the majority of the pool distributing plants?

A. Yes.

Q. Do you have any other thoughts on 72 that you'd like to make?

A. I do not.

MR. BESHORE: Okay. Now, at this point I'd like to ask that the proposed regulatory language for proposals 1 through 5 be marked as exhibits 73, proposal one 74, proposal 2, 75 proposal 3, 76 for proposal 4, and 77 for proposal 5.

(Whereupon, Exhibits No. 73 through No. 75 was marked for evidence.)

THE COURT: Off the record.

Q. Mr. Hollon, let's look at exhibit 73, which was proposal number 1 first.

A. Yes.

Q. Okay. This is the update proposed amendments within it to the existing Transportation Credit Balancing Fund program in Order 5, correct?

A. Correct.

Q. Okay. So can you just identify the changes in proposed language represented by proposal number 1?

A. In section 81.

Q. Section 81 of Order 5.

A. Of Order 5.

Q. Yes.

A. The assessment, currently the assessment for the Transportation Credit program is 15 cents, that's striked (as stated) through and inserted is 30 cents, which is the proposal from DCMA.

Q. Okay. And that's the only change in section 81 81, correct?

A. That is --

Q. Only proposed change?

A. Yes.

Q. Okay. It section 82,(a)(1), is there a proposed change?

A. There in the second sentence, the month of February is striked (as state) through, so it would no longer be a mandatory payment month, it could be an options payment month.

Q. Okay. Going on second page of the exhibit 73, what's the change to part 83(b)?

A. That defines the methodology if the industry wants to institute a payment for February, so it includes February, inserts February, like June is inserted, and would follow the same procedure of asking the Market Administrator to make a payment for February.

Q. Okay.

A. And then no other changes in paragraph B.

Q. How about paragraph D then, or subparagraph D, "Transportation Credit shall be computed as follows," were there changes in section (iii) -- subpart (iii) and (viii)?

A. In subpart (iii), instead of subtract 85 off the miles, it should read subtract 15-percent of the miles, from the mileage so determined.

Q. Okay. And then subpart (viii) is there language proposed to be added in that section?

A. Yes, this would be -- the entire section would be added, and this allows for the Market Administrator to make changes in the mileage rate factor, if a written -- if a written request is received, and it describes the timing for that. It also, on the next page, says the Market Administrator may increase the mileage adjustment factor by as much as 10-percent up to 25-percent, so there is a boundary around those, and also there's a boundary of decrease, and that if the Market Administrator is looking to change those, they have to give notice to the industry. And I want to back up and I did -- and when I was talking about (viii), I said mileage rate factor, that should be mileage adjustment factor.

Q. Thank you. So, going then to section 83, part 83 of Order 5, the mileage rate for the Transportation Credit Balancing Fund. As you have testified, does proposal 1 request updating of those numbers in parts 2, 3, 4 and 5 from the numbers that have been in place since 2006 to the current numbers as described in your testimony?

A. So, the changes in paragraph A in subparagraph 2, $1.42 is struck and insert $2.25. And subparagraph 3, "5.5" is struck, insert "6.2." Paragraph 4, $1.91" is struck, insert "$3.67." And in paragraph 5. Strike 4.80, insert "5.97."

Q. Okay.

A. That's all of the changes.

MS. TAYLOR: (Inaudible).

Q. Would you repeat what the change in part 5 should be?

A. Part 5, strike 4.80, insert "$4.97."

Q. "$4.97," not "$5.97?"

A. Okay. Yes, that would be important.

Q. Thank you. Now, proposal 74 -- exhibit 74, proposal number 2 are changes to, proposed changes to Order 7, with respect to Transportation Credit Balancing Fund provisions, are they identical to those proposed for Order 5 with the exception of the rate involved?

A. That is correct. All the places where I mention changes would be the same, and they would all be the same changes except the rate would be different.

Q. The rate of assessment?

A. Rate of assessment, instead of 30 cents in section 81(a), insert 60 cents.

Q. Okay. Let's move on then to the proposed language for the distributing plant delivery credits. And these proposal three relates to that program in Order 5, exhibit 75. Proposal 4, exhibit 76 relates to that program in Order 6, and exhibit 77, proposal 5, relates to that program in Order 7, is that correct?

A. That is correct.

Q. And let's then just walk through the language in Order 5, exhibit 75, and it will then be, we can then go 76 and 77 and just point out the differences from Order 5 because they're quite similar in each Order, correct?

A. That is correct.

Q. Okay. So let's talk about the even exhibit 75, proposal 3 for Order 5. The first two parts, sections 1005.30 and .32 are additional reporting requirements, is that correct?

A. Yes.

Q. And that's just to require handlers to report to the Market Administrator information regarding volumes of milk on which they would have received on which distributing plant delivery credits may be applicable and/or assessments for that fine might be appropriate, correct?

A. Correct.

Q. Okay. Let's go then to section 84 pages, which is pages 2 through 5 of exhibit 75 this is new language

DCMA proposes for its credit program, correct?

A. Correct.

Q. So not presently a section 84 in Order 5, correct?

A. There is not.

(Whereupon, Exhibits No. 76 and No. 77 were marked for evidence.)

