BEFORE THE UNITED STATES DEPARTMENT
OF AGRICULTURE
AGRICULTURAL MARKETING SERVICE

In the Matter of:	)	
	)	
	)	
MILK IN THE CENTRAL	)	Docket Nos.
	)	AO-313-A48
ORDER MARKETING AREA	)	DA-04-06

TRANSCRIPT OF PROCEEDINGS

The above-entitled matter came on for hearing, pursuant to notice, at 8:30 a.m. on Tuesday, December 7, 2004, at the Hilton Kansas City Airport, 8801 NW 112th Street, Kansas City, Missouri, before the Honorable Marc R. Hillson, Chief Administrative Law Judge.

VOLUME II

APPEARANCES

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(Proceedings commenced at 8:31 a.m.)

JUDGE HILLSON: Good morning. We're here for the second day of our hearing. It's December 7th, 63rd anniversary of Pearl Harbor Day.

Mr. Beshore, you're going to call your first witness; is that correct?

MR. BESHORE: Yes. Mr. Hollon.

JUDGE HILLSON: Mr. Hollon.

ELVIN HOLLON,

a Witness, being first duly sworn, testified under oath as follows:

JUDGE HILLSON: If you would, please state and spell your name for the record.

THE WITNESS: I am Elvin Hollon, H-O-L-L-O-N.

JUDGE HILLSON: He's your witness, Mr. Beshore.

MR. BESHORE: Thank you, your Honor. Before Mr. Hollon proceeds, I ask we have marked for identification two documents, the first being a 44 page document cover page titled Statement Regarding Proposals 1 through 3.

JUDGE HILLSON: Mark that as Exhibit 18.

THE WITNESS: Do you want to do that in reverse? 18 as my exhibits and --

JUDGE HILLSON: What's going on?

MR. BESHORE: Can we just mark -- I have two exhibits. We would like the statement be marked as Exhibit 19 and the other packet, which is a 39 page document with the cover page Titled Exhibits Regarding Proposals 1 through 3, we would like to have that marked as Exhibit 18.

JUDGE HILLSON: So the exhibits regarding Proposals 1 through 3 is marked Exhibit 18 and the statement I'm marking as Exhibit 19.

MR. BESHORE: Yes.

JUDGE HILLSON: So marked.

MR. BESHORE: Thank you.

(Exhibits 18 and 19 were marked for identification.)

EXAMINATION

BY MR. BESHORE:

Q. Mr. Hollon, will you first provide us with your business address and describe your present employment, please?

A. Well, my business address is down the street, but I'm not sure if I can do the numbers. I would have to go look them up, but I will get that.

I'm employed by Dairy Farmers of America as a director for fluid marketing and economic analysis, and I've been an employee of Dairy Farmers of America for 25 years.

Q. Now, prior to being employed by Dairy Farmers of America, would you give a summary of your professional background beginning with your education?

A. I have a Bachelor of Science Degree in dairy manufacturing from Louisiana State University, commonly termed how to make cheese and ice cream. And I have a Master's Degree in agriculture economics from Louisiana State University.

Q. After obtaining your master's degree, how have you been employed?

A. Again, I've been employed by Dairy Farmers of America for 25 years. I spent five years in what was the forerunner to DFA, Associated Milk Producers, Inc., in their corporate offices in San Antonio. I worked with dairy policy issues, worked with industry Market Administrator type activities.

Then I spent 13 years in the Upper Midwest working in the day-to-day marketing of fluid milk, buy/sale, worked with over order pricing agencies and, again, Federal order hearings and regulations.

I worked for two years in AMPI's southern region in Arlington, Texas, again working with fluid milk marketing, buy/sale, as well as over order pricing agencies. And worked with, at that time, AMPI's relationships with some of the producer groups in the south and southwest, and over order pricing agencies in the southeast.

And since the formation of DFA, I've worked here in the Kansas City office, and my duties deal day-to-day with economic analysis, not so much the buying and selling of milk every day, but with our activities with the Chicago Mercantile Exchange, with Federal Milk Marketing Orders with their national and agricultural policies, and with marketing decisions between DFA's counsels.

Q. Have you previously testified in Federal order hearings?

A. I have previously testified at many Federal order hearings.

Q. In many regions of the country -- in all regions of the country?

A. Yes. I think I have had either -- I've either testified or written testimony for a hearing in every order that is in existence today, every Federal order and one or two state orders.

Q. And have you been -- has your testimony been received in your fields of expertise as an agriculture economist in dairy marketing?

A. It has.

MR. BESHORE: Your Honor, I would ask that Mr. Hollon's testimony be -- that he be so recognized and his testimony be perceived in that area of expertise in this hearing.

JUDGE HILLSON: Any objection? Hearing none, so noted.

Q. (By Mr. Beshore) Let's first go to

Exhibit 18, Mr. Hollon, your exhibit -- your set of exhibits. Exhibit 18 has 39 pages, which are consecutively numbered in the lower right-hand corner when it's turned laterally; correct?

A. Correct.

Q. And there are, I think, ten tables and two charts in the exhibit; is that correct?

A. Yes.

Q. And these are referred to in your testimony, and to provide some context and background, let's go through them. If you would, turn, starting with the first exhibit, which is the first table, Table 1 in Exhibit 18, could you describe that for us, please?

A. Table 1 is data taken from the Federal Milk Marketing Order's annual statistics and is for the calendar year 2003 by Federal order. The total pounds of Class I milk in each -- pounds of milk using Class I products by Federal order in each order. This data is published both in written form and electronic form.

Q. Published by --

A. By AMS, Dairy Programs, correct.

Q. Thank you. Table 2 has five pages, A through E; is that correct?

A. That is correct. This is data from the Central order. I suspect all of this data could be found in one form or another in Mr. Stukenberg's exhibit. I simply pulled it together in this form for some comparisons I was making for reference. This is all data that is published monthly. And then summed up at the end of the year by the Central Federal order. It is various statistical pounds, utilizations and prices in the Central Federal order.

Q. Statistical uniform prices and utilization and producer prices?

A. That's correct.

Q. Table 3 of Exhibit 18 is a one-page table?

A. Table 3 is a one-page table. This is information from the Central order that has pounds of Class I and Class II by months, pounds of Class III and Class IV by month. It computes an index for comparison purposes using January of 2000 as a base. And the purpose of this table was to try to get some idea of the relationship between Class III and IV as a reserve versus Class I and Class II fluid use in the Central order, and that information is then on a graph that would be Exhibit 18, Chart 1.

Q. That's the next page in Exhibit 18?

A. That's correct.

Q. Now, there are two columns of indices on Table 3. Would you just explain how each index was calculated?

A. The index that is the index of Class I plus Class II was the fifth column from the table of data. The information under Class I plus Class II index and it takes the pounds in each month and then divides again by January of 2000 just to give some historical relationship over time. And so in each of the -- there's a set of matched columns for each month, and that would always be the column to the left.

So in January -- the column labeled March of 2000 would be the taller of the two columns.

Q. On the chart?

A. On the chart, that's correct.

Q. The base month for the index is January of 2000?

A. Which is the first month of Federal Order Reform, yes.

Q. And is that the base month for both indexes?

A. It is.

Q. How is the index labeled Class III and Class IV calculated?

A. For that the Class III and Class IV were added together each month and the total divided by -- the total for January of 2000, and that would be -- that index number would be the last rightmost column in the data, and on the chart in each paired comparison it would always be the column to the right.

Q. Thank you. Now, would you move to Table 4 of Exhibit 18. That is also a one-page table; is that correct?

A. It's a one-page table. This data was taken from information that was provided by the Market Administrators in Order 32, the Central order, Order 30, the Upper Mideast order and Order 135, the former Western order.

This data was put into the record yesterday.

And first column is the pounds of California milk that was pooled on the Western order taken from that table, pounds of California milk pooled on the Central order taken from that table, pounds of California milk on Order 30 taken from that table, the total, and then the second half of the column is just all Federal order pounds from each of those orders.

And the graph, which would be Chart No. 2, takes the sum of the California pounds. That would be the lower of the two lines, the California pounds as they got pooled into various Federal orders, and the upper line would be all the milk pooled in the orders. And where there is a jump or an increase would represent pounds when there were large volumes of California milk pooled on the orders.

And back to the table itself in the Federal order column, there's a number in October that seems to be out of place. To the best of my knowledge, that represented a distressed pooling situation of California milk. I'm not intimately familiar with those, but it is reported in the Order's statistical data.

Q. That's the number for October '02 in Federal Order 30?

A. That's correct.

Q. And does this table and chart essentially show the migration of California milk as regulations were promulgated and changed?

A. That is correct. And the point when it ends, while the regulation was in effect in the Western order in April, pricing was such that in the Western in order that month there was no -- there was a lot of depooling that went along in those months, so the last end of the chart is the end of the California milk in that order.

Q. Now, would you turn then to Table 5, and that is a five-page table, pages identified as 5-A and 5-E; is that correct?

A. That is correct.

Q. What does that show?

A. The purpose of Tables 5-A through E is to try to give some relative ability of the blend price in Federal Order 32 and its competitive position with the blend price in Federal Order 5. So there are two locations of pockets of milk production. One is in the Nashville, Illinois, area, Southern Illinois, one is in the Jackson, Missouri, area, and that's southeastern Missouri, and both of those milk supplies are affected and do at times supply Madisonville, Kentucky. There's a processing plant there that plant is in Federal Order No. 5.

So the first row is the Federal Order 5 blend price of $13.32 for January of 2000. That's reduced by the location of Madisonville to be a net blend at that location of $12.62. The freight from Nashville, Illinois, using a $2.10 per loaded mile and a 50,000 pound load weight would be approximately $0.76 a hundred or net return after haul of $11.86.

Similar comparison, a blend at location less haul, a net return from Southeast Missouri would be $12.62 minus $0.67 for $11.95. This calculation carries its way throughout the year.

In the lower half of the page, that same milk supply of what kind of a net return would it have at St. Louis. So we have the Order 32 blend price which in January was $11.23. No location adjustment, that's the based on the marketplace. The haul or freight from Nashville, Illinois, would be $0.24 a hundred for a net return of $10.99. The freight from Jackson, Missouri, would be $0.45, that would be a net return of $10.78.

So now we have two net returns to compare. And the Federal Order 5 is able, at Southern Illinois, to outpay Order 32 by $0.87 in January of 2000, and Federal Order 5 is able to outpay Order 32 from Southeast Missouri by $1.17 for January of 2000.

Those calculations are repeated across the page for an annual average over in the right-handmost column. And then this pattern is computed all the way through the 2000, '01, '02, '03 and year to date in '04 for a comparison of Federal Order 5 and Order 32.

Q. And each page of Table 5, A through E, is a calendar year summation of those calculations?

A. That is correct.

Q. Turn, then, to Table 6 of Exhibit 18, and that is also a five-page table, is it not?
A. It is. And it does all of the same types of comparisons using the same methodology. The locations, however, are different in this case, comparing to relative competitive position between Federal Order 32 and Federal Order 7. And in this case the milk supply is near Ada, Oklahoma, there's a pocket of milk there, and the comparison there would be between Federal Order 32 and -- I'm sorry -- Federal Order 32 and Federal Order 7 at Ft. Smith and Little Rock versus Tulsa, Tulsa being Federal Order 32.
And you do the same thing, you take a blend price it was based on, reduce it by the appropriate location, reduce it by the haul to get a net versus net. So, for example, in January, the Order 32 had an advantage of $0.20 versus Federal Order 7 at Little Rock, but it was behind by $0.47 at Ft. Smith, and that reflects, by and large, the distance is much shorter.
Q. Now, Little Rock and Ft. Smith are the locations of distributing plants in Order

7?

A. That is correct. That could be a competitive force for that particular milk supply.

Q. And on each table, as in the previous table, the bottom line indicates your calculation assumptions with respect to the transportation and calculation?

A. That's correct.

Q. Then B is -- 6-B is the same calculation for the year 2001?

A. Yes.

Q. And C, D and E, the respective sequential calendar years of 2002 through 2004; correct?

A. That is correct.

Q. Turn, then, to Table 7. Is this also a five-page table, 7-A through 7-E, showing another comparison of returns with an adjacent Federal order, this time Federal Order 30?

A. That is correct. This series of tables compare the return from Southwest Wisconsin to St. Louis and from the Melrose, Minnesota, area to Des Moines, Iowa. Those would be pockets of milk supplies and alternative of sources.

In the case, for example, in January of 2000, the blend at Federal Order 32 was $11.23 with a zero location adjustment. The freight from Lancaster, Wisconsin, to St. Louis was $1.43, so there would be a $9.80 return.

For Federal Order 32 at Des Moines, the same $11.23 minus the $0.20 location adjustment for $11.03, less a $1.46 of transportation for a $9.57 return.

The Order 30 blend price at Lancaster, $10.48 less the location of a nickel, $10.43, and the Federal Order 30 price less at Melrose was $10.48, so now you have comparing apples and apples to get a competitive position.

And in this particular month, Order 30 had the ability to outpay Order 32 at Lancaster by $0.63 and at Melrose by $0.91. And these comparisons average across the page and for each year.

Q. So essentially -- and the years are then sequentially A through E, 2000 through 2004?

A. That's correct.
Q. And again, Order 32 is on the short end of the comparison?
A. Yes. In this case almost every single month at the time and the comparison worsens over time.
Q. So the blend price compared Order 5 to the Southeast, Order 7 also to the south and east, and Order 30 to the north, and Order 32 is basically behind in all comparisons?
A. With the exception of Little Rock, Order 32 was competitive, but in every other case it neither attracts a supplemental milk supply from the Upper Midwest, which is a source of supplemental milk, and it could not keep its milk supply from being attracted to the Southern orders.
Q. Now, let's turn, then, to Table 8 in Exhibit 18. This is a multipage table as well.
A. Yes.
Q. The pages are then identified by letters 8-A through 8-I; is that correct?
A. That is correct.
Q. Would you tell us what Table 8-A

through I shows?

A. This table is an attempt to make a comparison of return versus distance for a milk supply that might originate in Southern Idaho and deliver to an Order 32 market. Picked the closest distance to try to make a comparison, and that would be to the Denver market. There are several scenarios involved. There's eight different scenarios measured: Four scenarios for Class III comparison, four scenarios for Class IV comparison.

Q. So A through D are Class III comparisons?

A. That's correct.

Q. And E through I --

A. H.

Q. E through H are the Class IV comparisons?

A. Correct.

Q. And the final exhibit is a tabulation of the various comparisons?

A. Right. The final exhibit is a tabulation of the summary numbers at the bottom. And there is a set of assumptions for the delivery standards that we are proposing today, 20 and 25 percent, and there is a single page summary for the delivery standards that are in place now at 15 to 20 percent. And for the delivery standards that are in place now, there's only a single page, but all the calculations were done in the same format.

In each case the things that are consistent is there's a 50,000 pound load, it's a rate per mile of $2.00, there is 686 miles between Southern Idaho and Denver. I have given full benefit to the transportation credit as proposed by in Proposal 3 as a part of this example. And start out by taking in January of 2000 the PPD in Denver was $1.73. And so I want to know what would happen if we delivered that milk and what kind of return would there be.

So in January of 2000, if that milk were to deliver every single day, it would lose $0.46 a hundredweight, because the return would not be enough to offset the haul, or this load representing a million pounds in a month, that's another constant is that there's always a representation of a million pounds of milk per month, would lose $4,640. But that's only milk delivered every day. If it touched base only once, which is what the current requirement is, and delivered in Idaho all the rest of the time, it would make $7,081.

Q. Now, you just basically described the data on the first line of Table 8-A?

A. That is correct.

Q. For January '00?

A. That is correct.

Q. And the return, comparing the return after monthly delivery in column 1, 1 and 2, with the return on a one-time touch base only in column 3?

A. That is correct. So each row, then, repeats itself going down. Again, under the current pooling scenarios, there would be no need for this load as long as it maintains its association with the market to ever travel to Denver again and that million pounds would earn at various amounts all the way down.

This scenario assumes that there is no depooling, that this particular transaction takes place every month, and sums its way through at the bottom of the page. Then for calendar year 2000, there would be an average return of $1.126; calendar year 2001, 66.3 cents; calendar year 2002, return of 44.1 cent; calendar years 2003 and 2004 to date would be negative because of the negative PPDs that we've experienced in those years, but for the entire 58 months, this transaction would return 34.8 cents under the assumptions given.

Now, would point out that there is no consideration given to the arrangements of the pooling deal, if there is one. Those arrangements are many, they're negotiated, there would be some split of these dollars, but the dollars would be there nonetheless. And my decision-making factor when -- well, I'll cover that when I get to the depooling part.

Q. This basically shows the return under the order under the regulations as they currently stand?

A. That's correct.

Q. Now, the second scenario, then, Table 8-B, has a different assumption for pooling the same million pounds of milk from Idaho to Denver; correct?

A. That is correct. In the heading in

the table -- in the row that says touch base requirement at 100,000 pounds, that 100,000 pounds is a holdover from a prior exhibit, and that should read 200,000 or 250,000. And I'll be repeating that correction any time the 100,000 appears in the title.

So that would be about the fifth line down, and that simply reflects our proposal of 20 and 25 percent delivery standard would mean you have to deliver out of a million pounds 200,000 or 250,000 pounds to the market in the appropriate month.

Q. So this is -- you're then showing on Table 8-B returns with the proposed performance standards, how they would effect returns on pooling this milk in Idaho on Order 32 at Denver?

A. That is correct. And this proposal, again, you would have to deliver every month, there would be no depooling opportunity here. So the return would be a mix of 25 percent of the time in January because that's a 25 percent month, the return would be the PPD at Denver with $1.73, and 75 percent of the time the return would be the $0.78 diverted back to the Southern Idaho location. And that would be less the delivery cost on the 25 percent that actually had to make the trip.

So those are the differing -- that's what makes this assumption different from the first page is, again, the proposed delivery standard, instead of "once and done," 25 and 75, and again, this scenario delivers every single month, and so the returns down at the bottom for the entire 58-month period under this case would be $0.650 positive.

Q. Okay. What have you analyzed, then, in Table 8-C with respect to other assumptions in this milk pooling movement?

A. Tables 8-C and D, I need to make one number correction. I transferred -- I copied over one PPD in error. So the October, the very last number in column 3, it says negative $0.19, that number should be positive $0.14.

Q. For October '04?

A. I'm sorry, October '04. I said that wrong. October '04. The resulting total dollar figure would be $1,400.

Q. Positive?

A. Positive. That would then also

effect the calendar year 2004 row. The $14,200 number should be corrected to be $17,500. The rate per hundredweight, the $0.237 should be corrected to $0.292. The total for all 48 months, the $312,981 should be corrected to $316,281, and the $0.665 to $0.659.

JUDGE HILLSON: Have you made those corrections in the copies of the exhibits that you submitted to the reporter?

MR. BESHORE: No. We're just giving -- we're giving them from the stand. The reporter has the corrections to be sure we've got them in the testimony, but the exhibits as distributed and as presented need to reflect the corrections that Mr. Hollon has just made.

JUDGE HILLSON: Okay.

Q. (By Mr. Beshore) So those are corrections to the month of October 2004, which then changes the calendar year 2004 total and the 48 month average?

A. That is correct.

Q. So just basically one set of entries, one month changes?

A. That is correct as well.

Under this scenario, the option now is the current order provisions, the "once and done" provisions and the opportunity to depool whenever the opportunity presents itself and my depooling decision was driven by whether or not the PPD itself was negative.

I realize that sometimes there may be situations where the PPD might be positive, but the freight would cause somebody to make a decision, but I didn't have the ability -- I couldn't quite figure out how to program that fast enough, so I drove it off what the PPD would be.

So in this case there would be 48 months, so at 58 before, there were ten opportunities over this time period to have depooled milk. And under that scenario, then, the returns for the entire time period would have been 65.9 cents per hundredweight with a once and done and depool at will scenario.

Q. And essentially that is the current order standard?

A. That's correct.

Q. So that could be quite a profitable

pooling opportunity there under the current order regulations?

A. This decision would probably not require any comments it would help make.

Q. Table 8-D, then, shows another scenario with proposed changes in the performance standards; correct?

A. That is correct. On this table, in the title, 100,000 needs again to be changed, again, to 200,000 and 250,000.

Q. And that reflects the proposed performance standards versus the -- another set of possible performance standards?

A. That is correct. And again, the same error appears in October.

Q. October 2004?

A. I'm sorry, October 2004. So the negative $0.19 should be positive $0.14. The total should be positive $1,710 for October.

Q. That changes the calendar year 2004 average, then, or -- excuse me, total.

A. The calendar year 2004 would be a positive $84, the per hundredweight is zero, and the 48 -- the 48 month total is $180,782, and the rate is 37.7 cents.

So under this scenario, then, you would find the delivery standards as we have proposed them, but still have the opportunity to depool whenever the PPD would be negative, and this scenario has a return of 37.7 cents over the entire period within some cases quite a bit of variation.

Q. And that return is positive and the nature of that return is driven substantially by the ability to depool when that's financially remunerative?

A. That's correct.

Q. Table 8-E, then, describes another scenario. Tell us about that, please.

A. E, F, G and H all take the same set of comparisons but drive them on the basis of if you're a Class IV handler instead of a Class III handler. So this would be the financial scenario for somebody who had Class IV utilization.

So under the first example, this would be if you touch base once and done and pooled every month, and in this case the return for the entire period 58 months would be 37.2 cents. There would be some -- the first year was negative, and if I remember back to 2000, that the relationship of Class IV prices, butter prices were quite high that year, and that would have made this an uneconomic decision in 2000. The remainder of the years would have been a profitable decision of some sort and average for the period $0.37.

Q. No depooling in this scenario?

A. No depooling in this scenario.

Q. Now, the title at the top of 8-E says Return Options For Proposed Performance Standards; is that correct?

A. That is incorrect. Oh there's no -- the entire set of 8 does have some comparison. On this table, no, there's no performance standard.

Q. Just the current?

A. Yes.

Q. Once and done?

A. Yes.

Q. Touch base provision?

A. Yes.

Q. Or qualification.

Scenario Table 8-F what is that?

A. In the title, the 100,000 should be changed to 200,000 and 250,000 like in the proposal. In this scenario you would still pool every month but you would have a higher delivery standard than the once and done. And, again, each month would be -- a part of the return would be based on what you deliver less than freight cost, plus the return from the diversion point, in this case in Southern Idaho, and over the entire period this return would be 8.9 cents positive for the five-month period; early on negative, later on quite profitable.

Q. No depooling in this scenario?

A. No depooling in this scenario.

Q. 8-G?

A. 8-G takes the once and done option and allows depooling at any opportunity.

Q. And that's essentially the current status quo?

A. This is essentially the current status quo. And under this scenario, the return for the 36 months, that means 58 minus 3,622, 22 times there would be an opportunity to depool. Those opportunities would have been taken and this return would have been positive every year and every month and return an average return of $1.10.

Q. So currently you've got butter powder production in Southern Idaho, there is butter powder production there?

A. There is butter powder production in southern Idaho.

Q. What, roughly --

A. It's Class IV utilization.

Q. And that would -- and there was -- in the Order 30 hearing that was, what, roughly maybe 100 million pounds a month?

A. Yes.

Q. And that -- presently that, under the present Order 32 regulations, those volumes could pool and depool at will, make $1.10 if they were attached to the order in Denver?

A. That would be true.

Q. Table 8-H?

A. Table 8-H institutes the proposed standards up in the title. Needs to be changed -- 100,000 needs to be changed to 200,000 and 250,000. And in this scenario, the delivery standards of 25 -- 20 and 25 percent were applied in the model, and there was also the opportunity to depool when the PPD was negative. And over this time the return was 81.7 cents.

Q. So if the pooling standards were -- of Order 32 were changed as proposed but depooling was not addressed, there remains a profitable opportunity for pooling this milk in Southern Idaho?

A. That would be correct, unless some of the other performance changes with regard to delivery were also instituted. Part of the purpose of this exhibit is to try to show the interrelationships of some of the proposals.

Q. Very good. Now, the last table of Table 8-I sums up and compares, at least on one page, the various scenarios; correct?

A. It does. The type is bigger so it's a little bit easier to read from. I want to go ahead and make the corrections here.

In the third block down, the once and done Class III PPD for calendar year 2004, the $14,200 should be $17,500. The .237 should be .292. The $312,981 should be $316,281.

Q. That's the 48 month summary?

A. Correct. And the 65.2 should be 65.9. The next block down, those numbers also need to be changed. The negative $2,391 for the calendar year total should be $84.

Q. That's calendar year 2004?

A. Yes. Per hundredweight should be zero. The 48 month sum, $180,782. And the per hundredweight, 37.7.

Q. And that's the 25 percent delivery, Class III PPD, depool maximum scenario?

A. Yes, that scenario.

Q. Are there any other corrections that need to be noted on Table 8-I?

A. No.

Q. What, when you review the eight scenarios in 8-I, what do you see?

A. There is certainly some opportunities to take advantage of the Order 32 blend pool. There's concern about the potential for distant milk to be associated with the Order 32 pool, and we're trying to point out what some of the economic harm may be if that occurs. And there are several performance provisions that need attention in order to address the potential of the situation.

Q. And you discuss that further in your statement?

A. Discuss that further in my statement, that's correct.

Q. Now, let's turn to Table 9, the next page, page 35 of Exhibit 18. It's identified as 9-I, although it's just a one-page table; correct?

A. That is correct. And this takes all of those eight scenarios and then instead of the 20 and 25 percent delivery standard where that is modeled, it uses -- substitutes the current pooling standard of 15 and 20 percent, and the same error floated its way through to this set of spreadsheets.

So in the third block, the once and done, Class III PPD, that would be the same as before. There would be no change in the two, because there's no pooling standard that affects that model. So the numbers there, the $14,200 should be $17,500, same as before; the 0.237 should be 0.292; the $312,981 should be $316,281; and the 0.652 should be 0.659.

In the next block, the numbers are different because the performance standards there come into effect. The positive $1,176 for the 2004 figure should be $3,816. The per hundredweight, instead of 0.02 should be 0.064. The 48 month sum should be $210,638 instead of $207,998, and the 0.433 should be 0.439.

The relationship of the scenarios one to another down the page, the eight scenarios are in the same proportion and direction, it's just that the opportunities are more lucrative at each turn. And so where the performance standards are less, or reflect the existing level of 15 and 20 percent, the potential damage to the pool is greater.

Q. Okay. The next page numbered page 36 of Exhibit 18 is a one-page chart which you've identified here as 9-1. Can you tell us what that chart is?

A. This is an attempt to get some sense of the state milk production using the NASS data series for the primary states in the Central Federal order. And what it shows is that any state in a solid color has decreased in milk production and the period is annual milk production, annual 1998 versus annual

2003.

Again, any state that has a solid color, which would be Missouri, Illinois, Iowa, Wisconsin, Minnesota, South Dakota, has shown decreases at a significant level. And then any state that's in a lined or hatched has shown some increase in production.

Overall for all states, milk production in these states are down 1.9 percent over this five-year period and the areas for growth are, with the exception of Colorado, are in areas away from the major population centers in the market.

Q. Now, the last table in Exhibit 18 is Table 10, which has three pages, A, B and C, the numbers pages 37 through 39 in the exhibit. Could you describe those, please?

A. The use for Table 10 will be to support our proposed modification on transportation of Proposal 3 as a transportation pool, or transportation credit, and we're going to propose a modification to that. The proposal as it currently reads applies only to milk moved out of a supply plant, and our modification is going to also provide -- will provide transportation for milk that moves directly off the farm or through a reload that happens to do that.

And in order to put that proposal together, we had a couple of assumptions in our proposal. One is we proposed to exempt the first 25 miles of haul from the credit and that we would apply it only to the Class I. And we had to make some estimate of both of those sets on distributing plants.

So the purpose of Table 10-A is to detail to some extent our rationale for our -- some numbers behind our 25 miles. That number was chosen for two -- for -- well, the reason it was chosen is we tried to find some equity between a producer who delivered to a supply plant and a producer who delivered directly off the farm.

And there should be some obligation to pay haul, that if a producer pays to haul to a supply plant in primarily the northern sections of the order, that's where most the supply plants are, then all the other producers ought to also pay at least 25 miles per haul.

So we then looked at our experience and felt like the 25 miles was a reasonable number, but we also attempted to come up with an empirical -- a mathematical measure of that. So we first went to our own internal data and our own internal management where we deal quite extensively with milk haulers.

And in the Central order we own some equipment that DFA owns and operates both wholesale, but the overwhelming majority, we negotiate with third-party providers. And as a part of that negotiation, there's times we may buy out a milk hauler and resell those assets to someone else, we negotiate rates for and on behalf of producers, and we have a lot of data reflective of that.

So our data for a farm to -- a farm pickup system, which would include cost of the equipment itself, it would include the facilities to maintain that equipment, it would include the labor involved in making that farm pickup system, it would include mileage cost, maintenance cost, include fuel cost and fuel subsidy. That rate is currently $3.03 per loaded mile.

The range of equipment, in our experience, is very wide. There are some farm pickup units that were as small as 20,000 pounds and some as large as 53,000. Some cases an over-the-road semi can pick up directly off of a farm, in other cases a small truck picks up and reloads or delivers to short distance. So we used 45,000 pound pay load for that.

The algebra, to do our calculation, we were able to -- well, start out with just the equation itself. The most frequent calculation is you get a haul rate, in terms of rate per mile, from a transport or a logistics company and you multiply that by the number of miles you're going to travel and divide that by the number of hundredweight you're going to transport, and you use that to get a rate per hundredweight. Then it's used to compare or to pay.

If you rearrange that algebra and you know all of the constants, you can come out with a proxy for the number of miles that you actually travel.

We know from published studies in

most of the Market Administrator offices, and we ask that it be included in the record, that they will go to the producer payroll tapes, they will extract any amount of dollars paid for milk hauling off of those checks, part of that is used to assure certain minimum pricing and transactions that take place in the order, and that data, though, is a part of their statistical recap. And several Market Administrators publish studies, that's part of their regular routine. Order 124 market has a regular study, they publish that data.

So the Market Administrator collected for us the rates by county, and then some goes into a bi-state average. And we took, then, those rates for the states in the geography where the supply plants are, that being the northern part of the Central order, Iowa, Minnesota, North and South Dakota, and Wisconsin, and that data was put in the record by Mr. Stukenberg yesterday; he gave us a rate per hundredweight.

We took that rate per hundredweight and substituted it into our revised algebraic equation and came out with a number of miles.

So, for example, a $0.18 payment in Iowa pays for about 27 miles. A $0.05 payment in Wisconsin pays for about 8 miles. We also, then, had the pounds by state for the month of December. All this stuff is from December of '03.

So we were able to compute a weighted average rate for that geography of 15.36 cents, the arithmetic is in this chart, and that worked its way back to 23 miles. And from there that's how we chose our 25 mile limit that we put in our transportation equation.

Q. So essentially, if I attempt to boil this down, you've demonstrated here on 10-A using actual DFA cost experience that on a weighted average basis, producers in Iowa, Minnesota, North and South Dakota and Wisconsin were pooled in Order 32 are paying for 23 miles of haul?

A. That's correct.

Q. And essentially your proposal, then, on transportation credits would maintain that constant producer expense throughout the market?

A. That's correct.

Q. Let's go to 10-B, then.

A. In furthering our proposal, we then needed some method of trying to cost out our proposal over the market, and that's a difficult task, because no one player in the market has all the data, except the Market Administrator, and they don't have all of the haul route data. So we've had to make some assumptions and then attempt to cost it out as best we could.

So this table, the dollar data -- I'm sorry -- the mileage data is all hypothetical. We just drop it in for example purposes, but this is how we would envision the credit working. And we asked the Market Administrator to divide the order up into four sections for markets, and those maps were presented yesterday by Mr. Stukenberg.

In general, there's the Denver market, there is the Oklahoma market, Kansas City, Des Moines market, and the St. Louis market. And they publish maps of the counties that supplied those markets and tables with the pounds in those counties that supplied those markets.

So then we went back in and using our own data, in conjunction with Prairie Farms, made estimates of the sales to the distributing plants in each of those markets. We had deliveries to distributing plants in each of those -- in those quadrants. And if you add up all the quadrants of deliveries and divide that by the Class I pounds in January, you come up with an average of 83 percent each, so we assumed that each bottling plant was 83 percent Class I. Now, that number, also, we went back and interrogated our own billing network and concluded that was a reasonable estimate.

The data for the counties, again, was taken from the Market Administrator data. So this hypothetical presentation of the Colorado market would have all the production that delivered to that quadrant of the market from the maps, the counties that it came from, the county seat that it came from, we looked that up on the Internet.

We assumed for the purposes only of this example that 100 percent of the milk delivered to Colorado Springs, the zone, the location adjustment in Colorado Springs is $2.55. Each of these counties has its own differential in place and -- but for purposes of example, we assumed them all to be 2.45; in actuality, you would put in, for example for Jerome, Idaho, would be $1.08.

But to show how we did the computation and make it easy, I put $2.45 for all of them. The mileage was randomly assigned. So the county was 25 miles and the first 25 miles was exempted, that would be zero pay. If the county was 75 miles away, the first 25 was exempted, that would be 50 miles pay. The county with 600 miles away, the maximum was 500, so only 500 miles would be paid.

We chose to use the same rate in this Proposal 3 rate per mile, .0003. Again, we thought that was a reasonable approximation. So .0003 is divided into each of the miles that were left over after the 25 mile subtraction or the 500 mile cap.

Our proposal costs were a location -- the recognition of a positive location adjustment, we would reduce that from the total, so the Colorado labeled zone adjustment subtracts $0.10.

That leaves us, then, with how much a transportation credit would actually be paid. If it was negative, no amount would be paid. We had the pounds of milk that came from the MA exhibits and you multiply all those across the sum, and in this hypothetical example it would be $224,331.

So that describes how we went about making the calculations for the actual data is in the next -- the actual summary data is in the next table.

