

UNITED STATES DEPARTMENT OF AGRICULTURE

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 :  
 MILK ORDER AMENDMENT HEARING :  
 :  
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Wyandotte Room  
 Hilton Hotel  
 8801 N.W. 112th Street  
 Kansas City, Missouri

Wednesday,  
 November 14, 2001

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

BEFORE: HONORABLE DOROTHEA BAKER  
 Administrative Law Judge

APPEARANCES:

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

GREGORY COOPER, ESQ.  
 Office of General Counsel  
 Marketing Division  
 U.S. Department of Agriculture  
 Washington, D.C. 20250

On behalf of the Proponents:

CHARLES M. ENGLISH, JR., ESQ.  
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**EXECUTIVE COURT REPORTERS, INC.**  
**(301) 565-0064**

APPEARANCES: (Continued)

On behalf of the Proponents:

JOHN VETNE, ESQ.  
15 Powow  
Amesbury, Massachusetts

Also Present:

CAROL WARLICK, Marketing Specialist  
CONNIE BRENNER, Marketing Specialists  
GINO TOSI, Marketing Specialist  
U.S. Department of Agriculture  
Washington, D.C.

DENNIS TONAK  
Midwest Dairymen's Company  
Des Moines, Iowa

NEAL GOLDEN  
Associated Milk Producers

## I N D E X

<u>WITNESSES:</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
David C. Stukenberg	21	44 58 69 87 92 97 104 105	--	--
Jerry Owen Bond	109	113	--	--
Rex H. DeFrain	116	121	--	--
Elvin Hollon	139	--	--	--
Warren Erickson	224	232 236 238	242 243	--
Elvin Hollon (recalled)	244	267 290 295	300	307 312 313
Gary Lee	316	336 337 348	--	--

## E X H I B I T S

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

8:37 a.m.

JUDGE BAKER: Good morning. I am Judge Dorothea Baker.

We have a court reporter here today, and among her instructions are not to go off the record unless I direct her to do so. Also, she is to ensure that all exhibits are properly numbered and stamped. So, when you hand her your exhibits, if you'd please allow her time to do that.

If you offer exhibits into evidence, three copies are required. However, it would be helpful if you had additional copies for the participants and for me.

The Government does not furnish copies of the transcript. If you wish a personal copy of the transcripts, it is suggested you make purchase arrangements with the court reporter at the earliest possible time.

It is essential that each time you rise to speak or make an objection, that you please state your name and representation, if any. If you forget to do this, I shall find it necessary to interrupt you and ask you to do so. This is in the interests of making an accurate transcript.

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1 I shall be glad to answer any questions of  
2 procedure at any time.

3 This hearing is beginning at 8:30, and at  
4 approximately 10 a.m., we will have a 15-minute break,  
5 and at approximately 12:15, we will have our luncheon  
6 break, and then another break of perhaps 15-minutes  
7 duration in the evening. If we do not finish today, we  
8 shall continue tomorrow, commencing at 8:30.

9 Handler to supply the fluid milk needs of the  
10 Central Order Marketing Area requested this hearing.  
11 The principal issue to be addressed is the degree of  
12 association milk supply should maintain with the  
13 Central Fluid Milk Market to benefit from participation  
14 in the marketwide pool.

15 Proposals to be considered include making  
16 performance standards for participation in the pool  
17 year-round for both supply plants and producer milk;  
18 eliminating the possibility of the same milk sharing in  
19 the higher-valued return of more than one marketwide  
20 pool; and increasing the rate of partial payments to  
21 dairy farmers.

22 The hearing will also consider relaxing some  
23 requirements for pooling the milk of individual  
24 producers.

25 Details of these proposals are set forth in

1 full in the Notice of Hearing and Federal Register  
2 which was published October 23, 2001, Volume 66, Number  
3 205, commencing at Page 53551. That document has been  
4 marked for identification and is admitted into evidence  
5 as Exhibit 1.

6 (The document referred to was  
7 marked for identification as  
8 Exhibit Number 1 and was  
9 received in evidence.)

10 JUDGE BAKER: Should you desire to scrutinize  
11 the proposal to greater length, it is suggested that  
12 you obtain a copy of Exhibit 1, if you have not already  
13 received a copy of the Notice of Hearing.

14 This administrative action is governed by the  
15 provisions of Sections 556 and 557 of Title 5 of the  
16 United States Code, and therefore it's excluded from  
17 the requirements of Executive Order 12866.

18 The hearing is called pursuant to the  
19 provisions of the Agriculture Marketing Agreement Act  
20 of 1937, as amended, and the requirements of 7 USC  
21 Sections 601 through 674, and the applicable Rules of  
22 Practice and Procedure governing the formulation of  
23 Marketing Agreements and Marketing Orders found under 7  
24 CFR Part 900.

25 The purpose of the hearing is to receive

1 evidence with respect to economic and marketing  
2 conditions which relate to the proposed amendments;  
3 more specifically set forth in the Notice of Hearing,  
4 and any appropriate modifications thereof to the  
5 tentative Marketing Agreement and to the Order.

6 Evidence also will be taken to determine  
7 whether emergency marketing conditions exist that would  
8 warrant omission of a recommended decision under the  
9 Rules of Practice and Procedure as set forth in 7 CFR  
10 Section 912(d) with respect to any of the proposed  
11 amendments.

12 Actions under the Federal Milk Order Program  
13 are subject to the Regulatory Flexibility Act as found  
14 in 5 USC, commencing at Section 601. This Act seeks to  
15 ensure that within the statutory authority of a  
16 program, the regulatory and information requirements  
17 are tailored to the size and nature of small  
18 businesses.

19 For the purpose of the Act, a dairy farmer is  
20 a small business, if it has an annual gross revenue of  
21 less than \$750,000, and a dairy products manufacturer  
22 is a small business, if it has fewer than 500  
23 employees. Most parties subject to a Milk Order are  
24 considered a small business.

25 Accordingly, interested parties are invited

1 to present evidence on the probable regulatory and  
2 informational impact of the hearing proposals on small  
3 businesses. Also, parties may suggest modifications to  
4 these proposals for the purpose of tailoring their  
5 applicability to small businesses.

6 I see that there are some people coming in  
7 the room, and there aren't enough chairs in the back,  
8 but we'll try to accommodate them as well. I see they  
9 have found some chairs. All right. Thank you.

10 The amendments to the rule proposed herein  
11 have been reviewed under Executive Order 12988, Civil  
12 Justice Reform. They are not intended to have a  
13 retroactive effect. If adopted, the proposed  
14 amendments would not preempt any state or local laws,  
15 regulations or policies, unless they present an  
16 irreconcilable conflict with the rules.

17 The Federal Register Notice of Hearing, being  
18 Exhibit 1, sets forth in detail provisions that must be  
19 followed before a party may file suit. Your attention  
20 is directed to that part of the Federal Register,  
21 October 23, 2001.

22 If you have any questions, I shall be glad to  
23 answer them.

24 The proposed amendments which we shall  
25 consider have not received the approval of the

1 Secretary of Agriculture. Unless there is some good  
2 reason to the contrary, we shall consider the proposals  
3 in the Order in which they are set forth in the Notice  
4 of Hearing.

5 The Proponents of the proposals will go  
6 first, and after they have completed their  
7 presentation, they are subject to cross examination and  
8 questioning. Opponents or those who wish to testify  
9 otherwise will then be given the opportunity to do so.

10 This is a public rulemaking hearing, in which  
11 the public can participate, and all interested parties  
12 have a right to be heard with respect to matters  
13 relevant and material to this proceeding. That right  
14 and opportunity to submit evidence will continue until  
15 the hearing is closed.

16 All witnesses give their testimony upon oath  
17 or affirmation, and after the direct testimony of a  
18 witness, questioning and cross examination is  
19 permitted. However, repetitious or extraneous  
20 questioning of a witness will be ruled out of order.  
21 Also, evidence which is immaterial, irrelevant or  
22 unduly repetitious will be ruled out of order, if it is  
23 not of the sort upon which responsible persons are  
24 accustomed to rely.

25 I have not engaged in the administrative

1 actions leading to the proposals under consideration  
2 nor do I participate in or do I have any part in  
3 formulating the recommended decisions or what may  
4 follow hereafter, other than after the close of the  
5 hearing, the parties have the opportunity to submit (1)  
6 proposed corrections to the transcript, and (2) briefs  
7 setting forth proposed findings of fact and conclusions  
8 and a brief in support thereof.

9 Interested parties who wish to do so should  
10 submit four copies to the Hearing Clerk, United States  
11 Department of Agriculture, 1400 Independence Avenue,  
12 Room 1081, South Building, Washington, D.C. 20250, at  
13 a date to be announced prior to the close of the  
14 hearing.

15 With respect to notices, I will ask later on  
16 that the Government supply the necessary notices that  
17 supposedly have been sent out in this case, and I shall  
18 mark them accordingly.

19 I shall now ask for appearances by the  
20 parties, those who wish to participate, and to enter  
21 their appearance on the record. I shall ask that they  
22 do so now at this time. I shall start at this end of  
23 the room and go over to that end of the room.

24 Mr. Cooper, I shall start with you. Would  
25 you please enter your appearance?

1           MR. COOPER: Yes. My name is Gregory Cooper.  
2 I'm with the Office of the General Counsel, United  
3 States Department of Agriculture, Washington, D.C.  
4 20250.

5           JUDGE BAKER: Thank you, Mr. Cooper.

6           Mr. Cooper, do you have those Notices to the  
7 Governors?

8           MR. COOPER: Yes, Your Honor, I do.

9           JUDGE BAKER: Would you care to supply me  
10 with them right now, and I'll enter them in the record?

11          MR. COOPER: Okay. Do you want me to go one-  
12 by-one?

13          JUDGE BAKER: Yes, that would be helpful.

14          MR. COOPER: Okay. The first one is the  
15 Notice to the Governors, and it's Notice of the Hearing  
16 that's given to the Governors of the States of  
17 Arkansas, California, Colorado, Idaho, Illinois, Iowa,  
18 Kansas, Minnesota, Missouri, Nebraska, New Mexico,  
19 North Dakota, Oklahoma, South Dakota, Texas, Utah,  
20 Wisconsin and Wyoming.

21          JUDGE BAKER: What is it dated, and by whom?

22          MR. COOPER: And it's dated the 24th of  
23 October 2001 by Joyce McPherson.

24          JUDGE BAKER: Thank you.

25          MR. COOPER: And I have three copies.

1 JUDGE BAKER: Very well. Thank you, Mr.  
2 Cooper.

3 That document shall be marked for  
4 identification and admitted into evidence as Exhibit 2.

5 (The document referred to was  
6 marked for identification as  
7 Exhibit Number 2 and was  
8 received in evidence.)

9 MR. COOPER: By the way, might I inquire as  
10 to the reporter having sufficient copies of Exhibit 1?

11 JUDGE BAKER: At this point, no. Thank you,  
12 Mr. Cooper.

13 (Pause)

14 MR. COOPER: Next, Your Honor, we have the  
15 Notice that a press release has been issued, and a copy  
16 of the press release, the Notice states that the  
17 attached press release, somebody didn't have the  
18 staple, so it's two pages that aren't attached. The  
19 second page is the press release itself.

20 It's signed by the Acting Director of the  
21 Public Affairs Staff, dated November 2nd, 2001, and  
22 attached is the press release entitled "USDA Sets  
23 Hearing to Amend the Central Milk Marketing Order".

24 JUDGE BAKER: Thank you.

25 MR. COOPER: I would ask this be marked as

1 Exhibit 3, Your Honor.

2 JUDGE BAKER: Exhibit 3. That shall be  
3 identified and entered into evidence as Exhibit 3, Mr.  
4 Cooper.

5 (The document referred to was  
6 marked for identification as  
7 Exhibit Number 3 and was  
8 received in evidence.)

9 MR. COOPER: Next, we have, Your Honor,  
10 documentation of Mailing of Notice to Hearings of the  
11 Interested Parties, signed by Donald Nicholson, the  
12 Market Administrator of this Order, and that's dated  
13 October 17th, 2001. That's a one-page document.

14 JUDGE BAKER: Very well. That document is  
15 identified and admitted into evidence as Exhibit 5.

16 MR. COOPER: Is it 4, Your Honor?

17 JUDGE BAKER: 4. 4. You're correct, Mr.  
18 Cooper. Thank you.

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

23 JUDGE BAKER: Thank you, Mr. Cooper.

24 Mr. Cooper, are you the only one who's  
25 entering an appearance at your table there?

1 MR. COOPER: No, Your Honor.

2 MS. BRENNER: My name is Constance M.  
3 Brenner. I'm a Regional Dairy Products Marketing  
4 Specialist with Dairy Programs, Agricultural Marketing  
5 Service, U.S. Department of Agriculture, 14th and  
6 Independence, Washington, D.C. 20250.

7 JUDGE BAKER: Thank you, Ms. Brenner.

8 MS. WARLICK: Carol Warlick, a Marketing  
9 Specialist at the Department of Agriculture,  
10 Agricultural Marketing Services, Washington, D.C.  
11 20250.

12 JUDGE BAKER: Very well. Thank you, Ms.  
13 Warlick.

14 I'll start at the next table.

15 MR. HOLLON: I am Elvin Hollon, Dairy Farmers  
16 of America.

17 JUDGE BAKER: Thank you.

18 MR. BESHORE: Marvin Beshore, Attorney,  
19 representing Dairy Farmers of America, Inc., Prairie  
20 Farms Dairy, Inc., Swiss Valley Farms, the Proponents  
21 of Proposals 1 through 6, and also under Proposal 7.

22 JUDGE BAKER: Thank you, Mr. Beshore.

23 MR. LEE: Gary Lee, Prairie Farms Dairy, Inc.

24 JUDGE BAKER: Thank you, Mr. Lee.

25 MR. DeFRAIN: Rex DeFrain, Nebraska. I'm a

1 dairy producer.

2 JUDGE BAKER: Thank you, Mr. DeFrain.

3 MR. VAUGHN: Jerry Vaughn of Oca, Nebraska.  
4 I'm also a dairy producer.

5 JUDGE BAKER: Thank you. Thank you.

6 MR. VETNE: My name is John Vetne, V-E-T-N-E.  
7 I'm an attorney with offices in Amesbury,  
8 Massachusetts. I'm representing Proponents and  
9 Opponents, including NTI, Foremost and others who will  
10 appear at various times of the hearing.

11 JUDGE BAKER: Thank you, Mr. Vetne.

12 MR. KURTH: My name is Curtis Kurth,  
13 K-U-R-T-H, Foremost Farms.

14 JUDGE BAKER: Thank you, Mr. Kurth.

15 MR. HAHN: James Hahn, H-A-H-N, Land of  
16 Lakes, Inc.

17 JUDGE BAKER: Thank you, Mr. Hahn.

18 MR. GRAN: My name is Gary Gran, G-R-A-N,  
19 Family Dairies, USA.

20 JUDGE BAKER: Thank you, Mr. Gran.

21 MR. CONOVER: Carl Conover. I'll be a  
22 witness in this hearing.

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

25 MR. ENGLISH: Charles English, Attorney,

1 Washington, D.C., representing Sweeza Foods and  
2 Anderson Erickson Dairy Company with respect to  
3 proposals to this hearing.

4 JUDGE BAKER: Okay.

5 MR. ENGLISH: I have Witnesses Carl Conover,  
6 Warren Erickson and Ernie Yates.

7 JUDGE BAKER: Thank you, Mr. English.

8 MR. TONAK: Dennis Tonak, T-O-N-A-K, Midwest  
9 Dairymen's Company, Rockford, Illinois.

10 JUDGE BAKER: Thank you, Mr. Tonak.

11 MR. ERICKSON: Warren Erickson, Anderson  
12 Erickson Dairy, Des Moines, Iowa. I'll be a witness.

13 JUDGE BAKER: Thank you, Mr. Erickson.

14 Thank you very much for entering your  
15 appearances.

16 If there is anyone who has not entered an  
17 appearance and who would like to do so, he may do that  
18 at any time during the proceeding.

19 I see that we may need some additional  
20 chairs, and I'm sure that can be arranged later on.

21 It is customary for the Government to go  
22 first. Mr. Cooper, I shall ask you two things. One,  
23 would you be kind enough to describe your function  
24 here, and secondly, would you please indicate whether  
25 the Government has any statistical or other data it

1 wishes to offer?

2 MR. COOPER: Yes. To the first question,  
3 Your Honor, my purpose here is to -- is not in favor of  
4 any particular proposal or opposed to any particular  
5 proposal. It's rather to help make a full record of  
6 all the necessary information to help the Secretary  
7 reach his decision in this matter and to provide such  
8 legal advice as the Secretary's representatives may  
9 request during the course of the hearing.

10 JUDGE BAKER: Very well. Thank you, Mr.  
11 Cooper.

12 MR. COOPER: And secondly, yes, we do have  
13 some statistical information we'd like to put in, and  
14 we'd like to have Mr. Stukenberg from the Market  
15 Administrator's Office testify.

16 JUDGE BAKER: Very well. Thank you.

17 Mr. Vetne?

18 MR. VETNE: Your Honor, John Vetne.

19 Before the first witness testifies on  
20 statistical data, four exhibits have been received, and  
21 I'm not sure what's the best way of addressing that,  
22 but we have -- maybe it's simply a representation by  
23 Mr. Cooper would be sufficient.

24 We have a press release, and it's simply the  
25 words of the press release, but it doesn't indicate to

1       whom it was released. For example, you know, is there  
2       a place in Washington, D.C., where it's posted, and the  
3       folks in Washington get notice of it, or is it sent to  
4       newspapers and the television/radio media regionally or  
5       nationally, or is it a press release that lays on a  
6       desk in Washington that doesn't have the same notice  
7       effect as one that is sent to newspapers in Iowa or  
8       Idaho or Tennessee?

9               So, we don't know what the effects of that  
10       release is. We do know what the words are, and then  
11       secondly -- that's Exhibit 3. And secondly, on Exhibit  
12       4, we have no disinterested parties. Again, I have the  
13       same concern, whether that -- to whom did that notice  
14       go? I guess we have the words. I assume that it went  
15       to handlers in the markets.

16               I'm not sure, I don't know to what extent it  
17       went to handlers and producers under other markets or  
18       even state markets who may be affected as a result of  
19       changes in marketing practices or changes in policy  
20       that may derive from this hearing.

21               So, I would request whoever is the best  
22       witness or person to explain for the record, to explain  
23       to whom those -- that release and those notices went  
24       and perhaps to whom it did not go, which is more  
25       important.

1                   JUDGE BAKER: Very well. Thank you, Mr.  
2 Vetne.

3                   Mr. Cooper?

4                   MR. COOPER: With regard to Exhibit 3, it  
5 says on the Notice itself that's attached to the press  
6 release that the press release was sent to "such  
7 newspapers and television and radio stations in the  
8 area subject to regulation or proposed to be regulated  
9 as reasonably will tend to bring the attention of  
10 interested persons that USDA will hold a hearing".

11                   Now, I don't know with any particularity  
12 which newspapers and television and radio stations in  
13 this area got this notice or didn't get this notice.  
14 That was something done by the Acting Director of the  
15 Public Affairs staff in Washington, and I really have  
16 no idea, other than it does state that newspapers,  
17 radio and television stations in this area, this  
18 Marketing Area.

19                   JUDGE BAKER: Very well.

20                   MR. COOPER: Now, with regard to Exhibit 4,  
21 that's something sent out by the Market Administrator's  
22 Office, and I think the representative who's going to  
23 put in the statistics will be able to tell us to whom,  
24 what interested persons it was sent.

25                   JUDGE BAKER: Very well. Thank you.

1 I believe you indicated, Mr. Cooper, that Mr.  
2 Stukenberg is going to give testimony at this time, is  
3 that not correct?

4 MR. COOPER: Yes, Your Honor. We'd like to  
5 put his testimony on first, so we have the statistics  
6 available to all parties at the hearing to use in their  
7 cross examination or their examination of other  
8 witnesses.

9 JUDGE BAKER: Very well. Thank you.

10 Sir, would you step forward and be sworn,  
11 please?

12 Whereupon,

13 DAVID C. STUKENBERG

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

16 JUDGE BAKER: Would you be seated, please.

17 DIRECT EXAMINATION

18 BY MR. COOPER:

19 Q Could you please state your name?

20 A My name is David C. Stukenberg.

21 Q And by whom are you employed?

22 A By the Milk Market Administrator here in  
23 Kansas City.

24 Q In what capacity?

25 A I am an Assistant Market Administrator.



1           Q     Now, those tables that weren't regularly-  
2 published material, is that from material gathered by  
3 the Market Administrator in the course of his duties?

4           A     Yes, sir, it is.

5           Q     And special documents of the Market  
6 Administrator?

7           A     Yes, sir.

8           Q     Okay. I'd ask you to go through Exhibit 5  
9 page-by-page, explaining what each of these tables or  
10 charts are, and then at the end indicate which ones  
11 weren't published material.

12          A     Yes, sir. Okay. Table Number 1 is the Price  
13 Summary, which is normally published on our  
14 statistical. The first five columns are Prices Paid or  
15 Minimum Prices to be paid to producers. The next four  
16 columns are the Class Prices Adjusted to a 3.5 Percent  
17 Butterfat Basis, and it's Minimum Prices that handlers  
18 are required to pay, and the last column is the  
19 Statistical Uniform Price which is merely the first  
20 column, which is the Producer Price Differential, added  
21 to the Class 3 Price to have serve as a benchmark on a  
22 uniform price.

23                   Table Number 2 is Marketing Data, indicating  
24 the number of farms that were pooled on the market, the  
25 utilization of the milk by class, and then the next

1 four columns were the Average Component Levels of the  
2 milk that is marketed or, excuse me, the three columns  
3 are the Component Levels of the milk marketed with the  
4 last column being -- or the Somatic Cell Count being  
5 the average for the market as far as the number of  
6 somatic cells. Somatic cells are not a component, and  
7 the last column is the Average Marketings Performed.

8 Table Number 3 indicates the Receipts by the  
9 Pooled Handlers, the first column being the Producer  
10 Milk, the second column being Other Source and Other  
11 Federal Order Milk. The next two columns, Beginning  
12 Inventory and Overages, which is part of doing  
13 business. The last column then indicates the Total  
14 Receipts by the Pooled Handlers.

15 Table Number 4 indicates the Class 1  
16 Utilization. The top portion of Table 4 is a listing  
17 of the Individual Products that were manufactured or  
18 sold. The bottom portion, we get into the Total Route  
19 Disposition, which is a carryover from the top page,  
20 and the Class 1 to Non-Pooled Plants consists of bulk  
21 and package to other Federal Order Plants and Plants  
22 Not Regulated under any Federal Order, and then we have  
23 the Inventory Shrinkage and a Gross Class 1.

24 From the Gross Class 1, we subtract the Other  
25 Source and Other Federal Order Receipts that were

1 allocated to Class 1, and the Beginning Inventory and  
2 Overage, and we end up with the resulting Total  
3 Producer Milk Utilized as Class 1.

4 JUDGE BAKER: Excuse me, Mr. Stukenberg.  
5 What is included in "Excess Shrinkage"?

6 THE WITNESS: Excess Shrinkage. Most  
7 handlers are allowed, especially of distributing pooled  
8 plants, is allowed two percent of the skim and  
9 butterfat as part of doing business. Anything in  
10 excess of that two percent at a bottling plant, in this  
11 case, would be allocated to Class 1 and be entitled to  
12 excess shrinkage.

13 JUDGE BAKER: Thank you.

14 THE WITNESS: You're welcome.

15 Table Number 5 is the Class 2 Utilization.  
16 Listed are the products, the fluid creams, dips and  
17 sour cream, yogurts, cottage cheese, frozen desserts,  
18 and then Other Class 2, that is a smaller number  
19 primarily from the standpoint that there are certain  
20 Class 2 products that are not listed here, and they're  
21 a small amount, and it would normally be restricted  
22 numbers. So, it's just listed as Other Class 2.

23 Then we have the Class 2 to Non-Pooled  
24 Plants, which again includes Other Federal Orders, and  
25 Shrinkage that is allocated to Class 2, and then the

1 Gross Class 2, and then the bottom part of Table 5, we  
2 do the same thing again as in Class 1. We have the  
3 Gross, and from that, we subtract the Other Source,  
4 which includes Other Federal Order, and then the  
5 Beginning Inventory and Overage and end up with the  
6 Total Producer Milk Utilized in Class 2.

7 Table 6 is a Class 3 Utilization. This is  
8 products that are -- the first column is Products Used  
9 in Class 3 or the milk that is used to manufacture  
10 Class 3 Products, I should state. The amount of milk  
11 that is ending up in Dump or Animal Feed, Class 3 to  
12 Non-Pooled Plants, again including Other Federal Order  
13 Plants, and Shrinkage and the Gross, and from the  
14 Gross, we subtract the Other Source and Beginning  
15 Inventory and Overage, and end up with a Class 3  
16 Producer Milk.

17 I might point out, too, that on the Approved  
18 Dumps and Animal Feed for the Year 2001, down at the  
19 bottom there, for July, August and September, you  
20 notice zeros. That is due to pricing where milk that  
21 is in these and in Shrinkage, also, ends up in the  
22 Lowest Class Price, and Class 4 happened to be the  
23 Lowest Class Price. So, when we move to Table 7, you  
24 will notice a big increase in those numbers down in  
25 Table 7.