Q. Okay. Let's go through the proposed language then, sub A of 84, can you tell us what that, what that is, Mr. Hollon?

A. Section establishes the new credit, gives it a name, delivery plant --sorry distributing plant delivery credit fund and it establishes that in the order language.

Q. It says "Market Administrator shall" what? Make that a separate fund and administer it separately from the market what, pool, and separately from the Transportation Credit Balancing Fund, correct?

A. That is correct.

Q. Okay. Subpart (b) then?

A. Subpart (b) describes payments that will be made into the fund, so that would be the result of assessments on Class I milk and it defines the assessment rate of 55 cents per hundredweight and thereafter not greater than 60 cents per hundredweight.

And as the Market Administrator deems necessary to remain a balance in the fund to equal the total distributing plant delivery credit dispersed during the prior year, so that indicates that there would be some time period that the Market Administrator would examine operations of the funds and possibly make changes.

Q. And that's intended to be identical to the type of fund administration that presently is in the order of Transportation Credit Balancing Fund?

A. Say the last part of your sentence again.

Q. It's intended that the Market Administrator have the ability to administer the assessments and administer that funds in the same manner that the current Transportation Credit Balancing Fund is?

A. Yes, that is correct.

Q. Okay. Part C then, subpart C of 84 provides for the announcement of the -- of the rate per hundredweight each month, is that correct?

A. Correct.

Q. Okay. So part D relates to payments from the distributing plant delivery credit fund?

A. Correct.

Q. Okay. Can you take us through that, please, Mr. Hollon?

A. Payments from the fund, this is part D, section 1 defines dates where payments have to be made, points out that milk and director of producers farms were receipts of bulk unconcentrated milk transferred from a supply plant. Makes note that if the funds are insufficient to pay all of the credit supply core, then there will be a pro rata reduction, so everyone who applied for credits would get the same reduction in their application as anyone else.

Q. Same operation in concept and principle as with the current Transportation Credit Balancing Fund?

A. Correct.

Q. Okay. How about (d)(2)?

A. (d)(2) and (d)(3) talk about review by the Market Administrator of the credits and the amounts and the calculations and the data and just makes note that there would be a review after the initial funding and there could be changes. So D says that, sorry, section 3 talks about a final verification, and so that's where the Market Administrator may do a look-back after they have access to all of the data.

Q. Make sure everything's right?

A. Make sure everything is right, correct.

Q. Okay. Part 4 then?

A. Specifies that a cooperative association can be the party that receives the payment funds.

Q. For which is the handler?
A. Yes.
Q. Okay. And part 5, (d)(5)?
A. D5, I'm gonna read that, "The Market Administrator shall provide monthly to producers who are not members of a qualified cooperative association a statement of the amount per hundredweight of distributing plant delivery credit, which the distributing plant handler receiving the milk is entitled to claim. So that specifies that in the case of a producer who is not a member of a co-op that the Market Administrator would make that producer aware of what Transportation Credits were earned on shipment of their milk.
Q. And what's the purpose of that provision?
A. To be a transparent situation so that the knowledge is known about what happened.
Q. The non-member is provided that knowledge?
A. Yes.
Q. Okay. Go then to subpart E.
A. Subpart (e) defines which milk the credits would apply to, and in this case in Order 5, within the marketing areas of federal Orders 5 and 7, so milk originated -- originating from the farm in 5 or 7. And some additional counties, which I'll speak to in a

moment, originates in areas 5 and 7, and delivers to plants 5 and 7. Soit can move in either direction, obviously you can't collect on both at the same time, but you can, milk that starts at 5 could deliver the 5 plant, could deliver the 7 plant. If it originates the 7, it delivers to a 7 plant, could deliver to a 5 plant.

Q. So if this is provisions for Order 5, this just says that Order 5 would pay for milk originating either in Order 5 or Order 7 or the additional counties that you discussed in your direct testimony that are in presently not federally regulated, non-federal marketing area Virginia or West Virginia?

A. That is correct. And the language specifies the number of counties in place and then again the handler on those counties, if requested by the Market Administrator, would need to show some information, and then if there's additional counties that would like to be included, that's possible, but they would have to again prove to the Market Administrator that they are a regular supply of milk.

Q. Okay. Move on subparts 2 and 3 of E?

A. Part 2 describes the fact that on days where claims were made, the Market Administrator would investigate and make sure that the handler, if they've made claims for milk deliveries to a plant, they did not ship milk out of that plant, and so that is the -- that's the purpose of two. And on the purpose of three is that the Market Administrator should monitor and evaluate requests for delivery plant credits and try to make sure that there's not a non-economic movement of milk and if they do find that, they would -- there's a process for how to make that known to the handler they're investigating and what might happen.

Q. So two and three, in both of those cases the proposal is intended to provide the Market Administrator with the authority to police any potential abuses, is that fair?

A. That is correct. And just the fact that somebody is looking, you know, would be one factor of how to administer that the fact that if somebody knows you're looking, then they'll be a better actor.

Q. Very good. Subparts F then defines how to compute the delivery plant, distributing plant delivery credits, would you just review that, please?

