

BEFORE THE SECRETARY OF
THE UNITED STATES DEPARTMENT OF AGRICULTURE
AGRICULTURAL MARKETING SERVICE

- - -

In the Matter of Proposed) Docket Number
Amendments to the Tentative) AO-166-A77;
Marketing Agreement and Order) DA-08-06

- - -

VOLUME I

- - -

PUBLIC HEARING BEFORE: Peter M. Davenport
U.S. Administrative Law Judge
U.S. Department of Agriculture

DATE: August 19, 2008
TIME: 9:00 a.m.
PLACE: Westin Cincinnati Hotel
21 East Fifth Street
Cincinnati, Ohio 45202

REPORTED BY: Renee Rogers, RPR
Notary Public, State of Ohio

1 APPEARANCES:

2 On behalf of the U.S. Department of Agriculture:

3 GARRETT B. STEVENS, ESQ.

Deputy Assistant General Counsel

4 U.S. Department of Agriculture, Marketing Division

Room 2343, South Building

5 Washington, D.C. 20250

6 On behalf of Michigan Milk Producers Association,

Foremost Farms U.S.A. Cooperative, Dairylea

7 Cooperative, National Farmers Organization and Dairy
Farmers of America:

8

MARVIN BESHORE, ESQ.

9 130 State Street

Harrisburg, Pennsylvania 17108

10

On behalf of Dean Foods Company, National Dairy

11 Holdings and Prairie Farms Dairy, Inc.:

12 CHARLES M. ENGLISH, ESQ.

Thelen, Reid, Brown, Raysman & Steiner, LLP

13 701 Eighth Street, NW

Washington, D.C. 20001

14

On behalf of United Dairy, Inc.:

15

JOHN VETNE, ESQ.

16 11 Red Sox Lane

Raymond, New Hampshire 03077

17

On behalf of Continental Dairy Products, Inc., Select
18 Milk Producers, Inc.:

19 BENJAMIN F. YALE, ESQ.

Yale Law Office, LP

20 527 N. Westminster Street

Waynesfield, Ohio 45896

21

22 Also Present:

23 Erin Taylor, USDA AMS/Dairy Programs

Bill Richmond, USDA AMS/Dairy Programs

24 Gary Jablonski, USDA Dairy Programs

Clifford Carman, USDA Dairy Programs

I N D E X

	Witness	Page
3	SHARON UTHER	
4	Direct by Mr. Stevens	16
5	Cross by Mr. Beshore	40
6	Cross by Mr. English	46
7	Cross by Mr. Vetne	67
8	Cross by Mr. Yale	84
9	Recross by Mr. Beshore	89
10	Recross by Mr. Vetne	91
11	Recross by Mr. English	93
12	Further Recross by Mr. Vetne	95
13	Redirect by Mr. Stevens	100
14	Further Recross by Mr. Beshore	103
15	Further Recross by Mr. Vetne	104
16	JASON NIERMAN	
17	Direct by Mr. Stevens	106
18	Cross by Mr. Beshore	129
19	Cross by Mr. English	130
20	Cross by Mr. Vetne	133
21	Recross by Mr. English	137
22	GAYLE ELY	
23	Direct by Mr. Stevens	113
24	Cross by Mr. English	139

1	ROBERT SCHOENING	Page
2	Direct by Mr. Stevens	121
3	Cross by Mr. English	142
4	Redirect by Mr. Stevens	309
5	ELVIN HOLLON	
6	Direct by Mr. Beshore	146
7	Cross by Mr. English	224
8	Cross by Mr. Vetne	249
9	Cross by Ms. Taylor	276
10	Cross by Mr. Richmond	284
11	Recross by Mr. Vetne	287
12	Recross by Ms. Taylor	290
13	Redirect by Mr. Beshore	292
14	Further Recross by Mr. English	303
15	Further Recross by Mr. Vetne	305
16		
17		
18		
19		
20		
21		
22		
23		
24		

E X H I B I T S

		Marked
1		
2		
3	Exhibit Number 1	12
4	Exhibit Number 2	12
5	Exhibit Number 3	13
6	Exhibit Number 4	14
7	Exhibit Number 5	17
8	Exhibit Number 6	31
9	Exhibit Number 7	34
10	Exhibit Number 8	37
11	Exhibit Number 9	108
12	Exhibit Number 10	114
13	Exhibit Number 11	123
14	Exhibit Number 12	49
15	Exhibit Number 13	96
16	Exhibit Number 14	145
17	Exhibit Number 15	145
18		
19		
20		
21		
22		
23		
24		

1 JUDGE DAVENPORT: The hearing in the
2 matter of docket number AO-166-A77; DA-08-06
3 will come to order.

4 My name is Judge Davenport. I was
5 asked to preside over this hearing for the
6 next couple of days.

7 This hearing was called pursuant to the
8 provisions of the Agricultural Marketing
9 Agreement Act of 1937, as amended, in the
10 applicable rules of practice and procedure
11 of governing the formulation of marketing
12 agreements and marketing orders.

13 The purpose of today's hearing is to
14 receive evidence with respect to the
15 economic and marketing conditions which
16 relate to the proposed amendments, and any
17 appropriate modifications thereof to the
18 tentative marketing agreement and to the
19 order.

20 Evidence will also be taken to
21 determine whether emergency marketing
22 conditions exist that would warrant omission
23 of a recommended rule of decision under the
24 rules of practice and procedure.

1 The proceedings today are going to be
2 recorded. We have Ms. Rogers with us to
3 help us do that.

4 Ms. Rogers, at this time would you
5 raise your right hand.

6 (Whereupon, the court reporter was
7 sworn to faithfully record the proceedings.)

8 JUDGE DAVENPORT: Very well. Just a
9 couple of administrative announcements if I
10 might.

11 The restrooms are located to your
12 immediate right outside the door under the
13 exit sign.

14 For those of you having rooms here at
15 the Westin, your room key allows you access
16 to the facility; if not, there's a code
17 which is posted to the right of the door.
18 It's 1247 star. I am informed that that
19 code works, so that will take care of that
20 particular problem.

21 I would ask at this time that you turn
22 your cell phones either to silent or to
23 vibrate. Certainly if you need to take a
24 call, please, if you would make sure that

1 it's done in such a way that it does not
2 disturb the proceedings or the people around
3 you.

4 At this time I would like to ask
5 Mr. Stevens to introduce the people who are
6 at his table, or at the table with him, and
7 then I'll go around the room for those who
8 have particular interests in the proceedings
9 today.

10 MR. STEVENS: Thank you, Your Honor.
11 My name is Garrett B. Stevens. I'm an
12 attorney with the Office of General Counsel
13 at the U.S. Department of Agriculture. My
14 office --

15 (Microphone problems.)

16 MR. STEVENS: Garrett B. Stevens,
17 Office of General Counsel, U.S. Department
18 of Agriculture. My office is in Washington,
19 D.C.

20 I'll let the other employees and people
21 from the department identify themselves for
22 the record.

23 MS. TAYLOR: Erin Taylor, USDA
24 AMS/Dairy Programs.

1 MR. RICHMOND: I'm Bill Richmond, USDA
2 AMS and Dairy Programs also.

3 MR. JABLONSKI: Gary Jablonski, USDA
4 Dairy Programs.

5 MR. CARMAN: Clifford Carman, Dairy
6 Programs, USDA.

7 MR. STEVENS: Just for the record,
8 there are -- there's at least one marketing
9 administrator here, if not more, and they're
10 available to assist the participants in the
11 hearing.

12 We have copies of various exhibits in
13 the back of the room, I think the hearing
14 notice and other documents that would be
15 helpful to the parties.

16 And most of the people here know who
17 they are. I don't know that we need to
18 identify them, but they are here and
19 available to assist.

20 JUDGE DAVENPORT: Very well.
21 Mr. Beshore?

22 MR. BESHORE: My name is Marvin
23 Beshore. I'm an attorney at 130 State
24 Street, Harrisburg, Pennsylvania.

1 I'm representing the cooperative
2 proponents of Proposal One: Michigan Milk
3 Producers Association, Foremost Farms U.S.A.
4 Cooperative, Dairylea Cooperative, National
5 Farmers Organization, and Dairy Farmers of
6 America.

7 JUDGE DAVENPORT: You want to introduce
8 any other individuals with you?

9 MR. BESHORE: With me who will be the
10 primary witness for the proponents is Elvin
11 Hollon from Dairy Farmers of America.

12 JUDGE DAVENPORT: Very well. Anyone
13 else at that area? Mr. Yale?

14 MR. YALE: Benjamin F. Yale, Yale Law
15 Office, 527 North Westminster Street,
16 Waynesfield, Ohio, and I'm here on behalf of
17 Continental Dairy Products, Inc. and Select
18 Milk Producers.

19 JUDGE DAVENPORT: Very well.
20 Mr. Vetne?

21 MR. VETNE: My name is John Vetne,
22 V-E-T-N-E. I'm an attorney at Red Sox Lane,
23 Raymond, New Hampshire. I represent United
24 Dairy in this proceeding.

1 JUDGE DAVENPORT: Mr. English?

2 MR. ENGLISH: My name is Charles
3 English with the law firm of Thelen, Reid,
4 Brown, Raysman & Steiner, at 701 Eighth
5 Street Northwest in Washington, D.C.,
6 20001.

7 I'm here representing three entities:
8 Dean Foods Company, National Dairy Holdings,
9 and Prairie Farms Dairy, Inc.

10 We will have witnesses, Evan Kinser for
11 Dean Foods, Mike Meyer for National Dairy
12 Holdings, and Carl Conover.

13 JUDGE DAVENPORT: Very well. Is there
14 anyone else that would like to introduce
15 themselves at this time?

16 MR. HITCHELL: My name is John
17 Hitchell. My last name is spelled
18 H-I-T-C-H-E-L-L. I'm with Kroger Company,
19 1240 State Avenue, Cincinnati, Ohio. And
20 I'll be testifying in opposition to the
21 proposal.

22 JUDGE DAVENPORT: Very well. If
23 there's no one else that wishes to introduce
24 themselves at this time, Mr. Stevens, are

1 you ready to proceed?

2 MR. STEVENS: I am, Your Honor. We
3 have given the reporter originals and copies
4 of certain documents that we would like
5 entered in to the record. We've also given
6 copies to Your honor. There are copies
7 available I believe at the back of the room
8 for use of the parties.

9 The first one I believe is the notice
10 of hearing which we would like marked as
11 Exhibit 1.

12 JUDGE DAVENPORT: Very well. It will
13 be so marked.

14 (Whereupon, Exhibit Number 1 was marked
15 for identification.)

16 MR. STEVENS: The second document is a
17 press release noticing the hearing of the --
18 noticing the hearing, and that we would like
19 marked as Exhibit 2.

20 JUDGE DAVENPORT: So marked.

21 (Whereupon, Exhibit Number 2 was marked
22 for identification.)

23 MR. STEVENS: There then is a
24 certificate of mailing, which is a document

1 issued by the Department of Agriculture
2 dated July 24, 2008 that evidences enclosed
3 certificate of mailing for the notice of
4 hearing. We would like that marked for
5 identification as Exhibit 3.

6 JUDGE DAVENPORT: So marked.

7 (Whereupon, Exhibit Number 3 was marked
8 for identification.)

9 MR. STEVENS: The last one in this
10 series we would like marked as Exhibit 4 is
11 a determination re mailing of notice of
12 hearing that is dated July 24, 2008 and is
13 signed by David Z. Walker, market
14 administrator. We would like that marked as
15 Exhibit 4.

16 JUDGE DAVENPORT: May I have the --

17 MR. STEVENS: I misspoke there. Let me
18 correct the record.

19 JUDGE DAVENPORT: The determination
20 goes with the certificate of mailing, which
21 I have marked as Exhibit Number 3.

22 MR. STEVENS: Exactly.

23 JUDGE DAVENPORT: Exhibit Number 4 I
24 have as a certificate of officials notified.

1 MR. STEVENS: Exactly.

2 (Whereupon, Exhibit Number 4 was marked
3 for identification.)

4 MR. STEVENS: So now the record
5 correctly reflects there are four documents,
6 one is a two-page document, and the last
7 one, Number 4, is a certificate of officials
8 notified. That's signed by the docket clerk
9 at the Department of Agriculture and
10 evidences what she has done with the
11 certificate of officials notified.

12 JUDGE DAVENPORT: Okay. Those four
13 exhibits have been marked as indicated. Is
14 there an objection to the receipt in to
15 evidence at this time?

16 Very well. They'll be admitted in to
17 evidence as Exhibits 1 through 4
18 respectively.

19 MR. STEVENS: Now, there are -- we do
20 have four witnesses that we would like to
21 present, Your Honor. This is in the area of
22 information, statistical data primarily,
23 that has been asked for by participants in
24 the hearing and have been prepared by

1 various market administrators offices. We
2 have witnesses to present these
3 compilations, and we're prepared to do that
4 at this time.

5 JUDGE DAVENPORT: Very well. You want
6 to call your first witness?

7 MR. STEVENS: Certainly, Your Honor.
8 Sharon Uther.

9 JUDGE DAVENPORT: Raise your right
10 hand.

11 THE WITNESS: (Complies.)

12 JUDGE DAVENPORT: Do you swear or
13 affirm the testimony you are about to give
14 during this hearing shall be the truth, the
15 whole truth, and nothing but the truth, so
16 help you God?

17 THE WITNESS: Yes.

18 JUDGE DAVENPORT: Please be seated. If
19 you would, tell the court reporter your
20 name, and if you would spell it for her.

21 THE WITNESS: Sharon R. Uther,
22 S-H-A-R-O-N, R., U-T-H-E-R.

23 MR. STEVENS: Good morning, Sharon.

24 THE WITNESS: Good morning.

1 SHARON UThER,
2 of lawful age, as having been duly sworn, was examined
3 and testified as follows:

4 DIRECT EXAMINATION

5 BY MR. STEVENS:

6 Q Why don't you describe for the record by
7 whom you are employed.

8 A The Mideast Market Administrator's
9 Office.

10 Q And where is that located?

11 A Brunswick, Ohio.

12 Q How long have you worked in that office?

13 A I've been with the Market
14 Administrator's Office for 29 years.

15 Q And what primarily are your duties in
16 the Market Administrator's Office?

17 A I supervise the pool computation,
18 statistical releases, the monthly bulletin, and
19 producer data.

20 Q Have you testified in federal milk
21 market order hearings before?

22 A Yes, I have.

23 Q Have you presented compilations in
24 previous hearings?

1 A Yes, I have.

2 Q In conjunction with this hearing did you
3 get requests from certain parties to prepare
4 information for use at the hearing?

5 A Yes.

6 Q And you prepared that information?

7 A Yes.

8 Q And you brought it with you today?

9 A Yes, I have.

10 Q You have a copy of it in front of you?

11 A Yes.

12 MR. STEVENS: Your Honor, this is a
13 multipage document that doesn't have
14 numbers, but it's a rather thick document
15 with tables -- with a letter of the request
16 for information with tables, with maps,
17 colored reproductions, which we would like
18 marked for identification as Exhibit 5.

19 JUDGE DAVENPORT: So marked.

20 (Whereupon, Exhibit Number 5 was marked
21 for identification.)

22 Q Now, to start out with, this was
23 prepared by you or pursuant to your supervision from
24 records of the Department of Agriculture kept in your

1 offices there in the Market Administrator's Office?

2 A Yes.

3 Q So you received a request -- the first
4 page of the document is the request, is it not?

5 A Yes.

6 Q And the market administrator, David
7 Walker, received that from Elvin Hollon?

8 A Yes, he did.

9 Q And it's dated -- it speaks for itself,
10 certainly. And that -- you tried to fulfill the
11 request -- with the documents following the letter you
12 tried to fulfill that request?

13 A Yes.

14 Q And that's what the documents following
15 represent?

16 A Yes, they do.

17 Q Okay. Now, briefly could you just go
18 through the documents and describe what's there and
19 maybe give an example of each document just so for the
20 parties they'll know -- I know there are milk experts
21 here, a lot more expert than I am, but for anyone, a
22 farmer, dairy farmer or someone else who's here, could
23 you just go through sort of page by page and describe
24 briefly what documents you have prepared.

1 A Okay. The first table that we have is a
2 table listing pool distributing plants broken down by
3 regions that were defined by DFA in their request.

4 We're showing these plants by their
5 location, the county, the differential, the current
6 differentials at each plant. The three regions are
7 the Northwest, Northeast, and Southern region.

8 And when you go to the map following
9 the table, there's a color-coded map with the numbers
10 that correspond to the table for each distributing
11 plant in the three different regions.

12 Q Okay. So the first two pages and the
13 map following work together --

14 A Yes.

15 Q -- to describe the situation. And this
16 is for April of 2008?

17 A Yes.

18 Q And this was prepared by you, your
19 office?

20 A Yes, it was.

21 Q And it comes from your records?

22 A Yes.

23 Q Most of this I guess is somewhat public
24 knowledge, is it not?

1 A Yes, it is.

2 Q Continue, please.

3 A Okay. Then for the DFA request number
4 two there's a table of the milk production in lake
5 states by pool status. And they define or identify
6 the lake states as Michigan, Indiana, Ohio,
7 Pennsylvania, and New York.

8 And we have shown those on this table
9 by state, the county, showing their FIPS code, current
10 class differential, and then by the milk, whether it
11 was pooled Order 33, normally pooled Order 33 but not
12 pooled, and that milk pooled in other order. And this
13 is production data, and then there's a column showing
14 the total also, and we have tables for May 2003 and
15 2007.

16 Q All right. And there's a footnote there
17 that says restricted data. Could you describe what
18 that means for the record.

19 A If there is less than three producers in
20 a county, we cannot show that by itself. So those
21 counties would be included in other. At the bottom of
22 each state there's an other category.

23 Q Okay. That would be the last entry, for
24 any one of these states there's an entry for other?

1 A Right.

2 Q And this is to protect the
3 confidentiality of the information of the handlers?

4 A Yes. And the producers.

5 Q And the producers.

6 A Then following the tables there are maps
7 that show the marketings in a chromatic map. The top
8 map on the page is all milk marketings, and the bottom
9 half would be just the Order 33 milk marketings.

10 And it's showing that production data
11 color-coded by county, and you can see in the table
12 the different levels. And we have maps corresponding
13 to the tables for May 2000, 2003 and 2007.

14 Q And so in the same way as the previous
15 -- as your previous testimony, these documents
16 interrelate --

17 A Yes.

18 Q -- using the tables and the maps?

19 A Yes.

20 Q Okay. Could you continue.

21 A Okay. The next group of data is for the
22 request 3-A, and it is a map showing the supply areas
23 for each month of January 2007, April 2007, August,
24 November --

1 Q Take your time.

2 A August 2007, November 2007, and January
3 and April of 2008. We've shown the three supply area
4 regions in a color map. And also contained on these
5 maps, the top number is the bulk milk physically
6 received at the distributing plants located in -- the
7 Northwest region is the first page you're looking at.
8 You have 281,952,383. And then the bottom number is
9 the available milk from farms located in that region.

10 And the footnote defines that as pounds
11 of milk produced on farms located in the Northwest
12 region and either pooled on the Mideast Order or
13 pooled on another order and delivered to those
14 distributing plants located in the region. So in this
15 example the available amount was 718,289,071.

16 And then the next page is the same type
17 of information for the Northeast region, and the
18 following page for the Southern region. And that
19 information is repeated for each of the six months.

20 Q Could you describe the next part of the
21 exhibit.

22 A 3-B of the request is a summary of the
23 information provided on the map pages. So for each of
24 the six months it's recapping the available milk in

1 each region, the milk received at distributing plants,
2 and then the difference.

3 So, for example, in January 2007, the
4 difference is a positive 436,336,688, Northeast, a
5 positive 166,044,451, and in the Southern region it's
6 a negative value of 114,359,569.

7 And then there's a total line which
8 shows the market in total combining the three regions,
9 and the available milk received at distributing and
10 the difference. And that same information is repeated
11 for the other five months.

12 Q Okay. Continue.

13 A Okay. The next table is in response to
14 the request 4-A, and that shows the hauling distance
15 of the producer milk to the distributing plants by
16 supply region.

17 So in 20-mile increments we've shown the
18 amount of milk delivered in each of those 20-mile
19 increments by region, and in total, and at the bottom
20 there's a weighted average of the miles traveled for
21 each region.

22 Q Okay. Where there are dash marks, what
23 does that indicate?

24 A That there was no milk that --

1 Q Zero?

2 A Right. Zero in those regions during
3 those mile increments.

4 Q And the weighted average, briefly what
5 is that now? What is the weighted average?

6 A That's a weighted average of the
7 distance the milk traveled. Not a simple average of
8 the miles, but weighted by the amount of production in
9 each range.

10 Q By the volumes?

11 A Yes.

12 Q All right. And you've done that for a
13 number of months?

14 A Yes. We have done that for each of the
15 six months showing the pounds. And then the next part
16 of that request is the percent of milk as it travels.

17 And it's a cumulative percent, so you
18 will see, for example, in January 2007 the Northwest
19 region 7.68 percent of the milk traveled one through
20 20 miles, and then one through 40 miles would be
21 36.22, and that continues on until you reach a hundred
22 percent of the milk in the Northwest region traveled
23 300 miles or less. And, again, at the bottom is shown
24 the weighted average and the total pounds for each

1 region.

2 Q Now, Sharon, where there's no number
3 relating to a mileage number, that would be zero?

4 A Right. Because once you reach a hundred
5 percent, then there was no milk beyond that.

6 Q You know those stats better than I do,
7 right? I got you.

8 A And then we have the same information
9 for each of the six months requested. Then the next
10 table, 4-B, is just a summary of the weighted average
11 differences for each region by month. And the last
12 column is just a simple average of all of the weighted
13 averages for each month.

14 Q Okay. So you have a column there that
15 represents the simple averages?

16 A Right.

17 Q Then you also have -- that's a vertical
18 column. Then you have a horizontal series of numbers
19 that represent the weighted average?

20 A Right.

21 Q And all this information is subject to
22 the footnote?

23 A Yes.

24 Q Continue.

1 A Okay. The next section, the map, is a
2 response to the request 5-A. And it is a map of the
3 nonpool plants located in the Mideast market area,
4 along with a table that identifies the name and
5 location of the plants.

6 May 2007 was used. This was the most
7 recent month available for the producer data when we
8 get to the later section of it.

9 So on this map there are color-coded
10 numbers similar to the distributing plant maps, only
11 this is for nonpool plants.

12 Q So the map and the table following it
13 work together --

14 A Right.

15 Q -- to describe what's contained on the
16 map?

17 A Right. And those plants are listed by
18 state -- by city and state and county. And the next
19 part of that request, 5-B, shows those same plants in
20 the same area but with the Class I differential zones
21 displayed on the map. And it's color-coded with a key
22 for the current differential zone that those plants
23 are located in.

24 Q All right.

1 A Then the 5-C part of the request adds
2 the production data to the map. And this is the same
3 production data that's in the Mideast milk marketing
4 shown in the request 2-B map, but as a density map.
5 So one dot equals 500,000 pounds of milk.

6 Q Okay. One dot equals 500,000 pounds of
7 milk?

8 A Yes.

9 Q So, in other words, you could count them
10 out, the dots in a county, for example, and determine
11 how much milk is there by that calculation?

12 A Yes. And those counts are also shown
13 back in the 2-B request table.

14 Q In the 2-B request you have it
15 numerically?

16 A Right.

17 Q And here it's demonstrated on a map
18 graphically, I guess you could say?

19 A Yes.

20 Q And the last page?

21 A The last page is a table showing the
22 change in the producer milk value, producer price
23 differential value, and the producer price
24 differential using the proposed Class I differentials

1 and assuming no other changes in the pool.

2 So this was done for the months of
3 August and November of 2007, and January and April of
4 2008. And you'll see in the first column is the
5 change in producer milk value, the second is the
6 change in the producer price differential value, and
7 the third is the actual change in producer price
8 differential.

9 Q And these values are created by
10 calculations that you do in your office every month
11 relating to the proposal?

12 A Yes.

13 Q If I'm wrong in that correct me, but
14 that's how I understand it.

15 A Right. You just apply the proposed
16 changes and recalculate it.

17 Q You plug that in to your system and --

18 A Yes.

19 Q -- these are the values that come out?

20 A Yes.

21 Q Do you have anything that you would like
22 to add to what you said about these documents? We did
23 go over this before the hearing certainly. Are there
24 any corrections that you want to add at this point to

1 the documents?

2 A No.

3 Q Now, again, these are -- this is
4 information that you prepared or was prepared pursuant
5 to your supervision?

6 A Yes.

7 Q And it comes from records from the
8 Department of Agriculture in the Market
9 Administrator's Office?

10 A Yes.

11 Q Is it presented -- for what purpose is
12 this information presented?

13 A In response to the request by the
14 proponents.

15 Q It's not -- it's not prepared or
16 presented in favor or opposed to any proposal, is it?

17 A No.

18 Q And you're not here testifying in favor
19 or against any of the proposals that were proposed by
20 the parties?

21 A No.

22 MR. STEVENS: That's all I have, Your
23 Honor. And I would ask that this document
24 be admitted either now or after

1 cross-examination.

2 JUDGE DAVENPORT: Very well.

3 MR. STEVENS: Oh, let me jump in a
4 minute, Your Honor. We do have other
5 requests, so. I was reminded by my esteemed
6 colleague here I need to go over those and
7 do those all at one time and have her
8 cross-examined all at one time on all the
9 documents. Is that acceptable, Your Honor?

10 JUDGE DAVENPORT: It's more than
11 acceptable. And obviously the wisdom of
12 your colleague should be followed.

13 MR. STEVENS: That's why they don't let
14 me travel alone.

15 Q Okay. You did receive other requests?

16 A Yes, we did.

17 Q And you received requests from Dean
18 Foods, did you not?

19 A Yes, we did.

20 MR. STEVENS: Your Honor, I have the
21 document which is in the back of the room
22 which were given copies to the reporter and
23 to you, which we would like to have -- it is
24 titled compilation of statistical data as

1 requested by Dean Foods. We would like to
2 have it marked as Exhibit 6.

3 JUDGE DAVENPORT: It will be so marked.
4 (Whereupon, Exhibit Number 6 was marked
5 for identification.)

6 Q Sharon, would you go through and
7 describe that, and I have some basic questions. Just
8 go through the document and describe -- there is a
9 letter with the request, is there not?

10 A Yes, there is.

11 Q And you -- or as best you could, you
12 complied with that request?

13 A Yes.

14 Q And the documents that follow are the
15 documents in response to the request?

16 A Yes.

17 Q Would you go through them, please.

18 A The first table is a response to the
19 request 1-A and B where they've asked to break in the
20 percent of milk to each region's distributed plants.
21 And this is using the same regions as defined in the
22 DFA request for the same months that we used the -- in
23 the other DFA requests. We have January, April,
24 August and November of '07, January and April of '08.

1 And if you look at the first month
2 across the top columns we have delivered to the
3 Northwest region, and the numbers there represent --
4 the 97.8 would represent the milk being supplied by
5 the Northwest region. The .1 is the milk supplied by
6 the Northeast region, .67 is milk supplied by the
7 Southern region, and 1.43 out of those three regions,
8 and that is what supplied distributing plants in that
9 region.

10 The next column is -- of that milk
11 delivered to the Northeast region, 13.85 was from the
12 Northwest, 68.28 from the Northeast, .3 from Southern,
13 and 17.56 from out of the area.

14 In the last column of that milk
15 delivered to Southern region distributing plants,
16 42.23 percent came from the Northwest area, 28.7 from
17 the Northeast, 28.8 from the Southern, and .27 from
18 out of the area. And that information is repeated for
19 each of the five months.

20 The next request we were asked to show
21 the change in the producer price differential for
22 selected cities, and those cities were Battle Creek,
23 Michigan, Fair Oaks, Indiana, and Canton, Ohio.

24 And that, again, is for the same six

1 months. And the change in the producer price
2 differential in those areas would be the same as it is
3 in all areas, because those locations are not part of
4 the proposed changes. They're not located in the
5 Southern region of the proposed changes. So the
6 effect on the PPD would be the same as it is on the
7 general.

8 Okay. The next table for request three,
9 pounds of milk pooled on 33 but diverted to plants
10 outside the Mideast marketing area. And this data was
11 requested from January 2003 through the present.

12 And at the time we did this, June was
13 the most recent month that we had. So you will see in
14 each column for every month of the year the volume of
15 pounds that was diverted to plants located outside of
16 the Mideast area.

17 Q Okay. Do you have any corrections to
18 add to this since the time you prepared it?

19 A No.

20 Q Prepared by you or pursuant to your
21 supervision?

22 A Yes.

23 Q From records of the Department of
24 Agriculture in your office, the market administrators?

1 A Yes.

2 Q They're not prepared for or against any
3 proposal, are they?

4 A No.

5 MR. STEVENS: Your Honor, we have a --
6 let me get back to Sharon.

7 Q You had a supplemental request, did you
8 not?

9 A Yes, we did.

10 Q And you prepared documents pursuant to
11 that request?

12 A Yes, we did.

13 MR. STEVENS: Your Honor, I'd like that
14 document which has been distributed to you
15 and the reporter and is available in the
16 back of the room, I would like that marked
17 as Exhibit 7.

18 JUDGE DAVENPORT: It will be so marked.
19 (Whereupon, Exhibit Number 7 was marked
20 for identification.)

21 Q Sharon, could you describe that. You
22 got a request and you fulfilled that with the
23 documents attached?

24 A Yes. However, the first request was to

1 add May 2008 to the time period covered in DFA's
2 request 2-B, and that was not available at the time we
3 did this. We were not able to complete that.

4 Some of that information comes from
5 other orders, and it's compiled in the Kansas City
6 office, and not all of the other order information was
7 available.

8 So number two was to add the following
9 months to the time period in DFA's request 3-B, and
10 there's a summary table of the available milk versus
11 the milk received at distributing plants, and adding
12 the months of May and June 2007 and May and June
13 2008. And, again, this is the same format as the
14 previous request.

15 Then the third request from the
16 supplemental was to show the allocation percentage of
17 the milk received at pool distributing plants by
18 supply region by month and year. So for the same
19 months included in the other requests with the
20 addition of the four new months, we've shown for each
21 region the Class I, II, III, and IV utilization
22 percentages of the milk received at the distributing
23 plants in those regions.

24 The last column is the total counts for

1 the supply region. And at the bottom you will see the
2 total pounds in each class and the average percent for
3 the distributing plants of the market. And that,
4 again, is repeated for each month.

5 Q Since you prepared these documents you
6 don't have any additions or corrections to add?

7 A No.

8 Q This document was prepared by you or
9 pursuant to your supervision?

10 A Yes.

11 Q From records of the Department of
12 Agriculture in the Market Administrator's Office?

13 A Yes.

14 Q It's not presented for or against any
15 proposal, is it?

16 A No.

17 Q Did you get any other requests to
18 prepare information?

19 A Yes. We did get another request from
20 Ben Yale.

21 Q Okay. And Ben sent you an e-mail,
22 didn't he?

23 A Yes.

24 Q The e-mail is attached there, and then

1 the documents that respond to the e-mail as best you
2 could are attached also?

3 A Yes.

4 MR. STEVENS: Your Honor, I would like
5 to have it marked as Exhibit Number 8.

6 JUDGE DAVENPORT: So marked.

7 (Whereupon, Exhibit Number 8 was marked
8 for identification.)

9 Q Sharon, could you go through the
10 document briefly and describe what's contained.

11 A Yes. The first table shows the net
12 change in the blend value due to the proposed change
13 in differentials, and the request asked for it in the
14 zones affected.

15 The first change in the zones, the 2.20
16 to 2.40 and the 2.20 to 2.60 we had it combined
17 because of confidentiality. So we've shown the amount
18 of milk in Class I, II, III, and IV in that zone, and
19 then the value on the II, III, and IV portion and the
20 total amount that would change in the blend value in
21 the total plants located in that zone -- those two
22 zones.

23 And then in the plants located in the \$2
24 zone that would go to 2.15, we've shown the pounds

1 utilization in I, II, III, and IV, and the
2 corresponding value of the blend value change and in
3 total.

4 Then in total is the last box, and
5 you'll see the total net effect on the blend value by
6 Class II, III, and IV and the total for the market.
7 And this was done for the month of April, 2008.

8 The next table is the comparison of
9 different pool calculations using the proposed amended
10 differentials and comparing to the pool values. This
11 was done for January 2007 through April 2008.

12 The first section, the Class I
13 differential, shows the pool value of the Class I
14 differential, what the amended value would be with the
15 proposed differentials, and then the difference.

16 The next box is the net producer
17 location adjustments showing the pool versus the
18 amended and what that difference would be.

19 And then the next column is the net
20 difference between the Class I location difference and
21 the producer location difference.

22 And then the third -- or the next box is
23 a producer price differential, what the pool
24 differential was, what the amended would be, and what

1 the difference would be.

2 Q The producer price differential is also
3 referred to sometimes as the PPD, right?

4 A Yes.

5 Q And these tables are subject to the
6 footnotes that appear there?

7 A Yes, they are. It's just an explanation
8 of which request --

9 Q And you're relating --

10 A -- the column is relating to.

11 Q Exactly. Do you have any corrections or
12 additions you want to add to that?

13 A No.

14 Q This was prepared by you or pursuant to
15 your supervision?

16 A Yes.

17 Q From records of the Department of
18 Agriculture and the Market Administrator's Office?

19 A Yes.

20 Q It's not presented for or against any
21 proposal, is it?

22 A No.

23 Q My colleague tells me we're done with
24 your documents.

1 MR. STEVENS: So, Your Honor, I repeat
2 my request that they be entered in to
3 evidence either now or after
4 cross-examination as you desire.

5 JUDGE DAVENPORT: Let's wait for
6 cross. Cross-examination of this witness?
7 Mr. Beshore?

8 MR. BESHORE: For cross-examination may
9 I stay at my seat, or would you prefer --

10 JUDGE DAVENPORT: I would prefer that
11 you come to the microphone, although if the
12 court reporter and everyone else can hear
13 you, we'll grant you dispensation.

14 MR. BESHORE: Good morning, Sharon.

15 THE WITNESS: Good morning.

16 MR. BESHORE: I have just a few
17 questions on your exhibits.

18 First of all, I want to thank you and
19 your staff for the work which you did for us
20 and for all the parties in preparation for
21 this hearing. It certainly is a substantial
22 amount of effort reflected.

23 CROSS-EXAMINATION

24 BY MR. BESHORE:

1 Q In Exhibit 5, starting with the response
2 to the DFA request 2-A, there's a column called
3 F-I-P-S, and it's referred to as FIPS, and I think
4 that's what you said in your testimony. Can you just
5 for the record state what that is?

6 A That's the general FIPS code for each
7 county, you know, that's assigned to each county in
8 the country.

9 Q What's a FIPS code and what's the
10 significance?

11 A It's just a code used to -- we use to
12 assign the Class I differential for that county.

13 Q Is it a county code that actually
14 appears in -- you know, in the CFR relating to the
15 differentials as well?

16 A Yes.

17 Q I would like to go to the last page of
18 Exhibit 5 which is response to DFA et al. request
19 6-A. By the way, the request, just again for
20 clarification, at the bottom of the page you identify
21 the data as a response to requests 1-A through 6-A?