Q. Okay, let's go to that, then, 10-C, which is titled Recap of Transportation Proposal.

A. In Table 10-C we have the market subdivided as the data that we requested and got from the Market Administrator. The handlers, the distributing plants in each of those quadrants are listed. The pounds that delivered to those plants as, again, published in the maps. It's listed, for example, quadrant one, the Denver area, it was

95,808,529 pounds that actually delivered --
Q. That's from Mr. Stukenberg's statement?
A. From Mr. Stukenberg's statement off the data that we requested. And the execution of our transportation proposal, with the assumptions and the data and methodology I outlined, would have resulted in January of $25,267 being taken from the pool and paid in the form of a transportation credit.
In quadrant 2, those are the handlers listed, the pounds in the exhibit, the application of our credit would be 284,000, sums down to $573,414. And the January pool in its entirety was 1,274,000,000 pounds and that divides out to be approximately $0.045 of reduction in the blend.
Q. Which is an estimate of the impact of the transportation credit proposal that you're going to be advocating?
A. That is correct.
Q. Now, with that background on the exhibits in Exhibit 18, would you proceed with your statement, Exhibit 19?
A. Statement of Proponents. Dairy

Farmers of America, Inc. and Prairie Farms Dairy, Inc. are the proponents of Proposals 1 and 2 and a modification to Proposal 3.

Dairy Farmers of America (DFA) is a member owned Capper-Volstead cooperative of 13,500 farms that produce milk in 49 states. DFA pools milk on 10 of the 11 Federal Milk Marketing Orders including the Central Federal Order.

Prairie Farms Dairy, Inc. (PF) is a member owned Capper-Volstead cooperative of 800 farms that produce milk in six states. Prairie Farms pools milk on three of the 11 Federal Milk Marketing Orders including the Central Federal Order.

The proponents are supporters of Federal Milk Marketing Orders and we believe that without them dairy farmers' economic livelihood would be much worse. Federal orders are economically proven marketing tools for dairy farmers. The central issues of this hearing are providing for orderly marketing, economically justifying the appropriate performance qualifications for sharing in the marketwide pool proceeds of an order and recognizing that the cost of serving Class I markets should be borne by all producers who share in the Order's revenues. Failure to address these issues will be detrimental to all the members of our cooperatives, both in their day-to-day dairy enterprises and the milk processing investments that they have made.

Summary of Proposals For This Hearing. These amendments are being requested by producers due to the present day dynamics surrounding the pooling of milk in Federal Milk Marketing Orders. The supporters of Proposals 1 and 2 recognize the disorderly market conditions that now exist due in large part to what we see as loopholes in the Federal Order regulations.

Milk can exit the pool at any time they are negative consequences to pooling and immediately return to the pool when it is extremely advantageous to do so. Milk that is so distant from the Order 32 Class I market that it would never regularly ship to fluid use, could, after meeting the initial one day touch base requirement, shares in the fluid earnings of the pool in an opportunistic manner.

Proposal 1 deals with performance standards for both local and distant milk. It's goal is to more fairly define the milk that should share in the pool's Class I returns.

Proposal 2 deals with the issue of depooling. Its goal is to minimize the practice of depooling by requiring milk that chooses to "opt out" of the pool to face greater economic consequences for that behavior. Both DFA and Prairie Farms depool milk when advantageous and feasible. However, we think this practice is detrimental to the Order system and to dairy farmers and wish it stopped or curbed.

Our modification to Proposal 3 offered Foremost Farms USA and others would establish a "transportation pool" funded by blend price revenues to offset a portion of the cost of transport milk produced in the marketing area to the market.

We will present two witnesses, Mr. Lee and Mr. Hollon, to deal with the specifics of our proposal and the technical workings of the language we propose. We will also present several dairy farmers who will address how the practical aspects of the current inadequate performance standards affect their ability to produce milk for the Class I market in Order 32.

Because of the way our proposal work, we will testify first to Proposal 2, then to Proposal 1. We will also address a modification to Proposal 3 and speak to the emergency nature of the hearing.

Class I Value and Performance Standards. We provided proposals and supporting evidence at the 2001 Central Order hearing on pooling and performance standards, (Administrative Order-313-A44). We are here today because we feel some of the same issues need to be revisited and other marketing problems addressed.

DFA Exhibit 18, Table 1, Pounds of Milk Used in Class I Products, by Federal Milk Order Marketing Area, 2003 demonstrates the Central order is the third largest Federal order market in terms of Class I use with

4.724 billion pounds of Class I sales in 2003. It is the value of these Class I sales that provides revenues to producers over the market clearing prices from lower valued milk uses.

Market Administrator Exhibit 10, DFA Request No. 10, details just how much of the Central order's pool values are derived from the value of Class I milk. For example, for the month of January 2000 there remains $6.66 million in value to the shared in the pool after all of the producer milk is priced at component value. Class I sales generate these extra dollars. Clearly the value contributed by Class I is not static. In the period covered by the table, the Class I contribution ranged from a high of $16.5 million in November 2001 to a low of $1.5 million in March 2004.

The question of who shares in these values is the key question at this hearing.

Should performance standards allow milk to opt in and out of the pool on a month-to-month basis depending on the relative blend price return and share in the market returns on the same basis as the milk that supplies the Class I market's regular every-day demand? We think they should not.

Should the third largest Class I sales volume market have a more diligent performance standard than what is commonly turned "once and done"? We think it should.

Should performance standards be so lenient to allow pooling of milk, which if delivered to meet the market's every-day Class I demand, would lose large amounts of money? We think they should not.

Should all producers who share in the market's return have some obligation to help offset some of the cost of supplying the market's every-day Class I needs? We think they should.

These questions form the focus of our proposals.

The decision from the 2001 Order 32 (Central Order) hearing directly effects the relevant questions before us at this hearing and provides direction for both our proposals and the testimony and evidence we provide to support them. We want to highlight a few selected paragraphs from that decision:

"The pooling standards of all milk marketing orders, including the Central order, are intended to ensure that an adequate supply of milk is supplied to meet the Class I needs of the market and to provide the criteria for identifying those who are reasonably associated with the market as a condition for receiving the order's blend price.

"The pooling standards of the Central order are represented in the Pool Plant, Producer, and the Producer Milk provisions of the order. Taken as a whole, these provisions are intended to ensure that an adequate supply of milk is supplied to meet the Class I meeds of the market.

"In addition, it provides the criteria for identifying those whose milk is reasonably associated with the market by meeting the Class I needs and thereby sharing in the marketwide distribution of proceeds arising primarily from Class I sales.

"Pooling standards of the Central order are based on performance, specifying standards that, if met, qualify a producer, the milk of a producer, or a plant to share in the benefits arising from the classified pricing of milk.

"Pooling standards that are performance-based provide the only viable method for determining those eligible to share in the marketwide pool. That is because it is the additional revenue from the Class I use of milk that adds additional income and it is reasonable to expect that only those producers who consistently bear the cost of supplying the market's fluid needs should be the ones to share in the distribution of pool proceeds.

"Pooling standards are needed to identify the milk of those producers who are providing service in meeting the Class I needs of the market. If a pooling provision does not reasonably accomplish this end, the proceeds that accrue to the marketwide pool from fluid milk sales are not properly shared with the appropriate producers. The result is the unwarranted lowering of returns of those producers who actually incur the costs of servicing and supplying the fluid needs of the market.

"The tentative decision and this

final decision find that the milk of some producers is benefitting from the blend price of the Central order while not demonstrating actual and consistent service in satisfying the Class I needs of the Central milk marketing area.

"The reform Final Decision, as it related to the Central marketing area, did not intend or envision that the pooling standards and pooling features adopted would result in the sharing of Class I revenues with those persons, or the milk of those persons, who would not be demonstrating a measure of service in providing the Class I needs of the Central marketing area.

"As previously indicated, pooling milk on the Central order without demonstrating actual performance in servicing the Class I needs of the market area is neither appropriate nor intended." Taken from 68 Federal Register 51644 through 51646, August 27, 2003.

Proposal 2 - Depooling. Proposal 2 deals with the issue of depooling. While there is no official order term "depooling," the industry generally understands it to mean the process of removing pounds of milk (by class) from the pool whenever the blend return is less than the corresponding class value to the pooling handler and then reassociating the same milk in a later month with the pool when the return is above the class value.

The pooling handler retains the higher class value, having billed his customer for it, but does not share the higher value in the order pool and has more dollars (generated by the order) available to pay to his milk supply than a handler that cannot depool. (By definition, Class I milk must be pooled and the value shared through the pool's blend price.)

This is a rational economic practice - but the consequences in a regulated environment are disorderly. Competing milk supplies that do not have equal returns generated by the order available to pay for milk.

Depooling is allowed by the order for Classes II and III and IV. In every order except the northeast Federal order this economic comparison can be made monthly with no consequence in a later month for a decision made this month.

The term and its occurrence is not a new or even recent Federal order phenomenon. But as milk prices become more volatile, the high dollar value associated with depooling becomes more critical and is both a recent phenomenon and a critical reason why changes must be made to the order system.

I personally performed depooling decision calculations for Order 30 for my employer in the 1980s and 1990s, but remember very few prices differences of the over $2.00 per hundredweight range. In an exhibit prepared for the most recent Order 30 hearing, instances of negative PPDs for Order 68 were presented and for the period 1993 to 1999 (84 months) there were 16 negative months with PPDs listed.

That sentence should be "there were 16 months with negative PPDs listed."

Six of them were in excess of 50 cents. Furthermore, I cannot recall more than a few times that depooling decisions extended into what was then the Indiana, Michigan, Central or Southern Illinois orders. Certainly it was the mid to late 1990s before that type of decision-making was "regular" outside of the Upper Midwest orders.

Among the basic purposes of the Federal order structure are to assure an adequate supply of milk for the fluid market, equitably share in the pool proceeds in an economically justifiable manner, and promote orderly marketing. Orderly marketing would encompass principles that attract milk to the highest value use when needed and clear the market when not needed.

Marketwide pooling allows qualified producers to share in the market returns on a fair and equitable basis and establish requirements that provide the necessary incentives to efficiently supply the market. Working in conjunction with classified pricing, these principles and requirements assure an adequate supply for the fluid market.

A review of MA exhibits, published Order data, and DFA exhibits for Order 32 show that depooling opportunities have been present 43 times since the implementation of Federal Order Reform. In calendar year 2000 there were eight opportunities (zero in Class II, zero in Class III, and eight in Class IV); in 2001 there were ten opportunities (five in Class II, zero in Class III, and five in Class IV); in 2002 there were four opportunities (three in Class II, zero in Class III, and one in Class IV); in 2003 were there ten opportunities (six in Class II, four in Class III, and zero in Class IV); and thus far in 2004 there have been 11 opportunities (nine in Class II, two in Class III, and zero in Class IV).

Depooling is a problem because it results in different returns from the Order for milk sales. Milk is only depooled when the result means more money for the handler who depools. Since by definition Class I milk cannot depool, then the Class I sale is always disadvantaged when milk is depooled. The handler with Class I sales must draw from margins in order to pay a competitive pay price because his regulated return is less than the depooling handler. If he cannot or does not, he will lose his milk supply to a handler who does depool.

Thus, handlers in common procurement areas face widely different returns from the regulated pricing scheme. This is the ultimate in irony - that the source of additional value to the pool, Class I milk, is unable to be competitive with other class sales due to depooling. If one of the purposes of the order is to provide milk for Class I sales, then depooling thwarts that purpose and must be considered disorderly.

The magnitude of the difference in returns is large. Looking to DFA Exhibit 18, Table 2-E, Utilization and Statistical Uniform Blend Price Federal Order 1032 Calendar Year 2004, for April a handler that was unable to depool was $4.02 per hundredweight behind in ability to pay versus a handler that was able to depool. For the supplier that delivered a tanker load of milk per day to a fluid bottler, that different amounted to $62,310 for the month; for ten loads per day, $623,100 per month.

Differences of this magnitude would be insurmountable for nearly any milk producer. In May, that difference was $2.18 per hundredweight. While much less, still very significant. Expressed another way in February 2004, 1.2 billion pounds of milk was pooled on the Central order including 628.8 million pounds of Class III milk.

In March there were only 0.712 billion pounds in the pool and 141.6 million pounds of Class III. In April and May both volumes dropped even more but completely returned in June to nearly the same February levels. Much of the milk that shared in Class I dollars generated by the Order in February opted out in March and April and returned easily in June to share again.

Looking again to MA Exhibit 10, DFA Request No. 10, those who chose to depool left the pool when there was only $1.5 million of revenue to share and returned to the pool in June when there was $11.7 million to share. Thus, those who could not depool were not able to "collect more" when "more" was available to make up for their shortfall in March and April because more pounds opted to share in the total pool and blended down the per unit return. This situation must be remedied.

The handlers face different returns from the blend pool, then ultimately producers in common procurement areas will face differing returns - a second sign of disorderly marketing. Furthermore, while not a purpose of orders, depooling makes risk management tools normally available to dairy farmers virtually useless since the magnitude of risk they must now account for is far too wide for any speculator to be willing to take on or the price for such activity so great to render the hedge useless.

MA Exhibit 10, DFA Request 4B, producer Price Differential Computation with the Effect of Incremental Increases of Depooled Producer Milk Utilized in Class III, July 2003 to May 2004 depicts the financial impact on the PPD from various levels of depooling Class III milk.

As noted in the footnote, each PPD computation does not include the Producer Settlement Fund reserve amount. Adding four and a fraction of a cent to each number would result in the published PPD for the month in the column labeled "Weighted Average PPD."

Using the data in the table we can determine that in April 2004 the published PPD of negative $3.974 would have been $0.87 more if the pool had contained 25 percent more Class III milk. If all of the depooled Class III milk would have been included, the pool would have been $2.15 greater and of equal importance all handlers in the marketing area would have had the same level of return from the pool.

In December 2003, a month of a sizeable positive PPD of $1.08, if 100 percent of the Class III milk would have chosen to depool, the PPD would have been $2.03 or 95 cents more. Clearly the order system was designed to share the December 2003 - $0.95 of value. That is the principle of marketwide pooling and the concept is designed to prevent producers from taking on ruinous competition in order to capture the Class I market such that no one is profitable and all are out of business. But it should seem equally clear that the system should not abet the in and out behavior that we now have.

It is our testimony that differing returns in the ability to pay of up to $4.02 are disruptive, disorderly and greatly affect our ability to procure and maintain a milk supply for our Class I customers.

Proposal to Limit Depooling. The proposal we offer is to limit the pounds a handler can pool each month to a volume lesser than or equal to 125 percent of what was pooled in the prior month. This proposal is too drastic for some, as I am sure we will hear, and not nearly strong enough for others in the marketing area.

In the development of Proposal 2, the proponents reviewed the Order's pooling requirements. Among possible changes reviewed and discarded were changing the touch base to an every month requirement; eliminating split plants so that a plant was either a pool plant or a nonpool plant at any given location; instituting a producer for other markets provision; and developing a type of committed supply program. All of these would have meant some change, and in some cases great change, at great cost for Order 32 handlers.

Proposal 2 would limit how much milk a handler could add to the pool or repool each month. Milk pooled would be limited to 125 percent of the previous month's pooled volume with a few exceptions. It will not eliminate depooling. It does mean there are potential consequences to massive depooling. If you depool under the regulations, there are no long-term consequences. In fact, there are virtually no negative impacts for those who depool.

The level of this limitation was chosen after receiving information similar to that found in Market Administrator Exhibit 10, DFA Request No. 8. The two large percentage changes shown in Table 8 are the 148.32 percent in November of 2003 and the 189.38 percent in July of 2004 - in both cases these percentages follow month of massive depooling and represent the type of situation our proposal is designed to correct.

The 126.98 percent in February of 2000 represent a response to Federal Order

Reform where pooling decisions were being made to take advantage of new Order provisions and the February calendar was not long enough to make all the delivery requirements necessary to comply with handlers' new intentions.

More milk than normal was then associated for the first time with the March pool. The 125 percent limitation in our proposal should accommodate the normal market situation in the Central order and allow for a reasonable amount of added volume in any given month.

MA Exhibit 10, DFA Request 5, Estimated Volume of Maximum Milk Allowed to Be Depooled at 125 percent Depooling Limit with the Three Month Time Lag demonstrate that depooling is not eliminated by our proposal. Under "perfect conditions" a handler could depool up to 35 percent of his milk supply over a three-month period and still get it all back on the pool in month four. While not eliminating depooling, this is a modest, and in our minds reasonable, position to take to control the problem.

Restricting the pooling of milk on

prior performance is not new to Federal orders. The Northeast order has had a "producer for other markets" provision for many years. Under this provision milk, milk of a producer cannot be immediately repooled if it has been depooled and is, in fact, excluded from the pool for an extended period of time. Proposal 2 would not impose such a burden on an individual producer but limits pooling based on an aggregate total of the handler's previous month's pooled pounds.

Years ago, other orders primarily in the South and/or Southwest had either a producer for other markets provision or base plants to accomplish similar goals. In these markets, the intent of such provisions was to limit the sharing of the marketwide pool during the spring months to those who pooled during the fall.

An additional benefit to our proposed limitation on pooling is that it would reduce or eliminate the possible increase in the Market Administrator's assessment fee.

Q. Mr. Hollon, can I ask you to go back? When you were referring to base plants, you may have said in the southwestern part. You meant southeast?

A. That's correct. It should read, "Years ago, other orders primarily in the South and/or Southeast" --

Q. Thank you.

A. -- "either had a producer for other markets provision or base plants to accomplish similar goals."

An additional benefit to our proposed limitation on pooling is that it would reduce or eliminate the possible need for an increase in the Market Administrator's assessment fee. In Federal Order 30, the Market Administrator's budget has been so impacted by depooling that he felt necessary to ask for an increase in the upper limit for the fee level in order to assure that the order can properly function and do so with a reasonable budget.

While this is not a current issue in the Central order, it may well become one and our proposal should keep that from occurring. The pool volumes would be more stable. It is our view that there would be more milk pooled and less need for a fee increase. At the very least, with stability in the pool volumes, it would be easier for the Market Administrator to make staffing and other operational decisions which benefit the Order.

Some have asked why not seek a "non" order solution to this problem. However, those solutions are not always workable or consistent. There is not any way to recover the negative PPDs from the Federal order. A handler that must pool is always at a disadvantage when there is a negative PPD. And when there is a positive PPD, the handler who depooled during the negative PPD immediately returns to share in the pool.

There has been a recent effort to recover the negative PPDs through increased fluid market service charges. While admirable and welcomed by those who supply the fluid market, this effort is not sustainable over the long term. The increased price may have contributed to the larger than normal decline in fluid milk sales this summer. Also, the fluid plants in Order 30 where the added price has been implemented were placed at a competitive disadvantage with fluid plants in the Central and Mideast Orders and other areas where there has not been an increase.

The fluid plant cannot always recover this increased cost from the marketplace. Many of the longer term packaged milk supply arrangements with national and regional accounts have a price adjuster for changes in the Federal order cost of milk. There may not be any provision, however, for changes in over order prices. The fluid plant ends up "eating" this increase and the books show red ink.

Central Milk Producers Cooperative and Upper Midwest Milk Marketing Agency (CMPC and UMMA) are pricing agencies composed of some of the cooperatives that supply milk for Class I use in the Upper Midwest. CMPC and UMMA put the increased service charge (negative PPD surcharge) in place for those plants that obtain milk from the CMPC and/or UMMA membership. Not all suppliers in Order 30 were members of CMPC or UMMA. This adds to the difficulty of maintaining a negative PPD surcharge premium. This method is not a long-term workable solution.

There are other proposals that have been offered here and will be testified to later in the week. We discussed many of those proposals and feel that several of them may work well in principle but are not the best solution for the Central order.

The language that we offer is as follows:

(f) The quantity of milk reported by a handler pursuant to § 1032.30(a)(1) and/or 1032.30(c)(1) for the current month may not exceed 125 percent of the producer milk receipts pooled by the handler during the prior month. Milk diverted to nonpool plants reported in excess of this limit shall be removed from the pool. Milk received at pool plants in excess of the 125 percent limit, other than pool distributing plants, shall be classified pursuant to § 1000.44(a)(3)(v). The handler must designate, by producer pick-up, which milk is to be removed from the pool. If the handler fails to provide this information, the provisions of 1032.13(d)(5) shall apply. The following provisions apply:

(1) Milk shipped to and physically

received at pool distributing plants shall not be subject to the 125 percent limitation;

(2) producer milk qualified pursuant to § .13 of any other Federal order in the previous month shall not be included in the computation of the 125 percent limitation; provided that the producers compromising the milk supply have been continuously pooled on any Federal order for the entirety of the most recent three consecutive months;

(3) the Market Administrator may waive the 125 percent limitation;

(i) for a new handler on the order, subject to the provisions of § 1032.13(f)(3), or

(ii) for an existing handler with significantly changed milk supply conditions due to unusual circumstances;

(4) a block of milk may be considered ineligible for pooling if the Market Administrator determines that handlers altered the reporting of such milk for the purpose of evading the provisions of this paragraph.

Section (f) sets out that the total volume of milk that can be pooled this month is no more than 125 percent of what was pooled in the prior month. Any milk in excess of this volume will be removed from the pool. It is the handler's responsibility to designate which milk is not to be pooled if the limit is breached.

Section (f)(1) directs that milk shipped directly to a distributing plant is exempt from the limit. In the extreme case of 100 percent depooling, a handler can always pool his deliveries directly to a distributing plant next month and also begin to earn pooling ability for subsequent months.

Section (f)(2) allows that milk has been pooled on another order to be exempted from the 125 percent limit so long as the milk has been continuously pooled for at least three months on some order. This does not penalize a Central order handler from being a supplemental supplier to another order plant and also prevents a multi regional supplier from selectively depooling and moving producers around between orders to maximize depooling gains.

Section (f)(3) allows the Market

Administrator some discretion in administering the proposal to account for a new handler, drastic but explainable reasons for changes in a pooling volume, and the ability to investigate and deny pooling for instances where some type of fraud or mal-intent is going on.

Proposal 1 - Performance Standards. Proposal 1 deals with the recognition that the performance standards for the Central order need further review. Current provisions - while improved from the standards set in order reform, are still too lax and allow far more milk to be associated with the market that what might be considered a normal reserve.

The excess reserve depresses the blend price for producers that serve the every day needs of the market. It is increasingly difficult to attract milk to the Central order with the existing blend price or to keep milk from being attracted away to other orders.

Furthermore, we are concerned that a pooling situation may develop with milk supplies from the Mountain states, similar to the "double dipping" concerns from California milk that was evident only a few months ago where large volumes of milk may get attached to the Central order from distances so far away that it can rarely if ever serve the market. This situation has already occurred in the Upper Midwest order and we want to insure that performance standards are adequate in the Central order to correctly identify which milk should share in the market returns.

Distant milk - concerns. We note that today little distant milk is associated with Order 32. However, the same thing could have been said about California milk in calendar year 2000 - there was none on the pool. But from 2001 through 2003, a large quantity was pooled on the Central Order Milk from California. The volume first pooled on Order 30 because it was the easiest and most lucrative order to attach to.

After that option was no longer an alternative, much of the milk moved to the Central order and then to the Western order. This situation is illustrated with data taken from Exhibits 15 and 16, which is the Western Market Administrator's exhibit, MA Exhibit 9, which is the Central Market Administrator, and MA Exhibit 11 -- and this should be a correction here, that should read the Upper Midwest Market Administrator exhibit.

The data was assembled in table form in DFA Exhibit 10, Table 4 - Compilation of Pounds of Milk Pooled on Orders 30, 32 and 135 From All Sources and California, and graphically in DFA Exhibit 10, Table 4, Chart 1.

Q. Do you mean DFA Exhibit 18?

A. Yes, DFA Exhibit 18.

Q. In both references there?

A. Yes, that is true.

Q. Okay.

A. Table 4, Chart 1 - Comparison of Total Milk Pooled and Milk Pooled from California, Federal Orders 30, 32 and 135, January 2000 through December 2003. It is clear to see that California milk moved between the orders as provisions allowed.

The parties that pooled the California milk were acting in their own self-interest and made rational economic decisions within the framework of the rules allowed. However, we, much of the rest of the industry, and eventually the Secretary felt this type of pooling was disorderly and adopted regulations to limit California milk from pooling in Orders 30, 32 and 135.

We have seen a similar situation arise with milk from Idaho and other portions of the former Western order become pooled on Order 30. (See Market Administrator Exhibit 11, DFA Request 1 from the Upper Midwest Market Administrator.) Data presented in these tables was offered in the recent Order 30 performance provision hearing and detailed how milk from Jerome County, Idaho, had become the single largest milk supply county on the order - at over 1,200 miles away from the Minneapolis market. Milk from this area would be a long distance from Central order markets.

MA Exhibit 10, DFA Request 2, details mileages from several Southern Idaho cities to bottling plant locations in the Central order. As seen from the table, the distance ranges from 548 miles, from Preston, Idaho, to Denver, to 1,434, Boise, Idaho, to Sioux Falls, South Dakota.

These distances make it difficult to be a regular supplier to the market. There are some questions about dependability of supply and certainly the cost of transport would be excessive. In addition, order provisions are such currently that only a miniscule amount of the milk would ever have to perform.

Testimony presented at the Order 30 hearing indicated that less than 1 percent of the milk pooled ever delivered to the market. We will present some additional testimony relative to cost and return later in our statement. We know from our own marketing information and from the testimony presented in the Order 30 hearing that a significant quantity of the Southern Idaho milk supply that is attached to Order 30 is Class IV. The Central order has little Class IV utilization currently so any additional supply would not be a traditional part of the market.

MA Exhibit 9, Central Federal Milk Order Tables 11 through 13 show Class IV percentage use to be in the high single digits since Federal Order Reform consolidated several markets into the Central order. Pounds of Class IV utilization have been between 1.1 and 1.45 billion pounds annually since 2001. MA Exhibit 10, DFA Request 3, shows that for some of the predecessor orders there was a smaller but consistent amount of Class III - A utilization pooled in the Central order geography.

The Order 30 hearing, the Class IV volume paper pooled on Order 30 was estimated to be near 100 million pounds per month. MA Exhibit 10, DFA Request 4A, computes an estimated impact that additional pounds of Class IV milk pooled on the Central order would have, if added in increments of 25 million pounds for the month of November 2003 to January of 2004. These months were full-pool periods with prices in normal alignment.

From this exhibit we can see that in November at the full 100 million pound rate the negative impact to the pool would have been $0.25 per hundredweight on all milk. This would also have resulted in a negative PPD of $0.05 - even in a month with normal price alignment.

The dollar impact of the November pooling would have been $2.898 million. In December, the effect would have been $0.16 on the PPD and $1.984 million; and $0.08 in January 2004 and $1.020 million. Producers that supply the every day needs of the market should not have to have their revenues reduced by this amount for milk that rarely, if ever, serves the market.

DFA Exhibit 10, Table 3 --

Q. You mean 18?

A. 18. Comparison of Fluid Use Pounds and Reserve Supply Pounds Federal Order 1032, January 2003 through October 2004, and the accompanying chart, DFA Exhibit 18, Chart 2, compares reserve supplies in indexed form from January 2000 to October 2004 using January 2000 as a base.

The table clearly shows that reserve supplies have been reduced likely as a result of the first "performance provisions" hearing. But clearly there is a significant amount of reserves still attached to the order, as levels of 125 percent still seem high. Some may claim that this level of reserve supply is needed or should be a part of the order for various historical reasons. But that argument must surely be weakened when as shown by the data that the reserve readily leaves the market and is not available to supply the market any time the PPD relationship is not economically attractive.

We have had supplemental suppliers refuse to make deliveries when faced with the "opportunity" to receive a negative PPD. The rationale that a large supply should have access to the pool must be measured against its ongoing availability to actually serve the market.

One of the measures of orderly marketing is some semblance of price alignment within and between Federal order markets. The entire price surface is theoretically established to facilitate milk movements to supply markets. Class I differentials and class prices are designed to maintain a milk supply, provide incentives to transport milk and clear markets.

Differentials are established with

assumptions about pooling and milk use. The differential surface established in Federal Order Reform is not performing for Order 32. The anticipated Class I use of 50.1 percent has never been achieved. Either price is not high enough or more milk is blending down the returns than was anticipated when the differentials were established.

While we have opinions about the first option, the remedies for that option are much more limited and are not available to us here. So we are focusing our efforts here on the second remedy of reducing the milk that can be pooled and may be pooled in the future.

DFA Exhibit 18, Tables 5-A through E through 6-A through E, Comparison of Relative Returns Between Markets makes computations about the relative returns after freight costs between Federal Order 32 and reserve supply points in the Upper Midwest and competitive demand destinations in the Appalachian (Order 5) and Southwest (Order 7) Federal orders.

The relative return (blend less haul) from Order 5 has outpaid the Order 32 return every month except two since January of 2000.

While the annual average has narrowed this year, the ten month average for a Southern Illinois producer has been $0.61 per hundredweight better from Order 5 and for a southeast Missouri producer $0.92 better from Order 5. Producers in this area will not supply the St. Louis market when differences of this magnitude are available.

A similar comparison has been made for a southern Oklahoma producer showing the returns from Federal Order 7 at Little Rock and Ft. Smith. While the Order 32 return is $0.04 better when compared to Little Rock, it will not procure milk away from a Ft. Smith sale as the haul is much less and the return $0.62 above the Order 32 level.

When the comparison shifts to Order 30 and the ability of the Order 32 blend price to attract a supplemental supply from Lancaster, Wisconsin, to St. Louis or Melrose, Minnesota, to Des Moines, Iowa, the comparison worsens. In both cases, the Order 32 return is inadequate and has actually worsened since the 2001 performance hearing.

The Order 32 return for the

Lancaster - St. Louis comparison is a negative $1.22 per hundredweight and a negative $1.41 for the Melrose - Des Moines delivery for ten months in 2005. It has been negative for every year for both markets since 2000. While orders are designed to establish minimum prices only, the premium level it would take here to procure a reserve supply in this case is unrealistic.

These data clearly show that the blend level will neither attract a reserve supply nor maintain a local supply from competition from orders to the southeast.

MA Exhibit 9, Central Federal Milk Order No. 32 and MA Exhibit 12, Dean Foods Company details the sources of milk supply to the order for each year since 2000 and deliveries to pool distributing plants. We note that the milk supply has been historically associated with the market and has delivered to distributing plants has originated from plants with at least one -- I'm sorry, that should be from "states," not plants -- from states with at least one county in the marketing area and from New Mexico. No milk is shown to be a part of the Central order supply on a regular basis from the Mountain states.

We would contend that order provisions should bear some relationship to real world economic decisions. One measure of the reasonableness of a performance standard is if the standard did not exist would the economic reality of the transaction ever prevent it from ever taking place.

The minimum pricing environment objective of orders is such that orders establish minimum prices that should still require some level of negotiation in the marketplace. The "flipside" of this concept is that the order pricing provision (performance standard) should not enable a transaction to take place that is so absurd that it would never occur outside of the regulation.

The debate and resulting decisions on "open or paper pooling" clearly established the principle that pooling without regard to performance was wrong. The part that was wrong was that a benefit was obtained that was not nor could not be earned absent regulation - the economic cost would be too great and the party seeking the gain would abandon the effort.

We have attempted to measure the relationship between performance standard and return in order to demonstrate that current standards are too lax and to defend both our proposed change in touch base, diversion limit and diversion point. Our measure again compares the relative return over various pooling standards and PPD level driven by both a Class III (the traditional) and a Class IV standard (blend less Class IV price). These comparison are located in DFA Exhibit 18, Table 8-A through I and 9-I titled Comparison of Delivery Charge Versus Producer Price Differential.

We have compared the return from a delivery originating in Southern Idaho to Denver - the closest point for the milk supply that may seek a new pooling location if prevented from pooling on Order 30. The distance for this comparison is 686 miles. We have reduced the haul by the proposed transportation benefit offered by Proposal 3.

We have used a haul rate of $2.00 per loaded mile, which after the application of the transportation credit yields a $2.19 per hundredweight cost. We made four comparisons for the assumption based on a Class III PPD and four comparisons for a Class IV PPD. All examples are for the 58 months since Federal Order Reform and are based on a single 1 million pound per month delivery.

No consideration is given for the effect of "pooling deals." All the return is expected to accrue to the shipping handler. Also, all "depooling" decisions are made based on the PPD. In some cases the freight consideration may make the decision to depool, even if the PPD is positive.

Comparison A constructs a scenario where milk is pooled every month. In each scenario the milk would lose a lot of money if it had to perform every day. No rational economic business would ever make this business arrangement. However, after the "once and done" current Order 32 touch base requirement is met, no other deliveries are required (so long as association is maintained with the market) and the return becomes profitable over the entire period earning an average of 34.8 cents per hundredweight per month. For the period even with negative returns for calendar year 2003 and 4, $201,881 is earned by pooling on Order 32 - a great return for delivering a single load of milk.

Comparison B constructs a scenario where our proposed delivery/diversion requirement of 25 and 20 percent delivery in the shipping months/surplus months is in effect. Under this scenario the handler must still pool every month - no depooling option is considered. Also, this option would have our proposal to only allow diversions to nonpool plants in the marketing area.

Under this scenario the 58 month average return is 6.05 cents or $37,770 in total. Still a positive return, but one in which some level of premium/negotiation would be likely before the transaction would take place.

Comparison C depicts a "once and done" depool at will scenario that is the most lucrative. Under this scheme the term is 65.9 cents per hundredweight average for the period and earns $316,281 for the milk pooled. The review of an economist would not be needed to make this business decision.

Comparison D depicts a delivery/diversion requirement of 25 and 20 percent delivery in the shipping months/surplus months performance standard, but the ability to depool at will. This effort earns a 37.7 cent return and $180,782 for the period. Note that all of these comparisons are at million pound increments. The Idaho/Order 30 pooled milk in a full pool month averaged slightly over 260 million pounds - some of which is Class IV which would make this comparison worse.

Comparison E through H shifts to a Class IV PPD holding all other variables the same as in scenarios A through D. This would be the economic pooling decision as viewed by a maker of Class IV products. As we have noted, there is about 100 million pounds of Class IV milk pooled on Order 30 from Idaho. That milk has been a significant negative draw against the Order 30 blend price and warrants our consideration in this analysis to study its potential effect on the Order 32 blend price. In comparison E, the "once and done" touch base- pool every month situation resulted in a 37.1 cent per hundredweight gain or $215,781 for the period.