1                   Table 7 is the Class 4 Utilization. The  
2 first column is the Milk Utilized in Class 4 Products,  
3 and then the Dumps and Animal Feed, Class 4 to Non-  
4 Pooled Plants, Inventory Shrinkage, Gross Class 4  
5 Utilization. Subtract from that the Other Source, the  
6 Inventory and Overage, and you'll end up with the Class  
7 4 Producer Milk Utilization.

8                   Table Number 8 lists the Pooled Handlers that  
9 were included in each of the months of the Year 2000,  
10 and flipping to the next page are 2001. This is a  
11 continuation of Table 8.

12                   First listed as the Distributing Plants, the  
13 city in which these plants are located, and the  
14 Applicable Class 1 Location Adjustment. The second  
15 section is the Supply Plants that supply or qualify to  
16 supply the distributing pool plants, and the last  
17 section are the Cooperative Acting as Handler, also  
18 known as 9(c). The second page on that for 2001 lists  
19 the same thing through the month of September.

20                   Flipping to Table 9, listed in Table 9 are  
21 for the year -- for the month December 2000. Listed  
22 here are the plants that have actually received  
23 transferred or diverted milk from pooled plants or  
24 cooperative acting as handler.

25                   Some of the plants listed in here are

1 bottling plants. In other words, they are Class 1  
2 Manufacturers but are not pooled or they manufacture  
3 products other than Class 1. These are broken down by  
4 state.

5 The Location Adjustment on the far right-hand  
6 column is also listed, and going through these, I think  
7 there's seven pages, and then on Table 10, we did the  
8 same listing for July 2001.

9 Also, I forgot to point out, too, on Table 9,  
10 as on Table 10, where it says, "Unregulated  
11 Manufacturing Plants", we have a number after that in  
12 parenthesis. For the year -- for December 2000, it's  
13 listed as a 163. That is the number of plants that are  
14 listed on Table 9. On Table 10, we have a 140 plants.

15 Continuing on then to Table 11, we have the  
16 Marketings by State, listing the number of farms that  
17 were pooled on the market and the amount of milk  
18 marketed. This is broken down for each of the months  
19 listing a Total for the Year 2000. Directly underneath  
20 that is the Nine-Month Total or Average, and then the  
21 Percent, that is, of the Total for the Nine Months.

22 The reason we used nine months was to give it  
23 a comparison between the Year 2000 and the Year 2001  
24 since we only have nine months of data for 2001.

25 At the end of Table 11, we have the Total

1 Federal Order Summary.

2 Table 12 actually consists -- starting off  
3 with a map of the Milk Shed for the Year -- for  
4 September 2000. The darker colors indicate a more  
5 concentrated amount of milk production. The Total  
6 Marketings for September 2000, you will note at about  
7 1.3 billion pounds. Of that, from counties located in  
8 the Marketing Area, 730 million pounds were pooled, and  
9 from counties outside the Marketing Area, and the  
10 Marketing Area, by the way, is defined by the dark line  
11 on each of the respective maps, and for September 2000,  
12 Out-of-Area Counties marketed a total of 601 million  
13 pounds.

14 For September 2001, which is the most current  
15 data we have available, the Total Marketings were 1.4  
16 billion pounds. In-Area Counties marketed 751 million  
17 pounds, Out-of-Area Counties marketed 657 million  
18 pounds on to the Order.

19 Continuing on on Table 11 is a breakdown by  
20 state.

21 MR. COOPER: Excuse me. Do you mean Table  
22 12?

23 THE WITNESS: Continuation of Table 12. I'm  
24 sorry.

25 For instance, if we were to look at the third

1 state down, Colorado, there were 23 counties in  
2 September of 2000 that had marketings from counties in  
3 the Marketing Area in the state of Colorado, and four  
4 counties were located outside of the Marketing Area but  
5 still were pooled from the state of Colorado, and this  
6 continues on for each of the states and into September  
7 2001. Listed on the far right column is the Percent  
8 Change.

9 Moving on to Table 13, we have the Individual  
10 Marketings by County, the Number of Producers, the  
11 Pounds of Milk Marketed, the Percent of the Total for  
12 the Market, and then the Average Marketings Per Farm,  
13 for each of the states and counties listed, and that  
14 continues on for 11 pages, and then we list the same  
15 thing for September 2001, which is Table 14 for  
16 September 2001.

17 Table 15. Now, this data is not regularly  
18 prepared or regularly released by our office, but in an  
19 effort to document some of the information for the  
20 proposals as listed, we prepared Table 15 and 16 for  
21 this hearing.

22 Table 15, the first column shows the Total  
23 Pounds a Producer of Milk Marketed. The second column  
24 under the heading "Milk Physically Received at  
25 Distributing Plants from Producers", that includes the

1 9(c) or Cooperative Acting as Handler Milk Received at  
2 Pooled Distributing Plants.

3 The third column over is the Amount of Milk  
4 Received at Distributing Plants from Pooled Supply  
5 Plants. The next column is the Addition of the  
6 Producers and the Supply Plant Milk. The next two  
7 columns are the Percents. They are of the Total  
8 Producer and Supply Plant Milk.

9 The last column is taking the fourth column  
10 over, dividing it by the first. In other words, the  
11 Percent Producer and Supply Plant Milk Received at  
12 Distributing Plants are of the Total Producer Milk  
13 Pooled.

14 Table 16 relates strictly to Supply Plants.  
15 The first four columns are the Receipts at the Supply  
16 Plants. The first column is from the Producers. The  
17 second column from Pooled Supply Plants which include  
18 Supply Plants and Distributing Plants shipping to a  
19 supply plant. The third column is the Other Federal  
20 Order Receipts, and the fourth column is the Non-Grade  
21 A and Non-Pooled Receipts at Supply Plants.

22 Now, Non-Grade A and Non-Pooled includes  
23 manufacturing grade milk producers, plus milk received  
24 from unregulated supply plants.

25 The next section is entitled "Dispositions".

1 So, of the milk received from -- at the supply plants,  
2 the pooled plants, they shipped out two pooled plants  
3 the amount of milk indicated in the first column under  
4 Dispositions, and the next column under Disposition is  
5 the Amount Shipped to Other Federal Order Plants, and  
6 then the last column is the Amount of Milk to Non-  
7 Pooled Plants.

8 The final column, entitled "Percent Pooled  
9 Plants and Other Federal Order Dispositions" are of the  
10 Total Producer Receipts, is simply adding the first two  
11 columns under Dispositions and dividing by the Total  
12 Producer Milk Received at Supply Plants.

13 Table 16-A, and this table was requested by  
14 Mr. Beshore as an expansion of Table 16, under the  
15 Other Federal Order Dispositions, and it lists by Order  
16 the amount of milk shipped to each of these -- each of  
17 the other Federal Order Plants.

18 And that concludes the explanation of the  
19 information contained in this particular exhibit.

20 JUDGE BAKER: All right. I'll ask if there  
21 are any questions on this exhibit. Does anyone have  
22 any questions for Mr. Stukenberg with respect to what  
23 has been marked as Exhibit 5? Yes?

24 MR. ENGLISH: Your Honor, Charles English.

25 I believe there are other exhibits that were

1 requested by the Industry, and I'm wondering if it  
2 might make more sense to put those in first, because I  
3 think there may be questions that cross-reference the  
4 various exhibits.

5 MR. COOPER: That's what I was going to  
6 suggest, Your Honor.

7 JUDGE BAKER: Very well. You know more than  
8 I do who requested it. Thank you, Mr. English. Very  
9 well.

10 MR. COOPER: Yes.

11 BY MR. COOPER:

12 Q Mr. Stukenberg, have you brought with you  
13 today another exhibit, entitled "Information Requested  
14 by Charles M. English, Jr."?

15 A Yes, sir, I have.

16 MR. COOPER: And I'd like to have that marked  
17 as Exhibit 6, Your Honor.

18 JUDGE BAKER: It shall be so marked, Mr.  
19 Cooper.

20 (The document referred to was  
21 marked for identification as  
22 Exhibit Number 6.)

23 BY MR. COOPER:

24 Q And was this exhibit also prepared from the  
25 official records of the Milk Market Administrator's

1 Office?

2 A Yes, sir, it is.

3 Q And can you tell us what this exhibit is?

4 A This exhibit consists of a Request by Mr.  
5 English less than two weeks before the hearing. This  
6 was received by fax and is indicated by the first page  
7 in the exhibit. It is listed here, each of the  
8 requests that he had, and after his signature, he  
9 followed it up with a Table of Contents which is the  
10 Table of Contents from the hearing recently held in  
11 Wadsworth, Ohio, in regards to Federal Order Number 33,  
12 and he requested that we prepare something along the  
13 line of this particular exhibit from the Order 33  
14 hearing.

15 After that, consists of each of the questions  
16 that he -- or points that he requested in his letter  
17 requesting the information, and each of the bullets or  
18 stars after the question indicate a reference either to  
19 our hearing-prepared Exhibit Number 5 or other tables  
20 contained in this particular exhibit.

21 Most of it are references, except I might  
22 want to draw attention to Number 4, where it was a two-  
23 part request. The first part of it consists of  
24 reference to Tables Number 13 and 14, which are the  
25 Marketings by State and County, and then the next

1 bullet after that, he requested the Producer Milk  
2 Produced in California. I think he meant pooled from  
3 the state of California, and I wanted to provide the  
4 Average Federal Order Class 1 Location Value for the  
5 Quantity of that milk.

6 And as indicated by that particular bullet,  
7 the California Producer Milk on the Order from March  
8 through September 2001 was priced at an average  
9 location value of \$1.62.67 cents per hundredweight, and  
10 the range for that amount during the period that that  
11 California milk was pooled was from \$1.6146 in March of  
12 2001 to \$1.6317 in July 2001.

13 Moving on, then, the rest of it is pretty  
14 much straightforward. Exhibit or Item Number 7 is a  
15 Restricted Number we were not able to provide to him.

16 Number 9, the point that he made there, I'm  
17 not exactly sure what he's getting at here, but we  
18 interpreted it strictly as listed here. He requested  
19 how we would interpret or how we would provide or how  
20 would we administer Proposal Number 5, and the answer  
21 is fairly frank, maybe too simplistic, I don't know,  
22 but we'll find out, I'm sure, but it states, "During  
23 the month of August through November, the Producer  
24 Receipts delivered to a handler described in 7(a), (b)  
25 or (c) would be divided by .25 and that amount would

1 equal the producer milk that may be pooled by that  
2 handler", and then, similarly, using .20, we would use  
3 the calculations for the months of December through  
4 July.

5 Moving on, then, to English Number 2, he  
6 requested in his Question Number 2, a list of the -- a  
7 list of all the pooled handlers, their location  
8 adjustment, and what provisions of the Order were used  
9 to qualify each of these handlers. That is the column  
10 on the far right, and it's referenced as 1032.7(a) and  
11 so forth.

12 The same is listed for Supply Plants. The  
13 asterisks would indicate that a supply plant is located  
14 outside of the Marketing Area, and this is all  
15 handlers, as near as we could calculate and should  
16 relate back to Table 8 for the months January 2000  
17 through the present.

18 Table Number 5 or English Number 5, as  
19 referenced here, relates to his Question Number 5. The  
20 first column has to do with the amount of supply plant  
21 milk, both in and outside of the Marketing Area.

22 The first column is the Supply Plant or the  
23 Producer Milk Received at Supply Plants. The second  
24 column is the Amount of Milk Diverted to Non-Pooled  
25 Plants, which again includes Other Federal Order, and

1 if you subtract the two, you have the amount that is  
2 physically received at the supply plant, and this is  
3 the same format as set up for the supply plants in the  
4 Marketing Area and outside of the Marketing Area.

5 Continuation of Table Number 5 on the next  
6 page is the same information on the first three columns  
7 as contained on the top section, and the percents are  
8 provided then on the inside and outside Marketing Area  
9 supply plants as they relate to the first column or the  
10 first three columns.

11 English Number 6 consists of a map, and this  
12 is in regards to his question of plants located more  
13 than 500 miles from the nearest distributing pooled  
14 plant. In doing so, as you can see, the only plants  
15 listed in our Table Number 9 and 10 would be located in  
16 the states of California, Oregon, Washington -- well,  
17 actually we don't have any states or plants located in  
18 Oregon, Washington that are receiving milk from the  
19 Central Order, but -- or pooling from the Central  
20 Order, but in California and Montana are the only two  
21 states listed here or shown here that would qualify as  
22 these 500-mile radius.

23 And English Number 10 was a last-minute  
24 request, and it consists -- it consists of Uniform  
25 Prices for the Periods 1998 through Present, and in

1 simple average, then it was calculated for each of  
2 these years for these selected cities, and these  
3 selected cities were designated by Mr. English, and  
4 this was requested via telephone, by the way.

5 That concludes my explanation of Exhibit  
6 Number 6.

7 Q Returning to Mr. English's Question Number 9,  
8 if you would, on Page -- I guess it's the fourth piece  
9 of paper in this exhibit, including the cover.

10 A Okay.

11 Q It's the last item on that page.

12 A Yes, sir.

13 Q When you have that citation there, it says,  
14 "1032.7(a), (b) and (c)". Is (c) correct or should  
15 that be (e)?

16 A Well, my copy says (e).

17 JUDGE BAKER: So does mine.

18 MR. COOPER: Some of them say (c).

19 THE WITNESS: Some of them say (c)?

20 BY MR. COOPER:

21 Q I'm sorry. You said (c) in your testimony.

22 A Oh, okay. I'm sorry.

23 Q It should be (e), is that correct?

24 A Should be (e).

25 Q Okay. Did you also bring with you another

1 document today, entitled "Information Requested by  
2 Elvin Hollon"?

3 A Yes, sir, I have.

4 Q Do you have three copies of that?

5 A Yes, sir.

6 MR. COOPER: I'd like to have that marked as  
7 Exhibit 7.

8 JUDGE BAKER: So marked, Mr. Cooper.

9 (The document referred to was  
10 marked for identification as  
11 Exhibit Number 7.)

12 BY MR. COOPER:

13 Q Was this prepared from official records of  
14 the Milk Market Administrator's Office?

15 A Yes, sir, it is.

16 Q Could you go through this document and  
17 explain what it was?

18 A Sure. The first page was the Request of Data  
19 from Mr. Hollon, and again some of it was statistical  
20 data that we were going to put into the record anyhow.

21 Point Number 2 is the one that I'll address  
22 primarily with the data that follows. The first page  
23 of DFA Number 2, as is titled up in the right-hand --  
24 upper right-hand corner, is a map, and it compares  
25 December 1998 with December 2000, and what's listed

1 here are seven states, going around the horn, that we  
2 provided data for.

3 Certain states, you know, he kind of wanted,  
4 as I recall from reading the question, the origin or  
5 milk that did not originate from counties that were  
6 located in the Marketing Area of the Predecessor Order  
7 32 or Federal Orders -- let me start over again.

8 Marketing Area of Predecessor Orders to  
9 Federal Order 32 for those that were not -- well, and  
10 he would like this in both the data and -- and a map, a  
11 table and a map.

12 So, looking at the map, the seven states had  
13 a total listing or total marketings then of 492 million  
14 pounds, and from those seven states, let me make sure I  
15 get this right, -- I'm sorry. The seven -- of the dark  
16 line on the map is the Marketing Area. Included in  
17 that Marketing Area of the seven states, there were 492  
18 million pounds.

19 The other states outside that dark line, also  
20 seven states, had 262 million pounds, or a seven-state  
21 total then of 754 million pounds pooled on the Order.  
22 Comparing this then to December 2000, the seven states  
23 inside the dark line Marketing Area had 569 million  
24 pounds. The others outside the Marketing Area had 748  
25 million pounds, for a combined total then of

1 1,318,000,000 pounds.

2 The table that follows is a breakdown by each  
3 of the seven states. For instance, for the state of  
4 Wisconsin -- we, also in this table, went back to  
5 December 1966 -- 1996, and there are two counties in  
6 the state of Wisconsin which are included in Order 32,  
7 and then in 1996, there were 17 other counties that had  
8 marketings in -- on each of the Predecessor, as he  
9 calls it, Counties or Predecessor Orders in the  
10 Marketing Area.

11 In other words, if you look down at the  
12 bottom, you'll see what the Predecessor Orders were.  
13 These were Orders 32, which was a Southern Illinois  
14 Order, Order 50, Central Illinois, 64, Kansas City, 65  
15 was the Nebraska/Western Iowa, 76, Eastern South  
16 Dakota, 79, Iowa, 134 was Western Colorado, and 137,  
17 Eastern Colorado.

18 So, like I said, listed then are Decembers  
19 1996, '98 and the Year 2000, with the final column on  
20 the right being the Percent Change from December 2000  
21 compared to December 1998.

22 Following that is a listing of each of the  
23 counties that had marketings during any of these three  
24 Decembers listed. Just the Total Pounds of Milk  
25 Marketed, and that concludes the information contained

1 on Table -- Exhibit 7.

2 Q Were Proposed Exhibits 5, 6 and 7 prepared by  
3 you or under your supervision?

4 A Yes, sir, they were.

5 Q Are they being offered in support of any  
6 particular proposal by you or for informational  
7 purposes only?

8 A These were prepared for informational  
9 purposes only.

10 Q Before I offer you for cross examination, Mr.  
11 Vetne raised the point a little earlier about the  
12 Notice to Interested Persons, which I believe has been  
13 received as Exhibit 4 in here and which was sent out by  
14 the Market Administrator's Office.

15 Are you familiar to who the interested  
16 persons that are notified about the hearing are?

17 A Yes, sir.

18 Q Could you explain?

19 A We have -- maintain a mailing list that  
20 consists of -- well, quite a few names, addresses and  
21 so forth, and this particular Notice included a Notice  
22 of Hearing as contained -- the same language as  
23 contained in the Federal Register and also the news  
24 release, and this is a list that is maintained by us  
25 from people requesting overtime.

1                   This goes back to the Predecessor -- each of  
2                   the Predecessor Orders listed here, where the  
3                   respective market administrators at that time, before  
4                   the Federal Order Reform, consolidated -- this is a  
5                   consolidated list of all known interested parties.  
6                   This list is updated regularly. Anybody requesting it  
7                   is made -- requesting either market statistics, the  
8                   news release, whatever they want, we gladly provide  
9                   that to them, and as I recall, this was sent out to  
10                   approximately 630 interested parties.

11                   Q     Okay. Do you notify all the handlers?

12                   A     The handlers are -- the handlers, we  
13                   especially make sure they are on the list, and then  
14                   they for the most part are included in the Interested  
15                   Parties List. If not, we make sure that they receive a  
16                   copy of it.

17                   MR. COOPER:   Okay. I have no further  
18                   questions, and I'd offer Mr. Stukenberg over for cross  
19                   examination before seeking 5 through 7 be received.

20                   JUDGE BAKER:   Very well. Thank you, Mr.  
21                   Cooper.

22                   Are there any questions or cross examination?

23                   Yes, Mr. Beshore.

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CROSS EXAMINATION

BY MR. BESHORE:

Q Mr. Stukenberg, on -- I want to look at what you've identified as DFA Number 2, part of Exhibit 7, first.

The footnote to this exhibit identifies Order 32, 50, 64, 65, 76, 79, 134 and 137 as Predecessor Orders to Existing Order 32, is that correct?

A That's correct. There was also portions of Order 106, the Southwest Plains Marketing Area.

Q Okay. Now, so, Order 32, as we know it, since January 1, 2000, regulates -- tell me if this is correct -- regulates all of the Class 1 sales, fluid milk handlers, distributing plants that were previously regulated under those Orders?

A Under the Orders listed here with portions of the Southwest Plains Order 106.

Q And are there any additional Class 1 plants which are regulated now that were not regulated under these Predecessor Orders?

A No, sir.

Q In fact, Federal Order Reform was -- was drawn so as not to include other -- Class 1 handlers who were not regulated previously --

A That's correct.

1 Q -- in the Federal Order Reform regulation?

2 A That's correct.

3 Q Okay. So, the universe of Class 1 sales,  
4 Class 1 plants that are presently part of the Order and  
5 served by milk pooled on the Order, is the same as it  
6 was pre-reform with those Orders?

7 A For the most part. There were a few handlers  
8 who became exempt because of the quality -- the  
9 quantity of the milk that was required, and these were  
10 small to begin with.

11 Q Very small handlers?

12 A Yes, sir.

13 Q So, you've actually got a few less -- a few  
14 less handlers because of the small handlers, and I  
15 assume --

16 A That's correct.

17 Q -- there's been some consolidation probably  
18 over the --

19 A Well, like any other industry, yes, there has  
20 been. Yes, sir.

21 Q Okay. And would it be fair then to conclude,  
22 and I think some of your other data basically shows it,  
23 that, you know, the Class 1 needs of this market have  
24 remained essentially the same as they have been  
25 previously?

1           A     I would think that's true.

2           Q     Okay.  Now, in December 1996, your Exhibit 7,  
3     DFA Number 2, shows that the needs of these Predecessor  
4     Orders were being supplied by producers, as you've  
5     indicated, in these seven states, both within -- inside  
6     and outside the designated areas, correct?

7           A     That's true.  There probably was some in the  
8     states not outlined in the map here, but that went to  
9     some of the distributing pooled plants, but for the  
10    most part, this was prepared to indicate just for the  
11    seven states, the shift in producer milk pooled on the  
12    Order.

13          Q     And in December '98, basically the same --  
14    roughly the same volume of milk in the same areas were  
15    supplying this -- the market at that time?

16          A     That's correct.

17          Q     Now, you were involved in the administration  
18    of some of those Orders at the time?

19          A     Yes, sir.

20          Q     To your knowledge, were the fluid needs of  
21    those markets being served by the -- by the producers  
22    serving the markets in 1996 and 1998 and 1999?

23          A     Yes, sir.

24          Q     Now, let's -- let's go to December 2000.  
25    Looking at the first state at the top of DFA Exhibit 2,

1 --

2 A Hm-hmm.

3 Q -- the change from December 1998 to December  
4 2000 in the state of Wisconsin is that rather than  
5 having the supply coming from 14 counties in Wisconsin  
6 outside the counties that are part of the Marketing  
7 Area, you had milk pooled from -- from 66 counties in  
8 the state of Wisconsin, is that correct?

9 A That's correct.

10 Q And rather than 38 million, almost 39 million  
11 pounds of milk in December '98, you had 395 million  
12 pounds in December 2000, correct?

13 A Correct, correct.

14 Q Do you know whether any of that additional  
15 360 million pounds of milk was needed to serve the  
16 Class 1 needs of the 32 Order?

17 MR. VETNE: Objection.

18 JUDGE BAKER: On what basis, Mr. Vetne?

19 MR. VETNE: The word "need" implies an  
20 opinion from this witness who is not a distributing  
21 plant operator about the requirements of persons who  
22 are distributing plant operators, and he's not  
23 qualified to testify as to what's in the mind of people  
24 operating plants that are not his plants.

25 JUDGE BAKER: Well, the objection has been

1 noted. It's overruled, and you may examine the witness  
2 along those lines as soon as Mr. Beshore is through,  
3 Mr. Vetne.

4 Mr. Beshore?

5 BY MR. BESHORE:

6 Q Do you recall the question, Mr. Stukenberg?

7 A I think so, but what the Class 1 needs not  
8 really increasing, and if the milk is to supply or to  
9 be utilized in Class 1, there is, like you had stated  
10 before, not really a change in the total Class 1 needs  
11 for the distributing pool plants.

12 Q Okay. Now, let me -- I want to explore just  
13 a little bit what -- what has been occurring with those  
14 additional volumes of milk that have come on to the  
15 Order.

16 If you look at Exhibit 5, would it be -- and  
17 probably Table 2. Is it correct to note that the  
18 change in utilization under the Order in January 2000  
19 through the months later in 2000 and 2001, that the  
20 additional volumes of milk pooled on the Order have  
21 primarily been used in Class 3?

22 A If you look at strictly the percentages, yes.  
23 If you flip back to the other tables, the pounds of  
24 milk would indicate the same.

25 Q Okay. Now, when Class 3 milk is brought on

1 to the Order, is it correct to say that the value that  
2 that brings to the Order is whatever the Class 3 value  
3 is for the milk?

4 A Minimum values, right.

5 Q And that's what you pooled, the minimum  
6 values?

7 A Yes, sir.

8 Q Okay. Now, assume that Class 3 production is  
9 in the state of, you know, Idaho. Would that milk be  
10 on the Order?

11 A A small amount. Yes, sir.

12 Q Okay. Well, let's just talk about Idaho  
13 then. Does it tell -- tell us in Exhibit 5, one of  
14 these tables, how much in the way of pooled draw the  
15 milk in Idaho would -- would draw out of the pool?

16 A No, it does not.

17 Q Wouldn't the location differential applicable  
18 in a plant in Iowa be something of a proxy for that  
19 number?

20 A It would be close, yes.

21 Q And for Idaho, what -- that number shows up  
22 on what exhibit?

23 A Table 11.

24 Q Table 11.

25 A The first page of Table 11.

1           Q     All right.  And what's the -- what's the  
2     location differential in Idaho?

3           A     Hmm.  Well, as you know, it's broken down by  
4     counties.  So, I don't know if we have a plant located  
5     in Idaho or not.  If not, I'll have to refer or defer  
6     to the Order.

7           Q     I thought it was -- maybe I'm wrong.  I  
8     thought this location was shown on --

9           A     Oh, okay.

10          Q     The Location Values were shown on one of  
11     these tables.  Maybe it's Exhibit 10.

12          A     Well, that's what I was looking at, but  
13     apparently none of the plants in Idaho received --

14          Q     Okay.

15          A     -- any -- any milk.

16          Q     Well, let's look at California then.  The  
17     calculation that you made for Mr. English showed the  
18     average value of the milk in the state of California  
19     for the time period that he inquired about, is that  
20     correct?  The average location differential?