22 A Yes.

23 Q Those are corresponding to the numbered
24 paragraph requests at Mr. Hollon's letter at the

1 beginning of Exhibit 5?

2 A Yes.

3 Q Now, looking at the response to request
4 6-A, this shows changes in pool values, and there are
5 a number of tables that were prepared in Exhibits 5
6 through 8 that show plus and minus numbers related to
7 pool values?

8 A Yes.

9 Q And I just want to make sure there's no
10 misunderstanding about the way these values work. The
11 first column on -- this is the last page to Exhibit 5
12 -- change in producer milk value, at least for the
13 months of August, November -- August, November 2007,
14 January and April 2008.

15 Is it correct that those amounts,
16 \$297,325.29 for August 2007 represents the added new
17 or additional value, gross value to the pool which
18 would be generated by Proposal One if it were adopted?

19 A Yes.

20 Q Okay. So that any time in any of these
21 tables where you see negative numbers with respect to,
22 you know, pool calculations, producer price
23 differential calculations, those negative numbers do
24 not reflect that the proposal will -- they don't mean

1 the proposal is going to take away money, they just
2 are numbers that are the product of the pool
3 calculations themselves?

4 A Yes.

5 Q And not to get too complicated about the
6 way location differentials, the location values work
7 themselves through the pool, but they're really just a
8 product of where your zero zone in the market area is,
9 are they not?

10 A Yes. It's either added or subtracted
11 from the zero zone.

12 Q So in Order 33, the zero zone is where?

13 A The Cleveland area, which is a \$2
14 differential.

15 Q The \$2 differential is the zero zone?

16 A Yes.

17 Q So hypothetically if the zero zone was
18 further out, was in the 1.80 zone, just if the order
19 happened to be written that way, the numbers would
20 show as -- the negative numbers in producer price
21 differential value would show as greater or lesser,
22 even though there was no real change in the dollars in
23 the pool; is that correct?

24 A Yes.

1 Q Okay. And if the zero zone happened to
2 be in the Southern side, they'd be affected the other
3 way, even though the total dollars really aren't any
4 different?

5 A Right.

6 Q And, in essence, in response to what
7 Exhibit 6-A shows is that in each month -- well,
8 taking the four months that were sampled here, the
9 proposals would add nearly or just over \$300,000 in
10 gross value to the pool in --

11 A Yes.

12 Q Now, I'd like to turn to Exhibit 6, the
13 last page. And I think there is a simple correction
14 here, at least on the one I have, that we ought to
15 make for the record.

16 The column -- the one -- two -- three --
17 the fourth column of years, on my exhibit it said 2005
18 which repeated --

19 A I'm sorry. Which one was that?

20 Q Exhibit 6, the last page.

21 A Oh.

22 Q It's Dean Foods request three. I'm just
23 looking at the year.

24 A You're right. There's -- that should

1 have been 2006.

2 Q Instead of two years of 2005?

3 A Yes.

4 Q The second one in sequence?

5 A Yes.

6 Q Okay. Now, just while we're on that
7 page, I note that those volumes have declined from
8 2005 to 2006 and 2006 to 2007.

9 Did the pooling provisions of Order 33
10 change because of prior hearings, changes which were
11 effective during that time period?

12 A Yes. We had changes that changed the
13 pooling. If milk was depooled as it came back on the
14 market. We have the 150 percent provision now.

15 Q And some of the requirements of pooling,
16 the performance requirements for the pool were changed
17 as well?

18 A Yes.

19 MR. BESHORE: Thank you. That's all
20 the questions I have.

21 JUDGE DAVENPORT: Other cross of this
22 witness? Mr. English?

23 MR. ENGLISH: Good morning. My name is
24 Charles English. I represent Dean Foods

1 Company, National Dairy Holdings, also known
2 as NDH, and Prairie Farms Dairy, Inc.

3 Ms. Uther, I, too, want to start with a
4 thank you for the tremendous amount of work
5 that was done on behalf of everybody, but
6 especially Dean Foods because they made a
7 request.

8 CROSS-EXAMINATION

9 BY MR. ENGLISH:

10 Q I want to ask a few questions about the
11 process. The request number five from Dairy Farmers
12 of America is dated July 31, 2008. That's the first
13 page behind the title page, Exhibit 5, correct?

14 The written request by Dairy Farmers of
15 America, literally the first page of their actual
16 request which is after the title of Exhibit Number 5,
17 that request was formally made on July 31, 2008,
18 correct?

19 A Yes.

20 Q Would it be fair to say that your office
21 had some discussions with Dairy Farmers of America and
22 others prior to July 31 about data, and this was
23 simply the formal request that had come in?

24 A This was a formal request from the

1 hearing, but we also had a request from them last fall
2 for some data which they referenced in their hearing
3 request that you will see where they requested data
4 prior to the hearing request.

5 Q That request for a hearing that you just
6 referenced is not part of Exhibit 5 or any of the
7 documents you've submitted, correct? The actual
8 request for a hearing you just referenced in answer to
9 my question?

10 A Right. Right.

11 Q But you've seen that request, correct?

12 A Yes. But DFA did reference it in their
13 request, in the second paragraph of their request.

14 Q What are you looking at now?

15 A The DFA request that's dated July 31,
16 2008, and the second paragraph as shown on attachment
17 one which was submitted with our hearing request, is
18 where they define the regions.

19 Q Right. Now, was the hearing request
20 originally submitted on or about June 6, 2008, to your
21 knowledge?

22 A I believe so. Let me find the exact
23 date. Yes.

24 MR. ENGLISH: Your Honor, I've handed a

1 document to -- I'll hand out more copies,
2 but I've handed a document to general
3 counsel and to Mr. Beshore of a letter dated
4 June 6, 2008, and I'd like to also hand a
5 copy to the witness and to you with your
6 permission. How many copies will I need for
7 the court reporter, Your Honor?

8 JUDGE DAVENPORT: Four. You can give
9 her what you have now and --

10 MR. ENGLISH: I have plenty. I have
11 other copies for the parties.

12 Q Ms. Uther, could you identify very
13 quickly what I've handed you.

14 A You've handed me a request for a hearing
15 upon amendments to Federal Order 33, 7 C.F.R. 1033,
16 written to Dana Coale from Marvin Beshore.

17 Q Dated June 6, 2008?

18 A Yes.

19 Q Is this the letter to which you were
20 just referring a few moments ago?

21 A Yes. That's the -- I assume that's what
22 Elvin was referring to in his data request.

23 Q Have you seen this document before?

24 A Yes.

1 MR. ENGLISH: I'd like to have this
2 document marked, Your Honor.

3 JUDGE DAVENPORT: This will be marked
4 as Exhibit 12. The reason it's marked
5 Exhibit 12 is I premarked certain of the
6 other statistical data and I want to keep
7 it all --

8 MR. STEVENS: Your Honor, may I just
9 say, this document is on the website of the
10 USDA. It's available to the public on the
11 website as part of the documents concerning
12 this hearing.

13 MR. ENGLISH: But that doesn't make it
14 a part of the record.

15 MR. STEVENS: It does not. I just
16 noted for the record that it's on the
17 website.

18 MR. ENGLISH: And I'm happy, Your
19 Honor, to accommodate that numbering
20 system. That makes sense.

21 (Whereupon, Exhibit Number 12 was
22 marked for identification.)

23 Q So in preparation for this June 6
24 submission and connecting up to your testimony a few

1 moments ago and to paragraph two, the proponents
2 actually made a request for data in the fall of 2007,
3 correct?

4 A Yes.

5 Q Is there any data, to your knowledge,
6 that was requested in the fall of 2007 that was not a
7 part of the data that is the formal request of July
8 31?

9 A I don't recall that there was.

10 Q Following the request for data in the
11 fall of 2007 leading up to the June 6 letter from
12 Mr. Beshore, were there any other requests for data
13 from the proponents?

14 A I don't think so.

15 Q Between June 6, 2008 when this letter
16 was submitted and July 31 when the formal request that
17 is part of Exhibit 5 came in, were there any other
18 requests for data, oral or in writing from the
19 proponents?

20 A I don't think so, not up until this
21 request.

22 Q Was there any discussion ahead of the
23 formal request of July 31 of which months your office
24 was capable of preparing in response to inquiries?

1 A Yes. We did discuss with them, you
2 know, the time constraints and that, in order to try
3 to provide numerous months.

4 Q Was there any discussion regarding data
5 that could or could not be provided for any month
6 after June -- after April 2008, that is to say, May or
7 June 2008?

8 A We did provide May and June 2008 for the
9 Dean request.

10 Q Except not in response to the very first
11 request and the supplemental request for May of 2008,
12 correct?

13 A Right. And as I stated before, that was
14 not available due to the other order information we
15 needed for that.

16 Q And as I recall your testimony -- and I
17 may have been parsing the sentence too carefully, and
18 I apologize. It wasn't available at the time that you
19 made the response, as I thought you said. Now, that
20 may not be different. Is it available today?

21 A No. I mean, the response was last
22 Friday. We received this request last Thursday and
23 gave our response on Friday.

24 Q And so on Tuesday, August 19, you do not

1 yet have the data for May 2008 --

2 A No.

3 Q -- in response?

4 A No.

5 Q When, in the normal course, would you
6 have that data for May 2008?

7 A I'm not sure. As I said, that other
8 order information is compiled by the central Market
9 Administrator's Office and they will be releasing
10 that. So we don't release that from our office. We
11 obtain it from them.

12 Q But by July 31 when you received the
13 request, the formal request from Dairy Farmers of
14 America, at that point you had the April data,
15 correct?

16 A But the April data only applies to the
17 Mideast marketing area data, which we have. And we
18 did have that for May and June in a request.

19 Q Oh, I'm sorry.

20 A But it was the total marketings that
21 included other order marketings that we did not have
22 available.

23 Q Not even for April of 2008?

24 A That's not compiled for April of 2008.

1 It's compiled in May of each year by the central
2 Marketing Administrator's Office.

3 Q So the only month it's actually compiled
4 is May of 2008?

5 A Yes.

6 Q Do you recall when the May 2000 data
7 became -- the May 2007 data from the central marketing
8 area became available?

9 A No, I don't. I don't know the exact
10 date.

11 Q I'd like to tie a few things together
12 that I think for most of us are fairly obvious, but
13 for someone who reads this record down the road may
14 not be quite as obvious.

15 The Dairy Farmers of America request
16 includes a list of pooled distributing plants with
17 numbers one through 40 that I assume they provided
18 you; is that correct?

19 A They provided us the area of -- or the
20 counties they wanted included in each region, and we
21 assigned -- we put the distributing plants located in
22 the region in this table.

23 Q And then just assigned a number?

24 A Yes.

1 Q A different unique number for each one,
2 just whatever order that you applied them in?

3 A Yes.

4 Q Those numbers one through 40, then, when
5 we see numbers on the various exhibits maps, like the
6 request 1-B or request 3-A, those numbers that we see
7 are the same numbers from that DFA et al. request 1-A,
8 correct?

9 A Yes.

10 Q Turning to --

11 JUDGE DAVENPORT: Before you leave,
12 Mr. English, may I ask one additional
13 question.

14 In other words, those numbers were
15 assigned for the purpose of the information
16 request only? They have no other
17 significance?

18 THE WITNESS: That is correct.

19 MR. ENGLISH: Thank you, Your Honor.

20 Q Turning now to DFA et al. request 2-A,
21 and I know that in response to some questions from
22 Mr. Beshore you went over the FIPS code, but just a
23 couple of other columns for a moment.

24 There's a column labeled FO 33 not

1 pooled. Could you describe what data would be
2 included in that? And I guess maybe I would direct
3 your attention for that purpose to one month that I
4 found numbers that are not zeroes, which are May 2007
5 beginning on page four of 2007 over to page five. If
6 you could describe what that column is about.

7 A That is milk that is normally associated
8 with Order 33 and pooled here, but for that month they
9 chose not to pool it. So it's production in these
10 counties, but it was not pooled on the Mideast Order.

11 Q And for purposes of our record, those in
12 the industry may sometimes call that depooled milk?

13 A Yes.

14 Q When calculating in other documents
15 available milk for months in which there was FO 33
16 milk not pooled, was that milk treated as available,
17 or was it excluded?

18 A If you look at the explanation of those
19 numbers, it is milk produced on farms located in the
20 Southern region and either pooled on the Mideast Order
21 or pooled on another order and delivered to those
22 pooled distributing plants. So if it was not pooled
23 on the Mideast Order, it would not be in that number.

24 Q And for purposes of this calculation, we

1 have May data, not April data, but for purposes of
2 request 3-B, we have January, April, August, November
3 data, so we don't really have comparable data, do we?

4 A No. You don't have the same months.

5 Q So, for instance, we don't know whether
6 in April 2007, the month immediately prior to the
7 month we're just looking at here for milk that was
8 depooled, we don't know whether there was milk
9 normally pooled but not pooled for that month for
10 calculating available milk?

11 A Right.

12 Q Without jumping around too much, since
13 you, yourself, went to the footnote one on request
14 3-B, I just want to ask a few more questions about
15 what's included and not included.

16 Pounds of milk produced on farms located
17 in the defined supply area and either pooled on the
18 Mideast area or pooled on another order and delivered
19 to a pool distributing plant in the defined supply
20 area.

21 So if milk was pooled on Order 5 and
22 delivered to a plant in Order 5 not located within the
23 defined supply area, that would -- that milk would not
24 be included as available milk, correct?

1 A That's correct.

2 Q But if the same farm for the same month,
3 for milk pooled on Order 5 but diverted back to a
4 distributing plant on Order -- or any plant on Order
5 33, that milk would be included as available, correct?

6 A Yes. If it was a distributing plant in
7 that region.

8 Q Only a distributing plant, so not a
9 supply plant?

10 A Right.

11 Q Only a distributing?

12 A Right.

13 Q Turning then -- let me backtrack.
14 Footnote one, available milk -- and I apologize if
15 it's obvious, but is that a definition provided by
16 DFA, or a definition you came up with?

17 A That was provided by DFA.

18 Q Turning to response to DFA et al.
19 request 4-A, I just want to delve a little more in to
20 weighted average. In the column -- in the lines in
21 the columns you have like, for instance, Northwest
22 region for miles one through 20, 21, 653, 940?

23 A Yes.

24 Q For the weighted average purposes did

1 you use some number within that range, or was it the
2 actual miles applied to actual pounds?

3 A The actual miles applied to actual
4 pounds.

5 Q Turning to a series of questions asked
6 by Mr. Beshore about request 6-A, but perhaps for
7 convenience purposes also getting in front of you --
8 having in front of you, I apologize, Exhibit 6, the
9 initial request from Dean Foods, Dean Foods request
10 two, and the request from Mr. Yale, the first page
11 actually after the request, which is the net change in
12 blend value calculation.

13 Maybe I misunderstand where Mr. Beshore
14 was going, but let me see if I can understand it a
15 little better for myself.

16 If you're a dairy farmer located in or
17 around Fair Oaks, Indiana and delivering your milk to
18 a plant located in Fair Oaks, Indiana, for the month
19 of January 2007, which goes to your response to
20 Mr. Kinser's request, isn't it the case that if the
21 proposal goes in to effect, your actual blend price
22 would be one cent lower than it would have been if the
23 proposal has not been not in effect?

24 A Yes. Rounded to one cent.

1 Q And the reason for that, if you look at
2 the response to Mr. Yale's request, is that when
3 plants in the zones for which there is a proposed
4 increase pay in on class -- they count to the pool for
5 their Class I pounds, they would pay the new higher
6 differential value on those Class I pounds, correct?

7 A Yes.

8 Q But for accounting purposes from the
9 pool, the handlers, or those supplying handlers
10 receive a credit not just on the Class I pounds but
11 all pounds, right?

12 A On the producer side, yes.

13 Q And so unless a plant -- a hundred
14 percent Class I, by definition on the producer side,
15 more is going to be paid out than paid in for that
16 plant, correct?

17 A Yes.

18 Q So notwithstanding the idea that where
19 the zero zone is, if you're in any zone that is not
20 part of those increases, your blend price will
21 actually go down. It will be zero or minus one cent,
22 correct?

23 A Yes.

24 Q And even for those months when it's

1 zero, it's really zero because you've rounded a
2 negative number down to zero, correct?

3 A Yes. Because it's so minute.

4 Q But in order to balance the pool, that
5 number has to come from somewhere, correct, that
6 minute negative number --

7 A Yes.

8 Q -- is still a real number, correct?

9 A Yes.

10 Q It comes out of the reserve at that
11 point?

12 A Yes.

13 Q Turning to your responses to Dean Foods
14 Exhibit Number 6 -- and recognizing I think there are
15 some maps that may help answer this.

16 The request 1-A and 1-B, for the column
17 labeled delivered to the Northeast region from out of
18 area, I note that the Northeast region of this order
19 is the only area receiving quantities of milk from out
20 of area that are above 1.5 percent and are -- it looks
21 like they're almost always above ten or 12 percent.

22 Would it be fair to say that milk from
23 out of area, that much of that milk from out of area
24 is coming from New York and Pennsylvania, the

1 unregulated portions of that area?

2 A I'm not completely sure of exactly what
3 -- I know there is some Pennsylvania and New York
4 milk, but I can't say it's the majority.

5 Q There is some Pennsylvania and New York
6 milk that is not physically located in the Northeast
7 region that is being delivered to those plants?

8 A Yes. And like you said, the map that
9 shows the -- the location and the amount would show
10 that.

11 Q So if the map of the location of the
12 milk showed milk from, say, unregulated portions of
13 New York or even Order 1 portions of New York that are
14 being delivered to pool distributing plants in the
15 marketing area, since other regions are only getting
16 0.27 percent and since the Northwest region more
17 logically might receive its milk farther Northwest,
18 the bulk of that milk coming in would be going to the
19 Northeast region, correct?

20 A I think so, yes.

21 Q Turning to the last page of your
22 response in Exhibit 6, I think, again, I may have
23 overparsed your sentence, and I apologize, but we did
24 not yet for this document have data for July 2008. Is

1 that data now available?

2 A We -- I mean, the July pool is
3 completed, yes, but we have not calculated these
4 numbers for July 2008.

5 Q When would you normally -- in the normal
6 course calculate those numbers?

7 A Well, this was only calculated based on
8 the request. The -- I mean the pool numbers?

9 Q I'm talking about pounds of milk pooled
10 on Federal Order 33 --

11 A Oh, I'm sorry.

12 Q -- but diverted to --

13 A I was looking at the previous page. I'm
14 sorry.

15 Q Yeah. I'm sorry. I'm looking at the
16 very last page, the one Mr. Beshore pointed out had
17 two 2005s that we now corrected.

18 A Yes.

19 Q That's a really modest thing, but to get
20 that cleared up I just want to make sure we're on the
21 same document.

22 So for that document, which is the last
23 page of Exhibit 6, pounds of milk pooled on Federal
24 Order 33 but diverted to plants located outside the

1 Mideast marketing area by year and month, the July
2 pool has been calculated?

3 A Yes. But it was calculated after these
4 exhibits were prepared.

5 Q Would it be possible before the close of
6 this hearing to get that number for July 2008?

7 A I'll have to check on that, if we're
8 able to get that information.

9 Q Thank you. Going back just one moment,
10 I apologize, to Exhibit 5. This is a slightly
11 different request from what I asked earlier, although
12 it may have the same answer.

13 But in a number of occasions -- on a
14 number of occasions, for instance, in response to
15 request 4-A there's a footnote that says includes milk
16 pooled on Orders 1, 5, or 33 delivered to Mideast pool
17 distributing plants.

18 A Yes.

19 Q And I take it like your prior answer
20 when we talked about the pooled milk, that would mean
21 that on days in which milk that is delivered often
22 enough to be pooled under five, meet the pooling
23 standards for Order 5, but is diverted back to a pool
24 distributing plant in Order 33, that that milk is

1 included in this calculation?

2 A Yes.

3 Q And the mileage is included?

4 A Yes, it is.

5 Q And the mileage that is included is the
6 mileage from the farm or the other plant distributing,
7 or what is the mileage that's included?

8 A It would be from the farm to the
9 distributing plant where it's received.

10 Q Turning to Exhibit 7, footnote one, even
11 though the footnote is worded a little differently, I
12 assume this is the same thing we were just talking
13 about, pounds of milk produced on farms located in the
14 defined supply area and either pooled on the Mideast
15 area or pooled on another order and delivered to a
16 pool distributing plant in the defined supply area.
17 That again --

18 A Yes.

19 Q -- is the same type of milk diverted
20 back, correct?

21 A Yes.

22 Q Do you recall in the fall of 2007 or if
23 any of the discussions leading up to the July 31
24 letter from Dairy Farmers of America, whether anyone

1 asked for data especially along the weighted average
2 distance of data that dates back prior to Federal
3 Order reform, that is to say, prior to January 1,
4 2000?

5 A No.

6 Q No, you don't recall, or no, nobody
7 asked?

8 A I don't recall that anyone asked.

9 Q Was -- back in the fall of 2007, was the
10 data request made by Dairy Farmers of America?

11 A Yes.

12 Q Was it in writing?

13 A Yes.

14 Q Could we get a copy for this record,
15 please?

16 A I don't have that with me. I don't know
17 if anyone here has that available.

18 Q Would you have it in your office, be
19 able to get it before the close of the hearing?

20 A Yeah.

21 MR. STEVENS: We'll look in to it.

22 That's not the answer. The answer is we'll
23 look in to it. That's the answer.

24 MR. ENGLISH: Thank you, sir.

1 MR. STEVENS: Sure.

2 Q Looking for a moment at Exhibit Number 7
3 -- just one second.

4 MR. ENGLISH: I have no further
5 questions at this time. Thank you very
6 much.

7 JUDGE DAVENPORT: Very well. This
8 appears to be a reasonable time to take a
9 short break. Let's take 15 minutes. Be
10 back at 10:35.

11 (A brief recess was taken.)

12 JUDGE DAVENPORT: Is there other
13 cross-examination of Ms. Uther? Mr. Vetne?

14 MR. VETNE: Your Honor, my name is John
15 Vetne. I represent United Dairy, Inc. which
16 operates three distributing plants in the
17 Mideast market.

18 JUDGE DAVENPORT: If you could speak up
19 a little bit and maybe lift up your
20 microphone, that might amplify it a little.
21 Thank you.

22 MR. VETNE: Ms. Uther, good morning.
23 Thank you for coming.

24 THE WITNESS: Good morning.

1 CROSS-EXAMINATION

2 BY MR. VETNE:

3 Q On the back table are copies of all of
4 the exhibits that have been marked, and some yet to be
5 marked, responsive to requests for data from parties.

6 In the past when I've attended hearings
7 such as this, the department or the market
8 administrator have ordinarily prepared a package of
9 statistical data generated on their own initiative.

10 (Microphone problems.)

11 Q Returning to my question, in the past
12 when I've attended hearings such as this the dairy
13 programs or the market administrators have prepared a
14 package of information on their own initiative, not
15 responsive to any request, but responsive to their own
16 views of things that might be of interest to the
17 hearing.

18 Have you been responsible for
19 preparations of such packages in the past?

20 A Yes, we have in the past.

21 Q Okay. And in the past those packages
22 have generally included all things that are in the
23 annual publication of statistics from the marketing
24 area updated to the date of hearing as close as

1 possible, correct?

2 A Yes.

3 Q And does the market administrator for
4 the Mideast market maintain such general annual
5 statistics on its website?

6 A Yes, we do.

7 Q Which would include producer milk by
8 state and county for various times of the year?

9 A Yes. We usually release that for May
10 and December of the year.

11 Q Okay. So there is data on the website
12 showing pooled producer milk by state and county for
13 the Mideast market for December of '07?

14 A Yes.

15 Q And is the May of '08 data yet on the
16 website?

17 A No. That's not out there yet.

18 Q And when would that, in the ordinary
19 course, be available on the website?

20 A That should be available soon. We have
21 that information, I think. It just hasn't been
22 updated on the website.

23 Q And that website publication also has --
24 identifies pool plants by location, correct?

1 A Yes.

2 Q And the pricing zones of those pool
3 plants?

4 A Yes.

5 Q And there's a list of pool plants that
6 -- the pool plants have a number assigned to them
7 which is different than the number assigned to them in
8 Exhibit 5; is that correct?

9 A Yes. They would be different.

10 Q Is there a reason which you're aware why
11 a similar general statistical publication was not
12 prepared for this hearing?

13 A We were not asked to put that in to the
14 hearing. Normally we receive a request if that is to
15 be entered in to the hearing, and we did not receive a
16 request for it at this time.

17 Q And that request would ordinarily come
18 from dairy programs?

19 A No. It generally comes from the
20 proponents or someone involved in the hearing.

21 Q Oh, really? Okay.

22 A Yes.

23 Q Now, at various places in the exhibits
24 that have been marked -- I'm trying to look for an

1 example -- there's a term "available supply used."

2 A Yes.

3 Q Let's see. It's -- okay. It's used,
4 among other places, in Exhibit 7, approximately the
5 third or fourth page response to Dean Foods
6 supplemental request two.

7 The available supply in each case for
8 each of the proponent designated regions is limited to
9 those supply areas also designated by the proponents,
10 correct?

11 A Yes.

12 Q All right. There is substantial --
13 there is a substantial quantity of milk that is part
14 of the Mideast pool that is not produced on farms
15 located within any of the proponent designated supply
16 areas; is that correct?

17 A There is milk located outside of those
18 areas, yes.

19 Q And that is a substantial quantity?

20 A I'm not familiar with the exact volume
21 of it.

22 Q Nevertheless, the data that is available
23 on your website showing producer milk by state and
24 county would, for the western part of the milkshed,

1 reveal information that is not in Exhibit 5 that would
2 show its extension west in the same way as the
3 proponent designated supply area extends to the east
4 and to New York?

5 A Yes.

6 Q And had you been instructed to include
7 that west of Mideast supply like you did for east of
8 Mideast supply, your calculations of available supply
9 would have been different, correct?

10 A Well, included in the available milk is
11 only milk located in those regions. So unless there
12 was milk pooled on another order and delivered to
13 those regions, even the milk located to the east would
14 not be included.

15 Q Okay. Look at Exhibit 7, third page
16 under footnote one for -- okay. Let's look at May
17 2007, for example, summary of available milk versus
18 milk received. For the Northeast region of the
19 Mideast Order as defined by the proponents --

20 MR. BESHORE: What page are you on,
21 John? I'm sorry.

22 MR. VETNE: Exhibit 7, the third page.

23 MR. BESHORE: Thank you.

24 A Is that the Dean request?

1 Q Yes.

2 A Supplemental?

3 Q Dean Foods supplemental request.

4 A Okay.

5 Q Available milk, as footnote one, pounds
6 of milk produced on farms located in the defined
7 supply area.

8 A Yes.

9 Q Okay. Are you saying that the available
10 milk on this page of Exhibit 7 does not include any
11 milk produced in Pennsylvania or New York that is
12 outside of the boundary of Order 33?

13 A If it's outside of the boundary of those
14 regions, it would only be included if it was pooled on
15 another order and delivered to distributing plants in
16 that region.

17 Q Okay. So that -- when we turn to
18 Exhibit 5, the very first map -- it's tough to do this
19 -- oh, okay. I'm sorry. Look at DFA et al. request
20 2-B. There is a -- there are two maps on that one
21 page, color-coded?

22 A Yes.

23 Q The bottom map shows Federal Order 33
24 marketings for May of 2007, correct?

1 A Yes.

2 Q And it's Federal Order marketings
3 limited to those states. There are other Federal
4 Order 33 marketings from others not included -- other
5 states not included in this exhibit?

6 A Yes.

7 Q Okay. So to the extent on the bottom
8 map there that shows Federal Order 33 milk marketings,
9 there's milk placed in New York state, some of which
10 are heavy production counties for Order 33.

11 That production would not be included
12 as an available supply for Northeast region unless --
13 unless the milk of that producer was delivered to --
14 within the market to an Order 33 plant on a particular
15 day?

16 A Yes, that's correct.

17 Q And only that volume of milk that
18 actually moved from New York into the Mideast to a
19 distributing plant would be included in available
20 supply by the definition of available supply as you
21 applied it?

22 A Yes.

23 Q Okay. Is there any characteristic of
24 the pool of milk that is shown on that map from New

1 York or central Pennsylvania that would make it
2 unavailable to the Order 33 distributing plants?

3 A I'm not sure.

4 Q Okay. You did not intend in your
5 preparation of Exhibit 5 or any other exhibit to make
6 a judgment that the milk that is produced in those
7 counties outside of Order 33 and not included in your
8 data on available supply, you did not intend to make a
9 judgment that that milk was not available?

10 A No. We did not intend to. We were just
11 showing the production as requested in those counties
12 and in those areas.

13 Q So the use of the term "available" is
14 not a term that you have adopted for any substantive
15 purpose?

16 A No. It was just as per the request.

17 Q Within the available supply area as
18 defined by the proponents in their requests to you,
19 there is also milk produced that is not pooled in
20 Order 33 but is marketed to other markets; is that
21 correct?

22 A That's correct.

23 Q Do any of the exhibits that you're --
24 that you have prepared reveal the volume of that

1 additional local production?

2 A No. The one table we provided showed
3 milk diverted outside of the marketing area, but that
4 would be diversions that wouldn't include milk pooled
5 by other orders.

6 Q And it would be diversions outside of
7 the marketing area. By the way, that exhibit that
8 shows diversions outside of the marketing area
9 includes diversions to distributing plants as well as
10 nonpooled plants?

11 A That's correct.

12 Q As well as, for that matter, supply
13 plants or Class II plants that are part of a unit
14 outside of the marketing area?

15 A Yes. Anything outside of the marketing
16 area.

17 Q So it doesn't say anything about
18 utilization of the milk?

19 A No.

20 Q Okay. And would those diversions be
21 diversions in that exhibit from the Order 33 milk
22 supply as a whole, which is posted on your website,
23 rather than diversions from that quantity of milk that
24 the proponents have designated is either available or

1 produced?

2 A Yes. It would be in total.

3 Q In total. So those diversions do not
4 have a direct correlation with any of the data that
5 you have prepared at proponent's request?

6 A No.

7 Q With respect to milk deliveries by zone,
8 if a producer delivers one day to a distributing plant
9 in one zone and one day to a distributing plant in
10 another zone, first of all, how is such split
11 deliveries from an individual farm reflected in your
12 mileage calculations?

13 A The mileage in the table from the DFA
14 request? Is that what you're referring to?

15 Q Yes. Are all of those -- is all of that
16 variability in the delivery of milk from one farm to
17 multiple locations captured in the mileage figure?

18 A Yes. In each region it just looks at
19 the distance traveled from producers to the
20 distributing plants in those regions.

21 Q Okay. And, again, the distance traveled
22 from farms to distributing plants in that exhibit does
23 not include a portion of the Order 33 pooled milk
24 supply, right?

1 A It would only include the milk delivered
2 to distributing plants in those regions.

3 Q Does that mileage include milk from
4 locations outside of the proponent designated supply
5 or available area?

6 A If it's delivered at those distributing
7 plants, yes.

8 Q Okay. So the volume of milk and the
9 mileage reflected in that mileage exhibit is from data
10 that also does not correspond with proponent's
11 definition of the supply area or available supply?

12 A No. Because it is not actually
13 delivered to the distributing plants. It is not
14 looking at the supply area around it, but what was
15 actually delivered there in distance.

16 Q By answering no to my question did you
17 mean yes, it does not correspond with proponent's
18 definition?

19 A Yes.

20 Q With respect to available milk within a
21 proponent defined region, when milk is split -- when a
22 farmer ships to multiple regions within the Mideast,
23 as defined by proponents, how are such splits during
24 the month's sales reflected in any of your statistics

1 on available supply within proponent's definition?

2 A If a producer is located within, for
3 example, the Northwest region and that milk is pooled
4 anywhere in the market, that's included in the
5 available milk for the Northwest region.

6 Q Okay. If that producer every day ships
7 milk to the Southern tier of the region, is that milk
8 excluded from available supply to the Southern tier in
9 the exhibits as you prepared them on instruction from
10 proponents?

11 A It would be included in -- if the
12 producer is located in the Northwest region, that
13 would be included in the Northwest region supply
14 regardless where it went to in the Mideast Order.

15 Q So the answer is yes, even though that
16 milk day after day goes to the Southern tier and is
17 made available by that producer by the Southern tier
18 buyer, it would not show up as available to the
19 Southern tier in the data that you presented?

20 A Right. And you would see -- where it
21 would show up is in the table where we showed the
22 different regions supplying the other regions, and you
23 will see that the Northwest did supply a fair amount
24 of milk to the Southern region.

1 Q Okay. Which one is that?

2 A That is Dean request 1-A and B.

3 Q Dean 6, or Dean 7?

4 A Dean 6 where you see the percentages
5 delivered to the regions by the other regions. If you
6 look at milk delivered to the Southern region you'll
7 see that 42.23 percent of it came from the Northwest
8 region, 28.7 came from the Northeast region, 28.8 from
9 the Southern region.

10 Q And does the data in the exhibit that
11 you're looking at which is part of Exhibit 6 include
12 all of the pooled milk supplies in Order 33 rather
13 than the limits supplied designated as available by
14 the proponents?

15 A It applies to the milk delivered to the
16 distributing plants. So if you look at the actual
17 milk delivered to distributing plants, this is the
18 sources of that milk delivered to the distributing
19 plants.

20 Q Including milk that might come from
21 Indiana -- I mean Illinois or Wisconsin or --

22 A Yes.

23 Q -- any place?

24 A Yes.

1 Q So the data in here again does not
2 correspond with the universe of milk -- well, it is
3 the university of milk Order 33, but does not
4 correspond with the more limited portion of that
5 universe designated as the supply areas that are
6 available by the proponents?

7 A Yes. It corresponds to the milk
8 received at the distributing plants on those maps.

9 Q You're talking about the distributing
10 plant being located on those maps?

11 A Yes.

12 Q By the way, are there any distributing
13 plants that are or have been pooled in Order 33 that
14 are located outside the geography of the Mideast
15 market?

16 A No. I don't believe so.

17 Q Okay. Are you aware of any plants that
18 are close to being regulated in the Mideast market
19 that might be either partially regulated or regulated
20 someplace else?

21 A We do have partially regulated plants in
22 our market, yes. Whether they're close or not, I
23 can't say.

24 Q Okay. You are aware, however, that it

1 does happen that there are distributing plants in the
2 Federal Order system that are fully regulated in a
3 market even though the plant itself is not located in
4 that market?

5 A Yes.

6 Q Mr. Beshore asked you some questions
7 about the proposal and its creation of new revenue to
8 the pool, something like a quarter million dollars.
9 Do you remember that?

10 A Yes.

11 Q Is it not true that while the proposals,
12 if adopted, would create new revenue, the proposals,
13 if adopted, would also create new obligations from the
14 pool, and the obligations in all cases would exceed
15 the new revenue?

16 A Yes.

17 Q And it is for that reason that in
18 whatever month you're looking at, the blend price
19 north of the Southern tier would go down to the blend
20 price payable to producers?

21 A Yes. In some months it was zero, in
22 some months it would be a penny.

23 Q And that's part of the ordinary monthly
24 pool calculation, right?

1 A Yes.

2 Q That's not money that comes out of the
3 reserve, it's just part of the pool balancing
4 accounting for the pool that month?