Comparison F details the higher performance standard but not allowing for depooling and results in an 8.9 cent per hundredweight gain or $51,670 for the period.

Comparison G shows "once and done" and depool at will and the most lucrative return of the scenarios of $1.102 per hundredweight and $396,581.

Lastly, scenario H shows the higher performance standard coupled with the ability to depool at will. This strategy yields a return of 81.7 cents per hundredweight or $294,048.

Table 8-I is a summary of all comparisons using the -- delete the word "existing" -- using the performance standards -- and delete the words "and the ones" -- we have proposed. The sentence

should read, Table 8-I is a summary of all comparisons using the performance standards we have proposed.

Table 9-I makes all of the same comparisons but at the existing delivery standards in the Central order. Those are 20 percent and 15 percent delivery in the shipping and surplus months. In all cases the current standards are even more lucrative than those we propose and would have to be viewed as a reason to correct the existing performance standard.

When the current performance standards are reviewed, it becomes clear that they allow and perhaps encourage business decisions to be made that would never take place in the real world. This leads to and supports the conclusion that the performance standard is both faulty and needs correction.

We can concluded that milk outside the marketing area and the adjoining defined area needed to perform in order to derive the benefits of the marketwide pool. There may be a better alternative to achieve this goal for the unique marketing circumstances of the

Central order than our proposals, but we have not discovered them.

Under our proposal, diversions to plants located outside the prescribed geographic area would not be allowed to pool. Our proposal requires that all poolable deliveries must be to either an Order 32 pool plant or a plant located within the prescribed area. Also, our delivery standard, if to achieve the goal of a more reasonable performance standard, must be coupled with a minimal increase in touch base standards and a limitation to depooling. Retention of the existing "until" language, 1032.13(d)(1), also is an integral part of the performance standard.

The approach that Proposal 2 takes is supported by the logic used in the last Order 32 performance standards decision. That decision established the principle that in-area milk could not be used to qualify out-of-area milk. (1032.7(c)(2).) The out-of-area milk needs to perform on its own merit in order to earn the reward of sharing in the pool returns.

Federal orders have had a long tradition of differentiating between in-area and out-of-area milk. Former Order 68 had provisions for reserve supply plants. Initially these plants had no regular shipping requirement except for the initial load of milk that established association with the market. There was, however, one major criterion these reserve supply plants had to meet - they had to be located in the marketing area.

The same criteria applied to supply plant systems in former Order 30. A supply plant had to be located in the marketing area to be part of a supply plant system. Supply plants outside the marketing area were obligated to perform on their own behalf.

Further support for the approach that out-of-area milk should perform on its own is found in the requirements for the formation of pool plant systems in current Orders 30 and 32. A supply plant must be located in the marketing area. Supply plants outside the marketing area cannot be part of a supply plant system.

This method for supply plants to meet the Order's performance requirements was developed to allow milk to move to fluid use in the most economical fashion but still provide for reasonable and economically justified performance criteria. By excluding plants from outside the marketing area, there was assurance that the included supply plants had ties to the market - even if an individual plant did not ship for fluid use. From the Reform Decision:

"The only requirement affecting an individual plant within the unit is that the plant must be physically located within the marketing area. This restriction is necessary to prevent distant plants from receiving the benefits of participating in the marketwide pool without actually having an association with the market." 64 Federal Register page 16154 (April 2, 1999).

The plant-based approach in Proposal 2 is appropriate since supply plants or supply plant systems inside the Order 30 area are treated no differently than supply plants located far from the order's core. Both are responsible to perform similar rates.

Since the time of the 2001 hearing, the market situation has changed dramatically. The Western order, which encompassed much of Idaho, has been terminated. Class IV prices have swung from much higher than Class III to being significantly lower. This changed relationship is primarily due to a change in purchase price of nonfat dry milk powder by the CCC under the milk support price program. This action was far outside the Federal order realm, though it has a major effect on Federal order class prices and pools.

The adoption of Proposal 2 will ensure that any milk, no matter how near or far from the marketing area, can and will serve the needs of the fluid market if it is going to enjoy the rewards of the marketwide pool.

We draw the following conclusions from our data:

1) The Central order still has more reserves than can be reasonably justified and those reserves are not always available to the market when needed.

2) There is a real concern that milk that cannot reasonably ever serve the every day needs of the market may seek to attach to the Order 32 pool if foreclosed from Order 30.

3) Current performance standards would allow this milk to share in the pool returns even though it would never serve the market without the lax standards because doing so would be hugely unprofitable.

4) The Order 32 blend price is not meeting the objectives of attracting a reserve supply or preventing its supply from moving to other markets and its ability to do either has worsened.

5) The current performance standards will allow and even encourage milk from areas too distant to ever serve the market on a regular basis to become attached to the order pool. The "once and done" standard combined with the ability to depool any volume can be very detrimental to the Order 32 blend price.

6) Comparison of the various alternatives for pooling show that Class IV milk can have an even more detrimental effect on the blend price to performing Order 32

producers.

7) An economic model of evaluating the performance standards for the Central order demonstrate that a higher level of standard is needed to determine who should share in the market returns.

8) In order to protect the blend price from milk supplies that do not exhibit adequate performance, order provisions that correct depooling abuses and enhance performance standards are needed.

Proposal Language to Enhance Performance Standards.

JUDGE HILLSON: I think I'm going to interrupt. I think it's a good time to take a -- you've been going for a while now and I think our reporter probably needs a break too. I'm going to call our morning 15 minute break now.

THE WITNESS: Sounds like a good idea.

JUDGE HILLSON: Be back at 25 minutes of.

(Recess.)

JUDGE HILLSON: Let's go back

on the record. And Mr. Hollon, you can resume your statement.

A. On page 28, middle of the page, Proposal Language to Enhance Performance Standards. All Federal orders have performance standards. The reasons for their existence is uniform while the exact standards themselves are varied. In order to best fit the marketing conditions we see in the Central order, we offer the following language:

In this particular case, regular case is existing language, bold case is proposed, and a strike through represents some deleted portions of the provisions.

§ 1032.7 Pool Plant. (c) A supply plant from which the quantity of bulk fluid milk products shipped to (and physically unloaded into) plants described in Paragraph (c)(1) of this section is not less than, strike 20, insert 25 percent during the months of August through February and, strike 15, insert 20 percent in all other months of the Grade A milk received from dairy farmers (except dairy farmers described in § 1032.12(b)) and from handlers described in

§ 1000.9(c), including milk diverted by pursuant to § 1032.13, subject to the following conditions:

The result of this language change is to increase the delivery standards for supply plants by 5 percent to 25 percent during the months of August through February and by 5 percent to 20 percent for all remaining months. We felt no changes were needed in the months for which the percentages would apply.

In light of our data showing that market reserves are still excessive and blend prices too low to attract a reserve supply or retain a supply from other markets, we think this modest change is warranted. We had requested higher levels than granted in the last performance hearing and can appreciate the position of the Secretary to make changes gradually; so now is the time to make the next change.

Other proposals that have been made for this hearing also endorse improvements in the performance standards of the order. No proposals have been offered to weaken them. We think the Secretary should consider the fact that much of the order supports the direction that our proposal is taking.

§ 1032.13 Producer Milk.

(d) Diverted by the operator of a pool plant or a cooperative association described in § 10000.9(c) to a nonpool plant located in the states of Colorado, Illinois, Iowa, Kansas, Minnesota, Missouri, Nebraska, New Mexico, Oklahoma, South Dakota and Wisconsin subject to the following conditions.

Q. Mr. Hollon, in reading that proposed language, the references to § 1000.9(c), I think you said 10000.

A. It should be 1000.9(c). Thanks.

We note that the language as proposed in this testimony is different from that of the notice. There was an error in the sentence structure of our initial request to the Secretary that we overlooked. The phrase "to a nonpool plant" should be in the position it is in here rather than following the words "Wisconsin" and before the word "subject." The error was on our part and not that of the Department.

Our intent here is to allow any plant

or cooperative handler to divert milk only to nonpool plants in the prescribed area. As always, any delivery may be made to an Order 32 pool plant. A plant outside the prescribed area can become a supply plant by meeting the supply plant requirements. The states listed in our prescribed area all have either a county or counties located in the marketing area or have been a regular portion of the market's supply as noted in the MA statistics since 2000.

The conditions that the diversions are subject to have been modified as listed below.

(1) Milk of a dairy farmer shall not be eligible for diversion until, strike "at least one day's production," milk of such dairy farmer has been physically received as producer milk at a pool plant and the dairy farmer has continuously retained producer status since that time. If a dairy farmer loses producer status under the order in this part (except as a result of a temporary loss of Grade A approval), the dairy farmer's milk shall not be eligible for diversion until milk

of the dairy farmer has been physically received as producer milk at a pool plant.

The "once and done" touch base provision has been eliminated. However, the "until" language has been retained which will continue the practice that milk that has lost its association with the market must first reassociate with the market before obtaining diversion privileges. We view this as an additional safeguard for the blend price pool and do not wish to change it.

(2) The equivalent of at least one day's milk production is caused by the handler to be physically received at a pool plant in each of the months of August through November and January through February.

The "once and done" standard has been replaced with a single day's touch base in each of the months of August through November and January and February. These months correspond to the times when Class I demand is the highest and hardest to fill. Having a requirement for a touch base delivery should help make milk available for Class I use.

The month of December was excluded

because of the Christmas/New Year's holiday period which while it has a high demand for part of the month is nonetheless difficult to comply with any touch base standard because demand changes radically at the end of the month.

(3) The equivalent of at least one day's milk production is caused by the handler to be physically received at a pool plant in each of the months of March through July and December if the requirement of paragraph (d)(2) of this section (§ 1032.13) in each of the prior months of August through November and January through February are not met, except in the case of a dairy farmer who marketed no Grade A milk during each of the prior months of August through November or January through February.

This section describes the necessary touch base requirements for the "nonshipping" months if the requirements are not met in the shipping months.

Strike (2), insert (4) Of the quantity of producer milk received during the month (including diversions, but excluding the quantity of producer milk received from a handler described in § 1000.9(c)) the handler diverts to nonpool plants not more than, strike 80, insert 75 percent during the months of August through February, and not more than, strike 85, insert 80 percent during the months of March through July, provided that not less than, strike 20, insert 25 percent of such receipts in the months of August through February and, strike 15, insert 20 percent of the remaining months' receipts are delivered to plants described in § 1032.7(a) and (b).

This language provides the shipping/diversion requirements for a 9(c) handler. These requirements are the same as those for a supply plant in both percentage requirements and months of application.

Marketwide Services. Proposal 3 is a proposal for marketwide services. Congress instituted these types of provisions in the order system in order to help pay the costs of supplying milk to the market. In some sense it follows the economic concept of a public good in that all benefit (for Class I sales) but it is difficult to recoup the cost associated with the good (servicing the Class I demand) from any individual in the entire market. Said another way, there are benefits derived from the market by all but some do not pay the full cost associated with those benefits.

Marketwide services have been tailored directly to a specific service such as in market transportation, surplus milk disposal and supplemental milk procurement. However, the original language clearly does not limit the concept of just these types of services as the enabling legislation provides for, "...(c) services of marketwide benefit, including but not limited to..."

Federal Order 30 provides for an assembly credit paid to all suppliers of Class I milk. The initial decision implementing assembly credits spelled out the assembly credit as the compensation for the assembling and reloading Class I milk. Federal Order Reform extended this payment, but neither it nor the original decision provided an exact definition of "assembly." It would be difficult to limit the definition of assembly to only those services associated with reloading Class I milk - when the credit was initiated or today.

Assembly must then encompass more services. Charles Ling in the Rural Cooperative Business Service publication Cost of Marketwide Services in the Northeast -- that should be Market -- lists the following activities as services for assembling and procuring milk for Class I use:

Services for the producer:

1) field services - assist with production problems

2) assist with inspection problems

3) sell milking supplies and equipment

4) information on price and availability of hay, herd replacements, etc.

5) provide marketing and outlook information

6) provide insurance programs - life, health and disaster

7) provide retirement program

8) guarantee daily market for milk

9) negotiate haul rates

10) collect and insure payment from buyers

11) check weights and tests.

Services for the market:

1) direct farm to market milk movement

2) pay haulers

3) allow for farm shrinkage of milk

4) maintain quality control and related lab services

5) deliver preconditioned or standardized milk

6) sell milk FOB receiving point

7) split loads among processors

8) maintain spot and hold tank storage

9) participate in Federal order hearings

10) negotiate Class I prices and service charges.

We have already shown that the Central order blend price is not able to -- and strike the word here neither -- is not able to attract a supplemental milk supply from other orders or keep its milk supply from seeking a home in other markets.

DFA Exhibit 18, Chart 9-1, Annual Milk Production, shows that milk production is declining in the states composing the Central order. The five-year decline for the ten states measure is 1.9 percent. The decline ranges from down 0.8 percent in Iowa to double digit declines in North Dakota, Minnesota and Missouri. The states that show increases are on the western side of the order and to some extent serve as a reserve supply for the order and that role may increase in the future.

We see an increasing need to transport milk from southwest and west to east and north in the order. Marketwide service payments tailored to transportation will help offset the cost associated with these movements. Both of these facts should be part of the rationale for instituting an assembly credit. What greater service can there be than to have a supply to sell!

Our data indicates that the Order 32 blend is insufficient to hold its milk supply away from Order 5 (Southern Illinois farm to Madisonville, Kentucky, bottler) by $0.61 per hundredweight through ten months of 2004; from Order 5 (southern Missouri farm to Madisonville, Kentucky, bottler) by $0.92 per hundredweight; from an Order 7 (southern Oklahoma to a Ft. Smith, Arkansas, bottler) by $0.62 per hundredweight.

We have also shown that a St. Louis bottler is $1.22 per hundredweight short of being able to attract a reserve supply from Order 30/southwest Wisconsin; and a Des Moines area bottler is $1.41 short of being able to attract a reserve milk supply from central Minnesota milk supply.

These costs far exceed the requested $0.10 assembly credit requested. Certainly having a Class I milk supply to sell is of marketwide benefit. We also note that the cost of such a credit is approximately $0.03 on the entire pool volume. (MA Exhibit 10, DFA Requests 11 and 12). We support the proponents of Proposal 3 in their efforts to secure an assembly credit.

We also support their proposal for a transportation credit or tanker shipments, again noting that this marketwide service payment assists in providing milk to the Class I market. We concur with their proposal and language. We would offer that their proposed rate is reasonable. In the recent hearing held to provide for cost recovery associated with hurricanes in the southeast, the cost recovery was limited to actual costs or $2.25 per mile - that rate being considered a high end rate.

Dividing $2.25 by 500 hundredweights (50,000 pounds over-the-road tanker volume) yields $0.0045 per mile so the $0.003 requested (two-thirds of the cost) is both reasonable and in line with the concept of order minimums. The same calculation at $2.00 per mile yields a $0.004/75 percent recovery ratio and a $2.10, or $0.0042/71 percent recovery ratio.

We also support the proponents of Proposal 3 in their efforts to secure a supply plant transportation credit. We also note that the cost to the blend pool ranges from $0.006 to $0.01 per hundredweight. (MA Exhibit 10, DFA Requests 11 and 12).

However, we view Proposal 3 as

incomplete. Only a small percent of the Class I market is served via milk from supply plants. MA Exhibit 10, DFA No. 7, Pounds of Milk Transported From Supply Plants Into Pool Distributing Plants in Increments of 100 miles in 2003 indicate that in 2003 213.7 million pounds were delivered if in that format. In 2003 there was 4.7 billion pounds of Class I milk so only 4.5 percent of the Class I supply reached the market in this manner.

The rest of the supply came directly off the farm (or through a reload) - and in a more efficient manner. We cannot support a credit for one portion of the supply and ignore the balance within the same market. Especially when that "ignored" balance is delivered in a more efficient mode of transportation.

Our proposed modification would add a payment for direct-shipped milk that delivers to a pool distributing plant for Class I use. We would allow the payment for milk that is reloaded also, but at the same rate as milk that is not reloaded. This should recognize the service but provide the market with a "carrot" to move to the most efficient manner of delivery - farm direct.

Our proposal would use the same rate of payment $0.003 per mile as we think that is both responsible and reasonable and pushes the market towards efficiency. We would limit our proposed payment to deliveries of 500 miles and net the pounds paid to any distributing plant against any diversion or transfers made on the same day as protections from abuses of the credit.

Additionally, we would direct the MA, the Market Administrator, to make the measure of miles be the shortest distance possible by comparing the shortest road miles from the distributing plant to the nearest farm on the route. The handler requesting the credit must provide data to the Market Administrator justifying all calculations. Our proposal would exempt the first 25 miles from payment. That distance is what we have determined reasonably represents the distance that producers serving the market through supply plants pay for in haul. It seems reasonable to us to treat all producers in the same manner in this regard.

The justification for our choice of factors is as follows:

MA Exhibit 10, DFA Request No. 9, presents summations of producer haul charges by county and sums up to the state level for the Central order. This data is taken from actual payroll tapes and was collected by the Market Administrator. Data collection and publication of this information is a routine practice in most Market Administrator offices. There is a single recap of "every county" data for January 2004 and a monthly average for each state for all months from January 2002 to August 2004.

A review of the data shows that from month to month the change of rate is small. We chose to use December 2003 rates because we also have December 2003 pounds in the record and needed both for our calculation. For example, the December 2003 average haul rate for Iowa was 18.4 cents.

In the process of determining the mechanics of our proposal, we concluded that a direct-ship transportation credit should not pay for 100 percent of the cost nor reimburse for 100 percent of the miles. We concluded that a fair target would be to exempt from the credit the mileage that a producer paid to a supply plant in the northern sector of the market. This way all producers would have the same responsibility.

Furthermore, the supply plant credit is designed to offset the cost from the plant to the bottler so its proponents envisioned the producer paying the haul to the plant. Page 91 of MA Exhibit 10, Central Federal Milk Order No. 32, Pool Supply Plants is a map showing the location of supply plants in the market.

That's Exhibit 9, not Exhibit 10.

The DFA plant in Fort Morgan does not function as a reload and transship point, nor does the Prairie Farms plant in Carbondale, Illinois. However, the remainder of the Order 32 supply plants do assemble and ship milk to the market. For this reason we chose the states where those supply plants are located to attempt to measure the miles that local producers pay for hauling. Those states would be Iowa, Minnesota, North and South Dakota and Wisconsin. Note the South Dakota data is combined with the North Dakota information but it is overwhelmingly influenced by the South Dakota volumes.

DFA Exhibit 11, Table 10, Analysis of Local Haul Mileages makes computations for mileages.

Q. 18.

A. Excuse me, DFA Exhibit 18. The methodology was explained when the exhibit was introduced. We regularly negotiate for haul rates, buy haul routes, sell haul routes and maintain extensive costs for doing so. Our analysis of a farm haul yields a rate per loaded mile of $3.03 per hundredweight. This figure covers mileage costs (both stop and go, pickup and transport), labor and time on the route, maintaining the equipment and a facility which sometimes functions as a pump over, the equipment itself and the fuel adjuster.

As expected, these costs are not static. We deal with a large number of trunk/tank combinations. The range is 20,000 pounds on the low end to 53,000 on the upper end. In some cases the route goes directly from the hauler's location to all farms and then to a customer. In other cases, routes are picked up and pumped over. Higher volume tanks lower the rate while lower volume tanks increase it.

We are comfortable with the $3.03 as a typical rate and 45,000 pounds as a typical tank size. The calculation using these constants and the weighted average hauling paid in the Central order in the area where there are supply plants yields a 23 mile distance that the producer rate pays for. We have chosen 25 miles for our proposal. Thus, any rate calculation for credit would not pay for the first 25 miles of haul.

Given our proposal, and the constants used to determine the exempted miles, we then attempted to determine an estimated impact on the order blend pool. MA Exhibit 9, DFA 1, Producer Milk Received at Order Distributing Plants, these are maps, was designed to show the milk received in four quadrants of the market in order to preserve confidentiality.

The accompanying tables show the pounds by county that made up that supply.

DFA Exhibit 18, Table 10-B, Recap of Transportation Proposal details by example what we did with the data. We assigned pounds to each bottling plant in each quadrant. In the case where the bottler was a DFA or Prairie Farms customer, we used our own information. If not, we developed an estimate from our own market intelligence sources. In each case we balanced the total to the Market Administrator data. We compared deliveries to Class I use for January and concluded that 83 percent of all deliveries on average were used in Class I. We tested this calculation with data for DFA sales and found it to be reasonable.

With pounds by bottler and supply by county, we attempted to assign the pounds to each plant from the closest source. In some cases we had to split large counties between plants as those counties were the reserve supplies for the milkshed. We assigned all milk to the county seat and computed mileages from an Internet-based calculator. The

Internet site was www.sys -- I'm sorry, I would have to look at my notes. I've got it, I will have to look it up at the next break.

We inserted all the appropriate county location differentials for each bottler location and each county supply source. We then computed the credit amount using the language in our proposal. The mechanics of the computation were as follows:

1) miles between supply and demand less 25;

2) cap the miles at 500;

3) if more than zero miles, multiply by $0.003;

4) reduce this product by any positive difference in the Federal order location adjustment;

5) if positive multiply by the pounds;

6) multiply this product by 83 percent to arrive at a credit payment for Class I;

7) sum the pounds, miles and dollars for each quadrant.

DFA Exhibit 18, Table 10-C, Recap of

Transportation Proposal sums for the market all of the data from each quadrant for January 2004. For the deliveries made, $573,414 would be spent in a farm direct transportation credit as we have proposed. The effect on the entire pool for January would be an estimated $0.045 per hundredweight.

MA Exhibit 9, DFA Nos. 11, 12, 14 and 15 -- would be Exhibit 10 -- each explain some portion of the marketwide service payments calculations. We agree with the explanations and resulting cost estimates. It appears that the two proposals made by Foremost Farms and the modification as proposed by DFA and Prairie Farms would cost the pool (or reduce the blend by) approximately 8.1 cents per hundredweight on all milk. This would, in turn, provide a payment to the Class I shipper of approximately $0.25 per hundredweight. In both cases modest.

And I would add that these -- my estimate uses January and the Market Administrator's estimate uses August and September.

Proposal Language For a Direct Ship

Transportation Credit. Insert as appropriate in the newly formed Section 1032.55 proposed by Foremost Farms:

(1) Transportation credits paid pursuant to paragraph (a)(1) and (2) of this section shall be subject to final verification by the Market Administrator pursuant to § 1000.77 and

(2) In the event that a qualified cooperative association is the responsible party for whose account such milk is received and written documentation of this fact is provided to the Market Administrator pursuant to § 1032.30(c)(3) prior to the date payment is due, the transportation credits for such milk computed pursuant to this section shall be made to such cooperative association rather than to the operator of the pool plant at which the milk was received.

We would envision that each handler would compute and apply for credit as appropriate at pool time. Each handler would have to maintain a file of locations and distances and perform the various computations. While cumbersome, to establish the task can easily be accomplished with computer aid. The Market Administrator would accept and make payments and then audit as necessary.

(2)(a) Transportation credits shall apply to the following milk:

(1) Bulk milk received directly from the farms of dairy farmers at pool distributing plants subject to the following conditions:

(i) The quantity of such milk that shall be eligible for the transportation credit shall be determined by multiplying the total pounds of milk physically received from producers meeting the conditions of this paragraph by the Class I utilization of all producer milk of the pool plant operator receiving the milk after the computations described in § 1000.44;

(ii) The transportation credit shall be limited to the first 500 miles of delivery.

In paragraph I'm going to have two insertions here, so I want to give them first before I read them. In the second sentence, after the word "section" and before the word "the," I want to insert the following words, "prior to the application of the Class I percentage."

Q. You mean the second line?

A. Second line following the word "section" and before the word "the," insert "prior to the application of the Class I percentage."

In the fourth line following the word "plant" and before the word "on," insert the words "by the distributing plant to which the milk was delivered." Again, after the word "plant," before the word "on," insert the words "by the distributing plant to which the milk was delivered."

Paragraph (b)(1) will now read: Transportation credits shall be computed as follows:

(1) The Market Administrator shall subtract from the pounds of milk described in paragraphs (a)(1) of this section prior to the application of the Class I percentage the pounds of bulk milk transferred or diverted from the pool plant receiving the milk if milk was transferred or diverted to a nonpool plant

by the distributing plant to which the milk was delivered on the same calendar day that the milk was received. For this purpose, the transferred or diverted milk shall be subtracted from the most distant load of milk received, and then in sequence with the next most distant load until all of the transfers have been offset.

This section defines that the credit will apply to milk shipped directly from farms, limited to Class I use only, and for no more than 500 miles. Additionally, any transfers or diversions away from the distributing plant on the same day as the credit is applied for will be netted against the computation.

(2) With respect to the pounds of milk described in paragraph (a)(1) of this section that remain after the computations described in paragraph (b)(1) of this section, the Market Administrator shall:

(i) determine an origination point for each load of milk by locating the nearest city to the closest producer's farm from which milk was picked up for delivery to the receiving pool plant;

(ii) determine the shortest hard surface highway distance between the receiving pool plant and the origination point;

(iii) subtract 25 miles from the mileage so determined;

(iv) multiply the remaining miles so computed by 0.3 cent ($0.003);

(v) subtract the Class I differential specified in § 1000.52 applicable for the county in which the origination point is located from the Class I differential applicable at the receiving pool plant's location;

(vi) subtract any positive difference computed in paragraph (d)(3)(v) of this section from the amount computed in paragraph (d)(3)(iv) of this section; and

(vii) multiply the remainder computed in paragraph (d)(3)(vi), if positive, by the hundredweight of milk described in paragraph (b)(2) of this section. If the remainder computed in paragraph (d)(3)(vi) is negative, no transportation credit shall be computed.

Summary of Proponent's Views. Our

concerns at this hearing deal with the current and difficult issue of depooling; the need for changes in the order's performance standards and the impact those changes may have on both "distant" milk and local milk and our desire to have a modest portion of the cost of serving the market borne by all producers who share in the blend pool.

Depooling is an equity issue and greatly impairs the ability to attract and maintain a milk supply of Class I use! The increased level of price volatility has made the issue much worse. We expect depooling to be a problem in December and January, so the need to correct the issue as best we can determine is very timely.

Our proposal to limit future poolings by 125 percent of the current month's pooling is modest and will have a positive effect on the Central order pool. Furthermore, it is a key component in our effort to establish reasonable performance rules in the order for milk so distant from the market that it can never reasonably serve the market.

While "distant milk" is not a current

issue in the Central order, we have demonstrated that it could very possibly become a costly issue for producers. Our proposed changes in performance standards would greatly reduce the potential for negative blend impact from milk that did not perform, would help the order to have a more reasonable reserve supply, and provide changes that will help attract milk to markets when needed.

Finally, our proposal for marketwide services will help to share in the cost of maintaining and attracting a Class I milk supply. Our proposals are backed by data that show them to be targeted, effective, modest and workable.

Need For Emergency Provisions. There is a need for this hearing to proceed on an emergency basis.

1) The issues with depooling will be a problem in the market with December milk. Volatile dairy markets seem to know no season and we may have negative PPDs in January also. Opponents in the Order 30 hearing argued that there was no need for emergency provision

treatment because the concern was past - they are wrong already. A correction is needed as soon as possible.

2) Our concerns with performance standards also have a very short-term horizon for need. The record showed that California milk moved very easily through the order system shifting from one market to the next as regulation changed. The producers in Order 32 have no desire to experience the blend damage that producers in Order 30 have and emergency action will greatly help that desire.

Thank you for listening to our views. We also greatly appreciate the efforts of the Central order staff in preparing data for this hearing. They already have the well-deserved reputation of being proactive and user friendly, and that reputation was only magnified in their effort to produce data and information for industry use here this week.

Q. Now, Mr. Hollon, I have just one or two further questions for you and then the witness will be completed on direct examination.

You've referred in your closing

comments to the price outlook currently, December and perhaps January, with respect to potential for negative PPDs. Can you provide in any more detail what you currently see forthcoming in Order 32 in that respect?

A. Certainly that statement was written Sunday and Monday, and relative to Monday's market things have changed somewhat. Monday cheese prices have dropped some and in short time we'll know what they did today. They went down further today by $0.05.

So we still expect that there will be negative PPDs in Order 30 and in Order 32 in December, perhaps in the range of slightly under a dollar in Order 32 and slightly over a dollar in Order 30. In January I think the likelihood is much less now that the market has dropped, but there still could be a possibility of negative PPDs in January, but certainly for December there will be some.

Q. Okay, thank you. Now, your testimony was addressed to Proposals 1, 2 and 3. Do you have any other comments you would like -- any comments you would like to make at this time with respect to any of the other proposals?

A. The only comment I have is waiting to hear testimony from the other proposals, that there is a proposal that would require a four-day touch base that's embedded in one of the Dean proposals, and we would oppose that. We did consider something similar. We looked at that and did some cost analysis and we thought the cost would be really prohibitive for the market to bear.

So that's the only position that we have at this point on any of those proposals, and neither for nor against any of the remainder.

MR. BESHORE: Thank you. Mr. Hollon is available for cross-examination. And at an appropriate time we move for the admission of exhibits.

JUDGE HILLSON: Let me ask the government representatives first if they have any questions of this witness. Don't forget, once again, to identify yourself before you ask the questions.

CROSS-EXAMINATION

BY MR. ROWER:

Q. I was worried about this microphone.

Is this too loud? Can you hear me? Okay.
Good morning, Mr. Hollon.
A. Good morning.
Q. I'm Jack Rower, AMS Dairy Programs.
In your exhibits you've used the term "loaded mile."
A. Yes.
Q. Could you explain what loaded mile is?
A. Typically a hauling router of milk deliveries makes on the delivery side the truck is full and on the return side the truck is empty. So it's 3 points is current to assess all the costs against when the truck is full, because that's what you're doing to earn your keep, so to speak.
So per loaded mile would be when the truck is full and represents half the miles. So if I went from here to my house in Liberty, which is 20 miles away, a round trip would be 40 miles, and a loaded mile would be 20 of those 40.
Q. Throughout your exhibits in some places you used the term loaded mile and in some areas where you do calculations you've

just used the term mile. Is there a difference?

A. No. In every case the reference would be to a loaded mile.

Q. At the end of your statement we're just looking at, did I understand correctly that the depooling, repooling issue is the key emergency issue from your view?

A. No. The depooling issue is our top concern, that's just the distant milk issue is also I think of an emergency scenario. And it will certainly play out as the other -- as the Order 30 decision, for example, at some point we would expect a rather soon decision in that hearing, and if that plays out the way that we hope and expect it to, then we would have concerns that some of the problems with distant milk there would find their way to Order 32 just like the California milk did when it was foreclosed to Order 30. So those two both have a significant time considerations to them.

Q. Thank you. In Proposal 1 there's a choice of states was made. Is there a need for more flexibility in terms of the states that would apply? I mean, for example, we have New Mexico, South Dakota, I guess I could read them, but going back to your Exhibit 9, I guess it's 9-I or 9-1.

A. Okay.

Q. You showed -- I would like to just go to your exhibits for a second. Just changes in the way the milk production has taken place over the last five years, one concern, or one of the questions, I should say, that just came to mind was as markets evolve over the next year or two, three, will we have to come back and revisit with more flexibility in terms of geographic definition, be helpful in your view?

A. When we started this process, you always have to decide, you know, where you want to set your boundary at, for lack of a better word. So our discussions followed then at some point, you know, discussions would be anything from anywhere to, you know, in a marketing area, some other geography.

So in the marketing area we discussed that as a possibility and felt like there were some regular milk supplies that didn't always meet that definition. So then we expanded our horizons to any state with the county in the marketing area, and that meant many, but again, not all.

So as we looked at the historical relationships, that's how we came to the definition that we have now in our proposal, and we don't foresee in the near future, and we haven't seen in the past, any kind of a regular milk supply in any quantity from states outside those.

So that seems like that will provide enough flexibility for some growth, and some of those states are reserve supplies to the market and we would think that reserve is going to grow, and some of those areas where there's decline, there will be some production to offset. So that's how we picked that geography, and I think that's what your question was driving at.

Q. Basically that is what I was driving at. Thank you for the answer.

On page 2 of your statement, I believe, you use the word -- let me just read your sentence. "We think this practice is detrimental to the order system and to dairy farmers and wish it would stop or curbed."

I want to get a sense of, for the record, what you mean by "curbed." What rises to an appropriate curbing, if you will?

A. Milk marketing is an art and a science, and sometimes, then, the science side is a lot easier than the art side. So when you consider markets are different, and that's one reason why we don't comport in one national Federal order, for example. We consider fluid markets still have a regional nature, and so one size fits all is not an appropriate standard in this regard.

Perhaps what should be the definition of a Class I product, that's a pretty much one size fits all question, but as to the approach of, especially of depooling in the relationship of supply and reserve in the market, it doesn't seem to be a one size fits all. We don't think that we can propose a single standard.

So in terms of curb, certainly where we have now absolutely no limit, that certainly forms one extreme. There is no limits at all. And before the week is out we will hear a lot of proposals to limit that, and the ones that we discussed, this seems to provide some balance between a limit that would make the economic analysis be of some consequence that would not be a total foreclosure, because the market has been -- has had access, if you will, to depooling, good or bad, over a long period of time.

And as we discussed amongst our -- Prairie Farms and ourselves, our own business and that of some of the people we are allowing milk supply, we picked this option. So I guess the definition of curbed is going to be something less than wide open, but not as perhaps restrictive as we could have imagined.

That may be more of an art answer than a science answer, sorry.

Q. I was trying to get you to artfully move to what your -- what would be the most acceptable or least acceptable point in that continuum.

A. Well, for the Central order, as we discussed amongst ourselves, we felt like the 125 percent methodology would be something that would be acceptable and workable. We looked at historical pooling from month to month to month and felt like there weren't too many months that were out of range, could be normal months that were out of range that would accommodate for some growth without having to run into exceptions or having to go to the Market Administrator every month and say, gee, can you change this.

Also it would meet much of the requirements for MA budget examples. It would also help to alleviate the problems that we have with producer prices being so far different. Again, it wouldn't be a 100 percent fix, but it would be in the right direction.

Q. Thank you. You talked about price volatility, and from your statement, for the record, it seems like price volatility is a root cause of many of the problems that this hearing was called to address.