A. Okay. (F)(1), with respect to milk delivered directly from farm to a plant. Step -- the next step is then single I, "shortest hard surface highway miles from the farm to the plant, multiply the miles by adjustment rate of not great are than 95-percent," so it could be a reduction of miles, "not greater than 95 or less than

75-percent," and our initial proposal suggests using 85-percent as that initial adjustment; (ii), subtract the Class I price in the county where the shipping farm is so that establishes what that differential value is. And also for the county where the plant is located. Triple I, multiply the adjusted miles by the mileage rate factor that is determined in section 84, (iv) subtract any positive difference in Class I prices computed in subparagraph (ii), so this makes a subtraction, if it's a positive number, so you would -- you would reduce the payment by the monies offered in this case by the differential. D, multiply the remainder computed in (iv) by the hundredweight of milk that's transported. And that then becomes the payment.

Q. And that's basically the calculation that you showed and demonstrated in that exhibit 71?

A. Yes.

Q. Okay. Then part 2, is that the same calculation methodology with respect to milk moving from a pool supply plant to a distributing plant in Order 5?

A. It is.

Q. Okay. Then there are three more parts to section 84 (g), (h) and (i), can you tell us what those are?

A. This allows for us the ability to move the mileage rate up and down is G.

Q. Okay. That's between 75-percent and 95-percent that you've described?
A. Yes.
Q. Okay. (H) then just sets the rate at the same rate --
A. Yes.
Q. -- as transportation -- as applies to mileage Transportation Credit Balancing Fund?
A. That's right, says use same mileage rate factor as used in the other program.
Q. That was explained in your testimony?
A. Yes.
Q. Then (ii) or (i) provides for the announcement of the mileage rate factor for the month, correct?
A. Correct.
Q. Okay. So that's Order 5, let's look at Order 6, which is proposal 4, exhibit 76 and just, just talk about what differences, if any, there are, from Order 5 in the proposed Order 6 language?
A. I think six sections 30 and 32 have no changes; 84(a) has no change; 84(b) has a different assessment rate; initial rate at 80 cents and thereafter no greater than 85. The remainder of the language would be the same. C, no changes. D, no changes. Two, no. Changes three, four and five -- well three and four, no changes.

Five, we have a different set of counties, these are counties located in the State of Georgia.

Q. You mean (e)(1)?

A. (E)(1), yes, that's right.

Q. Okay. So, 1 provides the locations from which farm to plant deliveries for Order 6 would qualify?

A. That is correct.

Q. And this set of counties in Georgia was described in detail in your testimony?

A. It was, well not in detail. More of the detail is coming, but there was a list and there was a map.

Q. Okay. Now, are the remainder of the language provisions for Orders 6, same as 4 and 5?

A. No, Order 6, when you get down to H --

Q. Okay.

A. -- it is until you get to H.

Q. Very good. It's the same until we get to H. And H is different in Order 6, why is that?

A. Because there is no such language to modify in Order 6. There is not a Transportation Credit Balancing Fund program in Order 6, so in order to have the mileage rate factors computed and the language for those, you would need what's in paragraph two to be able to do that.

Q. So, in order 6, because there's no Transport

Credit Balancing Fund presently there, was have to add the calculation of the MRF rate into the Order 6 language rather than just refer to it --

A. Right.

Q. -- in the other orders. Okay. Very good. Go to proposal 5 then, which is 7, exhibit number 77. And if you would just identify what differences, if any, there are in the Order 7 language from the Order 5 language?

A. Section 85 (b) says, "this assessment rate of initially $0.45 per hundredweight and not greater than 50.

Q. Okay. So, the rate of assessment, as you testified, is established for each order individually?

A. That is correct.

Q. Section (e)(1).

A. (E)(1) indicates that a credit can be applied for if the farm is located within the marketing area of Orders 5 and 7 and then delivers to a pool distributing plant, Order 7.

Q. So, if I can just summarize the difference between the three Orders are basically the rate, rates of assessment, which are specified for each of the Orders, and the geographic locations of the farms from which the deliveries would be eligible for the credit. Those are specified individual for each of the orders correct?

A. That, and then the insertion in Order 6 of the MRF.

Q. Detail, detail calculations -- okay. Very good. With that, are there any other, any other exhibits or items that you'd like to present in direct testimony?

A. There are no more exhibits and no more direct testimony.

MR. BESHORE: And I have no further questions for Mr. Hollon on direct at this time.

THE COURT: Okay. So we take 15-minute break. Be back, Mr. Hill, did you want to be -- apparently not. Okay, well we be back 11:15 for cross-examination of this witness.

MR. BESHORE: Thank you, Your Honor.

(Whereupon, a recess was taken.)

THE COURT: Mr. Beshore.

MR. BESHORE: Your Honor, with your permission, I need to make, I would like to make one correction to exhibit 71, one change we can do to 71, do you have that Mr. Hollon?

A. I do.

Q. Okay. The first example from that says it's from Dacula, Georgia and Oglethorpe, Georgia, we should just cross out those locations. The arithmetic, the mileage example calculations, it's a correct example of a transaction, but the transaction was not, the mileage doesn't match the distances from Dacula, Georgia to Oglethorpe to Dacula, correct?

A. Yes.

Q. So there's some other geography that that represents, we're not sure what it is right now, but the arithmetic is right as an example of how things would work. So those locations should just be crossed out, correct?

A. Yes.

MR. BESHORE: Thank you, that's all I have. Thank you, thank you for allowing me to fix that before we go to cross.