5 A Yes.

6 Q Are you aware of any new capacity in the
7 Southern tier that's being proposed for processing
8 Class II, III, or IV products?

9 A No, I'm not.

10 Q Are you aware of a Nestle plant that is
11 planning to come online at some point in the future?

12 A Yes.

13 Q Do you know where that's located?

14 A Yes. That's in Anderson, Indiana.

15 Q Which is north?

16 A It's in the Southern region.

17 Q It's in the Southern region?

18 A Yes.

19 Q So when that plant comes online, its
20 Class II, III, and IV would also draw more money from
21 the northern producers, correct?

22 A Any plant that has II, III, and IV, yes.

23 Q There are provisions in the Mideast
24 Order which allow the market administrator, without

1 going through this hearing process, to adjust
2 performance requirements, supply plants, diversions,
3 touch base, that kind of thing --

4 A Yes.

5 Q -- are you familiar with those?

6 A Yes.

7 Q And would you agree that one of the
8 purposes for the existence of those provisions is to
9 allow the market administrator to respond to either a
10 need for additional milk where there is need and a
11 problem getting it, or to dispose of increased
12 production, surplus milk that needs to find a home and
13 still be in the pool? Those are the two uses for that
14 provision?

15 A Yes.

16 Q Have there been any requests by anybody
17 for use of that provision, those provisions, to
18 respond to any perceived trouble getting milk to the
19 Southern tier?

20 A Not using that provision, no.

21 Q Okay. So nobody in the last couple
22 years has asked the market administrator to make any
23 adjustments pursuant to those provisions to get more
24 milk?

1 A Not to my knowledge, no.

2 MR. VETNE: That's all I have for now.
3 Thank you.

4 JUDGE DAVENPORT: Is there any other
5 cross-examination of this witness?
6 Mr. Yale?

7 MR. YALE: Thank you, Your Honor.
8 Benjamin F. Yale on behalf of Continental
9 Dairy Products and Select Milk.

10 Good morning.

11 THE WITNESS: Good morning.

12 MR. YALE: Thank you for making the
13 exhibit and preparing the information we
14 requested.

15 THE WITNESS: You're welcome.

16 CROSS-EXAMINATION

17 BY MR. YALE:

18 Q In your -- I would like to look at that
19 Exhibit 8 which is the one that responds to
20 information that's being requested.

21 This uses the calculation for April as
22 an example. It shows, as I understand it, a reduction
23 in the overall pool of about \$47,000; is that right?

24 A Yes.

1 Q All right. Now, that money, it's a loss
2 in the pool, but that really goes to somebody, right?
3 I mean, this isn't -- it's not thrown into a black
4 hole. What is this \$47,000? Where does it go?

5 A It represents the difference between the
6 Class I value and the producer value. So that would
7 be the effect on the producer price differential.

8 Q So it goes to some producers in the pool
9 but not all producers in the pool, right?

10 A Right. The producers in the pool that
11 are affected by the change in the differentials, yes.

12 Q Okay. And is -- because they get paid
13 on all the milk they deliver to those plants
14 regardless of the class?

15 A Correct.

16 Q And the Class I plan would pay for the
17 Class I?

18 A Correct.

19 Q So one could determine approximately how
20 much money is being paid to the producers delivering
21 to that Southern region extra as a result of this
22 proposal for milk that is not used in Class I by
23 taking, in this example, the 47,445 and determining
24 the per hundredweight that is of the 188 million

1 pounds?

2 A Yes?

3 Q Now, you looked at the language of the
4 proposal, have you not?

5 A Yes.

6 Q Are you familiar with it?

7 A Yes.

8 Q And it has really two provisions. It
9 has the one that came out of order reform that says
10 this is the county Class I price, and then this
11 proposal says you add to that this additional money
12 based on this table that was added on some counties,
13 right?

14 A Yes.

15 Q Okay. Now, going back to the question
16 regarding payments to producers, does the -- you're
17 involved with the blend -- settlement of the blend and
18 all that?

19 A Yes, I am.

20 Q This is kind of a technical question and
21 maybe you can't answer, but I'm going to ask and then
22 you can tell me whether or not.

23 Is it possible that in computing the
24 blend that -- one, that you compute what the Class I

1 plants have to pay based upon what's in the original
2 table, I think it's 52, and this table, but for paying
3 producers that it would only be on the other table,
4 just the original table, without combining the two?

5 A I believe it should be on both tables.
6 The same applies to producers as the Class I
7 differential.

8 Q But you don't know whether your computer
9 has the capacity to differentiate and break that down?

10 A We would -- in actually doing it, we
11 would put the new numbers in adjusted to do the
12 calculations.

13 Q As one number?

14 A Right. As part of our program.

15 Q You answered it much more simply than I
16 asked it, so thank you. Now, going back to that
17 earlier question that we talked about, we could
18 determine that additional amount that really just goes
19 to other producers, it's a shift from some producers
20 in the pool to a smaller number of producers in the
21 same pool, right? That's really what that \$47,000
22 represents?

23 A Yes.

24 Q Now, according to these exhibits, for

1 example, Exhibit 7 that you prepared I think in
2 response to Dean Foods, the supply of milk to the
3 Southern region I think -- no. I'm sorry. It's not
4 that. It's Exhibit 6. I apologize. Exhibit 6.

5 The amount of milk that comes to the
6 Southern region comes, in significant part, from all
7 three of the regions; is that correct?

8 A Yes.

9 Q All right. And at the same time in
10 which milk from, say, for example, the Northwest
11 region is supplying the Southern region, the Northwest
12 region is also supplying its own region; is that
13 correct?

14 A Yes, it is.

15 Q So the milk that comes out of the
16 Northwest region -- if this proposal is adopted based
17 upon the numbers you gave me, for milk that comes out
18 of the Northwest region and goes only to the Northwest
19 region, there would be basically for those producers
20 no change in their blend price, maybe minus a penny or
21 something like that depending on rounding and the
22 month, right?

23 A Yes.

24 Q But for producers in the Northwest

1 region that are supplying the Southern region, they
2 would get approximately 15 to 20, or whatever the
3 amount is, per hundredweight on the differential extra
4 on all of the milk that they would supply to that
5 Southern region; is that right?

6 A Yes.

7 Q And those could conceivably be
8 neighboring farms that are supplying, you know, from
9 the Northwest neighboring farms some supplying just
10 the Northwest and some to the Southern region?

11 A Yes.

12 MR. YALE: That's all that I have.

13 Thank you.

14 JUDGE DAVENPORT: Recross,

15 Mr. Beshore?

16 RECROSS-EXAMINATION

17 BY MR. BESHORE:

18 Q Ms. Uther, would you go to Exhibit 5,
19 please. I want to look at the data on response to DFA
20 request 3-A for April 2007. That's the map. It's
21 response to 3-A for April 2007. I want to also look
22 at the response to DFA request 4-A for the same month,
23 April 2007.

24 A Okay.

1 Q Okay. Now, the -- you were asked a
2 number of questions by Mr. Vetne suggesting that
3 definitions -- you know, that definitions of
4 availability and the various data sets did not go
5 together here.

6 I just want to compare these. For April
7 2007 for the Northwest region you show on response to
8 request 3-A bulk milk physically received at
9 distributing plants located in the Northwest region
10 263,040,584 pounds. Do you see that?

11 A Yes.

12 Q And on the request of 4-A, which is your
13 mileage -- weighted average mileage calculation for
14 deliveries to distributing plants in the Northwest
15 region, that's based on the exact same number to the
16 pound, correct?

17 A Yes.

18 Q And the same thing would apply if we
19 compared the northeast region data for April 2007 in
20 response to Exhibit 3-A and looked at -- which is the
21 next page in your exhibit, which shows 175,664,395
22 pounds delivered to those distributing plants,
23 correct?

24 A Yes.

1 Q And that was the same exact to the
2 pounds set of milk deliveries that you then evaluated
3 in response to paragraph 4-A to determine how far it
4 was from farms?

5 A Yes.

6 Q And we could compare all of the 3-A and
7 4-A requests, but all the numbers are identical data
8 sets, are they not?

9 A Right. On the available milk -- or on
10 the milk received at the distributing plants, yes.

11 MR. BESHORE: Okay. Thank you.

12 JUDGE DAVENPORT: Other examination of
13 this witness?

14 RE-CROSS-EXAMINATION

15 BY MR. VETNE:

16 Q Just so I can make sure I have a good
17 understanding of that clarification, I'm also looking
18 at DFA request 3-A, the map there.

19 The bulk milk physically received at
20 distributing plants in the Northwest region, 263
21 million pounds, first of all, bulk milk means milk
22 from the farms?

23 A Yes.

24 Q Okay. And it would not include

1 transferred milk?

2 A Not bulk transfers, no.

3 Q Okay. But it would include diversions
4 from one distributing plant to another?

5 A Yes. Any milk that's physically
6 received from farms at those distributing plants, yes.

7 Q Whether it's diverted by cooperative
8 plants or supply plants or distributing plants --

9 A Right.

10 Q -- if it's from a farm into the
11 distributing plant it's part of that 263 million?

12 A Yes.

13 Q Included in that 263 million is whatever
14 milk may have come to those distributing plants from
15 Indiana, Wisconsin, or anyplace else?

16 A Yes.

17 Q Okay. The bottom number, however,
18 available milk from farms, that number of 710 million
19 is not from all of the counties that actually supplied
20 milk to distributing plants, it is limited to that
21 supply within the dark blue colored part of the map?

22 A Yes. If it was in that area and pooled
23 on the order, it's included, or also milk pooled
24 elsewhere but delivered to those distributing plants

1 is included.

2 Q Okay. So, again, your use of available
3 milk here is limited by the proponent's definition,
4 not by the milk produced that actually ends up in that
5 -- or is available to that market from elsewhere?

6 A Yes. It's just as the footnote states

7 MR. VETNE: All right. Thank you.

8 That clarifies it for me.

9 JUDGE DAVENPORT: Mr. English?

10 MR. ENGLISH: Good morning again.

11 Charles English.

12 RE-CROSS-EXAMINATION

13 BY MR. ENGLISH:

14 Q These are going to basically some of the
15 questions asked by Mr. Vetne about what is or is not
16 available on the website.

17 First, to the extent that there is
18 monthly data after the last annual summary is
19 published, is that monthly data available on the
20 website?

21 A Not as part of the annual statistics.
22 We will have our May data out, state and county, out
23 shortly, but other than that we don't update all of
24 the tables until the end of the year.

1 Q Is 2007 annual summary out --

2 A Yes.

3 Q -- on the website?

4 A Yes, it is.

5 Q Do you, as part of the annual data, on
6 the website list milk that is not pooled but normally
7 associated with the market, that is --

8 A No.

9 Q -- to say depooled milk?

10 A No.

11 Q Do you include a table for bulk
12 transfers as opposed to farm milk in the annual
13 statistics?

14 A No.

15 Q And clarifying from Mr. Vetne, since --
16 this year and since adoption of the changes in the
17 southeast differentials, has anybody submitted to you
18 a request for the month of May, June, July, August, or
19 September to alter the diversion limitations, shipping
20 percentages, or anything like that?

21 A No.

22 MR. ENGLISH: I have no further
23 questions.

24 MR. VETNE: Just one more.

1 JUDGE DAVENPORT: One more question,
2 Mr. Vetne.

3 FURTHER RECROSS-EXAMINATION

4 BY MR. VETNE:

5 Q Ms. Uther, to the extent that there is
6 milk produced in Order 33 in the marketing area in the
7 state of Ohio that is actually pooled in Order 5 or
8 Order 7 for the southeast, and that milk is delivered
9 to a cheese plant in Kentucky under one of those
10 orders, am I correct that that volume going to a
11 manufacturer in Kentucky would not show up as
12 available in any of your exhibits?

13 A That's correct.

14 MR. VETNE: Thank you.

15 JUDGE DAVENPORT: Other questions of
16 this witness? Mr. Stevens?

17 MR. STEVENS: Your Honor, we have some
18 additional information to provide on Exhibit
19 6, if I may hand the witness a note which
20 has the additional information on it.

21 JUDGE DAVENPORT: Very well.

22 MR. STEVENS: Any objection to that
23 from the crowd?

24 MR. BESHORE: I'm sorry?

1 MR. STEVENS: She'll explain. Also,
2 while I'm here, I have copies of this letter
3 that you've been asking about.

4 MR. BESHORE: Your Honor, may I make a
5 comment before there is discussion of the
6 proffered exhibit. Has this been marked?

7 MR. STEVENS: No.

8 MR. BESHORE: Well, I guess it needs to
9 be marked for identification purposes.

10 MR. STEVENS: All right. I just handed
11 it out at this point, and then I'll ask that
12 it be marked and we'll go from there.

13 MR. BESHORE: Why don't we do that.

14 MR. STEVENS: Okay. I've handed out
15 for the judge and the court reporter a copy
16 of a letter dated September 25, 2007 from
17 Elvin Hollon to David Walker that was
18 referred to in earlier discussion in the
19 hearing, and I want to have that marked as
20 Exhibit 13, I believe it is, Your Honor.

21 JUDGE DAVENPORT: That's correct. It
22 will be so marked.

23 (Whereupon, Exhibit Number 13 was
24 marked for identification.)

1 MR. BESHORE: Your Honor, with respect
2 to the proposed document that has been
3 marked for identification as Exhibit 13, I
4 want the record to reflect that we did not
5 object to the market administrator -- to the
6 government making available this document
7 which had previously been queried by
8 Mr. English, I believe, but I would like to
9 note -- note some concerns about the path
10 that this leads.

11 This is a prior request for information
12 that Mr. Hollon submitted to the market
13 administrator. All of these parties, DFA,
14 and the other cooperatives I represent and
15 the handlers represented by Mr. English,
16 Mr. Vetne, and Mr. Yale, other parties here,
17 in the ordinary course of business have many
18 conversations with the market administrator
19 staff with respect to data of their own
20 operations or other operations. If this --
21 and with respect to hearings and possible
22 hearings. And this is of that nature, as it
23 speaks for itself.

24 If we're going to -- if these

1 proceedings are to become a discovery forum
2 with respect to all of those conversations
3 or any of those conversations, we're going
4 to object.

5 The materiality or relevance of these
6 conversations is limited, if, in fact, it
7 exists at all, and we shouldn't go down that
8 path in these proceedings.

9 We do not object to this exhibit being
10 produced and being marked, but if we go
11 further, we may well have objections as they
12 relate to us.

13 And of course it puts us in a position
14 of asking Mr. Kinser or any of Mr. English's
15 other witnesses or Mr. Vetne's witnesses, if
16 he has any, about their conversations with
17 the Market Administrator's Office, and that
18 just shouldn't be what we're here at this
19 hearing to engage in.

20 JUDGE DAVENPORT: Mr. English?

21 MR. ENGLISH: Since Mr. Beshore has
22 objected sort of a little odd, I think in
23 this particular context the relevancy is
24 that the document came up during

1 cross-examination of this witness.

2 And, frankly, I don't know if anybody
3 in this room other than, say, the United
4 States Department of Agriculture and the
5 proponents, knew anything about a request
6 for data literally ten and a half months ago
7 with respect to this.

8 And, you know, obviously if it was
9 confidential data of any nature, that would
10 be an issue. I think this document is very
11 limited. We aren't pursuing it on this. We
12 mostly wanted to see what was requested.

13 We certainly had some commentary in our
14 testimony and otherwise about how this
15 hearing came about. But, you know, we are
16 content.

17 I may have some questions about this
18 based upon seeing it, but I do think that
19 it's an appropriate document given the fact
20 that it came up right here in the
21 discussions of cross-examination. So I
22 think it's perfectly appropriate.

23 I guess at some point I would move
24 admission of both Exhibits 12 and 13.

1 JUDGE DAVENPORT: Mr. Stevens?

2 REDIRECT EXAMINATION

3 BY MR. STEVENS:

4 Q So with respect to 13, this is a
5 document that comes from the records of the Market
6 Administrator's Office where you are employed?

7 A Yes.

8 Q And the copy that you're looking at, the
9 copy that -- do you have a copy?

10 A Yes, I do.

11 Q Okay. The copy you're looking at, the
12 copy that has been entered in to evidence, that's a
13 true and accurate representation of what is found in
14 the records?

15 A Yes.

16 Q Now, you have some updated information
17 for Exhibit 6, request three from Dean Foods, do you
18 not?

19 A Yes.

20 Q Okay. Maybe you want to turn to that
21 exhibit for a second.

22 A Okay.

23 Q Having asked you to turn to it, I need
24 to turn to it myself. And in that exhibit there are a

1 series of columns representing -- well, the document
2 speaks for itself, the title as to what it represents,
3 and there are a series of columns that represent the
4 years 2003 through 2008.

5 You have corrected the second
6 appearance, I guess the one to the right of the first
7 appearance for the years 2005 to 2006, correct?

8 A Yes.

9 Q Okay. And but you have additional
10 information to add to the column 2008?

11 A Yes, I do. It was previously requested
12 that we provide July information for 2008. And we did
13 obtain that during the break, and that value is
14 213,542,206 pounds.

15 JUDGE DAVENPORT: One more time,
16 please.

17 THE WITNESS: 213,542,206.

18 Q For July 2008?

19 A Yes.

20 Q And that number is derived in the same
21 way as the rest of the numbers that appear on that
22 exhibit?

23 A Yes, it was.

24 Q And all the questions that I had with

1 respect to that exhibit would apply to this exhibit
2 also, so I won't repeat those questions, but the
3 answers would be the same?

4 A Yes, it would.

5 MR. STEVENS: Your Honor, that's the
6 extent of my questions. I certainly would
7 move for admission of Exhibit 12 and 13 in
8 to the record.

9 JUDGE DAVENPORT: Objection by any
10 party?

11 It will be so entered. Are there
12 objections at this time to the receipt of
13 Exhibits 5, 6 as amended by Mr. Beshore's
14 correction of the year and most recently by
15 Mr. Stevens and Ms. Uther's addition of the
16 volume figure for that year, for the most
17 recent year as to Exhibit 6, 7, and 8?

18 Very well. They will be admitted in to
19 evidence at this time.

20 MR. STEVENS: Thank you, Your Honor. I
21 think that concludes testimony we wish to
22 present from -- oh, hang on one second.

23 As I previously said, that concludes
24 our presentation with this witness.

1 JUDGE DAVENPORT: Very well. Thank
2 you, ma'am. You may step down.

3 MR. BESHORE: I'm sorry. May I ask one
4 question in response to your, in essence,
5 redirect?

6 JUDGE DAVENPORT: Certainly. I'm
7 sorry.

8 FURTHER RECROSS-EXAMINATION

9 BY MR. BESHORE:

10 Q Ms. Uther, to your knowledge over the
11 past 12 months have there been conversations with
12 persons in the industry, other than Elvin Hollon, by
13 the Order 33 staff with respect to possible -- oral or
14 written with respect to possible data assembly for
15 actual or possible Federal Order hearings?

16 A We've had the other requests for this
17 hearing, yes.

18 Q In addition to that have there been
19 conversations with persons about possible requests for
20 possible hearings?

21 A Yes.

22 MR. BESHORE: Thank you.

23 JUDGE DAVENPORT: Mr. Vetne?

24 MR. VETNE: I have one question.

1 FURTHER RECROSS-EXAMINATION

2 BY MR. VETNE:

3 Q The addition to the last page of Exhibit
4 6 brought my attention to a question I didn't ask
5 before.

6 The volume of milk diverted to plants
7 outside of the marketing area, we've established that
8 could also be -- could be distributing plants or Class
9 II plants or manufacturing plants?

10 A Yes.

11 Q To the extent that there is milk
12 produced outside of the marketing area as pooled on
13 Order 33 and delivered in Michigan, for example, to
14 Naprino [phonetic] to make cheese, that's a diversion
15 to a plant within the marketing area that volume would
16 not be included here; is that correct?

17 A That's correct.

18 Q And the volume that is included here
19 would include both milk from farmers within the
20 geography of the Mideast that is diverted outside for
21 some purpose, as well as Mideast pooled milk that was
22 produced outside and stays at a plant somewhere
23 outside the marketing area. That's what's on this
24 exhibit?

1 A Yes. Any milk pooled on the Mideast
2 Order but delivered outside of that area.

3 Q Okay. So we have no data anywhere in
4 these requests that shows the volume of milk diverted
5 for manufacturing use within the geography of the
6 Mideast; is that correct?

7 A That's correct.

8 JUDGE DAVENPORT: Other questions?
9 Thank you again. You may step down.

10 Mr. Stevens, do you think we could go
11 ahead and identify the other exhibits before
12 lunch, before breaking for lunch?

13 MR. STEVENS: I'm certainly prepared to
14 do that, Your Honor, if you would like that.

15 JUDGE DAVENPORT: Then save the cross
16 until after the noon break.

17 MR. STEVENS: I'm certainly prepared to
18 do that, Your Honor.

19 JUDGE DAVENPORT: Very well. Let's
20 proceed.

21 MR. STEVENS: Would you like me to call
22 the next witness and identify them?

23 JUDGE DAVENPORT: If you would, please.

24 MR. STEVENS: All right, sir. I call

1 Jason Nierman.

2 JUDGE DAVENPORT: Would you raise your
3 right hand.

4 THE WITNESS: (Complies.)

5 JUDGE DAVENPORT: Do you swear or
6 affirm the testimony you are about to give
7 during this hearing shall be the truth, the
8 whole truth, and nothing but the truth, so
9 help you God?

10 THE WITNESS: I do.

11 JUDGE DAVENPORT: Please be seated.
12 Give us your name, and if you would spell it
13 for the hearing reporter.

14 THE WITNESS: Jason Nierman,
15 N-I-E-R-M-A-N.

16 MR. STEVENS: Good morning, Jason.

17 THE WITNESS: Good morning.

18 JASON NIERMAN,
19 of lawful age, as having been duly sworn, was examined
20 and testified as follows:

21 DIRECT EXAMINATION

22 BY MR. STEVENS:

23 Q You're from the MA's office. Which MA's
24 office?

1 A Federal Order 5, Louisville, Kentucky.

2 Q Where is that office located? Oh,
3 Louisville, Kentucky. Okay. How long have you been
4 employed by that office?

5 A I've worked in the MA office for five
6 years, and prior to that I was -- I worked for five
7 years also in economic analysis branch of Dairy
8 Programs in Washington, D.C.

9 Q Could you tell us briefly what your
10 duties are in the MA's office?

11 A I'm an associate market administrator
12 overseeing the statistical information and economic
13 analysis performed in the office.

14 Q All right. Have you testified in
15 Federal Order hearings before?

16 A Yes, I have.

17 Q And in conjunction with those hearings
18 have you prepared and brought documents that reflected
19 requests from interested parties to those hearings?

20 A Yes.

21 Q Did you do that today?

22 A Yes.

23 MR. STEVENS: Your Honor, could I have
24 marked for identification a document

1 entitled compilation of statistical material
2 prepared at the request of Dean Foods?

3 JUDGE DAVENPORT: This will be marked
4 as Exhibit 9.

5 MR. STEVENS: Thank you, Your Honor.

6 (Whereupon, Exhibit Number 9 was marked
7 for identification.)

8 Q Jason, this document was prepared by you
9 or pursuant to your supervision?

10 A Yes.

11 Q From records of the Market
12 Administrator's Office of Order Number 5?

13 A Yes.

14 Q Do you have a table of contents -- you
15 received a request to prepare this information from
16 Dean Foods?

17 A Yes.

18 Q And in response to that request, you
19 prepared these documents which have a table of
20 contents with four entries?

21 A Yes.

22 Q I'm not going to read them. They're
23 self-explanatory. The document will be entered in to
24 evidence hopefully and will reflect that.

1 Why don't you go through the documents
2 briefly and describe what's contained therein.

3 A The first table is from page one through
4 page four for January 2004 through June 2008, and it
5 includes the total pounds of milk pooled on Federal
6 Order 5 from the three defined Mideast regions, and
7 then the last column is the portion of that milk that
8 was delivered to a pool distributing plant on Federal
9 Order 5.

10 Q Okay. So give us an example, reading
11 across the table, just to show us what it contains.

12 A So for January 2004 there was roughly
13 nine and a half million pounds of milk from the
14 Northeast region pooled on Federal Order 5, and of the
15 roughly nine and a half million, 1.8 was delivered to
16 a pool distributing plan located in Federal Order 5.

17 Q I think I heard you say .18. Maybe I
18 misheard but --

19 A 1.8.

20 Q It is what the document shows?

21 A Yes.

22 Q And in some of these columns there is
23 the word "restricted" in the footnote. And the
24 footnote explains what it is, but why don't you just

1 say what it is for the record.

2 A If there's less than three handlers, the
3 data would be restricted. I believe the Northeast
4 region is restricted in a few months. That's the only
5 region that is restricted.

6 Q Again, the document -- you're not
7 correcting the document there. The document shows
8 what it shows?

9 A Yes.

10 Q Could you move to the next part of the
11 first eight pages.

12 A The second table on page five is the
13 monthly fluid milk sales from Federal Order 33 pool
14 plants into the Federal Order 5 marketing area.

15 The third table on page six is the
16 monthly pounds of milk pooled on Federal Order 5 and
17 diverted to plants located in the Mideast marketing
18 area.

19 The final table, table four, which is
20 pages seven through eight, is the total pounds of milk
21 requesting a transportation credit and the total
22 amount paid in transportation credit for milk
23 originating in the defined Mideast regions from
24 January 2003 through June 2008.

1 Q All right. Do you have any corrections
2 or anything you would like to say about these -- the
3 documents at this point?

4 A No, I do not.

5 Q So these were prepared by you or
6 pursuant to your supervision?

7 A Yes.

8 Q And they were prepared from records from
9 the Market Administrator's Office?

10 A Yes.

11 Q And are they submitted in favor or
12 opposed to any proposal?

13 A No, they are not.

14 Q Are they submitted by you in an attempt
15 to assist the parties in conducting this hearing?

16 A Yes.

17 Q And particularly Dean Foods asked you to
18 prepare this information for the hearing?

19 A Yes.

20 MR. STEVENS: Your Honor, that's all
21 the questions I have. I would offer the
22 witness -- or we could move it in to
23 evidence as is your desire.

24 JUDGE DAVENPORT: Very well. Because

1 cross is generally somewhat protracted, is
2 the consensus this would be a good time to
3 take a lunch break?

4 MR. STEVENS: The only thing I would
5 suggest, Your Honor, is we have two more
6 witnesses with documents. I think your
7 suggestion is certainly appropriate, but I
8 leave it to the desire of the parties if
9 they have some different point of view.

10 JUDGE DAVENPORT: What we might do,
11 gentlemen, subject to your objection, would
12 be to go ahead and introduce the other two
13 exhibits and then break for lunch.

14 MR. YALE: That would be most
15 efficient.

16 MR. BESHORE: That's fine.

17 JUDGE DAVENPORT: Very well. Let's
18 excuse this witness at this time and you may
19 call your next witness.

20 MR. STEVENS: Thank you, Your Honor.
21 Gayle Ely, please come to the stand.

22 JUDGE DAVENPORT: Would you raise your
23 right hand.

24 THE WITNESS: (Complies.)

1 JUDGE DAVENPORT: Do you swear or
2 affirm the testimony you're about to give
3 during this hearing shall be the truth, the
4 whole truth, and nothing but the truth, so
5 help you God?

6 THE WITNESS: I do.

7 JUDGE DAVENPORT: Please be seated. If
8 you would, give us your name and spell it
9 for the hearing reporter.

10 THE WITNESS: Gayle, G-A-Y-L-E, last
11 name Ely, E-L-Y.

12 MR. STEVENS: Good morning, Gayle.

13 THE WITNESS: Good morning.

14 GAYLE ELY,
15 of lawful age, as having been duly sworn, was examined
16 and testified as follows:

17 DIRECT EXAMINATION

18 BY MR. STEVENS:

19 Q Could you tell us by whom you're
20 employed.

21 A I'm employed by the Market Administrator
22 Office in Atlanta, Georgia for Federal Order 6 and 7.

23 Q What areas do those orders represent?

24 A Florida and the southeast.

1 Q Could you tell us briefly what your
2 duties are in the Market Administrator's Office?

3 A I am the assistant market administrator,
4 and in conjunction with the market administrator,
5 oversee all the operations of the Market Administrator
6 Office.

7 Q How long have you been in that position?

8 A Since 2000.

9 Q Have you testified in federal marketing
10 order hearings before?

11 A Yes.

12 Q Have you been asked to prepare documents
13 for interested parties to previous hearings?

14 A Yes.

15 Q And have you done that for this hearing?

16 A Yes.

17 MR. STEVENS: Your Honor, I'd like
18 marked for identification an exhibit which
19 has been distributed and given to the
20 reporter.

21 JUDGE DAVENPORT: It has been marked as
22 Exhibit 10.

23 (Whereupon, Exhibit Number 10 was
24 marked for identification.)

1 MR. STEVENS: Just so the record
2 reflects, it's entitled compilation of
3 statistical material prepared at the request
4 of Dean Foods.

5 Q You have a copy of this document?

6 A Yes.

7 Q Could you briefly go through it and
8 explain what's contained in it.

9 A Yes. We received a request from Dean
10 Foods with a number of items on it, and we have
11 responded. The first item on page one is Federal
12 Order 7, producer milk from farms located in the
13 Federal Order 33 marketing area.

14 We were originally asked to provide the
15 data for the defined regions as defined by the
16 proponents. However, due to confidentiality issues,
17 we did not provide it by regions but by the total --
18 totality of the Federal Order 3 marketing order --
19 Federal Order 33 marketing area, and we did it by year
20 rather than by month also due to confidentiality
21 issues. You'll see that even with that, 2004 is
22 restricted.

23 The second part of that request was for
24 Federal Order 7, producer milk delivered to Federal

1 Order 7 distributing plants from farms located in the
2 Federal Order 33 marketing area.

3 We had the same issues with
4 confidentiality and restrictions that applied to the
5 first part of this request.

6 Q So for certain of the months, a good
7 number of those months, the R represents restricted --
8 the letter, capital letter R, represents restricted?

9 A Yes.

10 Q Okay.

11 A The second request in the letter from
12 Dean Foods was for fluid milk sales in Federal Order 7
13 marketing areas by plants regulated by Federal Order
14 33.

15 That's been provided on a monthly basis
16 where it could be, where there were no confidentiality
17 restrictions. Where there are, it's marked with an
18 R. That is for January 2003 through May 2008.

19 The third request was for Federal Order
20 7, producer milk or milk pooled on Federal Order 7
21 delivered to plants in the Federal Order 33 marketing
22 area, January 2003 to June 2008.

23 Again, we had significant
24 confidentiality issues and provided only data for

1 2003. The other years are marked as restricted.

2 The fourth request is for Federal Order
3 7, transportation credit balancing fund activity for
4 milk originating from Federal Order 1, Federal Order
5 30, Federal Order 33, and unregulated areas.

6 Initially this request was for
7 transportation credit balancing fund activity for milk
8 originating from Order 33. However, we could not
9 provide any data for that, so a verbal request was
10 made to expand the area from which we were providing
11 data, and we did that to include Federal Order 1 and
12 Federal Order 30 and unregulated areas.

13 Q Why were you unable to provide --

14 A There were not --

15 Q -- data for 33?

16 A I'm sorry. There were not enough
17 handlers. We have to have at least three handlers'
18 data in order to provide the data.

19 And this is for the period -- I will
20 make a correction. I believe the handouts say July
21 2003 to June 2008. This actually also includes July
22 2008.

23 Q So you would correct the word "June" to
24 represent --

1 A June 2008 to July 2008.

2 Q I want to make sure I heard that right.
3 You were talking about Dean request four?

4 A Yes.

5 Q And it's July 2003 to July 2008?

6 A Yes.

7 Q Okay.

8 A In addition, we were asked to provide
9 something that is normally in our annual statistics.
10 It's transportation credit balancing fund activity.
11 We were asked to provide it for 2006, which is on page
12 seven, for 2007, which is on page eight.

13 These two items can also be found in our
14 annual statistics which is on our website. And we
15 were also asked to provide it for 2008 year to date,
16 which is on page nine.

17 Q All right. Now, all this information is
18 subject to the footnotes that are on the pages
19 qualifying or explaining the information that appears
20 on those pages?

21 A Yes.

22 Q Now, all of this information was
23 provided by you or pursuant to your supervision?

24 A Yes.

1 Q And it was in response to requests from
2 Dean Foods?

3 A Yes.

4 Q And it comes from records of the Market
5 Administrator's Office of the order where you are
6 employed?

7 A Yes.

8 Q And which order is that again?

9 A Order 7 -- this data is from Order 7.
10 Our office also administers the provisions of Order 6.

11 Q But this is Order 7?

12 A This is Order 7.

13 Q There's no Order 6 information?

14 A There's no Order 6 information.

15 Q And this information is not provided for
16 or against any proposal, to be interpreted as for or
17 against any proposal?

18 A That's correct.

19 Q And you're not testifying for or against
20 any proposal being proposed by the interested parties
21 of this hearing?

22 A That's correct.

23 MR. STEVENS: That's all I have, Your
24 Honor.

1 JUDGE DAVENPORT: Very well. You may
2 be excused subject to re-call.

3 Mr. Stevens, do you have any --

4 MR. STEVENS: One more witness, Your
5 Honor, Mr. Bob Schoening.

6 JUDGE DAVENPORT: Would you raise your
7 right hand.

8 THE WITNESS: (Complies.)

9 JUDGE DAVENPORT: Do you swear or
10 affirm the testimony you are about to give
11 during this hearing shall be the truth, the
12 whole truth, and nothing but the truth, so
13 help you God?

14 THE WITNESS: I do.

15 JUDGE DAVENPORT: Please be seated.
16 Tell us your name and spell it for the court
17 reporter.

18 THE WITNESS: My name is Robert
19 Schoening. It's S-C-H-O-E-N-I-N-G.

20 MR. STEVENS: Good morning.

21 THE WITNESS: Good morning.

22 ROBERT SCHOENING,
23 of lawful age, as having been duly sworn, was examined
24 and testified as follows:

1 DIRECT EXAMINATION

2 BY MR. STEVENS:

3 Q Could you tell us by whom you are
4 employed.

5 A I'm employed by the central marking area
6 in Lenexa, Kansas, Federal Order 32.

7 Q Federal milk marketing office in --
8 where is it located?

9 A It is physically located in Lenexa,
10 Kansas.

11 Q This is the central office?

12 A Yes.

13 Q How long have you been employed by that
14 office?

15 A I've worked in Kansas City for the past
16 eight years. Prior to that I was in Tulsa for six
17 years, and 14 years in the St. Louis market
18 administrator office.

19 Q So you have a little time in the
20 marketing order program?

21 A 28 years next week.

22 Q What are your duties in the Market
23 Administrator's Office where you're currently
24 employed?

1 A I'm the supervisor economist there. I'm
2 in charge of market information, economic research. I
3 also assist in the monthly pool.