What do you see, in your view, as the root cause of the price volatility that we're seeing? Is it related to advanced pricing, for example, from the Federal order side?

A. I'm not sure if I can -- why don't you try your -- you asked me the causes of volatility in the dairy markets?

Q. Yes, of course.

A. Volatility --

Q. In pricing that we're seeing. For example, let me see, what you said is "As milk prices become more volatile, the dollar in value associated with depooling becomes more critical."

Can you comment some more on your view of the root causes of that volatility?

A. Causes of volatility or causes of depooling?

Q. Causes of volatility.

A. There are probably several that come to mind. One is certainly the milk supply/demand relationships. And in our markets, about half of 1 percent change in milk production causes some pretty dynamic changes. So when you get to the way that the formula price mechanisms work, when you get to peak spots in markets or when you get to low spots in markets, many of the traditional reasons why markets behave don't work anymore.

When you get up near the top of the cheese price cycle, price can be easily moved higher by speculative interest; when they get to the low point in the cheese price cycle, it can be easily moved because people are concerned about their own self-interest and are unwilling to take perhaps a position there. So that effects volatility.

Support price changes and the reduction in the -- support price purchase for nonfat dry milk have caused some changes in the period 2000 to today that would have caused a certain amount of that volatility.

We have had situations over the past 15 months where some of the market players had misread the buy/demand situation and that has caused them to take reaction to the marketplace; has helped to make price volatility worse.

This is my own bias, but I think in recent weeks there's been speculative activity that has had a bearing on price volatility.

Q. I'm sorry, I couldn't hear you. Did you say speculative activity?

A. Speculative activity in the markets.

So all of those things are some of the causes of volatility. We have had some natural causes; four hurricanes in Florida. The southeast has disrupted milk supply relationship pattern that has pulled the milk, for example, away from manufacturing uses to replace some of that which is short in the market.

Q. Thank you. I apologize, I have a lot of questions, a lot of notes.

A. That's okay. I have a lot of time.

Q. I read your statement last night and made several notes. I apologize for flipping around here. Going back to this idea of curbing, I think you may have answered the question already, so if this is redundant, just let me know and we'll move on.

In Proposal 2, 125 percent selection, just again, how is that selected versus, say, 120 percent for a limit or even 130 percent?

A. One of the criteria was just the experience in the market over the past four-and-a-half years, what has been the variation month to month to month. Were there any months -- were there a lot of months that the change was over 125 percent. So that means perhaps that standard might be so low that it would give us some grief; well, there wasn't. There was only two that we saw that were greater; those were both months that followed massive depoolings. The third one, in our view, we went back and investigated the price relationships, and apparently at that time we felt like it was a response to Federal Order Reform.

So that standard seems to be a reasonable spot to start out with that it doesn't cause an excessive amount of change in the marketplace. Where we have at times months of massive depooling, 125 percent is going to make the party who is making that business decision think about more than one month in their return calculation, and we think that that will dampen and limit the enthusiasm. Obviously depooling makes me a dollar this month and I lose $2.00 next month, that's not a very good decision.

We also looked at the number of months it may take to get all of your milk supply back on the market. And we're familiar, as is most everyone in the room, with making milk projections and price projections and time horizons, and generally you can be more accurate in one month out than you can in three or four months out.

So we felt like that level and, in fact, a couple of months later you could get all your milk back on, but there would be a percentage that would begin to limit how much milk you could get off the market in that time frame. All those things contributed to 125 percent.

We did evaluate some of the other like the northeast provisions where dairy farmers in the market and we felt like that provision would be more difficult to work in this order and would be perhaps more restrictive in this order than we could live with.

We even considered the California proposal. If you opt out for a year, for the next 12 months, and again felt like that that was perhaps more restrictive in this market. That's not to say some day in the future somebody might propose that in another market, we may be supportive, but in this market we felt like that was the best estimate.

Q. We appreciate that. That's very helpful. Thank you.

Please take a look at, again, this Proposal 2. In the order language that's proposed, the Market Administrator, according to the proposal, the order language, Market Administrator may waive the 125 percent limitation -- in the next section -- for a new handler on order subject to provisions of this Section (f)(3). What would constitute a new handler?

A. Could be a brand new business entity.

Q. Right.

A. Could be somebody who had -- who moved from one order to another. They've been regulated under Order 5 and now became regulated under Order 32.

Q. Okay.

A. Those could be a merger of two entities where the number -- the arithmetic now looks radically different, or perhaps even a division where there's a new business in place. Certainly there needs to be both some latitude and some judgment, because we don't want everybody, every time their numbers don't work, call themselves a new handler, but I think the Market Administrator has some judgment that they can exercise there.

Q. So in your opinion, it should be Market Administrator who decides what would constitute a new handler?

A. That would be the ultimate authority.

Q. For the Market Administrator's discretion?

A. I would expect that the Market Administrator would come back to the record and look at your question and say, well, this was considered, so maybe I could use that as some of my judgment. We can't anticipate every single one.

Q. I understand.

A. But the -- and the ultimate authority has to -- the buck has to stop somewhere. But those would be some ideas of what might constitute a new handler.

Q. There are so many smart people in the dairy industry, that if there is a way to use a new handler definition, would you agree that someone will find it --

A. Yes.

Q. -- and apply it to their --

A. Yes.

Q. -- package? Thank you.

You raised an issue -- well, you were talking about in your statement the notion of public good with respect to transportation and assembly. Economics, you were using the term as its used in economics, I assume?

A. Yes.

Q. There's a continuum, isn't there, between something on one side that would be a private good, for private consumption?

A. Okay.

Q. And on the other end of the spectrum for the public good?

A. I think the classic is the Army.

Q. Exactly. That's the one I learned too.

A. Okay.

Q. Where in the continuum, where would you place assembly and where would you place transportation? Those are two different functions, wouldn't you agree?

A. Yes.

Q. In terms of treating them as a public good?

A. I think in that term -- that's a good question, Jack. I guess I would say the assembly credit might be more in line, because it's harder to be transactional based. So I think that we view both of them as needs and they fall in that, if you will, umbrella of it's a recognizable cost, but it's sometimes hard to put your finger exactly on it.

And so the way I think the Secretary maybe has to define for that has to say, you know, we can't do exactly A equals B, but if we can show that A equals 10 times B or some large multiple of B, then B might be acceptable. And so --

Q. So what we're saying -- I apologize for interrupting. Did I cut you off?

A. Transactional cost is a little bit easier to put your finger on a haul rate than it is to put your finger on an assembly rate, but if a market demonstrably has a hard time attracting milk supply and being out of a competitive position by a dollar and a half or struggling to maintain or has some difficulty in maintaining a milk supply, being out of a competitive position by $0.60 or $0.70, then it would seem like an assembly credit of $0.10, while again not exactly A equals B, would be in the realm of a reasonable thought, provided you can demonstrate some of the cost that it's designed to offset.

A supply plant transportation credit or direct quantity transportation credit is a little bit easier to say, here's a truck, it costs so much; here's a driver, they cost so much; here's the pounds, here's the miles.

Q. Thank you. I appreciate that answer.

You raised another issue of -- well, I think it was on page 19 of your statement. I was wondering, from some of the comments that you made, in your view is there a need to revisit the assumptions and the calculations or recalculate the Class I price surface? Was that something that you were -- was that an issue that you were raising, and could you -- if it was, could you expand on it for this record?

A. I would say that there would probably be some merit to revisiting the Class I price surface. Nothing is ever good forever. But that -- in our -- in the industry, that's a really difficult issue, and so having said that, I'm not sure that any of the parties have the necessary will, measure or desire to go there, either through the administrative process or through the legislative process.

But your initial question, is that something that probably needs review? Yes, there probably are some pricing points in the U.S. that are now hopefully understated and perhaps, and perhaps, there are some that are overstated. But that's not something that we proposed anyway for this hearing and it's not an option for trying to correct some of these problems, so we aimed for the options that were within our reach.

Q. Thank you, that clarifies that a bit. Appreciate that. And I apologize, I was up late last night reading.

A. It's good, though, you had such a stimulating topic.

Q. Absolutely. What I would like to do for a moment is ask my colleague, Carol

Warlick, she has some questions for you regarding small business, and then I'm going to come back and that way we can move more quickly.

A. Okay.

CROSS-EXAMINATION

BY MS. WARLICK:

Q. I just wanted to know if you -- this is Carol Warlick from the Department of Agriculture in Washington.

Regarding DFA, I would just like for you to clarify for the record whether or not you consider DFA a small business or a large business?

A. I think it would be pretty hard to consider DFA a large business itself; however, with the individual dairy farmer members who own DFA and many of them will be -- not many, but several will be testifying, the majority of them would be the in the small -- the majority of the members and their business would be small, again, the definition of $750,000.

So many of the dairy farmer member/owners, again, the majority of them would probably be within the realm of that. They are certainly a percentage of DFA members who would also be larger than that classic sense.

Q. And when these producers do come up, we would appreciate it if you could identify which ones are small and which ones are large.

A. Okay, I can do that. They've been schooled about that question already.

RECROSS-EXAMINATION

BY MR. ROWER:

Q. This is Jack Rower again, Dairy Programs.

Going through the Proposal 3, I recognize, I understand correctly, I think, correct me if I'm wrong, that the basic function that's being requested of the Market Administrator in the proposal is to follow up on the audit with respect to the transportation credits that are requested?

A. That would be correct.

Q. And have you all estimated -- have you estimated the audit costs that would be involved, the additional resources required of the Market Administrator?

A. The Central order Market Administrator is extremely capable, so it would not be a difficult task. Initially there would be some up-front effort established. For example, a database of froms and tos, that's going to take a little bit of effort. Beyond that, for example today, the Market Administrators in Orders 5 and 7 do the same type of functions.

And there is -- in terms of number of adjustments, there are those and it's done by a co-worker, they probably have more audit adjustments that deal with the transportation pool in the Southeast than with their other audit adjustments.

But once the initial database is set up, I don't envision that would be an extremely big issue because it would all be done electronically. So when I would submit my data at pool time and request for a credit, probably at pool time I'm going to submit $5, a dollar amount, but very shortly thereafter I'm going to submit electronically the backup for that and it's going to be, you know, here is the route, it's composed of producers A, B and C, it was delivered to, you know, handler number 1, and on that route handler -- the second stop was the closest.

And we will have some standard determined, I'm sure, by the Market Administrator, we'll work through that stuff; we'll use Rand McNally database or somebody else's, and we'll submit all that stuff electronically. It will be a matter of making sure, again electronically, that, yeah, producer B is Elvin Hollon and our database, Elvin Hollon is 30 miles from Kansas City and that's the closest farm and that's the one we're applying for.

Q. So if this provision were adopted, you don't foresee a need for an additional administrative assessment --

A. No.

Q. -- on the part of the Market Administrator?

A. No.

Q. Have you discussed the cost of this -- or have you discussed --

A. No.

Q. -- the cost of this with --

A. No, we have not discussed.
Q. -- the Market Administrator's office?
A. No, we have not. We have discussed that, yes, the task would be -- initially it would be a large task setting up the data information, but past that, again, it would be I think -- it would not be a big task to keep up with it.
Q. Even this farm point pricing, handling this farm point pricing?
A. Correct.
Q. Thank you.
MR. ROWER: That's all I have for the moment, but I may want to ask some more later. Thank you.
JUDGE HILLSON: Any further questions from the USDA representatives? I think that's a no.
MR. ROWER: That's a no.
JUDGE HILLSON: Do we have questions from other folks? Anyone want to question this witness? I don't see anyone -- okay, you need to get up, use the microphone and identify yourself.
MR. VETNE: Thank you.

CROSS-EXAMINATION

BY MR. VETNE:

Q. All right, my name is John Vetne, V-E-T-N-E, attorney. My office is in Newburyport, Massachusetts, appearing here, at last, on behalf of proponents of Proposal No. 3, Foremost, et al., and on behalf of -- unfortunately I don't have the exhibit numbers, but yesterday I understand that an exhibit with the cover sheet bearing my name was introduced. What's that exhibit number?

JUDGE HILLSON: 14.

A. 14.

Q. (By Mr. Vetne) Thank you. And also on behalf of Central Equity Milk Cooperative, National All-Jersey, Milnot Holding Corporation and Wells Dairy. Those are the additional parties I represent that are not part of the group identified as proponents of Proposal No. 3.

And I did spend some time last night making notes and by 11:30 got half way through and nodded off. I have some initial --

A. Should we deal with your second half first?

Q. I spent a long day in the fog yesterday in Chicago.

My questions to you will take two phases: One, so I understand your testimony, and then I'll go, now that I understand it, I will apply it --

A. Fair enough, I understand.

Q. -- for the most part.

Let's go to page 1, 1 through the end of your prepared statement.

A. Okay.

Q. DFA currently has 13,500 farms. Is that like a 2004 number?

A. That was in the 2003 annual report.

Q. 2003, okay. How much total milk does that represent?

A. I don't have those numbers off the top of my head.

Q. Is it in the annual report?

A. It is. It is in the annual report.

Q. And DFA also markets the milk of cooperatives and producers who are not members of DFA?

A. That is correct.

Q. And do you know how many farms,

additional farms that would involve?

A. No, I don't.

Q. In total, is it still the case that the milk marketed by DFA, for its own members as well as for others, represents about a third of the milk in the nation?

A. Yes.

Q. Prairie -- let me ask you this. Of the DFA member milk and member production, what portion is associated with the Central market area?

A. I could get that. It's more than a seventh, I think, the Central area on the order. I would have to look that up, I don't know the answer off the top of my head.

Q. Just 2003, number of producers, number of pounds? Is it readily available?

A. After a break I'll try to have that.

Q. Thanks. And same question representing Prairie Farms here. They will have a witness later?

A. Yes.

Q. So I should ask them what their proportion is in Central?

A. Yes. He can be forewarned.

Q. Thank you. I'm on page 3 now, moving rapidly ahead. The large paragraph starting near the middle of the page, you refer to $6.6 million in value to be shared in the pool. This is value that you attribute to Class I differential?

A. Yes. Those numbers were detailed in Mr. Stukenberg's exhibits yesterday.

Q. And that's after the producer milk is priced at component values?

A. Yes.

Q. And component values, in turn, represent a blended value of the value components in Classes II, III and IV?

A. That is true, but I think in terms of this exhibit, I think they were all valued as -- again, it's in the exhibit, we can look and see what it says.

Q. Would you agree with me that the component values for milk vary depending on use?

A. Yes.

Q. And it's the blended component value that is produced as the producer component prices?

A. Yes.

Q. So if we were to compare the current process of announcing and analyzing blend prices versus class prices, a portion of what used to be referred to as the blend price, which is now PPD plus, today would be the blended component value to the producer plus the PPD?

A. I think that's correct.

Q. If one simply looked at the difference between the Class III price and the PPD today and tried to compare it to Class III and blend price in the past, looking at it today would omit some of the revenue that was included in the past price?

A. I think I'm getting further away from where you're going, so I'm not sure I can answer. I think if you went back to the exhibit, I'm doing this from memory now, it took all of the Class I dollars that were generated and then they subtract it from that, the value of components, and I think it was at the producer prices, again I would have to go back to the exhibit, and every month it was a difference, but it was two measures of Class I value. One was a total and then after the value, which is the components, were deducted it was still a value left. And that's what this is referring to. But I'm not sure if I can do the math.

Q. Just conceptually, how to apply your analysis to how things have changed and how they were done in the past and how to be done in the future. Let me see if I can explain myself.

In the Upper Midwest we went through a little exercise, I think, I'm not sure if it was you and me, but the group as a whole --

A. Fair enough.

Q. -- to get a grasp on the place of the PPD as applied in today's market compared to the blend price in the past.

A. Okay.

Q. And one could, in the past, identify a blend price and subtract from that the Class III price and come up with something similar to today's PPD?

A. At least in label. I'm not sure if it all represents the same things and I'm not sure if I can do the math that shows what they represent differently, but I would say that they wouldn't be exactly the same.

Q. That's sort of what I'm getting to. Things included in that difference in the past, part of that value is now included in the blended component value of producers and part of it is included in PPD?

A. I'm just not sure.

Q. Okay. So your example here of $6.6 million, for example, necessarily does not include any added value to producer revenue produced by Class II prices when Class II is in line?

A. No.

Q. And that's because it's blended into the producer component price?

A. Yes.

Q. Top of page 4, first full paragraph, show the third largest class sales volume market. Are you, as a matter of policy, suggesting that one factor to be taken into consideration in setting performance standards is Class I volume?

A. Yes.

Q. So by that, Arizona would have an

extraordinary low performance standard because there's not much Class I milk there?

A. Perhaps.

Q. Is it not -- at least in the past has it not been Class I volume compared to producer milk which produces a utilization?

A. That would be a factor, yes, it would be.

Q. There can be a huge Class I volume and still a low utilization?

A. That's correct.

Q. Now I've skipped over in my midnight notes to page 6.

A. Like to read fast.

Q. The last full paragraph beginning with the words "The term and its occurrence," you refer to depooling as a recent phenomenon.

A. Not new or even recent.

Q. Pardon?

A. That sentence says it's not new or even -- not new or even recent.

Q. It's not new or even recent. And two lines down --

A. Yep.

Q. What is recent -- what is recent is

degree?

A. Yes.

Q. It's degree, okay. And that degree is illustrated by what happened last March, April and May?

A. Yes.

Q. Going further down to the last line of the page, few price differences of $2.00 per hundredweight range, that's the difference between the blend price and the Class I price that you were referring to?

A. No. In that case it would be Class III and blend.

Q. Class III and blend.

A. Yes.

Q. When Class III was $2.00 or more above the blend price?

A. Yes. Those were not -- there were more than zero of those, but it didn't seem to be as many or as many as high as there are now.

Q. And that's sort of your measure in this testimony as to what is a recent critical phenomenon?

A. Yes.

Q. What you believe to be a probability of recurrence of that phenomenon in the future that causes you to an emergency reaction?

A. Yes. It would be 100 percent probability in December.

Q. Of $2.00? I don't think you testified to that effect.

A. No, I don't think it will be $2.00. It will be negative PPDs.

Q. And there have been negative PPDs in price diversions on multiple occasions in the past, though not of the $2.00 plus range?

A. Yes.

Q. Last full paragraph of page 7 you refer to depooling opportunities. As I'm observing in your testimony that the most frequent depooling opportunities, particularly in 2004, are for Class II, nine opportunities in Class II versus two for Class III; in 2003 there were six opportunities for Class II versus four for Class III; in 2003, three opportunities for Class II versus one in Class IV, zero in Class III. Let's talk a little bit about the degree of that opportunity.

That opportunity only exists if Class

II is produced at a plant, a nonpool plant, federally unregulated plant to which milk is diverted; correct?

A. I think that's right.

Q. There was no opportunity to depool milk that is used in a distributing plant to make soft products?

A. I think that is correct also.

Q. Do you know -- there is some information of Class II use in the record, but -- and there's some information on plants to which milk is diverted, but do you have even a ballpark estimate of the percentage of Class II milk that is used in pool plants versus that which is used in nonpool plants?

A. I do not.

Q. Do you have a knowledge or opinion on whether the Class II milk in pool plants is greater in volume than the milk in nonpool plants?

A. No, I don't.

Q. Do you have any suggestion on where in existing information or easily available information not in the record one might look to find that information?

A. I don't either.
Q. You do, however, supply a number of -- you, DFA -- supply a number of distributing plants that has substantial Class II use?
A. Yes.
Q. Does DFA supply stand-alone unregulated Class II plants in the Central marketing area?
A. I think the answer to that is yes.
Q. Would you identify those?
A. The only one that comes to mind is I think there's a fairly decent size ice cream plant that's part of the Hiland-Roberts group that's a stand-alone plant, so we would be a milk supply there.
Q. And Hiland-Roberts is a facility that is owned as part of a joint venture between DFA/Prairie Farms?
A. Yes, that's correct.
Q. And those are the only joint venturers?
A. Yes.
Q. Do you know what the approximate monthly efforts of that plant is?

A. I do not.
Q. Which of the two joint venture parties is responsible for day-to-day supply to that plant?
A. DFA.
Q. Is that plant supplied on a regular basis or does it balance the market?
A. I don't do that transaction, but my suspicion is it's supplied on a regular basis.
Q. Is there any other significant Class II plant in the marketing area that you're aware of which is a stand-alone, unregulated Class II?
A. I think the Milnot facility is a stand-alone Class II operation. I think there may be some other ice cream facilities in the St. Louis market, I don't know of them, don't know them directly.
Q. Do you know of any that are of substantial size?
A. I think Wells may have an ice cream plant, a stand-alone Class II facility.
Q. Let me ask you this: If those plants were of a size of 10 million pounds a month, is it likely you would know about them?

A. Again, those types of supply demand is done at the council level and that's not something I do day-to-day. Certainly those are plants that have -- the three or four that we've mentioned are some that has some volume, but I simply don't know what the sales volumes are. I think two of the three, though, are your clients, so you could probably tell us.

Q. I know as much about my clients as you know about your employer. Probably less.

Is there information in the record to your knowledge or someplace you can point us to that would give us information on the volume of milk that actually took advantage of the opportunity to depool Class II milk?

A. I'm not aware that that detail is kept. It's generally a published figure on the amount of milk that was depooled, but I'm not familiar with -- it's done by class.

Q. Would it be fair to say -- if I were to look at the monthly Class II data, compare month to month and look at the month in which there was a sharp drop and compare that to an adjacent or next adjacent month of high Class II, that would probably represent the outside parameters of the degree to which that opportunity was exploited?

A. Yes, I would agree with that. A complete pool month and a month when there was no Class II, you would begin to get some -- or much less Class II, you would begin to get some idea.

Q. On page 8 of your testimony, referring you again to depooling, you talk about the response of a Class I handler, the handler with Class I sales drawing from margin to pay a competitive price.

Is the competitive pay price that you're referring to there a price that is equivalent to the class value of depooled milk or something in between that price and the market blend?

A. I'm not sure exactly how to answer your question directly. I think what I would say is that the problem that I'm attempting to point out here is that if everyone had the same blend price, then any payments over that that came "from margin" would not be a problem.

But the difference between the blend

price from someone who pools than someone who depools that has to be made up from a third party source, that is, in our view, an issue. So that's one of the reasons why we would like to see depooling effected, curbed, so that everybody starts from the same place.

Q. You continue, if he cannot or does not, that is pay competitive, pay an extra premium, that's what we're referring to, an extra premium, in that sentence, fifth line down, it does or does not?

A. From the top?

Q. Yes, from the top.

A. Yes, he cannot or does not.

Q. And can or cannot or does not do is pay an extra premium?

A. Yes.

Q. He will lose his milk supply to a handler who does depool.

Is it not true that Class I handlers ordinarily receive their milk by long-term contract with milk suppliers?

A. There are a number of supply arrangements with bottling handlers.

Q. Ordinarily are those long-term

contracts?

A. The duration moves from one month to multi months.

Q. Ordinarily does DFA have long-term contracts with its customers?

A. DFA has a wide range of contractual arrangements with its customers.

Q. Are those, for the most part, not exclusively longer than one month?

A. Yes.

Q. So milk, then, is part of a supply contract commitment?

A. Uh-huh.

Q. It's not going to move to depooled source because that would be a breach of the contract as well as dishonoring the contractual relationship. Am I correct?

A. The movements may or may not occur immediately, but they could have some impact over time. And whether or not -- whether it's DFA making that difference up or some arrangement with the supplier making that difference up is still part of the price that would raise a concern. The difference between the ability to pay from someone who depools to someone who doesn't would still be there.

Q. What you identify as the problem of depooling in this competitive situation is one that varies by degree within the marketing area and the milkshed of the marketing area?

A. That is true.

Q. There could be, and are, actually areas in the marketing area in which this problem is little or nonexistent?

A. You mean in the Central order?

Q. Yes.

A. In the month that it was minus $4.02, I don't -- I think it was just everywhere. In months where it was at the zero zone, it might be minus a quarter, it's possible that some areas wouldn't have a negative PPD.

Q. Well, let's put it this way. There are places in which although the difference was $4.02, in a cheese plant outlet, to explain that difference, is a long ways away?

A. You mean mileage-wise?

Q. Mileage-wise.

A. While on the surface that may be true, the competitiveness -- the plant itself may be a long way away, but the competitive and the intermingling of the milk supply is going to be neighbor to neighbor, next door to next door milkshed, pocket to pocket.

So your first question about there being variation in the order is true, but there's that competitiveness in the milkshed. Just Kansas City is 150 miles from cheese plant X doesn't mean it's a long way away.

Q. Did the problem that you describe here occur to any significant degree, even during those $4.00 months in, say, Colorado?

A. There were negative PPDs in Colorado in that competitive situation had to be dealt with one way or another.

Q. There were negative PPDs everywhere.

A. Uh-huh.

Q. And there would have been negative PPDs even if all Class III milk were pooled?

A. Yes.

Q. So I'm not talking about negative PPDs --

A. Okay.

Q. -- I'm talking about the competitive situation that you described between a Class I handler and available supply to the supplier.

A. That situation, too, varies over the course -- over the area of the marketplace.

Q. And did it occur to any significant degree in Colorado, is my question?

A. I don't have those numbers at hand. I would guess that it was -- to some less degree they headed other places.

Q. On page 9, first full paragraph towards the bottom, you refer to what you believe to be the absence of risk management tools available to producers.

A. Uh-huh.

JUDGE HILLSON: You have to say "yes" for the transcript.

A. Yes. I was waiting for the question.

JUDGE HILLSON: Oh, I thought you were answering.

Q. (By Mr. Vetne) That was the beginning of it. There are a lot of risk management tools available including, but not limited to, those available on the Chicago Mercantile Exchange. In making this statement, did you attempt to analyze the function and use of each of those management tools to depooling and reducing depooling risks?

A. I did not analyze every possible combination. We offer -- DFA offers some risk management tools to its producers, and actually later in the day there will be some testimony about those from some that used them. And again, during the month of the minus $4.02, there were lots and lots of producers who used some risk management tools and the return was $4.00 different than what they thought they had hedged.

And so that's what the statement is referring to. And because of that amount of volatility, it would be impossible to use -- to find a speculator -- it would be difficult to find a speculator who would be able to offer an offset for that much of a price difference. And if they did, what their charge would be would probably make the hedge not be worth taking on.

Q. Does DFA, as an organization, also use the risk management tools of CME?

A. Yes. In our practice, from time to time we use risk management tools.

Q. For example, if you sell cheese in

the future at a fixed price to a buyer, you'll go to the CME and try to cover yourselves?

A. Sometimes. Most the times we use it in conjunction with the buyer.

Q. And DFA also uses the CME to offer bulk cheese and to make bids on bulk cheeses available; correct?

A. Wrong.

Q. Wrong?

A. Wrong.

Q. DFA has never -- doesn't ordinarily offer cheese nor bid for cheese?

A. Wrong again.

Q. Can you explain why it's wrong? How am I putting this wrong and correct me?

A. We've never offered cheese on exchange.

Q. I see. You only bid for cheese?

A. If we participate in the exchange, we'd be -- we listen every day, but we don't always participate. But if we do participate, it's only been in a bid role or a buy role.

JUDGE HILLSON: Mr. Vetne, I'm going to interrupt. I think it's about time to have lunch, it's about 12:15.

A couple of things. I don't know how the dining facilities are around here. Should we allow an hour and a quarter for lunch rather than an hour or -- would that make some sense? So we're going to come back at 1:30.

Also, there's a lot more people here than there were here yesterday when we were planning who the remaining witnesses were going to be, so when we come back at 1:30, maybe we can take a few minutes and sort things out, figure out who's going to testify. If we need to switch the order to accommodate the dairy farmers who's planning to come in for one day and leave, I think we should do that.

MR. BESHORE: We're probably going to request that.

JUDGE HILLSON: Okay. Well, I'd be pretty accommodating to allow that; I'm sure everyone else will too. So let's all think about that.

And the folks who didn't tell me, like Mr. Vetne, do you have witnesses you're going to call and other folks have witnesses, I just need to get a list so I can get a sense of how long we should run the next few days.

Off the record.

(Lunch recess.)

JUDGE HILLSON: We can go on the record now. The parties here have agreed that we're going to go a little bit out of sequence. We're going to resume Mr. Hollon's examination by Mr. Vetne afterwards and I'm going to allow Mr. Beshore, I think he said he had six dairy farmers to call, those who wanted to get in and out of here today.

So I'm going to let you call your next witness, Mr. Beshore.

MR. BESHORE: The first witness we have is Jim Huffman.

JIM HUFFMAN,

a Witness, being first duly sworn, testified under oath as follows:

JUDGE HILLSON: If you would please state and spell your name for the record, sir.

THE WITNESS: My name is Jim Huffman, it's J-I-M H-U-F-F-M-A-N.

JUDGE HILLSON: Mr. Beshore, your witness.

DIRECT EXAMINATION

BY MR. BESHORE:

Q. Thank you. Mr. Huffman, you're a dairy farmer?

A. Yes, I am.

Q. Where from?

A. I'm from McCook, Nebraska, which is in the southwest corner of the state.

MR. BESHORE: I would like to ask, your Honor, if we could mark as the next consecutive exhibit --

JUDGE HILLSON: 20.

(Exhibit 20 was marked for identification.)

MR. BESHORE: 20 a six-page document.

Q. (By Mr. Beshore) And, Mr. Huffman, have you prepared some comments you would like to make here, which is marked as Exhibit 20?

A. Yes, sir.

Q. Would you proceed to present that statement, and then I'm going to have another question or two for you before the other folks have a chance?

A. Great, thanks. I appreciate it.

First off, thanks for having me here today. I'm kind of nervous, so excuse my quivery voice.

My name is Jim Huffman. I've been married for 24 years and I am the father of three. I graduated from Cal Poly San Luis Obispo in 1983 with a degree in agricultural business management. I worked as a salesman/nutritionist for a large feed mill in central California for seven years.

During that time I also started a small dairy, milking 65 cows. I milked the cows in the morning, went to work all day while my wife fed the cows and calves. Then I milked the second shift in the afternoon when my wife fed the cows, the calves and the kids.

We come from a humble beginning. Through the years we have moved several times building and selling dairies. First we were in central Texas, then southwest Nebraska. We've been in the dairy business over 20 years. We now milk 1,500 cows and farm 300 acres. We're proud of the fact that we employ 14 people and their families.

The reason for my being here today is

to voice my disappointment in the way Order 32 is being used from 2000 to the first ten months of 2004. We have lost an average of $1.36 a hundredweight on our PPD. The number of handler has remained the same, but the volume of milk pooled has diminished from a high in 2002 of 1.5 billion pounds to a low of 948 million pounds, or 40 percent less.

This number represents an extreme swing in pounds of milk pooled from one month to the next, representing abuse that has cost me and the other dairymen alike hundreds of thousands of dollars every year. I do not think that the Federal orders were designed to allow handlers to manipulate the market in such a way that it hurts the very producer that keeps them supplied.

Since 2000, total U.S. production has risen 1 percent. I highly doubt that Federal Order 32 has seen a reduction in production of 40 percent or a demand shift of 40 percent that warrants a change of this magnitude. Pure and simple, the producers within Order 32 are being used by the handlers, and the Market Administrators are allowing it to continue.

Order 32 looks more like a pissing post than a hitching post for the rest of the country. I'm sure this was not the intention of the milk Market Administrators, at least I hope not.

When we made budgets and proposals to our lenders, one of the most asked questions that comes up is, "Can we protect our price and lock in some stability?" The average PPD for the first six months of 2004 was a negative $1.23. If we look at the CME for Class III contracts for the first six months of 2004, we have an average price of $13.38.

If we add the negative PPD of $1.23, you should anticipate locking in a gross pay price of $12.15, not a lot of risk management built into this scenario considering it's below a break even. This Class III price that many dairy economists are touting as a better than average price was part of that calculation for the first six months.

In closing, I appreciate your time and effort. I'm not an expert in milk markets or how they work, but I do understand when the price I receive for my milk is below the cost of production because of a negative PPD. We can blame whomever we want for the negative numbers, but until the rules are changed, I will most likely continue to struggle with negative PPDs, lost income and wonder why no one cares enough to make a change.

In presenting with this statement, there's two letters that are attached to it. One from my CPA and the other one from a well-respected dairy CPA stating their opinions of the financial impact on my farm and others pertaining to the native PPDs.

I'm not going to take the time to read through both letters from each CPA, I'll leave that up to you, but I would like to highlight just a couple of points from the letter that my CPA prepared about my farm.

If you look down at the third paragraph, he talks about the practice of pooling and depooling and whenever it suits the handlers, he feels it's unfair, as I do as well. He calculated the average PPD from April through September of '04, when milk prices have finally reached prices above the cost of production, Order 32 producers who shift through DFA experienced a negative PPD, as well as all producers, not just DFA producers, an average price of $1.34 hundredweight.

To put it into perspective of my farm, with an average production of 65 pounds milking 1,500 cows, that insures me a loss of $33,000 a month, or if you look at it just over this summer, a whopping $200,000. That's $200,000 that I can't afford nor can any other producers, especially given the fact that the previous two years we experienced 35 year historical low milk prices.

I want to speak a little more personal, not just about Order 32, but about southwest Nebraska. We moved there in 1997 and we built two dairy facilities there, coming from central Texas. At the same time there were seven other dairy farms that were established in southwest Nebraska. To date, all seven farms have experienced financial losses and difficulty directly attributed to low milk prices and negative PPDs.

Of those seven producers that have built new facilities and invested over $35 million in capital improvements and livestock in southwest Nebraska, three of them have filed bankruptcy, one of them has been foreclosed on and it's just now recently been reopened. All seven facilities have financial difficulties and are for sale.

Today I've learned that December's PPD will also be negative; at least that's what's anticipated. On my dairy farm, on a dollar move, a negative PPD will impact me by January 15th of 25 to $30,000.

I'm kind of passionate about this, I hope you all can understand that. It's a serious matter. And I don't think there's any one person to blame for it, but the end result is it's costing the dairy producers in our area a tremendous amount of money, and I hope that we can do something to change that. I hope we can do it really fast. Thanks.