THE COURT: Yes. Counsel.

CROSS EXAMINATION

BY MS. TAYLOR:

Q. Good morning.

A. Good morning.

Q. I think I'd like to start -- I think I want to start with the red text first, some questions on that. I'd like to start with exhibit 73, get some of the technical stuff out of the way. On the bottom of the second page that's on the mileage adjustment factor.

A. Page 2?

Q. Yea, bottom of page 2 into page 3, highlighted paragraph.
A. Okay, I think.
Q. Okay. So you have, right now we, as proposed, adjust the miles at 15-percent, and then the Market Administrator has the ability to adjust that factor, the way it's written is that the mileage adjustment factor may be increased by as much as 10-percent, up to 25-percent?
A. Hang on, I thought you were talking about the testimony for proposal 2, let me catch up with where you are.
Q. Yea, I'm in, I should be --
A. Is the language you're asking about proposal 1?
Q. Proposal 1, exhibit 73, I'm on the second page, part of 1005.82,(d)(3)?
A. (D)(3)(iii)?
Q. All the way at the bottom, (viii), however you want to say that. Okay. So yea, the way it's written is you can increase the factor by as much as 10-percent up to 25-percent, and then decreased by as much as 10-percent to a minimum of 5-percent. That could be interpreted to say 10-percent to 15-percent, for example, instead of what you think you might intend is of 10-percent? Did you mean to say 10-percent of the

15-percent or did you mean to say you could increase or decrease for example by as much as 10 percentage points so that the mileage rate would be, adjustment could be, for example, 25-percent of the miles?

A. I think the intent is if there needs to be, currently it's at 85, that's where we started at.

Q. Right.

A. Okay. And so -- well you can't go up 25 from 85. I'll have to have a review.

Q. We can discuss this maybe after lunch once you have a chance to talk.

A. Okay.

Q. Then moving on to exhibit 75, which is the start of the Distributing Plant Delivery Credit.

A. All right.

Q. I think Mr. Beshore clarified this, but I was trying to read some of the texts and I might have missed it, but you indicated in your testimony that the allowance for a credit to be for pool supply plants was in Order 5, but the language is in here in all three orders, so?

A. We're okay with all three orders, even though I don't think Order 6 has supply plant, Order 7 does have a plant there, sometimes a supply plant, sometimes not, most of the time not. And then in Order 5, that supply plants, as Mr. Smith will talk about, gets lots of use.

Q. Okay. In 1005.84 paragraph (d)(5), it's on the third page?

A. (D)(5), yes.

Q. That's a paragraph that the market administrator should provide to producers who aren't co-op members the amount that their handler gets for their credit, there's no date of when that should be provided, so could you elaborate maybe what your intentions are and how that would be operated?

A. Well, as far as dates, I presume it would be when prices are announced or when, when the final verification might be done. If I remember right, the handler has to apply with when they're making their pool reports, they submit their, the credit information and in this case, their delivery credit information, and they would, and this would be a calculation and a payment, seems like it would perhaps make sense that that notification would be after the verified filing.

Q. That brings up another question, for these Transportation Credits have to be requested, and it's your intent that these delivery, distributing plant delivery credits also need to be requested, they wouldn't just be automatic for producers who are eligible?

A. Automatic sounds pretty good.

Q. If I -- if it's found that maybe an administering a program, it might be easier that they were automatic?

A. Yes, that would certainly be true.

Q. Right. So would DCMA be amenable to that?

A. Can I ask you a question?

Q. Sure.

A. How are the assembly credits in order 30 done? Are those automatic?

Q. I'll have to get back to you on that one, talk to an Order 30 person.

A. Automatic sounds like the right way.

Q. Okay.

A. You've already supplied the information. You've already sent it in, so yes.

Q. And that brings up another question, in Order 5 has unregulated counties that are currently Virginia and West Virginia able to be, to qualify for shipments for these delivery credits?

A. Yes.

Q. Is it possible that those shipments could be eligible for both delivery plant distributing credits and Transportation Credits theoretically, and is it your intent that they be allowed to get both0?

A. It would not be the intent to give both, so on the same load of milk, so if you have two loads of milk and one meets that requirement and one meets that requirement, that could, that could certainly be possible, but there's no intent for anyone to collect twice on the same load.

Q. Okay. This is a very technical question and I'm going to turn to page 5 of exhibit 75, paragraph G, it references in the last sentence, paragraphs (f)(1) and (f)(6), but there is no (f)(6)? There's (f)(1) subparagraphs and there's an (f)(2) with subparagraphs. We can come back after lunch if you guys want to look into that, but?

A. We'll be back.

Q. Great. For Order 5 you listed out the counties, we noticed a difference that there was more counties to make it more contiguous in your exhibits, in your map, kind of shaded all the counties, but we don't believe all the counties are actually listed in the reg texts that are in exhibit 66. So, if the Department found that -- well, let me say this, is your intention that all the counties listed in exhibit 66 are included as eligible to receive distributing plant delivery credits in the Appalachian Order?