21          A     That's correct.

22          Q     So, it was what?  A dollar?

23          A     A \$1.60 something.

24          Q     \$1.60 something.  So, assuming that the milk  
25     in California that went to Leprino Foods was Class 3

1 made into cheese --

2 A Hm-hmm.

3 Q -- out there and contributed to the Class 3  
4 value of the Order. The hundredweight of that milk was  
5 entitled to a differential dollar setting for Leprino.  
6 I'm looking at Page 1.

7 A Right. That's correct.

8 Q And -- and all the milk in California had an  
9 average of a \$1.62 or 3?

10 A \$1.63, rounded, yes.

11 Q Okay. How about milk in Wisconsin, outside  
12 the -- outside the Marketing Area? Would that be in  
13 the \$1.70-1.75 range, most of that milk, according to  
14 the --

15 A Right. According to Table 10, Pages 5 and 6,  
16 yes. It appears to be somewhere -- 5, 6 and 7. It  
17 appears to be in that area, yes.

18 Q Now, I want to explore with you just a little  
19 bit the tables where you have -- which are Tables 15  
20 and 16 in Exhibit 5, where -- and one -- one of the  
21 tables in -- in Exhibit 6, which details to a degree  
22 supply plant milk movements.

23 First of all, Table 16 of Exhibit 5 shows  
24 that milk that's pooled at supply plants, if I  
25 understand the table correctly, has been between --

1       it's been averaging around 200 million pounds a month,  
2       roughly?

3             A       Roughly, yes.

4             Q       With low months a 170 and high months over,  
5       you know, what, up to 251 million in September of 2000?

6             A       Yes, sir.

7             Q       Okay. Now, that -- we've already noted that  
8       there's much more milk than that outside the Market  
9       Area that has to be added to the pool since January 1,  
10       2000, correct?

11            A       Correct.

12            Q       Okay. So, can you explain to me, if milk in,  
13       you know, let's say, Northern Wisconsin, North and  
14       Central Wisconsin, is not pooled in the supply plant  
15       because most of it's not, and let's assume it's not  
16       delivered to a distributing plant in St. Louis or  
17       anywhere else in Order 32, because it's mostly made  
18       into cheese, as the utilization indicates, how would  
19       that milk be pooled on the Order?

20            A       It would be pooled by the cooperatives acting  
21       as handler on that milk.

22            Q       Okay. And is that what we usually refer to  
23       as 9(c)?

24            A       That's correct.

25            Q       Okay. Now, what -- the present Order

1 regulation, is it correct to say, allows 9(c) milk to  
2 be pooled under the -- on what -- what -- how much 9(c)  
3 milk has to be delivered to the market or cooperative  
4 to be pooled milk if it's 9(c) milk?

5 A Well, first off, it has to be received at a  
6 pooled plant, and after --

7 Q Each producer's?

8 A Each producer's or each -- one day's delivery  
9 has to be received at a pooled plant, and then after  
10 that, it varies, depending on the cooperative  
11 operations.

12 Q What's the minimum -- on that cooperative's  
13 9(c) report, what's the minimum volume, the minimum  
14 proportion, if -- if there is on -- minimum proportion  
15 that must -- of -- of milk in that 9(c) report must be  
16 delivered to a fluid milk distributing plant in Order  
17 32?

18 A There is none.

19 Q None?

20 A Right.

21 Q Okay. So, a cooperative could pool  
22 theoretically a hundred million pounds of milk on a  
23 9(c) report in Order 32 today without maneuvering any  
24 of that milk to a pooled distributing plant?

25 A That's correct.

1           Q     Does it have to deliver -- deliver some  
2     portion of that milk to a pooled plant, including  
3     pooled supply plants?

4           A     Yes.

5           Q     Okay. And what -- what proportion is that?

6           A     Hmm.

7           Q     Does it vary by month?

8           A     It varies by month, right. What, 30 -- 35  
9     percent? 35 percent in the months of September through  
10    November and January, and 25 percent in February  
11    through April and December.

12          Q     Is -- is there any requirement in the Order  
13    that -- that those deliveries to -- strike that. Let  
14    me back up.

15                 So, a portion of the milk, the stipulated  
16    portion, has to be delivered to pooled supply plants.  
17    How much milk do the pooled supply plants have to  
18    deliver to fluid distributing plants under Order 32?  
19    Let's -- let's take the month -- well, the month of  
20    June 2001.

21          A     In June, 25 percent has to be delivered to  
22    the distributing pooled plants.

23          Q     From pooled supply plants?

24          A     From pooled supply plants.

25          Q     Okay. So, if a cooperative -- presently, if

1 the required proportion of the 9(c) handler's milk is  
2 delivered to the pooled supply plant, the supply plant  
3 has to deliver 25 percent of its physical receipts to  
4 pooled distributing plants to qualify, is that correct?

5 A That's correct.

6 Q Okay. The diversions -- the 9(c) diversions  
7 off that supply plant do not need to be accounted for  
8 in any way in the supply plant's deliveries to  
9 distributing plants to qualify, is that correct?

10 A Define "accounted for". What -- what --

11 Q Well, --

12 A You mean by individual --

13 Q -- the supply plant -- if the supply plant  
14 receives four million pounds of milk, physically  
15 receives four million pounds of milk in the month of  
16 June, --

17 A Hm-hmm.

18 Q -- but the diverted -- there's milk diverted  
19 from that plant on a 9(c) report, how much milk does  
20 that supply plant have to deliver to a distributing  
21 plant to remain part of the pool?

22 A Would you repeat that question?

23 Q Let me move on. Let's look at -- let's look  
24 at Table 16-A, Table 16-A, 16 and 16-A of Exhibit 5.

25 A Hm-hmm.

1           Q     The supply plant dispositions to other  
2 Federal Order Plants shown on Table 16 are itemized to  
3 the extent -- or broken down to the extent that you  
4 could break them down in Table 16-A, is that correct?

5           A     That's correct.

6           Q     Okay. So, 16-A's a breakdown of the  
7 Disposition column of Other Federal Orders on 16?

8           A     That's correct.

9           Q     Now, taking -- let's take the month of  
10 December 2000. Does this indicate that essentially 99  
11 percent plus of the deliveries to Other Federal Order  
12 Plants from supply plants under -- under Order 32 went  
13 to the Upper Midwest Order 30 Distributing Plants?

14          A     That's correct.

15          Q     Okay. And when it goes to Other Federal  
16 Order Plants, are those distributing plants?

17          A     Probably in most cases, yes.

18          Q     So, that Order 32 pooled milk is serving the  
19 needs of those Order 30 Distributing Plants?

20          A     I think that's a fair statement.

21          Q     Okay. And in other months here, in August  
22 and September of 2001, the Order 32 Pooled Milk at  
23 those five plants was shipped to distributing plants in  
24 the Southeast Order, correct?

25          A     Correct.

1           Q     And the same indication would apply there,  
2     that it was serving the needs of those distributing  
3     plants in the Southeast Order, correct?

4           A     Correct.

5           Q     Okay.  But all the -- all the manufacturing  
6     volume at those supply plants was pooled under Order  
7     32?

8           A     I'd say that's probably true.

9           Q     Well, all the -- all those supply plants were  
10    pooled in Order 32, correct?

11          A     Right.

12          Q     And a pooled supply plant is under Order 32?

13          A     Well, your "manufacturing" threw me there,  
14    when you put that word in there.

15          Q     Well, some pooled supply plants are not  
16    manufacturing plants, --

17          A     Correct.

18          Q     -- they're just reloading facilities or  
19    receiving stations?

20          A     That's correct.  Right.

21          Q     Okay.  Whatever utilization those plants had  
22    is pooled in Order 32?

23          A     Right.

24                 MR. BESHORE:  Those are all the questions I  
25    have at the moment.  Thank you.

1 THE WITNESS: You're welcome.

2 JUDGE BAKER: Thank you, Mr. Beshore.

3 Are there other questions? Yes, Mr. English.

4 CROSS EXAMINATION

5 BY MR. ENGLISH:

6 Q I guess, first, I should thank you for your  
7 quick turnaround.

8 A You're certainly welcome.

9 Q Let me begin in Exhibit 5 with a couple of  
10 sort of information definitional questions. In your  
11 Table 8, the List of Pooled Handlers, turning to --  
12 excuse me -- supply plants, for information purposes,  
13 you've listed Beatrice Cheese in Fredericksburg, Iowa,  
14 through April of this year, and then beginning in May  
15 of this year, ConAgra Dairy Foods.

16 Would it be fair to say that those are the  
17 same operation, just under different ownership?

18 A That's correct.

19 Q And is that operation proprietary or a  
20 cooperative operation?

21 A Proprietary.

22 Q Looking down the list, there's one other I  
23 just don't recognize, Wapsie Valley in Independence,  
24 Iowa. Is that a proprietary or cooperative operation?

25 A That's proprietary.

1           Q     For those -- those supply plants that are in  
2     operation today on this Order, looking down the list  
3     for a moment, are those the only two, the ConAgra and  
4     the Wapsie Valley, that are proprietary operations or  
5     supply plants that are in operation today?

6           A     I think, yes, sir, that's correct.

7           Q     With respect to the Table 12 and also at the  
8     same time, if you could, the DFA Number 2, Continued  
9     Selected Counties of Milk Marketing on the Central  
10    Order. It would make sense to have them both out at  
11    the same time.

12                   Turning first to the information for  
13    Illinois, I would note that from December '98 to  
14    December 2000, there's -- there's virtually no change  
15    in the in-area and in fact total has actually gone up  
16    from December '98 to December 2000.

17                   But then if you look at Table 12 for  
18    September, from September 2000 to September 2001, you  
19    see a rather significant drop in the amount of producer  
20    milk pooled on this Order from Illinois, correct?

21           A     That's correct.

22           Q     To your knowledge, have -- is that much milk  
23    essentially no longer being produced in Illinois from  
24    September of 2000 to September 2001?

25           A     That is not the total explanation for the

1 drop, I'm sure.

2 Q Would -- would a significant explanation for  
3 the drop be milk that is produced in Illinois that is  
4 now pooled on other Orders?

5 A That's correct.

6 Q Such as Orders 5 and Order 7?

7 A I would assume 5 and 7 would be the correct  
8 ones.

9 Q Similarly, on Table 12 of Exhibit 5, Missouri  
10 shows a significant drop in pooled production from  
11 September 2000 to September 2001.

12 Q Would it also be the case that a significant  
13 portion of that drop is reflected in milk that is no  
14 longer pooled on Order 32 for Missouri, but it is  
15 pooled on Orders 5 and Order 7?

16 A I'm not totally sure on Missouri. To my  
17 knowledge, we have not lost any plants to Order 7.  
18 Again, I -- I can't say for sure on Missouri.

19 Q Okay. Would it be fair to say, though, that  
20 whether you lost plants, that milk -- the producers  
21 there could be now being associated with Orders south  
22 and east of Missouri?

23 A Now, that's correct, yes.

24 Q And sort of piecing together for a moment  
25 your Table 16 and 16-A from Exhibit 5, and now also

1 getting Exhibit Number 6 out for a moment and looking  
2 at English Number 5, I have a couple questions as to  
3 how those tables may relate, and I'm sorry. I -- I  
4 need Table 15 and Table 16 of Exhibit 5 to compare it  
5 to English Number 5 --

6 A Okay.

7 Q -- and Number 6. If I read it correctly, if  
8 I understand it correctly, the column on Table 15 for  
9 Milk Physically Received at Distributing Plants from  
10 Pooled Supply Plants, for instance, in January of 2000,  
11 you show 24,989,860.

12 A Correct.

13 Q Would that number of pounds be included in  
14 the third column of English Number 5, January 2000,  
15 physically received all Order 32 supply plants, the  
16 141,216,485?

17 A That would be included as part of that, yes.

18 Q Essentially, that 24,989,860 pounds were  
19 first received at a supply plant and then transferred  
20 to a pooled plant?

21 A That's correct.

22 Q Would that milk necessarily be received for  
23 this purpose at a pooled distributing plant under Order  
24 32?

25 A Yes.

1           Q     Okay.  And so, that number is different from  
2     the number that you show in Table 16-A for Supply Plant  
3     Transfers and Diversions to Other Order Plants,  
4     correct?

5           A     Yes.

6           Q     Let me ask a few questions about California  
7     for a moment.  Any milk pooled on this Order first has  
8     to be delivered at the point of one day's production to  
9     an Order 32 pooled plant, correct?

10          A     That's correct.

11          Q     And so, to the extent that milk has been  
12     pooled that is produced in California, a volume of that  
13     milk is first received at a pooled plant under Order  
14     32?

15          A     That's right.

16          Q     Is that volume included in the value  
17     calculation that you did for me in response to Question  
18     Number 4?

19          A     Yes, it is.

20          Q     So, that average number includes not only the  
21     average of the plants to which diverted in California  
22     but it includes the portion of milk that was used to  
23     qualify that producer on Order 32, correct?

24          A     That is correct.

25          Q     And looking at your Exhibit 5, and your Table

1 of Producer Milk, Table 14, Page 1, looking at the  
2 California milk from, say for instance, Tolare, there  
3 are 37 producers and 42 million pounds of milk  
4 associated with those producers, correct?

5 A That's what's indicated, yes.

6 Q And so, on average, that third column would  
7 show that there's 1,161,000 pounds of milk associated  
8 with the milk producers, correct?

9 A An average per farm, yes.

10 Q What -- do you know the range at all of those  
11 farms?

12 A No, I do not.

13 Q Do you know how many tankers it might take to  
14 move that volume of milk, one day's production, to --  
15 to this Order?

16 A Well, very simplistically, if you divide it  
17 by a 50,000 pounds, that would give you an indication,  
18 yes.

19 Q And 50,000 pounds would be what you would  
20 use, based upon California tankers or --

21 A Well, the just general use of the -- what's  
22 generally considered a tanker-load of milk. Usually a  
23 little bit less than that, but 50,000 would give you a  
24 good indication.

25 Q And so, how much -- how much milk, based upon

1 that, would these producers have to deliver to become  
2 associated with this Order?

3 A Based on?

4 Q Based on that 1,161,000 average marketings.

5 A Well, it would, on average then, have to  
6 deliver one day's production out of that. So, divide  
7 that by the number of days you have, in September, it  
8 would be 30, and that producer then on average would  
9 have to deliver that amount of milk, whatever that  
10 calculates out to. Roughly a fair amount.

11 Q About a tanker-load per producer?

12 A That'd be close to it, yes.

13 Q And once that one day's production was  
14 delivered to this Order, is there really enough freight  
15 in that to make those deliveries on a regular basis, to  
16 your knowledge?

17 A I would doubt it. I'm not a freight expert,  
18 but I doubt it.

19 Q By the time you get to September of this year  
20 and about 72 million pounds of California milk pooled,  
21 and then a one-time touch-base requirement, and those  
22 numbers are now staying pretty constant, may I assume  
23 that by September, since that volume has remained  
24 constant, that almost all that milk now listed as being  
25 pooled on Order 32 as California source milk is being

1 diverted to California plants?

2 A That is a safe assumption, yes.

3 Q With respect to some of the statistics for  
4 the month of September and Class 1 Utilization for this  
5 market and maybe some Class 2 Utilization for this  
6 market, I note that fluid cream sales on this market  
7 year comparison, September of 2000 to September of  
8 2001, dropped about 1.2 million pounds.

9 Would it be fair to say that that was a  
10 special impact of the September 11th events and that  
11 some of the September statistics may have some skewing  
12 in terms of Class 1 Utilization as a result of that?

13 A It would be speculation on my part. I have  
14 no idea.

15 Q Do you know if fluid cream sales were down  
16 significantly in September, as a result of the  
17 processors not being able to make sales of fluid cream?

18 A I would assume between that and price.  
19 Again, it's an assumption.

20 Q Okay. Let me turn now to our -- maybe my  
21 confusion only, but who knows, with respect to Proposal  
22 Number 5, and the question I asked in Number 9, and  
23 maybe the way to get at it is to ask some questions  
24 with some examples, to see if I understand it  
25 correctly, and I'll try not to trip myself up.

1                   But assume for a moment that you have a  
2 pooled distributing plant on Order 32, doesn't matter  
3 which one, and assume for a moment that you have a  
4 supply plant, and at least initially, I'd like to  
5 assume that we're talking about Proposal 5 and maybe  
6 the volume of shipping, which is Proposal 1, but  
7 without considering whether or not the supply plant is  
8 inside or outside the Marketing Area.

9                   A     Okay.

10                  Q     Let's assume that you have a supply plant  
11 that delivers through 9(c) one million pounds of milk  
12 into the pooled distributing plant that is regulated in  
13 Order 32, --

14                  A     Okay.

15                  Q     -- and that it also delivers three million  
16 pounds of milk into its supply plants.

17                         Am I correct that under the current Order  
18 provisions, that operation could also divert up to 12  
19 million pounds on to a non-pooled plant?

20                  A     Yes.

21                  Q     So, with the delivery of one million pounds  
22 to the Order 32 pooled distributing plants, 60 million  
23 pounds could be pooled, correct?

24                  A     That's correct. Right.

25                  Q     Under Proposal 5, if adopted, under the same

1 scenario, one million pounds delivered to the pooled  
2 distributing plant, three million pounds delivered to  
3 the supply plant, and 12 million pounds diverted, how  
4 many pounds of milk could be pooled under Proposal 5?

5 A Okay. You're running how much through where  
6 again?

7 Q One million pounds into the pooled  
8 distributing plant.

9 A Okay.

10 Q Three million pounds delivered to the supply  
11 plant, and 12 million pounds diverted to a non-pooled  
12 plant. So, it's the same -- it's basically the same  
13 scenario. In other words, the facts have not changed.  
14 The only thing that's changing is the regulation.

15 A Hm-hmm.

16 Q Would I be right -- I mean, my reading of  
17 Proposal 5, and this is where I get tripped up  
18 sometimes, is that --

19 A Hm-hmm.

20 Q -- at this point now, with one million pounds  
21 delivered to the pooled distributing plant, you could  
22 only pool up to four million pounds, --

23 A Right. That's correct.

24 Q -- is that correct?

25 A I agree with you there.

1           Q     Okay.  And so, whatever the verbiage is, the  
2     bottom line is what you've done is created a shipping  
3     percentage, assuming it's 25 percent, --

4           A     Right.

5           Q     -- that links directly to the number of  
6     pounds that are delivered to pooled distributing plants  
7     and doesn't take into consideration the number of  
8     pounds that are delivered to the supply plant?

9           A     That's correct.  Right.

10          MR. ENGLISH:  And that means that's all I  
11     have.  Thank you.

12          JUDGE BAKER:  Very well.  That brings us to a  
13     time for our morning recess, and we'll take a 15-minute  
14     recess at this time.

15                     (Whereupon, a recess was taken.)

16          JUDGE BAKER:  Can we please take our seats?

17                     (Pause)

18          JUDGE BAKER:  Would you please come to order?

19                     Mr. Stukenberg is still on the stand, and Mr.  
20     English, I think you had completed your questioning.

21                     Are there other questions for Mr. Stukenberg?  
22     Mr. Vetne?

23                     (Pause)

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CROSS EXAMINATION

BY MR. VETNE:

Q Mr. Stukenberg, preliminarily, in response to my query earlier and your answers to Mr. Cooper, you talked about the mailed Notice to Interested Parties.

A Yes, sir.

Q And you indicated there are about 600 persons or companies on your mailing list?

A I'd like to revise that at the present time. I was informed by one of the fellows that helped mail out this one, and he said it was more in the vicinity of 360.

Q Okay. Thank you.

A And that also includes non-member producers, too, which I forgot to mention.

Q I was going to ask. The -- that's dairy farmers whose milk is pooled on Order 32 who are not members of a cooperative association, --

A That's correct.

Q -- is that right? The mailings to non-member producers, was that based on producers in a given month who are not members?

A At the present time, when the Notice of Hearing was signed, yes.

Q When the Notice of Hearing was signed. Okay.

1 And non-member producers on the market, does the  
2 identity of those producers change from month-to-month?

3 A Minimally.

4 Q Year-to-year, maybe a little bit more than  
5 minimally?

6 A Yes.

7 Q Am I correct that you did not solicit or  
8 attempt to solicit mailing lists from other market  
9 administrators, including producers that are on their  
10 mailing lists?

11 A That's correct. We used strictly our own.

12 Q I apologize that the questions are not  
13 necessarily in a logical sequence, but I'm trying to  
14 cover the turf.

15 In Table 12 of Exhibit 5, Mr. Stukenberg,  
16 showing counties with milk marketings, in response to a  
17 question, I think, from Mr. Beshore, you stated that  
18 there had been some consolidation and continuing  
19 consolidation of the dairy industry.

20 Would you describe what you meant by that?

21 A Handlers being merged or bought out by other  
22 handlers. That includes fluid processors and also the  
23 -- some of the cooperatives. Over time, there's been  
24 cooperatives merging with each other. That's basically  
25 what I meant by that.

1           Q     Okay.  Would you agree that there's also been  
2     some farm consolidation, individual producers selling  
3     out, and their farms going to a neighbor, and so the  
4     surviving producer's larger?

5           A     I don't know about the farms, but I'm sure  
6     the cows have been purchased by neighboring producers,  
7     yes.

8           Q     Do you know to what extent the marketings  
9     shown on Exhibit 5, Table 12, reflect distributing  
10    plant consolidation, and by that, I mean, whereby  
11    consolidation results in a plant with more  
12    distribution, serving a greater portion of this market  
13    that didn't serve it in that quantity before?

14          A     Based on the information that I have seen,  
15    there doesn't appear to be any major changes in the  
16    distribution patterns of the distributing pooled  
17    plants.

18          Q     Since January 1 of 2000, when consolidation  
19    took effect, have there been any significant voluntary  
20    depooling of producer milk, so that it becomes non-  
21    pooled milk?

22          A     Yes, there has.

23          Q     Is this milk that is ordinarily delivered to  
24    a non-pooled plant?

25          A     I would say for the most part, that's true,

1 yes.

2 Q Okay. And this is something that handlers  
3 can elect to do on a producer-by-producer basis or  
4 diversion-by-diversion basis?

5 A Yes.

6 Q Is there any data here that reflects the  
7 volume of milk that would be pooled or associated with  
8 the market if you take into account depooled milk?

9 A Nothing contained in this exhibit. No, sir.

10 Q Or any exhibit that you prepared?

11 A No, sir.

12 Q And prior to January 1 of 2000, would it be  
13 correct to say that the frequency with which and the  
14 volume of which diversion -- depooling took place was  
15 far greater than it has been since January 1, 2000?

16 A Yes.

17 Q With respect to Exhibit 7, DFA Number 2,  
18 showing pounds of milk from various sources, prior to  
19 January 1 of 2000, do you have knowledge as to whether  
20 milk was depooled, for example, during December of '96  
21 or December of '98, that was not depooled in December  
22 of 2000?

23 A I do not have that direct knowledge at this  
24 point, no, without going back and doing some checking.

25 Q In -- in the years 1996 and 1998, would you

1 agree with me that the volume of milk pooled in these  
2 Consolidated Orders or this Consolidated Order or its  
3 Predecessors varied substantially from month-to-month  
4 because of depooling?

5 A That's correct, yes.

6 Q Did you, when you prepared this exhibit, make  
7 any judgment as to whether December 1996 or December  
8 1998 was representative of the consolidated markets or  
9 the -- or their predecessors for those years?

10 A No, we did not. It was data that we had  
11 available in our historic database, and we were able to  
12 go back to 1996 without any problem.

13 Q You -- does your office ordinarily publish  
14 producer milk by state and county for every month or  
15 just certain months of the year?

16 A It's for every month.

17 Q And how long has your office done that?

18 A We've had it since Federal Order Reform has  
19 taken effect, January of 2000.

20 Q Okay. And prior to January of 2000, did your  
21 office, as a matter of course, publish producer milk by  
22 state and county?

23 A We didn't exactly publish it, but we did have  
24 it available for any inquiries, plus it was also  
25 published by Dairy Programs periodically.

1 Q Periodically, --

2 A Right.

3 Q -- the Dairy --

4 A Hm-hmm.

5 Q -- Programs Branch of AMS periodically  
6 publishes a, I guess, supplement to the Federal Milk  
7 Order Statistics that shows producer milk by state and  
8 county?

9 A That's correct.

10 Q And you didn't include with any of your --  
11 let me ask it this way.

12 You publish an Annual Statistical Summary?

13 A Yes, we do.

14 Q In that Annual Statistical Summary, do you  
15 include producer milk by state and county for certain  
16 months?

17 A No, we do not.

18 Q And in none of your monthly releases, do you  
19 include producer milk by state and county for months  
20 prior to January of 2000?

21 A Not that I can recall, no.

22 Q In colloquy with Mr. Beshore, you answered a  
23 number of questions which were put to you, and the term  
24 "Class 1 Needs" was used, and at one point, I got up  
25 and questioned that term.

1           When you used "Class 1 Needs" or responded to  
2 questions about Class 1 Needs in your answers, would it  
3 be correct to say that your answer referring to needs  
4 would be synonymous with volume of Class 1 milk?

5           A     I would say it would be a very good  
6 indication of what the Class 1 Needs are when you look  
7 at the route sales and so forth.

8           Q     In your mind, when you were answering those  
9 questions, did you have any concept or definition of  
10 the word "needs" that was different from Class 1  
11 Volume?