4 Q Have you testified in a Federal Order
5 hearing before?

6 A No, I have not.

7 Q Have you attended Federal Order hearings
8 before?

9 A Yes, I have.

10 Q How many, approximately?

11 A Oh, probably eight to ten.

12 Q You've seen other federal market order
13 employees testify?

14 A Yes, I have.

15 Q And enter documents in to evidence, have
16 you not?

17 A Yes.

18 Q Did your office receive a request from
19 someone to prepare documents for this hearing?

20 A Yes. We received a request from Dean
21 Foods.

22 Q Okay. And you brought the responses to
23 that request and also the request, I believe, here
24 today, did you not?

1 A Yes, we did.

2 Q It's available to the parties.

3 MR. STEVENS: I would like to have it
4 marked for identification.

5 JUDGE DAVENPORT: It's been premarked
6 as Exhibit 11.

7 (Whereupon, Exhibit Number 11 was
8 marked for identification.)

9 MR. STEVENS: Thank you so much, Your
10 Honor.

11 Q Now, going through this document which
12 has been marked for identification as 11, just tell us
13 what it is. You got a request from Dean Foods, right,
14 and you attempted to respond to the request?

15 A Yes. We had a request on August 1 for
16 some data that our office had for this hearing. The
17 first page is the actual letter request.

18 Page two of the document is in response
19 to request number one in the letter. And it is milk
20 delivered to distributing plants within 50 miles of
21 St. Louis, Missouri from producers located outside of
22 the central Federal Order.

23 Page three of this exhibit has Mideast
24 Order sales on routes into the central marketing area,

1 along with central order sales into the Mideast
2 marketing area from January 2003 to present on a
3 monthly basis. That's in response to the item number
4 two on the Dean request letter.

5 The last page, page four, is milk pooled
6 on the central order but diverted to plants located
7 inside the Mideast Order. This is in response to
8 number three of the Dean request letter.

9 They actually had requested this on a
10 monthly basis. We determined we could not release
11 that due to confidentiality. And so in subsequent
12 conversations they requested it on an annual basis
13 from 2003 through June of 2008.

14 Q So this document was prepared in the
15 Market Administrator's Office by you or pursuant to
16 your supervision in your regular course of duties in
17 that office?

18 A Yes, it was.

19 Q And the information contained herein
20 comes from the official records maintained in that
21 office?

22 A Yes, it does.

23 Q And are you here testifying for or
24 against any proposals by the interested parties?

1 A No, I'm not.

2 Q And this information was prepared by you
3 for the use of the parties during the course of the
4 hearing?

5 A Yes.

6 Q And it was specifically requested by
7 Dean Foods?

8 A Yes, it was.

9 MR. STEVENS: That's all I have, Your
10 Honor.

11 JUDGE DAVENPORT: Very well. Thank
12 you.

13 MR. STEVENS: I have no further
14 witnesses.

15 JUDGE DAVENPORT: How much time do you
16 think we need for a lunch break?

17 MR. STEVENS: I would suggest an hour,
18 but maybe people have different thoughts
19 about it.

20 JUDGE DAVENPORT: Mr. Beshore?

21 MR. BESHORE: No more than an hour.

22 JUDGE DAVENPORT: Very well.

23 Mr. Yale?

24 MR. YALE: Fine with me.

1 JUDGE DAVENPORT: Mr. Vetne?

2 MR. VETNE: (Shrugs shoulders.)

3 JUDGE DAVENPORT: Mr. English?

4 MR. ENGLISH: Certainly an hour is
5 fine.

6 JUDGE DAVENPORT: All right. Let's be
7 back at 1:00 then.

8 (A lunch recess was taken.)

9 JUDGE DAVENPORT: We're back in
10 session. Before the break I indicated that
11 -- or I asked Mr. Beshore how long his
12 direct testimony would be. He indicated
13 probably at least an hour.

14 Mr. Yale, cross on Mr. Hollon?

15 MR. YALE: 15 minutes at the most for
16 me, I think.

17 JUDGE DAVENPORT: Mr. Vetne?

18 MR. VETNE: For this witness?

19 JUDGE DAVENPORT: No. Cross of
20 Mr. Hollon.

21 MR. VETNE: Oh, 30 minutes.

22 JUDGE DAVENPORT: Mr. English?

23 MR. ENGLISH: Obviously we just
24 received it, so we don't know what's in it,

1 but I would imagine 45 minutes to an hour.
2 I just received it. I have no idea what's
3 in it.

4 MR. YALE: You realize, of course, we
5 all lie.

6 MR. ENGLISH: Speak for yourself.

7 JUDGE DAVENPORT: I would certainly not
8 want to make a conjecture on that on the
9 record.

10 Very well. That gives us an idea.
11 Probably you would not be able to give me an
12 estimate as to what your case -- or what
13 your witnesses will take, Mr. English, at
14 this point?

15 MR. ENGLISH: I would imagine that
16 Mr. Kinser's -- Mr. Kinser will be the
17 longest for my witnesses. I would imagine
18 his direct would be 45 minutes to an hour.
19 Mr. Conover's direct would be 20 minutes, 30
20 minutes, and Mr. Meyer's direct might be 30
21 minutes.

22 JUDGE DAVENPORT: The problem we have,
23 of course, is that we do not have the room
24 tomorrow [sic], and so what I was hoping to

1 avoid was having to extend it beyond that
2 point.

3 MR. ENGLISH: Past tomorrow.

4 MS. TAYLOR: Past tomorrow.

5 JUDGE DAVENPORT: Excuse me. We do
6 have it tomorrow, but not for Thursday. I'm
7 sorry. So, in other words, I would like to
8 get as much in to today as we possibly can.

9 MR. ENGLISH: And I understand that,
10 Your Honor. I'm just -- having not even
11 seen the proponents --

12 JUDGE DAVENPORT: The other thing is
13 any of you have or expect to have farmer
14 testimony?

15 MR. VETNE: (Indicating.)

16 JUDGE DAVENPORT: Are they expected
17 tomorrow?

18 MR. VETNE: Probably first thing in the
19 morning.

20 JUDGE DAVENPORT: In other words, the
21 usual position is we try to take care of
22 farmers as available because of their
23 schedules.

24 Is there anything else we can take up

1 at this time?

2 Very well. Mr. Beshore, are you ready
3 for cross of this witness?

4 MR. BESHORE: I have one question for
5 Mr. Nierman.

6 JUDGE DAVENPORT: Very well.

7 (Whereupon, Jason Nierman returned to
8 the witness stand.)

9 CROSS-EXAMINATION

10 BY MR. BESHORE:

11 Q Mr. Nierman, with respect to the
12 transportation credit balancing fund on Order 5, to
13 the best of your knowledge has that assessment ever
14 been waived?

15 A It has, but it hasn't -- at least in the
16 last three years it hasn't been waived.

17 Q So it's not been waived for at least
18 three years?

19 A That's correct.

20 MR. BESHORE: Thank you.

21 JUDGE DAVENPORT: Mr. English?

22 MR. ENGLISH: Good afternoon. Charles
23 English.

24 Mr. Nierman, first, thank you for

1 preparing this for Dean Foods. I have a
2 couple questions.

3 CROSS-EXAMINATION

4 BY MR. ENGLISH:

5 Q First, before lunch did I ask you
6 whether or not there would be any updates available of
7 data?

8 A Yes.

9 Q And were you able to come up with any
10 updates using timesaving mechanisms that you were
11 asked before lunch?

12 A Yes.

13 Q What updates do you have?

14 A For the first table for July 2008 to the
15 Northeast region there was 24,402,595 total pounds
16 pooled on Federal Order 5, and for the Northwest
17 region there's 76,645,246 pounds, and for the Southern
18 region it is 35,447,864 pounds.

19 I was not able to update the total
20 pounds delivered to Federal Order 5 pooled
21 distributing plants.

22 Q And that's because you just don't have
23 the data available at this time?

24 A No, I do not.

1 Q When, in the normal course, would that
2 become available to you?

3 A More than likely the beginning of next
4 month or the end of this month.

5 The second table, page five, for July
6 the total volume was 10,058,286 pounds, and on page
7 six on the third table the July total was 12,976,576
8 pounds. And I was not able to update the court table.

9 Q The transportation credits?

10 A No.

11 Q That's because you're still doing the
12 calculation for what's been requested?

13 A Yes.

14 Q When, in the normal course, would that
15 data become available for the month of July?

16 A I think this Friday they run the second
17 pool, and they have to the 20th of the month to
18 provide credit -- request credits.

19 Q So they have until tomorrow to request
20 credits, and then you rerun it by Friday?

21 A Yeah.

22 Q I just have one other series of
23 questions. You've been here all morning for the
24 hearing so far?

1 A Yes.

2 Q And you were here for the testimony of
3 Ms. Uther regarding the data from Order 33?

4 A Yes.

5 Q And did you hear the discussion about
6 how to calculate available milk for that -- for the
7 request for the cooperatives for that area?

8 A I followed it somewhat, yes.

9 Q If you followed it, looking at the first
10 four pages, which is the pounds of milk pooled on
11 Federal Order 5 proposed Mideast regions, the
12 right-hand column, total pounds delivered to Federal
13 Order 5 pool distributing plants from Mideast, would
14 you understand those volumes to have been excluded
15 from the available milk using the calculations in
16 Order 33?

17 A I believe that's how she explained it,
18 yes.

19 Q And the difference between the last two
20 columns, the difference between total pounds pooled on
21 Federal Order 5 and total pounds delivered on Federal
22 Order 5 to distributing plants, some of that -- we
23 don't know what volume, but some of that difference
24 would be milk that would have been diverted back to

1 Order 33 conceivably and thus would have been
2 included, but we don't know what volume, correct?

3 A That's correct.

4 MR. ENGLISH: I have no further
5 questions. And can I thank you both for
6 this and for making the updates through
7 lunch.

8 JUDGE DAVENPORT: Mr. Vetne?

9 MR. VETNE: Thank you, Your Honor.
10 Mr. Nierman, I'm John Vetne. I represent
11 United Dairy.

12 CROSS-EXAMINATION

13 BY MR. VETNE:

14 Q Looking at Exhibit 9, page one of the
15 responses following up on shipping, the total pounds
16 pooled, to the extent it was not delivered to Order 5
17 distributing plants, that volume could have been
18 disposed of in a number of ways. It could have been
19 diverted to a nonpool plant, correct?

20 A That's correct.

21 Q And the nonpool plant could have been
22 located within Order 33 or outside of Order 33 or
23 within Order 5?

24 A That's correct.

1 Q Okay. And it could have been diverted
2 to a pool plant in another marketing area?

3 A Yes.

4 Q Or a pool plant regulated under another
5 market regardless of its location?

6 A Yes.

7 Q Was any inquiry made of you by the
8 proponents for this hearing?

9 A No, there was not.

10 Q And on this exhibit for a few months
11 there is no data because it's restricted. And we've
12 been told that means there are fewer than three
13 handlers.

14 So if it's just one handler, we'll all
15 know what that one handler did, and if it's just two
16 handlers, each of the handlers will know what the
17 other person did; is that correct?

18 A That's correct.

19 Q The numbers may not be available to
20 provide for us, but can you identify the less than
21 three handlers involved in this kind of transaction
22 for those months in which it is restricted?

23 A I don't have that in front of me right
24 now.

1 Q Do you not know that information?

2 A Are you talking about for the specific
3 months it's restricted?

4 Q Yeah. Could you identify the handlers
5 that had milk pooled on Order 5 from the proposed
6 Mideast regions?

7 MR. STEVENS: Your Honor, I'm going to
8 object on the basis of relevance. I don't
9 see the point of identifying the handlers.
10 Their information is restricted.

11 I don't know that their representatives
12 are here, but if I were them I wouldn't want
13 my name mentioned. But that's -- I think
14 it's not something that enlightens the
15 record.

16 MR. VETNE: Well, Mr. Stevens,
17 fortunately for him doesn't have to brief
18 this record. I do. And if it's some of the
19 same supply organization that are making
20 proposals, it would be very useful to know
21 their ability to shift milk between supplied
22 regions.

23 I recall frequently in the published
24 data where USDA does not give, for example,

1 Class I sales. It will, nevertheless,
2 identify handlers that make Class I sales
3 and the pounds will be restricted because
4 you don't want to know the details of the
5 operation. But the identity of somebody
6 who's engaged in a marketing practice,
7 without revealing the pounds, has never been
8 confidential. That was the basis for my
9 question.

10 JUDGE DAVENPORT: Well, he's answered
11 he doesn't have that information available.

12 Q You don't have it available on a
13 month-to-month basis?

14 A For these specific regions I don't have
15 that information in front of me right now.

16 Q Do you know enough about that
17 information to know who generally pools milk in Order
18 5 from producers located in the Mideast area?

19 MR. BESHORE: I'm going to object to
20 that question on the basis of it's
21 probative. Given who generally, it's not
22 going to give us anything that's of any
23 value for the record.

24 JUDGE DAVENPORT: It's asked and

1 answered.

2 MR. VETNE: Thank you.

3 JUDGE DAVENPORT: Let's move on.

4 MR. ENGLISH: (Indicating.)

5 JUDGE DAVENPORT: Mr. English?

6 MR. ENGLISH: Charles English. I
7 apologize. I meant to ask this initially.

8 RE-CROSS-EXAMINATION

9 BY MR. ENGLISH:

10 Q In May of this year there were some
11 changes made to the marketing regulatory provisions in
12 Orders 5 and 7, correct?

13 A Yes.

14 Q Were the changes in Order 5 where they
15 took the Class I differentials and the transportation
16 credit program?

17 A Yes. And the touched base days and the
18 diversion limits were also modified.

19 Q And what were the changes to the
20 transportation credit balancing fund in Order 5?

21 A The new provisions allowed payment on
22 the entire load of milk instead of just the Class I
23 utilization.

24 Q So that was a payout change?

1 A Payout change, yes.

2 Q Was there any pay-in change?

3 A There was no change on the assessment,
4 no.

5 Q For Order 5?

6 A For Order 5.

7 Q When was the last time there was a
8 change on the assessment for Order 5, if you know?

9 A It was the prior hearing proceedings
10 before May 2007. I can't remember exactly when those
11 were implemented. I think it was the prior year
12 around December 2006, I believe. I may not be
13 correct, but I believe that's correct.

14 Q But there were no changes in May of this
15 year to the pay-in provisions of the transportation
16 credit Order 5?

17 A No, there was not.

18 MR. ENGLISH: Thank you. I have no
19 further questions.

20 JUDGE DAVENPORT: Other cross of this
21 witness?

22 Very well, Mr. Nierman. You may step
23 down. Thank you.

24 Ms. Ely?

1 (Whereupon, Gayle Ely returned to the
2 witness stand.)

3 JUDGE DAVENPORT: Ms. Ely, you're still
4 under oath. Mr. Beshore?

5 MR. BESHORE: I have no questions.

6 JUDGE DAVENPORT: Mr. English?

7 MR. ENGLISH: Again, we thank you for
8 providing testimony.

9 CROSS-EXAMINATION

10 BY MR. ENGLISH:

11 Q Were you able to come up with any
12 updates for this material? Most of what you have is
13 already July, so.

14 A Right.

15 Q But I think you might have told me off
16 the record that you had one update.

17 A I have one update to the request number
18 two, the fluid sales in to the Order 7 marketing area
19 by plants regulated by Order 33. That was through
20 May. I do have June numbers. That would be 5,622,122
21 pounds.

22 Q And that data only became available in
23 the last week, I assume?

24 A Yes.

1 Q So the July data in its normal course
2 wouldn't be available until mid-September?

3 A That's correct.

4 MR. ENGLISH: Thank you. That's all
5 the questions I have, and I appreciate you
6 being here.

7 JUDGE DAVENPORT: Other cross of this
8 witness?

9 MR. ENGLISH: I'm sorry. I apologize.

10 BY MR. ENGLISH:

11 Q As opposed to Order 5, what changes were
12 implemented in Order 7 with respect to transportation
13 and the credit assessment program in May of this year?

14 A As Mr. Nierman testified, payment on the
15 full load rather than just the Class I portion, payout
16 months were added of January and February. There were
17 some minor changes to eligibility, producer's
18 eligibility requirements, and the maximum assessment
19 rate went from 20 to 30 cents.

20 Q And does that maximum assessment rate
21 vary from month to month?

22 A The maximum does not.

23 Q Have you, since May, been assessing the
24 maximum?

1 A Yes.

2 Q In April did you assess the maximum of
3 20 cents?

4 A Yes.

5 Q And in May you assessed the maximum of
6 30 cents?

7 A That's correct.

8 Q In June did you assess the maximum of 30
9 cents?

10 A That's correct.

11 Q In July did you assess the maximum of 30
12 cents?

13 A That's correct.

14 Q Have you already announced August?

15 A No.

16 Q Do you have any reason to believe it
17 will be anything other than 30 cents?

18 A No.

19 MR. ENGLISH: I have no further
20 questions.

21 JUDGE DAVENPORT: Other cross?

22 Thank you, ma'am. You may step down.

23 Mr. English?

24 (Whereupon, Robert Schoening returned

1 the witness stand.)

2 MR. ENGLISH: Good afternoon. Charles
3 English. Thank you also for providing this
4 data.

5 CROSS-EXAMINATION

6 BY MR. ENGLISH:

7 Q I have two sets of questions. First,
8 before lunch, in order to save time did I also ask
9 whether you had any updates available?

10 A Yes, you did.

11 Q And do you have any updates available
12 now?

13 A Right now I do have one update. It's on
14 page three. It's the table entitled Mideast Order
15 sales on routes into the central order marketing area
16 and central order sales into the Mideast Order
17 marketing area. I have the July numbers on that. The
18 first column --

19 Q July 2008?

20 A Yes. Federal Order 33 into Federal
21 Order 32, that total is 5,616,864. And the second
22 column, Federal Order 32 into 33, 2,906,383, and the
23 net should be 2,710,481.

24 Q And do you anticipate that by tomorrow

1 you could have any other -- you might have another
2 update?

3 A I anticipate probably having that this
4 afternoon.

5 Q For page two?

6 A For page two and also for page four.

7 Q Now, there was some discussion that I
8 had again with Ms. Uther regarding data from May 2008
9 that she said ultimately is derived or provided by
10 Order 32.

11 A Correct.

12 Q And did you hear that discussion earlier
13 today?

14 A Yes, I did.

15 Q And when -- we went back and looked at
16 our records, and it appears that last year that data
17 became available around September 6 of '07 for May
18 2007 data. Does that sound about right?

19 A Typically in the past we have that data
20 -- we get that data in from all the other federal
21 offices and the state of California, and then we
22 compile it, do some maps and things with that, and
23 then we send it out to the other offices before we
24 release it.

1 Typically that data is available some
2 time in September. We often actually put that data in
3 our September marketing service bulletin. So I would
4 anticipate some time next month.

5 Q But it's not available now?

6 A It's not available as of now, no.

7 MR. ENGLISH: That's all the questions
8 I have. Again, thank you very much.

9 JUDGE DAVENPORT: Other cross?

10 Thank you, sir. You may step down.

11 MR. STEVENS: Your Honor, may I move in
12 to admission the exhibits from these four
13 witnesses starting with Exhibit 5 and up to
14 and including Exhibit --

15 JUDGE DAVENPORT: Actually, we entered
16 in to evidence 5 through 8, so 9 through 11
17 as amended shall be admitted in to evidence
18 at this time.

19 MR. STEVENS: Thank you, Your Honor.

20 JUDGE DAVENPORT: And also 12 and 13.

21 Please raise your right hand.

22 THE WITNESS: (Complies.)

23 JUDGE DAVENPORT: Do you swear or
24 affirm the testimony you're about to give

1 during this hearing shall be the truth, the
2 whole truth, and nothing but the truth, so
3 help you God?

4 THE WITNESS: I do.

5 JUDGE DAVENPORT: Please be seated.
6 Give us your name, and if you would, spell
7 it for the hearing reporter.

8 THE WITNESS: My name is Elvin Hollon,
9 E-L-V-I-N, H-O-L-L-O-N.

10 MR. BESHORE: Your Honor, before
11 Mr. Hollon provides any further testimony, I
12 would like to ask that his prepared
13 testimony, the statement and the exhibits,
14 that that be marked for identification.

15 JUDGE DAVENPORT: It will be marked as
16 Exhibit 14.

17 (Whereupon, Exhibit Number 14 was
18 marked for identification.)

19 MR. BESHORE: Okay. That's the
20 testimony. The exhibits are separate.

21 JUDGE DAVENPORT: Let's mark the
22 exhibits as 15.

23 (Whereupon, Exhibit Number 15 was
24 marked for identification.)

1 ELVIN HOLLON,
2 of lawful age, as having been duly sworn, was examined
3 and testified as follows:

4 DIRECT EXAMINATION

5 BY MR. BESHORE:

6 Q Mr. Hollon, would you first of all tell
7 us, you know, your address and by whom you're
8 employed.

9 A I'm employed by Dairy Farmers of America
10 as the director of fluid marketing and economic
11 analysis. My office is located at 10220 Ambassador
12 Drive, Kansas City, Missouri 64153.

13 Q What is your educational background?

14 A Bachelor of science in how to make
15 cheese and ice cream, dairy manufacturing, and a
16 master's in agriculture economics both from Louisiana
17 State University.

18 Q How long have you been employed in the
19 dairy industry and what capacities? Can you just
20 briefly give us your background, professional
21 background since college.

22 A I've been employed by Dairy Farmers of
23 America or one of its predecessors since 1979. In my
24 current role I deal with economic data in the dairy

1 industry.

2 I work with our day-to-day operating
3 divisions on marketing and Federal Order matters. I
4 deal with some of our -- I work with our national
5 agriculture policy.

6 Part of my background, I have years of
7 experience in day-to-day milk marketing in the Upper
8 Midwest, the Southwest, the Southeast, the Mideast.

9 And prior to that, my first couple of
10 years of work experience dealt with, again, the dairy
11 data statistical information that was USDA, AMS-type
12 national agriculture data and dairy industry data.

13 Q Have you ever previously testified in
14 Federal Order proceedings?

15 A I've testified in Federal Order
16 proceedings dating back to the mid-eighties.

17 Q And proceedings before other bodies?

18 A That is correct. I've been in various
19 state, for example, order proceedings, various
20 congressional hearings where they were requesting
21 information on the industry, and various media and
22 industry outlet or industry functions about the dairy
23 industry.

24 MR. BESHORE: Your Honor, I would offer

1 Mr. Hollon's testimony here as that of an
2 expert in agricultural economics and milk
3 marketing, and offer him for voir dire on
4 his qualifications, if any.

5 JUDGE DAVENPORT: Voir dire from any
6 other witness?

7 It appears that nobody wishes to avail
8 themselves of that privilege.

9 MR. BESHORE: Thank you.

10 Q Now, Mr. Hollon, have you prepared a set
11 of -- compiled a set of exhibits which have been
12 marked as Exhibit 15, I believe, for identification?

13 A That is correct.

14 Q You have those?

15 A I have those handy. And those were
16 compiled by my co-workers at DFA and myself, the data
17 and packet of information that's there.

18 Q Okay. Before you go to your prepared
19 statement, I would like to review those -- the
20 exhibits which will be referenced in your testimony,
21 if we could briefly.

22 And, first of all, just the pages in
23 Exhibit 15 are numbered, are they not?

24 A That is correct. They are supposed to

1 be numbered consecutively.

2 Q And one through 51?

3 A Yes; that is correct.

4 Q Okay. So tell us then -- just start
5 with page one. What is that, of Exhibit 15?

6 A Pages one through 31 are somewhat of a
7 packet of data and information, and they describe what
8 we term a rate sheet.

9 And that's a document that is used
10 internally in communication with milk haulers and milk
11 transport companies that discuss their deliveries,
12 customer's pounds, rates. This is from 2003, May,
13 June, and July.

14 The map on page one indicates where
15 those transport locations were. And as you can tell
16 from the map on page one, there's a pretty good
17 geographic spread throughout Order 33.

18 We attempted to try to gather haul rate,
19 base rate information demonstrating what haulers were
20 paid during that time period.

21 The remaining tables two through -- or
22 pages two through 31, then, are -- they're not all
23 formatted identically because they don't all
24 necessarily come out of the same accounting person's

1 files or accounting location, but they all contain
2 basically the same type of information.

3 I think there's ten different milk
4 hauling companies represented over that geographic
5 spread. And in each case there might be a name of the
6 transport company who was in existence at that time,
7 and many of these are still, you know, operating
8 entities.

9 Where they're from indicates where they
10 might have delivered product to, what customers,
11 indicated road mileages that we keep track of in our
12 day-to-day business in terms of trying to be as
13 efficient as we can about marketing milk, volumes of
14 milk that were delivered to those locations.

15 And perhaps the key piece of information
16 is somewhere in the heading on each of those pages is
17 the notation \$2.20 per loaded mile one way. And so
18 we're working here to establish that that was a viable
19 base rate for the period May through June of 2003.

20 And there's a column listed less 36
21 miles. And in each of those cases that indicated that
22 the transport, a portion of it, was paid by the dairy
23 farmer. And in all of these cases the first 36 miles,
24 that's the practice of the Mideast Milk Marketing

1 Agency. And that is the -- I think that's the
2 majority of information that's on these first 31
3 pages.

4 Q Okay. If we could just go back to page
5 one for a moment. The locations that are printed in
6 red for those -- I think all the copies -- certainly
7 the record copies and I think all the copies we've
8 distributed are in color.

9 Are the red copies locations or
10 headquarters locations of the trucking firms that are
11 covered by the --

12 A That is correct.

13 Q -- following 30 pages?

14 A That is correct.

15 Q So that in Michigan, for instance,
16 you've got a hauler that was perhaps located in
17 Snover, Michigan, and you've identified that on the
18 map?

19 A That is correct.

20 Q And the same for the other locations in
21 Ohio, Indiana, Pennsylvania, Kentucky, wherever they
22 might be?

23 A That is correct.

24 Q Okay. Now, just go to one of the load

1 sheets just for a minute. Take page two. I think you
2 basically covered all this information, but the
3 hauler's name is shown, you know, at the top left,
4 correct?

5 A Correct.

6 Q And then you've got under that a route
7 number, which is just an internal identification
8 number, I take it?

9 A That's correct.

10 Q Now, for that hauler there are actually
11 three sheets. Pages two, three and four are for the
12 same firm or hauling company; is that correct?

13 A That is correct.

14 Q Okay. And they are for three different
15 months, May, June, and July of '03?

16 A That is correct.

17 Q Okay. So are those -- are there three
18 months of data, then, as you continue through for each
19 of the other array of haulers here?

20 A Yes.

21 Q And the same three months?

22 A Yes.

23 Q Now, you talked about the 36 miles. The
24 2.20 per loaded mile, can you just indicate what that

1 is again. Per loaded mile, you mean that's when the
2 truck is full?

3 A That's when the truck is full making its
4 delivery. And that \$2.20 is intended to try to offset
5 some of the base labor, interest, equipment,
6 maintenance, you know, some of the types of cost of
7 transporting. A base rate that was, again, prevalent
8 in the marketplace at that time.

9 Q That's what you had to pay the hauler to
10 get him to move the milk a mile?

11 A That's correct.

12 Q And was that close to the penny, the
13 effect of the actual amount these haulers were paid
14 for over-the-road miles during these time periods?

15 A The base rate is very close. And at
16 that point in time that was very close. There might
17 be some variation with load sizes that may have called
18 for some additional rate or perhaps a smaller, some
19 lesser rate, and in some cases there may have been
20 some fuel add-ons in the neighborhood of one or two
21 percent at this point in time.

22 Q But other than minor variations of that
23 nature, that represents the dollar rate per loaded
24 mile that all of these haulers were paid during those

1 months?

2 A That is correct.

3 Q And this was based, then, on a 45,000
4 pound average payload; is that correct?

5 A That was what was considered typical at
6 that time. That's grown some now to closer to 48,000,
7 but at that point in time that's where the
8 negotiations started at.

9 Q Okay. Let's move, then, to page 32 of
10 Exhibit 15. Could you tell us what page -- page 32,
11 page 33 and 34 go together?

12 A Yes. Those pages go together. And page
13 35 is a graphic depiction of that data. This is
14 diesel fuel prices per gallon that are published by
15 the Energy Information Administration, and these are
16 weekly price data each week of the year. This is
17 through from 2000 to date.

18 We published a weekly price of
19 on-highway diesel prices for the U.S. and for the
20 Midwest. PADD, P-A-D-D, that stands for Petroleum
21 Administration Defense District, and it's a common
22 industry term that describes geographic locations
23 where diesel fuel and other gasoline prices are
24 accumulated, and each week's diesel fuel prices are

1 published.

2 The dairy industry as well as many other
3 industries use this particular statistic as a marker
4 for fuel prices. The Southeast Order hearing, for
5 example, used this as a marker. The majority of the
6 milk marketing, you know, agreements that DFA has with
7 transport agencies use this as a marker for diesel
8 fuel prices.

9 Q Is the Energy Information Administration
10 an agency of the federal government?

11 A It is.

12 Q Department of Energy, I guess?

13 A It's either energy or labor. I would
14 have to -- we could go back and look it up.

15 Q In any event, it is a federal agency and
16 they're government statistics?

17 A That's correct.

18 Q Let's turn, then, to the set of -- to
19 the next document in Exhibit 15 which is page 36.

20 A Page 36, 37, 38 and 39 were constructed
21 by DFA folks from information. There are four pages
22 that group together for information purposes.

23 In the column is listing a supply
24 points. There are 11 counties that are supply points

1 that we've identified, and I'll give them more
2 definition in my statement.

3 Across the top row there are 11
4 customers -- ten customers -- or ten bottling
5 operations that are located in the geography that
6 we've identified as the Southern region of the Mideast
7 Order.

8 And this first page, the table on page
9 36, identifies the differences in the current federal
10 order location adjustment between those supply
11 counties and those demand points.

12 So, for example, for the supply point of
13 Clinton County, Michigan, it's located in the 1.80
14 differential zone. And the bottling plant Eastside
15 Dairy in Anderson, Indiana is located in the \$2 zone.

16 And the 20 cents at the intersection of
17 those rows is \$2 minus 1.80, or the amount that the
18 current order differential would allow for
19 transportation for milk that originated in Clinton
20 County and delivered to Eastside Dairy in Anderson.
21 And so each of these various intersections would be
22 that subtraction for these ten plants in these 11
23 counties.

24 Q Does page 37 have the same set -- the

1 same array of supply points down the left and delivery
2 points, demand points across the top?

3 A It does. In the --

4 Q What information does it present?

5 A The additional information here is the
6 mileages between the supply points and the demand
7 points that connect each of the two.

8 And this was -- this data came out of a
9 program called PC Miler. And this data, the mileages,
10 again, were straight road miles between the two
11 locations.

12 Q The counties was the point of departure,
13 the county seat?

14 A It was.

15 Q Turn to page 38 then. You've got the
16 same supply points and the same demand points. What
17 is the information contained in 38 that's titled
18 hauling cost matrix?

19 A Here the information is -- it takes
20 those mileages that were in the table on page 37 and
21 multiplies them by \$3.23 per loaded mile. That's a
22 combination of the \$2.20 base rate that was noted in
23 earlier tables, and a fuel adjuster of 47 percent --
24 and I will detail some information about that number

1 in my statement -- to get \$3.23.

2 And the dollar -- resulting dollar value
3 was then divided by 480 hundredweights or a 48,000
4 pound load to result in the rate per hundredweight per
5 mile, a computation that you could see.

6 So, for example, again, using Clinton
7 County and Eastside Dairy, it was 235 miles. So if we
8 multiply that by \$3.23 per loaded mile, that would
9 give a total dollar figure, divided that by 480, would
10 result in \$1.59 per loaded mile. Each of these
11 intersections, each of these computations yield that
12 difference.

13 Q \$1.59 per loaded mile, or \$1.59 per
14 hundredweight?

15 A Oh. You're right. Per hundredweight.
16 Sorry.

17 Q Okay. Thank you. And then of course
18 the same thing at each other point of supply to demand
19 on the table?

20 A That is correct.

21 Q Then going on to page 39 which is titled
22 hauling cost minus location adjustment, same supply
23 points, same demand points. What are the data in the
24 intersection provided there?

1 A This table takes the computations of
2 cost and subtracts out the allowable differential
3 under the current order. So the remaining would be
4 the cost that it would take to make that transport
5 that's not covered by the current differential.

6 And the rows on the bottom, average,
7 median, minimum, maximum are descriptive statistics of
8 the net column. So in the Eastside Anderson, Indiana
9 column, the average shortfall, if you will, or
10 insufficiency of the differential would be \$1.61, the
11 median half above and half below would be \$1.45, the
12 minimum or the least amount of shortfall is 55 cents,
13 and that would be located if, for example, you could
14 source all the milk to Eastside Dairy from Mercer
15 County, Ohio.

16 And the maximum, \$3.01, would be if you
17 unfortunately had to source all the milk from
18 Chatauqua County, New York. And there's an average,
19 median, minimum, maximum for each location.

20 All the way to the right the -- there's
21 an average, then, of the various rows. And down below
22 there's the -- an average of the -- of all the average
23 and a minimum number, a maximum number, and a median
24 number. So there's descriptive data about each of

1 these rate computations.

2 Q Thank you. Turn, then, to page 40 of
3 Exhibit 15 titled Southeastern model, model for
4 determining what Class I differential should be in
5 Miami. Can you tell us what that is.

6 A This model was taken as presented from
7 the hearing in Orders 5, 6, and 7 that set out to
8 determine temporary adjustments to the differential
9 surface in Orders 5, 6, and 7.

10 This was a methodology that was
11 developed for use and accepted by the hearing
12 decision. And if you were to go to the proper
13 location which is cited in testimony, you could find
14 this exact table in that record.

15 And it's used as a template, that we
16 used the template, adjusted the numbers to reflect
17 current situations, and made similar-type computations
18 for several demand points in Order 5 -- I'm sorry --
19 in Order 33.

20 Q So the data -- I mean, the data on page
21 40 is simply taken right from the record of the
22 Southeastern --

23 A That is correct.

24 Q Okay. Turn to page 41, then, of Exhibit

1 15, and tell us what that is.

2 A Page 41 describes the methodology used
3 to get the rate per hundredweight per mile which is
4 used in both the Southeastern model -- there was one
5 there used, and will be used in the subsequent
6 descriptions that we have.

7 And this is taken out of the order
8 language that computes this weight per hundredweight
9 per mile that's embedded in Orders 5 and 7. And the
10 components to that is a diesel price per gallon.

11 For our purposes, rather than using the
12 most recent week's energy information number, we've
13 used an average of calendar year 2008.

14 The base fuel per gallon would be
15 derived from what diesel fuel costs during the May,
16 June, July period in 2003 that we selected for a base,
17 and that would be taken from the energy information
18 tables, looking at the graph to find the best spot,
19 divide by miles per gallon.

20 In this typical market a typical miles
21 per gallon rate and one that's used in transport
22 negotiations is six miles per gallon. For reference,
23 in the Southeast hearings they used 5.5 miles per
24 gallon.

1 The base rate was what we identified as
2 a base rate for that time period of \$2.20. Adding the
3 fuel adjuster to the base rate gives \$2.64 divided by
4 the 480 hundredweights would be a rate per
5 hundredweight per mile of .0055.

6 Again, for comparison purposes, the most
7 recent Federal Order 5 and Federal Order 7 of this
8 calculation would be .00521.