Q. Just one or two other questions, Mr. Huffman. I think you were here this morning when Mr. Hollon presented his direct testimony, were you not?

A. Correct.

Q. You remember there was some talk

there about whether this was an emergency or whether these issues in this hearing should be handled on an emergency basis. I wonder, in your opinion as a dairy farmer, do you consider it an emergency?

A. Yes, I do. I think we should resolve something today. Don't we all?

Q. Just one final question. You're a member of DFA, I take it?

A. Correct.

Q. Do you hold any corporate office or regional office or any office whatsoever in DFA?

A. No, I don't.

Q. Just a rank and file member?

A. Rank and file.

Q. Thank you for coming today.

MR. BESHORE: We would request that Exhibit 20 be received. And Mr. Huffman is available for further questions.

JUDGE HILLSON: Any objection by receipt of Exhibit 20 into evidence? Okay, hearing none, I'm receiving Exhibit 20 into evidence.

Who has questions of this witness?

Mr. English.

CROSS-EXAMINATION

BY MR. ENGLISH:

Q. Good afternoon. Charles English for Dean Foods Company. Thank you for appearing today.

I take it from your testimony and in particular from your reading from -- and your own application of your farm to the analysis by the CPA, that you've actually received on your check a negative adjustment that is for the PPD?

A. Correct.

Q. And do you consider that negative adjustment part of or a price for your milk?

A. Part of a price?

Q. Yes. Do you consider that part of the price?

A. Yes.

Q. Do you consider it a loss? I read this as effectively saying you consider it a loss for your products?

A. Yes, I do.

Q. Do all those farms that have set up in southwest Nebraska belong to DFA?

A. I'm not sure. I believe the majority, but I wouldn't want to testify that every one of them is.

Q. Forgive me because maybe this doesn't happen in your part of the country, but in a lot of parts I've dealt with it does, do you and your neighbors tend to compare what your paid price looks like from month to month?

A. Not as much as I would like, because we are separated by miles, time and so forth. I would say we don't compare every month, no.

Q. For those months you have compared it, when you've had a negative PPD, have you noticed whether the PPD you've received or the price you've received has been different for your milk?

A. I'm not sure I understand the question.

Q. That's all. Thank you very much.

JUDGE HILLSON: Anyone else have questions for this witness? Mr. Vetne.

CROSS-EXAMINATION

BY MR. VETNE:

Q. Good afternoon, Mr. Huffman. My name is John Vetne. I represent AMPI, Foremost, Central Equity Milk Producers and some others. I have some questions similar to that of Mr. English.

Your testimony, when you say you lost an average of $1.36, am I correct that you are applying the label loss to your dairy to any negative number in the PPD?

A. Correct.

Q. Is it your belief that the accountants that sent these letters share the same perception that a negative PPD represents a revenue loss?

A. Correct.

Q. Did you ask for these letters?

A. I asked for his opinion, to write a letter that I could present here.

Q. That was the first one, the December 2 letter from Genske?

A. Yes.

Q. Then the data on the bottom of that letter, 1,500 cow farm used for illustration, does that represent your farm?

A. Yes, it does.

Q. You, as a member of DFA, you receive educational informational material from your

cooperative? I'm not asking yet if you read it. First question is: Do you get it?
A.   I read most of it I get in the mail, but maybe a little more specific than -- about how to make cheese or hedge or what?
Q.   Have you received anything explaining negative PPD, how it's arrived at and what it means?
A.   In general statements, yes.
Q.   From DFA?
A.   Yes.
Q.   And your expressed understanding of what the negative PPD is and that it constitutes a loss whenever it's negative, does that come from DFA literature and your discussion with DFA field people?
A.   No.
Q.   Where does that come from?
A.   It comes from the opinion of my accountant and the milk statements that we receive.
Q.   The milk statements that you receive from DFA?
A.   Right.
Q.   That show a negative number?

A. Correct.
Q. Which you and your accountant both attribute it in entirety as a loss to your operation?
A. Yes.
Q. In the ordinary course of events, you're aware that your blend price or your PPD -- well, your blend price, that is the component price plus the PPD, your total price, is a function of mixture of uses in Class IV, Class III, Class II and Class I; correct?
A. Correct.
Q. And under ordinary circumstances, Class III use and Class IV use lower the component portion of your blend price; correct?
A. I'm sorry, repeat that again.
Q. Use in manufacturing purposes lowers your blend price?
A. Use of manufacturing --
Q. Use of milk, marketwide use of milk in manufacturing lowers your blend price?
A. I --
Q. Do you know that?

A. No, I don't.
Q. You don't know that?
A. No.
Q. Are you aware that in the market that has a 70 percent cheese use, the price to producers would be less than a market that has 20 percent cheese use, for example?
A. I couldn't say that it does or doesn't, because obviously it depends on the price of cheese that given month.
Q. That's true, it varies. But on the average, are you aware that Class I milk, on the average, commands a higher price than cheese on the average, milk used for cheese on the average?
A. I would not want to assume that Class I was higher than Class III. I think that's a good way to get yourself in trouble when you go to hedge and start contracting Class III contracts and find out Class I is, in fact, not.
Q. Do you use forward contracting opportunities offered by DFA?
A. I have, yes.
Q. During the past year, how much of

your milk has been forward contracted?
A. 50 percent. Not -- I'm sorry, a million pounds a month, not 50 percent.
Q. Not quite 50 percent?
A. And that's over a period of nine months, not the entire year.
Q. And does that produce a fixed price for you?
A. Does it produce a --
Q. Forward contract on your formula, that produces a fixed price?
A. Correct, on Class III.
Q. Fixed price on Class III. Could you describe to me what that means?
A. Just that, the portion of my milk that I'm paid in Class III price on, I have fixed a million pounds a month at that price.
Q. Does that portion of your milk supply also command a variable premium or variable additional amount?
A. Yes.
Q. It does?
A. Yes.
Q. That additional amount, is the PPD a factor in that additional amount?

A. No. No, it's not, because that Class III price, again, is a fixed price, and the PPD is a component on top of or in addition for a negative to that fixed price.
Q. On the fixed portion, the portion that you have forward contracted at a fixed price, is that -- is the value you receive for that milk variable based on what the PPD does or is it simply --
A. No.
Q. It's not. So the PPD affects about half of your production, approximately, that you don't forward contract at a fixed price?
A. Let me clarify that a little bit. When you talk about what's fixed, and you asked me if there's any variables to it, the variables that I was referring to or what I thought you were inferring has to do with quality and the components within that milk.
Q. So you get quality premiums in addition to the fixed component?
A. Well, the component pricing: Butterfat, solids, nonfat, skim, that's what --
THE COURT REPORTER: I'm sorry,

could you speak up a little bit?

A. Well, I was under the impression that you were asking if that was part of the variable price.

Q. (By Mr. Vetne) Why don't you explain this?

A. I wish I could.

Q. Let me see if I can do it. On the portion that you forward contracted, you have contracted a fixed price based on Class III?

A. Correct.

Q. And that varies based on the butterfat component in your milk?

A. Correct.

Q. And the protein component in your milk?

A. Correct.

Q. The somatic cell component in your milk?

A. Yes.

Q. Are there other variables like that in the fixed price that you have?

A. None that I know of.

Q. Thank you.

JUDGE HILLSON: Mr. Stevens?

CROSS-EXAMINATION

BY MR. STEVENS:

Q. Garrett Stevens, Office of General Counsel. One of the things the Secretary wants to hear in these hearings is small business, what small businesses think about the various changes or proposals that are made. I just want to ask you a few questions about that, if I could.

The Department, when they issue these rules, they put certain criteria out for small business and then, as I say, like to hear evidence from those small businesses.

JUDGE HILLSON: Is your mic on?

MR. STEVENS: Can you hear me? I'll move closer.

JUDGE HILLSON: I'm not sure the people in the back of the room can hear you.

Q. (By Mr. Stevens) Garrett Stevens, Office of General Counsel. When the Secretary does these hearings, he likes to hear from the witnesses, the Department likes to hear from the witnesses concerning small business concerns and these proposals. And I would like to ask you a few questions about that.

The Department establishes criteria for small business, basically in terms of a dairy farm, we're talking about annual gross revenue of less than $750,000 a year. So under that criteria, what would you -- what are your thoughts on that? Would you consider yourself a small business for purposes of the hearing?

A. Oh, I would, very much so.

Q. And if you do feel that way about it, what would you like the Secretary to know? I know your testimony and we certainly heard that, and again appreciate you taking the time from your business to come here and participate. You've expressed the financial aspects of it. Is there anything else you would like to tell the Department about the effect of the proposals and this proceeding on you as a small business?

A. That's a really good question, I'll try to answer it. One of the things that, as a larger producer, we don't follow that category of a small farmer, but we do influence many, many other people. On a monthly basis we deal with 30 to 35 different suppliers, whether that's service, feed, our influent dealers; there's a whole array of people that help make our business work every month, not to mention our lenders, my banker.

So when we're affected financially, our ability to spend dollars within our community, pay down debt, higher additional labor, it's directly affected within our community, and well beyond just McCook. So when we're financially affected and by the decisions that are made here today, we will be directly affected. That has a direct impact on what we can do.

When I go home today, you will determine what I can and can't do in the future. So we may not be small business by USDA standards, but we certainly affect all the small businesses in the community.

Q. And I get from what you're saying that this ripple effect, I mean in your town and your county --

A. Right.

Q. -- your suppliers, the people you do business with, I mean, this, what we're doing here, affects all of you.

A. Oh, it really does. I wish they could all be here today.

Q. Okay, thank you very much.

A. Thanks.

JUDGE HILLSON: Any more questions from the government? Any questions, Mr. Vetne.

RECROSS-EXAMINATION

BY MR. VETNE:

Q. My assumption is --

JUDGE HILLSON: You need to identify yourself.

Q. (By Mr. Vetne) John Vetne, again. The assumption is that you don't consider yourself a small business under the $750,000 gross revenue criteria?

A. I personally consider myself a small business. We're a family-run business, my wife and I, but --

Q. But under that criteria, though, you don't fit; correct?

A. Right.

Q. The Department has recently, based on your own experience and knowledge of your herd size, the Department has periodically published an assumption of where this small business line lies for dairy farmers, and most recent publication I've seen was there's an assumption that producers having 500 cows or less are likely to be small businesses because their gross revenues are likely to be $750,000 or less.

Based on your knowledge of your own herd and revenues, is that a fairly good number where the threshold on $750,000 revenue can be put?

A. Oh, I don't know. That's all based on the price of milk and the production.

Q. It's an average over time, yeah.

A. I think you could do the math in that regard. You take 500 cows producing 65 pounds of milk, I mean, pull a calculator out and I'll figure it out.

Q. My question was sort of a backhanded way of getting to, you know, you've got 1,500 cows, is your gross revenue approximately three times $750,000?

A. Is it three times that?

Q. Approximately.

A. Sure.
Q. Thank you.
JUDGE HILLSON: Any further questions, examination of this witness? Mr. Beshore, do you have some questions?
MR. BESHORE: Yes.

REDIRECT EXAMINATION

BY MR. BESHORE:
Q. Maybe one additional question. What's the population of McCook, Nebraska?
A. 8,000.
Q. And what county are you in there?
A. Red Willow County.
Q. Pardon?
A. Red Willow County.
Q. What's the population of Red Willow County itself in southwestern Nebraska?
A. I do not know what the actual population of just the county is. I'm going to take a guess and say 12,000. And that is a guess.
Q. Is agriculture the major industry in the county?
A. Yes, it is.
MR. BESHORE: No further

questions.

JUDGE HILLSON: You may step down. Thank you for testifying.

THE WITNESS: Thank you.

JUDGE HILLSON: Call your next witness, Mr. Beshore.

MR. BESHORE: James Reed.

JAMES REED,

a Witness, being first duly sworn, testified under oath as follows:

JUDGE HILLSON: State and spell your name for the record, please.

THE WITNESS: James Reed, R-E-E-D.

JUDGE HILLSON: Go ahead, Mr. Beshore.

MR. BESHORE: Your Honor, we would like to have Mr. Reed's three-page statement marked for identification as Exhibit 21.

JUDGE HILLSON: It will be marked as Exhibit 21.

MR. BESHORE: Thank you.

(Exhibit 21 was marked for identification.)

DIRECT EXAMINATION

BY MR. BESHORE:

Q. Mr. Reed, have you prepared a statement to present here for this proceeding today?

A. Yes, I have.

Q. Could you proceed with that, please?

A. Sure. My name is James Reed. My address is Route 1 Box 83, Esbon, Kansas, which is located in north central Kansas. I operate a family dairy farm along with my wife and my parents. We are member-owners of Dairy Farmers of America, Inc. and market all our milk through the cooperative. The Reed family earns its livelihood from the dairy and participates off the farm in the dairy industry.

I currently serve as president of the Kansas Dairy Association. The KDA is the professional trade organization for the Kansas dairy industry, and is the only Kansas organization specifically representing the dairy interest at the state capitol and in Washington, DC. We represent 99.5 percent of the state's 492 dairy farms, which produce

1.338 billion pounds of milk annually. We are led by a 13-member board of directors. At our September board meeting the board unanimously voted to support the proposals put forth by DFA.

I am not a technical expert in the inner workings of Federal orders, I do not expect to answer many technical questions about them or the proposal. Because of my position, I get many questions from producers across my state asking me to explain negative PPDs and why they occur. I explain to them about pooling and depooling and the effects they have. This is very unsettling to our dairy producers.

The main issues I would like to discuss today are depooling and the effect it has on dairy farmers' income and the use of risk management tools, such as hedging.

All dairy farmers deliver to a market. It may be a Class I market or a Class III market and all share in the blend price of that market. However, with the volatile prices in the market today, it is essential that those producers who wish to supply a market and share in the bend price should be able to do so without being adversely affected by those who wish to do so only when it is directly advantageous to them.

Most of my state's producers agree that if you are going to share in the market returns, you should be in the pool day in and day out, not just when it is most profitable to you. It does not sound reasonable to us to be able to pick and choose.

In the matter of risk management, our farm, like many across the state, regularly forward contracts our milk to assure a profitable price. Predicting the price of milk in the future is very difficult, but it is something we are learning to do to insure our business's future. However, when negative PPDs occur at the rate they did last spring, it becomes almost impossible to know what price level we can live with in relationship to advance selling, as the price we were trying to achieve was destroyed by factors that are almost impossible to predict.

Congress has instructed the USDA to take an active roll in educating and encouraging dairy farmers to use risk management tools. But the situation we find ourselves in now precludes us from using the futures market as our basis. We have no way of knowing where the PPD will fall, as it would be impossible to predict where the Class I and Class III prices will be in relationship to one another and how much milk will be pooled or depooled, because the present regulations are much too lax. We would encourage the Secretary to take this into serious consideration in making her or his decision.

Thank you for listening to my concerns, and I will try to answer any questions that you have.

Q. Mr. Reed, would you look at the last full paragraph on your statement where you were comparing Class I, and the statement says II as printed. You read it III, you meant III; right?

A. Yes. This was retyped and when I proofread it, I noticed one of the I's was missing. It should have been III.

Q. It's a typographical error, it should read III?

A. Yes.

Q. Would you tell us a little bit more about your dairy farm? How many cows do you milk, what size is it, who's involved?

A. We milk about 130 cows with my parents who started the dairy in 1979, and my wife and I joined it about 13 years ago and became partners in it.

Q. Are you -- is your dairy a small business, as defined by the USDA for these proceedings, that is a dairy enterprise grossing less than $750,000 a year?

A. Yes, sir.

Q. Are the issues in this hearing important to your dairy farm as a small business enterprise?

A. Oh, absolutely. The amount of money that we lost to negative PPDs last spring, I don't have the figures off the top of my head, but they were in the 3 to $4,000 range every month, which to our size of business is a great amount of money.

Q. Now, you're here speaking on behalf of the Kansas Dairy Association. As president, that's an elected position, I take it?

A. Yes.

Q. The board members of the association are elected from its general membership?

A. Yes.

Q. Or by the general membership?

A. They are elected by the membership at the annual meeting in February.

Q. And you're here representing DFA producers in Kansas and the non-DFA producers in Kansas?

A. Right. I'm representing all producers in the state of Kansas, regardless of who they sell to.

Q. You, yourself, do not hold any office in Dairy Farmers of America; is that correct?

A. I'm not real -- I'm redistricting committeeman in my district, so -- I think the answer would probably be no, because it's not a real --

Q. You're on a committee?

A. Yes, so the answer would be no.

Q. If you had your druthers, would -- you voted to support the DFA position, but do you think it's tough enough on the issues you've identified here?

A. No. I think it should be tighter than what you've proposed. The reason the board of directors elected to go with DFA's proposal is because it was the one there. Rather than write our own, we elected to support DFA's.

Q. You're satisfied it's moving in the right direction anyway?

A. Right.

Q. Not as far as you would like it if you were writing on a clean slate?

A. I would like it to go much further, but...

Q. Thank you.

JUDGE HILLSON: Go ahead, Mr. English.

CROSS-EXAMINATION

BY MR. ENGLISH:

Q. I'm Charles English for Dean Foods. Are you aware that Dean Foods has a number of proposals that go a lot further than DFA's proposals?

A. I'm aware of that. Before I came I

was not.

Q. For instance, you said that most of your state's dairy producers agree that if you're going to share in market returns, you should be able to pool day in and day out, not just when it's most profitable to you?

A. Correct.

Q. So for instance, if Dean Foods has a proposal that would say that if a dairy farmer or a handler for a dairy farmer takes a farmer off the market, they would have to remain off for a whole year, do you think that would be more in line with what you're interested in doing for meeting that statement?

A. I would say that probably. I mean, I'm representing a board of directors and, of course, I would have to -- but I would think they would lean that way, yes.

Q. Thank you, that's all I have.

JUDGE HILLSON: Mr. Vetne.

CROSS-EXAMINATION

BY MR. VETNE:

Q. Mr. Reed, I'm John Vetne. I just have a couple of questions. Of the 13-member board of the Kansas Dairy Association, how

many of those are DFA members and members of other cooperatives?
A. I know that there's at least two that are members of other. Exactly, I don't know. We're not all a DFA board by any means.
Q. Are there any non-unaffiliated nonmembers, independent producers on the board that you're aware of?
A. That sell to like proprietaries?
Q. Yes.
A. Yes.
Q. Do you share the perception of Mr. Huffman before you that when there's a negative PPD, on your milk sales announced by the Market Administrator, that that represents a loss to your dairy farm?
A. Yes.
Q. Thank you. You gave some testimony concerning a loss last spring. And that was entirely from what was on your check as a negative PPD?
A. Correct. That was the loss I was referring to was the negative PPD on that check.
Q. And that was at a time when milk

prices were going up?

A. Correct.

Q. And it's your perception that if there had not been any depooling, there would not have been a negative PPD?

A. No, incorrect.

Q. What is your perception?

A. The negative PPD was exaggerated by the depooling. It would have already been there, but not to the extent that it was.

Q. And you have the belief that even if all the milk was on and you hadn't had that negative PPD, there's a loss to your organization from some source?

A. There would have still been a loss, but not as great. I think I've seen one figure, about half.

Q. Could you describe a little bit more to me how you characterize that as a loss? Let's say all of the Class III milk was pooled and it was a negative PPD, or $2.00, a loss comes from someplace, it's an expense, it's never recovered, or something, how is that a loss?

A. I guess if everything's pooled,

correct, that's what you're saying?

Q. Everything's pooled in this hypothetical, everything's pooled and the PPD is 2 bucks.

A. I guess I would have to back up and say maybe that's not a loss, it's just part of the blend price; however, when things are depooled, that's a situation that could be avoided and something that's worked -- outside factors are adversely effecting my business, something that can be changed.

Q. When you discussed this with the board of the Kansas Dairy Association, was it the perception of the board as a whole, by the members of the board, that a negative PPD is a loss?

A. I would believe so that that was their perception, yes.

Q. You talk about your own experience with forward contracting. How many of your milk during 2004 has been forward contracted through DFA?

A. I contracted probably 80 percent of it for six months.

Q. What was the nature of that contract?

Was it a fixed price per hundredweight or
componently?
    A.   It was a fixed price for Class III.
    Q.   What does that mean, fixed price for
Class III?
    A.   I sold at a set price, Class III, I
believe 3.5 butterfat and then the components
and the other things come into play, PPD, and
adjust that fixed price.
    Q.   So whatever the actual Class III
price was, you received a fixed price?
    A.   That's my base price.
    Q.   That's your base price.
    A.   I guess we shouldn't be saying fixed
price, that's a base price.
    Q.   So fixed base. And the additions or
subtractions there too are variable?
    A.   That's correct.
    Q.   Which includes your protein, your
quality, your somatic cell, etc.; correct?
    A.   Correct.
    Q.   And was the PPD part of the total
revenue that you received on your forward
contracted milk? Was there an add-on when the
PPD was positive, a subtraction when it's

negative, or did you receive a fixed?
A. Correct, yes.
Q. It was?
A. That's a line item.
Q. What other forward contract type price, prices are available through DFA? Is it just that one or do they have a variety of others?
A. There's others, but I don't find them advantageous to the way I do business.
Q. All right. Thank you.
JUDGE HILLSON: Mr. Stevens, you may proceed next.

CROSS-EXAMINATION

BY MR. STEVENS:
Q. Mr. Reed, thank you for coming. You testified that you consider yourself a small business?
A. Yes, sir.
Q. Taking into consideration your previous testimony, is there anything else that you would like to tell the Department, the Secretary of Agriculture about these proposals and their effect on you as a small business?

A. Well, I guess the loss of income to my business within my county, which is a small county built of small businesses, no large business, probably in my county I'm a fairly large business in total revenue, so any time I lose money, you know, everybody else does too: The feed supplier, fuel supplier. It effects the amount of money I can spend and spread out to those around me.

Q. Similar to what Mr. Huffman testified to. So it effects your community, you as a small business and the other small businesses in your community?

A. Yes.

Q. Thank you.

A. And my community is a very, very rural, small population county.

Q. Thank you very much.

JUDGE HILLSON: Any further questions of this witness? Mr. Beshore, do you want Exhibit 21 admitted into evidence?

MR. BESHORE: Yes. I do have another question or two.

JUDGE HILLSON: Let me get Exhibit 21 --

MR. BESHORE: Yes, I would like to have it admitted.

JUDGE HILLSON: Exhibit 21 is received into question. You can ask further questions.

REDIRECT EXAMINATION

BY MR. BESHORE:

Q. What kind of breed of cattle do you milk?

A. Milk Holsteins and Jerseys and moving in the direction of going to more of the Jersey heard.

Q. Now, how far did you drive to get here? How long did it take you?

A. About five hours.

Q. And you've got to get home by the evening milking, I guess?

A. Children have a Christmas program. Hopefully the milking's done.

Q. I hope you can make it. How far -- how much further is McCook, Nebraska, from where you are?

A. I will guess about a three hour drive, four hour drive.

Q. Beyond your area west?

A. Right.
Q. Thank you for coming, Mr. Reed.
A. Thank you.
JUDGE HILLSON: You may step down. Thank you for testifying.
You may call your next witness.
MR. BESHORE: Bob Seiler.
BOB SEILER,
a Witness, being first duly sworn, testified under oath as follows:
JUDGE HILLSON: If you would please state your name and spell it for the record, please.
THE WITNESS: Bob Seiler, S-E-I-L-E-R.
JUDGE HILLSON: Go ahead.
MR. BESHORE: Your Honor, I would ask that a three-page document headed testimony of Bob Seiler be marked as Exhibit 22.
JUDGE HILLSON: Okay, so marked.
MR. BESHORE: Thank you.
(Exhibit 22 was marked for identification.)

DIRECT EXAMINATION

BY MR. BESHORE:

Q. And Mr. Seiler, would you proceed with your statement in Exhibit 22, please?

A. My name is Bob Seiler. My address is 13501 West 85th Street North, Valley Center, Kansas 67147. We are near Wichita, Kansas, probably oh, ten miles, 15 miles from Wichita in the southern part of the state. My wife, Marcella, and I run a 100-cow dairy farm and grow about 2,000 acres of crops. We also hire about three full-time employees and support their families. I am a member of the Kansas Dairy Association and am representing them today.

We market our milk through Dairy Farmers of America, Incorporated, and that's our only choice. One thing about that, there are two other properties that do pick up milk in the area, but they're also in the southwest agency, which we are involved in marketing agency out of Texas. That is a part of DFA.

I have participated as a Corporate Resolutions member for DFA the last three years and I have had much heartburn the last couple over depooling. Glad I didn't. And I helped to write a resolution to try to stop the depooling, and it's been incorporated in the DFA resolutions.

It is very important that we quickly stabilize the market in Order 32 by stopping the extreme depooling because of the effect it's having on our farm and the other dairymen of Kansas and I'm sure in the rest of the order. Without competition for milk in our area, we have no choice whom to market our milk through and no competition for it.

As you can see from the tables in some of the exhibits, we have some of the highest hauling rates also in the order. There is little incentive for our coop to return its gains from depooling to us because of the lack of competition. And I understand that, they've got to be competitive in areas where there is competition. These monies I believe are being used in areas where they feel they need to stay competitive. This is why I believe we need to revise the pooling restrictions in Order 32.

The reason I'm here today is because

I realized the gain that could be made in our profit at our farm if the pool was stabilized. To make this comparison, I used a Class I through Class IV utilizations from the 2001 to 2002 era on Order 32, which is the last year they were really stable. And Class I averaged 27 percent, Class II averaged 6 percent, Class III averaged 62 percent, and Class IV averaged 5 percent, plus or minus a decimal point or two.

I compared the March 2004 through October 2004 time period prices, which we received at our farm, against the percentages that these classes had during the 2002 period. And so on the April price, if it was 62 percent Class III, I took that times the Class III price for April, and that's basically how I came up with this formulation.

Instead of using negative PPD, I used what I thought was maybe a more correct way if we hadn't been depooled to come up with a number. And most months it was a wash except when we had the low -- big months in depooling.

If depooling had not occurred we

would have netted an additional $11,600 on our small 100-cow dairy in them seven months. We produce about 2.5 million pounds of milk a year. Considering what is likely to happen in December 2004, it will likely be a loss of around $15,000. That's an estimate, that may be a little high, hearing that cheese price is back down.

Needless to say, the reason I'm here is because that would increase my profit by a third on our farm this year and that's significant. And if I can make 10 or $15,000 a day, I would go anywhere for that. So that's why I'm here.

When you multiple these numbers across the state of Kansas, using Jim Reed's KDA's numbers of 1.338 million pounds produced per year, the totals are substantial. The March 2004 through October 2004 time period would have netted another $6.2 million to Kansas dairymen. And I would estimate somewhere in that 7 to 8 million for the year, and that's a pretty significant increase for Kansas dairymen. Now, I'm sure that could be multiplied over the order in dollars or overhead.

I support anything you can do to tighten up the pool. I would even like to see the Dean proposal that would let the milk be pooled for 12 months if -- it would not let the milk be pooled for 12 months if it is depooled.

Basically, I'm in favor of tighter pooling. I worry about how the artists or the marketers figure out the new rules and may want to mull again if I support something today and doesn't look so good in a couple of years, but I am in favor of tighter pooling and hope that we can get there quickly.

I don't support the additional transportation credits in order to participate in the pool. And I guess where I came from there, I may not understand the issue completely, but I hate to pay transportation costs on milk that will compete with mine when nobody's paying mine. Maybe I don't understand the issue correctly, but that was my thoughts there.

I think if you share in a pool, you really need to be able to perform. And I hope that the Federal Order 32 changes will move through quickly. Back in March when cheese prices went over $2.00, there was excitement among my colleagues that way we would have $20.00 milk and hopefully help to recover from the last couple of years of low prices. Needless to say, when our milk price topped out at $18.00, there was disappointment.

It is hard to get excited about the current uptake in the cheese prices knowing that it will mean high PPDs, more depooling and missed opportunities.

And I thank you for your consideration of my thoughts.

Q. Mr. Seiler, in the very last line of your prepared statement, No. 22, when it says high PPDs, do you mean high negative PPDs?

A. Yes. Sorry.

Q. That was the sense of what you testified to, and I thought --

A. The only PPDs I know is negative PPDs.

Q. Is your farm a small business that is a dairy enterprise grossing less than $750,000 a year?

A. Yes, it is. And the funny thing that if we didn't have the depooling, we might have went over $750,000, so we still qualify.

Q. On a hundred cows?

A. With the farming operation.

Q. Ah, okay. Who are the other -- you mentioned there were two other marketers in your area generally besides DFA, two other cooperatives.

A. Lone Star, and maybe Arkansas Dairy Coop is the same as Lone Star now possibly, I don't know.

Q. Do you know whether your milk primarily goes to Class I plants or other uses?

A. I believe that it does.

Q. Primarily Class I?

A. Primarily Class I.

Q. In your hauling, the rate you're charged for, you have to pay to get more than 25 miles to the nearest Class I plant?

A. I believe so.

Q. Did you hear Mr. Hollon's testimony this morning with respect to the proposal that Class I deliveries that would be delivered more than 25 miles would receive some reimbursement from the pool?

A. Yes. I'm not sure I completely understand that. Sorry about that.

Q. In any event, you're one of the producers in the market who pays more than what it costs to ship milk 25 miles, it delivers generally to Class I plants?

A. I believe our base rate is 20 miles, so -- the rate we're paying on. Being a market haul might be affected by that.

Q. Thank you.

MR. BESHORE: Mr. Seiler is available to further questioners.

JUDGE HILLSON: Does anyone here have questions? Mr. English.

CROSS-EXAMINATION

BY MR. ENGLISH:

Q. Charles English for Dean Foods. Thank you for being here today. I want to ask a question or two about your discussion on the bottom of page 1 and the top page 2 when you reference the lack of an incentive for your coop to return its gains from depooling because of the lack of competition. Then you have a statement, "These monies I believe are being used in areas where they feel they need to stay competitive."

Are some of those areas where they need to stay competitive in other parts of Central Order 32, to your knowledge?

A. That's a personal opinion and not to my knowledge. I don't know where that would be, but money has to go somewhere, in my opinion.

Q. Do you know whether, as a result of depooling, that prices received by dairy farmers in this market are not equal?

A. Between farmers in this market?

Q. Between farmers. Let's say you ship to DFA, and a farmer who doesn't ship to DFA because of depooling, if, as your statement says, there's no need to pay you, but if that farmer gets that money from their coop, they're going to see a different price than you; correct?

A. I was aware of some of that, yes.

Q. You are aware of that?

A. Some of that, yes.

Q. And that results because of

depooling?
A. I don't know.
Q. Thank you, sir.
JUDGE HILLSON: Any more questions of Mr. Seiler? Mr. Stevens.
CROSS-EXAMINATION
BY MR. STEVENS:
Q. Thank you for coming, Mr. Seiler. You testified that you're a small business?
A. Yes, we are.
Q. You heard the other people testify before you --
A. Yes.
Q. -- being small businesses?
A. Yes.
Q. Is there anything you would like to add to the record for the Secretary about the effect of these proposals on you as a small business?
A. As I look at the dairy industry in our area, there's -- in our county there's probably 40 small dairies, mostly -- largest is 400 cows, I would guess, and the rest are mainly 200 or less. And as I look around that room of dairymen, I would be hard pressed to

say the five of us will be there in ten years unless we can do something about the profitability of this enterprise and how we can continue to go on. I think it's a situation that needs to be corrected quite quickly.

Q. Thank you.

JUDGE HILLSON: Anything else of this witness? I assume you want Exhibit 22 received into evidence?

MR. BESHORE: Yes.

JUDGE HILLSON: I will receive Exhibit 22 into evidence. Are you going to ask any further questions?

MR. BESHORE: No.

JUDGE HILLSON: You may step down. You may call your next witness.

MR. BESHORE: Richard Groves.

RICHARD GROVES,

a Witness, being first duly sworn, testified under oath as follows:

JUDGE HILLSON: If you would please state your name and then spell it for us.

THE WITNESS: Richard Groves,

G-R-O-V-E-S.

JUDGE HILLSON: Mr. Beshore.

DIRECT EXAMINATION

BY MR. BESHORE:

Q. Where do you live, Mr. Groves?

A. I live in Skidmore, Missouri.

Q. What part of the state is that?

A. That's up in the northwest corner. I'm 100 miles from Kansas City.

Q. What do you do for a living?

A. We milk cows. We milk about 60 registered Jerseys.

Q. Do you have some notes --

A. Yeah.

Q. -- you've made, thoughts you would like to share here at the hearing?

A. Yes, I do. We live on a Century Farm, third generation. My grandpa started it, the dairy in 1898 on his -- done his first Jersey as registration. My wife and I, we work there together.

On depooling, whenever -- to me, whenever they depool, it comes back to hurt the farm. The money is not there. Maybe I'm wrong, maybe I'm right, but that's the way I see it. And on depooling, I think you should not be able to qualify the milk the very next month. My opinion is you should have to wait at least two or three months or just be able to qualify some of it at a time.

To me, what would happen, what would be the disruption to the milk market if Grade A producers, when you had a negative PPD, would go back and sell manufacturing milk.

Q. What do you think would happen?

A. I think there would be a lot of disruption to the milk, to the bottle milk -- milk going for the bottled milk.

Q. Why would that be?

A. On account of it would be going more for the cheese, and that way -- and DFA is the only producer -- I mean, the only people we have to sell to in that area.

Q. So if a Grade A producer went onto a manufacturing market to be depooled, the milk wouldn't be available to supply the fluid market at a later time?

A. That's right.

Q. So once they don't have a Grade A permit, they can't supply the fluid market;

correct?
A. Yes.
Q. What county are you in?
A. I didn't hear you.
Q. What county is your farm in?
A. Nodaway. Nodaway is one of the biggest in the state, and I think there is seven dairy producers in that county. And I think one went on the buyout, I'm not sure, that's what I heard.
Q. The current CWT buyout?
A. Yes.
Q. Are you aware of the different prices among farmers that relate to pooling and depooling?
A. Yes and no, because where we milk Jerseys, the price would be, with the components, would be different than if it was a Holstein heard. So you can't compare, really compare. The base price is there, but, you know, our components are a lot higher than the Holstein herd.
Q. So you get the component values under the order regardless of the PPD?
A. Yes.