A. All of the counties in exhibit 66?

Q. Yes.

A. Yes.
Q. So if we found counties missing out of the red text, your intention is to include those?
A. If you found counties --
Q. In exhibit 66 that were not in the regulatory text, it's your intention to include those?
A. Yes. The test in that case, the testimony prevails.
Q. Gotcha. I don't see it in the red text and I don't think your testimony covered this, but when comes to diversion, the current Transportation Credits system as we talked this morning cannot give credit on milk that you're diverting off of, is your intention for that to apply also for delivering these new credits?
A. We've discussed that twice, and I'm not totally prepared to give the answer, so give you an answer, we're up to three now.
Q. Hope someone's keeping track. Okay. Let me turn to --
A. Can I ask you a couple clarifying questions on that?
Q. Sure.
A. Okay. So, for a diverted transaction, there is the place that is diverted off of, but not delivered to, and on the other end of that translation, it's diverted

to and delivered to, and that's your question, right? Which one of those ought to count?

Q. Yes. Okay. I'm going to turn to your part 2 statement, which was exhibit 13, I want to go through that a little bit.

A. Part 2 statement?

Q. Exhibit 13, what you just read into the record.

A. Exhibit 13.

Q. Yes. It was marked yesterday as exhibit 13?

A. Oh, okay. All right. Part 2?

Q. Yea. That's part 2, correct. And I'm just going to ask a few questions just to make sure the record's clear and kind of close the loop on a few items. On page 4, the last full paragraph, it says "DCMA proposes to address these cost inequities to a program of Distributes Plant Delivery Credits," could you just summarize again what those are? I think that's what you discussed in the previous paragraph, but I just want to make sure that's clear.

A. The previous paragraph would be examples of where there would be cost inequities that laid out the Florida example that's pretty geographically clear, there's a lot of milk here and it can go one direction and there's transportation costs and benefit from the differential; it goes the other direction, and there's transportation cost and no benefit, so that's the global, if you will, goal, that's just one example. You would have another example, if I understand right, in some of the marketing witnesses who are going to come pretty soon, they're going to I think give some examples like that, but in Southwest Georgia we got milk that goes all directions, northeast, north, northwest, west, and almost all of those transactions incur costs, but no transportation assistance, and we think that's a change that should be made.

Q. On the bottom of page 6, the last full sentence, and I'll read it, "The reductions in farms and plants put at risk a long-held marketing relationships that have supported the availability of fresh local milk to consumers and school children everywhere in the southeastern U.S." I just wanted to know if you could elaborate, perhaps the marketing people later today are the better people to ask about this, just talk about long-held marketing relationships and what you mean by that.

A. Well, I think I'm go to defer because they're answer closer to the tool on that.

Q. Okay. On page 8, this is part of your list that talks about the marketing rational for distributing plant delivery credits.

A. Yes.

Q. And your sentence talked about this unique regional situation is why you're asking for it down here in the southeastern part of the country.

A. Which paragraph?

Q. I'm sorry, that would be helpful, paragraph 3.

A. Paragraph 3, yes.

Q. Yea. I just want, I guess my question is, can you just maybe contrast how it's different in the southeast versus what makes the southeast unique from other parts of the country? We talked a lot about what's going on in southeast, and your data talks about that, but just highlighting how it's different, how it's different down here than it is in the rest of the country that makes it unique down here to do these unique provisions.

A. Well the paragraph starts out by talking about discussion around differentials, and I guess one of the things that's reasonably true is any time any region of the country talks about differentials, other regions' antennas go up, they want to know what's it doing, what does it mean work, how does it work, what's going to happen, and the opportunity to do the delivery credit system would be the ability to address some of those cost factors without adjusting the differentials, and then you wouldn't necessarily have participation or interest from other parts of the country.

Q. Okay. Would you say based on your experience the milk supply/demand situation down here is different than other parts of country, that's part of the reason why it makes it unique?

A. Well, that's certainly true, you spent a lot of pages earlier yesterday talking about some of those differences, and I don't know that there's any of the other Orders where the supply and demand relationship are as stark as in the southeast.

Q. Next page 9, in paragraph H?

A. Yes.

Q. It talks about the system is superior to over-order prices, which are challenging to maintain, wonder if you could expand on that?

A. Okay. Over a long history, I've seen marketing premiums, if you will, over-order premiums go up, go down, go up, go down, and it's not always the easiest to maneuver them. There's a wide collection of buyers with all different marketing plans. One example, I can remember participating in a discussion in the Texas market where half the customers wanted to have the same price milk the whole year, the other half wanted to have it moved with order pricing, and so you say, well, okay, how can we respond to that? What can we do with that? And so, those are unusual. And then, you have situations where there's maybe different parts of the country that have different, different marketing programs, and when you want to maybe identify costs that you want to make some change in, you have three parts of the process, you have the milk supply, processing supply, and the ultimate retail consumer supply, and where along that chain does that price get transmitted and how much, how not much, you know, how is the response a good one, a bad one? And it's becoming increasingly clear that price transmission is tremendously easier when it shows up on the Federal Order price announcement. We're all here today, most everybody here today is looking at justifying those, so it's not like you make them up and put them in, you have a longstanding process, but the fact that they're part of the regulatory process does two things, makes pretty sure you can pass them on, and secondly, that they get audited and checked and collected, and that is another scenario in the unregulated market, occasionally those price changes don't get collected.