12          A     No, I did not.

13          Q     I believe it's Table 4. Table 4, Total Class  
14 1 on Routes. Is that -- is that total all Class 1  
15 sales by regulated handlers, including Class 1 Sales  
16 Outside of the Marketing Area?

17          A     That's correct. It does.

18          Q     Does Total Class 1 Sales include Class 1  
19 Sales within the Marketing Area by Non-Pooled Plants?

20          A     Not on this table, it doesn't, no.

21          Q     Not on this table?

22          A     No, nor -- nor in any other table in this  
23 exhibit.

24          Q     Okay. And in any exhibit that we're aware of  
25 here?

1           A     No.  The Class 1 Sales in the area by non-  
2     pooled plants?

3           Q     By non-pooled plants.

4           A     That is not included in any of this exhibit.

5           Q     Okay.  And just so we understand what non-  
6     pooled plants would include, it would include plants  
7     that have some sales in the market but not enough to be  
8     fully regulated?

9           A     That would be part of it, yes.

10          Q     Partially -- partially-regulated plants,  
11     they're called?

12          A     Correct.

13          Q     Okay.  And it would include Class 1 Sales of  
14     Producer-Handlers and Other Exempt Plants?

15          A     Correct.

16          Q     Okay.  Other than those two categories, is  
17     there any other source of --

18          A     Other Federal Order Plants Selling into the  
19     Marketing Area.

20          Q     Other Federal Order Plants Selling into the  
21     Marketing Area?

22          A     That's correct.

23          Q     Are you aware of whether there's been any  
24     significant change in the volume of, first of all,  
25     sales in the Marketing Area by non-pooled plants?

1           A     There has not been.

2           Q     And when you use pre-January 2000 and post-  
3     January 2000 as the reference, and when you go pre-  
4     January 2000, say, you know, three or four years, say  
5     1996 to 2000 versus January 2000 to the current time,  
6     any significant change?

7           A     I cannot answer that question from the  
8     standpoint of the Central Federal Order being a merger  
9     of, what is it, eight or eight and a half different  
10    Orders. We were not administering but three of those  
11    Orders, and from my standpoint, you know, I just don't  
12    have those numbers. I'd have to go back and check.

13          Q     Okay. And the same reference point for  
14    distribution in the Marketing Area by Other Order  
15    Distributing Plants. That's plants regulated under  
16    Other Marketing Areas. Any significant change, to your  
17    knowledge, if you can answer it?

18          A     No, I have no idea.

19          Q     I have observed -- I'm drawing on my memory  
20    here -- some plants from fairly distant location listed  
21    in various Market Administrator Reports and partially-  
22    regulated plants, including Altadena Dairy near Los  
23    Angeles, has that been a partially-regulated plant?

24          A     Yes, sir, it has.

25          Q     Okay. And there's a plant some place in

1 Georgia that ships milk to a number of Orders. Has  
2 there been a Georgia plant, I think it's Savannah,  
3 that's --

4 A Yes, sir.

5 Q -- distributed Class 1 Milk in this market?

6 A A relatively small amount, yes.

7 Q Okay. Can you, you know, identify other  
8 distant locations from which milk was distributed by  
9 partially-regulated plants? Utah?

10 A The plant -- one plant in Utah in particular,  
11 the Dannon plant, I think it is, has a small amount of  
12 sales in the area, but it's -- as I recall, in West  
13 Jordan, Utah, and pooled in Order 1. The Northeast.

14 Q A Utah plant pooled in Order 1?

15 A Yes. And --

16 Q I love it.

17 A And there's a plant in California, also, a --  
18 I always call it Chique, but I know that's not the  
19 correct spelling or pronunciation of it, but it's  
20 C-H-I-Q-U-E or something like that, has a small amount  
21 of sales in the Marketing Area.

22 There are a few others from distant locations  
23 that do pool in -- in the area, but right now, I can't,  
24 you know, think of all of them.

25 Q Okay. Jus as a general matter, --

1           A     Hm-hmm.

2           Q     -- since January of 2000, as well as prior to  
3     January of 2000, there have been plants at distant  
4     locations, such as we've talked about, that have had  
5     Class 1 Distribution in the Marketing Area?

6           A     Yes.

7           Q     In response to a question by Mr. Beshore, and  
8     at the time, he was referring to California milk, he  
9     directed your attention to the Class 1 Differential at  
10    some California location, and he asked the following  
11    question. I'm paraphrasing.

12                    He asked you if that milk was entitled to a  
13    Class 1 Differential of 1.70, and you said -- \$1.70,  
14    and you said yes.

15          A     Right.

16          Q     Do you recall that?

17          A     Right.

18          Q     Actually, a \$1.70 is the Class 1 Differential  
19    for that location, --

20          A     That's correct.

21          Q     -- but would it not be correct to say that  
22    the producer milk that is from that location does not  
23    receive or have an entitlement to a \$1.70 Class 1  
24    Differential?

25          A     That's correct.

1           Q     Okay. That producer milk has an entitlement  
2 to a PPD, Producer Price Differential, which is  
3 substantially less than a \$1.70, correct?

4           A     That would -- yes, that would be correct.

5           Q     Okay. And it's entitled to a Producer Price  
6 Differential, based on -- adjusted for whatever base  
7 zone the PPD is announced in this Order?

8           A     That's correct.

9           Q     In response to questions by Mr. English, you  
10 indicated that there had been some shift of milk  
11 produced in the Midwest, and he identified various  
12 states, Illinois was among them, that had shifted in  
13 its pooling to Orders 5 and 7.

14          A     Correct.

15          Q     Would you also agree that Order 33 has been a  
16 market to which milk produced in Illinois and probably  
17 some from Wisconsin or Iowa has shifted?

18          A     Hmm. There's been some milk that has been  
19 headed in that direction periodically. Exactly how  
20 much or whatever, I cannot -- cannot really say.

21          Q     Also in response to questions by Mr. English,  
22 you described an interpretation of the pooling  
23 requirements for supply plants under the existing Order  
24 and as proposed. Do you recall that?

25          A     As proposed on Number 5.

1 Q On Number 5, yes.

2 A Correct.

3 Q Okay. The 62 million pooled versus four  
4 million pooled?

5 A Correct.

6 Q In reviewing these proposals, let's say  
7 Proposal Number 5, you have a sense of the direction,  
8 maybe not the degree but the direction, the proposals  
9 would take, if adopted, in terms of quantity of milk  
10 that can be pooled?

11 A Yes, sir.

12 Q Okay. And in terms of the fact that if less  
13 milk were pooled, there would be a change in the  
14 Producer Price Differential that producers would  
15 receive under this Market Order?

16 A That would be true, yes.

17 Q And if that milk then ships to another  
18 market, you would assume that Grade A milk would try to  
19 be pooled in some market, correct?

20 A That's generally what -- what has been the  
21 practice in the past, yes.

22 Q Okay. And you can also form an opinion as to  
23 the direction, perhaps not the degree, that Producer  
24 Price Differential in a market to which this milk would  
25 move would change?

1           A     Right. Any time you'd dilute the amount of  
2 monies involved in the Class I, yes, it would decrease  
3 the Producer Price Differential.

4           Q     Would it be correct for me to say that having  
5 an awareness and having an opinion on direction of  
6 Producer Price Differential revenue, for example, lower  
7 revenue in Order 30 if the milk shifted, that your  
8 office received no instruction from USDA in Washington  
9 and did not on its own make an effort to give notice to  
10 producers in those other markets who may be affected by  
11 this milk shifting to their markets?

12          A     Well, yeah. We didn't notify them, if that's  
13 what you're getting at.

14          Q     That -- that was my question.

15          A     But the information was -- has been available  
16 on the Internet. I'm sure it's been topics of much  
17 discussion among the handlers involved.

18          Q     Okay. If I post something on the Internet,  
19 you wouldn't know to look for it, unless I told you to  
20 go look, would you?

21          A     Not unless you told me where, yes.

22          Q     Yeah. There was an exhibit -- help me -- or  
23 table -- help me find it here -- that addressed supply  
24 plant milk pooled percent received, diverted, delivered  
25 to distributing plants.

1           A     Table 16?

2           Q     Might be it.

3           A     It doesn't break down the -- anything  
4     diverted to distributing plants as such.

5           Q     Was there a table that showed marketing of  
6     supply plant milk to distributing plants?

7           A     Marketings? Just -- just Table 16 that shows  
8     the amount of milk that's moved to distributing plants.

9           Q     Where is that?

10          A     Table 16, the -- what -- under Dispositions,  
11     the first column under Dispositions.

12          Q     Dispositions to Pooled Plants. Does pooled  
13     plants -- does that column only mean --

14          A     Well, that --

15          Q     -- distributing plants?

16          A     Well, that's true, too. It's not just  
17     distributing plants. Some of that may be to other  
18     supply plants.

19          Q     And does it not include the supply plants in  
20     question when it's a disposition?

21          A     Right. It could be double-counted, but it is  
22     a relatively small amount, but there is some of that  
23     going on.

24          Q     All right. Handlers -- some handlers, in  
25     Order 32, --

1           A     Hm-hmm.

2           Q     -- that operate a manufacturing plant have --  
3     a cooperative handler have a couple of options on how  
4     to pool milk, if they have a Class 1 customer, and tell  
5     me if I'm correct or not.

6                     One option is to pool the manufacturing plant  
7     as either a supply plant or a cooperative balancing  
8     plant and qualify on the basis of shipments, direct  
9     shipments, transfers or diversions, to a distributing  
10    plant. Am I correct?

11          A     That's correct. Right.

12          Q     Okay. Another option that the organization  
13    has is to simply pool as a 9(c) handler, make  
14    deliveries from the milk supply of the cooperation to  
15    the distributing plant and divert the balance to the  
16    manufacturing plant as a non-pooled plant?

17          A     That's correct.

18          Q     Okay. Generally, as between those options,  
19    the actual physical flow of milk from farms to  
20    manufacturing would be similar, regardless of which  
21    option was chosen. Am I correct?

22          A     I'd say that's a fair assumption, yes.

23                     (Pause)

24                     BY MR. VETNE:

25          Q     Now, with that in mind, going to Table 15 of

1 Exhibit 5, the column, the second column of numbers  
2 under -- under Producers, for example, in January 2000,  
3 showing 483 million pounds, received at distributing  
4 plants from producers, those receipts may include, for  
5 example, a 9(c) handler that operates a manufacturing  
6 plant or diverts to a manufacturing plant in much the  
7 same physical transportation manner as a supplier?

8 A That's correct.

9 Q Okay. And in this exhibit, by the way, when  
10 you showed pounds of supply plant milk, do supply  
11 plants here also include cooperative balancing plants?

12 A If it's listed under the Supply Plant Table  
13 that we had back here that shows the -- all the supply  
14 plants, yes, it is included in there.

15 Q In the Supply Plant Table? Are supply plants  
16 and cooperative balancing plants, which have different  
17 performance levels or different sections of the -- of  
18 the rules, are they separately identified in --

19 A No.

20 Q -- the plant list? Are all the cooperative  
21 association balancing plants listed in that earlier  
22 table as supply plants?

23 A No. I don't think there are any.

24 Q There aren't any?

25 A On that balancing plants? Define "balancing

1 plants". That's not a term under the Order as such.

2 Q Well, it's not a term under the Order, but  
3 let's look at the Order. Under Section 7(d), "a plant  
4 located in a Marketing Area and operated by a  
5 cooperative association", that's what -- that's --  
6 that's my --

7 A Okay. Well, there aren't any.

8 Q There aren't any?

9 A Right.

10 Q And have there been since January of 2000?

11 A Right. There haven't been any since January  
12 of 2000.

13 Q And were there any plants that qualified  
14 under a unique provision for cooperative associations  
15 in the Predecessor Orders prior to January 2000?

16 A I'm pretty sure there was, yes.

17 Q Now, going back to Table 15 for a second, if  
18 you would, please, in identifying the pounds and  
19 percent of milk physically received at distributing  
20 plants from full supply plants, did you have in mind in  
21 preparing the exhibit and this table in that manner to  
22 provide information for the record on the level of  
23 performance by supply plants compared to what the  
24 column you identified as producers?

25 A That was not the intention, no.

1           Q     Was it your intention to provide information  
2     on the level to which needs of distributing plants as  
3     served by supply plants?

4           A     Only to indicate the volumes in bulk.

5           Q     Okay. Keeping in mind, as we've discussed  
6     before, that milk may be pooled as 9(c) milk associated  
7     for diversion purposes with a manufacturing plant and  
8     physically moved from farm to distributing plant or  
9     farm to manufacturing plant in essentially the same  
10    manner as milk associated with supply plants, would it  
11    be correct to say that one cannot draw a conclusion  
12    from Table 15 with respect to the -- the performance as  
13    in meeting needs of distributing plants -- of supply  
14    plants versus other market suppliers?

15          A     You cannot conclude that from this table, no.

16          Q     Thank you.

17                 JUDGE BAKER: Very well. Thank you, Mr.  
18     Vetne.

19                 Are there any other questions for Mr.  
20     Stukenberg? Yes? Yes, sir.

21                 MR. TONAK: My name is Dennis Tonak.

22                         CROSS EXAMINATION

23                 BY MR. TONAK:

24           Q     On Exhibit 5, Table 8, there's a list of  
25     these pooled handlers, and those would be the people

1 that submit the Report of Receipts and Utilization as  
2 referred to in the Order, is that correct?

3 A That's correct.

4 Q Do you receive Reports of Receipt and  
5 Utilization from anybody that would not be on this  
6 list?

7 A We receive Reports of Utilizations for  
8 partially-regulated plants, producer-handlers, and even  
9 the exempt plants provide us with that information.

10 Q To the extent that these plants have  
11 producers that they write milk checks for or that they  
12 directly pay the producers for, do you also receive a  
13 payroll report from these plants?

14 A Yes, we do.

15 Q Do you receive producer payroll reports from  
16 anybody else?

17 A In some cases, where another cooperative is  
18 marketing the milk but not acting as handler on it,  
19 that cooperative will provide us with the payroll  
20 information, yes.

21 Q Are there any cases where the -- the  
22 cooperative will provide you with the payroll  
23 information for producers that they do not write the  
24 milk checks for? Is that what you're saying?

25 A No.

1           Q     Do you receive payroll reports from anybody  
2     that's not on this plant list?

3           A     Yes, we do.

4           Q     Let's run through that a little bit then, so  
5     I can try to understand it better. How does that work?

6           A     Well, quite frankly, when a cooperative -- I  
7     think we have somewhere in the vicinity of 30  
8     cooperatives pooling milk on the Central Order.  
9     Obviously if you look at the cooperatives acting as  
10    handlers, there were not anywhere near that number,  
11    generally around 10 or 11 and some months 12, but the  
12    other cooperatives pool or market the milk directly to  
13    a, say, distributing pooled plant or a supply plant,  
14    and they in turn file a report to us that lists the  
15    individual producer marketings and the composition of  
16    that milk that is marketed and the price that they pay.

17          Q     Now, is that the plant that's not on this  
18    list or the other cooperative that's not on this list?

19          A     The other cooperatives are not on the list.

20          Q     On this list?

21          A     Correct.

22          Q     And there's no proprietary plants that you  
23    receive producer payroll information from?

24          A     No, that's not true. We do receive producer  
25    payroll from several of the plants listed on here.

1           Q     There's no proprietary -- are there any  
2     proprietary plants listed on -- in Table 8? Let me  
3     rephrase that.

4                     Are there any proprietary plants that are not  
5     listed on Table 8 that you'd receive producer payroll  
6     information from?

7           A     Not listed on Table 8 that we receive?

8           Q     Producer payroll information from or if  
9     there's a proprietary plant that's paying producers  
10    directly, being pooled by one of the cooperatives  
11    listed on this list, --

12          A     Hm-hmm.

13          Q     -- are you receiving the producer payroll  
14    information from the producers paid by that, let's call  
15    it a non-pooled proprietary plant, from the cooperative  
16    on -- in Table 8 or from the non-pooled plant itself?

17          A     If the milk is pooled, and it's a cooperative  
18    member, we receive a payroll from the cooperative,  
19    regardless as to which plant the milk is marketed to.

20          Q     Or who writes the milk check?

21          A     Right. We -- well, define on "who writes the  
22    milk check", whether you're talking about the total  
23    amount of -- for the total amount of milk received or  
24    for individual producers.

25          Q     For individual producers.

1           A     For individual producers, whoever writes the  
2 milk check does provide us with the payroll  
3 information.

4           Q     So, there are plants in effect that are not  
5 identified on these lists that are writing milk checks  
6 to producers and that milk is pooled under the Order,  
7 but we don't really know who's writing the milk checks?

8           A     We know who's writing the milk checks.

9           Q     From the information on this list?

10          A     From the information on this list, no,  
11 because there's -- like I said, we have about 30  
12 cooperatives, and they are not listed on here.

13          Q     Does your office compile a list of milk  
14 marketings, total milk marketings under all Federal  
15 Orders by state and county for the months of May and  
16 December?

17          A     Yes, we have.

18          Q     That's not widely distributed, but it is  
19 available on request, would that be correct?

20          A     It's -- depending on your definition of  
21 "widely distributed", yes, it's available on request.

22          Q     And that's basically for the entire United  
23 States, all counties in the U.S. that have Federal Milk  
24 Marketings?

25          A     And California.

1 Q And California.

2 MR. TONAK: Thank you.

3 JUDGE BAKER: Thank you.

4 Are there any other questions for Mr.  
5 Stukenberg? Yes, Ms. Brenner.

6 CROSS EXAMINATION

7 BY MS. BRENNER:

8 Q Mostly some clarifying questions, Mr.  
9 Stukenberg.

10 Mr. Vetne's questions about who your office  
11 notified about the hearing, that included all handlers  
12 that are pooling milk under this Order --

13 A That's right.

14 Q -- currently, both inside and outside the  
15 Marketing Area?

16 A The outside, I'm not totally sure about. If  
17 they're on our Interested Parties List, yes, they  
18 received it. Like I said, if the handlers pool on  
19 another Order, it's -- it's -- it's questionable.

20 Q But if it's pooled on your Order, if --

21 A Well, if it's pooled on our Order, yes.

22 Q -- a co-op in the Upper Midwest that has milk  
23 pooled on this Order, --

24 A Correct. They were notified.

25 Q -- they were notified?

1           A     Hm-hmm.

2           Q     Non-member producers located in other  
3 Marketing Areas that had milk pooled on this Order  
4 would have been notified, also?

5           A     Yes, they would have.

6           Q     Okay. Going on to another area, in Exhibit 5  
7 on Table 8, you have a column labeled "Location", --

8           A     Hm-hmm.

9           Q     -- and I believe a lot of the same  
10 information is also in Exhibit 6. That's English  
11 Number 2.

12          A     Yes.

13          Q     What do those numbers represent?

14          A     That is the Class 1 Location applicable at  
15 the respective counties. Since Federal Order Reform,  
16 all locations have been on a county-by-county basis.

17                 For instance, the Kansas City is listed as  
18 the base point. If you were to look at the very first  
19 one there, Anderson Erickson at a \$1.80, we would take  
20 the -- for Class 1 purposes, the -- what do they call  
21 it these days? The base price, and for Kansas City,  
22 we'd add \$2 to it for the Class 1 Differential. At Des  
23 Moines, Iowa, for instance, we would add a \$1.80 to it  
24 and that would become the Class 1 price.

25                 When it comes to payments to producers, it's

1 the difference between the \$2, the base point again,  
2 minus the \$1.80, leaving -- or the other way around.  
3 So, it'd be minus 20 cents. So, 20 cents would be  
4 taken off of the PPD in relation to paying producers.

5 Q Okay. And so, where you have Class 1 Dif on  
6 Table 9 listed for different counties --

7 A Right.

8 Q -- or a number of different locations, those  
9 are the same -- those are the same numbers?

10 A Right. It is the location, not necessarily  
11 on a Class 1 basis, but it would be -- it's the same  
12 explanation, right.

13 Q Okay. And therefore, when milk is pooled,  
14 it doesn't get that Class 1 Differential value, it gets  
15 the PPD, and then this Class 1 Differential is used to  
16 -- the difference in the Class 1 Differential is used  
17 to adjust --

18 A Right. To adjust --

19 Q -- the PPD?

20 A -- the PPD. Correct.

21 Q Okay. And I believe the statement was made  
22 that the PPD is considerably less than the \$1.60.  
23 Sometimes it's somewhat more, too, isn't it?

24 A Right.

25 Q It depends on the month?

1           A     It depends on the month.

2           Q     Okay.  The other area in which I have  
3 questions is relative to Table 16.  In this four-column  
4 section headed "Receipts", are those physical receipts  
5 at supply plants?

6           A     Yes.

7           Q     That's milk that's actually received at the  
8 supply plants?

9           A     Just a second.

10                   (Pause to review document)

11                   THE WITNESS:  For the most part, that's true.  
12 There is a little bit of 9(c) milk included in that.

13                   BY MS. BRENNER:

14           Q     And that would be included in the -- under  
15 the column headed "Producers" or --

16           A     Yes, correct.

17           Q     Okay.  And then, under the three-column  
18 portion called "Dispositions", I believe you said that  
19 the dispositions to pool plants could include some  
20 transfers to other supply plants, --

21           A     That's correct.

22           Q     -- but if you look at Table 15, the milk  
23 physically received at distributing plants from pooled  
24 supply plants, it's identical --

25           A     Right.

1 Q -- to that column.

2 A It includes a small amount of diversions in  
3 that, also. Something less than 15 -- 15 percent of  
4 the total.

5 Q That's true in Table 15, in the pooled -- in  
6 the milk physically received at distributing plants  
7 from pooled supply plants, also includes some --

8 A Yes, a small amount.

9 Q -- diversions to non-pooled plants or  
10 diversions from farms?

11 A Which -- which column are we talking about  
12 now?

13 Q Okay. On Table 15, --

14 A 15.

15 Q -- milk physically received at distributing  
16 plants from pooled supply plants, --

17 A Hm-hmm.

18 Q -- is the same information --

19 A Right.

20 Q -- that shows up on Table 16 under  
21 "Dispositions to Pooled Plants"?

22 A Right. That's correct.

23 Q And that includes some --

24 A A very small amount, yes.

25 Q Of diversions?

1 A Of diverted milk.

2 Q Diverted to?

3 A Directly to the distributing plant.

4 Q To the distributing plant?

5 A Right.

6 Q Okay. And those Other Federal Order  
7 Dispositions are to Other Federal Order Distributing  
8 Plants or would there be some supply plant milk there?

9 A I would say it's almost all distributing  
10 plants. There might be a supply plant listed in there,  
11 not being, you know, that familiar with some of the  
12 Other Order Plants.

13 Q Okay. And this -- on Table 15, the last  
14 column, "Percent Producer and Supply Plant on Total  
15 Order 32 Producer Milk", that's the producer and supply  
16 plant milk that's received at distributing plants?

17 A Yes.

18 Q The percent -- okay.

19 MS. BRENNER: I think that's all I have.

20 JUDGE BAKER: Thank you, Ms. Brenner.

21 Are there any other questions? Yes? Mr.

22 Beshore.

23 CROSS EXAMINATION

24 BY MR. BESHORE:

25 Q Mr. Stukenberg, just a follow-up with some of

1 Ms. Brenner's questions.

2 With respect -- Table 16. Can you tell us  
3 how the -- the universe of receipts attributed to  
4 supply plants on -- on Table 16, can you tell us which  
5 is the first column?

6 A Hm-hmm.

7 Q I take it.

8 Q Right. This whole table relates to supply  
9 plants only.

10 Q Okay. The total receipts at supply plants  
11 would be the aggregate of those four columns?

12 A That's correct.

13 Q Okay. Are those just -- well, how is that  
14 total arrived at? Does that include, for instance,  
15 9(c) deliveries of a cooperative to that supply plant?

16 A Yes, it does.

17 Q All? So, it includes all, --

18 A Right.

19 Q -- even -- all deliver -- all 9(c) deliveries  
20 to that supply plant?

21 A That's correct.

22 Q Okay. Does it include all diversions from  
23 that supply plant to distributing plants --

24 A No.

25 Q -- or other --

1 A No, it's not a net number. It's the actual.

2 Q Diversions are not in that number?

3 A Diversions -- diversions to pooled -- to  
4 pooled plants or diversions --

5 Q To anywhere.

6 A Anywhere? No, they wouldn't be. Well, wait  
7 a minute. To pooled plants, they would be. Non-pooled  
8 plants, they wouldn't be, because there are some  
9 diversions involved. Well, 9(c) diversions would be  
10 included in there, but diversions to -- now, wait a  
11 minute. I'm getting myself mixed up here, too.

12 It includes the 9(c), if it's a diversion to  
13 a pooled plant. I can't recall. If it shows up on the  
14 -- on the report itself that is sent in for the supply  
15 plant as a producer receipt, it is included in that.  
16 Diversions. It's strictly the pooled plant receipts,  
17 yes. Producer receipts at -- at the supply plant as  
18 listed on the report.

19 Q Okay. So, these totals were -- basically,  
20 you took all your supply plant reports --

21 A Right.

22 Q -- and aggregated them?

23 A That's correct.

24 Q 9(c) report's a different report?

25 A That's a different report, right.

1 Q Okay. So, --

2 A If there were 9(c) receipts at that supply  
3 plant, that would be included in there, also.  
4 Cooperative handler receipts.

5 Q At the supply plant?

6 A At the supply plant.

7 Q Even if the supply plant was not the same  
8 cooperative?

9 A That is correct.

10 Q So, the supply plant reports basically then  
11 includes all milk physically delivered to that supply  
12 plant?

13 A That's correct.

14 Q Any milk diverted by the operator of that  
15 supply plant to a pooled distributing plant is also  
16 included, I take it?