Q. Now, are you -- is your farm a small business, Mr. Groves?

A. Yes, it is.

Q. You gross less than $750,000 from the dairy?

A. Way less.

Q. Is it your view that depooling issues affect your farm as a small business?

A. Yes, it does.

Q. In an adverse way?

A. I didn't hear you.

Q. In a negative way?

A. Yes, it does. Because when you take the money out of the pool, it's not there to pay.

Q. Thank you. I have no other questions.

JUDGE HILLSON: Does anyone else have questions of this witness? Come on up, Mr. Vetne.

CROSS-EXAMINATION

BY MR. VETNE:

Q. Hi, I'm John Vetne. Have you been at the -- did you hear Mr. Hollon's testimony?

A. Yes, part of it there.

Q. You're aware that DFA depools --
A. Yes.
Q. -- milk, and when they do, DFA, as an organization, receives the higher manufacturing value of the depooled milk.
Do you know how much of your revenue, milk checks from DFA, was from milk that DFA, as an organization, depooled for your benefit and the benefit of others?
A. No, I don't.
Q. Earlier you said when you depooled, the revenue's not there. The revenue is there to somebody, it's there at the cooperative that markets the milk that was depooled; correct?
A. I guess.
Q. Which would include your cooperative?
A. Yes.
Q. And include some of the money in your milk check; correct?
A. Yes.
Q. Thank you.
JUDGE HILLSON: Anyone else have a question of this witness? Go ahead, Mr. Stevens.

CROSS-EXAMINATION

BY MR. STEVENS:

Q. Garrett Stevens. Thank you for coming today.

A. I'm sorry, I can't hear very good.

Q. I'm Garrett Stevens of the Department of General Counsel's office.

You heard the testimony of some of your -- the other farmers that have been on before you about their concerns as a small business. Do you have any concerns like they have?

A. Yes, I do. You know, just like they said, it all comes back to affect us. You know, the price of milk, we don't have it -- it affects our way of living. If you lost -- you know, when milk goes down, you lose $6.00 a hundred, it hurts your income, unless you're making an awful lot of money, more than we are.

Q. Thank you very much.

JUDGE HILLSON: Mr. Beshore, you want to ask another question?

MR. BESHORE: Yes, just one other question.

REDIRECT EXAMINATION

BY MR. BESHORE:

Q. Another question, Mr. Groves. As a Jersey producer, do you talk with other Jersey producers that have other, different markets than you have through DFA?

A. Yes, I do.

Q. Do you notice any difference in the PPD that you get and they get?

A. Talk to the people down in southern Missouri, last time they had $4.00 and ours was $3.00. They had the highest.

Q. Do you know if they're supplying markets which are able to depool when there's a negative PPDs?

A. Yes, they are.

Q. And because of that, was their return higher than yours?

A. I guess. I think it was. I know the last time their money was about a dollar more than mine.

Q. Thank you.

JUDGE HILLSON: No further questions? Thank you for testifying.

THE WITNESS: Thank you.

JUDGE HILLSON: Do you have another?

MR. BESHORE: Yes. We call Doug Nuttelman.

JUDGE HILLSON: Mr. Beshore, I'm going to mark this statement as Exhibit 23.

(Exhibit 23 was marked for identification.)

DOUG NUTTELMAN,

a Witness, being first duly sworn, testified under oath as follows:

JUDGE HILLSON: Could you please state your name and then spell it for the record.

THE WITNESS: My name is Doug Nuttelman, and Nuttelman is spelled N-U-T-T-E-L-M-A-N.

DIRECT EXAMINATION

BY MR. BESHORE:

Q. Thank you. Mr. Nuttelman, have you prepared a statement that's been marked as Exhibit 23, remarks for the testimony, for the hearing today?

A. Yes, I have.

Q. Would you present that, please?
A. Okay. My name is Doug Nuttelman. My address is 12449 M Road, Stromsburg, Nebraska 68666. Stromsburg is located in east central Nebraska, about 100 miles west of Omaha. I operate a family dairy and also have a cash crop farm operation. My wife, Gloria, and I have three sons: Jason and Greg are both married and have families, and Scott is a senior in high school. Jason and Greg are both actively involved in both the dairy and the farming.

We milk around 150 cows and farm about 2,000 acres. We also have two full-time employees and one part-time employee. Our dairy was started by my wife's father in the 1960s, and I took it over in 1986. I hope that some day I will be able to turn it over to my sons, since they both wish to stay on the farm and raise their families there.

I market my milk through Dairy Farmers of America, Incorporated. I am presently on the board of directors and have filled many positions since 1988. I am also on the Nebraska Dairy Industry Development

Board and the Dairy Council of Nebraska.

First, I believe that the Federal Milk Marketing Order was designed to create a system that allows all producers in a given area to equally share in the returns from all classes of milk. When this system operates correctly, producers that supply a bottling plant and a manufacturing plant both share in the returns from the market. This creates stability in the country, and dairy farmers are not always out shopping for the best markets for the their milk.

Also, the fact that paper milk (milk that is not delivered to a processor) can draw money out of the hands of the producers that supply a market is not right. I do not share any of my other income from my farm operation with someone else from a different state, except for the milk I produce.

I support Proposal No. 1. I believe that milk from out of Federal Order 32 should not be allowed to pool unless the requirements are revised. Currently they allow too much freedom from milk in other areas to pool on our order. If the milk is needed in Order 32 and they can supply it, then they should share in the returns. But to deliver a small amount of milk and paper pool the rest is not right. The order rules should reflect economic reality, both for the local producer and for the producers that share in a different order. Delivering real milk does cost money.

I support Proposal No. 2, which would limit the pooling of milk normally associated with the market that was not pooled in a prior month to 125 percent of the producer milk receipts pooled by a handler during the prior month. When class prices for milk change rapidly (especially Class III), producers that are supplying the manufacturing should not be able to withdraw from the order. This leaves the producers that are servicing the rest of the market at a price disadvantage. When this happens, producers begin to switch markets.

Someday the supply of milk that is needed for fluid customers will be gone. In Nebraska, during the month of April, other DFA members and I received roughly $2.59 less for my milk than those producers that supply a Class III plant, because 62 percent of the milk from Nebraska producers in my coop had to be pooled. In May it was $1.40, because 60 percent of our milk was pooled.

And I guess I would just like to stop for a minute and share what the impact of those figures has as far as my dairy and also the dairymen, the other DFA dairymen in the state of Nebraska.

In April, you know, it would have cost me $6,700 and in May $3,600 for a total cost of $10,374 in those two months. So the rest of the producers in Nebraska, it would have amounted to $1.2 million in April and about 7 -- about $700,000 in May for an impact of $1.9 million for DFA producers in Nebraska.

In my capacity as a director, many producers call me and ask me, "How can this be right?" The Federal order system is not performing as it was intended. Fluid milk buyers demand steady performance from dairymen because consumers demand it from them. If the milk for fluid isn't available, the cost to supply that milk should be passed on to the consumers, not to the balance of dairymen in that area.

The fluid market has a steady, regular demand. If any dairyman wants to share in the returns from the market demand, he should be prepared to deliver every month and not get in and out of the pool. This would return to all dairymen equally.

Thank you for listening to my concerns, and I will try to answer any questions.

Q.   Mr. Nuttelman, is your 150-cow dairy operation a small business defined as producing less than $750,000 from the dairy?

A.   Yes, it is.

Q.   I have no -- one other question. How long does it take to get to Kansas City from Stromsburg, Nebraska?

A.   Roughly four hours under good weather conditions.

Q.   Thanks for driving down.

A.   Yes.

JUDGE HILLSON: Any questions? Mr. English.

CROSS EXAMINATION

BY MR. ENGLISH:

Q.   Charles English for Dean Foods.

Thank you for being here today. I want to explore just a little bit more, even though you went into some depth, the statement on page 2 and the top of page 3, having to do with the difference in April and in May.

I just want to clarify for my own self here. There were other producers in Nebraska or your neighbors, who don't -- were not DFA members, I take it?

A. Yes, there is.

Q. And their milk is shipped to a Class III plant?

A. To a manufacturing Class III plant, yes.

Q. And as a result, when their milk was depooled, is that what happened for the month?

A. Yes, it was.

Q. And when they received their checks, they were different by this $2.59 amount for the month of April than yours?

A. The way I -- yes.

Q. And for the month of May they were different --

A. Yes.

Q. -- similarly for $1.40?

A. Yes.
Q. So notwithstanding the existence of Federal order, notwithstanding the fact that you have pooled milk on that Federal order, your pay price was not uniform with the pay price for those dairy farmers; correct?
A. There was considerable difference in the pay prices.
Q. And you would like to see some kind of return to the quality that existed when you don't have depooling; correct?
A. Yes. The state of Nebraska is affected quite a bit by those that depool and those that can't depool.
Q. Thank you very much, sir.
JUDGE HILLSON: Mr. Vetne.
CROSS-EXAMINATION
BY MR. VETNE:
Q. Good afternoon, Mr. Nuttelman. I'm John Vetne, I represent AMPI, Foremost, Central Equity and some others.
The same part of your testimony to which Mr. English referred, the "62 percent of the milk from Nebraska producers in my coop had to be pooled."

A. Yes.
Q. Does that mean that DFA depooled 38 percent of its milk?
A. Between 34 and 38, or whatever the percentage is, yes, we did.
Q. How did you find that out?
A. I asked my people that run my Region III and do the calculations for Nebraska.
Q. And in May 40 percent of the DFA milk was depooled; right?
A. Yes.
Q. And the revenue from that depooled milk, the extra revenue that DFA received as a collective producer, do you know what portion of it came back to you?
A. It came back to us in our paycheck to help us be competitive to the other people, other producers.
Q. And you refer to differences between your milk check and your neighbors' milk checks, neighbors that don't belong to DFA?
A. Uh-huh.
Q. During months in which there's no depooling, are there differences in those paychecks?

A. There may be a small amount of differences, but not the large amount of differences that we've seen in the April and May period.

Q. What is the range of the ordinary difference as opposed to what you refer to as an extraordinary difference?

A. You might see $0.20 to $0.30.

Q. Is that per hundredweight or does that depend upon components?

A. Most of it is based on components of an individual producer, quality of their milk and stuff like that.

Q. But $0.20 to $0.30 is, in your mind, comparing apple to apples?

A. Yes.

Q. Same component, same fat, same quality?

A. Yes. We do have producers that share paychecks and then we try to put them on an equal 3/5 comparison basis, so that gives us how we're doing in the market.

Q. Do the neighbors to which you are referring belong to a coop or are they unaffiliated?

A. Quite a few belong to a coop and some of them are to a proprietor.

Q. That's all.

JUDGE HILLSON: Mr. Stevens, go ahead.

CROSS-EXAMINATION

BY MR. STEVENS:

Q. Thank you for coming, Mr. Nuttelman. You heard the other farmers testify and I heard you testify that you're a small business?

A. Yes, I am.

Q. And they had some thoughts that they wanted to offer to the Secretary on the effect of these proposals and what's being considered here on a small business. Do you have something you would like to say?

A. Do you know which Secretary is going to be hearing my comments?

Q. I had the pleasure of meeting you earlier and you let me know it was a fellow from Nebraska.

A. I'm hoping my governor might be able to hear them.

Yes, it does affect the local

economy. I come from a small town that only has 1,200 people, so even though I may be considered as a small producer, you know, it does effect the local economy.

The fact is that I own a dairy and I need to provide a living not only for my boys but other employees. Under low milk prices, you know, I have to still maintain a salary and a payroll for everybody else. So under low milk prices, and when I feel like money is not there for me, I'm the one that suffers and then I'm the one, you know, suffers for the ability to pay or do business with other people in town.

Under higher milk prices, I still can maintain payrolls and try to upgrade my facility. So it does have a large effect even on a small producer. It really does effect not only me but I would hope, you know, I represent all of Nebraska producers in the same way.

Q. Thank you very much.

A. Thank you.

JUDGE HILLSON: Any further questions? Mr. Beshore? I presume Exhibit 23 you wanted admitted into evidence?

MR. BESHORE: Yes.

JUDGE HILLSON: Exhibit 23 is received into evidence.

REDIRECT EXAMINATION

BY MR. BESHORE:

Q. Just one other question or two, Mr. Nuttelman. When your price is $2.59 per hundred less than one of your neighbors who's depooled for $1.40 per hundred less, is that loss some real money?

A. Yes, it is.

Q. I think you testified in response to Mr. English that when everybody's pooled, prices are within $0.20 or $0.30 in your area; correct?

A. Correct.

Q. And would it be fair to assume that that goes both ways, that is sometimes you might be $0.20 higher and another month you might be $0.20 lower?

A. Yes. Premiums sometimes affect the markets and how different coops might do business compared to a proprietor does add plus or $0.20 or $0.30 to the market each month.

Q. But when there's a month of massive depooling in Order 32, is it fair that you're always on the low end?

A. Yes, we are.

Q. The other -- you said there's a cooperative and a proprietary that are competitive in your area and that have the higher price when there's depooling. When Mr. Vetne identified one of the clients he's representing as including Associated Milk Producers, Inc., would that be one of your competitors --

A. Yes, it is.

Q. -- in your area? Thank you.

JUDGE HILLSON: Any other questions of this witness? You may step down. Thank you very much for coming.

THE WITNESS: Thank you.

MR. BESHORE: Call William Siebenborn.

WILLIAM SIEBENBORN,

a Witness, being first duly sworn, testified under oath as follows:

JUDGE HILLSON: Could you

please state your full name and then spell it for us.

THE WITNESS: Bill Siebenborn, S-I-E-B-E-N-B-O-R-N.

JUDGE HILLSON: He's your witness.

DIRECT EXAMINATION

BY MR. BESHORE:

Q. Mr. Siebenborn, what's your address? Where are you from?

A. I'm from Trenton, Missouri. Trenton is about 100 miles north and east of Kansas City. We milk 100 cows, been using intensive grazing for the last 13 years. My wife teaches English in our local high school. Have three children, all graduates of the Ag School of Mizzou, all in the food industry.

Q. How long have you been dairying the Trenton, Missouri, area?

A. 1974.

Q. Do you have some comments that you would like to present and share with the hearing record?

A. Just in my capacity as director for DFA from our district, we've held I think a total of five meetings in the last two years in our area, which is kind of the St. Joe/northwest Missouri area. At all those meetings, at the heart of it was the negative PPD, why is that happening, and depooling, what part does depooling play in it.

We've had a number of people address, and Dr. Nicholson attended a meeting I think two -- over two years ago in the cause of this area. We've had university people explain it. A number of our managers meet almost on a regular basis. As soon as the negative PPDs appear on the milk check, the phone starts to ring from directors, managers, from producers, and in this process, we have come to understand why PPDs, why we have negative PPDs, and that is that the Class III market is rising faster than Class I.

And when you get that inversion of what is a normal marketing, you end up with negative PPD. The depooling piece of it simply amplifies the problem. It doesn't cause the problem, but it causes it to be worse than it would be without depooling.

Q. Just tell us the nature of these

meetings that you've described where -- first of all, you're an elected director up there?

A. Yes.

Q. For what geographic area?

A. Well, I start at northwest Missouri. I come from that district that represents northwest Missouri.

Q. How many counties is that?

A. That would probably be about 20 -- about 15 counties in northwest Missouri.

Q. About how many DFA dairy farmer members are in that county -- that district area?

A. 150.

Q. And you're the elected representative from that area. And then what boards within the cooperative do you -- are you a member of?

A. I currently serve as vice chairman of the corporate board from our Central Area Council. I also represent farmers as chairman of UDIA, United Dairy Industry Association, that spends our 15 cents for promotion.

Q. Those district meetings, you say you've attempted to discuss and explain the problems with negative PPDs and depooling

among your membership; correct?
A. That's correct.
Q. And you've brought resources in, including Dr. Nicholson, Market Administrator, and other university personnel to attempt to elaborate on these issues; correct?
A. Exactly.
Q. Now, are the proposals in this hearing which DFA has presented, along with Prairie Farms, a result of that participatory process in DFA?
A. Yes.
Q. And what is your position with respect to the proposals and what recommendations do you have as one dairy farmer on the issues?
A. I support those proposals. I think, as we continue to try to encourage it, the dairy industry in our part of the state and throughout Federal Order 32, that we -- you have to look to the areas that are growth areas of the dairy industry, that being the west and the southwest. That's where the expansion's at, that's where the industry is going.

And if we hope to have a dairy industry in Order 32, we've got to be able to compete, and this depooling issue is, in my opinion, the single largest problem we've got that in that competitive environment.

Q. Does depooling create differences in pay prices among dairy farmers in the 15 county area with which you're most familiar?

A. Absolutely.

Q. Are they substantial differences, such as the magnitude that Mr. Nuttelman just described?

A. Yes, they are.

Q. Is that a disorderly marketing condition, in your view?

A. It certainly is, because the Class I market that Deans, I'm sure, is here to protect and encourage depends on all of us wanting to participate in that market, but participation means more than sharing in the proceeds, it means supplying the milk.

And if we're going to have a Class III price higher than Class I price and farmers are receiving less money for supplying Class I market, that's an absolutely disorderly way to market milk.

Q. Now, you're a member of the DFA Central Area Council?

A. Correct.

Q. In that capacity, do you have knowledge of whether these differences in pay prices among farmers are the same effects that you've described in your local area, are they present throughout the Order 32 area when there are massive depoolings?

A. Yes, they are. They're widespread.

Q. And when all the milk is pooled, the relative pay prices among dairy farmers in the area are competitive but closer, as Mr. Nuttelman described; would you agree with that?

A. Yes.

Q. Thank you, Mr. Siebenborn, for coming here. One other question.

You've heard the questions and descriptions with respect to a small business. Is your 100-cow dairy farm a small business enterprise?

A. Even with my wife's salary, it's still under 750.

Q. Thank you.

JUDGE HILLSON: Anyone else have questions of this witness? Anyone over here have questions of this witness? Okay, thank you very much for testifying. You may step down.

Your last dairy farmer witness?

MR. BESHORE: That is our last dairy farmer witness. There are two other dairy farmers who we expect -- expected and we still expect to come, but they're not here now, so we're ready to resume.

JUDGE HILLSON: If they show up tomorrow, we can get them in.

MR. BESHORE: I appreciate that, thank you.

JUDGE HILLSON: This would be a logical time, I think to take out 15 minute afternoon break. When we come back, I expect to see Mr. Hollon back on the stand and Mr. Vetne back for cross-examining.

(Recess.)

JUDGE HILLSON: Mr. Hollon is back on the stand. And Mr. Vetne, you can resume your cross-examination of Mr. Hollon.

CROSS-EXAMINATION (continued)

BY MR. VETNE:

A. On page 39, is that right?

Q. No, 9.

A. Mistakenly put a 3.

JUDGE HILLSON: My recollection is Mr. Hollon is correct, actually.

A. Argue with that one.

Q. (By Mr. Vetne) In that case I'll say I forgot something.

There was some testimony by the DFA farmer witnesses about forward pricing, risk management available through DFA, and there was agreement that there were a number of contracts available but the witnesses didn't know them. Do you know some of the contracts and options offered, options meaning alternatives not options in the CME sense?

A. That's not the slice of the busy that work in. There's some other co-workers in my area that do. I can tell you briefly three of them that are there, and there may be more, it's just not something that I do. And I can't -- I can't drill down in detail because I simply don't know. But the most common is the one that each of them who described something described it and it's the opportunity to, in essence, lock in a Class III price value, and in general, in exchange it runs through the Chicago Mercantile Exchange, producer has the opportunity to do that. There are fees associated with doing that. And their milk check would look identical, whether they contracted or not, with the exception of a plus or a minus relative to that Class III price.

There are also, occasionally, we have customers who may come to us with a fixed price, and if it meets certain criteria, we may turn around and offer that to producers. We don't initiate that and we facilitate that, and again, we don't always transmit those through.

And then there are some programs that offer combinations of puts and calls, but having said that, that's -- I know less about that than the other two. And again, there may be other programs, but I don't know about them.

Q. All right. Let me ask you to look at

a document that I downloaded from the DFA website.

A. Just because it's on the website, I may not know about it, but let's see.

JUDGE HILLSON: If they're going to be exhibits, you need four for the reporter and you'll need one for me.

MR. VETNE: I'll get more here.

JUDGE HILLSON: Plus, if it's on the website, I could just take official notice of it as well. Whatever is more convenient. Given how short it is -- you wanted this marked, I take it?

MR. VETNE: Just mark it and tell everybody they can find it on the website.

JUDGE HILLSON: I'm going to mark this as Exhibit 24.

(Exhibit 24 was marked for identification.)

Q. (By Mr. Vetne) This is a two-page print from the website. You described two, if you'll look at the second page of that website print. There's a reference to a standard fixed price contract and standard minimum price contract.

A. I see that on the second page.

Q. Those are the two you described you said you knew most about?

A. Actually, no. The one on the first page is, I think, the one I'm most familiar with, and the one on the second page, I wasn't speaking to that at all. So that would be one of the ones I didn't know anything about.

Q. Which one on the second page? There are two, the top line says standard fixed price contract and below that in bold, standard minimum price contract, two different...

A. The one on the top of the page is the one that I think most of the -- I think there were two producers who talked about risk management and I think that's the type of contract they were describing.

Q. Do you know how much DFA member milk is under some kind of forward price contract?

A. I do not know.

Q. These options in the website description, are they available to all the producers, regardless of market or location?

A. Yes. Any DFA member can avail themselves of the four contracting programs.

MR. VETNE: I would like to have that marked, please.

JUDGE HILLSON: I've marked it.

MR. VETNE: And it being received.

JUDGE HILLSON: Any objection to it being received in evidence? Okay, Exhibit 24 is received into evidence.

Q. (By Mr. Vetne) Proceed on my way to page 39 again. I'm on page 11 now, talking about Proposal 2. The first line, Proposal 2 would limit how much milk a handler could add to the pool or repool each month.

Looking at the first limitation or descriptive limitation as adding to the pool, if an existing handler, say a small cooperative with 10 million pounds -- or 20 million pounds got a new customer and new producers of 10 million pounds so that the total would be 30 million pounds, and those producers had previously shipped within that market, your proposal would not allow the pooling of all that milk in the first month in which the cooperative grew by 50 percent, the 150 percent of the prior month?

A. Except the proposal does allow some discretion with the Market Administrator, who I would presume if the situation were exactly as you described it, that that may be something that would fall under that discretion.

Q. Is there any reason why the reference to a producer being pooled consecutively for three prior months should not apply to the Central order as well as neighboring orders?

A. Saying if the producer was pooled consecutively for three months, his entire volume?

Q. Exactly the same -- your proposal would exempt from the calculation of the base, milk of any producer who was pooled in another Federal order for three consecutive months, but it wouldn't similarly do so for a producer within the Central order so that a coop that or handler, who wants to grow his milk supply and not be subject to the 125 percent limitation, would be penalized if he got that supply from within the Central order but not be penalized if he got it from Ohio?

A. You raise a point that I hadn't given a lot of consideration to, so my answer may change after I've had a chance to sleep on it. But I would say off the cuff that if we're talking about, again, the entirety of a volume, so in month one I had a hundred pounds, that was all my volume, and in month two I changed my market and that ran afoul of that calculation, I think that should probably be allowed.

If in month one I only had one pound out of my 100 pooled and somehow I showed up on somebody else's report and the claim was going on the new piece of business so I have to be pooled out, I would say no. And that same would apply whether I was in Ohio or in the Central order, under your example.

Q. And under your proposal there's no reason you can think of why the same rule shouldn't apply to producers who were formerly outside the market as opposed to producers inside the market?

A. As long as we frame our discussion as the 100 percent of their volume is pooled in the month, no, I can't think of any reason now.

Q. That's what your proposal says, 100 percent pooled if it's coming from another order?

A. It doesn't say that, but that would be the intent. The reason for that subsection was that there was some concern that, and I think I covered that in my testimony, that a multi order supplier could potentially have the ability to depool milk in Order 1, pool in Order 2 in the next month, and bring it back to Order 3 and all be okay.

We've received some criticism today, that wasn't our intent, so we added the modification that if you were contingently pooled on another order for three month, I guess contingently must mean all, it would be okay to come back to the Central order.

Q. Well, that's essentially what the DFA did last summer after depooling milk in the northeast order, shifting it to Ohio until it could be repooled in the northeast in August, isn't it?

A. Yes.

Q. Now, under this proposal, if adopted, if adopted here and adopted in the Upper Midwest, those proposals where hearings are pending, DFA can still take a hunk of milk, a huge hunk of milk, depool it and then repool it, say, in the southeast or in Order 7 or Order 5 for the requisite three months and bring it all back 100 percent?

A. If the arithmetic worked out, DFA or anybody could do that.

Q. Or anybody could do that. But it may take longer than three months to do it if it just stays within the pool?

A. It may, or again, it may not. Depends on the arithmetic.

Q. But it's an advantage to entities that have multiple order operations?

A. How so?

Q. To be able to come back to the pool 100 percent after three months. A handler who does not have a multiple order operation does not have that option.

A. Yes.

Q. Yes, you agree with me, or yes, he does?

A. Yes, I agree with you.
Q. The bottom of page 12, you say there's not any way to recover a negative PPD from the Federal order. A negative PPD is simply a matter of arithmetic. Class I -- PPD, the Class I price -- arithmetic, yeah, the producer blend minus the Class III prices, and sometimes it's negative?
A. There's a value that's associated with that number, and there's not a way to recover that value from the Federal order.
Q. Like a commercial value? It's simply arithmetic. Sometimes arithmetic turns out negative?
A. Well, when it ends up on my paycheck, it seems like it has more than just a number value.
Q. If all the milk is pooled, it could be negative on your paycheck?
A. Yes.
Q. It's not a value that's going someplace else. If all the milk is pooled and there's still a $2.00 negative PPD as there may have been for April, had all the milk been pooled, it's not a money or revenue or value

that is going somewhere else, it's simply the result of arithmetic with a minus in front of it?

A. Under that scenario, had all the milk had been pooled and it's simply a value and everyone has the same value on which to start, I would agree with your assessment. If everybody does not have the same value from which to pay producers from, then I do not agree with your assessment.

Q. So your statement that continues from 12 to 13, "A handler that must pool is always at a disadvantage when there is a negative PPD" is untrue, it's only true where there is some milk that's depooled?

A. Yes.

Q. And the measure of that disadvantage is not the measure of the negative PPD but the measure of the difference between what that handler receives out of the pool at the negative -- portion of the negative PPD and what somebody else is not pooling receives?

A. Why don't you state that more clearly, because I'm not sure I understand it. In your brief you will say I agree with something I didn't understand, so.

Q. Let's just do one.

A. All right.

Q. The disadvantage that you're measuring there is not a number that's equal to the negative PPD?

A. In the case where -- case we discussed where all the milk would be pooled and there would still be a negative PPD, then everybody is starting at the same base point, I would say that it did not cause the disadvantage.

Q. So then your statement that "A handler that must pool is always at a disadvantage when there's a negative PPD" is not true?

A. In that case, yes, that would be -- if everybody started at the same spot, that would not be a disadvantage to the handler who pools because they must all pool.

Q. And you talk about recent effort to recover negative PPDs, again you're talking not about recovering negative PPDs, but recovering that competitive difference that you and I just agreed upon?

A. Yes.

Q. In your proposal, and I'm going to page 14 to 15, you provide a discretionary paragraph for the Market Administrator to look at reporting for purposes of evading this paragraph?

A. Yes.

Q. But you also permit a handler to evade by shipping all that milk to a distributing plant. My assumption is, and tell me if my assumption is correct, that a handler who depools 100 percent, or lots of milk, if that lots of milk in a subsequent month is shipped to a distributing plant, that handler is home free?

A. That handler could reassociate the volume to a distributing plant with the pool in a subsequent month.

Q. And if all that volume is redistributed -- reassociated through the distributing plant, it's your intention that the Market Administrator not view that because it's expressly permitted, not view that as a means of evading?

A. I think in any month from day one,

any shipments to a distributing plant in Class I had been pooled, I think that's required.

Q. I understand that. But distributing plants can receive other source milk, and depooled milk mandatory from other source milk, that's the way you propose to handle it, as a matter of fact; correct?

A. I think so.

Q. Don't want to have, if this is adopted, have the Market Administrator employ it in the way that you did not intend or that we did not understand at this hearing, so let me make sure I understand so that I can brief it.

If I have 100 million pounds of milk and depool 90 million in May and take that 90 million to a distributing plant in June, it would be pooled for the month of June?

A. Yes.

Q. Under your proposal, and starting in August -- or July, I could send it anywhere without disruption?

A. Within the limits of the pool rules, yes.

Q. But without any limit from this

depool proposal? The 125 percent is a pool rule without any limit from other pool rules?

A.   I think, yes.

Q.   Now, this distributing plant -- excuse me if I don't recall this correctly -- but the distributing plant escape clause was not part of your original published proposal, was it? Maybe it was.

A.   No. I think everything as printed here was all in from day one.

Q.   Was it part of the proposal up in the Order 30?

A.   (Nods head.)

Q.   It was?

A.   Yes.

Q.   On the nicely colored maps of distributing plant regions and supplies, there's a little pink county in the middle of Idaho that seems to supply the Denver, Colorado, metropolitan area plants all the time.

A.   Yes.

Q.   In fact, it's even more regular than the New Mexico supply, going back to the 1980s?

A. I don't know that.
Q. Is that a DFA source, milk source?
A. Not to my knowledge.
Q. Do you know whose milk source it is?
A. I do not.
Q. Going to the other side of the map, milk in new Mexico, is that milk all either DFA or a part of the Southwest Marketing Agency coops?
A. I think all milk in New Mexico is part of the Southwest Agency coop.
Q. The southwest Agency is a federation consisting of DFA select producers and -- I'm missing one.
A. You're correct, you're missing one.
Q. Who is the other one?
A. Lone Star.
Q. Lone Star. Is there any pooled milk in New Mexico that you're aware of that is not part of that agency?
A. There may be. I'm not sure. The agency doesn't have 100 percent of the sales in the state of New Mexico. I'm not sure the part they don't have is in the pool or not.
Q. There's on occasion milk from El Paso

County, Texas, that's been part of the Central market. Is that DFA milk?

A. It may be.

Q. El Paso, Texas, is the home of a DFA powder plant; correct?

A. Correct.

Q. Is there any other -- any other marketing organization that you're aware of that markets milk from south of New Mexico to Central market?

A. South of New Mexico?

Q. El Paso lies south of New Mexico.

A. Yes. I think there are some select milk producer members in El Paso County.

Q. Is the DFA powder plant in El Paso County available as an outlet to all of the coops that are part of the Southwest Marketing Agency?

A. Yes, it is.

Q. And milk from those coops is regularly received there?

A. I don't know the answer to that, but it's available. So I think the agency balances the market in a most efficient manner, so that doesn't necessarily mean that some milk from all members go there.

Q. I'm now on page 19. The Exhibit 18 indexed material, the first few pages of Exhibit 18, both Class I and other class uses use January 2000 as a base.

A. Correct.

Q. Would you agree with me that -- well, first of all, Class I milk is not extraordinarily available from month to month, year to year in the Central market?

A. Yes.

Q. And January 2000 is more or less representative of Class I use in other months since January 2000.

A. Is that a question?

Q. Is that true?

A. I'm sorry, try it one more time.

Q. Class I use in January 2000 is more or less representative of the volume of Class I use in the Central order in months subsequent to January 2000?

A. Yes.

Q. Would you also agree with me that Class III and IV use in January 2000 is not representative of the volume of Class III and

IV use in subsequent months?
A. Yes.
Q. Is there a reason why you did not employ for the index an average of a year or 18 months or two years for the volume represented by index and the percentages?
A. I picked January 1 because that was what I consider to be the most representative month before Federal Order Reform, and it would be the closest I felt to represent a typical situation before there were market responses to Federal Order Reform changes.
Q. Other than the proximity of the month to the beginning of Federal Order Reform, is there anything about that marketing that occurred during that month that you considered in your conclusion that's representative?
A. Many times in the industry when we're doing a study of something, whether it's me or, you know, DFA or some of our other cohorts, many times we will use January because of this typicalness, if you will. Fluid demand is reasonably good in those months, there's not an excessive amount of milk production that's needed at its peak nor

its valley, and it tends to be a good place to get a representative look. And that's not an abnormal, you know, month to do any measuring in the milk industry.

Q. For the marketing year?

A. Yes.

Q. Is there any other circumstance in which you use January of a month five years preceding to do analysis for the current year?

A. Again, from time to time we use January as the base for a lot of comparisons.

Q. January five years preceding, that's what you have done here?

A. This case we used January five years preceding.

Q. Also on the top of page 19 you refer to supplemental suppliers refusing to make deliveries when faced with the opportunity to receive a negative PPD. I didn't appreciate your humor the first time I read that.

A. It's personal, I understand.

Q. When you wrote it?

A. That's true also.

Q. Are you talking about suppliers that have contracts with DFA or with DFA customers,

or are you talking about spot milk?
A. Both.
Q. Okay, let's go to contract supply. What circumstance, what volume and what supplier of a contracted for supply refused your personal knowledge to make milk available?
A. We have arrangements with supplemental suppliers of varying degrees and varying relationships, and during months of negative PPDs we've had communication from them that they were not eager to serve the market with a month of a negative PPD, or they wanted some May calls, if you will, return in order to do that. As far as details about individual names and specific companies, I'm not going to go into those.
Q. These are suppliers that you have contracted for volume or suppliers that you ordinarily call upon when additional supplies other than that ordinarily scheduled are?
A. Both.
Q. Both meaning that some suppliers are in one category and some are in another or individual suppliers are in both categories?

A. Try that again.

Q. You said both, you referred to a supplier of a contracted amount?

A. Yes.

Q. And suppliers that aren't committed to a contracted amount that you call upon.

A. Okay. Suppliers in both of those categories have expressed concerns about a reluctance to --

Q. Reluctance is not the same as not shipping. Was there any contracted for milk where there's a long-term commitment that was not supplied, to your knowledge, by anybody during the month with a negative PPD?

A. I don't think there was.

Q. The bottom of that -- near the bottom of that same page, the middle of the paragraph, "The anticipated Class I use of 50.1 percent has never been achieved. Either price is not high enough or more milk is blending down the returns than was anticipated."