And I would say the last point is that some of the cost pieces have a tremendous amount of volatility, more so now than every before, we have another witness who's going to provide some history and color around that, but it's not uncommon, at least in my memory, to say that you establish a price, you made a price change, but you couldn't put it in place for three or four months down the road until you, you know, you've got all this alignment. Again, this is, wouldn't have to deal with those types of issues, so that's sort of color, if you will, around that statement.

Q. Thank you. On page 10, in the middle, the big paragraph in the middle talks about the assessment rates and the Market Administrator can change the rates --

A. Yes.

Q. -- after investigations. I'm just asking, I didn't ask in the text sort of long lines of questions from yesterday, what do you all intend for the Market Administrator to look at just over a certain periods of time, the assessments are collecting too much money, you should only carry so much of a balance and at that point he should reduce the rate, for example?

A. That would be I think a good example. That also gives you credibility, you know, in the marketplace, so that would be one. Obviously, the other end, you know, would be, ghee, every month this year you've had prorated amount payments, so that says well maybe we should look at changing some of the factors that we can change and increase, so I'm sure that the Market Administrator gets lots of requests from others and to them to do both of those, so those would be two really good examples.

Q. Okay. And then is it your intention that the Market Administrator also just lower the rate? I think from the regulatory text, I might have to go back and look, it talks about allowing them to waive the rate, if they so choose, or increase the rate, but doesn't necessarily speak to just lowering the rate for the new distributing plant delivery credits?

A. Try that one more time.

Q. I'm not sure the red text, as proposed, for the distributing plant delivery credits in the assessment part specifies that the Market Administrator could lower the rate, it talks about increasing the rate or waiving the rate, but not necessarily lowering it, is it your intention to include lowering in that --

A. Yes.

Q. And the next paragraph about the "Market Administrator can disallow claims if they determine both movements were persistently and pervasively uneconomic?"

A. Yes.

Q. Could you just expand on what, for the record, what you're looking for there?

A. Can I draw a question out of that sentence? I think so, yes. First of all, this is a new program, so not everything is going to be clear. There would be things that perhaps we didn't anticipate. So I don't know that we can say without a doubt there is this, this, this, this. But again, the fact that somebody's looking is perhaps the most prevailing thing. And then if there's -- marketers in the dairy industry are known for their creativity, and so to the extent that maybe the creativity crosses a line, there's nothing wrong with inquiring and saying, "Hey, I've noticed this is going on, I don't think it's the right think, what do you think," I think would probably have some impact, but overall, just the fact that it's in the order and it's required to look has got to have some weight.

Q. Moving on to page 12, in the middle, the large paragraph in the middle, towards the bottom, the 85-percent, "the choice of 85-percent for the initial setting was based on DCMA members of current market conditions," can you expand on what that sentence incorporates?

A. Some of it trails back to the transportation credit and their 85-percent, that's where it originated, and so that carried over. There was an active discussion about at what level that should be, at what level, there always should be responsibility by the seller of any commodity, you know, to have to bear some of the cost of marketing, so where should that be at? Should it be up here? Should if be down -- I guess you can't do that. It should be high or it should be low, and with discussion back and forth, it was felt like that was an appropriate number to recognize some responsibility by the seller.

Q. I had another question on the assessment, on page 13, the paragraph that starts exhibit 63, this is kind of technical, but at the bottom of that very --

A. Which paragraph?

Q. It starts exhibit 63.

A. Okay. There's two numbers.

Q. The first one.

A. First one, okay.

Q. Talks about the MA can adjust the assessment if conditions weren't after a year of operations, but I don't think your regulatory texts says that, but is that your intent?

A. I thought it did say that. I thought it said they were supposed to establish based on, you know, a period of time, if it was an equitable amount. You wouldn't do it on a day -- that there would be a periodic review of the assessment to set it at a level that would meet some goal in the prior period, prior year, isn't there language like that?

Q. If I'm looking at your exhibit 75, second page, paragraph (B), second paragraph B on that page, "payments to distributing plant delivery credit fund," I guess that's what you mean here in the middle of the paragraph, "set the rate of $0.55 and thereafter not greater than $0.60 as the market administrator deems necessary to maintain a balance in the fund equal to the distributing plant delivery --

(Court reporter asked for Ms. Taylor to slow down reading the document.)

MS. TAYLOR: Sorry, my mom always told me I talked too fast.

A. That's, that's, that's the paragraph that I was --

Q. Okay. During the prior calendar year, so it's your intent that the $0.55 stays $0.55 for a whole year, and then after that we can adjust it, if necessary, for example?

A. There's not a good answer to that question, because early on there may be reason to change.

Q. Okay.

A. And so, and later on, there would be a desire to say, okay, you got to at least look, so. I would say yes, we would go with the language here, but there is a boundary then at the end of the year, there has to be some. He can say "I looked and I'm not doing anything," or, "I looked and I want some information on this," just like you would do a rule-to-comment type proposal, which I think is what the industry envisions happening.

Q. And then going forward from there, would it be something he should look at just once a year?

A. No.

Q. He or she?

A. They.

Q. They. I did want to turn to exhibit 63.

A. Exhibit?

Q. 63.

A. 63?

Q. Yes. I have to find it myself. This is analysis of assessment and costs for DC proposal Federal Order 5, 2020 to 2022, and I'll -- I'm looking at that and I'm looking at how you describe on page 13, as I was following along, you said, in their texts, your statement, the second column is the "total dollars of assessment using market administrator generated miles, less 15-percent, multiplied by the mileage rate factor," isn't that column just the assessment they collect on Class I milk? It really doesn't make -- you don't really incorporate miles and mileage rate?