17 A That would be included in there, also, right.

18 Q In that report?

19 A Right.

20 Q And -- and in these volumes?

21 A In those volumes, correct.

22 Q But not milk diverted by the operator of that  
23 supply plant to a non-pooled plant?

24 A Diverted by -- that's correct. Right. It  
25 would not include that.

1 Q So, --

2 A Pardon me. Wait a minute. Let me back off  
3 on that. It would be included because it is listed  
4 down in the other section where it is diverted -- where  
5 it would be diverted to the other Order.

6 Q Okay. Let's compare English Number 5 --

7 A Okay.

8 Q -- with Table 16. English 5, part of Exhibit  
9 6.

10 A Hm-hmm.

11 Q Table 16. What I'm interested in -- I'm  
12 trying to clarify for the record --

13 A Right.

14 Q -- how all of this -- this milk is apparently  
15 going to non-pooled plants, it shows up and doesn't  
16 show up, and on some of these various reports,  
17 including these reports of supply plant milk.

18 English Table Number 5 shows milk diverted to  
19 non-pooled plants --

20 A Hm-hmm.

21 Q -- from all Order 32 plants, 25, --

22 A Right.

23 Q -- 740,720 for January 2000.

24 A Right.

25 Q Table 16 of the same month shows dispositions

1 to non-pooled plants, a 128 million plus.

2 A Hm-hmm.

3 Q Okay. Now, is the 25 million on English 5  
4 included in the 128 million on Table 16?

5 A In the -- which one?

6 Q The non-pooled plant dispositions.

7 A Right. It's included on which column? The  
8 first column? Yes.

9 Q The dispositions to non-pooled plants, how --

10 A Okay. Under Dispositions?

11 Q Yes.

12 A Yes, that would be included in there.

13 Q Okay. So, those dispositions include  
14 diversions as well as transfers?

15 A That's correct.

16 Q Okay. Now, if you -- if you total the  
17 Disposition columns --

18 A Hm-hmm.

19 Q -- on Table 16 and compare it to the Total  
20 Receipts columns, they -- do they aggregate? Are they  
21 the same total?

22 A They won't be the same total, but it will be  
23 --

24 Q The balance would be the amount retained at  
25 the pooled supply plant for its use?

1           A     It would be that and also some small amounts  
2 of shrinkage and various other accounting-type things.

3           Q     Now, let me go to Table 15 of Exhibit 5,  
4 which is the tabulation of the Receipts of Distributing  
5 Plants. Because this table says milk physically  
6 received at distributing plants, I take it that this  
7 does not count in the report in any way milk that is  
8 reported as diverted by those distributing plants?

9           A     That's correct.

10          Q     Do distributing plants regularly report milk  
11 as being diverted to non-pooled plants?

12          A     It's a very small amount.

13          Q     So, if -- if we know that there are large  
14 volumes of milk being delivered to distant non-pooled  
15 plants, we know there's only a small amount being  
16 diverted there by distributing plants in the Order?

17          A     I would say that's correct, yes.

18          Q     And we know how much of it is going by  
19 diversion or transfer by supply plants through Table 16  
20 or Table 5?

21          A     Right.

22          Q     The remainder would be --

23          A     Distributing plants.

24          Q     -- reflected on -- distributing -- on 9(c)  
25 reports of the cooperative handlers?

1           A     Right.

2                     MR. BESHORE: Thank you.

3                     JUDGE BAKER: Thank you, Mr. Beshore.

4                     Are there any other questions? Mr. Vetne?

5                                 CROSS EXAMINATION

6                     BY MR. VETNE:

7           Q     Just a little follow-up on the last line of  
8     questions.

9                     You indicated there's very little milk  
10     reported by distributing plants as diversions to non-  
11     pooled plants?

12           A     That's correct.

13           Q     And is that because milk associated with the  
14     distributing plant is pooled and marketed by  
15     cooperative associations who report the diversions as -  
16     - as cooperative diversions under Section 9?

17           A     That's the main reason, yes.

18           Q     Okay. I mean, it would be essentially the  
19     same physical movement of milk, if the distributing  
20     plant pooled its own milk?

21           A     That's correct.

22           Q     And again, the distributing plants reflected  
23     in Tables 16 and 15, --

24           A     Hm-hmm.

25           Q     -- to the extent that they're distributing

1 plants -- plant receipts, in the case of a distributing  
2 plant handler that has a Class 2 operation, that would  
3 not by itself qualify as a distributing plant. Would  
4 it include -- are the receipts of the distributing  
5 plants including deliveries to those Class 2  
6 operations?

7 A unit by a distributing plant having --  
8 having a separate ice --

9 A It would be included in Table 15, yes.

10 Q Okay. And with respect to -- with respect to  
11 dispositions to non-pooled plants, would those  
12 dispositions include dispositions to Class 2 facilities  
13 that, for whatever reason, whether they can't or decide  
14 not to, that are not pooled as a unit with distributing  
15 plants?

16 A That would be included as dispositions to  
17 non-pooled plants, yes.

18 Q Okay. So, the distributing plant  
19 dispositions as well as the non-pooled plant  
20 dispositions would include some milk in both cases  
21 delivered to plants whose primary function is to make  
22 Class 2 products?

23 A That's correct.

24 MR. VETNE: Thank you.

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

1 Vetne.

2 Are there any other questions? Mr. English?

3 CROSS EXAMINATION

4 BY MR. ENGLISH:

5 Q Looking at English Number 5, in Exhibit 6,  
6 you provided some percentages in the second page of  
7 English Number 5 with respect to supply plants inside  
8 the Marketing Area and supply plants outside the  
9 Marketing Area, and would I be correct that you are  
10 unable to tell us a -- what percentage of those milks  
11 -- of that milk as divided up is 9(c) milk for the  
12 total producer milk pooled?

13 A Well, definitely at this point, I wouldn't be  
14 able to.

15 Q Would it be a fair assumption that the  
16 percentage of 9(c) milk in total producer milk pooled  
17 at supply plants inside the Marketing Area would be  
18 reflective of the percentage of 9(c) milk pooled in  
19 supply plants outside the Marketing Area? Would that  
20 be a fair assumption?

21 A It'd be pretty close. The outside probably  
22 would be just a tad higher, but I can't say that for  
23 sure without actually reviewing the numbers.

24 Q But for these purposes, you couldn't --

25 A They -- they are very close.

1 Q They're very close?

2 A Yes.

3 Q And then, I think you said that with respect  
4 to the dispositions when you were having the discussion  
5 with Mr. Beshore, that that 9(c) represented something  
6 under 15 percent?

7 A That's correct.

8 MR. ENGLISH: Thank you.

9 JUDGE BAKER: Thank you, Mr. English.

10 Are there any other questions?

11 (No response)

12 JUDGE BAKER: Apparently there aren't. You  
13 may be -- oh, you haven't moved those exhibits in.

14 MR. COOPER: Move Exhibits 5, 6 and 7 in  
15 evidence.

16 JUDGE BAKER: Are there any questions or  
17 objections with respect thereto?

18 (No response)

19 JUDGE BAKER: Let the record reflect there  
20 are none.

21 Exhibits 5, 6 and 7 are admitted and received  
22 into evidence.

23

24

25

1 (The documents referred to,  
2 having been previously marked  
3 for identification as Exhibit  
4 Numbers 5, 6 and 7, were  
5 received in evidence.)

6 JUDGE BAKER: Thank you, Mr. Stukenberg.

7 THE WITNESS: You're welcome.

8 (Whereupon, the witness was excused.)

9 JUDGE BAKER: With respect to two individuals  
10 who have requested to be taken out of turn, and with  
11 the concurrence of Mr. Beshore, we will hear them at  
12 this time.

13 Will Mr. Bond step forward?

14 (Pause)

15 JUDGE BAKER: Mr. Vetne, you have some  
16 procedural matters you want to take up.

17 Mr. Beshore, you kindly consented to hear  
18 these two witnesses out of order.

19 MR. BESHORE: Oh, yes. We certainly want to.  
20 These gentlemen are dairy farmers from Nebraska that  
21 have come, and we certainly think they should be heard  
22 --

23 JUDGE BAKER: Very well.

24 MR. BESHORE: -- at this time.

25 JUDGE BAKER: Thank you very much.

1           Mr. Vetne, we'll take your matters up after  
2 we hear this witness.

3           MR. COOPER: And Your Honor, the Secretary  
4 would also invite any other dairy farmers who are here  
5 today to be able to testify now, if they have to leave,  
6 because the rest of us are going to be here for two  
7 days.

8           JUDGE BAKER: Well, that might include the  
9 whole room, Mr. Cooper.

10          MR. COOPER: Looking around, I don't see many  
11 dairy farmers out there, but if there are any, we  
12 would, also.

13          JUDGE BAKER: Very well. We'll do the best  
14 that we can.

15          Mr. Bond, would you step forward and be  
16 sworn, please?

17 Whereupon,

18                               JERRY OWEN BOND

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

21          JUDGE BAKER: Would you be seated, please?

22 You may proceed, Mr. Bond.

23          THE WITNESS: Thank you, Your Honor.

24                               DIRECT TESTIMONY

25          THE WITNESS: Good morning. My name is Jerry

1 Bond. I'm a dairy producer in Southeast Nebraska, near  
2 Avoca, Nebraska. I'm a third-generation dairy  
3 producer, and my grandfather in 1934, David James Bond,  
4 was contracted with the Government to supply milk to  
5 the men in the quarter boats who worked on the Missouri  
6 River near Peru, Nebraska.

7 My father, Otis Bond, began producing milk at  
8 our present-day farming in Avoca, Nebraska, in 1946. I  
9 was born in December of 1960 and was raised on the  
10 Bonderosa Dairy. I worked on the farm, the dairy  
11 family farm since I was a child. I've been actively  
12 involved in many aspects of the dairy industry.

13 My father and I currently milk approximately  
14 a hundred Holsteins three times a day. Last year, we  
15 sold over a 1,678,000 pounds of milk, and I sell to  
16 DFA.

17 I testify today that during the past three  
18 years the Federal Order 32 has been in place, our Class  
19 1 sales of milk have been depressed due to the lack of  
20 pooling provisions of that Order. This has allowed a  
21 large amount of milk to be pooled on our market in  
22 Nebraska. Therefore, this has lowered our utilization.

23 Our Class 1 Utilization has dropped from 35-  
24 to-40-percent to the mid-to-low-20-percent range.  
25 Large amounts of milk are being pooled in the Central

1 Order without physically being moved, which lowers the  
2 price of the milk for the producers.

3 Since Federal Order 32 has been established,  
4 the Central Order has been a dumping ground of milk in  
5 the nation. The producers in Nebraska do not receive  
6 the benefit of the protection of the Federal Order  
7 System. Instead, money from Nebraska and dairy  
8 producers go to other states, such as Minnesota and  
9 Wisconsin and California.

10 Due to the lack of restrictions on pooling,  
11 the Nebraska dairy farmers have been hammered severely.  
12 I've been told by dairy co-op managers that we've lost  
13 as much as 50 to 60 cents a hundredweight on our milk.  
14 I'm not gaining the benefit from my product nor is the  
15 Nebraska consumer nor is the Nebraska state economy.

16 As a Nebraska dairy producer, I cannot afford  
17 the very hard-earned money to go elsewhere. I believe  
18 that the Federal Order System is a good system.  
19 However, milk that is pooled should have a service to  
20 perform in that market. This milk should be required  
21 to be physically moved or if the milk is pooled, as it  
22 is now, there needs to be transportation charges paid  
23 to the Federal Order, in which the milk was pooled.

24 Therefore, the transportation costs involving  
25 the milk -- the hauling of milk, if transportation

1 charges was assessed, this as a simple tool alone would  
2 eliminate and reduce a large amount of milk that does  
3 not perform a service on the market.

4 What we need is a Federal Order System which  
5 moves milk from milk surplus regions to milk deficit  
6 regions in an orderly way to service the fluid needs of  
7 the market. The proposal of the Central Federal Order  
8 under the Agriculture Amendment Act of 1937, as  
9 amended, does do some good, but they do not go far  
10 enough in correcting the pooling problems.

11 Eliminating distant milk and state-ordered  
12 pooled milk will alleviate the surplus. Approximately  
13 78 million pounds of milk every month will not be  
14 pooled on Order 32. There are between 1.4 to 1.6  
15 million pounds of milk pooled every month, and why does  
16 the Central Federal Order need an additional 1.4 to 1.6  
17 million pounds of milk when the fluid capacity is only  
18 about 500 million pounds? We do not need additional  
19 milk.

20 Then who stands to gain from this pooling?  
21 It is certainly not the dairy producers. We currently  
22 have a system of double dipping. Our milk is being  
23 pooled, but it is not being moved. As a result, our  
24 fluid milk then is greatly reduced in value, when it is  
25 processed in cheese and butter and powder. It

1 depreciates as a Class 3 and 4 when our product is  
2 finally moved.

3 Dairy cooperatives and others create a  
4 competitive game in an attempt to gain an advantage in  
5 money. I give testimony to you that the dairy farmers  
6 in Nebraska are literally struggling financially.  
7 Across the nation, dairy farmers are rapidly becoming a  
8 thing of the past.

9 I urgently request these changes to be made  
10 to the Federal Order to receive a fair and equal  
11 payment for the product of the dairy and the  
12 marketplace and no longer be pitting dairy producers  
13 against each other.

14 Thank you very much.

15 JUDGE BAKER: Thank you, Mr. Bond.

16 Are there any questions for Mr. Bond? Mr.  
17 Beshore?

18 CROSS EXAMINATION

19 BY MR. BESHORE:

20 Q Mr. Bond, thank you for coming down here to  
21 testify today.

22 I want to ask you a question about Proposal 6  
23 that relates to the so-called "advance price" that you  
24 receive in a milk check every month for a portion of  
25 the proceeds from the production.

1           Have you noticed any change in that rate of  
2           payment that's received on the first check since  
3           January 2000?

4           A     Seems like it takes longer to get it.

5           Q     Have you noticed that it is a lower  
6           percentage of your total payment for the month?

7           A     Yeah. I noticed that, also.

8           Q     Would you support Proposal 6, which is  
9           intended to restore the rate of payment on that check  
10          to what it was before; that is, the first check would  
11          be the same portion of your total receipts for the  
12          month that it had been before?

13          A     I think that would be a lot helpful. There's  
14          less speculation of what's going to be coming in for  
15          the next check, and you'd have a better idea of what --  
16          about what your cash flow is.

17          Q     So, that would assist you in --

18          A     In paying bills and managing and all those  
19          things.

20          Q     You made some comments with respect to  
21          transportation charges for the delivery of milk that is  
22          pooled on Order 32 but not delivered.

23                   Did I understand you to be expressing the  
24          view that milk which is distant from the market in  
25          essence is -- unless there's a transportation charge,

1 as you indicated, assessed, it's not providing value to  
2 the market at the location that it's at, but it's  
3 taking value from the market?

4 A That's right. Not only is the milk not being  
5 transported, but since it's going into our market, it  
6 lowers our class utilization, it lowers our price, and  
7 then we end up paying for that transportation from our  
8 funds, and it goes other places.

9 So, the producers in the state are getting  
10 hurt mightily two different ways. One, you're paying  
11 for a product that's not being delivered,  
12 transportation costs, and it's never even left really  
13 the paperwork, and the other thing, my Class 1 sales,  
14 which is the highest payment we can get, is your  
15 drinking milk. We're not getting the benefit because a  
16 lot of the milk has to go to lower classes. So, it  
17 lowers us in two different ways.

18 Q So, your utilization under the Order is  
19 reduced?

20 A It is reduced, yes.

21 Q Do you know what Order you were delivering to  
22 before?

23 A 65.

24 Q Which was the Nebraska, was it not?

25 A Right.

1 MR. BESHORE: Okay. Thank you, Mr. Bond.

2 JUDGE BAKER: Thank you, Mr. Beshore.

3 Are there other questions for Mr. Bond?

4 (No response)

5 JUDGE BAKER: Let the record reflect that  
6 there are none.

7 Thank you very much, Mr. Bond.

8 THE WITNESS: Thank you.

9 (Whereupon, the witness was excused.)

10 JUDGE BAKER: I think the other person who  
11 approached me with respect to testifying out of turn is  
12 Mr. Rex DeFrain.

13 Whereupon,

14 REX H. DeFRAIN

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

17 JUDGE BAKER: Be seated, please.

18 DIRECT TESTIMONY

19 THE WITNESS: First of all, Your Honor, I'd  
20 like to thank you for allowing us to move early in the  
21 agenda. Being dairy producers, it seems like no matter  
22 how far away we get from home, we're always expected to  
23 be home at night to do the chores. So, we appreciate  
24 that.

25 Jerry and I arrived in Kansas City this

1 morning at a quarter after 3. So, if our testimony's a  
2 little sluggish, I apologize.

3 My name is Rex DeFrain. I am a dairy  
4 producer from South Central Nebraska. My wife Debbie  
5 and I began our own operation in 1974, after purchasing  
6 the farm from my father. He had started in the  
7 production of Grade A milk in 1954.

8 When my wife and I purchased the dairy in  
9 1974, we started with a herd of 14 milking cows and  
10 replacements. Today, our herd consists of a 140  
11 registered Holstein cows and a 120 replacement Heifers.

12 We have been a member of the Dairy Co-Op  
13 System for 27 years, beginning with Mid-America  
14 Dairymen, and in the past few years marketing our milk  
15 through Dairy Farmers of America, DFA.

16 I currently serve on the Central Area Council  
17 Board of Directors of DFA, but I am here today to  
18 represent hundreds of individual producers who have a  
19 vested interest in the Federal Milk Market Orders and  
20 the impact that the pooling of milk across Order lines  
21 has made on their milk checks.

22 Nebraska, the state in which I produce milk,  
23 is not commonly referred to as a dairy state. However,  
24 the dairy industry is the sixth largest economic factor  
25 we have, and dairy is the third largest consumer of

1 utilities in Nebraska.

2 As is the same for other regions of the  
3 country, we continue to lose dairy-producing units due  
4 to a variety of factors. One of these factors is the  
5 negative impact that pooling of milk on our Milk Order,  
6 Order 32, from other Federal Orders has had.

7 When I first heard that there was going to be  
8 a hearing on the possibility of amending the pooling  
9 provisions, I thought it would be interesting to set in  
10 and hear the proposals. Then I was approached by some  
11 producers and asked if I would give testimony from our  
12 perspective and that is why I am here.

13 I requested a copy of the proposals from the  
14 Market Administrator's Office in Lenexa, Kansas, and  
15 have spent considerable time going over these ideas.  
16 While I was examining the proposals listed in the  
17 Federal Register, I came across what I consider some  
18 very interesting facts.

19 One of these is listed under the Subtitle  
20 "Supplementary Information", and this reads as follows,  
21 and I quote, "Actions under the Federal Milk Order  
22 Program are subject to the Regulatory Flexibility Act.  
23 This Act seeks to ensure that within the statutory  
24 authority of a program, the regulatory and  
25 informational requirements are tailored to the size and

1 nature of small businesses.

2 For the purpose of the Act, a dairy farm is a  
3 small business if it has an annual gross revenue of  
4 less than \$750,000. Most parties subject to a Milk  
5 Order are considered as a small business."

6 My interpretation of this statement is that  
7 in an age of large corporate farms, it is the desire of  
8 our Government to ensure that the smaller producers  
9 remain an active and vital part of our national  
10 economy.

11 The proposals to the Central Federal Order  
12 under Agricultural Marketing Agreement Act of 1937, as  
13 amended, do some good, but in our opinion don't go far  
14 enough in correcting the pooling problem.

15 Eliminating the distant milk and state Order  
16 pooled milk will help some. Approximately 70 to 80  
17 million pounds per month would not be pooled on Federal  
18 Order 32. However, as you look at the big picture, 1.4  
19 to 1.6 billion pounds being pooled each month now, this  
20 would be a small percentage.

21 The Central Federal Order has approximately  
22 500 million pounds of fluid milk plant capacity. Why  
23 then do we need 1.4 to 1.6 billion pounds of milk?  
24 This pooling is being done as a game between co-ops and  
25 others to gain dollars out of a market and gain a

1 competitive advantage over each other. They have  
2 created a market that really doesn't exist in the real  
3 world. In the process, you have winners and losers  
4 with some dairy farm families being negatively  
5 affected.

6 Milk being pooled needs to service and  
7 perform in the market and be delivered to that market.  
8 This paper chase of milk being pooled with very little  
9 cost is hurting the market.

10 If milk is being pooled on the market as it  
11 is now and not being delivered, there needs to be a  
12 transportation charge paid to the Order in which the  
13 milk is being pooled.

14 In the real world, there are costs involved  
15 in transporting milk. The average cost for moving  
16 fluid milk is \$1.80 per loaded mile. This equates to  
17 .036 cents per hundred pounds of milk per mile or, for  
18 a typical 1,000-mile haul, would cost \$3.60 per hundred  
19 pounds of milk.

20 Most handlers figure they can only move milk  
21 250 to 300 miles before condensing the milk becomes  
22 economically practical. However, condensed milk cannot  
23 be used for fluids. Milk which is transported long  
24 distances increases in temperature and has reduced  
25 shelf life, also.

1           These things alone would eliminate a lot of  
2 pooling because the cost of transportation would  
3 outweigh the advantages. This would eliminate or at  
4 least reduce the milk that doesn't perform or service a  
5 market. It would create a fair and equitable market  
6 for dairy farms and allow these farms to get money from  
7 the market and not out of each other's pockets.

8           We need a Federal Order System which moves  
9 milk from a milk surplus region to a milk deficit  
10 region in an orderly fashion to service the fluid  
11 needs. We now have a system of double dipping, milk  
12 being pooled but not moving, then processed in cheese  
13 or butter powder and then being moved.

14           I am a strong advocate of Federal Milk  
15 Marketing Orders and am in favor of maintaining their  
16 existence, but let's amend the provisions in Federal  
17 Order 32 to have a positive impact on dairy producers  
18 and give my sons the opportunity to operate our  
19 operation for decades to come.

20           Thank you.

21           JUDGE BAKER: Thank you, Mr. DeFrain.

22           Are there any questions? Yes, Mr. Beshore.

23                           CROSS EXAMINATION

24           BY MR. BESHORE:

25           Q   Thank you for coming and presenting your

1 testimony, Mr. DeFrain.

2 I'll ask you the same questions I asked Mr.  
3 Bond with respect to the partial payment check. Have  
4 you noticed since January of 2000 that that rate has  
5 declined from what it was previously?

6 A Yes, I have.

7 Q And would you support Proposal 6 advanced by  
8 DFA and others to attempt to restore that rate to what  
9 it was previously?

10 A Yes, I would.

11 Q And would that -- would that be helpful in  
12 your operation?

13 A It would be helpful in the fact that, as  
14 Jerry said, I hate to be repetitive, but you know  
15 closer to what the final pay price is going to be, how  
16 many dollars you're going to collect for the month.

17 I think this is -- this would be made  
18 possible very easily because actually when we get an  
19 advance check, we've already delivered 30 days worth of  
20 milk. So, I think it could be done very easily. It  
21 would be easier for me to keep my bills paid. I have a  
22 lot of bills that come due on the 15th or on the 25th,  
23 which is typically when the advance comes out.

24 So, yes, I think it would be helpful.

25 MR. BESHORE: Thank you, Your Honor.

1 JUDGE BAKER: Thank you, Mr. Beshore.

2 Are there any other questions for Mr.

3 DeFrain?

4 (No response)

5 JUDGE BAKER: Let the record reflect there  
6 are none.

7 Thank you very much, sir, for your testimony.

8 (Whereupon, the witness was excused.)

9 JUDGE BAKER: Mr. Beshore, you are the  
10 Proponents of the First Proposals. Do you wish to  
11 proceed now?

12 I have to tell you that I have been advised  
13 that in order to meet the convenience of the hotel, we  
14 should have our luncheon hour beginning at 12:15.

15 MR. BESHORE: Mr. Hollon is our first  
16 witness. He will address Proposals 1 through 5. At  
17 this time, I should say he has substantial material,  
18 exhibits and statements which are available for  
19 distribution and making them available will take, you  
20 know, a few minutes to just physically do that.

21 We'd like to have them made available before  
22 he testifies, so that everyone has them for the  
23 convenience of reference and use during his testimony.  
24 So, we need a couple of minutes to do that before he  
25 testifies.

1 JUDGE BAKER: Okay. Fine.

2 MR. BESHORE: Mr. Vetne also was waiting in  
3 line.

4 JUDGE BAKER: Very well. Thank you.

5 Mr. Vetne?

6 Could you be distributing them now, Mr.  
7 Beshore?

8 MR. BESHORE: We'd be happy to, if it's not  
9 going to distract everybody from whatever the business  
10 at hand that Mr. Vetne has.

11 JUDGE BAKER: Very well. Mr. Vetne?

12 MR. VETNE: Your Honor, before we begin with  
13 the Proponents' testimony, I'd like to address three  
14 procedural issues and then to ask the Administrative  
15 Law Judge and the parties to respond.

16 The first issue I want to address is Notice  
17 of Hearing. By Rules of Practice as well as the  
18 Administrative Procedure Act, Notice of Hearing before  
19 a decision can be made, a rule can be changed, is  
20 required to go to the interested parties.