Now, it's your belief if some milk is removed from the market, the anticipated utilization of 50 percent would be approached;

is that right?
A. Yes.
Q. How would that work if the Class I price is higher? How would you anticipate Class I utilization of 50 percent be approved if you increased the Class I differential?
A. Increase the Class I differential? I'm not sure, but your question was if milk were removed from the market.
Q. That was one question. Your statement said, first, as a premise, that we haven't received 50 percent, 50.1 percent Class I utilization, and your statement proposes two reasons for that, one of which is milk is blending it down, the other reason is the Class I price is not high enough.
I have difficulty, and I'm asking you to explain it, how an increase in the Class I price might increase the Class I utilization, because my intuition tells me it will make it plummet, but maybe it's not?
A. No, you're correct. It must have been a late night right there, but the thought process, while not always absolute, more price may be more milk, which may be more

utilization, or lower utilization.

Q. So you're focusing your efforts here on what you call remedy of reducing the milk that can be pooled and may be pooled in the future?

A. Yes.

Q. And is it correct for me to say that that is consistent with the policy DFA advocated for the Western market?

A. Yes.

Q. It's the same policy?

A. That the --

Q. To reduce --

A. -- performance standards need to be reviewed to see if they're adequate.

Q. To reduce the milk that can be pooled?

A. To see if they're adequate for the market.

Q. You say here to reduce the milk that can't be pooled.

A. Yes.

Q. And that is also the description that DFA made with the proposals advanced in the Western market?

A. Yes.

JUDGE HILLSON: You want this marked?

MR. VETNE: Yes, please.

JUDGE HILLSON: This is Exhibit 25.

(Exhibit 25 was marked for identification.)

Q. (By Mr. Vetne) Do you recognize Exhibit 25 as a couple of press releases available on the DFA website concerning the Western market and what DFA was attempting to do with the Western market and why DFA voted to terminate that order?

A. Yes, I do.

Q. And the objective there, as the objective here, is to reduce the milk that can be pooled if the Secretary -- my question is, if the Secretary in this proceeding does what the Secretary did in the Western market and not go far enough in restricting the volume of other people's milk that can be pooled, would DFA consider voting against continuing regulation in the Central market?

A. I can't say, I don't know the answer

to that.

MR. VETNE: I would like to have that exhibit received.

JUDGE HILLSON: Any objection to Exhibit 25 received into evidence? Hearing none, it is received into evidence.

Q. (By Mr. Vetne) Subsequent to termination of the Western market, it would be correct to say that what you ended up with in the greater Kansas -- I'm sorry, the greater Salt Lake City metropolitan area was a form of individual handler pool?

A. Try that again.

Q. Would it be correct to say that what has evolved after termination in the Western area is the form of individual handler pool?

A. Well, in the sense there's no regulation, there's customers and there's sales, so each customer's dealt with on an individual basis.

Q. And producers delivering to Class I plants get a premium Class I price? DFA milk delivered to Class I price advanced premium over DFA milk delivered?

A. No, it's not necessarily true.

Q. It is not true and is it true mostly?
A. We have premiums on most all the milk that we sell.
Q. You don't sell on a Class V basis anymore in the Salt Lake City area?
A. We do.
Q. And when you sell on a classified basis, generally the Class I price higher than manufacturing prices as they are generally?
A. In some cases but not in all cases.
Q. Make some flat price sales? Some unclassified milk to distributing plants?
A. Not following you there.
Q. Do you make some sales of raw milk to distributing plants on a non-classified price basis?
MR. BESHORE: Your Honor.
JUDGE HILLSON: Yes.
MR. BESHORE: I object to, on the basis of relevance, to inquiring further into the current sales in the unregulated Salt Lake City market.
JUDGE HILLSON: Response to that?
MR. VETNE: I always have a

response.

JUDGE HILLSON: How about letting me know what it is?

MR. VETNE: The response is the substantial part of this testimony concerns the specter of milk from Idaho, maybe Utah, coming into the Central market, what causes milk to move from one area to another, there's economic incentive or disincentive. I would like to know a little bit about the market in that area which might create the incentive to make that specter come true.

JUDGE HILLSON: I'll have you answer that question if you know the answer to the question.

A. Try the question again.

Q. (By Mr. Vetne) The question was as simple as this: Does DFA sell milk to distributing plants in the Salt Lake City area in which it does not use a classified price as a basis for sale?

A. I don't make those day-to-day business decisions, so I can't answer that directly.

Q. The answer is you don't know?

A. The answer is I don't know.

Q. And you also don't know how the revenues from sales in the Salt Lake City metropolitan area are pooled?

MR. BESHORE: I'm going to object to that as being proprietary.

JUDGE HILLSON: If it's -- I guess if it's proprietary, then you don't have to answer the question.

A. Again, I don't deal with that as a part of my direct job, so I do not know.

Q. (By Mr. Vetne) You do not know, that's fine. Is lack of knowledge proprietary?

MR. BESHORE: To the witness.

Q. (By Mr. Vetne) So you would always not know, then, what economic incentives exist in the area around Salt Lake City that might drive milk, because you don't know what the base is over there?

A. I've listed some in my testimony that I thought might drive those milk -- that milk to move.

Q. Would you agree with me that one of the principal regulatory reasons why milk from distant markets has associated with Federal markets, that is Idaho to Midwest, or the Central to Midwest, California, maybe going the other way also, is because the producer price is not disowned out relative to the value of milk in the local market as it used to be?

A. Rephrase your question.

Q. My question is: Would you agree with me that one of the reasons milk from distant markets is associated with any Federal market is because there's no longer a producer price disincentive?

A. Yes, I would agree with that. If I understood your question, the absence of what we used to call zoneout off of blend prices, because those are no longer in existence, is that what you're asking, because those things are no longer in existence?

Q. Yes.

A. Yes, I would agree with you.

Q. There's no longer -- well, it used to be called location adjustment. It's was also called transportation adjustment in the past.

A. Yes, that's true.

Q. And that no longer applies?
A. Not in the way -- in the way that they did it in pre-reform former days.
Q. The price service today is not based on transportation but based on the pronounced study of the relative value of Class I milk in one location compared to the relative value in another?
A. Which is all based on transportation.
Q. Which is based on the location of milk supplies available to -- close to and far away from that market?
A. And the transportation to get them from A to B, yes. Both of those options were from Cornell.
Q. You suggested in your testimony that, and maybe one thing that you would like to look at, but you couldn't on the basis of this hearing, was to reexamine the Class I price surface, because there may be at least some remedy available there?
A. Yes.
Q. You did not, however, mention the producer price surface.
A. You're talking about the surface we

just discussed?

Q. I'm talking about the surface we just discussed.

A. Okay.

Q. Taking the producer price surface away from the linkage to Class I, what would also be something that you would like to explore but couldn't look at in this hearing because it's limited to one market?

A. Well, that part is also true, but we have had some discussions with folks in AMS about that and felt like that was not an option, that it would be worth time and money to spend to explore, that while there may be various levels of intellectual agreement, the practicality of an approach like that being reinstituted in orders is not very likely.

Q. You understand I'm talking about simply an adjustment to the producer prices not adjustment to Class I prices?

A. I understand it might institute -- reinstitute the concept of zoneouts, that's what we agreed a minute ago. To reinstitute that concept is not anything likely and wouldn't be worth time to invest in.

Q. Zoneouts in the past, for producers, as they are today, were a mirror image as they are today for zoneouts for Class I pricing with a few exceptions?

A. I don't know I would necessarily agree with that. They operate under the similar principles and constructs in reverse, but I don't know that all the exact dollar values between them, $0.02 per hundredweight per ten miles or 3.5 cents per hundredweight per ten miles, zoneout adjustments, but I don't know that was the same price surface that set up differentials in every order.

Q. 23, 24, 25, 26, 27. Oh, yeah, 27.2, bottom of page 27. There's a concern that milk may seem to attach to Order 32 and foreclosed from Order 30. What foreclosure from Order 30 are you referring to in that part of your statement?

A. The hearing in Order 30 a few months ago, that may change some of the performance provisions there.

Q. That may, in effect, make it impossible or difficult for someone to pool there and then want to move that milk here or somewhere else?

A. That would be possible, yes.

Q. Is that the incentive that you're referring to, the disincentive when you use the term foreclosed?

A. Yes.

Q. Under Item 4 there, Order 32 price is not meeting the objective of preventing the Order 32 supply from moving to other markets. What objectives -- well, I mean, you say that's an objective.

Is there a historical basis for that being an objective or a regulatory policy statement with which you're familiar that I can look at or is this something you've just come up with?

A. I think it probably comes out of the idea of an adequate supply of milk for fluid use.

Q. And you think that the orders, if there's a greater need for milk in Order 7, or Florida, that Order 32 should be structured to prevent that milk from flowing from northwest to southeast?

A. Not necessarily, but by the same

token there needs to be an adequate price in each market to attract an adequate supply for fluid use in that market.

Q. Is there any Class I handler that has not been able to get an adequate supply of milk since Order Reform in the Central market?

A. There will be handlers who will be testifying later today, or perhaps tomorrow, and so they may have some opinions on that, as well as the relative ability to supply some of those has been a struggle in Order 32. So provisions that we have in place are designed to try to improve on that.

Q. By struggle, you're referring to competition?

A. Some cases just getting enough supply to meet the orders in the manner in which they were submitted and in the volumes which they were submitted.

Q. So it's a question of money, isn't it?

A. Many times.

Q. Except for a snowstorm, that's what -- that's the fact, deciding factor?

A. Well, I think Federal orders are

economic tools.

Q. The top of page 34 you refer to a supply in your Exhibit 18. You refer to a supply in southeast Arkansas -- or southeast Missouri. Let's see if I can find the precise page over here. Maybe you can help me.

A. Southern Missouri to Madisonville, Kentucky.

Q. Southern Missouri to Madisonville, Kentucky.

A. Page 34, second paragraph. That's one reference.

Q. I was looking at the Exhibit 19. I'm not sure I understood how you did the table in Exhibit 19, so --

A. Exhibit 18, the tables --

Q. Exhibit 18. The table on Madisonville. What is the alternative plant outlet in --

JUDGE HILLSON: Which table?

MR. VETNE: I'm not sure which table. The one that refers to Madisonville, Kentucky.

A. Be Table 5, and there's A through E. So milk supply in Madisonville, Kentucky, and -- I'm sorry, the milk supply is in Nashville, Illinois, or in Jackson, Missouri, and the alternative markets are St. Louis and Madisonville, Kentucky.

Q. (By Mr. Vetne) That's in Exhibit 18 what?

A. 15 would be one of the pages.

Q. Starting at page 15, all right.

A. Ending at page 15 for the Federal Order 5 comparison, but they're all done the same way on each one. So if this is a how-to question, any page will do.

Q. Jackson, Missouri. The Jackson, Missouri, milk supply, if not going to Madisonville, Kentucky, is going where? Is that shown?

A. The top half of the page is the Order 5 comparison. So Madisonville -- at Madisonville, there would be an order return in January of $13.55.

Q. What is in Madisonville?

A. There's a bottling plant.

Q. How big is that market?

A. You know, I don't know the answer to that. However, there is -- I don't remember,

but there's a bottling plant there.
Q. You don't know how much volume they receive?
A. No, I don't.
Q. What's the next closest plant to Madisonville?
A. I can't tell you. I guess Louisville, Kentucky, maybe.
Q. What's the next closest plant? Is it Nash -- Jackson, Missouri. What's in Jackson, Missouri?
A. That's a milkshed, a pocket milk.
Q. What's the alternative plant outlet for --
A. The two I compared are Madisonville, Kentucky, or St. Louis.
Q. Madisonville, Kentucky, or St. Louis.
A. Would you like me to walk through the comparison?
Q. Southern Illinois, St. Louis, where's -- at St. Louis. There's a freight from, let's see --
A. You want me to walk through the comparison?
Q. Yes. Where's the freight from

Jackson, Missouri, to St. Louis on here?
A. $0.45.
MR. BESHORE: The line says freight from Jackson, Missouri.
MR. VETNE: He could be going to Florida from Jackson, Missouri.
Q. (By Mr. Vetne) Where's the one that says -- okay. Freight from Jackson, Missouri. All right, $0.67. How do I know that goes to St. Louis?
A. It doesn't.
Q. That's the wrong one, okay. Freight from Jackson, Missouri, $0.45. That's St. Louis?
A. Yes.
Q. And that's St. Louis because -- obviously because the line above it says -- five lines, six lines above says St. Louis?
A. Correct.
Q. I see. Got it.
A. Not pleading guilty to being a poor chart constructor. You know, you've only asked me questions about this chart, this is the fourth hearing now, I think
Q. You had Madisonville and Jackson on a

prior chart?

A. Uh-huh.

Q. No, I didn't ask you questions about this in order then, because I wasn't there.

Now, from $0.60 disadvantage is what you calculate. That's from a point where there's a regular milk supply flowing towards the southeast?

A. In this example, which is typical, a milkshed near Nashville, Illinois, and Jackson, Missouri, and both has an alternative of going to Madisonville or St. Louis. And that's a real world example. There's milk procurement from both of those areas in that area.

Q. And actually in the real world, milk flows from northwest to southeast?

A. I'm not sure the directions here. I would have to get my map out, but there are producers in those two milksheds who have the option of serving both markets, and over time they have generally moved to the Madisonville market from St. Louis.

Q. Is it not true from, say, Missouri and Southern Illinois, as you move towards

Florida, milk is increasingly deficit?
A. Yes.
Q. So milk would naturally tend to move that direction?
A. At times milk moves in that direction. Typically these locations that service St. Louis, but the price has not been competitive enough to maintain that milk supply by a sizeable number.
Q. And DFA supplied those markets by Order 5 and Order 7; correct?
A. Yes, DFA has customers in Order 5 and Order 7.
Q. You're familiar with the term stairstepping?
A. I am.
Q. It's a means to supply a market in the most efficient manner?
A. Most of the time.
Q. Most of the time. And we've had production to the west of here and milk from Colorado into Kansas. Milk production moves east to Oklahoma and St. Louis?
A. Milk from Colorado, doesn't milk go western Kansas, moves south, southwest and

east?

Q. The population centers that, if they need fluid milk, that would get the fluid milk to new production in Kansas, those population centers are to the east?

A. That would be one of the reserves supplies.

Q. And if you're looking for a home for that milk, you would move it east and it might displace milk in Missouri, and this displaced milk, then, would be more efficiently to the southeast, that's a form of stairstepping?

A. Those areas of deficit, you wouldn't be displacing any.

Q. Those areas are deficit how? Missouri is deficit, southern Missouri?

A. Parts of Missouri. For example, St. Louis.

Q. Any metropolitan area is deficit?

A. Well, the market, the market that it serves. And not any metropolitan area is deficit.

Q. Not any?

A. In terms of its milkshed, milk supply, there are some that have a large milk supply in that metropolitan area.

Q. There was milk in Los Angeles County at some point, but where are you referring to?

A. Minneapolis. Milkshed around Minneapolis, for example, has a large milk supply.

Q. Maybe the only example?

A. No, there's probably some more.

Q. Oh, yeah, okay, www.sys --

A. I didn't look that up. I'll get that.

Q. I was going to throw it in here, okay.

The mechanics of your -- I'm on page 39. Oh, that's where I was a little while ago.

When milk flows, say, from Minnesota to Kansas City, there's a difference in the Class I price that goes to locations?

A. Yes.

Q. And that difference is subtracted from the credit proposed?

A. Yes.

Q. Assuming that it's achieved, it's simply in the price at the plant to which it's

delivered?
A. It helps to make the transportation, right, that's correct.
Q. As between -- on the other end of the market, in New Mexico or El Paso, Texas, when that milk moves north to Denver or Oklahoma, there is nothing subtracted --
A. There's nothing to subtract.
Q. Class I differential, in fact, to the south is even greater?
A. Yes. Those examples you laid out, that's correct.
Q. DFA, in partnership with others, is completing construction of a 7 million pound per day cheese plant in New Mexico; correct?
A. Yes.
Q. Now, when does that plant expect to go on-line?
A. I do not know. I think it's not until the end of 2006, but I'm not certain.
Q. Are you aware that DFA, when asked to make a long-term commitment to a buyer within this marketing area, declined to do so because that would require that milk on a future basis be delivered to the cheese plant in New

Mexico?

A. I'm not aware.

Q. You make pooling or help make pooling decisions which you effect; right?

A. In terms of trying to make price estimates, yes; in terms of trying to make pounds-pooled-type decisions, no.

Q. What is DFA's objectives, plans with respect to the market in which the new Class III milk in New Mexico will be pooled, or markets?

A. I do not know.

Q. Would it be in DFA's economic advantage to pool it in the Central market as opposed to the southwest market?

A. I do not know that either.

Q. When a producer in New Mexico has his milk pooled, or shipped, to touch base in -- at a Central market plant, and that producer has also sent milk during the month to a southwest plant, DFA can choose to divert that producer's milk from under market on simply a paper basis; correct?

A. Subject to the limitations of the two orders and what their pooling requirements are.

Q. It would still simply be a paper transaction, a producer whose milk has been delivered to a Central market and pooled in the Central market, if part of that producer's milk were pooled in the southwest --

A. Do you mean in your example delivered to a Class I location, Central market been delivered to as a Class I location in the southwest market?

Q. Sure.

A. Okay.

Q. During that same month would -- if it goes to the southwest market second chronologically, that producer's milk can still be reported as diverted from the Central market without retouching base?

A. Unless you lost association with the market. Instead, if you pooled in the other markets you would lose association, then you would have to come back and touch base again.

Q. The milk can't be split?

A. Different Market Administrators have different views on that, so sometimes yes and sometimes no.

Q. Do you know what it is for between those two markets?
A. No.
Q. Would you please look at the last page of your Exhibit 18?
A. Table 10-C?
Q. Yes.
A. Yes. If you want to ask me to detail the pounds by each handler, I can tell you in advance I'm not going to do that.
Q. Please identify the plants, first of all, in quadrant 1 that are supplied by DFA.
A. To my knowledge, we have sales to all of them.
Q. Are there any that are supplied by other cooperative associations?
A. I do not know. And you're starting to dig down into a proprietary answer, so I'm not going to answer that question.
Q. Are any of those supplied by, in part, by another clause in a federation?
A. Same answer.
Q. What federations is DFA a participant in supplying milk to Central area handlers?
A. I do not know.

Q. Do you know enough to agree that there are multiple federations in which DFA is a participant that supplied milk?

A. Federation, what's your definition there?

Q. Cooperative federations, where two or more cooperatives market their milk jointly to handlers.

A. You mean like an overpool basis, is that what you're talking about?

Q. No, we're talking about DMS kind of arrangement. You know DMS, don't you, they're a federation.

A. Uh-huh.

Q. They're a handler in the northeast?

A. Yes.

Q. In the Central market, similar federations operate, but they do so without being the reporting handler, they simply combine their milk for pooling purposes?

A. I understand that mechanism, but again, that kind of business decision is not made by me or in my area, that's a council, if you will, decision, so I don't know those details.

Q. Without the decision being made by you, do you know who -- what the federation combinations are with which they are --

A. I do not.

Q. Do you know any of them?

A. I know that they exist, but beyond that, I can't tell you who's in -- I can't tell you if there's one or more than one, and I can't tell you because I don't know, if the memberships are different, it's ABC here and AEF there, I do not know.

Q. The Southwest Marketing Agency of which is a federation of which DFA is a member; correct?

A. Southwest Marketing Agency is an over order pricing agency of which DFA is a member.

Q. And it's a federation that markets and coordinates the pooling of milk?

A. John, are you speaking when you use federation -- there's a Federal order term federation. Is that what you mean or are you using federation in the same sense that you might use a common marketing agency, like would you call CMPC your term of federation?

Q. I'm talking about repooling of joint

marketing and repooling of proceeds and combining them for purposes of pool qualification.

A. So you're using that in the sense of a Federal order term, not an oval order term.

Q. You and I just discussed a few minutes ago that DFS is a federation that operates as a reporting handler --

A. Yes.

Q. -- in the northwest?

A. Yes.

Q. And similar federations operate here without being an appointed handler, but combine their milk for pooling purposes?

A. Yes.

Q. The result is the same.

A. Okay.

Q. So my question to you is whether Southwest Marketing Agency reblended proceeds and markets the milk and coordinates the pooling in that federation, Federated manner?

A. I do not know.

Q. And you don't know about DFA/Prairie Farms coordinated pooling of supplies to the Prairie Farms plants and the joint ventures of

DFA?

A. No, I do not know.

Q. You don't know there's a federation between DFA and Prairie Farms?

A. I do not know.

Q. Quadrant 2. Are there any plants there that DFA does not supply DFA or DFA in conjunction with somebody else?

A. Yes, there are plants in quadrant 2 that DFA, if we supply them, would only be on a limited spot basis.

Q. Can you identify those?

A. Again, that's a proprietary question.

Q. I'm asking what you don't supply.

A. Same answer.

Q. Okay. How about the ones you do supply, the answers that you gave me for quadrant 1?

A. Same answer.

Q. And for quadrant 3, a lot of Prairie Farms plants, DFA and Prairie Farms has a joint venture or joint marketing federation and joint marketing agreement. Are there any plants in that arrangement that DFA does not supply in part?

A. I would say that we may occasionally have a load of milk into any of those plants, but some would be on a spot basis and some would be on a consistent basis.

Q. Which ones are the consistent basis plants?

A. Be a proprietary question.

Q. I'm just looking for a proprietary answer.

A. Not available.

Q. And it's because you aren't unwilling to give the answer rather than you don't know?

A. Combination of both.

Q. And if you could get the answer, you wouldn't give it to me?

A. Correct.

Q. Quadrant 4, same question. Are you going to give me the same answer?

A. In quadrant 4 we have no supplies in some form into all of those plants. The nature of those supplies and the agreements, etc., I'm not willing to go into.

MR. VETNE: I'm tired. I'm not saying I'm done, but I'm tired.

JUDGE HILLSON: Anyone else

have any questions for Mr. Hollon? Go ahead, Mr. English.

CROSS-EXAMINATION

BY MR. ENGLISH:

Q. Charles English for Dean Foods.

A. Good afternoon, Mr. English.

Q. Mr. Hollon, did you bring the Exhibit 1, the Federal Register notice of hearing? Did you bring that with you? I have a copy, an extra copy for you if you didn't.

MR. ENGLISH: May I do that?

MR. BESHORE: Yes.

Q. (By Mr. English) We'll start with a couple of clarifications. Before each of your two proposals, Proposal 1 and Proposal 2, that actually appears in the hearing notice, there is a paragraph that appears to describe what follows. For instance, in Proposal 1 ahead of No. 1, Amend § 1032.7, there's a paragraph that says, "This proposal would increase for all months the amount of milk a supply plant would need to ship to a pool distributing plant in order to be pooled," do you see that paragraph?

A. I do.

Q. Was that part of the proposal you submitted to the Department?
A. Was it that exact wording?
Q. Was that wording of what the proposal would do part of what you submitted to the Department?
A. It was not. I've not studied it intently, but no, it was not what I submitted to the Department. I sent the verbiage and there was a letter that we sent requesting the hearing.
Q. For instance, then, in No. 2, a statement that says, "This proposal would limit the pooling of milk normally associated with the market that was not pooled in a prior month to 125 percent of the producer milk receipts pooled by a handler during the prior month," that wasn't your language; right?
A. I don't think that was my sentence. I may have written something that implied that in my letter, but no, that was not my language.
Q. And so you don't intend that in any way from your perspective to be sort of what I may call legislative history to describe what

the proposal does; correct?
    A.   That is correct.
    Q.   And to the extent an interpretation of that language, looking at No. 2 for instance for a moment, to the extent an interpretation might be that it limits the pooling of milk that wasn't -- was not pooled in a prior month to 125 percent of the milk that was pooled, one way I read that paragraph was that could be 225 percent could be pooled: The milk that was pooled plus 125 percent of what was not pooled could be pooled, which would be 225 percent, that's not what you meant; correct?
    A.   That was not what we meant.
    Q.   If that's one's interpretation is?
    A.   Yes.
    Q.   The interpretation is if a million -- a handler pooled a million pounds in month A and subject to the exceptions that appear in 1 through 4, then they could pool 1,250,000,000 the next month?
    A.   Correct. That would be the maximum.
    Q.   Now, Mr. Vetne went through with you some discussion in some length of each of

these four sections and gave a number of examples that he thought might or might not work the way you intended them to work. The point of these examples is, or these provisions, is to open the door beyond the 125 percent that would otherwise apply if you didn't have any of those; correct?

A. Yes. There could be exceptions that would be very valid, and so we tried to provide some opportunity for those exceptions. You can't anticipate everything.

Q. And to the extent to which one might have a nit or here about them, one alternative would be to simply adopt a proposal within any of those four; correct?

A. Yes, that could be one possibility, I agree. It wasn't our proposal, but yes, you are correct.

Q. Let's discuss for a moment the first one, milk shipped to and physically received at pool distributing plants shall not be subject to 125 percent limitation.

Would I be correct that the reason for that limitation is, by definition, milk received at a pool distributing plant is

intended to be pooled?
A. Yes.
Q. That's the whole point of the order?
A. Yes, that's correct.
Q. So if you didn't have that exception, you could have the anomaly of a Class I operator getting a new customer, say adding 30 percent to their volume and not being able to pool -- that milk doesn't get pooled?
A. That is true. Also that provision wasn't in the very first time that we wrote this, and we were sitting, talking to one another, we said what happens if you want to ship next month? Well, if you're foreclosed in the market, that wasn't what our intention was. So this provision was added to make it clear that that would be something that would be pooled.
Q. For instance, discussion in (3)(ii) For an existing handler with significantly changed milk supply conditions due to unusual circumstances. Do you have a definition for unusual circumstances?
A. Well, there are some traditional definitions, like sections of the order like

fire or a disaster, those could be some, and certainly getting a new customer? Something that would be documented, and if it were extreme enough, that would cause a problem.

Again, the burden of proof would be on the person trying to make the exception. But there are some examples in order language and they generally refer more to catastrophe type events, but there's some history.

Q. For instance, you might have the Secretary look at, I don't think this provision actually is in Order 32, but 1030.7(i) is the traditional language that discusses unavoidable circumstances determined by the Market Administrator to be beyond the control of the handler operating a plant such as a natural disaster, ice storm, windstorm, flood, fire, breakdown of equipment, or work stoppage considered to have met the minimum performance standard, that kind of language might be a gloss that you would be prepared to provide the Secretary for that section?

A. That would be true.

Q. And again, that is to so-called open the door as opposed to close the door;

correct?

A. Again, provided there's a valid and defensible reason that can be -- you can convince the Market Administrator, I would say that would be reasonable.

Q. And ultimately the point is, even with these exceptions and certainly of point No. 4, is the Market Administrator is going to have to look at this to make sure this isn't being done to evade the purpose and the provisions of this paragraph?

A. Yes, that would be true.

Q. And the purpose and provisions of this paragraph are to make sure that milk that is associated with the pool doesn't jump on and off?

A. That is correct.

Q. You had some, again, lengthy discussion with Mr. Vetne when he went through with you about the milk in southeast Missouri and your own table, and he discussed with you the concept of stairstepping.

A. Yes.

Q. Isn't the whole point of all those tables, which also show that there's, you know, little or no value of shipping milk from Order 30 to St. Louis, that the concept of stairstepping simply fails when it comes to St. Louis?

A. Yes. St. Louis is just an extremely difficult market to supply. It's a high population, good demand, and not a strong milk supply close by. So you incur costs in some form.

Q. But you've done the analysis, there simply is no stairstep analysis that gives you a higher value for St. Louis than all the alternatives; correct?

A. That is true. That's the purpose of those tables, it compares Order 32 concerns with various alternatives, and Order 32 returns fails each time.

Q. And I think it was -- forgive me, we've done so many of these this year, but I believe it was the hearing in Atlanta earlier this year and I believe that Mr. Lee testified and you testified and Dean Foods testified, but as to St. Louis, isn't it the case that Prairie Farms testified in that proceeding that due to this lack of stairstepping ability, it came to DFA at one point for additional milk and was unable to get it from you because you couldn't make it economically work?

A. That is true.

Q. And so that's the point of all those tables is to instead of just tell that story, by the way, that Mr. Lee told it and Dean Foods has in prior testimony, to actually show numerically and arithmetically why that milk has no economic incentive to move to St. Louis?

A. That is true.

Q. And when milk is depooled and further depresses the PPD in the Central order, relative to other markets, that makes it even more difficult to supply milk to St. Louis?

A. Under the scenario that you were going through, that's one of the reasons it would make it even harder. You don't have the economic incentives in place and your competitor has the greater -- the competitor to the Class I supplies an even greater return, so it's even harder to procure supply and harder to procure steady supply because the producers say, "Tell me again why I should do this."

Q. There was some discussion about forward contracting. Now, not everybody can forward a contract, can they?

A. No.

Q. Class I processors, for instance, in trying to receive a milk supply, are not able to form a contract and still comply with the provisions of the Federal order and receive all the benefits of the hedge for forward contract; correct?

A. General answer to your question is yes. I don't know the exact specifics of the way you laid it out I would completely agree with, but in the name, yes, it's much more difficult to do a forward contract for a Class I milk supply.

Q. And to the extent that maybe DFA can form a contract, we know from the answer to questions from Mr. Vetne to the Market Administrator that there is a significant quantity of milk, some 70,000 million pounds a month, that is reported by handlers or distributing plants as direct producer milk?

A. Yes, that's correct.
Q. And to the extent, that is significantly more difficult to forward a contract when there is depooling, and that milk is forced to be pooled, there is no opportunity to do anything to hedge that difference?
A. That would be so hard as to be impossible.
Q. And so the discussion that was held regarding several DFA farmers who said they saw from their paychecks theirs was different because of the ability to pool, in that instance those proprietary dairy farmers, they're going to have close to zero of a depool; correct?
A. Correct.
Q. And no ability to forward contracting and they're going to see the full effect that negative PPD?
A. Unless their procurer decides to do something to subsidize that, yes.
Q. And if the procurer does something to subsidize it, that means the handler; right?
A. Yes.

Q. That means that handler is now paying a nonuniform price vis-a-vis of a non-contract price; correct?
A. That is correct.
Q. I suspect I know the answer, but you didn't say it. At one point when you were referring to your Tables 5 through 8, I think it was the very first table, and you referenced the depooling, you said that you made an assumption that the depool, this is Table, I guess, 8-C, that the depooling is only for that purpose when the PPD is negative, but you acknowledge that there are other circumstances when depooling occurs?
A. Try that again. I'm forming my answer to the question you didn't ask.
Q. Table 8-C, you acknowledge that for this purpose you took depooling into account?
A. Yes.
Q. But you only took it into consideration and you only made an assumption that it occurred when the PPD is negative?
A. For the purposes of this model, yes, that's true. There could be a decision made not to pool, for example, if the freight it

costs to make the delivery push it to a negative PPD, you may decide not to do that. And there are other instances where a PPD could be negative even if there were no price diversions.

Q. And what I didn't hear you say later, and I made an assumption, but just for the record, for the other tables for which the same assumptions apply, that is the same mechanism you used to calculate depool; correct?

A. Yes, that is true. That decision, if the PPD was negative, the milk would be depooled was a decision factored in every table, in all of the Table 8 tables.

Q. At one point in your testimony, I apologize I'm briefing through, but it was the point when you did an analysis of how many times in a particular year depooling was available.

A. That was in the statement. 2000 each year.

Q. And I'm sorry, it's on page 7. And I'm talking about what we just talked about. On page 7 you reference in 2004 there were 11

opportunities, you had some lengthy discussion with Mr. Vetne about the Class II, you reference two opportunities for Class III.
A. Yes.
Q. Now, is that tied to the same idea? When you say "opportunities," that's when the PPD was negative?
A. Yes.
Q. But in actuality, that's an example where depooling occurred in more than two circumstances for Class III, right, there were actually three months, March, April and May, when depooling occurred of Class III?
A. I would have to go back and look. Were the negative PPDs listed?
Q. No, that's my point.
A. Oh.
Q. There was negative PPDs for two months.
A. Yes.
Q. April and May.
A. Oh.
Q. But nonetheless, was there not significant depooling in March, even though there wasn't a negative PPD?

A. Well, it may have been a negative PPD in the base zone, but in an outer zone -- or you could be that somebody's projections were such that there was some depooling. The tables would show that, I just didn't look.

Q. Well, you would agree, would you not, that Class III, in March of 2004, it dropped from February of 628,770,680 pounds to 141 million pounds?

A. Yes.

Q. You would agree that's significant depooling?

A. Yes, I would.

Q. So whether or not there was a negative PPD for the month of March, you would agree there was a depooling opportunity for March?

A. Yes.

Q. In the statement.

A. Yes, in my own statement, that's correct.

Q. There was also some discussion, and if you're looking there now in Exhibit 9, marked as distributors data and has the table on page 19, which was the Class III that's referred to, Mr. Vetne also had some discussion with you about Class II. Do you know of any variation in Class II remotely resembling the kind of drop from February to March and April of this year on Class III?

A. Well, on a percentage basis you may see some 50 percent numbers, but on a volume basis it would be much less, and I think on a dollar value basis, I'm not sure if it would be as significant, but there is none that is the multi million pound change.

Q. Even on a percentage basis, I mean, you're looking at going from 628 million down to 20 million, you're at -- that's only 10 percent. But I'm looking at Class II, it varies this year from 117,088, February was the short month, back up to 130, 136, I mean, there's nothing remotely --

A. No.

Q. -- resembling the kind of change?

A. No, that's true.

Q. At one point you discuss the non-order potential solution of charging more for the milk in order to make up for the negative PPD; correct?

A. Yes.
Q. That effect was charged on the Class I handlers?
A. Yes.
Q. The very handlers who were forced to stay in the pool during depooling and carry the brunt of the cost in the first instance?
A. Yes.
Q. Not exactly an equitable solution for the problem in imposing the cost on the Class I side?
A. It's not a long-term solution. There would be too many variables that will be hard to duplicate to make that be a viable alternative.
Q. Regardless of whether it's a long-term solution or short-term solution, even the short-term I -- Class I handlers weren't the ones that depooled the milk, were they?
A. That is true.
Q. And yet, those are the ones who your non-order solution would impose the costs on; correct?
A. That is correct.