A. That's correct.

Q. So the second column is what's paid in based on the --

A. Yes.

Q. Okay. And then the other things use the mileage rate factor? I just want to make sure your statement is --

A. Yes.

Q. Okay.

A. I guess I would want to point out again, that's the last column is the punch line column, (unintelligible) exhibit, we looked at that, we looked at that assessment rate. We evaluated how it would performed, we said this is the assessment rate we want to ask for.

Q. Right. Back to statement on page 14 about what producer, what qualifies for a credit.

A. Will you.

Q. Again, this is one of those just questions asking just, the system give the market administrator, as proposed, flexibilities to do many different things requested by the industry, so just some clarity for the record as what you want the market administrator to look at when you talk about any out-of-order counties that want to be considered to be eligible to receive a credit must provide proof satisfactory to the market administrator, that the county is part of the milk shed that regularly supplies milk to the Order?

A. Regularly supplies is kind of a good word, so that has to be the bottom line, is that over an extended period of time, over an entire year, I don't think you can say 365 because you're going to have situations where maybe you couldn't do it on a day, maybe there was a quality problem, maybe it was Memorial Day weekend and some load had to move to a balancing location, but regular supply means it comes without question, most of the time, the handler can produce, you know, manifest, if asked, it can produce haul bills if asked, to show that it's a regular supply.

Q. Okay.

A. Obviously, in the example that you read, be not a federally regulated county, that particular one, that's order -- no, I'm sorry.

Q. Well out-of-any-order counties?

A. Yes.

Q. And that goes so what about, for example, in Order 6 where you have counties in Georgia that was the eligible to receive their payment, but somehow the milk shed changes, and instead of the county being in one of those (unintelligible) listed currently, it's somewhere else, what happens in that situation?

A. Well, we made attempts to include a broad range of counties, and the folks who market in that geography were key in saying okay, here is the counties where we absolutely have milk now and we know we have, and we know who the producers are and we know the ones who think they're going to expand in the ways, the ones that say they're not and the ones that say I have an uncle or a brother coming in the dairy business. We also note there's milk in this county, there's milk in this county, and here's a county here where there's not any, so it would be logic to try to include as many of those as you possibly could, and you know that the majority of the ones you include will never (inaudible/trailed off) a farm, you think, but it also allows you to give the majority of those who would, because the worst possible outcome is to have to come back to a hearing to include one county that you didn't make allowances for.

Q. But as it -- that makes sense, but I just want to be clear, if there's a county that is located in a Federal Order that somehow, I don't know, 10, 15 years from now there's milk there that isn't there now and it's a regular supplier for Order 6, for example, they couldn't petition the market administrator to be included?

A. Did you say they could or could not?

Q. Could not petition.

A. I would say that's correct.

Q. Okay. I had questions on the competitive pairs analysis and I know you said there was witnesses that were going to talk about the DAT information.

A. Uh-huh (affirmative).

Q. I'm thinking I might hold off on those questions now and maybe they'll be answered later?

A. That would be right. If the witness needs help, we'll provide it.

Q. Let me check my list real quick and one more. A broader question, I think it's well documented that Class I sales nationally are going down?

A. Correct.

Q. So can you speak on why it is appropriate at this time, given that fact, to increase essentially prices on Class I milk that the consumers will pay?

A. Fair question. In this particular situation, I guess I would answer that question by saying the is to try to keep as much local milk in the market producing milk. And so, I think the three dairy farmer witnesses, one of the things they spoke about was the number of dairies that they knew of that were near their farm who were no longer there, and to the extent that we can help the farm in the area grow or remain in business or maybe even come into business is going to provide the most economic milk supply for the processors in the southeastern Orders and ultimately for consumers, that's always a hard argument to follow all the way through the chain, but it speaks to be true. So every farm that goes out of business gets replaced by a supplemental milk load that costs a whole lot more.

Q. For now, my final question is on your emergency hearing request.

A. Correct.

Q. What's the consequence if USDA doesn't utilize emergency procedures and why would you consider this an emergency now that needs to be considered?

A. The biggest now situation is the transportation situation. And all the way through, you heard folks yesterday again who were at the forefront, you know, "my hauler went out of business, my hauler told me they were going to quit if I couldn't get more money, we can't get another person in our area," and so that's not showing any relenting. The volatility and the fuel arrangement, we'll have witness to speak to that and will be available for questions, but that volatility is not going away, it's only going to get worse. And our abilities, as I mentioned before, to deal with those factors in the current market are pretty hamstrung and so, obviously, when you ask for emergency, you would like it to show up and like it to happen that way. I guess your question about what would happen is out of business signs would probably be more and that would again make it more costly to supply the local market because the local milk is having a hard time. I would say, we also seem to hit a sweet spot in the capabilities of the Department to have the hearing and reach a decision, so that would be of benefit.

Q. Yes, we try to be efficient these days.

A. Good job.

MS. TAYLOR: I think that's it for AMS at the moment. Thank you.