21 There has been testimony of some notice  
22 given, but there's also been considerable testimony  
23 that, it doesn't matter whether it's by design or not,  
24 that the Department was and is aware that the  
25 proposals, if adopted, some of the proposals, if

1 adopted, would affect the price paid to producers in  
2 other markets, producers that aren't pooled, producers  
3 that received no notice, and there was no mechanism to  
4 get them notice, and to plants that aren't on the 300  
5 or so person mailing list that receive milk from those  
6 producers.

7 This would include, for example, but not  
8 limited to independent producers located in Wisconsin,  
9 Minnesota, and other locations.

10 JUDGE BAKER: Excuse me one minute, Mr.  
11 Vetne.

12 Would you please see that the distribution is  
13 made also to the court reporter and to me? Thank you.

14 Go ahead, Mr. Vetne.

15 MR. VETNE: It would include, also, producers  
16 and handlers -- let me try to explain what -- the  
17 proposals here, as described and as have been described  
18 at two prior hearings on similar issues, are proposals  
19 that would have an effect both in the market subject to  
20 the hearing as well as other markets.

21 Once changes are made in one place, changes  
22 correspondingly are made in other places. You can  
23 imagine the persons affected as a row of dominos and  
24 the notice the first domino. Notice was given to the  
25 first domino that there was going to be a change, but

1 notice was not given to succeeding dominos that will be  
2 affected.

3 I think the Notice of Hearing, based on the  
4 testimony of Mr. Stukenberg, and the description of the  
5 direction, if not the quantity, of change that will  
6 occur to producers and handlers in other markets was  
7 fully inadequate to continue this hearing, and I would  
8 like to request, therefore, that the hearing be  
9 discontinued for lack of adequate notice on that basis.

10 Secondly, the -- again because of the domino  
11 effect and because this -- this hearing addresses  
12 questions of policy that are national in scope, there  
13 have been -- this is the third of a series of hearings,  
14 and in the first hearing in Minneapolis early this  
15 summer, the Proponent, DFA, expressed a desire to make  
16 a change in national policy and do it Order-by-Order.

17 The effect of that is to, whether by design,  
18 stealth or inadvertence, is to give notice and provide  
19 notice to a limited group of people and exclude notice  
20 to a large group of people who will be affected not  
21 only directly in the income level they receive but also  
22 in the policy that may be set as precedent governing  
23 other markets.

24 JUDGE BAKER: Go ahead.

25 MR. VETNE: Okay. For those two reasons, I

1 would request a ruling or at least -- and if the ruling  
2 -- well, first of all, I'd like to request the  
3 Government to respond and then request the Court to  
4 rule, based on unrebutted and unrebuttable evidence  
5 that the Notice has been inadequate, that this hearing  
6 should not proceed until notice can be given not only  
7 to those who will be directly affected by pricing  
8 changes but also those who will be directly affected by  
9 policy changes who have not yet been given notice in  
10 any of the three proceedings.

11 I do have two additional points of procedure  
12 to raise, but we'll do them one at a time.

13 JUDGE BAKER: Well, why don't you go ahead  
14 and raise them right now, Mr. Vetne? All the  
15 procedural ones, please.

16 MR. VETNE: That was Number 1.

17 Number 2 is, there are proposals made at this  
18 hearing, and the Department has said that they take no  
19 position on -- on the proposals. However, it doesn't  
20 make much sense to go to hearing on a proposal that is  
21 not authorized by the Agricultural Marketing Agreement  
22 Act.

23 There are several proposals here that would  
24 discriminate and differentiate on -- between producers,  
25 distant and nearby producers, in either the amount of

1 revenue they receive or the amount of costs that they  
2 must incur to be associated with this market.

3 That was addressed in a series of cases,  
4 Blair v. Freeman and Zuber v. Allen. I don't know if  
5 the Department has taken a -- has made a preliminary  
6 opinion concerning the lawfulness of these proposals.  
7 It certainly did not appear in the hearing notice, and  
8 if it did, perhaps we could address the reasoning.

9 But based on the decisions in Zuber and  
10 Blair, it does not appear that proposals that would  
11 discriminate between producers, based on nearby or  
12 distant locations to the market, are lawful, and  
13 therefore evidence concerning such proposals would not  
14 be relevant.

15 So, I would ask the Department, if it has  
16 made a determination as to lawfulness, to share that  
17 with the record, so that we may tailor our testimony to  
18 address that legal opinion; in the absence of which, I  
19 would ask and make a motion orally in limine to exclude  
20 testimony relating to those proposals that would  
21 discriminate between producers on the basis of nearby  
22 or distant location from the market.

23 And the third aspect of my procedural  
24 presentation has to do with a specific provision in the  
25 Agricultural Marketing Agreement Act, in Section

1 8(c)(5)(b), called the "Trade Barrier Provision", which  
2 was addressed in the Supreme Court case of Lehigh  
3 Valley.

4 Lehigh Valley dealt with partially-regulated  
5 plants and compensatory payments. However, the Trade  
6 Barrier Provision is not limited to Class 1 use or  
7 compensatory payments. It's addressed to any provision  
8 which prohibits or, in the case of milk used for  
9 manufacturing, tends to limit in any manner milk from  
10 another production area in the subject Marketing Area.  
11 It would include manufacturing milk. It would include  
12 -- well, it would include Grade A milk used for  
13 manufacturing.

14 Again, the proposals specifically are  
15 directed at and would result in, if adopted, the type  
16 of barrier prohibited expressly by Section 8(c)(5)(b).  
17 Again, the hearing should not be held on proposals that  
18 are not authorized by the Agricultural Marketing  
19 Agreement Act, and this hearing should not receive  
20 evidence concerning such proposals under 8(c)(5)(b),  
21 and I also ask for a ruling of the Court in response to  
22 a Motion In Limine to include proposals that are  
23 directed at such -- to include evidence supporting  
24 proposals that are directed at such unlawful proposals.

25 Those are the three issues. Thank you.

1                   JUDGE BAKER: Very well. Thank you, Mr.  
2 Vetne.

3                   Mr. Cooper, do you have any response that you  
4 wish to make?

5                   MR. COOPER: Yes, Your Honor.

6                   With regard to the first issue about notice,  
7 the only unrebutted evidence I've heard that anybody  
8 hasn't been notified is Mr. Vetne, you showed up here  
9 saying that he hasn't been notified or somebody he  
10 knows who's unknown hasn't been notified.

11                   The point in fact is that the Notice was  
12 given in court with the procedures included in the Code  
13 of Federal Regulations and in accord with the Notice  
14 provisions required by statute.

15                   Most hearings -- most rulemaking actions in  
16 the Government, unlike these formal rulemaking actions  
17 that we take, are just done by Notice and comment with  
18 just the Notice being published in the Federal  
19 Register, without even Notices to Governors, Interested  
20 Parties and all this. That has long been held to be  
21 sufficient and legal, and the procedures we use in this  
22 proceeding go far beyond that.

23                   Furthermore, there's been no evidence that  
24 anybody who's interested hasn't received Notice. The  
25 Federal Register has long been held to be adequate

1 notice without the rest of these type notifications  
2 that we do here.

3           The fact that somebody may be affected, well,  
4 I'm sure somebody is always affected or could be  
5 affected or speculates they might be affected if  
6 something changes in any particular Order. If there's  
7 a change somewhere in California, somebody in Michigan  
8 sits there and says is there a way I can take advantage  
9 of that and maybe no. Maybe somebody in Texas can. I  
10 mean, the whole country is somewhat inter-related.

11           So, I mean, to say that it could possibly  
12 impact somebody somewhere, you know, is the same as  
13 it's always been for the last 50 years.

14           With regard to his other two issues here,  
15 discrimination between producers in 8(c)(5)(b), I mean,  
16 the cases he's talking about dealt with a nearby  
17 differential and dealt with compensatory payments,  
18 neither of which are in issue here.

19           If he thinks any of the proposals here are in  
20 violation of those sections, he certainly has the right  
21 to raise it on brief. He has the right to -- if any of  
22 the provisions are adopted that he thinks are illegal,  
23 he has the right to sue about them. There's no court  
24 case holding any of these provisions are illegal.  
25 Whether they are or whether they're not is something

1 that would be determined down the road.

2 Certainly we don't necessarily see that  
3 there's any discrimination among producers by the fact  
4 that all milk under an Order is not subject to exactly  
5 the same requirements.

6 The purpose of having Milk Orders in the  
7 first place is to supply an adequate supply of milk to  
8 a market. Now, certain milk that services the market  
9 obviously is included in the pool of that market.  
10 Sometimes milk that doesn't service the market is not.  
11 It has nothing to do with the particular producer  
12 involved. The producer may have milk here, he may have  
13 cows there, you know.

14 The Orders don't deal with producers in that  
15 sense, they deal with an adequate supply of milk  
16 servicing the market, and so, I really don't see that  
17 there is any discrimination against particular  
18 producers involved in this thing, and secondly, I don't  
19 see that the cases and sections he cited have anything  
20 to do with the issues raised here.

21 There has always been performance standards  
22 under various Milk Marketing Orders that had to be met.  
23 So, I would urge that the motions that Mr. Vetne has  
24 advanced be denied.

25 JUDGE BAKER: Mr. Cooper, among his requests

1 and his motions is that the Department make a statement  
2 as to whether or not it has taken into consideration an  
3 alleged discrimination among producers, based upon  
4 distance, nearby and distant distances.

5 MR. COOPER: I think I just answered that,  
6 Your Honor. We don't see any discrimination between  
7 producers.

8 JUDGE BAKER: Yes.

9 MR. COOPER: So, there's nothing to take into  
10 account.

11 JUDGE BAKER: Yes. In other words, you have  
12 taken it into account? That's what I'm trying to get  
13 at.

14 MR. COOPER: Well, since there is no  
15 discrimination, there was nothing to take into account.

16 JUDGE BAKER: Very well. Mr. -- yes, Mr.  
17 English?

18 MR. ENGLISH: If I may rise to the one  
19 limited issue that Mr. Vetne raised as to the Notice,  
20 Your Honor, and maybe I can simplify this.

21 7 CFR Section 900.4 provides the rules for  
22 institution of proceedings, and in particular,  
23 900.4(b), the heading is "Giving Notice of Hearing and  
24 Supplemental Publicity".

25 "The Administrator shall give or cause to be

1 given notice of hearing in the following manner: (1)  
2 by publication of the Notice of Hearing in the Federal  
3 Register; (2) by the mailing of a true copy of the  
4 Notice of the Hearing to each of the persons known to  
5 the Administrator to be interested; (3) the press  
6 release; and (4) the governors."

7 So, there's a Category B-1, B-2, B-3 and B-4.  
8 It's important to note the heading, "Giving Notice to  
9 Hearing and Supplemental Publicity", because then  
10 there's a B-2, and B-2 says, "Legal notice of the  
11 hearing shall be deemed to be given if notice is given  
12 in a manner provided by Paragraph B-1.1", which is the  
13 Federal Order Notice, and failure to give notice in the  
14 manner provided in Paragraph B-1.2, which was the copy  
15 of the notice by the Market Administrator to persons  
16 interested, known to be interested, or B-1.3, which is  
17 the press release or B-1.4, which is the governors'  
18 statement, failure to give notice in those sections  
19 shall not affect the legality of a notice.

20 Now, Your Honor, it is perfectly clear by the  
21 provision that Notice of the Federal Order Provision,  
22 the remainder is Supplemental Publicity, and there is  
23 -- even if the Market Administrator did fail, and I'm  
24 not conceding that he did, but even if there were any  
25 failures, you don't even need to go that far for an

1 evidentiary record, the section under which this  
2 hearing is called, 900.4, is very clear that the notice  
3 is only the Federal Register.

4 It's in my Federal Register and that's enough  
5 for me.

6 JUDGE BAKER: Very well. Thank you very  
7 much.

8 Mr. Vetne?

9 MR. VETNE: Your Honor, of course, the Notice  
10 provisions in the Rules of Practice do not preempt the  
11 Administrative Procedure Act and do not preempt due  
12 process rules.

13 The fact that producers in other areas who  
14 are not regulated under Order 32 has been established.  
15 It is not speculation. It is -- it is fact,  
16 directionally if not quantitatively.

17 The adequacy of this Notice. Now, we know  
18 that producers -- those producers didn't get a physical  
19 copy of the Notice, but even if -- even if it is deemed  
20 to be adequate to publish in the Federal Register a  
21 notice that affects dairy farmers, and if you assume  
22 that dairy farmers elsewhere read the Federal Register  
23 on a daily basis, the notice has to be informative.

24 I think we can take official notice of the  
25 fact that dairy regulations are of their nature obtuse.

1 One court has referred to them as of labrythine  
2 complexity. Notice is given -- notice is adequate  
3 under the APA and under the due process, if it gives  
4 you a clue, just a clue as to how this is going to  
5 affect you, but there's nothing in any language of any  
6 notice that is made part of Exhibits 1, 2 and 3 that  
7 would give anyone reading the Federal Register or  
8 receiving it in their mailbox living in Wisconsin, not  
9 pooled in Order 33, a clue that this is going to  
10 depress their blend prices, that this is going to  
11 depress their PPD.

12 If that kind of informative notice had been  
13 given, it would be adequate, but nothing gives that  
14 kind of notice. It's not just the rules, it's what's  
15 going to happen as a result of these rules, if adopted.  
16 That's the kind of notice that is adequate and that is  
17 what is absent.

18 JUDGE BAKER: Very well. Thank you very  
19 much, Mr. Vetne.

20 I have considered -- I have considered your  
21 motions, and with respect thereto, I am ruling that  
22 there is no inadequacy as to the Notice of Hearing  
23 relating to this hearing. Accordingly, that is denied.

24 I am also ruling that with respect to the  
25 matters raised as to any position which the Department

1 may or may not have taken with respect to alleged  
2 discrimination between nearby and distant markets, that  
3 is not appropriate to bring up at this time nor do I  
4 believe there was any unlawfulness involved in it, and  
5 accordingly, that is denied.

6 With respect to your argument pertaining to  
7 trade barriers and the lawfulness with respect to how  
8 it would affect this hearing, that is denied.

9 In other words, your motions and your motions  
10 in their entirety are denied.

11 That brings us to the time for our afternoon  
12 lunch hour, and we'll take one hour for lunch.

13 (Whereupon, at 12:15 p.m., the hearing was  
14 recessed, to reconvene this same day, Wednesday,  
15 November 14th, 2001, at 1:15 p.m.)

16  
17  
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25



1           Then we have a set of exhibits with respect  
2 to Proposals 1 through 5 which is under a separate  
3 cover, which the cover looks similar to the statement,  
4 and we'd like to ask that that document be marked as  
5 Exhibit 9.

6           Within Exhibit 9, there are 19 separately-  
7 indexed documents which are tables and charts which Mr.  
8 Hollon will refer to and review in the course of his  
9 testimony.

10           JUDGE BAKER: Very well. They shall be so  
11 marked, Mr. Beshore, for identification, and you'll  
12 move them into evidence later on?

13           MR. BESHORE: Yes. Yes, we will.

14           JUDGE BAKER: Thank you.

15                           (The documents referred to  
16                           were marked for identification  
17                           as Exhibit Numbers 8 and 9.)

18           MR. BESHORE: Thank you.

19                           DIRECT EXAMINATION

20           BY MR. BESHORE:

21           Q     Okay. Mr. Hollon, would you identify  
22 yourself, give us your name and address and your  
23 employment affiliation initially, please?

24           A     My name is Elvin Hollon. I work for Dairy  
25 Farmers of America, employed here in Kansas City. I've

1       been with Dairy Farmers of America or its predecessor  
2       since 1979.

3               Q     Mr. Hollon, what is your educational  
4       background?

5               A     I have a Bachelor of Science degree from  
6       Louisiana State University in Dairy Science  
7       Manufacturing, a Master's degree from Louisiana State  
8       University in Agricultural Economics.

9               Q     Have you previously offered testimony as a  
10       witness with respect to Federal Milk Order hearings?

11              A     I have.

12              Q     Have you testified in other government and  
13       regulatory forums over the years?

14              A     I have.

15              Q     Okay.

16                   MR. BESHORE: I would like to offer Mr.  
17       Hollon as an expert in agricultural economics and milk  
18       marketing and propose that his testimony be -- be given  
19       as an expert.

20                   JUDGE BAKER: Are there any questions or  
21       objections?

22                   (No response)

23                   JUDGE BAKER: Hearing none, he shall be so  
24       recognized, Mr. Beshore.

25                   MR. BESHORE: Thank you, Your Honor.

1 BY MR. BESHORE:

2 Q Now, Mr. Hollon, do you have a statement with  
3 respect to Proposals 1 through 5 in the hearing notice,  
4 which has been marked for identification as Exhibit 8,  
5 to present at this time?

6 A I do.

7 Q Okay. And I understand that you will be  
8 delivering as your testimony verbatim much of what is  
9 in Exhibit 8, but in some cases, you will be not  
10 reading all the quoted materials and making some other  
11 edits in the testimony in terms of it being presented,  
12 and we want to have it in the record as if it had been  
13 read in full, is that correct?

14 A That is correct.

15 Q Okay. Thank you.

16 Mr. Hollon, you may proceed.

17 A Statement of Proponents. The Proponents of  
18 Proposal 1 through 6 are Dairy Farmers of America,  
19 Inc., Prairie Farms Dairy, Inc., and Swiss Valley Farms  
20 Cooperative. Dairy Farmer of America, DFA, is a  
21 member-owned cooperative of 16,905 farms that produce  
22 milk in 46 states.

23 DFA pools milk by 10 of the 11 Federal Milk  
24 Marketing Orders, including the Central Federal Order.  
25 Prairie Farms Dairy, Inc., is a member-owned

1 cooperative of 800 farms that produce milk in six  
2 states. Prairie Farms pools milk on two of the 11  
3 Federal Milk Marketing Orders, including the Central  
4 Federal Order.

5 Swiss Valley Farms Cooperative is a member-  
6 owned cooperative of 1,500 farms that produce milk in  
7 four states. Swiss Valley Farms Cooperative pools milk  
8 on three of the 11 Federal Milk Marketing Orders,  
9 including the Central Federal Order.

10 The Proponents are ardent supporters of  
11 Federal Milk Marketing Orders, and we believe that  
12 without them, dairy farmers' economic livelihood would  
13 be much worse. Federal Orders are economically-proven  
14 marketing tools for dairy farmers.

15 The central issue of this hearing is  
16 providing for orderly marketing and economically  
17 justifying the appropriate performance qualifications  
18 for sharing in the marketwide proceeds of the Order is  
19 the heart of the Order system.

20 If these issues are not addressed properly  
21 systemwide, Orders will be jeopardized. That would be  
22 detrimental to all the members of our group, both in  
23 their day-to-day farm enterprises and the milk  
24 marketing -- I'm sorry -- milk processing investments  
25 that they have made.

1                   Summary of Proposals for this Hearing. The  
2 Proponents have an interest in the proposals being  
3 heard at this hearing. These amendments are being  
4 requested by producers due to the present-day dynamics  
5 surrounding the pooling of milk on Federal Order -- on  
6 Federal Milk Marketing Orders.

7                   We are the Proponents of Proposals 1 through  
8 6 and will present testimony and evidence to support  
9 them at this hearing. Proposals 1 through 5 deal with  
10 the open pooling of large volumes of milk from  
11 locations, most of which are so distant to the market,  
12 that we question if they would ever regularly serve the  
13 market in any capacity.

14                   Milk distant to the market needs to have  
15 additional performance requirements that are workable  
16 and consistent systemwide with Federal Order policy.  
17 Proposal 7 and 8 also deal with milk from distant  
18 locations. Comments on these proposals will be made  
19 from individual members of our group and do not reflect  
20 any group consensus.

21                   Proposal 6 reflects the position that the use  
22 of the lowest prior month's advance class price to set  
23 the advance payment to producers is no longer a  
24 reasonable mechanism. Proposal 9 deals with producer  
25 association issues.

1           Our witnesses and their submissions are as  
2 follows: Mr. Hollon, the need for the hearing, the  
3 structure set by Federal Order Reform, submission of  
4 testimony referring to various exhibits and comment on  
5 the Market Administrator exhibits and the specifics and  
6 intent of our proposal language.

7           Mr. Lee, specific concerns from a cooperative  
8 handler with bottling plant operations. Mr. Hollon  
9 again, support for Proposal 6, summary of proposals and  
10 the need for an emergency decision. Mr. Hollon will  
11 offer testimony on Proposal 7 and comments on Proposal  
12 8 and a modification to Proposal 5 separately and not  
13 necessarily reflect all the groups' consensus.

14           Not just the Federal Order 32 issues, with  
15 regard to Proposals 1 through 3 and 5, we note -- that  
16 should be 1 through 5. We note that the underlying  
17 issue is not just the local Order 32 issue. We have  
18 concerns identical to those expressed by the other  
19 Proponents here and in the Pacific Northwest, Western  
20 Mideast and Upper Midwest Federal Orders, that milk in  
21 distant areas is pooling on the Order and drawing down  
22 the blend price but not serving the market in a regular  
23 form.

24           We find this practice detrimental to our  
25 members, our customers, and the entire Federal Order

1 System. We plan to express that concern in other  
2 Federal Order hearings and seek a solution that is  
3 consistent and in line with Federal Order principles  
4 systemwide.

5 JUDGE BAKER: Excuse me, Mr. Hollon.

6 THE WITNESS: Yes, ma'am?

7 JUDGE BAKER: Have any of these other Federal  
8 Order hearings taken this up? Do you know?

9 THE WITNESS: Yes, ma'am.

10 JUDGE BAKER: They have?

11 THE WITNESS: Yes, ma'am.

12 JUDGE BAKER: Oh. When?

13 THE WITNESS: In Order 30 in May?

14 MR. BESHORE: June.

15 THE WITNESS: June?

16 JUDGE BAKER: June.

17 THE WITNESS: And in Order 33, about three  
18 weeks ago.

19 JUDGE BAKER: Oh, all right. Thank you very  
20 much.

21 THE WITNESS: The central issue in each case  
22 is the interface between the pricing service altered by  
23 Federal Order Reform, hereafter called "reform", and  
24 the pooling provisions found in each Order.

25 These -- those relationships were changed by

1 reform. The link between performance and pooling was  
2 altered and needs reviewed. Organizations, including  
3 DFA, and many of the other proponents of these  
4 proposals here have moved quickly to take advantage of  
5 these changes in Order rules.

6 Indeed, in the competitive dairy economy, if  
7 a competitor makes a pooling decision that results in  
8 increased funds, you must attempt to do the same thing  
9 or face a more difficult competitive position.  
10 Individual organizations cannot unilaterally disarm.

11 We think this process of extensive distant  
12 market open pooling is inconsistent with Federal Order  
13 policy and clearly disparaged in the reform record.  
14 DFA is supporting similar proposals that have been  
15 submitted in the Proposed Order 124 hearing to reflect  
16 this philosophy.

17 DFA and Prairie Farms have already offered  
18 proposals and presented testimony and evidence in the  
19 Order 33 hearing consistent with the principles  
20 advanced here, and DFA has done so in the Order 30  
21 hearing.

22 Furthermore, the Proponents attempted to gain  
23 some relief from the pressure on the blend price when  
24 the pooling of distant milk on Order 32 through a  
25 request to the Market Administrator to use his

1 discretionary authority. We asked that to better align  
2 performance standards with market reality, he reduce  
3 the diversion limits.

4           However, our request was denied primarily  
5 because some of the very liberal Order 32 performance  
6 provisions which were included in the Order as a result  
7 of reform were not subject to Market Administrator  
8 discretion, thus would circumvent our request. Several  
9 of our proposals here today seek to remedy this issue.

10           Federal Order Reform. The final rule,  
11 published on September 1, 1999, in the Federal Register  
12 culminated the Federal Reform -- Federal Order Reform  
13 process. It was a lengthy process but produced needed  
14 beneficial results for the industry which could not  
15 have been accomplished without the informal rulemaking  
16 process.

17           Through it, the number of Federal Orders were  
18 reduced from 31 Orders in Marketing Areas down to 11.  
19 It provided clear rule for what constitutes a market.  
20 The pricing provisions were improved, modernized and  
21 made more uniform and transparent across the Order  
22 system.

23           A more common classification and  
24 standardization of the provisions common to all Orders  
25 was instituted. The Option 1-A Differential Service

1 that was the result of extreme computer modeling and  
2 was extensively evaluated by university, government and  
3 industry persons, a superior Class 1 price -- Class 1  
4 advance price mechanism, the higher-up pricing  
5 mechanism for Class 1 and common multiple component  
6 pricing provisions across all Orders, using component  
7 pricing, were all valuable improvements to the Federal  
8 Order Program.

9 Even though the process was lengthy and  
10 thorough, the dairy industry is dynamic and changing,  
11 and we currently find that provisions of the Order need  
12 review and alteration. Areas that need review include  
13 the pricing provisions that were addressed in the Class  
14 3 and 4 hearings held last Spring.

15 The combination of the absolute versus a  
16 relative price service that we now have and this  
17 interface with the prevailing pooling provisions is an  
18 issue that is now plaguing the industry and is being  
19 addressed in this and other hearings.

20 Federal Order Benefits and Principles.  
21 Federal Orders offer both benefits -- offer benefits to  
22 both producers and handlers and have always operated in  
23 a deliberate and organized manner, guided by basic  
24 economic principles.

25 Two primary benefits of Orders are to allow

1 producers to gain from the orderly marketing of milk  
2 and to share in the proceeds through marketwide  
3 pooling. Orderly marketing embodies principles of  
4 common terms and pricing that attracts milk to move to  
5 the highest-valued market when needed and clears the  
6 market when not needed.