Q. And that does nothing to resolve the issue of uniform prices paid by handlers, because you have other handlers who aren't paying it; correct?

A. That is true.

Q. And does not resolve the question of uniform payments to producers?

A. It helps to make that better, but, again, it's not a long-term solution.

Q. Regardless, it's not a Federal order solution?

A. No, it's not a Federal order solution, that is true.

MR. ENGLISH: That's all the questions I have. Thank you, sir.

JUDGE HILLSON: Any cross-examination of this witness? Mr. Beshore, do you have any redirect?

MR. BESHORE: I do not have any redirect questions.

JUDGE HILLSON: I think now is the time, since no one else has any questions of you. Let me ask you at this point, we have Exhibits 18 and 19 being received, is there any objection to 18 and 19 being into received? Hearing no objection, 18 and 19 will be received into evidence.

REDIRECT EXAMINATION

BY MR. BESHORE:

Q. Elvin, early on in your cross-examination testimony you were asked some questions by Mr. Vetne concerning calculation of the PPD and the difference between PPD and component values, and there was a lot of talk about blended value of producer components.

Is it correct as it was, I believe stated, implied if not directly stated, that Federal order producer component values are blended values of utilizations?

A. The producers are paid based on the Class III component values and prices.

Q. So there's not a blended computer -- producer component value?

A. No, there's not.

Q. And so all of those questions that were comparing the PPD value as a proxy for the old blend price versus Class I value, to the extent it was talking about blended producer values, it really wasn't blended producer component values, it really was not correct?

A. To the extent that they were premised on that statement, I was incorrect.

Q. And to the extent the questioner so stated and premised, you were misled?

A. Yes. Still incorrect.

Q. With respect to Class II depooling -- do you have Exhibit 9?

A. I do not, but there is a table in Exhibit 9 that -- the particular question was, was I aware of any source that might detail Class II to nonpool plants, and on Exhibit 9, page 16, there is a detail provided by Mr. Stukenberg that goes annual 2001, 2001/2002 and month by month for '03 and '04, Class II pool and nonpool plants approximates a low of 18 million and a high of 50 million, out of a gross Class II utilization with a low of 104 and a high of 170 plus.

Q. Just to put these Class II volumes in context with respect to the pooling and depooling dynamics in Order 32, the Class III volumes in the order at their highs and lows and the peaks and valleys of pooling and depooling here, range from what, a billion pounds a month in Class III, or in excess of a billion pounds a month in Class III and some peaks?

A. Yes.

Q. And lows of, what, 20 million?

A. Correct.

Q. So the -- it's a ten to one ratio, at least in terms of gross -- in terms of peaks of Class III versus Class II, and Class III gets -- Class II probably never gets down as low as Class III on the valleys.

A. That is true. The opportunities, if you will, to earn revenues from depooling Class II while there are some are minor compared to Class III when there's depooling opportunities.

Q. Now, early on in your cross-examination by Mr. Vetne, I think you were -- there was some colloquy, one of you referred to utilization of the Milnot plant. And just so there's no question in the record here, is that Class II utilization, that Milnot?

A. I was the one who made that

reference. And I was incorrect and I was not misled.

Q. What is the utilization of the Milnot plant?

A. Well, for a long period of time it was Class III and now it's Class IV primarily. I don't know the intricacies of their business, but based on what things I do know, it's primarily Class IV.

Q. You were also asked about whether a multi order handler has some advantage with respect to pooling and depooling. I guess my question, with respect to that, is in order to move milk from one order to another, do you have to be in both orders every month or is it not a case that the milk marketers move milk from one order to another from month to month?

A. I think the scenario that perhaps Mr. Vetne was describing, it seemed to me in order to make it work, you would have to have some equal volume in both places that you could substitute back and forth.

And while I realize his example was blown up by the use of 90 million pounds, but the idea of having a large volume, you've got to have somebody who would buy that volume in both places. You've got to pay the freight both ways and you have uses in both orders that you, assumes at least to me, you have to fill, so while it may be a feasible scenario, I think practically it might be difficult to achieve, and if you've got to it and turn it into volumes that you have depooling, if you try to associate all that milk with a distributing plant, I think you would lose a distributing plant standard, would have more milk associated with it than it could qualify.

So while, yes, I think that there may be some way to construct a scheme to do that; practically and economically I'm not sure it's workable.

Q. You might lose as much or more money moving the milk around to fill an economic markets, as you are attempting to make in your pooling or repooling?

A. That is true. And I presume that you would also have to disguise all of this from the Market Administrator in some way so they wouldn't know you were doing a transaction to evade the pooling requirements. And we usually don't win too often when we try to hide details from the Market Administrator.

Q. Now, you were just more recently asked a series of questions in which Mr. Vetne used the word federation. First of all, is that, other than in some order, some specific order provisions, is that a term of art that you utilized in describing marketing arrangements that DFA has?

A. I remain somewhat confused by what that definition meant in the line of questioning, and there is a technical order term federation and then many times in literature and in common terminology an over order pricing body is also, from time to time, called a federation.

Q. But the word over order pricing or joint marketing -- common marketing agencies have a variety, apparently, of different functions that they may or may not perform?

A. That is true. And some of them have the name federation in their name.

Q. And some of them do not.

A. And some do not, yes.

Q. And whether they do or don't, the

variety of functions they perform is unrelated to the term, wouldn't you agree?

A. Yes.

Q. Now, I don't want to get into a legislative debate any more than is already seeped into the record here, but with respect to a question Mr. English asked you about producers supplying Class I plants and their ability to forward contract or hedge, first of all, DFA offers whatever programs it offers to producers, which you were asked about by Mr. Vetne, to any producer regardless of where their milk is marketed on a daily basis; correct?

A. This says the requirements, you have to be a member, but the programs are offered no matter where you are a member, where your milk is marketed, what order you're in, north, south, east or west.

Q. And any dairy farmer themselves, individually, regardless of what marketing affiliation they have or what use is made of their milk, can go on to the Chicago Mercantile Exchange and purchase or buy or sell -- buy or sale puts or calls or other

contracts for milk any time in order to hedge
price changes in the future?
A. Absolutely. There are a myriad of
brokerage services and brokers that would
offer, educate and place those risk
managements for you if you chose it.
Q. And they're beating the bushes in the
country all the time to drum up business in
that regard?
A. That is true.
MR. BESHORE: Thank you.
JUDGE HILLSON: Any
recross-examination? Mr. Miltner.
CROSS-EXAMINATION
BY MR. MILTNER:
Q. Ryan Miltner for Select Milk
Producers and Continental Dairy Products.
Good afternoon, Mr. Hollon.
A. Good afternoon, Mr. Miltner.
Q. I have just a couple of questions. I
want to start with Proposal No. 1. The
language on § .13 regarding 9(c) cooperatives
and their ability to divert milk, I think
Mr. Rower asked you some questions earlier
about this section. Do you see where I'm

referring to?
A. 1032.13.
Q. .8(d).
A. 1032(d), okay.
Q. As you drafted this section, you included language about a cooperative association located in the states listed.
A. That's correct, but as I stated, that phrase is misplaced. So -- just a second. Did that answer your question?
Q. I think it did.
A. Thank you.
Q. Well that takes care of that. On Proposal 2, (f)(3), it reads the Market Administrator may waive the 125 percent limitation. And my question is about your intent with the use of the word "may."
A. There would be some Market Administrator discretion and, again, they would have the ultimate judgment, so it doesn't necessarily say will and it doesn't say can't, but DFA had a case where they thought that they ought to be entitled to pool 130 percent and had a valid reason and could convince the Market Administrator of that,

then they could waive the percentage basis, but it's totally their discretion.

Q. So even in the event of a new handler on the order, even if there's no dispute that handler is a new handler, it would still be the Market Administrator's discretion as to whether to waive limitation?

A. Yes.

Q. And that was your intent?

A. Yes.

Q. In this order?

A. Yes.

Q. One final question on Proposal 3. You stated in your written statement that you had problems with Proposal 3 as it was written because it excluded direct farm shipment to the plants.

A. Yes.

Q. And DFA was not comfortable supporting Proposal 3, and that's why you included it in your modification?

A. Correct.

Q. Can that be interpreted to be opposition by DFA to Proposal 3, you would only support Proposal 3 as modified?

A. Yes, that would be true.
Q. That's all I have. Thank you.
A. You're welcome.
JUDGE HILLSON: Anyone else have any further questions of this witness? Mr. Vetne?

RECROSS-EXAMINATION

BY MR. VETNE:
Q. Mr. Hollon, I'm not sure if I asked you this: How much milk, how many producers does DFA pool in Order 32?
A. The question that you asked me that I got the answer for was you asked me how much of DFA's milk is associated with the Central order --
Q. Yes.
A. -- and the percentage is the teens. So all of DFA's milk, a percentage in the teens is associated with the Central order.
Q. So 13 to 19 percent --
A. Uh-huh.
Q. -- DFA's national milk supply?
A. Correct. Its member milk supply.
Q. Of its member milk supply. And in addition to DFA member milk, we have a number

for DFA as a whole. In addition to DFA member milk, as we discussed in part of my first question, effect markets and milk of others?

A. Yes.

Q. What additional volume of same relation to DFA's volume does DFA market for others?

A. I don't know the answer to that question. I do know that we do pool some milk supplies that we market for others on the Central order, but I don't know the volume and I don't even know the number of handlers that might fit into that category.

Q. We talked about DMS, Dairy Marketing Services, what, New York corporation?

A. I do not think there's any DMS member milk in the Central order. I think if we look at the handler list, I don't think it shows there.

Q. Whether you look at the handler list or not, does DMS market milk in the Central order?

A. Not to my knowledge.

Q. In Order 5, the Appalachian order, what portion of that milk supply is marketed

by DFA or --
A. I do not know.
Q. And same question for Order 7.
A. I do not know the answer to that either.
Q. For Order 7 there's an agency that pools and repools the Southern Marketing Agency?
A. Yes, there is.
Q. And what portion of the milk supply was accounted for by that agency?
A. Of Federal Order 7, what percentage of it pools with SMA?
Q. Yes.
A. I don't know the number, but I would say it would be a high percent.
Q. 90 plus?
A. I don't know a number.
Q. And Order 5, is there a similar agency working in Order 5?
A. Yes, SMA encompasses also Order 5.
Q. So high percentages for both markets?
A. Yes.
JUDGE HILLSON: Okay, Mr. Stevens.

CROSS-EXAMINATION

BY MR. STEVENS:

Q. Mr. Hollon?

A. Yes, sir.

Q. Earlier your --

JUDGE HILLSON: Even though I said Mr. Stevens, go ahead and --

Q. (By Mr. Stevens) Yes, Garrett Stevens, US Department of Agriculture.

These are just two housekeeping items from your previous testimony. You said you would provide your address for the record. Do you now know where you work?

A. I don't know, but I can get it.

Q. And while you're checking, also offer up some website information?

MR. BESHORE: Thank you for checking.

JUDGE HILLSON: Let's go off the record for a minute.

(Off the record.)

JUDGE HILLSON: Let's go back on the record. There's a pending question for you, Mr. Hollon.

A. My business address is 10220 North

Ambassador Boulevard, Kansas City, Missouri 64153. And the website from which we drive the miles is www.sym.sys.com.

Q. Just got my pen out, so could you repeat it for me? I'm sorry.

A. www.sym.sys.com.

Q. Thank you.

A. You're welcome.

JUDGE HILLSON: Is that it?

MR. STEVENS: Nothing further, your Honor.

JUDGE HILLSON: Mr. Hollon, you may step down.

We're going to take a five minute break and then take Mr. Lee's testimony.

(Recess.)

JUDGE HILLSON: Mr. Beshore, you can call your next witness.

MR. BESHORE: I would call Gary Lee. And before Mr. Lee testifies, your Honor, I would like to have marked for purposes of identification four documents, the first one being a three-page statement.

JUDGE HILLSON: I'll mark that as Exhibit 26.

(Exhibit 26 was marked for identification.)

MR. BESHORE: Then the next one being also a three-page document, the three state maps. The first one being the state of Illinois.

JUDGE HILLSON: That will be marked Exhibit 27.

(Exhibit 27 was marked for identification.)

MR. BESHORE: And Exhibit 28 would be a five-page set of charts.

JUDGE HILLSON: I've marked that as Exhibit 28.

(Exhibit 28 was marked for identification.)

MR. BESHORE: And the final exhibit being a one-page document which has locations across the top and cost categories and dates down the left side.

JUDGE HILLSON: I've marked that as Exhibit 29.

(Exhibit 29 was marked for identification.)

GARY D. LEE,

a Witness, being first duly sworn, testified under oath as follows:

JUDGE HILLSON: Please state your name and spell it for the record.

THE WITNESS: My name is Gary Lee, G-A-R-Y L-E-E.

JUDGE HILLSON: He's your witness, Mr. Beshore.

DIRECT EXAMINATION

BY MR. BESHORE:

Q. Mr. Lee, before you proceed with your prepared statement, which has been marked for identification as Exhibit 26, would you briefly identify and tell us what Exhibits 27, 28 and 29 are?

A. Exhibit 27 is a map of Illinois, Iowa, and Missouri by counties, and I'm showing and I'm showing how many producers Prairie Farms has in each of those counties, all of whom are pooled on Order 32. And then in the counties where we have a processing plant located is pooled on Order 32, I have put an asterisk to so indicate. The purpose merely to show that a high percentage of our member milk is located within a reasonable proximity of our processing plants.

Q. Could we, just for additional information purposes on Exhibit 27, identify the name of the processing plant with the asterisks, because we have Prairie Farms plants listed in other exhibits, maybe we can match them up.

A. Okay. In Peoria County, Illinois, Prairie Farms, in Adams County, Illinois, we have two plants in the city of Quincy, six blocks apart, one fluid distributing plant, one culture products plant. In Macoupin County, Illinois, fluid milk processing plant. Madison County, Illinois --

Q. And Macoupin, how is that plant identified on the handler list?

A. That's Prairie Farms Carlinville, I'm sorry.

Q. Carlinville, okay.

A. Madison County, Illinois, Prairie Farms Granite City, that is a fluid processing and UHT products plant. Richland County, Illinois. We have a plant located in Olney, Illinois, O-L-N-E-Y, fluid milk processing plant. In Jackson County, Illinois, we have a plant located at Carbondale, it is a cultured products plant.

We have no Prairie Farms processing plants in Iowa.

Then if you go over to the Missouri map, in the City of St. Louis we have a plant that is commonly known as Pevely Dairy, it is a Prairie Farms plant.

JUDGE HILLSON: How do you spell that?

THE WITNESS: P-E-V-E-L-Y, Pevely.

Q. (By Mr. Beshore) Thank you, Mr. Lee. Could you then move to Exhibit 28?

A. Exhibit 28 I have -- it's redundant with other exhibits that have come before. I've taken the Order 32 uniform price in St. Louis, I have compared it to the Order 30 uniform price in Rochester, Minnesota, I have compared the St. Louis price to the Order 5 price in Evansville, Indiana, because that is the town in Order 5 nearest St. Louis, or nearest Order 32 with an Order 5 regulated processing plant.

Then I have done the same thing with

Murray, Kentucky, because as far as I know, that is the closest location to Order 32 that has a plant located -- I mean, a pool on Order 7. And the Evansville location would be at the minus $0.90 zone on Order 5 and the Murray location would be at the minus $0.70 zone on Order 7.

The purpose, there are five pages here, it is to show the price comparison between these points for each month since Order Reform was implemented, in an attempt to show that the price disparity between St. Louis and Rochester is worse now than it has ever been. The price disparity between St. Louis, while not as bad now as it might have been three or four years ago, is still enough to lure milk away from Order 32.

Q. And the numbers in each block, are they comparative of the Order 32 and other order prices?

A. Yes.

Q. Exhibit 29?

A. Exhibit 29 is simply a summation, more or less. Have taken actual miles based on calculations from the Market

Administrator's office from Rochester to St. Louis, city center to city center, from St. Louis to Evansville, Indiana, from St. Louis to Murray, Kentucky. And then from Olney, Illinois, to Evansville, because that is the plant that we have that is closest to Order 5. And from Carbondale, Illinois, to Murray, Kentucky, because that is the plant we have closest to Order 7.

Show miles, take a theoretical 48,000 pound load of milk, assume a $2.20 per loaded mile cost to move that load from point A to point B, and then how much per hundred that would have theoretically equated to, and then compare that hauling cost to the difference in equivalent uniform price between Order 32 and the other orders for the -- every month -- an average, an annual average since Order Reform was implemented. And again, 2004 is through October.

Q. Now, with that introduction of your testimony with respect to the exhibits, could you proceed with your statement?

A. My name is Gary Lee. I'm employed by Prairie Farms Dairy, Inc. as the Vice

President of Procurement and Planning.

Prairie Farms is a Capper-Volstead Cooperative headquartered in Carlinville, Illinois. In October 2004, Prairie Farms had 833 members. Of those 833 members, 485 were located in Illinois, 84 in Iowa, 102 in Missouri, 150 in Indiana, 9 in Michigan and three in Ohio.

All of the producers located in Illinois, Iowa and Missouri ship direct to our pool distributing and cultured products plants pooled on Order 32.

Fluid distributing plants are located in Peoria, Illinois; Quincy, Illinois; Carlinville, Illinois; Olney, Illinois; Granite City, Illinois; and St. Louis, Missouri. Cultured product plants are located in Quincy, Illinois, and Carbondale, Illinois. The fluid distributing plant in St. Louis also makes cultured products.

Exhibit 27 is a set of maps by county of Illinois, Iowa and Missouri. It shows how many Prairie Farms members were located in each of those counties in October 2004. There is also an asterisk in each county where one of our Order 32 plants is located.

You can see from this exhibit that a high percentage of our members are located reasonably near our processing plants. These producers provide over 70 percent of the milk used at these plants on a 12-month basis. The balancing milk supplies are purchased from cooperatives located in Iowa, Minnesota and Wisconsin.

All of our producers located in Indiana, Michigan and Ohio ship direct to our Order 32 distributing plants located in Anderson, Indiana, Fort Wayne, Indiana, and Battle Creek, Michigan. The plant in Fort Wayne also produces cultured products.

We are also 50 percent participants in two joint ventures with Dairy Farmers of America that operate fluid distributing plants pooled on Order 32. These joint ventures are the Roberts Dairy Company and the Hiland Dairy Foods Company. In each of these joint ventures, Prairie Farms provides management and DFA arranges for the milk supply.

Roberts Dairy Company operates fluid distributing plants located in Iowa City, Iowa; Des Moines, Iowa; Omaha, Nebraska; and Kansas City, Missouri, all pooled on Order 32.

Hiland Dairy Foods Company operates fluid distributing plants located in Wichita, Kansas; Chandler, Oklahoma; and Norman, Oklahoma, all pooled on Order 32.

Hiland Dairy Foods Company also operates fluid distributing plants located in Springfield, Missouri; Fayetteville, Arkansas; and Ft. Smith, Arkansas, all pooled on Order 7.

As you can see, Prairie Farms has a great deal of interest in anything impacting Order 32.

It is troublesome to Prairie Farms that it is necessary to have a hearing to amend Order 32 just three years after we had a similar hearing. At the hearing in November 2001 we heard proposals to strengthen shipping requirements in order for producer milk to remain qualified on Order 32. The primary reason for the proposals presented at that hearing was that the difference in uniform price between the base zone of Order 32 and the base zone of Order 30 was not enough by itself to attract necessary balancing supplies of milk to St. Louis, Kansas City, and Southern Illinois. At the same time the uniform price in the St. Louis and Southern Illinois areas was such that local producer milk in those areas was being attracted to plants pooled on Order 5 and Order 7.

Exhibit 28 is a set of five charts showing a comparison of the statistical uniform prices for the base zones of Orders 30 and 32 and Order 5 in the minus $0.90 zone and Order 7 in the minus $0.70 zone each month since Order Reform was implemented. The zones in Orders 5 and 7 are where the pool distributing plants closest to St. Louis and Southern Illinois are located.

The point of this exhibit is to show that little has changed on Order 32 relative to surrounding orders. The difference in price between St. Louis and Rochester will not come close to covering the cost of hauling bulk milk that far. At the same time, dairy farmers located in southern one-third of Illinois and southeast one-fourth of Missouri can ship to plants located in Evansville, Indiana, or Murray, Kentucky, and probably easily cover all additional hauling costs to do so.

Exhibit 29 is a one-page chart showing distance from Rochester, Minnesota, to St. Louis, Missouri, and from St. Louis, Olney, Illinois, and Carbondale, Illinois, to Evansville, Indiana and Murray, Kentucky. It also shows the estimated cost per hundred to transport a 48,000 pound load of bulk milk between the aforementioned points. Mileages were provided by the Order 32 Market Administrator's office. Estimated cost per loaded mile was $2.20.

If we at Prairie Farms had our preference, we would not be here today discussing more tweaks to Order 32. Instead, we would be discussing how to best disassemble and remake Order 32 by creating several new orders from the current order or simply annexing various parts of it to adjacent orders.

Such a proposal was made jointly by Dean Foods and Prairie Farms at the hearing to merge Orders 5 and 7 in February 2004. The

Department chose to disregard that proposal.

We feel that in its current configuration, Order 32 is simply too geographically large and diverse to find a one size fits all solution to price imbalances with surrounding orders. However, we feel that Proposals 1 and 2 are reasonable attempts to try to alleviate these problems.

We feel most strongly about proposals to change § 1032.13(d) and § 1032.13(f).

With the elimination of the Western Order 135, it seems logical that milk located in Utah and Idaho will eventually seek a market in a nearby state. Proposal 1 will provide a safeguard that producer milk, which was formerly pooled on Order 135, will not be able to seek a platform on which to "ride" Order 32. It is not the fault of dairy farmers located in eastern Iowa and eastern Missouri and Southern Illinois to dairy farmers formerly associated with Order 135 chose to vote out their order. It should not be the responsibility of long time Order 32 producers to provide former Order 135 producers with an order in which to park their milk.

As we said earlier, Prairie Farms operates six fluid milk processing plants on Order 32. Seventy percent of the milk used at those plants comes from Prairie Farms members. Because those plants are pool distributing plants, they are part of the order every month. As a result, Prairie Farms members share their Class I utilization with all milk on the market each month. They have no other choice.

Because of weaknesses in Order 32, milk that goes to stand-alone plants that process Class II, III or IV milk does not have to be pooled if it is advantageous not to do so. Federal orders were originally created to help secure supplies of milk for Class I handlers and provide for sharing of revenue from all uses of milk on the order. We feel that is still the best intent of Federal orders.

Allowing producers who supply other than Class I to jump in and out of the order at will is not in the best interest of orders.

We feel that this hearing is one last

attempt to provide better price balance between Order 32 and surrounding orders. Failure to achieve this should and hopefully will result in the elimination of Order 32.

Q. Now, Mr. Lee, do you have occasion as part of your responsibilities with Prairie Farms to meet with dairy farmers and discuss their prices and --

A. Yes.

Q. -- terms for milk?

A. Yes, quite often.

Q. Have you had occasion to discuss the current phenomena in Order 32: Depooling, negative PPDs, and such with dairy farmers?

A. Yes, I have.

Q. Could you relate for us the substance of those discussions and your producers' reactions to these marketing conditions?

A. The reaction that we got that English referred to earlier today also when producers thought -- producers supplying fluid markets thought they could look forward to $20 per hundred milk last spring and it never materialized, they were highly disappointed, and then trying to explain the mechanics of why it didn't happen to them was rather frustrating. They felt something should be done to remedy this problem.

We ran into a particular problem in northeast Missouri where we have a large number of Mennonite producers. They have a lot of relatives in other parts of the country, and particularly in Wisconsin and other parts of the Upper Midwest, and trying to explain to someone who doesn't have a TV or a radio or may not subscribe to a newspaper why their brother-in-law in Wisconsin who ships to a cheese plant got $4.00 a hundred more than they did when supplied to a fluid market was a lot of fun.

Q. Were you successful?

A. I still have my job. I don't know, that's all I can say.

Q. Have you observed differences in pay prices in the milksheds where dairy farmer members are the cause of the dynamics of depooling of Order 32?

A. Yes.

Q. What have you observed?

A. Again, in the northwest part of

Illinois and the eastern part of Iowa, when we were competing directly with cooperatives and proprietary handlers who had the ability to depool, last spring our pay prices were anywhere from 2, 3 to $4.00 per hundred on an equivalent basis lower than that of those that we were competing against.

Q. When everybody's pooled are the comparisons quite different and more competitive, more similar?

A. Yes. When everything is pooled, we can compete quite well with anyone else procuring milk in the area where we operate.

Q. There's been some references earlier this afternoon to movements from increasing production areas to the west -- western and southwestern portion of Order 32, western Kansas, New Mexico, those areas.

A. Yes.

Q. A new prevalence of milk movements from the west and southwest, east and northeast. Do you recall that testimony?

A. Yes.

Q. Now, what can you tell us about whether there's any incentive and any ability

under the current milk price grid to get milk
to your plants from that direction?
A. We, at this time, don't look at the western Kansas milk as any value in St. Louis, simply because the order returns the same price in Kansas City as it does in St. Louis, and someone has to pay the transportation to get the milk from Kansas City to St. Louis. And whether it's the dairy farmer or the handler, again, the order is not helping make that movement of milk.
Q. So as far as stairstepping in that direction, it doesn't -- stairs are too steep to step from Kansas City to St. Louis under the present price grid anyway?
A. In our view, yes.
Q. Too flat, too steep. What's the mileage from Kansas City to St. Louis?
A. Approximately 225 to 250 miles. I don't know exactly.
Q. Thank you.
MR. BESHORE: I would move the admission of the exhibits and make Mr. Lee available for cross-examination.
JUDGE HILLSON: Any objection

to the Exhibits 26 through 29? Hearing none, I will receive Exhibits 26 through 29 into evidence. And I would ask who wants to cross-examine this witness first? Mr. Vetne.

CROSS-EXAMINATION

BY MR. VETNE:

Q. Mr. Lee, good afternoon.
A. Hi, John, how are you?
Q. Fine. In addition to the two joint ventures that you mentioned, Prairie Farms is involved in a joint venture for the Muller-Pinehurst Dairy in Rockford, Illinois?
A. Yes.
Q. Who is the other joint venture person in that?
A. Cooperative called Midwest Dairymens Company.
Q. And there's -- is that the only partner?
A. Yes.
Q. And there's another joint venture involving Prairie Farms in, of all places, Evansville, Indiana.
A. Yes.
Q. Which you used in your exhibits.

That's Ideal American. Who's the other joint venture partner in that one?

A. DFA is our partner there. I left those two out merely because they don't pool anything on Order 32.

There's a third joint venture in St. Louis that is a butter processing plant, our partner there is Land O'Lakes. Plant processes butter, butter oil and anhydrous milk fat. But again, it's an unregulated plant, so I left it out of the testimony.

Q. It's an unregulated plant that receives --

A. Receives no milk.

Q. Receives cream?

A. Receives cream and scrap butter.

Q. Does it receive cream from multiple market pools, plants?

A. Yes.

Q. It receives transfer cream?

A. Receives transfer cream from virtually every Federal order plus California.

Q. And the Muller-Pinehurst Dairy, does that, like Roberts and Hiland, have a supplier other than Prairie Farms?

A. Yes.
Q. And it's Midwest --
A. Midwest Dairymen, yes.
Q. They are the exclusive --
A. They have the -- they have the responsibility to secure a supply of milk for that company.
Q. And for the Hiland and Roberts, DFA has the responsibility?
A. Yes.
Q. Although it may not all be DFA milk?
A. Exactly.
Q. Do you know what organizations that market to the Hiland or Roberts plants through DFA other than DFA?
A. As a matter of my job, I study the pool reports of all those plants every month, checking shrink and route returns and other such things, and so I observe who they're getting their milk from.
The plant in Omaha might get all of its milk from DFA on a regular basis, but in all of the other plants, there are suppliers other than DFA, both cooperative and proprietary.

Q. And that's the responsibility of DFA to make the contracts for those additional supplies?

A. Yes.

Q. Is some of the milk going in there DMS milk?

A. I don't recall seeing that on a pool report.

Q. And what about Ideal American, is there, other than DFA milk, going into that joint venture facility?

A. Rarely. It's virtually always DFA milk.

Q. When you say in your testimony that all of the producers located in Illinois, Iowa, and Missouri shipped to your Order 32 pool plants, it leaves the possibility that some of the milk of those producers might be split and serving other markets, so that's my question to you.

Is, on occasion, some of that milk of those producers who supply Order 32 plants sometimes shipped to plants in other markets?

A. We have, on occasion, diverted milk from Order 32 producer milk to another plant of ours in Holland, Indiana, but we have not pooled that milk on Order 5, because the shipments were never enough to allow us to pool the milk there.

Q. Holland, Indiana, being what kind of plant?

A. It is a Prairie Farms subsidiary. And again, since it was pooled on Order 5, I left it out of the discussion.

Q. What is manufactured or processed there?

A. It's a fluid processing plant.

Q. Is that a joint venture with somebody else?

A. No.

Q. And what organizations supply milk to that plant?

A. It is supplied 95 percent by local non-member producers and the remainder primarily from Foremost Farms USA.

Q. Would Foremost have the supply responsibility for that plant like --

A. No.

Q. No?

A. They just -- in the balancing supply

of our choice, because they have a couple of farmers out in reasonable proximity to that plant. On occasion there has been some DFA and NFO milk show up in that plant that was on two- or three-way commingled books.

Q. You've been sitting patiently through testimony of Elvin Hollon.

A. Uh-huh.

Q. And you've heard some of the suggestions made for a revised transportation credit proposal?

A. Yes.

Q. One element of which would offset credits for milk coming into Prairie Farms' plants in cases where Prairie Farms might divert milk from that plant to someplace else. Do you recall?

A. I'm not quite following you.

Q. I don't have a second copy for you to look at, but Exhibit 19, page 41. Does your copy have additions to it? No, it doesn't. All right. All right, we're getting -- we don't need clean copies of this because I can't ask questions unless we have a marked copy. As proposed here under the middle paragraph, (b), Market Administrator shall subtract from the pounds of milk described in paragraphs (a)(1) of this section. Prior to the application of the Class I percent, pounds of milk, bulk milk transferred or diverted from the pool plant receiving the milk if the milk was transferred or diverted to a nonpool plant by the distributing plant to which the milk was delivered in the same calendar day that milk was received.

Prairie Farms relies on supplemental milk from Wisconsin and Minnesota and other places?

A. Yes.

Q. And Prairie Farms, for various reasons of efficiency, logistics and commitments, also diverts milk of its producers?

A. Yes.

Q. First of all, let me ask you if you have considered the modification and its application to the Prairie Farms plants?

A. Be prior to today, no, I had not. It could be problematic if we had moved a load of our milk, diverted a load from the Carlinville plant to the St. Louis plant and then purchased a replacement load from the Upper Midwest. I would hope Market Administrator would use some discretion or some judgment to see that there was no ill intent here to deprive -- to get extra transportation credit or to deprive anyone.

Now, if we were diverting a load of our milk to a Class III nonpool manufacturer somewhere and buying a replacement load, that would be different.

Q. That's all I have at the moment. Thank you.

JUDGE HILLSON: Mr. English.

CROSS-EXAMINATION

BY MR. ENGLISH:

Q. Charles English for Dean Foods.

The extent to which Prairie Farms receives milk at its plants, not a joint venture operations that are managed by Prairie Farms, but the plants that are Prairie Farms' operations, do you receive supplemental milk supplies from entities other than Prairie Farms?

A. Yes.

Q. Can you disclose for the record who those entities are?
A. Associated Milk Producers, Inc., Foremost Farms USA, Land O'Lakes, and DFA.
Q. And where does DFA figure in sort of the relative size of the supplemental supplies for the Prairie Farms operations?
A. They are the smallest -- they supply the least of our supplemental supplies.
Q. Turning to the third page of your statement and the portion where you say, "As a result," this is the end of the second paragraph, "As a result, Prairie Farms members share their cost utilization with all milk on the market each month."
A. Yes.
Q. You're effectively saying you don't depool milk?
A. Not Class I milk.
Q. Not Class I milk. And that's the vast portion of your milk; correct?
A. It's over 70 percent of our business, yes.
Q. And that's what you were discussing that leads you to the position of having a

differential for pay price as discussed with Mr. Beshore; correct?

A. Yes.

Q. And to the extent depooling occurs, causing a PPD, negative PPD to be larger than negative direction than would otherwise be, that further makes the situation vis-a-vis St. Louis, milk delivered to St. Louis versus Order 5, that makes that situation worse; correct?

A. Yes, it does.

Q. And as the operator of a plant in St. Louis and as an entity that delivers milk to plants in St. Louis, you know that for an absolute fact, I mean, you've seen that in operation that difficulty; correct?

A. Yes.

Q. In fact, you testified, I believe, in Atlanta earlier this year that at one point, because of this situation, DFA said they would not supply you additional supplemental supplies of milk into St. Louis; correct?

A. Yes.

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

JUDGE HILLSON: Is there any

other cross-examination of Mr. Lee? Do you have any redirect, Mr. Beshore?

MR. BESHORE: No.

JUDGE HILLSON: You may step down, Mr. Lee. Thank you for testifying.

And we will reconvene tomorrow morning at 8:30. We'll hear Mr. Vetne's witness on Proposal No. 3. Is that what it's going to be? What's the name of the witness?

MR. VETNE: Joe Weis.

JUDGE HILLSON: Joe Weis. So we're adjourned till tomorrow morning at 8:30.

(The hearing recessed at 5:55 p.m. to commence at 8:30 a.m. on Wednesday, December 8, 2004.)

CERTIFICATE

I, Glenda Moeller, a Certified Shorthand Reporter in and for the State of Missouri, do hereby certify that I appeared at the time and place first hereinbefore set forth, that I took down in shorthand the entire proceedings had at said time and place, and that the foregoing constitutes a true, correct, and complete transcript of my said shorthand notes.

WITNESS my hand and seal this 15th day of December, 2004.

Glenda Moeller, CCR No. 962, RMR, CRR