9 Some of the differences would be in that
10 proceeding and in the current order language there's a
11 slightly different base rate, slightly different miles
12 per gallon, and slightly different fuel base. But it
13 should be clear that the methodology and the results
14 are reasonable.

15 Q Looking in the numbers here on page 41,
16 the \$2.639, the third number coming down in the number
17 column is not footnoted. What is that number?

18 A A subtraction of the diesel price per
19 gallon -- the base fuel from the diesel price per
20 gallon.

21 Q The number 0.44, two numbers down,
22 that's not footnoted. How is that derived?

23 A That's the 2.639 increase in diesel fuel
24 cost divided by six miles per gallon to give a fuel

1 adjuster to add on to the base rate.

2 Again, the methodology that was
3 described and prescribed in that hearing record and
4 used currently in the order system.

5 Q Thank you. Turn to page 42 of Exhibit
6 15. Maybe that goes together with several. Would you
7 tell us what that sequence of pages are?

8 A Pages 42 through 47 then take the
9 template that was developed in that record and applies
10 it back to supply and demand locations in Order 5 that
11 we've identified. And using that methodology --

12 Q Excuse me. Order 33?

13 A Order 33. Sorry.

14 Q The methodology or the template
15 developed in the Southeastern hearing record for
16 Orders 5 and 7?

17 A That is correct.

18 Q Okay.

19 A Using that template, mileages that came
20 out of our database, the mileage rate factor that we
21 just described, the computation for gross haul cost
22 reduction factor of 80 percent which was designed with
23 the idea that order prices should have some reflection
24 of minimums, it gives an adjusted haul cost added to

1 the existing Class I differential in the markets to
2 give an acquisition cost, and then comparison to the
3 current Class I differential and the difference
4 between the two.

5 And these are calculated for using five
6 supply points which I'll detail -- six supply points
7 which I'll detail a little bit more in my statement.
8 And representation demand points which, again, I'll
9 detail a little more in my statement.

10 Q So pages 42 through 47 are separate
11 replications of that methodology for delivery points
12 beginning with Charleston, West Virginia on page 42,
13 Cincinnati on page 43, et cetera?

14 A That is correct.

15 Q Okay. Same methodology on each page
16 just different delivery points?

17 A That is correct.

18 Q Okay. Continue on, then, with the data
19 on page 48 of Exhibit 15.

20 A The data on page 48 is a comparison of
21 the information developed, and it is a listing of the
22 current differential, the multicolored matrix
23 differential that came from Mideast Marketing Agency
24 data and that came that from the Southeastern model

1 that we just walked through.

2 So the column labeled current -- or I
3 guess the column labeled Federal Order 33 would be for
4 several cities for which there are distributing
5 plants.

6 The current differential, the
7 differential -- a suggested differential from the
8 minimum matrix and a change, a suggested differential
9 from the Southeastern model methodology and a change,
10 and then the proposed differential as offered by the
11 cooperatives in their proposal and that change.

12 And in the lower half of the table is a
13 listing of cities in Federal Order 5 that -- their
14 current differential and the transportation credit
15 balancing fund assessment added to that to form what
16 we would term an effective differential. And I deal
17 with that definition a little bit more in this
18 statement also.

19 So this is a summary of the various
20 options and the ones selected by the cooperatives to
21 be proposed.

22 Q The locations in Federal Order 5 in the
23 chart at the bottom half of page 48, are they Federal
24 Order 5 distributing plant locations proximate to that

1 Southern tier of Order 33?

2 A That is correct. Those would be the
3 plants located in the northern part of Order 5 and
4 closest to what we identified as the Southern region
5 of Federal Order 33.

6 Q Okay. Turn, then, to the map on page 49
7 of Exhibit 15.

8 A The map on 49 would be the current
9 differential map in place today in Order 33. And the
10 map on page 50 would be as proposed by the
11 cooperatives in Proposal One that we'll be talking
12 about in our statement.

13 Q And the final page, then, 51 of your
14 exhibit set, Exhibit 15, can you describe that,
15 please.

16 A In the course of our work we've
17 identified several counties that we think are
18 appropriate places to indicate potential supply
19 locations that might be reasonable to calculate a
20 suggested differential from.

21 And realizing that unless you're
22 intimately familiar with the geography of the
23 marketplace, a label for each county would be
24 helpful. So we went back and labeled those counties

1 and put the names on them.

2 Q They correspond with -- it just shows us
3 on a map where the supply points are on some of your
4 various tables?

5 A That's correct.

6 Q Now, with that introduction to the
7 exhibits, would you proceed with your prepared
8 statement which has been marked as Exhibit 14.

9 A Statement of proponents. I am Elvin
10 Hollon. I am employed by Dairy Farmers of America as
11 the Director of Fluid Marketing and Economic Analysis.
12 My office is located at 10220 Ambassador Drive, Kansas
13 City, Missouri, 64153.

14 I am testifying today on behalf of
15 Michigan Milk Producers, Inc., Foremost Farms U.S.A.
16 Cooperative, Inc., Dairylea, Inc., NFO, Inc., and
17 Dairy Farmers of America, Inc., or collectively the
18 cooperatives.

19 Michigan Milk Producers Association is a
20 member-owned Capper Volstead cooperative of 1,520
21 farms that produce milk in four states. MMPA pools
22 milk on five of the ten Federal Milk Marketing Orders,
23 including the Mideast Order.

24 Foremost Farms U.S.A., Inc., FFUSA, is a

1 member-owned Capper Volstead cooperative of 2,375
2 farms that produce milk in seven states. FFUSA pools
3 milk on five of the ten Federal Milk Marketing Orders
4 including the Mideast Federal Order.

5 Dairylea Cooperative, Dairylea, is a
6 member-owned Capper Volstead cooperative of 2,400
7 farms that produce milk in nine states. Dairylea
8 pools milk on three of the ten Federal Milk Marketing
9 Orders including the Mideast Order.

10 NFO Inc. is a member-owned Capper
11 Volstead cooperative of 1,500 farms that produce milk
12 in 19 states. NFO pools milk on six of the 10 Federal
13 Milk Marketing Orders including the Mideast Order.

14 Dairy Farmers of America, DFA, is a
15 member-owned Capper Volstead cooperative of 10,500
16 farms that produce milk in 49 states. DFA pools milk
17 on 10 of the 11 Federal Milk Marketing Orders
18 including the Mideast Order.

19 The proponents are supporters of Federal
20 Milk Marketing Orders and we believe that without them
21 dairy farmers' economic livelihood would be much
22 worse. Federal orders are an economically proven
23 marketing tool for dairy farmers.

24 The cooperatives, all of whom supply

1 milk to processors and pool the milk of producer
2 members on the order are requesting this hearing to
3 consider changes in the Order 33 differential price
4 surface.

5 The cooperatives collectively market the
6 majority of milk and service the majority of the Class
7 I sales in the order. Failure to address these issues
8 will be detrimental to all the members of our
9 cooperatives, both in their day-to-day dairy farm
10 enterprises and the milk processing investments which
11 they have made.

12 Recent urgently needed changes to
13 Federal Orders 5, 6, and 7 which provide for temporary
14 increases in both the Class I differential price
15 surface and in Orders 5 and 7 only, enhancements to
16 the intermarket transportation credit payments have
17 increased the difficulty in supplying the southern
18 tier of fluid milk processing plants in Federal Order
19 33.

20 In a February 28, 2008 release, the
21 Agriculture Marketing Service announced changes in the
22 differential surface to Orders 5, 6, and 7 that
23 increased differentials by as little as 10 cents per
24 hundredweight in the northern and western portions of

1 the combined marketing area to as much as \$1.80 per
2 hundredweight in the southern counties of Order 6.

3 These and other changes to those orders
4 will increase blend prices in the Southeastern orders.
5 For example, in testimony presented at the hearing by
6 the Federal Order 5 market administrator, the change
7 in location adjustments in Order 5 were projected to
8 increase the uniform price at location, a weighted
9 average, by approximately 30 cents if applied to
10 market conditions in 2004-2006.

11 Similar testimony from the Order 7
12 market administrator indicated the changes could
13 increase blend prices by 64 cents there. 73 Fed. Reg.
14 1198, February 29, 2008.

15 Q Is that 11198?

16 A Yes. In addition, the decision modified
17 the intermarket transportation credit system in Order
18 5 and 7 by increasing the transportation credit
19 assessment charged to handlers.

20 The effect of this increase means more
21 total dollars are available to offset transportation
22 costs and the fund will be less likely to prorate
23 credit payments to shippers.

24 Also, the credits are now applicable in

1 more months of the year, further enhancing those
2 markets' ability to pay for the milk.

3 The resulting scenario is that the
4 Southeastern orders are now better able to attract
5 milk from further supply areas, such as Order 33, into
6 their markets and away from the local Mideast Order
7 plants. 73 Fed. Reg 11209-11212, February 29, 2008.

8 Issue with partial changes to the
9 differential price surface. The proponents realize
10 that some may differ with the concept of making
11 changes in the differential price surface on a
12 temporary basis. There has been a concern raised that
13 such changes should be made at a one-time national
14 hearing.

15 We would support such a hearing if one
16 were called and if the data existed for a thorough
17 review of the nationwide price grid and the changes in
18 it that may be necessary.

19 There may be issues that result from the
20 single-order approach and certainly some that could be
21 avoided if a single national hearing were available to
22 deal with the issues in a single setting.

23 However, such data does not presently
24 exist and no one has proposed a national hearing. The

1 issues that we present are real, current, and ongoing
2 and deserve to be addressed now.

3 There is no prohibition in the
4 regulations for changing the differential price
5 surface in individual orders. Hearing history would
6 indicate this had been done in prior instances.

7 As a safeguard to discovering that
8 additional changes may be necessary, the proponents,
9 like those in the Southeast, have offered changes that
10 are to be considered temporary and may be changed in
11 the future if and when a more comprehensive pricing
12 surface is disclosed by USDA and reviewed by the
13 industry, or if market conditions warrant further
14 change.

15 As the testimony will show, the changes
16 that are being proposed are less than levels that
17 could be justified using acceptable methods of
18 calculation. This means the proponents are choosing a
19 less than optimal solution, but nonetheless a more
20 proper differential level than is currently in place.

21 While there is industry knowledge of
22 research being undertaken by a partnership between
23 USDA AMS/Dairy Programs, and Cornell University
24 concerning differentials, there is no publication of

1 that research current, nor reason to expect that the
2 industry will be any more unified in its opinion of
3 the proper level of differential when results are
4 published than it is now.

5 In the recently completed make allowance
6 hearings dealing with manufacturing costs, it is
7 indisputable that costs of attracting milk from
8 production areas to markets where there is processing
9 capacity has risen dramatically since the last time
10 differentials were adjusted.

11 Milk suppliers are justified in asking
12 the secretary to review these costs and their
13 resultant impacts on the differential surface, just as
14 product manufacturers were justified in asking for a
15 review of make allowance changes.

16 Class I differential. The Federal Order
17 Reform decision declared: The purpose of the minimum
18 Class I differential is to generate enough revenue to
19 assure that the fluid market is adequately supplied.
20 63 Fed. Reg. 16102, April 2, 1999.

21 Due to recent changes in both fuel costs
22 inherent in supplying markets and in the increased
23 returns from nearby markets, our opinion is that the
24 Class I differentials in portions of Order 33 need to

1 be adjusted to compensate suppliers for adequately
2 supplying the market.

3 Supply situation in the Mideast Order.

4 The market administrator provided tables and maps,
5 Exhibit 5, titled Mideast Milk Marketing Area milk
6 production in the lake states by pool status, May
7 2003, 2007 -- sorry -- May 2000, 2003, and 2007, DFA
8 et al. request 2-A, table format, and DFA et al.

9 request 2-B, graphical format, contain data on milk
10 production by state and county, including FIPS code,
11 current Class I differential, pounds of milk that is
12 produced in the county that is either pooled on Order
13 33, associated with Order 33 but not pooled in that
14 month, or pooled on another Federal Order.

15 The volume represented in this exhibit
16 equals the total milk production and disposition of
17 all milk produced in those counties.

18 The states represented, except for New
19 York, each have counties located in the marketing area
20 of Order 33. New York milk volumes regularly pool and
21 deliver milk to handlers in Order 33, and have for a
22 long time been considered a regular part of the
23 order's supply.

24 This exhibit clearly details the milk

1 produced within the marketing area boundaries and the
2 associated volumes of milk pooled on the order.

3 Equally so, milk production that is
4 produced in the marketing area but not pooled on Order
5 33 can be assumed to have been marketed elsewhere,
6 likely due to a better return from another market.

7 On the maps, dark, rust-colored counties
8 represent the most milk production; black, a lesser
9 production volume; dark blue, lesser; tan, a smaller
10 volume; light blue, some volume; and white, no milk
11 production volume at all.

12 The proponents selected 11 counties to
13 represent reserve supply areas for Order 33. In
14 nearly every case, the counties selected represented a
15 high milk production county, dark rust, in each month
16 of the three-year periods and/or were representative
17 of a supply region in their segment of the state.

18 Additionally, from the market knowledge
19 of the cooperatives, each county represents areas from
20 which reserve milk supplies are drawn for servicing
21 fluid use plants in Order 33.

22 In Michigan, Clinton, Huron, Lenawee,
23 Missaukee, and Ottawa counties were selected. In
24 Indiana, Jasper and Elkhart were selected. In Ohio,

1 Mercer and Wayne counties were chosen. In
2 Pennsylvania, Crawford County, and in New York,
3 Chatauqua County. Each of these eleven counties are
4 detailed on Exhibit 5, page 51. Clinton and Missaukee
5 County, Michigan are --

6 Q You mean Exhibit 15, page 51?

7 A Yes.

8 Q So that's the last page, the map of your
9 exhibits where you --

10 A Yes.

11 Q -- point out each county? Okay. Thank
12 you. Go ahead.

13 A Clinton and Missaukee County, Michigan,
14 are counties where milk supplies are rapidly growing;
15 hence a rust-colored county in 2007, but not
16 necessarily in prior years.

17 Elkhart County, Indiana is a traditional
18 reserve supply area in Indiana with all of the milk
19 available for Order 33 deliveries, but in May 2007 a
20 volume of those pounds were not pooled, likely due to
21 price relationships.

22 Jasper County, Indiana is a
23 high-production county located within the marketing
24 area of Order 33, with much of the growth occurring in

1 recent since 2000 -- in recent years since 2000, and
2 with an increasing volume of the milk supply marketed
3 and pooled on other orders. However, it does
4 represent a potential milk supply for Order 33.

5 Based on this data and the best
6 professional judgment of the cooperatives, these 11
7 counties represent a reasonable basing point for the
8 reserve supplies for Order 33 fluid use milk sales and
9 to serve as a base reference for the accuracy of the
10 current differential price surface.

11 MA Exhibit 5, DFA et al. 5-C contains a
12 wide variety of important market information on a
13 single exhibit. It provides graphic detail of the
14 more than ample competition for milk supplies inside
15 of Order 33 from nonpool plants, each denoted by a
16 number.

17 Simply reviewing the legend key
18 indicates that there is a wide mix of Class II, III,
19 and IV plant operations all competing for the milk
20 supplies in the order.

21 The black dots represent locations for
22 milk supplies. Each dot represents 500,000 pounds of
23 milk per month. More dots mean more milk.

24 The milk supply is concentrated in the

1 central to northern regions of the order, and many of
2 the nonpool plants are located close to the milk
3 supply.

4 This means that the differential
5 structure in the southern regions of Order 33 must not
6 only bid milk away from the manufacturing plants, but
7 must up the ante to overcome the lower transportation
8 cost advantages of the nearby buyer.

9 Demand situation. The Southern tier of
10 fluid processing plants in Order 33, generally
11 speaking, the ten plants south of Interstate 70
12 located in Indiana, Ohio, and West Virginia lie in a
13 deficit milk supply region.

14 This region absorbs all of the local
15 milk supply that does not get attracted away to Orders
16 5 and 7, and then must rely on supplemental supplies
17 delivered from milk produced primarily within the
18 order but from more northern zones.

19 Furthermore, the reserve supply in the
20 northern zones will be further attracted to the
21 Southeast Orders as supplemental milk supplies through
22 the now increased differentials and the enhanced
23 transportation credit payments.

24 For example, data regularly published by

1 the Order 33 market administrator shows that Jasper
2 and Newton Counties are the two counties with the most
3 production in Indiana. In both counties, over eighty
4 percent of the milk produced there is pooled in
5 another Federal Order, clearly attracted there by the
6 higher price.

7 The Order 33 marketing area can be
8 subdivided for analysis in to three reasonably
9 distinct milksheds characterized by groupings of
10 demand points and supply regions.

11 This aggregation was constructed based
12 on current supply/demand relationships deemed most
13 reasonable from the best professional judgments of the
14 day-to-day milk marketing agents employed by the
15 cooperatives.

16 Current experience with which regions of
17 the market are deficit versus supply -- scratch that
18 sentence and start again. Current experience with
19 which regions of the market are deficit versus surplus
20 in milk production relative to demand, and those areas
21 from which supplemental milk supplies are regularly
22 taken in order to supply deficits in the other areas
23 within the Order 33 marketing area guided the
24 selection process.

1 Once the cooperatives established the
2 milk supply/demand regions, we asked the market
3 administrator to generate market statistics to
4 describe the areas. See DFA et al. request 1-A, 1-B,
5 3-A, and 3-B prepared by the Market Administrator's
6 Office, Exhibit 5.

7 The regions and their current
8 differentials are depicted on a map shown in request
9 1-B. This map details the county makeup of each of
10 the three supply regions, the state boundaries, and a
11 numeric marker for each pool distributing plant
12 regulated by the order for April 2008.

13 The blue-colored area on request 1-B
14 composes the Northwest region and includes Michigan,
15 Northern Indiana, and Northwest Ohio. The purple area
16 represents the Northeast region, which is primarily
17 the northern half of Ohio, and the western portion of
18 Pennsylvania that is located in Order 33.

19 The orange-colored area represents the
20 Southern region as defined by the cooperatives, and
21 includes the southern portions of Indiana and Ohio,
22 the extreme northern and northeast portions of
23 Kentucky that are located in the Order 33 marketing
24 area and the western half of West Virginia.

1 The table shown in request 1-A details
2 the plant code as shown on the map, the city, state,
3 and county for each plant and the prevailing
4 differential for each plant.

5 The cooperatives requested that the
6 market administrator calculate summary statistics for
7 each of the three defined regions. We asked for data
8 to be developed for January, April, August, and
9 November of 2007, one month out of each quarter, and
10 for January and April 2008, the most recent selected
11 months available this year, Exhibit 5.

12 We asked for one month per quarter as a
13 balance between showing what a year-round typical
14 situation in the marketplace would be, and the time
15 demand for the market administrator's staff to produce
16 the data.

17 We asked for milk that was produced on
18 farms located in the defined supply area either pooled
19 on the Mideast Order or pooled on another order and
20 delivered to a pool distributing plant in the defined
21 supply area.

22 This volume is noted in the column
23 labeled available milk on the one-page table, request
24 3-B, titled the Mideast marketing area summary of

1 available milk v. milk received at distributing plants
2 by months and supply region.

3 We then asked for the pounds of bulk
4 milk physically received at the distributing plants
5 located in the defined supply area, as noted as milk
6 received at distributing plants on request 3-B.

7 We also asked for a net of the two
8 figures which would indicate the more deficit supply
9 situation and the area for which some adjustment in
10 the differential would be justified. Request 3-A, 18
11 pages of maps, pictorially describes the summary
12 statistics.

13 Additionally, as a further descriptor of
14 each region, the cooperatives requested that the
15 market administrator summarize the distance milk had
16 to be hauled within each region to meet the demand in
17 that region.

18 These data are located in DFA et al.
19 request 4-A, 12 pages of tables, titled Mideast
20 marketing area hauling distance of producer milk to
21 distributing plants by supply region, 4-A, Exhibit 5.

22 These mileages request actual milk
23 movements from data provided to the market
24 administrator regularly each month by the order

1 suppliers.

2 Q Can you go back over that sentence. You
3 mean these mileages represent, not request.

4 A These mileages represent actual milk
5 movements from data provided to the market
6 administrator regularly each month by the order
7 suppliers.

8 This request details mileage breakdowns
9 in 20-mile increments for each region for the months
10 of January, April, August, and November 2007 and
11 January and April 2008 showing the pounds transported
12 to distributing plants by the 20-mile increments; and
13 secondly, the percentage of milk distributed in each
14 increment. Table 4-B is a summary of the mileage data
15 only, Exhibit 5.

16 The Mideast Northwest Region, NWR, is
17 composed of what are now the two lowest valued Class I
18 differential zones in Order 33. This is the area with
19 the largest milk production, the most counties
20 exhibiting growth in milk production and the largest
21 volume of Class I demand.

22 This area by any possible definition is
23 the reserve supply region for Order 33. Within this
24 region, milk production is surplus to Class I demand

1 by an average of over 156 percent in the six time
2 periods measured.

3 Based on our knowledge of the market,
4 milk is transported out of this region to customers in
5 each of the other two regions many days in every week
6 of the year.

7 For the milk that is delivered to Class
8 I plants in the region, the average haul distance for
9 each load is 72 miles for the six monthly periods
10 measured, the lowest transported miles of any region.

11 The Mideast Northeast region, MNR, is
12 composed of what is now the \$2.00 zone within Order
13 33, generally north of Interstate 70 in Ohio, and the
14 \$2.10 and \$2.30 zone in Pennsylvania, but not
15 including any of the \$2.00 zone in Indiana.

16 This is also a surplus region, but at a
17 lesser rate. Here supply is a little less than
18 double, 89 percent, of the Class I demand over the six
19 monthly periods measured.

20 The average distance that each load of
21 milk is moved to meet the Class I demand in this
22 region averages 70 miles.

23 The Mideast Southern region is composed
24 of the remaining marketing area in Indiana, the \$2.00

1 and \$2.20 zones, the remainder of Ohio, the \$2.00 zone
2 south of Interstate 70, and any counties in Kentucky
3 and West Virginia except the four counties north of
4 Wetzel County that are wedged between the Ohio border
5 and the Pennsylvania border.

6 The counties in the Southern region
7 comprise the \$2.20 and \$2.30 and \$2.40 zones in the
8 order. The Southern region, based on the April data
9 published in the market administrator information,
10 contains ten plants currently with an eleventh plant
11 in the startup phase.

12 The Nestle Company's plant in Anderson,
13 Indiana will, according to industry estimates, process
14 one million pounds of milk per day. When this plant
15 is operating at full capacity, the deficit in the
16 Southern region will worsen.

17 Recent news reports have indicated that
18 an expansion to the plant, which manufactures Nesquik
19 flavored milk drinks, expanding plant capacity by
20 2011.

21 The milk supply for this region
22 averages, for the six monthly periods measured, only
23 60 percent of the required Class I demand, making the
24 Southern region a severely deficit milkshed.

1 In order to supply the Southern region
2 milk transport averages 133 miles, clearly
3 representing milk movements from outside the region
4 being delivered to plants within the region.

5 In order to meet the demands of the
6 Southern region, milk must be transported over 60
7 miles further than in the other two regions.

8 The inadequacy of the current
9 differential surface. One of the purposes of the
10 Class I differentials, as noted earlier in this
11 testimony, is to provide an adequate milk supply.

12 This incentive must be adequate enough
13 to attract milk to the demand points in the market.
14 This conclusion was also reached in the recent
15 Southeastern Orders decision as noted in the following
16 discussion from the February 28, 2008 tentative
17 partial decision:

18 Opponents to DCMA's Class I price
19 adjustments noted that there is an adequate supply of
20 milk to meet fluid demands. There is an adequate
21 supply of national milk to meet the national demands
22 for fluid milk.

23 However, in the deficit areas of the
24 Southeastern marketing areas, there must be sufficient

1 incentives provided by the orders to encourage the
2 movement of milk from reserve areas to those deficit
3 markets.

4 In this regard, the location value of
5 milk needs to consider local milk supplies, local
6 demand, and transportation costs. 73 Fed. Reg.
7 11207-11208, February 28, 2008.

8 In the deficit Southern Region of the
9 Mideast Order, the relationship of the Class I
10 differential to the cost of transport has been eroded
11 sufficiently that it does not provide an adequate
12 incentive to move milk.

13 Nationwide, the differential surface has
14 been modified only two times in the past 23 years, as
15 a result of the 1985 Farm Bill and as a result of the
16 2000 Federal Order Reform decision.

17 The Reform decision was based on data
18 from the mid-1990's. In this market there have been
19 significant changes in the market since the
20 mid-1990's.

21 Farm counts have declined, farm sizes
22 increased, and the growth in milk production has moved
23 primarily to the northern counties of the market.

24 City populations in the Southern region

1 have grown. From 1990 to 2007, according to the US
2 Census Bureau, Indianapolis has increased population
3 by a compound annual growth rate of 1.6 percent per
4 year. Columbus has increased 1.3 percent per year,
5 and Cincinnati nine-tenths of a percent per year.

6 The Federal Order Reform price surface
7 resulted in a very flat price surface across Order 33.
8 For example, from southern Michigan to Cincinnati, the
9 current differential spread is only 40 cents.

10 A reasonable representation of today's
11 transport rate is \$3.23 per hundredweight per loaded
12 mile. To travel the 229 miles between Lenawee County,
13 Michigan, a county that regularly supplies fluid
14 handlers with milk, and Cincinnati would cost \$739.67
15 using a 48,000 pound payload and would result in a 154
16 -- I'm sorry -- would result in a \$1.54 per
17 hundredweight cost, far more than the current
18 differential spread.

19 The 40 cents differential only
20 represents 26 percent of the \$1.54 cost. Or doing the
21 calculation a different way and using the same
22 constants, 40 cents would move the 48,000 pound load
23 only 59 miles, far short of the intended destination.

24 The cooperatives will offer two methods

1 to document the extent to which the current
2 differential is inadequate. The first will use data
3 from the everyday market transactions of the Mideast
4 Milk Marketing Agency, MEMA, used to manage milk
5 transport.

6 The second method will parallel the
7 methodology from the recent Southeastern order's
8 decision to adopt the temporary adjustments to the
9 Class I differentials in Orders 5, 6, and 7.

10 Mideast Milk Marketing Agency
11 experience. The cooperatives collectively market in
12 the Mideast Order through the Mideast Marketing
13 Agency, MEMA. This common marketing agency works to
14 achieve as much efficiency as possible in the
15 day-to-day marketing process.

16 We share customer order information,
17 milk availability, balancing capacity, and use many
18 logistical tools in our attempt to market efficiently.
19 This process generates much market information and
20 enables us to better manage milk assembly and
21 transport systems.

22 There are several data factors which
23 require additional explanation before I can outline
24 our summary conclusions. Exhibit 15, pages 32 through

1 34, titled US on-highway fuel prices Midwest number
2 two diesel, energy information administration,
3 calendar year 2000 to date lists weekly diesel fuel
4 costs as published by the Energy Information Agency.

5 This data is used extensively by the
6 dairy industry to measure changes in fuel costs. This
7 table outlines the US national average of the Midwest
8 average prices for diesel fuel.

9 The PADD-Midwest includes the states of
10 Illinois, Iowa, Indiana, Kansas, Michigan, Minnesota,
11 Missouri, Nebraska, North Dakota, South Dakota, Ohio,
12 Oklahoma, Tennessee, and Wisconsin and includes the
13 main milk production and consumption areas of the
14 Mideast Order.

15 The prices are published by 5:00 p.m.
16 Monday each week for the prior week. The MEMA agency
17 uses this information regularly. This data is plotted
18 in Exhibit 15, page 35, titled US On-Highway Fuel
19 Prices Midwest Number 2 Diesel, EIA, 2000 to date.

20 I'd like to detail several data points
21 that I will refer to later in this statement. From
22 the chart, it is clear that fuel prices have increased
23 markedly in the last several months.

24 This increase affects the cost of milk

1 delivery markedly. Since milk is harvested daily,
2 this cost must be borne daily. We have selected the
3 period May 12 through July 28, 2003 as a base point
4 from which to measure change.

5 In those months, the fuel price was
6 stable for several weeks ranging between \$1.3980 and
7 \$1.4340 and averaged 1.4130. As shown in the chart,
8 even this much consistency in price is not the normal
9 experience.

10 The MEMA agency's program for
11 compensating milk transport uses the EIA Midwest
12 numbers in its rate payment schedule. So far this
13 year the diesel rate has averaged 4.516, peaking at
14 4.698 on July 14 and hit the low point of \$3.218 on
15 January 28, 2008.

16 Since we are not diesel fuel price
17 forecasters, we have chosen to use the 2008 calendar
18 year average diesel prices in our calculations in an
19 attempt to provide a measure that is not based on the
20 absolute peak price.

21 The agency also uses a base transport
22 rate of \$2.20 per loaded mile in its compensation
23 calculations. This base rate was in effect in 2003 as
24 shown in Exhibit 15, pages one through 31. This data

1 represents ten different transport companies in the
2 month of May through July of 2003.

3 The MEMA document rate sheets is the
4 template used to determine the hundredweight rate
5 compensation for delivery to a specific plant for a
6 specific hauler and route.

7 The rate is used with the transport
8 route data on a monthly basis. Approximately 120
9 different transport businesses receive these
10 statements each month representing over 290 million
11 pounds of milk hauled per month.

12 In each case, the base rate paid to all
13 haulers for transport services was \$2.20 per loaded
14 mile for all transport in excess of 36 miles.

15 In its calculations, the agency uses a
16 six mile per gallon rate. The Southeast Order
17 differential decision utilized a 5.5 gallon rate
18 through testimony and evidence in to the provisions
19 for Orders 5 and 7.

20 The six-mile figure is more typical for
21 this market. The payload we will use is 48,000
22 pounds, which is typical for our area and also used in
23 the Southeast hearings.

24 In order to measure the erosion of the

1 differential value, we selected 11 counties, as noted
2 earlier in this statement, representing the largest
3 milk production from which reserve milk supplies could
4 potentially be sourced to meet Class I demand in the
5 deficit Southern region.

6 We obtained mileages from the county
7 seat of each reserve supply county to each of the ten
8 Class I processing plants in the Southern region and
9 computed the cost per hundredweight to transport milk
10 from each reserve location point to each plant.

11 Exhibit 15, page 36, outlines the 11
12 counties and ten plant locations. This page also
13 calculates the net dollars available to offset the
14 transport cost from the difference in the differential
15 at the ship from and ship to locations.

16 For example, if a load were to move from
17 Clinton County, Michigan to Eastside Dairy in
18 Anderson, Indiana, the order differential would
19 provide 20 cents to offset the transport cost.

20 This difference is calculated for each
21 pair of destination/supply points in our example.
22 Exhibit 15, page 37, lists the mileages between each
23 pair of locations. There is a mileage point for each
24 combination. So in the example above, it is 235 miles

1 from the county center in Clinton County to Eastside
2 Dairy in Anderson, Indiana.

3 Exhibit 15, page 38, computes the
4 transport cost from point to point. Each month the
5 MEMA agency computes a fuel surcharge to be applied to
6 the base rate for transport payments.

7 For July, the most recent month, the
8 surcharge was 58 percent, reflecting the sharp
9 increase in diesel prices.

10 Again, in order to be conservative, we
11 have chosen to use the 2008 year-to-date average
12 surcharge of 47 percent in order to be more
13 representative of fuel costs.

14 Using \$2.20 base rate and a 47 percent
15 fuel surcharge yields a \$3.23 transport rate per mile.
16 This rate, multiplied by the mileages and divided by
17 the 480 hundredweight payload, yields the per
18 hundredweight of \$1.59 for the 235 miles between
19 Clinton County, Michigan and Eastside Dairy in
20 Anderson, Indiana.

21 Exhibit 15, page 39, nets the haul costs
22 with the differences in differential to yield the
23 remaining transport costs not covered by the
24 differential, and thus a measure of the erosion of the

1 differential.

2 Each individual combination is computed
3 for review. In a perfect world, this worksheet would
4 be populated by zeroes. For the entire group, the
5 average differential shortfall is \$1.76 per
6 hundredweight.

7 If one chooses the minimum shortfall for
8 each supply/demand combination, that average is 66
9 cents per hundredweight. For those plants in the
10 \$2.00 zone, the average of the minimum shortfall is 57
11 cents, and in the \$2.20 zone, 80 cents.

12 Note that the Charleston plant is
13 somewhat of an outlier within the current \$2.20 zone
14 with a \$1.17 minimum shortfall.

15 If the standard is there must be
16 sufficient incentives provided by the orders to
17 encourage the movement of milk from reserve areas to
18 these deficit markets, 73 Fed. Reg. 11207-11208,
19 February 29, 2008, then the current differential
20 structure in the Southern region is inadequate.

21 Southeastern model. A methodology was
22 developed and presented at the recent Southeast Order
23 hearing in which all differentials for the
24 Southeastern orders were temporarily adjusted. That

1 methodology was substantiated in the decision which
2 reads:

3 The basic foundation for deriving the
4 temporary adjustments to Class I prices begins with
5 DCMA's identification of potential supply areas and
6 reliance on that potential supply area to yield the
7 lowest Class I price adjustment based on the farthest
8 point of milk demand. 73 Fed. Reg. 11205, February
9 29, 2008.

10 We will follow this method to again
11 demonstrate that the current differential surface has
12 eroded to the point where adjustment is needed and
13 justified to support the level of adjustment proposed.

14 Exhibit 15, page 41, outlines the
15 components necessary to establish the methodology.
16 The calculation process described next replicates that
17 provided for in Federal Orders 5 and 7 now which was
18 based on testimony provided in the hearing that
19 created those fuel adjusters. The methodology is set
20 out in 7 CFR Sections 1005.83, Order 5, and 1007.83,
21 Order 7.

22 The end result of this procedure is to
23 compute a current fuel adjusted transportation rate
24 per hundredweight per mile in order to establish what

1 the relationship should be between a supply point and
2 a demand point based on transport cost.

3 This procedure utilizes a diesel fuel
4 rate from the EIA data previously mentioned. For our
5 purposes, we will use the average rate for calendar
6 2008, \$4.052 per gallon.

7 As noted earlier, we chose a May through
8 July period for establishing a base period, and during
9 that period the base fuel was \$1.413 per gallon.

10 Q For clarification, Mr. Hollon, that's
11 May through July 2003?

12 A That is correct.

13 Q Thank you.

14 A Subtraction yields an increase of
15 \$2.639, and divided by six miles per gallon yields an
16 adjustor of 44 cents, which adds to the base haul rate
17 of \$2.20 per mile to result in a fuel adjusted rate of
18 \$2.64.

19 Using a 48,000 pound tank size and
20 dividing the \$2.64 by 480 hundredweights results in a
21 rate per hundredweight per mile of \$0.00550.

22 For reference purposes, the current
23 August 2008 rate in Order 5 and 7 is \$0.00521. This
24 rate will be used in the comparison of alternative

1 supplies for several of the Order 33 Southern Region
2 markets.

3 Exhibit 15, page 40, is the exact
4 template used in the Southeastern differential hearing
5 to determine what an adjustment to the differential in
6 Miami, Florida might be, and procedurally was used
7 multiple times in that hearing record.