7 Marketwide pooling allows qualified producers  
8 to share in the returns from the market equitably and  
9 in a manner that provides incentives to supply the  
10 market in a most efficient manner.

11 The Concept of a Market. Fundamental to  
12 Federal Order Principles are the concepts of a market,  
13 Marketing Area market and the concept of performance to  
14 the market in order to be qualified to share in the  
15 returns from that market.

16 The Federal Milk Order Statistics Annual  
17 Summary defines a Marketing Area as "a designated  
18 trading area within which the handling of milk is  
19 regulated by the Federal Order."

20 It is clearly an identified geographic area  
21 and defined deliberately by a set of rules for a  
22 specific purpose. In every set of Federal Order  
23 regulations, Section 2 defines the geographic area of  
24 the Marketing Order.

25 Federal Order Reform sought out industry

1 comment on Marketing Areas, established seven criteria  
2 for their establishment, and then used those criteria  
3 to divide much of the lower 48 States into 11 Federal  
4 Order Markets.

5 The criteria and the Department's explanation  
6 then taken directly from the Federal Rule are as  
7 follows: "The same seven primary criteria, known as a  
8 set of rules, that, as were used in the two preliminary  
9 reports and the proposed rule, were used to determine  
10 which markets exhibit a sufficient degree of  
11 association in terms of sales, procurement and  
12 structural relationships to warrant consolidation in  
13 the specific purpose." The final rule explained the  
14 criteria as follows.

15 At this point, I would drop down to Point  
16 Number 2, Overlapping Areas of Milk Supply. "This  
17 criteria applies principally to areas in which major  
18 proportions of the milk supply are shared between more  
19 than one Order. The competitive factors affecting  
20 Orders" -- I'm sorry -- "The competitive factors  
21 affecting the cost of a handler's milk supply are  
22 influenced by the location of the supply. The pooling  
23 of milk produced within the same procurement area under  
24 the same Order facilitates the uniform pricing of  
25 producer milk. Consideration of the criteria of

1 overlapping procurement areas does not mean that all  
2 areas having overlapped areas of milk procurement  
3 should be consolidated.

4 An area that supplies a minor proportion of  
5 an adjoining area's milk supply with a minor proportion  
6 of its own total milk production while handlers located  
7 in the area are engaged in minimal competition with  
8 handlers located in the adjoining area likely does not  
9 a strong enough association with the adjoining area to  
10 require consolidation.

11 In a number of the consolidated areas, it  
12 would be very difficult, if not impossible, to find a  
13 market boundary across which significant quantities of  
14 milk are not procured for other Marketing Areas. In  
15 such cases, analysis was done to determine where the  
16 minimal amount of route disposition overlap between  
17 areas occurred, and the criteria of overlapping route  
18 disposition generally was given greater weight than  
19 overlapping areas of milk supply." Emphasis added.

20 Looking down to Footnote 1, "Milk procurement  
21 areas were considered as a criteria for Order 32  
22 boundaries, and the distant areas in question here were  
23 not found to be part of the Order's Marketing Area."

24 Moving back up to the top of the page, "Some  
25 analysis was done to determine whether milk pooled on

1 adjacent markets reflects actual movements of milk  
2 between markets or whether the variations in milks  
3 pooled under a given Order may indicate that some milk  
4 is pooled to take advantage of price differences rather  
5 than because it is needed for Class 1 use in other  
6 markets." Emphasis added.

7 Dropping down to Footnote 2, "Open pooling  
8 was reviewed and was not considered to be a criteria  
9 for deciding Marketing Area, and certain areas were not  
10 put together as markets, if their basis of commonality  
11 was for economic paper pooling versus meeting the  
12 criteria established.

13 Additional analysis was done to make sure  
14 whether or not milk supplies that were associated with  
15 an Order, including those that were paper-pooled,  
16 really should be a factor in determining the Marketing  
17 Area.

18 In the case of Order 32, the distant milk in  
19 question here was not included in the Marketing Area."

20 Skipping over to the next page, Page 7,  
21 bottom third of the page, beginning with the paragraph  
22 that's headed "Central", "The Consolidated Central  
23 Order Marketing Area merges the current nine Federal  
24 Order Marketing Areas of Central Illinois, most of  
25 Southern Illinois and Eastern Missouri, most of

1 Southwest Plains, Greater Kansas City, Iowa, Eastern  
2 South Dakota, Nebraska, Western Iowa, Western Colorado,  
3 and Eastern Colorado. (Federal Orders 50, 32, 106, 64,  
4 79, 76, 65, 134 and 137, respectively.)"

5 Moving to the Consolidated Southeast  
6 Marketing Area, there are six Missouri counties  
7 currently in Federal Order 32, and from Order 106, 11  
8 Northwest Arkansas counties and 22 Southern Missouri  
9 Counties.

10 Order 106 counties in Kansas and Oklahoma  
11 remain in the Central Market. In addition, some  
12 counties in Colorado, Illinois, Iowa, Kansas, Missouri  
13 and Nebraska that currently are not part of any Order  
14 area included in the Consolidated Central Market.

15 There are 543 counties and the City of St.  
16 Louis, Missouri, in this Consolidated Area. The  
17 Marketing Area is changed from the proposed rule by the  
18 addition of the Western Colorado Marketing Area and  
19 seven currently unregulated Colorado counties.

20 The elimination of six currently unregulated  
21 Missouri counties and the addition of two partial  
22 counties and the deletion of one partial county for the  
23 purpose of eliminating inclusion of partial counties.

24 Geography. The Consolidated Central  
25 Marketing Area would include the following territory:

1 Colorado, 44 counties, including the 30 Colorado  
2 counties currently in the Eastern Colorado Marketing  
3 Area and the four Colorado counties in the Western  
4 Colorado Marketing Area.

5 Ten currently unregulated counties, three in  
6 the southeast corner of the state between the Eastern  
7 Colorado and Southwest Plains Marketing Area, and the  
8 central part of the state between the Eastern Colorado  
9 and Western Colorado Marketing Areas are added.

10 Illinois, 87 counties, including five of the  
11 six counties currently in the Iowa Marketing Area of  
12 the two partial Illinois counties in the Iowa Marketing  
13 Area, all of Whiteside and none of Jo Daviess are  
14 included in the Central Area.

15 The 19 counties currently in the Central  
16 Illinois Marketing Area, the 49 counties currently in  
17 the Southern Illinois/Eastern Missouri Marketing Area,  
18 and eight currently unregulated adjacent counties in  
19 Southern Illinois and six currently unregulated  
20 counties in Western Illinois, located between the  
21 current Central Illinois, Southern Illinois, Eastern  
22 Missouri Order Areas and the Mississippi River.

23 Iowa, 93 counties, including the 68 counties  
24 currently in the Iowa Marketing Area, the 17 counties  
25 currently in the Nebraska/Western Iowa Marketing Area,

1 the one county currently in the Eastern South Dakota  
2 Marketing Area, six currently unregulated counties in  
3 the northwestern part of Iowa, and one currently  
4 unregulated county in the southeastern corner of Iowa.

5 Kansas, the entire state, 105 counties.  
6 Minnesota, the four Southwestern Minnesota counties  
7 that are currently in the Eastern South Dakota  
8 Marketing Area. Missouri, 39 counties and one city,  
9 including six of the counties and one city currently or  
10 in the Southern Illinois/Eastern Missouri Marketing  
11 Area, and the 20 counties that are currently in the  
12 Greater Kansas City Marketing Area.

13 The five counties that are currently in the  
14 Iowa Marketing Area and eight currently unregulated  
15 counties distributed around the center area proposed to  
16 remain unregulated.

17 Nebraska, 66 counties in the southern and  
18 eastern part of Nebraska, omitting the 11 counties in  
19 the Panhandle that are currently part of the  
20 Nebraska/Western Iowa Marketing Area, and adding five  
21 currently unregulated counties in the southwest corner  
22 of the state between the Nebraska/Western Iowa and  
23 Eastern Colorado Marketing Areas and three currently  
24 unregulated counties in the southwest corner of the  
25 state, between the Nebraska, Western Iowa and Greater

1 Kansas City Marketing Areas.

2 Oklahoma, the entire state, 77 counties.  
3 South Dakota, the 26 Eastern South Dakota counties,  
4 including the portion of Union County that currently is  
5 in the Nebraska/Western Iowa Marketing Area, that  
6 currently are in the Eastern South Dakota Marketing  
7 Area. Wisconsin, the two Southwest Wisconsin counties  
8 that are currently -- that currently are in the Iowa  
9 Marketing Area.

10 The Consolidated Central Marketing Area is  
11 adjacent to the Consolidated Upper Midwest Order Area  
12 on the North and Northeast, the Consolidated Mideast  
13 and Appalachian Areas on the East, and the Northwest  
14 corner of the Southeast Order Area and the Consolidated  
15 Southwest Area on the South, and the Consolidated  
16 Western Order Area on the West.

17 The area north of approximately the western  
18 half of the Consolidated Area's also unregulated. The  
19 north/south distance covered by the area is  
20 approximately 800 miles, from Waterloo, South Dakota,  
21 to Ardmore, Oklahoma. The east/west extent of the  
22 area, from the Indiana/Illinois border to the  
23 Colorado/Utah border, is approximately 1,200 miles.

24 Geographically, the Central Marketing Area  
25 includes a wide range of topography and climate types,

1 ranging from the Colorado Plateau and the Rocky  
2 Mountains in the West to the Central Section of the  
3 Mississippi River toward the eastern part of the area.

4           Precipitation ranges from less than 15 inches  
5 per year in Denver, Colorado, to more than 30 inches in  
6 St. Louis, Missouri. Most of the area experiences  
7 fairly hot summer temperatures while winter  
8 temperatures vary somewhat more than summer with colder  
9 winter temperatures occurring in the northern and  
10 western parts of the Central Area.

11           The natural vegetation ranges from desert and  
12 desert scrub in Western Colorado to coniferous forests  
13 in the Rocky Mountains to short grass prairies in  
14 Eastern Colorado through tall grass prairie in Eastern  
15 South Dakota, Nebraska, Kansas, Oklahoma, and much of  
16 Illinois to broad leaf forests on both side of the  
17 Mississippi River.

18           Moving to Page 11, starting with the  
19 paragraph entitled "Milk Production", in October 1997,  
20 996 million pounds of milk were associated with the  
21 Orders Consolidated in the Central Market, including  
22 all of the milk pooled under Orders 32 and 106.

23           However, because of class price relationships  
24 in the Iowa and Nebraska Markets, only 893.2 million  
25 pounds of the milk was pooled. The 996 million pounds

1 were produced by 9,900 producers located in 17 states,  
2 from Idaho to Kentucky, and from Texas to Minnesota.

3 Three-quarters of the milk associated with  
4 the Central Market Area was produced within the  
5 Consolidated Market Area. The states contributing the  
6 most producer milk were, in descending order of volume,  
7 Iowa, Colorado, Missouri, Kansas, Illinois and  
8 Oklahoma. However, 68 percent of the Missouri producer  
9 milk came from farms in counties which are included in  
10 the Consolidated Southeast Marketing Area.

11 These six states accounted for 71 percent of  
12 the producer milk associated with the nine current  
13 Orders to be consolidated. Emphasis added, and  
14 dropping down to Footnote 3, "After extensive analysis  
15 which clearly considered some of the milk from distant  
16 locations in question at this hearing, none were  
17 included in the Marketing Area of Order 32."

18 I'll also note that in several cases, Order  
19 32 boundaries include only parts of some states. All  
20 of the states having substantial portions of their  
21 areas in the Consolidated Central Market contribute  
22 producer milk to at least two of the nine individual  
23 Orders with five of the states, Iowa, Kansas,  
24 Minnesota, Missouri and Nebraska, supplying milk to  
25 five of the Order areas each.

1                   Turning to Page 12, moving to the bottom of  
2 the page, the paragraph marked with "Utilization",  
3 "According to October 1997 pooled statistics for  
4 handlers who would be fully regulated under this  
5 Central Order, the Class 1 Utilization Percentages for  
6 the individual markets ranged from 38 percent for the  
7 Southwest Plains Market to 87 percent for the Central  
8 Illinois Market.

9                   Class 1 and Class 2 receipts and utilization  
10 data for Iowa and the combination of Greater Kansas  
11 City and Eastern South Dakota markets are restricted to  
12 protect the confidentiality of individual handler  
13 information.

14                   Data for Eastern Colorado and Western  
15 Colorado markets are combined in order to amass  
16 restricted data. Combined utilization for the nine  
17 markets would result in a Class 1 percentage of 50  
18 percent."

19                   Based on calculated weighted average use  
20 values for, Number 1, the current Order with the  
21 current use of milk, and Number 2, the current Order  
22 with the projected use of milk, in the Consolidated  
23 Central Order, the potential impact of this  
24 consolidation on producers who supply the current  
25 market area is estimated to be Southern Illinois,

1 Eastern Missouri, a 27-cent per hundredweight decrease  
2 from 13.49 to 13.22.

3 Central Illinois, a 50-percent decrease from  
4 13.56 to 13.06. Greater Kansas City, a 69-percent  
5 decrease, a 69-cent per hundredweight decrease, from  
6 13.91 to 13.22. Nebraska, Western Iowa, a 10-cent  
7 decrease from 13.23 to 13.13. Eastern South Dakota, a  
8 32-cent decrease from 13.30 to 13.01. Iowa, a five-  
9 cent decrease from 13.08 to 13.03. Southwest Plains, a  
10 70-cent increase from 12.94 to 13.64. Western  
11 Colorado, a 65-cent decrease from 13.88 to 13.23, and  
12 Eastern Colorado, an 11-cent decrease from 13.70 to  
13 13.59.

14 The weighted average use value for the  
15 Consolidated Central Order Market Area is estimated to  
16 be \$13.29 per hundredweight. Emphasis added.

17 Moving down to Footnote 4, "Neither the  
18 utilization calculations nor the resulting blend price  
19 calculations included the milk from distant locations  
20 in question here as a part of Order 32. Note, also,  
21 that the projected utilization for the Central Order  
22 was 50 percent."

23 Moving to Page 14, "Criteria for  
24 Consolidation. Most of the criteria used in  
25 determining the optimum consolidation of Order areas

1 apply to the Central Marketing Area. Federal Order  
2 Markets consolidated in the Central Area are strongly  
3 related to each other through overlapping route  
4 disposition. The great majority of sales by handlers  
5 who would be regulated under the Consolidated Central  
6 Order are distributed within the Marketing Area, and  
7 the consolidated markets have a greater relationship in  
8 terms of overlapping sales area than within the other  
9 markets.

10 In addition, sales within the currently  
11 unregulated areas included in the Consolidated Central  
12 Area are overwhelmingly from handlers that would be  
13 pooled under the Central Order. Inclusion of these  
14 areas would reduce handlers' burden of reporting out-  
15 of-area sales and taking pockets of currently  
16 unregulated counties that occur between the current  
17 Order areas.

18 As discussed above, the milk procurement  
19 areas for the consolidated markets also have a  
20 significant degree of overlap." Emphasis added, and  
21 moving down to Footnote 5.

22 "The source for much of the milk from distant  
23 locations under consideration at this hearing were  
24 specifically excluded from the Central Order Marketing  
25 Area."

1           The Western Colorado Order is included  
2 because the most recent data collected from this final  
3 decision indicates that since the proposed rule, the  
4 Western Colorado Marketing Area has developed a closer  
5 relationship with the Eastern Colorado Market than with  
6 any other market area, even across the Continental  
7 Divide.

8           A benefit of combining Western Colorado with  
9 other markets is that it is a small market where data  
10 cannot be released without revealing confidential  
11 information, unless combined with data pertaining to  
12 another Marketing Area.

13           Consolidation of the area will allow  
14 publication of meaningful statistics without disclosing  
15 proprietary information. In addition, several comments  
16 supported the combination of the Western Colorado area  
17 with the Consolidated Central Market in view of the  
18 large negative effect of lower producer pay prices on  
19 the small number of producers involved, if the Western  
20 Colorado area were consolidated with the Southwestern  
21 Idaho, Eastern Oregon and Great Basin Marketing Areas.

22           Some of the currently unregulated counties in  
23 Western Illinois and Central Missouri have been added  
24 to the Central Marketing Area. The omission from the  
25 Marketing Area of the counties in Central Missouri that

1 are not included in the Consolidated Central Marketing  
2 Area are based on elimination of the Marketing Area  
3 central dairy located in Jefferson City, Missouri.

4 This handler has not been previously  
5 regulated. As discussed earlier, it is not the intent  
6 of this decision to include currently unregulated area  
7 in the Consolidated Order Areas where such inclusion  
8 would have the effect of regulating previously  
9 unregulated handlers.

10 An additional benefit of the consolidation of  
11 these nine Order areas is that data will be able to be  
12 made public without disclosing proprietary information.  
13 Four of the current Federal Market Orders, Central  
14 Illinois, Greater Kansas City, Eastern South Dakota,  
15 and Western Colorado, included in this consolidated  
16 area have too few pooled plants to be able to publish  
17 market data without revealing confidential information.

18 In addition to these three markets, the  
19 number of handlers regulated under the Nebraska,  
20 Western Iowa, Iowa and Eastern Colorado Orders is in  
21 the single digits.

22 Page 17, "Discussion of Comments and  
23 Alternatives. Prior to the issuance of the proposed  
24 rule, alternatives to the consolidation of the Order  
25 areas included in the Central Marketing Area that were

1 considered included combining the Iowa, Nebraska,  
2 Western Iowa and Eastern South Dakota Order Areas with  
3 those of the Chicago Region and Upper Midwest areas in  
4 a Consolidated Upper Midwest Order.

5 The collection of more detailed data  
6 concerning the overlap of route disposition and milk  
7 procurement showed clearly that these Marketing Areas  
8 are more closely related to markets to the south than  
9 to the north." Emphasis added.

10 Dropping down to Footnote 6, "Specific  
11 consideration was given for inclusion of the areas in  
12 question here, and these areas were expressly excluded  
13 from the Central Order Marketing Area.

14 Approximately 85 percent of the total fluid  
15 milk dispositions distributed by handlers regulated  
16 under the three Order areas that were suggested to be  
17 included in the central area in the initial preliminary  
18 report and in the Upper Midwest area in the revised  
19 preliminary report are disposed of in the Consolidated  
20 Central Market.

21 The disposition by other Central Marketing  
22 Area handlers within the Consolidated Central Area is  
23 somewhat greater than a proportion for the three more  
24 northern areas. Also considered was the exclusion of  
25 14 Nebraska counties, in addition to the 11 already

1 excluded from the Central Marketing Area to expand the  
2 unregulated area which Gillette Dairy could distribute  
3 milk without becoming regulated. There was no data  
4 indicating that Gillette distributes milk in those  
5 counties.

6 In the early stages of the study of  
7 appropriate Order consolidation, it was assumed that  
8 the Southern Missouri and Northwest Arkansas  
9 proportions of the Southwest Plains Order area would  
10 remain with the rest of that area. This area was  
11 included with the Consolidated Southeast area in the  
12 proposed rule and remains there.

13 Eighteen comments that pertain specifically  
14 to the proposed Central Marketing Area were filed by 17  
15 commenters in response to the proposed rule. Four of  
16 these comments advocated moving the Western Colorado  
17 Order from the Consolidated Western Order to the  
18 Consolidated Central Order.

19 These comments expressed concern about the  
20 expected reduction in blend price to the Western  
21 Colorado producers under the Western Order. An  
22 examination of updated data on route dispositions and  
23 bulk milk movements resulted in making this change,  
24 which is explained in greater detail in the Description  
25 of Comments and Alternatives under this section of this

1 decision dealing with the Western area.

2 A comment filed by the American Farm Bureau  
3 Federation representing -- recommending that the  
4 central area of Missouri that was proposed to be  
5 unregulated be included in the Central Order area. A  
6 comment filed on behalf of Central Dairy, the handler  
7 who is located and distributes milk in the unregulated  
8 Missouri area, opposed the addition of any presently  
9 unregulated territory of the Federal Order Marketing  
10 Areas and specifically opposed the addition of six  
11 currently unregulated Northeast Missouri counties into  
12 which the handler expects to expand his distribution.

13 There is no intention of causing the  
14 regulation of this handler. As discussed earlier with  
15 regard to the Northeast and Mideast Marketing Areas,  
16 consolidation of the existing Orders does not  
17 necessitate expansion of the Consolidated Orders into  
18 currently unregulated areas, especially if such  
19 expansion would result in the regulation of currently  
20 unregulated handlers.

21 At the same time, minimizing the extent of  
22 unregulated counties in the middle of the Consolidated  
23 Marketing Area would help reduce the reporting burden  
24 on handlers in determining which route dispositions are  
25 inside and which are outside the Marketing Area. The

1 administrative burden of verifying such reporting would  
2 also be eliminated.

3 Six currently unregulated Northeast Missouri  
4 counties which were -- that were proposed to be added  
5 to the Central Order area have been removed on the  
6 basis of comments received from the Jefferson City  
7 handler. We indicated that the regulation of six  
8 counties would result in change in the handler's  
9 regulatory status.

10 No urgency on the part of the regulated  
11 handlers having sales in the unregulated area to  
12 include that area in the Consolidated Order Area was  
13 apparent from comments. In fact, none of the comments  
14 received from affected handlers advocated that the  
15 unregulated area be included in the Consolidated Order  
16 Area."

17 Moving to Page 19, starting with the second  
18 paragraph or, I guess, "Several comments from the Iowa  
19 Department of Agriculture, Wells' Dairy and Anderson-  
20 Erickson Dairy, as well as Swiss Valley Farms,  
21 supported the inclusion of the Iowa Order Area in the  
22 Consolidated Central Area, stating that the attraction  
23 of a supply of milk for fluid needs requires such  
24 consolidation.

25 Comments were received on dividing the

1 current Iowa Marketing Area by adding the eastern edge  
2 of the Iowa Marketing Area to the proposed Consolidated  
3 Upper Midwest Order. Such division would result in  
4 Swiss Valley Farms' distributing plant in Dubuque  
5 qualifying as a pooled plant under the Consolidated  
6 Midwest Order, as it now does during some months under  
7 the current Chicago Regional Order.

8 The Swiss Valley plant comprises a large  
9 majority of the Iowa market sales in the Chicago  
10 Regional and Upper Midwest Order Areas, and the  
11 movement of a half a dozen counties would assure its  
12 pool status in the Consolidated Midwest Order and its  
13 location in that Order area.

14 Comments by Lakeshore Federated Cooperative  
15 argue that the extensive overlap of producers, Class 1  
16 sales, in geographic similarities between the northwest  
17 portion of Iowa, of the Iowa Marketing Area, and the  
18 adjoining Consolidated Upper Midwest Area, should be  
19 considered compelling reasons for making such a change.  
20 Lakeshore's comments were supported by Prairie Farms,  
21 Foremost Farms and DFA.

22 In addition, Grande Cheese Company, a  
23 Wisconsin cheese-maker, filed comments supporting  
24 Lakeshore's position. In its comments, Swiss Valley  
25 argued that the two Southwest Wisconsin counties

1 proposed to be included in the Consolidated Central  
2 Marketing Area were removed from the Chicago Regional  
3 area and added to the Iowa area on the basis of a  
4 formal rulemaking proceeding in the late 1980s, at  
5 which time, it was determined that the principal  
6 competition for fluid sales of milk supply in this area  
7 occurred between Iowa handlers rather than those of the  
8 Chicago Regional handlers.

9 It is therefore Swiss Valley's position that  
10 the two counties should remain with the rest of Iowa  
11 and in the Consolidated Central Marketing Area.

12 On the basis of data gathered for this  
13 decision, the primary source of route disposition in  
14 Grant and Crawford Counties, Wisconsin, Dubuque, Iowa,  
15 is the Swiss Valley plant in Dubuque, and most of the  
16 rest of the milk distributed under these counties are  
17 from handlers regulated under the Chicago Regional  
18 Order.

19 The data also shows that the Dubuque plant  
20 gets most of its milk supply from counties that supply  
21 milk in the Chicago Regional and the Upper Midwest  
22 Orders as well as other plants pooled in the other Iowa  
23 Orders."

24 Moving to Page 21, last paragraph -- I'm  
25 sorry -- the first paragraph at the top, "After

1 considering all comments and all other relevant  
2 information, it is determined that the territory  
3 encompassed here in the Central Marketing Area best  
4 meets the criteria used."

5 I would add that the citation that I forgot  
6 to add should read "Federal Register 64, 16070 to  
7 16074".

8 "The Concept of Pooling Market Proceeds. All  
9 Federal Milk Orders today save one provide for the  
10 marketwide pooling of milk proceeds among all producers  
11 supplying the market. The one exception to this form  
12 of pooling is found in the Michigan Upper Peninsula  
13 Market where individual handler pooling has been used.

14 Marketwide sharing of a classified use value  
15 of milk among all producers in a market is one of the  
16 most important features of the Federal Order Milk  
17 Marketing Area." I'm sorry.

18 "One of the most important features of a  
19 Federal Milk Marketing Area. It ensures that all  
20 producers supplying handlers in a Marketing Area  
21 receive the same uniform price for their milk,  
22 regardless of how the milk is used. This method of  
23 pooling is widely supported by the dairy industry and  
24 has been universally adopted for the 11 consolidated  
25 Orders. 64 Federal Register 16130, April 2nd, 1999.

1           Additionally, each Order has precise terms  
2 that a supplier must follow in order to share in the  
3 blend proceeds. These provisions are known by the  
4 industry as performance standards. The concept is  
5 explained, defended and endorsed in the final rule as  
6 follows.