MR. HOLLON: You're welcome.

THE COURT: Okay. Cross-examination by anyone, other than the presenting party DCMA? Okay, AMS, sir?

CROSS EXAMINATION

BY MR. TONAK:

Q. On your exhibit 13, page 3, middle paragraph?

A. Yes, sir.

Q. You indicate that in-area deliveries account for 54-percent of the pool distributing plant needs, Order

5, so that would mean 46-percent comes from out-of-the-area, is that correct?

A. Yes.

Q. And the same with Order 7, 44-percent of the needs come from in the area, so 56-percent would come from out-of-the-area?

A. Yes, sir.

Q. You also mention that the milk be partially paid for, meaning the out-of-area milk with the existence of the existing transportation credit system?

A. Yes, that's true.

Q. For the months of, if your proposal is accepted, into February, is it eliminated at the Transportation Credit month, so for the months of February, March, April, May, June, this milk from out-of-the-area, except for your designated counties in Virginia, West Virginia and Georgia, this milk would be on their own, so to say, no reimbursement of any cost to be delivered into the market into the distributing plants of the marketing area?

A. You talking about access to the transportation credit?

Q. I'm talking about just in general, the out-of-area milk?

A. The out-of-area milk then that's milk that qualifies for a Transportation Credit.

Q. From Order 5, I mean, for Order 5, not counting Virginia and West Virginia counties, and Order 6, not counting the Georgia counties, would not receive any transportation assistance during February, March, April May and June?

A. Again, I'm asking you would you distinguish between the transportation credit and delivery credit system?

Q. Well there is no Transportation Credit in February, March, April, May and June.

A. Correct. So any --

Q. So they'd receive no transportation assistance?

A. Yes.

Q. In those months, right?

A. Yes. But if the distributing plant delivery credits were in place, those in the suggested counties or in the marketing order would, they would receive that credit.

Q. But those producing, that are supplying the market from Indiana, Illinois, and so on, would not receive any transportation assistance?

A. Yes, you're correct.

Q. And since a number of those producers supply the market on a year-around basis with over 50-percent of the milk in February, March, April, May and June months, they would not be eligible for the Transportation Credit either?

A. That's correct.

Q. So those producers would not receive any assistance while producers in the market receive transportation assistance and supplying about half of the market needs?

A. That would be correct.

Q. Okay. I just wanted to make sure I understood that. On your exhibit 72, and it shows the pool distributing plants as of October 22nd, there's an actual plant tn Shreveport Louisiana?

A. Again, please? 72?

Q. 72, does that show a pool distributing plant at Shreveport, Louisiana?

A. It does not. I don't think there is one.

Q. Not anymore.

A. Well, that's true.

Q. But I also see on your exhibit, exhibit 70, I believe, that Shreveport is listed three times --

A. Yes.

Q. -- (unintelligible)?

A. Yes.

Q. Kind of a calculation without any meaning as far as this proceeding is concerned?

A. No, I think the meaning there is that there's possible customer location in Shreveport, what might be the comparison to include, you know, which plant might be able to supply that. You're right, there's no plant there, hasn't been one there for a long, long time, so but on that, the reason it's included in that list is the potential for competitiveness for that market.

Q. But when we're looking at compared plant comparison, a customer can be there, but there's no plant to compare as such, Tyler or Little Rock and so on?

A. Could compare Tyler to Shreveport and Little Rock to Shreveport and see what the numbers say.

Q. So you say then what we're actually looking at is the difference between what Tyler can do and what Shreveport could carry what Little Rock could do and we'd have to net those two numbers?

A. We'd have to examine them, haven't done anymore than that, but that's why Shreveport is included there.

Q. Okay. Looking at the "competitor less inside" milk, less inside, in column 15. Would that indicate that if some of the transportation charges be the transportation credit or the producer in the distributing plant delivery credit were increased, they could perhaps be increased by $0.40 a hundred without severely impacting the competitive nature?

A. So, are you looking at column 15?

Q. Column 15.

A. Yes. So, the numbers in column 15 would be with the constraints, differential and assessment, if there is one, differential assessment, if there is one, but not too many of those, and transportation cost comparison. So, line one, in Athens, Tennessee, with a potential competitor in Indianapolis, the Indianapolis competitor would be out of the money or would need to somehow overcome $1.71 a hundredweight to be competitive with the Athens plant, so is that the explanation that you're asking for?

Q. And if we added the transportation credit or an increase for a distributing plant delivery credit increase Class I -- it would reduce those differences depending on how much we added?

A. If you look at column 4 or column 9, those are the assessments, the 90 cents is the combination of the two programs we proposed, for example, in Order 5. So, if you will, all the way over to column 15 says $1.71 un-competitive and that includes both of the assessments, and so if the question, I think, if you were to make that -- it would be $0.95 cents, then all way over column 15, it would be $1.65.

Q. Okay, that was my question. Thank you for clarifying.

A. You're welcome.

THE COURT: Does that complete your examination? I think so, anyone else? Redirect, Mr. Beshore?

MR. BESHORE: May I suggest this would be appropriate time to take a lunch break before redirect with any further cross?

THE COURT: Any objection? Let's come back at, can we say, let's say 1:30, I guess. Thank you, off the record.

(Whereupon, a recess was taken for lunch.)