8 This table can be located at
9 <http://www.ams.usda.gov/AMSV1.0/getfile?d?DocName=STEL>
10 PRDC5060147, page F in the testimony of Jeffrey Sims.

11 This process compares the transport rate
12 of potential alternative supplies for a selected
13 demand point, and then bases a proposed differential
14 from the least cost supply alternative.

15 For example, that record identified five
16 potential alternative supply points surrounding the
17 Southeast that could possibly be used to supply the
18 Miami market developed in the same manner as we have
19 described for Order 33.

20 The distances between the supply points
21 and the demand point were multiplied by the mileage
22 rate, computed in a procedure as described above, and
23 reduced by 20 percent in keeping with the concept of
24 Order prices as a minimum amount.

1 The adjusted haul rate was then added
2 with the current differential for the supply point to
3 form what was termed an acquisition cost.

4 The differences between the acquisition
5 cost and the actual differential were used to suggest
6 what the temporary adjustment to the existing
7 differential might be.

8 We repeated this methodology for six
9 plants in the Southern region of Order 33. The six
10 plant locations chosen were Indianapolis, Marietta,
11 Newark, Cincinnati, and Springfield, Ohio, and
12 Charleston, West Virginia are representative of the
13 geographic spread of plants within the Southern
14 region.

15 We picked six potential supply points
16 from our 11 previously identified counties that serve
17 as the reserve supply for the Order. As with the
18 demand points, these six supply points represent a
19 reasonable geographic spread for supply points in the
20 Order.

21 For Indianapolis, Elkhart County,
22 Indiana was the least cost alternative at \$2.20 per
23 hundredweight. When compared to the current
24 differential of \$2.00, a suggested temporary

1 adjustment could be .55 per hundredweight.

2 Q Mr. Hollon, could you go back over
3 that. You said Elkhart, Indiana was the least cost --
4 Elkart County, Indiana was the least alternative at
5 what rate?

6 A \$2.55 per hundredweight. For Marietta,
7 Ohio, Wayne County, Ohio was the least cost
8 alternative at \$2.52 per hundredweight. When compared
9 to the current differential of \$2.00, a suggested
10 temporary adjustment could be 52 cents per
11 hundredweight.

12 For Newark, Ohio, Wayne County, Ohio was
13 the least cost alternative at \$2.29 per hundredweight.
14 When compared to the current differential of \$2.00, a
15 suggested temporary adjustment could be 29 cents per
16 hundredweight.

17 For Springfield, Ohio, Mercer County,
18 Ohio was the least cost alternative at \$2.40 per
19 hundredweight. When compared to the current
20 differential of \$2.00, a suggested temporary
21 adjustment could be 40 cents per hundredweight.

22 For Cincinnati, Ohio, Mercer County,
23 Ohio was the least cost alternative at \$2.54 per
24 hundredweight. When compared to the current

1 differential of \$2.20, a suggested temporary
2 adjustment could be 34 cents per hundredweight.

3 For Charleston, West Virginia, Wayne
4 County, Ohio was the least cost alternative at \$2.89
5 per hundredweight. When compared to the current
6 differential of \$2.20, a suggested temporary
7 adjustment could be 69 cents per hundredweight.

8 Exhibit 15, page 48, lists a summary
9 comparison of the two alternatives evaluated and the
10 proposed differential structure.

11 In the representative examples, the
12 proposed alternatives all are significantly less than
13 either of the two alternative measures.

14 Exhibit 15, page 49 and page 50, are
15 maps of the current differential surface and the
16 proposed surface. In the case of the plants in the
17 former \$2.00 zone, all will be in the newly proposed
18 \$2.15 zone, thus maintaining as much as possible the
19 existing competitive relationship between the plants.

20 Similarly, in the former \$2.20 zone, all
21 the plants except United Dairy in Charleston, West
22 Virginia will be in the proposed \$2.40 zone.

23 As noted in our calculations, the plant
24 in Charleston showed justification for a greater

1 adjustment than any other plant in the Southern
2 region, likely because it is more distant from the
3 potential reserve supplies.

4 The comparison of alternatives suggested
5 an adjustment of between 69 cents and \$1.17 per
6 hundredweight could be made. So our proposal of an
7 increase of 40 cents seems reasonable.

8 Additionally, when price alignment is
9 considered with Federal Order 5 to the south, the
10 suggested temporary adjusted differential of \$2.60
11 aligns well with the effective differential of the
12 three nearest competitors, Dean Foods at Louisville,
13 Kentucky with an effective differential of 2.45,
14 Winchester Farms Dairy, Winchester, Kentucky with an
15 effective differential of 2.75, and Flav-O-Rich, Inc.,
16 London, Kentucky's effective differential of 3.05.

17 In this comparison, the term "effective
18 differential" indicates the combination of the Order 5
19 announced Class I differential plus the 15 cents per
20 hundredweight transportation credit balancing fund
21 assessment, TCBF.

22 While the TCBF assessment may be waived
23 if the fund balance is deemed overfunded, that has
24 rarely happened. Thus, the use of an effective

1 differential, as noted here, is a valid comparison.

2 Impact of proposal on packaged milk
3 distribution. We measured the impact the proposed
4 changes would have on the competitive relationships
5 between handlers in the Southern region.

6 Certainly with changes in the
7 differential price surface there will inevitably be
8 changes in the competitive relationships between
9 handlers.

10 But we did not find any case where
11 the changes in class price relationships resulting
12 from the newly proposed differentials exceeded the
13 cost of moving packaged milk between those same two
14 points.

15 In the Reform process, the Cornell
16 models calculated costs for packaged distribution.
17 The Cornell publication, Pratt, James E., Phillip M.
18 Bishop, Eric M. Erba, Andrew M. Novakovic, and Mark W.
19 Stephenson, "A Description of the Methods and Data
20 Employed in the U.S. Dairy Sector Simulator, Version
21 97.3," Cornell Program on Dairy Markets and Policy,
22 R.b. 97-09, page 68, referenced and used in the Reform
23 decision describes both the model and the process.

24 The actual packaged good rate -- start

1 over. The actual packaged goods distribution rate per
2 hundredweight is calculated according to the following
3 equation --

4 MR. ENGLISH: Your Honor, perhaps
5 rather than having Mr. Hollon attempt to
6 read that formula in words, we could have
7 it -- have the formula from page 20 of
8 Exhibit --

9 JUDGE DAVENPORT: I would tend to
10 agree, as I would the table on the following
11 page.

12 MR. ENGLISH: Thank you.

13 THE WITNESS: Thank you.

14 (The following formula was copied from
15 the statement by the court reporter.)

16 Fluid distribution

17
$$\text{Cost}(i,j) = (80000 / (40000 + 0.5 * \text{GWV}(i,j))) * ((0.0311 * (\text{Distance}(i,j) ** 0.73)) * (0.52 + 0.48 * \text{WageRate}(i)))$$

19 A This equation uses gross vehicle
20 weight, distance between the source plant and
21 distribution point, and a wage rate unique to the
22 source plant.

23 In order to compute the fluid
24 distribution cost, we need to provide the distance

1 between the two plants and the prevailing wage rate.
2 Distances were extracted from the Internet program
3 Mapquest.

4 Cornell has updated the distance factor
5 and also the wage rate and has made them available to
6 the industry as represented in the above equation.

7 For example, using Marietta, Ohio as a
8 source point and Charleston, West Virginia as a
9 distribution point, the distance between the two
10 locations is 90 miles and the wage rate constant is
11 0.86.

12 Using these constants in the equation,
13 the distribution cost between the two points is \$0.77
14 cents per hundredweight.

15 The proposed Marietta differential is
16 \$2.15. Adding \$2.15 to the 77 results in a \$2.92
17 total cost of acquisition and packaged distribution.

18 This cost should then be compared to the
19 \$2.60 proposed differential at Charleston, showing
20 that the proposed differential would not result in an
21 incentive for economic movements of milk.

22 Q You mean uneconomic movements.

23 MR. ENGLISH: I think he was right the
24 first time.

1 A Oh. Let's try that sentence one more
2 time. This cost should be compared to the \$2.60
3 proposed differential at Charleston, showing that the
4 proposed differential would not result in an incentive
5 for uneconomic movements of milk.

6 Using the equation and the corresponding
7 mileage and wage rates for seven pairs of processing
8 points and distribution locations results as follows.

9 MR. ENGLISH: And the table will be
10 taken in the record as if --

11 JUDGE DAVENPORT: As if read.

12 A In each of these comparisons, the
13 spread remaining after comparing the total acquisition
14 and distribution costs are less than the resulting
15 differential costs in the destination point.

16 Language of Proposal. As noted in the
17 hearing notice, the cooperatives proposal would
18 temporarily adjust the Class I price surface for the
19 southern counties within the geographical marketing
20 area of the Mideast milk marketing order.

21 The current Order language provides for
22 an additional differential for each county in the --

23 Q Excuse me. An individual differential?

24 A Provides for an individual differential

1 for each county in the marketing area of the order as
2 detailed in section 1000.52.

3 The table set out in the notice would
4 provide an adjustment to 111 of the counties in the
5 Order. The adjustments would range from an increase
6 of 15 cents to 40 cents per hundredweight.

7 Summary. We have demonstrated that the
8 Southern region of Federal Order 33 operates in a
9 deficit situation with respect to supply and demand
10 for milk.

11 One of the purposes of the differential
12 structure is to attract milk to a market where needed.
13 In this portion of Order 33, the effectiveness of the
14 differential has been eroded by increases in the cost
15 of transport.

16 Since the differential surface has not
17 been modified in eight years, and the underlying data
18 for those modifications were representative of market
19 conditions in the mid-to-late 1990's, it is reasonable
20 for producers to ask the secretary of agriculture to
21 examine them now.

22 Twice since the Reform decision the
23 secretary has adopted proposals that have tightened
24 performance standards in this Order. Many of those

1 proposals were offered and supported by some of the
2 proponents and some of the opponents here today.

3 Data presented in the record indicate
4 that those proposals have been effective in improving
5 performance in the Order. However, the issues as
6 outlined by the cooperatives here are a problem, and
7 it is now time to look at the price surface as a part
8 of the solution.

9 The proposal is targeted to a specific
10 area of the Order marketing area that has been shown
11 to be deficit year round.

12 We have documented using two approaches
13 the magnitude of the problem and using those methods a
14 reasonable alternative for a price solution -- as a
15 reasonable alternative for price solution. Our
16 temporary adjustments could be modified with future
17 hearings once more data is available.

18 Thank you for the opportunity to present
19 our proposal. We will be glad to answer any questions
20 you may have at this time.

21 MR. BESHORE: I have a few additional
22 questions.

23 Q First of all, for clarification in the
24 hearing notice and in the letter requesting the

1 hearing, my letter requesting the hearing, which is I
2 think Exhibit 12, one of the proponents was listed as
3 Land O'Lakes. But you have not mentioned Land O'Lakes
4 in your statement. Can you explain that, please.

5 A Yes. In the time between the proposal
6 and now the hearing, Land O'Lakes no longer pools milk
7 on Order 33, and so they've requested that their name
8 be deleted as a proponent.

9 Q And you've done that?

10 A Yes. We have done that at their
11 request.

12 Q Okay. Now, the request for hearing in
13 the hearing notice also indicates that the secretary
14 is -- will be considering whether to take action on an
15 expedited basis on this hearing record or this
16 hearing.

17 I would like you to now specifically
18 address that issue in your written statement which is
19 proposal 14. Could you make any comments about that
20 at this time?

21 A I can, but I need my notes.

22 MR. BESHORE: With Your Honor's
23 permission.

24 JUDGE DAVENPORT: Certainly.

1 A With regard to that request, we would
2 offer the following information to the secretary:
3 First, the existing differentials are in our view
4 substantially eroded in the Southern region of Order
5 33.

6 Two hearing decisions that have modified
7 the performance provisions of the Order considered at
8 that point in time a wide range of proposals, and both
9 hearings result in tightened performance provisions
10 that are in effect today and are effective today, but
11 those changes have not been sufficient enough to
12 correct the erosion in the differential surface in the
13 Southern region of Order 33.

14 The underlying price grid in the Order
15 is misaligned, as shown in our testimony. And when
16 the underlying price grid is sufficient, it becomes
17 impossible to correct that deficiency, especially when
18 it gets large with over order premiums.

19 So while there can be some modification
20 of price levels and supply/demand conditions as they
21 change, as they get larger and larger, as we've
22 indicated, it just becomes harder and harder to
23 correct that using the premium structure.

24 In many months the changes in supply

1 cost that the differential is designed to offset in
2 order to attract milk to demand points change rapidly,
3 and it becomes very difficult to negotiate those
4 changes through the marketplace.

5 The dairy industry is characterized by
6 multiple, I guess what I call negotiation points
7 between the farm, the processing plant, and in many
8 cases the distribution network and in the end result a
9 retailer, and it's hard typically to negotiate those
10 cost changes in a really short amount of time.

11 So that makes it difficult to maneuver
12 those, and we would add to our request to get some
13 change in the underlying price grid.

14 The price grid has been modified already
15 in Orders 5, 6, and 7, and that's not something that
16 may happen or could happen or might happen. It has
17 happened. And so that provides additional incentive
18 to attract milk and make it more difficult to supply
19 milk to handlers in the Southern region.

20 Finally, milk moves every day, you know,
21 in Order 33. I think the tables outlined by the
22 market administrator indicates that it moves some
23 distance, and those costs are evident day in and day
24 out.

1 And to that extent that the price
2 surface needs changed, it needs to be reflected that
3 the day-to-day occurrence and the day-to-day cost that
4 we think is worthy of attention by the secretary on a
5 rapid basis.

6 Q Your testimony indicates with respect to
7 the changes, the recent changes in differentials in
8 Orders 5 and 7, your exhibits show how much they've
9 changed in the nearby Order 5 plants, nearby Southern
10 region -- Southern portion of order 33.

11 Your testimony indicated that in that
12 decision the secretary estimated that the blend prices
13 throughout the southeast could indicate 30 cents per
14 hundredweight; is that correct?

15 A Yes. Those estimates were both Order 5
16 and Order 7.

17 Q Now, with increased differentials in the
18 immediate adjoining area to the Southern portion of
19 Order 33, those plants had an increased blend price on
20 those orders. Has that materially exacerbated the
21 difficulty in attracting milk to the Southern region
22 of Order 33?

23 A It does. It creates a competitive
24 factor that has to be faced every day in the

1 marketplace.

2 Q Since those changes took place in May,
3 that has ratcheted up significantly the difficulty
4 that you're asking this hearing to address?

5 A Yes; that is correct.

6 Q Do you have Exhibit 5 available to you?

7 A I do.

8 Q There have been -- you know, this is the
9 data compiled at your request --

10 A That's correct.

11 Q -- by the Order 33 market
12 administrator. And I would just like to ask you to
13 respond to perhaps a few questions that have come up
14 with respect to the data.

15 First of all, the supply regions, the
16 identification of those regions, was that done, you
17 know, essentially on the basis of supply and demand in
18 the marketplace in Order 33?

19 A That is correct.

20 Q By the staffs of the cooperatives in
21 conjunction with the market administrator -- in
22 conjunction with the data provided by the market
23 administrator?

24 A We looked at the data that was

1 available. We provided those groupings based on our
2 day-to-day market knowledge, and then asked the market
3 administrator to develop the statistical packages
4 around those supply regions.

5 Q Now, when you look at the maps in
6 Exhibit 5 that are data in response to DFA request
7 2-B, the maps -- the question has been asked, I think
8 by Mr. Vetne, perhaps, I'm not sure who else, you
9 know, why aren't areas to the west reflected in these
10 maps or potentially some of the other data I guess.
11 Do you have any comments to make on that point?

12 A Well, certainly, you know, there would
13 be milk supplied from the west that comes in to Order
14 33 from Minnesota, from Wisconsin, from Illinois.
15 There was more in times past, and that volume has been
16 reduced by changes in performance standards.

17 One of the purposes of our data request
18 and our purpose here today is to look at what might be
19 a proper differential structure. And those milk
20 suppliers, while certainly they're there and they're
21 evident, they're further away.

22 And at the end of the day, it wouldn't
23 make sense to base a differential on supplies that are
24 further away than local supplies.

1 You would result in a price surface that
2 might yield uneconomic movements of milk; and
3 furthermore, we thought it was most appropriate to
4 present information to the secretary on milk that was
5 within the marketing area and that we could deliver or
6 was available to deliver primarily to plants in the
7 area, that that would be the potential supplies that
8 we should identify in order to base a differential
9 request on.

10 Q So is it fair to say that without going
11 in to any specific mileage calculations of
12 point-to-point supplies such as from, you know,
13 southwestern Wisconsin to Indianapolis or to
14 Cincinnati, without going in to that analysis, are you
15 familiar enough with the mileages involved and the
16 differential surface involved to indicate whether
17 those would lead to greater or lesser proposed
18 differentials?

19 A They would lead to lesser if we used the
20 same methodologies. And I would --

21 Q Lesser?

22 A They would lead to greater differentials
23 if we used the same methodologies. And I think we
24 noted that the average minimum was 66 miles.

1 I'm not sure if any of the counties that
2 might show up as potential supply counties in any of
3 the states to the west would be -- they all would be
4 much further than 66 miles away. So it would not
5 result in a potential base for a differential.

6 Q And the fact that those -- the distances
7 involved in those milk movements are not -- do not
8 provide economic day-to-day availability of milk
9 supplies is reflected in the cooperative's marketing
10 experience that you represent -- the experience of the
11 cooperatives?

12 A That would be correct. And that was
13 also reflective of some of the exhibits in prior
14 hearings where only small amounts of milk actually
15 moved for cost reasons.

16 Q If you go to the set of data in Exhibit
17 5 that begins with the month January 2007, the maps
18 that show the supply regions and that calculates the
19 demand for milk and the availability of milk --

20 A Yes. I have that.

21 Q First of all, the equation that's shown
22 in this data, the numerator is the actual total
23 physical demand for milk in plants in that region; is
24 that correct?

1 A Correct. That would be right.

2 Q Regardless of where the milk comes from,
3 that's the numerator intended to be the actual demand?

4 A Correct.

5 Q And how did you define the denominator
6 and why? Because there were a lot of questions about,
7 you know, does this take in all the milk that's
8 readily available or properly available or whatever.

9 A Well, again, in our thought process we
10 attempted to identify what we thought would be
11 reasonable supplies that would be available to supply
12 those plants.

13 And where we had that data we could
14 fairly quickly distinguish from what was pooled on the
15 order, and not just a point in time but over several
16 months in time. So that would indicate supplies that
17 were ready and available that weren't bid away to
18 other markets or delivered to other markets for -- due
19 to price incentives.

20 So it seemed to make sense to us that
21 those would be the locations to base the differential
22 on, so that's what we asked of the market
23 administrator to compute and calculate.

24 Q Okay. Now, showing the total of

1 available milk, why wouldn't you include milk that's
2 pooled and under orders?

3 A Because that milk would not be normally
4 available in Order 33. And we asked for multimonths
5 of data and the same general trend and the same
6 general volumes showed, you know, over a multiple of
7 months.

8 Q Is it fair to say just in terms of the
9 way it works day to day in the milk marketing
10 business, that if the milk is pooled in other order,
11 not pooled in its local order but is pooled month
12 after month after month on another order, that that's
13 a better economic return?

14 A That's a better economic return. That
15 would be a fair statement.

16 Q And therefore, the milk's not available
17 to the local pool?

18 A Correct.

19 Q How were the months -- well, I think you
20 testified that you took one month per quarter,
21 correct?

22 A We took one month per quarter. And we
23 again wanted to try to show a typical period, not just
24 a single month or one or two months.

1 Yet it's a pretty big data-gathering
2 task, so we had, you know, the two continuums of
3 trying to have an adequate descriptive picture and how
4 much task we gave the Market Administrator's Office --
5 not that they aren't capable, but it is a long
6 process.

7 So we agreed to request at least one
8 month in each quarter over a year's period, and then
9 we tried to make sure that we hit months that all the
10 milk that was pooled.

11 So we tried to make sure to get a month
12 in each quarter that did not have prices such that
13 large volumes of milk would be depooled, which would
14 give you maybe a distorted picture of what milk would
15 be available. So that would tend to make -- we tried
16 to make our statistical database as representative as
17 possible.

18 Q Now, when you looked back at the months
19 of '07, which was January, April, August, and
20 November, is it your opinion and your testimony,
21 Mr. Hollon, that the months of January, April, August,
22 and November are representative months of the full
23 year of 2007?

24 A In our opinion that would be

1 representative of the full months. There's a surplus
2 month, a deficit month. In each case there was a
3 positive PPD or at least a zero in April PPD in
4 January of '07 was a plus 47 cents. In April it was
5 zero. In August it was \$2.33 -- or 36 cents. In
6 November it was 1.86. In January of '08 it was 93
7 cents, and in April of '08 it was 1.89.

8 So the economic incentive would have
9 been to pool. So you would have pooled all the milk
10 that you had eligible to do so. So those months
11 should be a reasonable depiction of the marketplace.

12 Q So besides being reasonable in terms of
13 having a balance of surplus months and high demands
14 months and summer months and winter months, in fact,
15 the data is not distorted by any months when depooling
16 was a factor in the --

17 A That was our intent, and I think the
18 result we got.

19 Q Now, if you had used May, for instance,
20 for which there's certain other data in the record, if
21 you use May, was that a depooling month?

22 A May of '08?

23 Q Or '07.

24 A May of '07 would have been about the

1 same as April '07. It was zero cents PPD and a three
2 cents PPD. So those would have been approximate from
3 an economic draw. But in '08 the PPD was a negative
4 65 cents, and in June a negative 1.29.

5 So in our opinion those wouldn't have
6 been the best months to pick for representation, so we
7 didn't ask for those months.

8 But certainly Dean has requested for
9 those months and the data is available to look at, but
10 we didn't think those were quite as representative to
11 look at as the other months.

12 Q Okay. At one point -- just for
13 clarification, at one point in your statement you
14 mentioned the cooperatives for which you were
15 speaking, page 13, collectively market milk through
16 the Mideast Milk Marketing Agency?

17 A That's correct.

18 Q Okay. Clarification. Michigan Milk
19 Producers is not a member of MEMA, correct?

20 A Michigan Milk Producers is not a member
21 of MEMA. However, the MEMA agency does source supply
22 from them and they provide some amount of balancing to
23 the agency. So while they're not a member, they're
24 cognizant of the day-to-day marketing transactions

1 that take place.

2 Q Now, a question has been posed to the
3 market administrator witnesses, to Ms. Uther, I guess,
4 whether any of the proponents asked for the market
5 administrator to exercise its discretion and tighten
6 the pooling standards in Order 33 within the ability
7 that he has to do that. Do you recall that?

8 A I recall that question, yes.

9 Q Now, and the answer was that it's not
10 been requested, correct?

11 A That is correct. At least to my
12 knowledge it's not been requested.

13 Q Would tightening the diversion
14 standards, touch base standards, diversion standards,
15 plant performance standards, whatever could be done by
16 the market administrator, solve the problem that you
17 have testified is the problem this hearing has
18 addressed that, and that is, attracting milk to the
19 Southern portion of Order 33 where the differentials
20 don't cover by a pittance of the transportation
21 expense?

22 A In our opinion it would not, I guess for
23 two reasons. First of all, just a cost reason. The
24 cost is associated with those ten plants in that part

1 of the geography, and whether diversion standards are
2 tighter or looser doesn't change the diesel price per
3 gallon or the loads or any other cost figure.

4 Q Or the mileage from point to pint?

5 A That's correct. And secondly, the
6 diversion standard changes that the order provides for
7 affect the market as a whole. And the Northwest
8 region and the Northeast region, you know, are not
9 deficit.

10 So while we might tighten the standards
11 some, that might cause some economic milk movement
12 there that wouldn't help the southern region and it
13 wouldn't necessarily help attract milk to that spot.

14 The market administrator's discretion is
15 not plant or region specific in this order or any
16 order. So you can't tailor, if you will, that request
17 to the exact spots that's needed.

18 And I guess the third reason is that we
19 have, you know, seen performance provisions change
20 over the last six or seven years as a result of two
21 hearings, and we still have, you know, this issue
22 coming, so we thought we would look at another
23 approach, the one we have proposed.

24 MR. BESHORE: Thank you. I have no

1 further questions for Mr. Hollon on direct
2 and he's available.

3 JUDGE DAVENPORT: Very well. Let's
4 make him available after the break.

5 (A brief recess was taken.)

6 JUDGE DAVENPORT: We're back on the
7 record. Mr. English?

8 MR. ENGLISH: Thank you, Your Honor.
9 Charles English for Dean Foods, National
10 Dairy Holdings, and Prairie Farms.

11 Good afternoon, Mr. Hollon.

12 THE WITNESS: Good afternoon,
13 Mr. English.

14 CROSS-EXAMINATION

15 BY MR. ENGLISH:

16 Q I feel like I'm doing this show once a
17 year now, but were you in Tampa Bay for the proceeding
18 regarding Orders 5 and 7?

19 A I was not.

20 Q Dairy Farmers of America's interests
21 were, however, represented?

22 A That is correct.

23 Q By Jeffrey Sims?

24 A Yes.

1 Q For the -- I'm sorry -- I keep getting
2 confused by the name of the entity. What is the
3 entity that --

4 A DCMA, Dairy Cooperative Marketing
5 Association, I think was the proponent there.

6 Q But Dairy Farmers of America is a member
7 of DCMA?

8 A It is.

9 Q And DCMA testified on behalf of DFA,
10 correct?

11 A Yes.

12 Q Just as you today are testifying for
13 organizations other than Dairy Farmers of America,
14 correct?

15 A Yes.

16 Q Your testimony today says, for instance,
17 there may be issues that result from a single order
18 approach, and certainly some that could be avoided if
19 a single national hearing were available to deal with
20 the issues in a single setting.

21 Like if we had one single hearing, we
22 wouldn't have had to have a hearing in Tampa Bay
23 followed by a hearing here today, correct?

24 A Yes; that would be correct. That would

1 be an issue we might not have.

2 Q Might not have. We seem to have it now,
3 right?

4 A We've had hearings at multiple sites, so
5 you never can tell.

6 Q I understand. But if we had maintained
7 the idea of a national coordinated price surface
8 through a national hearing, presumably this issue for
9 this proceeding could have been dealt with as part of
10 that, correct?

11 A Yes.

12 Q Does DFA have plans for other hearings
13 of this type, say, in Order 1?

14 A We discuss prices and price surfaces day
15 in and day out. So to say we have specific plans for
16 other hearings, I don't -- I'm not aware of any at
17 this time.

18 Q So you have not made a request for a
19 hearing for Order 1?

20 A We have not made a request for any other
21 order for a hearing of this type at this time.

22 Q Have you requested data of the type that
23 was requested on September 25 of last year for Order 1
24 or Order 126?

1 A We request data of market administrators
2 I won't say daily, but month in and month out. So
3 some of this type of information, yes, we have
4 requested that in other orders for purposes of price
5 examination as well as day-to-day marketing
6 activities.

7 Q Exhibit 13 expressly references the
8 concept of a potential future hearing in Order 33,
9 correct?

10 A Exhibit?

11 Q Exhibit 13, which is the letter dated
12 September 25 -- your own letter dated September 25 of
13 2007 in the first paragraph says we would like this
14 data effectively so we can evaluate it for purposes of
15 a potential future hearing on Order 33?

16 A That is correct.

17 Q Is there a request of that nature out
18 for Order 1 or Order 126, a request for data for the
19 purposes of evaluating for a future hearing?

20 A I'm not aware of anything for Order 1,
21 although there are other agencies in Order 1 who deal
22 with similar-type questions, and we have had
23 discussion with other cooperative partners in 126
24 about the possibilities of having differential

1 hearings.

2 Q And the next sentence in your testimony
3 says such data does not presently exist, and no one
4 has proposed a national hearing.

5 No one has proposed a national hearing
6 would include the Dairy Farmers of America as a
7 national cooperative has not proposed a national
8 hearing; is that correct?

9 A That's correct.

10 Q The results obtained, assuming your
11 proposal is adopted, could they also be obtained by
12 increase of the blend price applicable to those plants
13 in the Southern region?

14 If the blend price plants in the
15 Southern region were to go up relative to other
16 facilities, could the results be obtained that you
17 see?

18 A Are you asking me a mathematical
19 question?

20 Q I'm asking an economic result question.

21 A Well, I would say mathematically if the
22 blend price were increased equivalent to the amounts
23 we've suggested, then the equivalent dollars would be
24 there.

1 Q And going to the question of
2 temporariness --

3 A Again?

4 Q Of temporariness of the Class I
5 differentials, your testimony references, for
6 instance, that a facility in Indiana looks now to be
7 expanded by 2011.

8 And I assume by including the fact that
9 that plant may be expanded in 2011, you're telling the
10 secretary, look, this problem we have may get worse in
11 2011, correct?

12 A That's correct.

13 Q Do you think the temporariness of these
14 Class I differentials will be resolved by 2011?

15 A I don't have an opinion on that.

16 Q What entities are supplying or have
17 agreed to supply that Nestle plant that's going to be
18 producing Nesquick product?

19 A I don't know all of the entities. I
20 know the Mideast Milk Marketing Agency has had some
21 discussions about being in that supply network, but I
22 personally don't have knowledge. It could be DFA. I
23 just don't know it.

24 Q Do you know if MEMA has already agreed

1 to supply that facility?

2 A I'm not familiar with any contractual
3 arrangements or handshakes or word of mouth. Again,
4 there may be. I'm just not familiar with them.

5 Q Is it likely the plant was built without
6 a commitment of a milk supply, given the size of that
7 facility?

8 A I'm not familiar, Chip -- or
9 Mr. English.

10 Q We've known each other for a few years.

11 A This is true.

12 Q If you're not familiar with the supply
13 arrangements for that facility, how do you know
14 whether or not that facility is going to add to any
15 deficit within the Southern region of the Order 33
16 market?

17 A There have been discussions about what
18 types of products it may make. There's been news
19 releases about what types of products it may make.
20 There has been, you know, supplies that have been
21 delivered there. And so whether it's one load or 20
22 loads, that's a new demand. So if we're deficit now
23 and there's more demand, then there's going to be more
24 deficit.

1 Q What's your position within Dairy
2 Farmers of America?

3 A Director of fluid marketing and economic
4 analysis.

5 Q The director of fluid marketing and
6 economic analysis doesn't know what the arrangement is
7 for a new plant, a fluid plant, that's going to be 30
8 million pounds a month?

9 A That's correct.

10 Q Does MEMA have a fuel adjuster in its
11 premium structure?

12 A It does.

13 Q Has that fuel adjuster gone up over the
14 last year?

15 A It has.

16 Q Have you been successfully able to
17 obtain the monies within the premium structure for the
18 fuel adjuster?

19 A To the extent that there's been changes
20 in the fuel adjuster and there's been billings, that's
21 correct.

22 If your question is does the full
23 adjuster cover all the months in which it occurred,
24 that answer would be no.

1 Q How about in the following month; does
2 it catch up?

3 A No.

4 Q In Exhibit 15 -- I'm sorry. Let me go
5 back for a second. Are you -- is MEMA paying your
6 haulers based upon the Exhibit 15, pages two through
7 31, adjusted for fuel increases from 2003 to date?

8 A Yes.

9 Q That's what your truckers are getting?

10 A They're getting a 2.20 base rate and a
11 fuel adjuster that moves from time to time.

12 Q How often does it move?

13 A It's a negotiated arrangement.
14 Sometimes it moves monthly, sometimes it moves less
15 than monthly, sometimes it moves directly in step with
16 the diesel prices. It's not always lock step.

17 Q So the market -- I presume you're trying
18 to maximize your members' profits, correct?

19 A That's always the goal.

20 Q And as part of that goal, you don't
21 simply say to your milk haulers, you know, gee, we're
22 going to pay you that 2.20 plus a fuel adjuster every
23 single month.

24 You presumably, on behalf of your

1 members, negotiate for the lowest possible rate
2 possible, correct?

3 A You negotiate as best you can, but there
4 has to be some element of eye and mind to their
5 business also. So some months there's perhaps a
6 better end result than others.

7 Q But presumably -- I'm not just imagining
8 the fact that trucks that come down from Harrisburg to
9 Washington, D.C. on a fairly regular basis, as you can
10 see by the protests, the fact that as truckers they
11 are not recovering the full amount of diesel cost
12 increases, correct?

13 A I'm not familiar with that.

14 Q Are you aware of major nationwide
15 protests by truckers because they are not able to get
16 diesel price increases?

17 A I've seen that in news reports, yes.

18 Q Presumably DFA doesn't overpay --

19 A I hope not.

20 Q -- for a milk hauler? So the pages two
21 through 31 which are drawn from 2003, have they been
22 updated for actual costs within your system?

23 A This is a template that is used each
24 month. And so something similar to this would be used

1 in any given month.

2 This particular was for the months of
3 May, June, and July to document the base rate at that
4 point in time.

5 Q Do you have a base rate in 2008 that's
6 based upon the months now?

7 A Yes.

8 Q Do you have a base rate for 2007 based
9 upon the base rate then?

10 A Yes.

11 Q Do you have a template for the base rate
12 in 2006 based upon the rates then?

13 A The template has been consistent. I
14 can't tell you it looks exactly like these pages, but
15 the basic data information, haulers' names, numbers,
16 locations, pounds, rates, you know, are all part of
17 our accounting system.

18 Q But you haven't provided this record
19 with the actual rates except five years in the past,
20 have you?

21 A We've provided a base rate and a diesel
22 fuel rate and a method of adjustment, and then we
23 adjusted that to a current diesel fuel rate. So we
24 provided that for the record.

1 Q But you just told me you have templates
2 for 2008 and 2007.

3 A Templates are the same kind of
4 information as is recorded here. And in our schedule
5 for like the MEMA matrix and the computation for the
6 Southeastern model we outline the factors that change
7 in that and what those factors are.

8 Q But you haven't provided the actual
9 templates --

10 A No.

11 Q -- for 2008, have you?

12 A No.

13 Q Turning to page 40 of your Exhibit 15,
14 which is your Southeastern model. Now, I take it the
15 title Southeastern model is a new heading for an
16 exhibit that -- and I just didn't bring it with me, an
17 exhibit that was included in the southeast for
18 potential supplying areas with this chart, correct?

19 A Page 40 is that exact -- is the actual
20 exhibit. I think the only difference is --

21 Q It's called Southeastern model?

22 A Um-hmm.

23 Q Okay. Now, in the Southeastern model as
24 you, yourself, have provided, you have got Wayne

1 County in Ohio to Miami, Florida, correct?

2 A Yes.

3 Q You have not provided as part of Exhibit
4 15 from the Southeast potential supply areas for an
5 acquisition cost to, say, Louisville, Kentucky, have
6 you?

7 A One more time.

8 Q This is -- page 40, Exhibit 15, is a
9 model for determining what class of differentials
10 should be in Miami?

11 A Correct.

12 Q Miami doesn't exactly border any of the
13 jurisdictions that -- the locations in this area,
14 correct?

15 A You are correct.

16 Q You have not provided for this record a
17 document from the Southeastern hearing?

18 A Actually, this is a document from the
19 Southeastern hearing, just used as a template to
20 describe how to do the calculation. It's not meant to
21 suggest, you know, a current differential for Miami.
22 It would be a recipe, is its purpose.

23 Q Precisely.

24 A Okay.

1 Q But you haven't provided a recipe, if
2 you will, for determining what the Class I
3 differential should be in Louisville, have you?

4 A We're not proposing any change in the
5 Class I differential in Louisville or Miami. Again,
6 this is just to verify the example and the
7 methodology. What we have provided is suggestions for
8 other points within Order 33.

9 Q But would you agree that the milk supply
10 to Louisville is very much the same milk supply as to
11 Cincinnati?

12 A There may be similarities, but the
13 differential at Louisville is not open at this
14 hearing. There was no proposals to change that.

15 Q Whether it is open or not, isn't it
16 relevant for the secretary to determine in applying
17 the Southeastern model whether or not the Southeastern
18 model consistently applied to Louisville and
19 Cincinnati would give same or similar results?

20 A I would presume the secretary would make
21 that calculation and judgment if they thought it was
22 appropriate.

23 Q But you haven't provided that for this
24 record?

1 A No. I have not provided that.

2 Q I know you weren't there, but I assume
3 you knew what was happening in Tampa Bay and I assume
4 you studied the record of that proceeding?

5 A Yes.

6 Q What was the mechanism for adopting or
7 proposing for adoption a Class I differential change
8 for Louisville?

9 A The model as described here was
10 calculated for Miami, and then there were calculations
11 made from Miami to Atlanta, from Atlanta to
12 Birmingham, from Birmingham to Nashville, from
13 Nashville to Louisville.

14 So there was a series of absolute value
15 numbers calculated, and then there was judgment
16 applied based on the marketing personnel in the
17 southeast as to whether that absolute value should
18 apply or some smoothed differential surface should
19 apply.

20 Q And as a result of that, Miami to
21 Atlanta to Nashville to Louisville smoothed price --

22 A Yes.

23 Q -- what Class I differential temporary
24 increase was proposed for Louisville?

1 A I don't recall.

2 MR. BESHORE: It's in an exhibit, page
3 48 of 15.

4 MR. ENGLISH: Mr. Beshore, I'm asking
5 him what he knows.

6 MR. BESHORE: He's already testified to
7 it, Your Honor.

8 Q Let's go to page 48, since Mr. Beshore
9 testified that is the difference. Where does page 48
10 tell us what the change was for Louisville?

11 A I don't know that it tells what the
12 change was. It tells us what the current differential
13 of \$2.30 is for Louisville.

14 Q But it doesn't tell us what the change
15 was, the temporary change?

16 A No, it does not.

17 Q Which is what my question was.

18 A And I told you I didn't know.

19 Q And apparently your lawyer didn't know
20 either?

21 A Okay. Yes, sir.

22 Q What about Holland, Indiana; what was
23 the temporary change for Holland, Indiana as a result
24 of the southeast order?

1 A I don't have that number.

2 Q What about Winchester, Kentucky?

3 A I don't have that number currently
4 either.

5 Q What about Madisonville, Kentucky?

6 A I don't have that number.

7 Q What about London, Kentucky?

8 A I don't have that number either.

9 Q What about Somerset, Kentucky?

10 A I don't have that number either.

11 Q Since in your testimony you acknowledge
12 that it would be useful to have a single national
13 hearing if we could, you also acknowledge that federal
14 orders should facilitate quarterly marketing with a
15 coordinated system of prices?

16 A Yes.

17 Q You also acknowledge that federal orders
18 are to recognize handler equity with regard to all
19 product cost?

20 A Yes.

21 Q Since you don't know what the change was
22 in the Class I -- temporary Class I differentials for
23 Louisville, Kentucky, Holland, Indiana, Winchester,
24 Kentucky, Madisonville, Kentucky, London, Kentucky,

1 and Somerset, Kentucky effective May 1 of 2008, you do
2 not have any testimony regarding how your proposal
3 would facilitate orderly marketing ordinances for
4 pricing, do you?

5 A I think that's incorrect.

6 Q You do not know what changes have
7 occurred in the market immediately to the south of
8 where we're sitting today, do you?

9 A I know what the absolute value of that
10 differential is, which is the effective price that's
11 charged. So from that price level I offered
12 comparisons of proposals that we made to test that
13 competitive difference, and concluded that the
14 proposals that we made were reasonable.

15 So whether I know or don't know if it
16 went up five cents or down five cents or up or down 20
17 cents, I know what today's price is and that's the one
18 that counts in each month.

19 Q But don't you also acknowledge that the
20 Southeastern model included a backing off a price from
21 Miami to Louisville that was smooth, correct?

22 A It did.

23 Q So whatever that change was for
24 Louisville, the analysis is not the identical analysis

1 you've now done for Cincinnati, is it?

2 A The backing off of that change for
3 Louisville was to line up with prices in other
4 surrounding orders. So we've accommodated some
5 changes also.

6 Q It was aligning for -- precisely. Isn't
7 that the problem, if you don't know what the change
8 was, you don't know whether you're actually aligning
9 your prices now, do you?

10 A Again, I've suggested to you that the
11 current price is what the charge is, and we've lined
12 up with those current prices in a reasonable manner.
13 So, again, whether they increase by a dollar or a
14 quarter or a nickel, the current price level is what
15 it is.

16 Q But for the southeast, it nonetheless
17 was important to both back off and smooth for the
18 purpose of aligning, correct?

19 A Yes. As we have done also.

20 Q But the alignment was based upon what
21 the prices were in Order 33 at the time you made the
22 change in Orders 5 and 7, correct?

23 A And the smoothing and alignment that
24 we've done in Order 33 is based on the prices that --

1 that is in Orders 5 and 7, less than what the
2 calculations might suggest, similar to the process
3 used in Orders 5, 6, and 7.

4 Q Were you assuming at the time of the
5 Tampa Bay hearing that you could have an Order 33
6 hearing and make changes to Order 33 if you made the
7 changes in Orders 5 and 7?

8 A That was not part of the process, but it
9 certainly could have been discussed.

10 Q But nonetheless, the evidence and the
11 consideration of what price level was set in
12 Louisville was based on the price then and today in
13 Cincinnati, correct?

14 A Yes.

15 Q You've introduced a new concept, at
16 least to me today, called effective differential?

17 A Yes.

18 Q And what I think you've done is you've
19 taken the Class I differential with any temporary
20 increases, plus transportation charges, correct?

21 A Correct.

22 Q And added that together?

23 A Correct.

24 Q Now, we don't have transportation

1 credits in Order 33, do we?

2 A No. That's correct.

3 Q If you had transportation credits in
4 Order 33, say, for the Southern tier, that could be
5 another way of dealing with the problem of getting
6 milk to the Southern part of the region, correct?

7 A It could be, yes.

8 Q But you have not proposed that, have
9 you?

10 A In this proceeding we have not.

11 Q And the economics of transportation
12 credits work differently from Class I differentials,
13 don't they?

14 A You going to rephrase your question?

15 Q The incentive for moving milk, based
16 upon a Class I differential, is different from the
17 economic incentive and signal that is sent from a
18 transportation credit, is it not?

19 A Yes. I would agree with that.

20 Q And the reason it's different is that
21 unlike a Class I differential, the transportation
22 credit payment, especially if it were applied now on a
23 whole load, is basically you pay in and then somebody
24 gets out on the payment of delivering that load?

1 A That is correct.

2 Q Whereas a Class I differential is
3 blended to everybody, correct?

4 A That is -- well, the producers and --

5 Q The producers in the market?

6 A The producers in that location get the
7 benefit of that level of differential.

8 Q But all the producers in that -- get
9 that benefit regardless of whether they're actually
10 shipping any Class I, correct?

11 A Yes.

12 Q So if you're trying to incentivize the
13 delivery of milk to a Class I operation, a
14 transportation credit would be more effective
15 economically than increasing the Class I differential
16 the same amount?

17 A Could your question be if those you
18 represent were supporting and proposing a
19 transportation credit might we consider supporting it?

20 Q It wasn't quite my question. But, you
21 know, the question I'm getting at, isn't the economic
22 incentive of a transportation credit more direct for
23 getting milk to where it's needed than raising the
24 Class I differential?

1 A Yes, it would be. I would point out
2 that it's been somewhat difficult to convince the USDA
3 of retaining transportation credits. But the general
4 philosophy that you outlined, I would agree with.

5 Q What I'm getting at is, when you talk
6 about comparing a Class I differential in a Southern
7 tier of this Mideast Order subregion milkshed to an
8 effective Class I differential that includes a
9 transportation credit paid on the entire load in Order
10 5, isn't it a somewhat apples to nonapples comparison?

11 A If you continue to slice and dice,
12 perhaps the answer is yes. If you're getting to
13 comparing an absolute price and an absolute price, I
14 would say that the comparison that we made is valid
15 for measuring competitiveness.

16 I really would be surprised to say any
17 processor that I'm used to dealing with would say some
18 part of their price is less significant than another.
19 They tend to see the total as what their bill
20 represents, and they usually have questions about
21 that.

22 Q The transportation credit assessment for
23 Order 5, the area immediately south of Cincinnati, I
24 think you were here today for the testimony from the

1 Order 5 witness, correct?

2 A Yes.

3 Q That did not actually change on May 1?

4 A That's correct.

5 Q Do you know when that assessment last
6 changed?

7 A I can't tell you exactly, but I think it
8 went from seven and a half cents up to 15, you know,
9 three years ago maybe.

10 Q And it was seven and a half cents at the
11 time of Federal Order reform?

12 A I think that is correct.

13 Q So that has gone up around seven and a
14 half cents, and Louisville's gone up some amount that
15 you don't know since Federal Order reform?

16 A Yes.

17 Q Have you looked at statistics regarding
18 production in the marketing area versus sales in the
19 marketing area?

20 A Yes.

21 Q Would it be fair to say that production
22 in Ohio, Indiana, and Michigan from 2000, 2008 is up,
23 say, 28 or 30 percent?

24 A I don't have an exact number, but in

1 those states production has increased.

2 Q Fairly significantly?

3 A Yes.

4 Q Have you looked at packaged milk sales
5 for that same time period in this region?

6 A Not individually and not to any great
7 depth, but I'm sure you have a number you'll portray
8 to me.

9 Q Would it surprise you to know package
10 sales in the Order are down just shy of nine percent
11 since 2000?

12 A No. But if you want to look at maybe
13 some of the individual data to see if there are
14 reasons it might, you know, stand out, like changes in
15 the economy recently may affect that point-to-point
16 comparison.

17 Q You mean a change in economy where
18 perhaps in a recession consumers aren't likely to buy
19 as much milk?

20 A At this point in time, yes.

21 Q Which may be relevant to whether or not
22 you want to increase Class I differentials during a
23 time that we're in a recession?

24 A There's lots of things that impact a

1 milk price. That would just be one of them.

2 Q Did you consider in putting together
3 this proposal lowering the Class I differentials in
4 the northern region in order to achieve the same
5 economic effect of moving the milk to the Southern
6 region?

7 A We discussed a wide range of proposals,
8 and certainly you can't discuss a wide range of
9 alternatives without considering that one, so we did
10 talk about it.

11 Q Under what conditions would you consider
12 lowering the price?

13 A I'm not sure, other than talking about
14 it, there would be any.

15 MR. ENGLISH: I have no further
16 questions at this time.

17 JUDGE DAVENPORT: Other cross of this
18 witness? Mr. Vetne?

19 MR. VETNE: John Vetne representing
20 United Dairy. Good afternoon, Mr. Hollon.

21 THE WITNESS: Good afternoon,
22 Mr. Vetne.

23 CROSS-EXAMINATION

24 BY MR. VETNE:

1 Q At some point I think in further direct
2 examination by Mr. Beshore you gave an explanation as
3 to why you did not include some of the
4 out-of-marketing area supplies pooled on Order 33 to
5 the west in the proponent's designation of available
6 supply.

7 Let me see if I -- I'm going to
8 paraphrase my recollection and see if that's correct.

9 A Okay.

10 Q You did not do so because those supplies
11 are even further away from the Southern tier of the
12 Mideast marketing area, and therefore any calculation
13 that you made by the model that you've used would only
14 result in higher prices or higher annualized prices
15 for the south?

16 A Result in a higher proposed
17 differential?

18 Q Yeah.

19 A Yes.

20 Q And that was the reason?

21 A That was one of the reasons, correct.

22 Q Okay. Now, you're familiar, I assume,
23 with the concept and term of stair stepping milk?

24 A Yes.

1 Q And let's see if we agree on what that
2 means. Assuming that milk flows from north to south,
3 which it does in the central part of the country,
4 correct?

5 A Yes.

6 Q You take milk from one supply area, move
7 it south a little bit to a demand area which frees up
8 the milk supply in that demand area, you can take that
9 freed up milk and move it to another Southern demand
10 area, correct?

11 A Correct.

12 Q The data that was prepared by the market
13 administrators at your request, for reasons you've
14 described, did not include Illinois or Wisconsin milk
15 as part of the available supply to the northern sector
16 that you've described, but nevertheless would not
17 those supplies be available to -- and are made
18 available to serve the needs of distributing plants in
19 the north, thereby part of that available supply,
20 thereby freeing up the northern supplies within Order
21 33 to stair step to the central part, which in turn
22 frees up supplies to stair step to the Southern part?

23 A The scenario that you described could
24 happen and perhaps happens from time to time. But at

1 the end of the day, if you're trying to set a
2 differential price structure up, I'm not sure you
3 would want to use that model, because if you ended up
4 with the furthest away stair step as your base in
5 point, I think that you would end up with a price
6 level that would encourage uneconomic movement of
7 milk.

8 Q Nevertheless, you do stair step -- DFA
9 does stair step to maximize efficiency?

10 A If we can determine that doing that does
11 maximize efficiency, that happens. And sometimes when
12 you perhaps make the entire trip because your
13 transport equipment or whatever efficiencies that
14 you're working on gets maximized that way.

15 Q DFA stair steps on a regular basis,
16 correct?

17 A No.

18 Q Nowhere in the country?

19 A Are we talking about everywhere in the
20 country?

21 Q I'm talking about DFA.

22 A On a day-to-day basis we try to move
23 milk as efficiently and as economically as we possibly
24 can using a number of logistical tools, and sometimes

1 that involves stair stepping milk, sometimes it
2 involves moving milk distances other than you might
3 consider stair stepping.

4 Q Since the changes to the Appalachian and
5 southeast markets took effect, has DFA or MEMA
6 supplied milk by diversion off of the Order 5 or Order
7 pool to distributing plants in the Southern tier?

8 A I'm not familiar with the
9 day-to-day-to-day milk movements, so I don't know if
10 that's -- if that has happened.

11 I would guess there have been times when
12 that has happened, but I'm not -- I don't know on a
13 day-to-day-to-day-to-day basis.

14 Q Would you not agree with me that there
15 is an economic incentive to do so to the maximum
16 extent possible, therefore drawing for the benefit of
17 your members the blend price from Order 5 and 7 and
18 forget satisfying the need for Southern Order 33?

19 A Was your initial question milk pooled on
20 Order 5 and 7 diverted to distributing plants in --

21 Q Southern --

22 A -- the Southern tier?

23 Q Yes.

24 A To the extent that you did that for

1 requested Class II you might be able to do that.
2 Obviously if milk got in to Class I it would be pooled
3 back into Order 33.

4 Q Right.

5 A So feasible, yes. Technically possible,
6 yes. You know, opportunities, perhaps not many. I
7 think one of the Dean exhibits detailed classification
8 of milk in the Southern tier and there wasn't a whole
9 lot of Class II, III, or IV milk there.

10 Q My question was do you not have an
11 economic incentive to do so to the extent possible;
12 that is, you know your customer's Class II needs, you
13 could identify a client in Cincinnati that has Class
14 II, and we're going to send -- we're going to satisfy
15 that need of a request for Class II from our Order 5
16 supply?

17 A Theoretically, you know, I would say
18 that could be possible. Day-to-day-to-day-to-day
19 basis it may not be as feasible as it sounds.

20 Q Possible, and there is an incentive to
21 do so?

22 A Yes. Possible and incentive. But not,
23 you know, necessarily on a day-to-day basis is it a
24 logical thing to do.

1 Q Is it not something that you instruct
2 the various divisions or regions of DFA to do, how to
3 maximize that kind of opportunity?

4 A I think on a day-to-day basis we attempt
5 to be as economic as we possibly can. And that would
6 include, you know, trying to maximize revenue where
7 it's possible to do.

8 Q My question was, your role as economic
9 analyst includes advising the local units or the
10 regional units of DFA --

11 A Yes. From time to time that's right, we
12 look at those possibilities to see if they're doable
13 or not. And then we have to get the answer from the
14 dispatchers to see if they can make it work.

15 Q By the way, MEMA, Mideast Milk Marketing
16 Agency, what percentage of MEMA milk does DFA
17 represent?

18 A We're the largest member in MEMA and
19 represent the largest amount of milk. I don't think
20 I'm interested in talking about the exact percentage
21 that we represent of the agency.

22 Q Is the milk marketed through MEMA, that
23 is milk of DMS producers, Dairy Marketing Services,
24 that is not membered milk of any of the cooperative

1 organizations?

2 A Yes.

3 Q That DMS member milk is marketed through
4 DFA, correct?

5 A Yes.

6 Q Can you share for the record what
7 portion of the MEMA supply that comes from DFA efforts
8 that is DFA member milk versus DFA nonmember milk?

9 A No.

10 Q You cannot because you don't want to, or
11 because you don't know?

12 A I decline to do so.

13 Q You referenced the Cornell University
14 U.S. dairy sector simulator. That's the Cornell model
15 upon which the post reform Class I differentials were
16 primarily based, correct?

17 A Correct. I would say that was the --
18 that was the initial perhaps modeling effort. I think
19 the differentials were modified by the industry and by
20 perhaps USDA to some extent.

21 Q There was some tweaking of it, option
22 1-A versus 1-B, but that was the fundamental approach?

23 A Yes. I would agree that was
24 fundamental. And it was tweaking of, as you

1 mentioned, 1-A and 1-B and further tweaking I think
2 before it got to 1-A and 1-B.

3 Q Could you describe the ways in which the
4 model that you have identified is used for the
5 southeast Appalachian and Florida markets, how that
6 model differs from the model used by Cornell in the
7 dairy sector simulator?

8 A The dairy sector simulator uses a
9 classical linear programming model at its heart. And
10 it would be -- milk supplies were aggregated around
11 the country, some 200 locations; demand points -- I
12 don't remember the number, but there were many demand
13 points and there was cost of assembling product, cost
14 of distributing product.

15 If I remember right, it did not consider
16 demands for Class III and IV product. The Cornell
17 model only considered demands for Class I and II
18 products and established a price surface that would be
19 representative of meeting those demands with no
20 production, you know, consumption processing costs and
21 distribution costs.

22 Q And it modeled it in the most efficient
23 way possible?

24 A Well, that may be debatable, but that

1 was its intent, I think.

2 Q The model did not account for competing
3 supply agencies --

4 A Right.

5 Q -- that exist in the real world?

6 A It did not account for, in essence,
7 day-to-day business transactions, you know, sales to
8 nonfluid use outlets.

9 Q Am I correct that in the model you
10 described that you espouse that was used for the
11 Southeast and which you now propose to use for the
12 Mideast, would start with the largest supply area
13 having the lowest price and move from that point out
14 to where demand is greater? Am I correct?

15 A I'm not sure I follow you, John.

16 Q All right. You've identified various
17 supply points?

18 A We identified 11 different counties that
19 could potentially be reserve supplies for the cities
20 in the Southern region with processing capacities.

21 Q Okay. The model that you used, whether
22 there's one supply point or, you know, 11 or 20,
23 starts with a supply point and then moves up in price
24 until you get to a demand point, and you look and see

1 which supply point will most efficiently serve that
2 demand point?

3 A The model identifies supply points and
4 the acquisition cost as defined by a rate per
5 hundredweight per mile reduced by 80 percent to an
6 acquisition point, and then you select the least cost
7 acquisition point from among -- in this particular
8 case, using the Southeastern model, there are six
9 supply points. Is that the same description that you
10 offered me?

11 Q Supply point to demand point, the most
12 efficient between the two. I think it is.

13 A I have to admit I'm somewhat skeptical
14 to agree with you, but --

15 Q I'm a lawyer.

16 A -- it does sound --

17 Q Well, would you -- are you aware that in
18 the Cornell dairy sector simulator that the price in
19 the country or the model produced the lowest price in
20 the country someplace up in North Dakota?

21 A I have to admit I don't remember the
22 point. But the way the model works and the way they
23 published the results, there would be someplace that
24 would be the lowest -- the lowest price point. I just

1 don't remember where it was.

2 Q You do not recall that the lowest price
3 point was not a place where there was a lot of milk
4 produced, but a place where there was very little
5 demand for milk?

6 A If it was North Dakota, your description
7 would be -- would fit it.

8 Q Now, you're also hopefully a little bit
9 aware of the demand in West Virginia. Are you aware
10 that the population of West Virginia is less than that
11 of metropolitan Cincinnati?

12 A I don't have the exact numbers, but I am
13 aware that West Virginia is a lower population point.

14 Q And your model does not factor in demand
15 at one location by the population that's going to
16 consume the milk versus demand in another location,
17 does it?

18 A It does not.

19 Q Would you agree with me that when one is
20 a buyer of milk or even a seller of milk, is looking
21 to supply a location, that the farm that is closest
22 presumably goes to that location first, and if that's
23 not enough milk, then farms that are a little bit
24 further away would go to that location, and if that's

1 not enough you can keep going out until you get your
2 supply?

3 A That's a reasonable theory, yes.

4 Q Now, your model is based on the farthest
5 out milk meeting the needs of a demand point and
6 doesn't account for the intermediate supplies of milk
7 between the supply point and the demand point, does
8 it?

9 A It looks at potential reserve supplies,
10 and those that are defined as large production points
11 in the area that could be reserve supplies and what is
12 the distance or acquisition costs to the demand
13 points. That's the principal that it operates under.

14 Q Yes. Now, the Cornell model didn't do
15 that. It looked at the closest supplies supplying
16 that area first, and by the way the model was built,
17 did not go further unless the demand point needs were
18 unmet?

19 A Not necessarily true.

20 Q You don't think that's the way the dairy
21 sector simulator worked?

22 A Typically the LP model is maximized for
23 the whole, so you -- the method that you've described
24 works well when you're at one point that's a classic

1 I'm the only dispatcher in the world viewpoint, and
2 the dispatcher to the next of me that doesn't count,
3 but you when you put the two of them together you get
4 a slightly different answer, and when you add a third
5 and a fourth, that's the way the Cornell model
6 worked. So you wouldn't necessarily come up with the
7 exact conclusion that you just came to.

8 Q Okay. Part of the consideration that a
9 supplier such as DFA or MEMA take in to account when
10 you sell milk is we've got this milk supply here,
11 we've got this market opportunity, you know, we've got
12 a milk supply at point A, we've got a market
13 opportunity at point B, we have an alternate market
14 opportunity at point C.

15 Now, if point A is your closest
16 available market, you're going to go to point A with
17 that milk unless you can get more -- you're going to
18 go from point A to point B unless you can get more
19 going to point C, correct?

20 A When you minimize for the whole, you
21 don't always get that answer.

22 Q A producer nevertheless, or a supplier,
23 normally, if he wants to stay in business, will
24 transport his milk to the nearest outlet?

1 A That wasn't the question that you asked
2 me. You asked me when DFA looks at a branch of
3 customers, A, B and C, and has supply, do you go A to
4 the closest B to the closest C to the closest.

5 And my answer was when you're minimizing
6 or maximizing profit or minimizing costs for the
7 whole, you don't always make the A to the closest
8 supply or B to the closest supply.

9 Sometimes with a whole A might go
10 further than the closest supply, but for the whole
11 system you're trying to maximize your profit.

12 Q Okay. Let me see if I can get back to
13 the question that -- my follow-up question. If you
14 have milk supply at point A, and no plants around
15 until you get to plant B, the value of the milk supply
16 delivered to plant B is no different than point A,
17 because it's got to get to plant B anyway.

18 Is there any reason in your concept of
19 how milk should be priced to include in regulated
20 prices the cost of transporting from supply point A to
21 the closest plant B if that's where the producers
22 would go anyway, there is no competing source?

23 A I think I got lost in your example.

24 Q Point A is a milk supply, point B is the

1 closest plant.

2 A Yep. And that's the whole universe,
3 that's the whole world, that's all that there is.

4 Q That's the whole universe to start
5 with. Milk is going to move from point A to point B?

6 A Yes.

7 Q From supply point A to plant point B?

8 A If that's the whole universe, that's
9 it. If you've got something to sell, that's the only
10 place --

11 Q Right.

12 A -- you've got to sell it then --

13 Q Right. Whatever is at point B --

14 A Yes.

15 Q -- it doesn't have a lower value --

16 A Right.

17 Q -- at point A because --

18 A It would --

19 Q -- there's nothing there.

20 JUDGE DAVENPORT: One at a time,
21 please.

22 MR. VETNE: I'm sorry.

23 Q Now, the -- I'm working up to the model
24 that you espouse, and maybe this is what you do and

1 maybe not. That's what I'm trying to find out.

2 If you've got an alternative market at
3 plant C, the incremental extra value at plant C is
4 only the difference between what plant B is willing to
5 pay and plant C is willing to pay.

6 A Okay.

7 Q So it's not the cost from the supplier,
8 it's the extra cost from plant B to plant C that's
9 extra mileage.

10 A Okay.

11 Q Am I correct? That's how a seller of
12 milk would measure -- include in consideration of
13 measuring market opportunities?

14 A Well, again, I think I described what we
15 did and how we do it and what we did on a broad basis,
16 so I think I would have to leave you to your own
17 conclusions from there.

18 Q Do you have milk that you market on
19 occasion as distress milk from Order 33, something
20 that you can't find a home for that you have to travel
21 a great distance to find a home for?

22 A Yes. On occasion that happens.

23 Q And whether or not you have a distress
24 load, you tend to profit more by selling it to the

1 plant closest to the supply usually; is that correct?

2 A Well, all things being equal, you would
3 minimize your transportation cost, that plant may not,
4 you know, offer you a return or may offer you a
5 product that you have inventory exposure to down the
6 road, but distress milk you seek to market it as
7 efficiently as you possibly can.

8 Q In the southeast part of the Mideast
9 market there are milk supplies but not enough. Is
10 that your testimony?

11 A Yes.

12 Q Would it be true to say that the milk
13 supply that is there that may not be enough is going
14 to be marketed to those plants anyway because it's the
15 closest market?

16 A Some of those milk supplies as shown in
17 the record find their way into Orders 5 and 7.

18 Q Yeah. And there's some -- the amount of
19 milk that can go to Order 7 is limited by the demand
20 of those plants?

21 A Yes.

22 Q When those plants are full you have to
23 find a home for that milk?

24 A Yes.

1 Q And whether it's a cheese plant in
2 Wisconsin or a bottling plant in Cincinnati, it's got
3 to go someplace?

4 A It's got?

5 Q It's got to go someplace?

6 A Yes.

7 Q Your proposal would increase prices not
8 just for those producers that are already close to the
9 Southern tier plant demand, but also for that supply
10 that is coming a bit farther, correct?

11 A To the extent that a load of milk from
12 Michigan would deliver to a plant in Cincinnati --

13 Q Yes.

14 A -- it would draw the higher
15 differential?

16 Q Yes.

17 A Is that your question?

18 Q That's my question. It would not
19 distinguish between that milk that you're having
20 difficulty moving to the south and that milk that
21 you're currently moving without difficulty?

22 A Yes.

23 Q And transportation credits which you
24 described as more direct or more targeted would --

1 could address the problem of moving just that extra
2 milk that's needed without increasing the price of the
3 milk that's already there?

4 A I would not argue with you, except
5 that's a little bit of a strong end because that, you
6 know, option doesn't exist. But in theory you're
7 right, it would target more the cost to the issue.

8 Q And the option doesn't exist because
9 it's your perception that USDA is not receptive to
10 that kind of proposal?

11 A Yes. I would say we would be supportive
12 of that kind of proposal if we thought we would -- it
13 would be accepted.

14 Q In your mix of solutions to what you
15 view the problem is, you said you talked a lot of
16 things?

17 A Yes. I'm not necessarily interested in
18 sharing them all with you, but we did discuss
19 alternative solutions.

20 Q That's fine. Did you talk about an
21 adjustment only to the blend price but not to the
22 Class I price?

23 A I don't think so.

24 Q Are you aware that the statute now

1 allows that, allows the blend price to be adjusted at
2 a different rate or different level than the Class I?

3 A Yes, I'm aware of that. I'm not --
4 there's not a case where it happens. I'm not even
5 sure if it's been proposed or heard at a hearing, but
6 I do agree with you that the statute does allow for
7 that.

8 Q You propose here and as was proposed for
9 the southeast and Appalachian Order market a temporary
10 Class I price increase, Class I differential increase
11 in some zones.

12 How does that differ from -- the word
13 "temporary" in this context differ from any ordinary
14 amendment that the secretary makes to his marketing
15 orders?

16 A I think the difference lies in the fact
17 that if in some point in time there is a national
18 hearing or a broader hearing that might consider more
19 geography, that these adjustments would be erased and
20 whatever new Class I differential surface might be
21 proposed would become the prevailing price level.

22 Q Okay. But any conventional amendment
23 also is only as good as the next hearing in which it
24 might also be proposed to be amended?

1 A I would agree with that.

2 Q Do you have in mind in use of the word
3 "temporary" an expectation that at some point Cornell
4 will come up with a revised U.S. dairy sector
5 simulator that provides new supply points, new demand
6 points, changes in production from which a new Class I
7 price surface could be modeled?

8 A Yes.

9 Q Is that what you meant by temporary,
10 until that event happens?

11 A No.

12 Q Okay. Is there a sunseting event that
13 you have in mind in use of the word "temporary"?

14 A I do not have a particular sunseting
15 event in mind, but you described one that could be.

16 Q So this temporary change could last a
17 year or a decade?

18 A Yes. Or until the next hearing, as you
19 outlined.

20 Q All right. In your exhibits you provide
21 some hauling -- some specific hauling rates and
22 scenarios for 2003?

23 A Correct.

24 Q Would it be correct to say that the 2003

1 hauling rates were not much different than they had
2 been at the time the dairy sector simulator was
3 created, in other words, late -- or by 1997, 1998?

4 A On page 35 it just shows diesel fuel
5 costs. You could certainly say that in 2000 diesel
6 fuel costs were much closer to 2003 than today's.
7 Don't have any data -- there is data, but I just don't
8 have it prior to 2000.

9 And then you would have to say that
10 simply in transport cost what about the cost other
11 than fuel, how likely were they.

12 And, lastly, the -- I think it's pretty
13 well accepted that the dairy prices -- the Cornell
14 model drew on data that to a large extent was based in
15 '96 and '97 with some I think updates in milk
16 production numbers to '98.

17 So you're going back a good deal of
18 time. So I think the closest I can answer your
19 question is that at least in 2000 the fuel prices were
20 much the same.

21 Q Much the same as they were in 2003?

22 A Yes. But the Cornell model again drew
23 on data that predated 2000 by two to four years.

24 Q In the various tables, pages two through

1 31, under the column actual mileage to handler,
2 there's a lot of different numbers there.

3 Is that mileage for a particular load
4 from a particular location, you know, or a pickup
5 route to the handler on that date?

6 A We've maintained a wide range of mileage
7 data. And I can't tell you point by point is this a
8 load that's always consistent, is this a one-farm
9 pickup, is this a county center, for example, for a
10 load.

11 But I can tell you that the mileage
12 that's used is something that's agreed to between, you
13 know, the DFA or the other members of MEMA and the
14 transporter and the hauler. So let's just go to page
15 seven.

16 Q All right.

17 A And the very first line, the Holmes
18 cheese, 40.8 miles. I can't tell you if that
19 represents a single farm, if that represents -- that
20 happened to constitute a load, or if that represented,
21 you know, five farms and it was some weighted average
22 center. We do those a number of ways.

23 But I can tell you that 40.8 would have
24 been a mileage figure that the agency members and the

1 hauler would have agreed was a fair representation of
2 the miles to transport that load.

3 Q These are individual loads? The line
4 entries here are individual loads; is that right?

5 A I don't think they're individual loads.
6 I do not -- I cannot tell you if they're individual
7 loads or maybe if they're a collection, if they
8 represent a month's worth of this particular route
9 that went from point A to point B.

10 Q So it could be average mileage to that
11 buyer for that month?

12 A Yes. It could be that. And it could be
13 an individual load.

14 Q An actual -- it could be highway miles
15 or it could be negotiated miles?

16 A Well, the negotiated miles would be
17 based on road miles, but it would be an agreed to --
18 both the payor and the receiver would agree that in
19 that case 40.8 was a fair number to reimburse for.

20 Q Even if the road miles --

21 A Even if it were 39 or 41.

22 Q Yes. All right. On page 19 and 20 of
23 your statement you refer to some measure of
24 competitive impact in distribution costs. Let me see

1 if I understand what you did there.

2 A Yes.

3 Q In your measurement, competitive changes
4 or competitive advantages or disadvantage, you
5 measured the mileage from one plant location to the
6 mileage of a competitor plant location to --

7 A Did you mean to say the mileage from one
8 location to another location?

9 Q Yes.

10 A Okay. That's what I thought you meant,
11 but it wasn't what you said.

12 Q Okay. To a competitor's location. And
13 applied the cost of transporting packaged fluid milk
14 to those locations?

15 A Based on the equation on page 20, which
16 includes, you know, not only mileage but wage rates
17 and the package of costs as included in the dairy
18 policy simulator model.

19 Q Everything that goes in to the cost of
20 transporting packaged fluid milk?

21 A Yes.

22 Q Packaged fluid milk only cost?

23 A Yes.

24 Q And packaged fluid milk only costs are

1 greater than bulk fluid milk hauling costs?

2 A Well, you get some debate on that from
3 time to time.

4 Q The general consensus is that it's a
5 little higher?

6 A Yes. I would accept that.

7 Q Okay. And if you found that the rate of
8 recommended price change was lower than the attributed
9 packaged milk hauling cost between the two locations,
10 that was the basis for your conclusion that your
11 proposal would not create a competitive disadvantage?

12 A In terms of -- competitive
13 disadvantage? Continue your sentence.

14 Q Competitive disadvantage in the
15 distribution of fluid milk. Page --

16 A Yes.

17 Q -- 19 --

18 A Yeah.

19 Q -- going to page 20 you talk about --

20 A Yes.

21 MR. VETNE: Thank you. That's all I
22 have.

23 JUDGE DAVENPORT: Other cross?

24 Ms. Taylor?

1 MS. TAYLOR: Good afternoon.

2 THE WITNESS: Good afternoon,

3 Ms. Taylor.

4 CROSS-EXAMINATION

5 BY MS. TAYLOR:

6 Q I have a few technical clarification
7 things first. On your testimony in page 14 we see you
8 selected May 12 through July 28, 2003 as the base time
9 period when you went to compute the MA mileage rate
10 and you used that rate when you inputted in to what
11 you were calling the Southeastern model?

12 A Yes.

13 Q I just wanted you to clarify why exactly
14 you picked that time frame instead of any other time
15 frame.

16 A Okay. In Exhibit 15 page -- wherever
17 the graph is, page 35, when we looked at the
18 adjustment that we're making is primarily reflective
19 of fuel cost changes, so we attempted to find a time
20 period when fuel cost changes were at a minimum.

21 That's hard to find, but that appeared
22 to be one spot where they were as flat as we could
23 find in that time period. So we selected that time
24 period, went back to the EIA numbers, averaged the

1 diesel fuel cost during that time period, and went
2 back to our database to look for a base haul rate. So
3 we selected that for that reason.

4 Q On page 15 of your statement you talk
5 about a surcharge for July, most recent year, a
6 surcharge of 58 percent, a fuel surcharge? This is
7 page 15 of your statement.

8 A Yes. Third paragraph. Okay.

9 Q My first question is, how does the
10 Mideast marketing -- Milk Marketing Agency come up
11 with this surcharge? How do they get 58 percent
12 versus --

13 A Prices that are charged by fuel sellers.

14 Q What's their base time frame? There's a
15 surcharge, so there must be a base point.

16 A The agency uses a base period that goes
17 back to almost the same time period in May. At that
18 time period in May there were one or two percent of --
19 there was a one or two percent fuel surcharge in the
20 agency, so it's based on a period it goes back to that
21 same time frame.

22 Q Then you just state that in 2008
23 year-to-date average surcharge of 47 percent. That's
24 from -- just a regular average from January to July?

1 A It is. There's a monthly January,
2 February, March, April, May, June, July surcharge.
3 And had we chosen July, that would have been -- it
4 might not have been the absolute highest, because
5 prices have tailed off a little bit, but we felt like
6 we didn't want to set our base rate on the absolute
7 highest fuel surcharge, so we picked an average of
8 '08.

9 Q Do you happen to know what the range is
10 for that same time period?

11 A Yes. I need to refer to my notes, but I
12 can tell you. (Peruses documents.) Maybe.

13 Q That's okay. If you don't know off the
14 top of your head --

15 A I thought I might be able to get it.
16 For that time period the surcharge ranged from a low
17 in January of 35 percent to a high in July of 58
18 percent. Monthly, January 35, February 35, March 44,
19 April 46, May 52, June 57, July 58.

20 Q Okay. Thank you.

21 A You're welcome.

22 Q Also on your Exhibit 15, which is your
23 compilation of exhibits, on page 48 where you list out
24 the current differentials, what you computed out of

1 your Mideast Marketing Agency matrix and your
2 Southeastern model --

3 A Yes.

4 Q -- can you please -- I have
5 unsuccessfully attempted to locate where this 2.83,
6 for example, for Cincinnati, Ohio, how that is
7 computed from the numbers in your previous tables.

8 A Okay. Go to page 39.

9 Q Yes.

10 A Are you familiar with how those four
11 tables come together?

12 Q I figured that part out, yes.

13 A Okay. Look at the two columns that
14 would be of Cincinnati. There would have to be two
15 handlers that have a little different physical
16 location, and the minimum increase, in this case, of
17 63 cents added on top of the current 2.20
18 differential, you get 2.83, which that's -- I should
19 have pointed that out.

20 Q Okay. Thank you. That's helpful when
21 we're trying to figure that out back in D.C.

22 A I understand.

23 Q All right. Some other questions. Also
24 on -- then back to page 48 of your exhibits, can you

1 explain exactly how you came up with 2.15 or 2.40,
2 given your two models that you've also listed and what
3 those models came up? I mean, how did you pick those
4 final numbers?

5 A Well, pricing is a hard science. So the
6 science part, the numbers are on the page, and so
7 calculations using the two models, the minimum matrix
8 in the Southeastern model, I think given the
9 Southeastern hearing the term "professional judgment"
10 was applied.

11 And so we looked at the day-to-day
12 marketing personnel, we looked at what the two -- the
13 MEMA matrix in the southeast model derived at, and we
14 looked at what the changes -- what the resulting
15 differential was in Order 5, the closest physical
16 location, and we simply arrived at the numbers that
17 are on the -- that we proposed.

18 So there's not an algebraic formula or a
19 Cornell model that spit out those particular numbers.
20 They were based on professional judgment and the data
21 that we had.

22 Q Okay. In Indiana in your 2.15 zone --
23 I'm not known for my geography of Indiana, but you
24 propose it to be 2.15, and then slightly below that

1 you have a 2.40 zone, and then in Kentucky and the
2 Southern part of Indiana that was part of the
3 Appalachian order is a 2.30 zone.

4 Do you foresee any alignment problems
5 when you have a 2.40 zone in between a 2.15 and a
6 2.30?

7 A Well, the 2.30 at Louisville, in our
8 discussion we discussed the term "effective
9 differential" which Mr. English questioned me about.

10 And so our thought process was that the
11 Louisville differential of 2.30 plus the 15 cents
12 that's been part of the transportation credit
13 balancing assessment, which is a very real day-to-day
14 price.

15 And the assessment has not yet been
16 waived at any time in its history with the former 2.45
17 price, and so 2.45 and 2.40 we thought were reasonably
18 aligned.

19 Q But if the 2 -- say the transportation
20 credit was waived in a month, then it would be in
21 effect a differential of 2.30 there?

22 A It would be. That's correct.

23 Q And I wanted to touch on the points
24 Mr. English brought up, that these location

1 adjustments to pay producers, and in the southeast and
2 Appalachia the transportation credits are payments or
3 credits to handlers?

4 A Yes.

5 Q So should another Order transportation
6 credit really factor in to this Order's location
7 transportation credits?

8 A That's certainly a fair question. And I
9 would answer you the same way we answered Mr. English,
10 is that at the end of the day there's an effective
11 price that's there that's paid by the handler.

12 In Order 5 it goes here and it goes
13 here, but I think if you asked any of them do they pay
14 it, I think they would all say yes. Performance is
15 part of the total price.

16 So when we're looking at price alignment
17 and competitive issues, the cost of milk in Louisville
18 reflects that full cost just like the cost of milk in
19 Cincinnati would reflect the full cost of the
20 differential that we proposed. And that seems to be a
21 reasonable alignment.

22 Q And can you expand on how you think
23 these changes in the Southern region of the Mideast
24 Order will aid the deficit situation there that you

1 all purport?

2 A Certainly. If there's some increase in
3 blend value, producers in the local area may respond
4 to that price-wise.

5 And I don't have any direct information
6 as far as what their day-to-day cost of production is,
7 but there will certainly be an increased price, will
8 have some opportunity to draw increased local milk
9 supplies; and secondly, as we have shown, a
10 significant amount of milk supplies in that area comes
11 from outside the Southern region, and so there would
12 be dollars available to help offset that
13 transportation cost of moving milk into that zone so
14 it would make it more feasible to supply that area.

15 Q I think my final question will be -- I'm
16 not sure if you are aware, but tomorrow there will be
17 rules of -- supplemental rules of practice published
18 in the Federal Register, and it will be effective
19 tomorrow, making the time frames and guidelines
20 outdated by the -- mandated by the 2008 farm bill
21 effective?

22 A I'm aware there was potential for it to
23 happen. I've not read the regs yet, so I don't know
24 if -- obviously they're not there yet, but I have not

1 read the regs to see what they say, but I have a
2 general understanding of what I think is going to
3 happen.

4 Q Well, if I go under the assumption that
5 after the close of this hearing when briefs are due,
6 the department has 90 days to issue a recommended
7 decision.

8 You want this handled on an emergency
9 basis, but if the department is under those
10 guidelines, would that satisfy your --

11 A Yes.

12 MS. TAYLOR: Okay. That's it for me.

13 A And we would be willing to comply with
14 whatever briefing schedule the department decided
15 needed to be met.

16 MR. RICHMOND: Just a few more for you,
17 Mr. Hollon. Bill Richmond --

18 THE WITNESS: Yes, Mr. Richmond.

19 MR. RICHMOND: -- Dairy Programs.

20 CROSS-EXAMINATION

21 BY MR. RICHMOND:

22 Q Would you say that the recent changes
23 that have been put in effect in Appalachian in terms
24 of increasing differentials are some of the biggest

1 factors if proposing these changes in the Mideast
2 Order?

3 A Yes. That is a large factor.

4 Q Have you seen any notable change in
5 bargaining conditions since implementation of those
6 rules, I mean since May?

7 A We have looked at various supply
8 arrangements that we have and looked at the various
9 price relationships, and in some cases we had to
10 modify our own supply arrangements because the changes
11 in price relationships didn't make them pay.

12 So where we might have made a prior
13 decision to go to the left, now we made a decision to
14 go to the right. And the situation is directly
15 attributable to some of those price changes which have
16 affected some of our day-to-day milk supply situation.

17 And I've had producers who have told me,
18 well, a friend who lives in Kentucky now gets more of
19 my milk maybe delivered to that location.

20 In fact, somebody today told me that. I
21 can't tell you how serious it was, but someone told me
22 they were contemplating perhaps moving their cows to a
23 farm in a higher price zone because it made more
24 financial sense to them. So there are day-to-day

1 business decisions that get made, you know, that are
2 affected by those changes.

3 Q Okay. And if you could just expand a
4 little bit on what DFA or other efforts have done
5 leading up to this hearing, kind of what the approach
6 has been in the Southern tier in the Mideast Order up
7 until now.

8 A I'm sorry. I don't understand your
9 question.

10 Q Just kind of how you dealt with the
11 situation in the region that we're talking about here
12 in the past.

13 A So there are -- you know, we have
14 customers in that area and we supply them with milk,
15 and now the numbers that we've shown that doesn't
16 always turn out to be the most economical
17 alternative.

18 So in times where we needed to fill
19 those orders, we did. If the differential --
20 difference would not pay the way, if premiums paid the
21 way, then we ended up that transaction with a positive
22 net return. If premiums didn't pay the way, we ended
23 that transaction with a negative net return.

24 MR. RICHMOND: I think that's all I

1 have

2 JUDGE DAVENPORT: Other questions of
3 this witness? Mr. Vetne?

4 RECROSS-EXAMINATION

5 BY MR. VETNE:

6 Q Just a follow-up on a question that Erin
7 Taylor asked you concerning the perceived -- well, the
8 actual deficit of production to demand in the south --
9 Southern tier. Some of the milk has to come from
10 outside, that is, from central Mideast or northern
11 Mideast.

12 And I think you testified that those
13 parts of the market are surplus production markets,
14 there's more milk produced there than is needed?

15 A There's more milk there than is
16 delivered -- physically delivered to pooled
17 distributing plants, yes.

18 Q At the current time, that excessive
19 supply produced in the northern part of Order 33, is
20 there a better market opportunity even at the current
21 prices than in the Southern tier?

22 A I mean, that's a moving target. From
23 day to day to day those returns change. A month ago
24 we would have been glad to have more Southern tier

1 marketing opportunities.

2 Yesterday and today, you know, there are
3 some alternatives that are better priced. But we have
4 to make our business plans on the long run, not on day
5 to day to day.

6 Q I'm talking long run you're asking for
7 15, 20, 40 cent increases. For that milk that does
8 not have a -- that is excess that is produced in the
9 north, on a long-term basis is not the Southern tier
10 the best market opportunity for that milk regardless
11 of whether there is a Class I differential in place?

12 A I think we've demonstrated the cost of
13 marketing into the Southern tier, and our proposed
14 request doesn't necessarily cover all of those costs.
15 So if there would be some discretion over a load of
16 milk, you might think twice about delivering it if it
17 didn't cover all your costs.

18 Q Well, I know transportation costs
19 something.

20 A Yes.

21 Q Regardless of that higher transportation
22 cost, is there a better market for that milk
23 production in the long run even at current prices?

24 A Again, you know, I said before, it's a

1 moving target. It varies from day to day to day.

2 Q So you don't have any evidence on
3 someplace else where you would prefer to send that
4 milk and where there is a demand and capacity to
5 handle it?

6 A I think that the southeast, for example,
7 markets are deficit something like 50 out of 52 weeks
8 of the year, so that would be a potential alternative.

9 Q But those markets again can only take a
10 finite amount of milk?

11 A More and more each day.

12 Q That finite amount is being served now
13 through a combination of local production, supplies
14 from the outside?

15 A Including some of the various suppliers
16 that you're asking me about.

17 Q Yes. Okay. My point is -- or my
18 question is, you don't have, as part of your primitive
19 case, any evidence on a better market opportunity for
20 this volume of milk than the Southern tier with or
21 without a price change?

22 A You've asked three times; I've answered
23 two. I think I've given you the best answer I have.

24 Q I guess so.

1 JUDGE DAVENPORT: Other questions of
2 this witness? Ms. Taylor?

3 MS. TAYLOR: One more. Erin Taylor,
4 USDA.

5 RECROSS-EXAMINATION

6 BY MS. TAYLOR:

7 Q Do you anticipate these changes in the
8 Southern tier to have any effect on the supply and
9 demand situation in the middle and top tiers of the
10 marketing areas where you're not proposing any changes
11 in the differential?

12 A It would certainly make those markets
13 more attractive to the Mideast region and the
14 Northwest region, so it may make it more attractive to
15 draw milk. And that is one of the goals that we would
16 like to see happen. Those markets are surplused by a
17 significant amount to sales of fluid distributing
18 plants, so I don't think it would impact from a supply
19 side sales to those plants.

20 Q The last question, I hope. The
21 differential changes that happened in the Southeast
22 and Appalachia Order happened to help attract the milk
23 supply in those regions.

24 If these differential increases are

1 implemented, do you foresee this kind of recreating
2 the problem that was in Appalachian and Southeast
3 before we increased the differential effective May 1?

4 A I'm sure there would be some discussion
5 there. I would suspect the appetite for the
6 department to hear that again in that area would
7 probably be, you know, limited.

8 So even -- even if that case were true,
9 I'm not sure that any proposals would be advanced. So
10 I think perhaps your question is are we on an
11 ever-lasting ratchet, and I would say the answer is
12 no.

13 Q But if -- okay. I agree with that. I
14 guess my question is just would that have a negative
15 effect on the plants down there possibly?

16 A It could. Because some of that supply
17 comes from, you know, Order 33, and so now you have a
18 more -- hopefully you'll have a more competitive, you
19 know, bid for that milk. And it may, in fact, pay for
20 the milk in the southeast.

21 MS. TAYLOR: We're done.

22 JUDGE DAVENPORT: Other questions?

23 Mr. Beshore?

24 MR. BESHORE: I do have some questions

1 that I would like to ask on redirect if
2 everyone else is done. And I would like to
3 ask for a brief break at this time before we
4 conclude with Mr. Hollon.

5 THE WITNESS: That would be nice.

6 JUDGE DAVENPORT: That certainly sounds
7 reasonable. How long do you think you
8 need?

9 MR. BESHORE: Ten minutes.

10 JUDGE DAVENPORT: We'll be in recess
11 for ten minutes.

12 (A brief recess was taken.)

13 JUDGE DAVENPORT: Back on the record.
14 Mr. Beshore?

15 MR. BESHORE: Thank you, Your Honor.

16 REDIRECT EXAMINATION

17 BY MR. BESHORE:

18 Q Mr. Hollon, a few questions on redirect
19 this afternoon. First of all, you were asked some
20 questions about the Nestle plant, the new Nestle plant
21 at Anderson, Indiana and its supply -- or its
22 products.

23 Do you have some information beyond what
24 was available to you when you were on

1 cross-examination that you can provide for the record
2 to have some more information about the Nestle plant?

3 A During the break I spoke to Mr. Weiss,
4 who represents Foremost Farms, and he informed me that
5 Foremost Farms has a lead supply agreement with the
6 Nestle plant. That's a contractual arrangement, and
7 that those milk supplies will be made out of and from
8 the Foremost Farm supplies as well as other MEMA
9 members, and the sale will be priced within the MEMA
10 agency at MEMA pricing terms.

11 Q So in terms of the contract -- and I
12 think Mr. English asked you that -- Foremost has the
13 contract?

14 A Yes, that's correct.

15 Q And the plant is just in a fairly early
16 stage, I guess of building up product, correct?

17 A To my knowledge they have rarely ordered
18 more than a couple loads of milk a week, but they have
19 ordered some product.

20 Q Have those products primarily been the
21 Class I products to date?

22 A Yes. Our indication -- again, we have
23 no direct knowledge of everything they're going to do,
24 but our indication is at least the products now are

1 all fluid milk products.

2 Q Now, you were asked a number of
3 questions about transportation, and apparently there
4 are some other -- some customers, some handlers that
5 are having a new interest in transportation credits.
6 If questions are --

7 A I was very pleased to hear that. That
8 sounded really good.

9 Q Okay. Did we have any support when
10 transportation credits were requested in Order 33 a
11 couple years ago?

12 A I don't -- transportation credits, I
13 don't necessarily remember that there was support for
14 transportation credits, but if there were, we would
15 accept it and we would have accepted it on a
16 go-forward bases.

17 Q You've requested them a couple places,
18 Order 32, for instance?

19 A That's correct.

20 Q How much support did that get?

21 A Very little, if any.

22 Q You may not have been aware of this when
23 you were asked it, but are you aware now there's been
24 a request made by the cooperatives in the Northeast,

1 including DFA, more than two years ago which still
2 remains unacted upon in the department for
3 transportation credits in --

4 A I forgot about that. That is correct.
5 That was a request that has been made that we helped
6 formulate that request, and it was made to the
7 department several years ago.

8 Q Has there been any -- to your knowledge
9 any handler support for that request?

10 A To my knowledge, at this point no.
11 However, we would be open.

12 Q And I think you've indicated and perhaps
13 Mr. English used the word "perception," but, in fact,
14 let's be candid.

15 The department, in its decisions and in
16 statements that it has made to whoever may ask in the
17 industry is not particularly receptive to
18 transportation credits. Isn't that fair?

19 A I think perhaps if there was a scorecard
20 for proposals on transportation credits, that would
21 have the lowest possible batting average of success.

22 Q But realistically if we want to do
23 anything about the problems in Order 32 that -- in
24 Order 33 at present, that was not an avenue that was a

1 high percentage of --

2 A On a near-term base that was simply not
3 something that we felt was achievable. We haven't
4 given up that idea, and we may yet go to the
5 department some time out in the future with a proposal
6 to do that.

7 Q Okay. Now, with respect to the MEMA
8 price, fuel pricing presently -- fuel -- not fuel
9 pricing, but the cost of transportation for milk to
10 the MEMA agency present today --

11 A Yes.

12 Q Okay. I think this was clarified, but
13 there was some suggestion I think in Mr. English's
14 questions that, you know, you've provided load sheets
15 from 2003 but you haven't provided any information
16 about what you're actually paying for hauling service
17 today in Order 33. But that's incorrect, is it not?

18 A I indicated to Ms. Taylor, you know,
19 what fuel surcharges had averaged, for example, for
20 January. So those could be applied to the 2.20 rate,
21 and the calculations could be made just as we outlined
22 them in our matrix to get some idea of a monthly rate.

23 Q So, in fact, if you take the percentages
24 for the months of 2008 which you provided in answering

1 Ms. Taylor's question, as well as the percentage that
2 you had already provided on page 15 of your statement
3 which is Exhibit 14, you can calculate for every month
4 of 2008 the rate per loaded mile that it has cost MEMA
5 to move milk in Order 33?

6 A You could calculate the reimbursement
7 rate that we paid in each month; that is correct.

8 Q Any when you say reimbursement rate,
9 that's what you have to pay to get your milk moved --

10 A Yes; that's correct.

11 Q -- from point to point?

12 A That's correct.

13 Q And as far as the formula for these
14 percentages, it's based off the EIA data series that
15 you've provided in your testimony, correct?

16 A It is.

17 Q And so you can look at those numbers
18 for, you know, January through August, and the
19 percentages that you've indicated and essentially
20 deduce or induce in further relationship?

21 A You should get the same general slope,
22 you know, should be there of the percentage changes.

23 Q Okay. Let's talk just a little bit
24 about the map on page 50 of Exhibit 15. This map

1 shows the proposed price zones in Order 33 under your
2 proposal, correct?

3 A Correct.

4 Q Okay. Now, the Cincinnati price is
5 2.40. When you go west from Cincinnati in Order 33,
6 the band, that yellow band of counties goes across
7 there, but are there any plants to the west of the
8 Cincinnati plants in Order 33?

9 A No, there are not.

10 Q Are there any plants in that area that
11 are pooled -- distributing plants pooled in any other
12 Order?

13 A I think I have an Order 5 map. I'm
14 looking for it. Wrong notebook. I'm sorry.

15 Q To your knowledge are there any plants
16 in that band of nominally 2.40 zone between the 2.15
17 zone in Indianapolis and the 2.45 effective price in
18 Louisville?

19 A No, there's not, not in Order 33.

20 Q Now, just is there, however, in Order 5,
21 a plant to the east and south of Louisville towards
22 Lexington and a bit south that has a 2.60
23 differential?

24 A There is. There's a plant operated by

1 The Kroger Company in Winchester, Kentucky that would
2 be that approximate geography.

3 Q That plant was identified on page 48 of
4 Exhibit 15 as the Winchester, Kentucky location?

5 A Yes.

6 Q Is that plant -- and that plant is -- I
7 mean, do you know what county it's in in Kentucky?

8 A I do not.

9 JUDGE DAVENPORT: Clark.

10 MR. BESHORE: Harvard?

11 JUDGE DAVENPORT: Clark.

12 MR. BESHORE: Clark. Thank you. I
13 know Your Honor is very familiar with
14 Kentucky geography because you gave us a
15 lesson on that in the last hearing, if I
16 recall.

17 Q Does the Winchester plant, which has a
18 2.60 differential and a 15 cent transportation credit
19 balancing fund charge compete for supplies of milk
20 with Cincinnati -- the plants in the Southern tier of
21 Order 33?

22 A It does. There are supplies, to the
23 extent that we supply them are similar.

24 Q So that plant has a 20 cent direct

1 differential advantage even after Cincinnati's
2 increase to 2.40 if it were to be so under your
3 proposal?

4 A That is correct.

5 Q That doesn't take in to account the 15
6 cent transportation credit balancing fund?

7 A It does not.

8 Q Now, just in terms of using that to have
9 an effective differential, is it not correct that the
10 transportation credit balancing fund assessment is
11 only on Class I volumes?

12 A Correct.

13 Q It's on Class I volumes at distributing
14 plants?

15 A Correct.

16 Q So it is applied -- every month that
17 it's applicable it's applied on the very same basis as
18 the Class I price?

19 A Yes.

20 Q It's not applied on a blend or anything
21 of that nature?

22 A That is correct.

23 Q Speaking of which, as a final question,
24 Mr. English I think asked you wouldn't it solve your

1 problem in the Southern tier of Order 33 -- and I'm
2 paraphrasing, I think, but I think the sense of the
3 question was wouldn't it solve your problem if those
4 plants just had a higher blend price? Do you recall
5 that question?

6 A I do.

7 Q Now, tell me what differences are there
8 between the solution you propose and -- first of all,
9 if you just have a higher blend price but no different
10 Class I price, where does the money come from to
11 increase the blend?

12 A If that was the assumptions, it would
13 only come from the remaining producers in the pool.
14 So there would be no new funds flow to offset, you
15 know, cost structures.

16 Q In other words, if you set a higher
17 blend price in the Southern tier, as Mr. Vetne
18 proposed or suggested was possible under the act and
19 what could be done, and Mr. English I think perhaps
20 implied the same possibility, if you did that, it
21 would basically just take money from farmers in the
22 northern part of Order 33 and move it down to the
23 southern part of 33 and the handlers would still be
24 paying the same amount for milk?

1 A That would be true under those
2 assumptions; that is correct.

3 Q But your proposal suggests that because
4 the cost to get milk to the Class I handlers in the
5 Southern tier of Order 33 has increased, that they
6 should pay a portion of that increase, correct?

7 A That is correct.

8 Q That's why the increase in Class I
9 differentials is superior to just taking money from
10 other dairy farmer's pockets and putting it in an
11 inflated blend price in the Southern tier?

12 A In our view that is correct.

13 Q By the way, in terms of what has to be
14 done now -- and I think Mr. Richmond asked you this
15 question. In terms of what has to be done now to
16 supply those markets, what the agency has to do is
17 take those less profitable sales to -- or less -- or
18 lost sales, however they may be, take those sales that
19 are very high, high cost in servicing in the Southern
20 tier of Order 33 and blend them out with sales in the
21 rest of the order among the dairy farmers that make up
22 the agency serving it?

23 A That would be true. Much the same
24 scenario as you outlined if all you did was change the

1 blend price from one part of the order, the same
2 principle -- it would be the same.

3 MR. BESHORE: Thank you.

4 JUDGE DAVENPORT: Mr. English?

5 FURTHER RECROSS-EXAMINATION

6 BY MR. ENGLISH:

7 Q Mr. Hollon, directly related to the
8 questions asked by Mr. Beshore, isn't it a fact that
9 in a prior proceeding when transportation credits --

10 A For Order 33?

11 Q In Order 33.

12 A Okay.

13 Q Isn't it a fact that Dean Foods actually
14 did support your proposal with one modification?

15 A I have to tell you, I don't remember the
16 exact details, but my suspicion is you wouldn't be
17 standing there if that answer wasn't yes. So I'm
18 going to say yes.

19 Q And isn't it true that the proposal you
20 made at that time for transportation credits excluded
21 the first 75 miles, on the grounds that 75 miles was
22 the producer's responsibility to ship to the market?

23 A I don't remember the numbers, but I'm
24 sure it was patterned something similar to the

1 Southeastern transportation credit program. So it had
2 a mileage limit in it, and you could well be correct.

3 Q And it was that issue that Dean Foods
4 disagreed with. They thought there should be no
5 mileage minimum?

6 A I agree with you. I think that is
7 correct.

8 Q But nonetheless, if there were a mileage
9 requirement and if the decision references -- by the
10 way, would you have been the witness in that
11 proceeding, or not?

12 A Yes. Oh --

13 Q You may not have been, actually.

14 A No. I was not.

15 Q I think you may not have been the
16 witness.

17 A That is correct.

18 Q So whoever the witness --

19 A Mr. Gallagher.

20 Q Mr. Gallagher may have testified that 75
21 cents was the producer's responsibility?

22 A 75 miles.

23 Q I'm sorry. 75 miles was the producer's
24 responsibility as opposed to 36 miles is what you've

1 testified today?

2 A Yes.

3 MR. ENGLISH: Thank you.

4 JUDGE DAVENPORT: Other examination of
5 this witness? Mr. Vetne?

6 THE WITNESS: Watch out, or you guys
7 are going to spark Ms. Taylor again.

8 MR. VETNE: Probably. John Vetne
9 representing United Dairy.

10 FURTHER RECROSS-EXAMINATION

11 BY MR. VETNE:

12 Q You mentioned serving a supply to the
13 Winchester plant. Is that a plant that is regularly
14 supplied by the MEMA cooperatives?

15 A Yes.

16 Q Does that plant receive any supply from
17 the counterpart organization in the Southeast?

18 A I don't know that directly, but I think
19 the answer is no, but I -- I would have to say I don't
20 know for sure.

21 Q For the Southern tier of Order 33 in
22 which you propose price increases, what portion of
23 total deliveries to the distributing plants or Class I
24 is supplied by MEMA?

1 A I don't have -- I do not know that
2 number. There are plants in that area that we supply,
3 all -- most in a small amount. I suspect on some of
4 them your clients would have a much better answer than
5 I would.

6 Q And you supply all of Broughton Foods,
7 correct?

8 A I don't know all of the details for
9 every plant.

10 Q That's a Dean plant. You supply Dean
11 plants, correct?

12 A Again, I don't know all the details for
13 every plant.

14 Q Would you agree that you supply a
15 supermajority of Class I needs in that part of the
16 region, the MEMA co-ops?

17 A Give me a number.

18 Q Supermajority meaning more than 50
19 percent.

20 A I think the answer is yes.

21 Q Okay. And within your organization you
22 have a transportation pool to help move milk around?

23 A Within the MEMA organization?

24 Q Yes.

1 A Yes.

2 MR. VETNE: That's all. Thanks.

3 JUDGE DAVENPORT: Other questions?

4 Mr. Beshore, you want to admit your
5 exhibit?

6 MR. BESHORE: I would request the
7 admission of Exhibits 14 and 15, yes, Your
8 Honor.

9 JUDGE DAVENPORT: Very well. Exhibits
10 14 and 15 will be admitted in to evidence at
11 this time.

12 MR. BESHORE: I would like to make one
13 other request. I would like to request that
14 the Federal Order decisions which Mr. Hollon
15 referenced in his testimony and had some
16 excerpted quotes from for the Southeast --
17 there were two, I think. I would like to
18 request -- and there are citations in the
19 testimony --

20 THE WITNESS: And the dairy policy
21 simulator.

22 MR. BESHORE: -- that official notice
23 be taken of those decisions for this record,
24 and of the publication that Mr. Hollon cited

1 that provided the formula basis for the
2 dairy policy -- dairy sector stimulator.

3 THE WITNESS: Simulator.

4 MR. BESHORE: Simulator.

5 JUDGE DAVENPORT: Objection by any
6 party?

7 Okay. Very well. Notice will be
8 taken.

9 Mr. Beshore, do the proponents have
10 anything additional today at this time?

11 MR. BESHORE: We do not.

12 JUDGE DAVENPORT: Very well. Excuse
13 me. Mr. Stevens?

14 MR. STEVENS: Your Honor, I have one
15 item that we might be able to fit in here.
16 I think we have some updated figures on the
17 Central Order which we would like to enter
18 into the record.

19 JUDGE DAVENPORT: Very well.

20 MR. STEVENS: I'd like to re-call
21 Mr. Schoening.

22 (Whereupon, Robert Schoening was
23 re-called to the witness stand.)

24 JUDGE DAVENPORT: Mr. Schoening, you're

1 still under oath.

2 REDIRECT EXAMINATION

3 BY MR. STEVENS:

4 Q Rob, after your testimony you did some
5 more work on updating some figures on your exhibits, I
6 believe, if not, correct me, but I believe they're on
7 your exhibits and you want to enter that information
8 into the record at this time?

9 A Yes, I do.

10 Q Why don't you go ahead and do that.

11 A The first update is on page two. This
12 is Exhibit 11. And we updated the July 2008 data.
13 That figure is 10,976,485. And the other update is on
14 the last page of that exhibit, page four, no update on
15 the numbers, but on the footnote there that says
16 through June, it will say through July, and the number
17 has not changed. It's still zero for 2008.

18 MR. BESHORE: Could you give that first
19 number again.

20 THE WITNESS: Sure. July 2008 and it's
21 10,976,485.

22 MR. BESHORE: That's on page two?

23 THE WITNESS: Page two. Correct.

24 MR. BESHORE: Thank you.

1 Q That's all you have?

2 A That's all I have. Yeah.

3 MR. STEVENS: Thank you very much.

4 JUDGE DAVENPORT: Questions of
5 Mr. Schoening?

6 Thank you, sir. You may step down.

7 Mr. Stevens, anything further?

8 MR. STEVENS: No, sir.

9 JUDGE DAVENPORT: Mr. Beshore?

10 MR. BESHORE: May we have a prospective
11 lineup of witnesses for tomorrow before we
12 adjourn today?

13 JUDGE DAVENPORT: I think that's a
14 reasonable request.

15 MR. ENGLISH: Proponents have any more
16 witnesses?

17 MR. BESHORE: No.

18 JUDGE DAVENPORT: Mr. English?

19 MR. ENGLISH: You have two? They're
20 asking witnesses.

21 MR. VETNE: Yeah.

22 JUDGE DAVENPORT: Mr. Vetne has two
23 witnesses, is my understanding.

24 MR. VETNE: Yeah. That's what Chip

1 said.

2 MR. ENGLISH: I still have three, and I
3 think there's Mr. Hitchell.

4 JUDGE DAVENPORT: Mr. Hitchell, you're
5 going to testify yourself? Is that my
6 understanding?

7 MR. HITCHELL: That's correct.

8 JUDGE DAVENPORT: We also have some
9 farmers who expressed some interest for
10 tomorrow morning. I would probably like to
11 take them when they are available. Probably
12 we can put them in after Mr. Vetne's
13 witness.

14 Mr. English, you are -- is Mr. Vetne
15 going first?

16 MR. ENGLISH: Yes. Mr. Vetne asked and
17 we said fine.

18 JUDGE DAVENPORT: Do we know what
19 Mr. Yale has? He does not have any
20 witnesses?

21 MR. ENGLISH: Mr. Yale told me he does
22 not have any witnesses.

23 JUDGE DAVENPORT: Mr. English, do you
24 have any anticipation as to how long your

1 presentation will be?

2 MR. ENGLISH: I think I said earlier in
3 the day, and I hesitate to change it. I
4 don't remember what I said.

5 MR. BESHORE: Who are Mr. Vetne's
6 witnesses?

7 MR. VETNE: Joe Carson and one of his
8 producer suppliers.

9 MR. BESHORE: Thank you.

10 MR. VETNE: Neither Mr. Carson or the
11 producer have ever appeared at or testified
12 in a federal milk hearing before.

13 JUDGE DAVENPORT: Very well. If
14 possible, we would like to have an extract
15 of their testimony if it's available.

16 MR. VETNE: It will be available before
17 the hearing starts tomorrow on the back
18 table.

19 JUDGE DAVENPORT: Very well. Is there
20 anything else we can do at this time?

21 Ms. Taylor, is 9:00 okay, or should we
22 try to shoot earlier?

23 MR. VETNE: No.

24 MS. TAYLOR: 9:00 is fine.

1 MR. BESHORE: Are we committed to
2 finishing tomorrow? It sounds like we're
3 going to have a problem.

4 MR. VETNE: Yeah. Are --

5 MS. TAYLOR: We can go late tomorrow.
6 We do not have the room on Thursday.

7 MR. BESHORE: We'll go until we're
8 done?

9 JUDGE DAVENPORT: Mr. Heeber, is that
10 -- is he still here?

11 MR. HEEBER: Yes.

12 JUDGE DAVENPORT: If we start a
13 half-hour earlier would that policy cause
14 any problems with the hotel staff?

15 MR. ENGLISH: I think we're going to be
16 done anyway, and I think starting at 8:30 is
17 stretching it for those of us who literally
18 did not see the proponent's testimony before
19 1:45.

20 MR. BESHORE: When are we going to see
21 yours?

22 MR. ENGLISH: You had apparently ten
23 months to work on yours. I would say we get
24 at least one night to work on ours.

1 MR. STEVENS: What difference does a
2 half-hour make? Between 8:30 and --

3 MR. VETNE: Sleeping.

4 MR. STEVENS: Sleep?

5 MR. ENGLISH: Yeah. Sleep.

6 JUDGE DAVENPORT: All right. 9:00
7 it is. See you all tomorrow. Thank you
8 all.

9 (Hearing was continued in progress
10 at 5:40 p.m.)

11

12

13

14

15

16

17

18

19

20

21

22

23

24

C E R T I F I C A T E

I, Renee Rogers, a notary public within
and for the State of Ohio, do hereby certify that
the within 314 pages were taken by me in stenotypy
and transcribed by computer-aided transcription,
and that this is a true, accurate, and complete
transcription of the same.

My commission expires:
April 13, 2011

Renee Rogers
Notary Public-State of Ohio