7           There were a number of proposals and public  
8 comments considered in determining how Federal Milk  
9 Orders should pool milk and which producers should be  
10 eligible to have their milk pooled in the Consolidated  
11 Orders.

12           Many of these comments advocated a policy of  
13 liberal pooling, thereby allowing the greatest number  
14 of dairy farmers to share in the economic benefits that  
15 arise from the classified pricing of milk.

16           A number of comments supported identical  
17 pooling provisions in all Orders, but others stated  
18 that pooling provisions should reflect the unique and  
19 prevailing market supply and demand conditions in each  
20 Marketing Area.

21           Fundamental to most pooling proposals in the  
22 comments was the notion that the pooling of producer  
23 milk should be performance-oriented in meeting the  
24 needs of the fluid market. This, of course, is logical  
25 since the purpose of the Federal Milk Order Program is

1 to ensure an adequate supply of milk for fluid use."  
2 Emphasis added.

3 Dropping down to Footnote 7, "The concept of  
4 a performance standard is fundamental to the Federal  
5 Order System and was endorsed by both the industry and  
6 the Secretary.

7 A suggestion for open pooling where milk can  
8 be pooled anywhere has not been adopted, principally  
9 because open pooling provides no reasonable assurance  
10 that the milk will be made available in satisfying the  
11 fluid needs of a market."

12 Dropping down to Footnote 8, "Open pooling  
13 was totally rejected in the reform deliberations by the  
14 Secretary."

15 Moving to Page 23, starting with the  
16 paragraph that reads, "We find no compelling reason to  
17 change this guideline. Open pooling is a cause for  
18 concern from our group's members in Federal Order 32.  
19 They are concerned when milk from distant areas shares  
20 in the blend price pool but does not perform; that is,  
21 does not deliver regularly nor balance the market.

22 The cost of providing these services to the  
23 market always falls back on the local milk supply, and  
24 if current practice is not amended, it will guarantee a  
25 continuing lower return for the local dairy farmers who

1 supply the local Class 1 market.

2 The resulting drop will impact funds to  
3 distant producers who do not perform is not reasonable.  
4 It was analyzed and excluded by Order Reform and thus  
5 is an end run that should not be allowed now.

6 Additionally, open pooling has an inherent  
7 conflict with the principles underlying the models that  
8 formulated the pricing services derived in reform. The  
9 differential models assume that supplies of milk  
10 associated with the demand point and aggregated into a  
11 market actually shipped from the counties they were  
12 located in to the population centers where the demand  
13 points were fixed.

14 To the best of our knowledge, there were no  
15 provisions in the mathematical equations for those  
16 models allowing for milk to be associated with the  
17 market if it did not actually ship to or supply the  
18 market.

19 The current practices clearly exploit the  
20 price service, and if we are to retain it, which we  
21 support doing, we must structure the regulations to  
22 parallel the model.

23 This means that using direct deliveries from  
24 inside the Marketing Area to qualify supply plants and  
25 milk supplies from outside the Marketing Area should be

1 greatly limited, if allowed at all.

2           The principles allowing direct ship milk to  
3 qualified supply plants was instituted to allow  
4 achievement of the economies of direct ship milk,  
5 saving the cost of reloaded pumps. It is now being  
6 used for other purposes, to substitute milk produced in  
7 the market for supplies located far out of the market  
8 in the qualification equation. This runs counter to  
9 the initial intent of the provision and to the  
10 principles that form the pricing list.

11           It is our position that milk supplies located  
12 in the Marketing Area should not be used to qualify  
13 distant milk. Milk deliveries that are used to qualify  
14 supply plants that are located outside of the Marketing  
15 Area should also originate outside of the Marketing  
16 Area from locations equal distance from the market as  
17 the supply plant.

18           This way, the principles that underline the  
19 pricing service could be adhered to but still allowing  
20 for the economies that come from direct ship milk. The  
21 accounting for this practice would be no more difficult  
22 to administer than similar provisions that govern  
23 transportation credits in Orders 5 and 7 or the surplus  
24 milk pricing adjustments that existed in the Texas  
25 Order prior to reform.

1           Performance standards are universal in their  
2 intention, to require a level of association to a  
3 market that is marked by the ability and willingness to  
4 supply that market. However, they are individualized  
5 in their application. Each market requires standards  
6 that work for the conditions that apply in that market.  
7 The reform record develops and defends this concept.

8           A review of the various Federal Order  
9 Performance Standards shows the diversity of standards  
10 but the common requirement of performance to the market  
11 in order to share in the blend price pool.

12           During the reform process, as individual  
13 Order performance standards were being evaluated, many  
14 times, a particular standard was chosen for one of the  
15 Predecessor Orders. Frequently, the most lenient  
16 standard was selected from among a group of available  
17 choices. This attempt, however good in its intent, has  
18 not always proven to be workable and is one of the  
19 reasons for this proceeding."

20           Exhibit 9, Table 1, entitled "Pounds of Milk  
21 Used in Class 1 Products" shows a table of annual Class  
22 1 usage for all Federal Orders. Note that Federal  
23 Order 32 has the third largest volume of Class 1 usage  
24 in all Orders.

25           Clearly, Federal Order 32 represents a major

1 market for Class 1 milk, and the performance  
2 requirements associated with it should reflect that by  
3 providing for a sufficient association and performance  
4 to the market in order to share in the blend price.

5 We note that several other markets with  
6 smaller total Class 1 sales volumes have more  
7 restricted pooling standards.

8 Exhibit 9, Table 2, entitled "Summary of  
9 Producer Milk Provisions Under Federal Milk Marketing  
10 Orders" is a comparison of Federal Order Producer Milk  
11 Standards. Note that while the intentions of the  
12 various standards are the same, to establish the  
13 requirements necessary to share in the Order's  
14 proceeds, the specifics vary from Order-to-Order.

15 Exhibit 9, Table 3, entitled "Summary of  
16 Minimum Pooling Standards for Supply Plants Under  
17 Federal Milk Orders" is a comparison of Federal Order  
18 Pooling Standards.

19 Again, note that while the intentions of the  
20 various standards are the same, to establish the  
21 requirements necessary to share in the Order proceeds,  
22 the specifics vary from Order-to-Order. Note that  
23 several Orders call for an automatic pool qualification  
24 period commonly referred to as "a free ride period".  
25 This term means that some level of performance in a

1 period, in a prior period grants the performer a  
2 benefit in a future period that does not require a  
3 performance during that time frame.

4 Exhibit 9, Tables 5-A and B, entitled  
5 "Comparison of Relative Return Between Markets in  
6 Federal Order 1005 and Federal Order 1032", and Tables  
7 6-A and B, "Comparison of Relative Returns Between  
8 Markets in Federal Orders 1007 and Federal Order 1032",  
9 demonstrate that the blend price for the St. Louis,  
10 Missouri, market and for the Tulsa, Oklahoma, market is  
11 not sufficient to prevent milk supplies from being  
12 attracted to the adjoining Southeastern Federal Orders.

13 Nashville, Illinois, and Jackson, Missouri,  
14 represent milk sheds that traditionally supply the St.  
15 Louis market. Recently, producers in these milk sheds  
16 have requested that their milk be marketed in Federal  
17 Order 5 due to higher returns.

18 A review of the blend price in Madisonville,  
19 Kentucky, Table 5-A, and nearby Federal Order 5, pooled  
20 distributing plant that solicits from milk supplies in  
21 these areas clearly demonstrates why producers in the  
22 area are seeking the adjoining market.

23 On a Calendar Year 2000 average annual basis  
24 after adjusting for haul, producers from Nashville,  
25 Illinois, would be \$1.52 per hundredweight better off

1 from a Federal Order 5 return. In the worst,  
2 individual monthly comparison, January 2000, a producer  
3 would be 92 cents per hundredweight better off, and in  
4 the best month, November 2000, \$2.74 per hundredweight.

5 Similar comparisons for Jackson, Missouri,  
6 area producers show a net annual average per  
7 hundredweight gain of \$1.80. The lowest individual  
8 monthly comparison, January 2000, shows a gain of \$1.19  
9 per hundredweight, while the November 2000 gain is  
10 \$3.01 per hundredweight.

11 Table 5-B details comparisons for Calendar  
12 Year 2001 data, year-to-date, showing that these trends  
13 are consistent with the Calendar Year 2000 data.

14 Ada, Oklahoma, represents the milk shed that  
15 traditionally supplies the Tulsa, Oklahoma, market.  
16 Recently, producers in this milk shed have requested  
17 that their milk be marketed in Federal Order 7 in order  
18 to obtain a higher return.

19 A review of the blend prices at Fort Smith  
20 and Little Rock, Arkansas, Table 6-A, both nearby  
21 locations for Federal Order pooled plants, pooled  
22 distributing plants, clearly demonstrates why producers  
23 in this area are seeking the adjoining market.

24 On an annual average basis, after adjusting  
25 for the haul, producers from Ada, Oklahoma, would be

1 better -- would be 65 cents per hundredweight better  
2 off from the Federal Order 7 return at Little Rock. In  
3 the worst individual monthly comparison, January 2000,  
4 a producer would be 11 cents per hundredweight better  
5 off marketing their milk to the Order 32 plant.

6 The only month in Calendar Year 2000 that the  
7 return would be better in the local market than in the  
8 adjoining market. The best month, November 2000, the  
9 adjoining market would be more -- would be \$1.59 per  
10 hundredweight more.

11 Similar comparisons for a Fort Smith,  
12 Arkansas, sale show a net annual average gain of \$1.25  
13 per hundredweight. The lowest individual monthly  
14 comparison, January 2000, shows a gain of 49 cents per  
15 hundredweight, while the November 2000 gain is \$2.19  
16 per hundredweight.

17 Table 6-B details comparisons for Calendar  
18 Year 2000, year-to-date, showing that these trends are  
19 consistent with Calendar Year 2000 data.

20 Exhibit 9, Tables 7-A and B, entitled  
21 "Comparison of Relative Return Between Markets, Federal  
22 Orders 1030 and Federal Order 1032", demonstrates that  
23 the blend price in Order 30 is not sufficient to  
24 attract milk from an adjacent Federal Order to replace  
25 milk that has been attracted away to other Federal

1 Orders.

2 For practical purposes, Federal Order 30 in  
3 Southwest Wisconsin would be the most logical  
4 replacement location for the St. Louis market.  
5 However, Table 7-A demonstrates that in every month of  
6 Calendar Year 2000, the Federal Order 32 blend price,  
7 less the haul, from Southwest Wisconsin would be less  
8 than the Federal Order 32 price in St. Louis. The  
9 average -- the annual average loss is 55 cents per  
10 hundredweight. This ranges from the least loss of 35  
11 cents to a maximum shortfall of 74 cents.

12 An additional comparison was made for milk  
13 supplies in Melrose, Minnesota, Stearns County, and Des  
14 Moines, Iowa, the location of a major pooled  
15 distributing plant in Order 32, and a logical reserve  
16 supply for the Des Moines Market Area.

17 Also, Stearns County is a major milk  
18 production area in Minnesota. There, too, the average  
19 annual advantage that Order 30 has over Order 32 is 82  
20 cents a hundredweight, ranging from 62 cents to a \$1.01  
21 per hundredweight.

22 Exhibit 9, Table 8-A and B, entitled  
23 "Comparison of Relative Return Between Markets, Federal  
24 Order 126 and Federal Order 132", demonstrates that the  
25 blend price in Order 32 is barely sufficient to attract

1 -- to keep milk from moving to Federal Order 126 in  
2 spite of a 317-mile haul.

3 In Calendar Year 2000, the spread between  
4 blend prices got as narrow as six cents per  
5 hundredweight in November and averaged 48 cents for the  
6 year. Through August of 2001, the Calendar Year  
7 average was nearly the same; thus, only a small shift  
8 in prices could cause Federal Order 26 to become a more  
9 attractive market in Order 32, even after a long haul.

10 DFA milk production in the former Western  
11 Colorado Federal Order Marketing Area, now encompassed  
12 by the Central Order, has declined by 15 percent since  
13 the implementation of Federal Order Reform. The number  
14 of farms has dropped from 20 to 16.

15 Several farms in the area had been developing  
16 expansion plans, but they have curtailed those plans  
17 due to lower blend prices. This area is very isolated.  
18 There is limited, if any, competition for milk sales in  
19 the area due to distance from other fluid bottlers.

20 Producers have no other market outlets due to  
21 the distance to other markets. The records available  
22 in Federal Order Reform process noted that perhaps this  
23 area could have stood alone, had not the mandate of 10  
24 to 14 Orders been enforced.

25 There have been no changes in the handler

1 make-up in the area, no changes in the production  
2 conditions and little change in the differential level,  
3 but the new Order regulations reduces the blend price  
4 severely enough to curtail production.

5 As a result of returns that are too low and  
6 alternatives that are no better, producers are and will  
7 continue to leave Federal Order 32 markets. As overall  
8 blend prices decline due to the effect of non-  
9 performing milk supplies, individual handlers will be  
10 able to offer small groups of producers higher prices,  
11 representing slices of the market at utilization rates  
12 higher than the market average and then pit producer  
13 versus producer in a race to sell for less.

14 Also, procurement schemes will pop up to  
15 exploit a specific blend price advantage that will  
16 benefit some producers at the expense of most of the  
17 others. The end result is that after prices fall to  
18 the lowest level, supplies will attempt to rationalize  
19 and then conditions will normalize, but over the time  
20 that this occurs, producers will lose revenues.

21 It would be far more orderly and less costly  
22 for all producers to correct the blend price alignment  
23 now rather than over the long time period that it takes  
24 to otherwise correct these price misalignments.

25 The magnitude of the difference cannot be

1 corrected with over Order premiums. Increases of the  
2 magnitude needed to solve the problem over a dollar per  
3 hundredweight in the cases cited above would accelerate  
4 the disorderly market conditions outlined in the above  
5 paragraph. None of the markets can institute a charge  
6 of that magnitude.

7 Exhibit 9, Tables 9-A and B, entitled  
8 "Utilization and Statistical Uniform Blend Price,  
9 Federal Order 32", shows pounds pooled by month on  
10 Federal Order 32 from January 2000 to date, taken from  
11 monthly Order statistical publications.

12 Exhibit 9, Chart 1, drawn from this data,  
13 details this information on an index basis. For each  
14 month, Class 1 and Class 2 usage is combined, converted  
15 to a pounds per day basis and then indexed with January  
16 2000 as the base. Identical computations for Class 3  
17 and Class 4 utilizations are made.

18 Class 1 and 2 usage represents the products  
19 from which added value is derived for the pool. Class  
20 3 and 4 usage represents products that maintain the  
21 reserve supply for the added value products and serves  
22 to balance the fluctuating demands of the market.

23 Clearly, the volume of Class 1 and 2 usage  
24 has changed little in the 22 months of reform of  
25 Federal Order 32, but the supply of reserve has grown

1 steadily. It would be difficult to justify the need  
2 for a near 187-percent increase in the reserve  
3 associated with the market.

4 Exhibit 9, Table 11, furnished by the Market  
5 Administrator, illustrates the source and volume of all  
6 milk that is pooled under Order 32 for each month that  
7 the reformed Order has been in existence.

8 The maps of Exhibit 9, Table 12, labeled  
9 "Counties With Milk Marketings on the Central Federal  
10 Order for Periods of September 2000 to September 2001"  
11 detail this exhibit graphically.

12 I'm not sure of the number, but Table 12  
13 continued delineates the same data from the standpoint  
14 sourced from inside the Marketing Area versus outside  
15 the Marketing Area for the same period.

16 Several conclusions can be drawn from these  
17 data. For the months, about 45 percent of the producer  
18 receipts came from farms located in counties located  
19 outside the Marketing Area.

20 Two. As best evidenced by the maps, much of  
21 the milk is from such long distance that it cannot  
22 serve the market easily on a regular basis.

23 Three. There was a learning curve to the art  
24 of open pooling as best evidenced by the Minnesota and  
25 Wisconsin data. Clearly, poolings slowly increased as

1 handlers realized the potential income opportunity and  
2 the ease of obtaining it. Once the methodology became  
3 understood, the volume pooled increased heavily.

4 Four. The free ride months of May through  
5 July became a temptation that could not be ignored.  
6 Examination of the data for leading states in the  
7 source of distant milk pooled on the Order, Minnesota  
8 and Wisconsin, show this factor.

9 In both cases, Calendar Year 2000 poolings  
10 increased in the free ride months as the learning curve  
11 of how best to exploit open pooling advanced. Then  
12 poolings tapered somewhat. In Calendar Year 2001, the  
13 cycle repeated as the free ride months' pooling again  
14 represented the largest months, largest volume pooled  
15 on the Order.

16 Five. California, the other leading state in  
17 the open pooling derby, had no poolings in Calendar  
18 Year 2000, but the same pattern of noticeable increases  
19 in poolings is evident in Calendar Year 2001, perhaps  
20 evidence that the lessons of the prior year had been  
21 learned well.

22 Market Administrator data has been published  
23 in a map and table form for every Federal Order. Data  
24 has been published similar to Exhibit -- this should be  
25 the Market Administrator 5, and that correction should

1 also be made back on Page 28.

2 MR. BESHORE: Why don't you go back and make  
3 that correction?

4 THE WITNESS: Okay. Page 28, middle  
5 paragraph, should read, "Exhibit 5, Table 11", and the  
6 next blank should read, "Exhibit 5, Table 12", and the  
7 next blank should say "MA Exhibit 5, Table 12".

8 Moving back to Page 28, Point 6, "Market  
9 Administrator data has been published in map and table  
10 form for every Federal Order. Data has been published  
11 similar to Exhibit 5, Table 12, for May 2000.

12 For comparison purposes, every other Federal  
13 Order, except the Appalachian Order, had more milk  
14 pooled and produced from within its Marketing Area  
15 boundaries than did the Central Order reported at 43.6  
16 percent for the May 2000 period. The next lowest  
17 percentage was the Southeast Order at 69.4 percent.

18 Clearly, Order 32 is carrying an excessive  
19 volume of reserve supply. Looking at the index chart,  
20 Exhibit 9, Chart 1, Class 1 and 2 usage has been  
21 relatively constant each month. Data from Exhibit 9,  
22 Tables 9-A and B, would indicate that this volume is  
23 approximately 500 million pounds per month.

24 Given the reality that milk production is  
25 reasonably level throughout the week and fluid use

1 demand is variable, how much is a reasonable reserve?

2 We would propose that a charitable assumption  
3 for a necessary reserve would equal a three-day supply;  
4 that is, demand for Class 1 and 2 is higher on four  
5 days of the week and lower to non-existent on three  
6 days. Therefore, a reasonable reserve would be three-  
7 sevenths or 42 percent.

8 Put in another way, this represents weekend  
9 balancing and/or the supply needed to serve peak weekly  
10 demand fluctuation. Every market should be responsible  
11 for maintaining a reserve supply.

12 The dairy farmer member owners of our group  
13 recognize that responsibility and are willing to accept  
14 it. However, we do not accept the responsibility for  
15 maintaining a greater reserve supply than necessary.  
16 Therefore, given the assumption of a reserve supply at  
17 42.8 percent and a fluid use average demand of 500  
18 million pounds, a reasonable calculation of a reserve  
19 supply would be 214 million pounds per month.

20 Looking again to the index chart, the  
21 Calendar Year 2001 data for Class 3 and 4 appears to  
22 have stabilized at a higher level, and looking to the  
23 usage tables at an average volume of 997 million  
24 pounds. This week Order reserve of 4.65 times more  
25 than the charitable 42.8 percent standard.

1           Looking again to MA Exhibit 12, MA Exhibit  
2 Table 12, we can see that milk from other counties,  
3 that is, those not located within the Marketing Area as  
4 established by Federal Order Reform, 601 million pounds  
5 in September and 657 million in 2001. This would be  
6 double to triple the amount of reserve supply needed by  
7 the market, again using our charitable estimate.

8           Just to get the perspective of another month,  
9 looking to the data requested by DFA from the Market  
10 Administrator, the milk pooled on the Order for  
11 December of 2000 from counties within the seven-state  
12 area but outside the Marketing Area show a reserve that  
13 would be three and one-half times larger than the 214  
14 million pound estimate.

15           Even taking into consideration the amount of  
16 Class 3 and 4 manufacturing use that has been in the  
17 market for many years, the current volumes of producer  
18 milk pooled must be considered excessive and in no way  
19 can be considered a necessary reserve to the market."

20           Exhibit 9, Table 4, entitled "Mileage Data  
21 Used in Various Computations and Comparisons", lists  
22 the mileages from certain supply points located outside  
23 the Marketing Area in counties and cities within those  
24 -- and counties and cities within those counties that  
25 pooled on the market listed in the Market Administrator

1 data.

2 The demand point shows and represent major  
3 population centers within Order 32 for the cities for  
4 which alternative price comparisons were made. Unless  
5 otherwise noted, the rate per mile used in the  
6 calculation is \$1.90, and a reasonable proxy for one-  
7 way transportation costs. This cost does not include  
8 any procurement assembly or reload costs, just the  
9 transportation component.

10 Exhibit 9, Tables 10 through 15, "Comparison  
11 of Delivery Charges Versus Producer Price Differential  
12 for Several Different Markets", depict the return from  
13 deliveries from several distant supply points to  
14 Federal Order 32.

15 The volumes chosen indicate easy arithmetic  
16 and are not intended to represent any actual receipts.  
17 However, the per unit calculations would be  
18 representative. The comparison uses the mileage shown  
19 in Exhibit 9, Table 4.

20 Exhibit 9, Table 10, shows a return  
21 calculation based on the California and Idaho supply  
22 point as if the milk was delivered to market every day,  
23 which is the most typical practice for local milk.

24 The return is shown in the column labeled  
25 "Monthly Return, All Delivered to Bottler". This

1 return is calculated by netting the difference in the  
2 Producer Price Differential from the destination point  
3 against the transport costs.

4 The effect of any additional milk procurement  
5 costs and market premiums are ignored. If this milk  
6 were delivered to the market every day, the blend price  
7 gain would not even be enough to pay the transportation  
8 costs. No rational supplier would make this business  
9 decision to lose \$1.2 million or approximately \$5.72  
10 per hundredweight in the case of the California  
11 delivery or \$833,526 or \$3.97 per hundredweight in the  
12 case of the Idaho delivery.

13 However, the easy producer association  
14 standard and the loose diversion standard make a one-  
15 time delivery of 32,587 pounds able to qualify the  
16 entire volume and turn the significant loss into gains  
17 of \$280,582 in the case of the California delivery and  
18 \$281,157 in the case of the Idaho delivery.

19 All that is necessary is to touch base one  
20 time and not lose association with the Order. Since  
21 California has no Federal Order plant, it's easy to  
22 remain unassociated with a Federal Order plant.

23 Since there are currently no pooled supply  
24 plants in Federal Order 135, the Western Order, any  
25 delivery to an Idaho manufacturing plant will not cause

1 loss of association with Central Order.

2 Also, the pooling handler must have  
3 sufficient sales to qualify for the diversion, a  
4 standard made easy by the Central Order provisions  
5 which allow the ability to pyramid deliveries in order  
6 to qualify larger volumes of milk.

7 Table 11 again uses the same calculation  
8 method but applies the delivery standards of 20 and 25  
9 percent that we propose, and the gains are reduced  
10 greatly. In the scenario of the California delivery,  
11 they would remain negative, and in the case of an Idaho  
12 delivery, they result in a 21-cent per hundredweight  
13 return. The 21-cent per hundredweight return may not  
14 be sufficient to draw milk away from the manufacturing  
15 plant, unless the intent is not to ever ship but just  
16 to ride the pool.

17 Note that this example does not consider the  
18 possibility that local in-area milk could qualify the  
19 milk in this example and thus affect the return but  
20 only considers how our proposal would work if this milk  
21 were forced to perform on its own.

22 Our proposals do address this issue, however.  
23 Proposals 8 and 9 will speak to other requirements for  
24 the pooling of distant milk from individual members of  
25 our group. Clearly, however, based on economic factors

1 alone, this milk would rarely, if ever, deliver to the  
2 market on the regular basis.

3 Exhibit 9, Table 12, shows a return  
4 calculation based on two Wisconsin counties, Buffalo  
5 and Manitowoc. These were chosen as two counties with  
6 large volumes of milk pooled on the Central Order in  
7 December of 2000 but no pounds pooled in December of  
8 '98.

9 They also represent counties from different  
10 milk sheds within the state. The towns of Cream,  
11 Buffalo, the counties which have the largest Calendar  
12 Year 2000 volume from a zero Calendar Year 1998 base,  
13 and Manitowoc, Manitowoc County, you know, in Manitowoc  
14 County, are located in each county.

15 St. Louis was selected as a likely delivery  
16 -- likely demand point since it is the major  
17 consumption point in the market and a location most  
18 likely to be served by these supply points.

19 If milk were delivered to the market every  
20 day from these two locations, which is the typical  
21 practice for local milk, it would generate a negative  
22 return, as shown in the column labeled "Monthly Return,  
23 All Delivered to Bottlers".

24 This return is calculated by netting the  
25 difference in the Producer Price Differential from the

1 destination point against the transport costs. The  
2 effect of any additional procurement costs and market  
3 premiums are ignored. If this milk were delivered to  
4 the market every day, the blend price gain would not  
5 even be enough to pay the transportation costs.

6 No rational supplier would make a decision to  
7 lose a \$123,000 or approximately 59 cents per  
8 hundredweight in the case of the Buffalo County  
9 delivery, or \$92,850 or 44 cents per hundredweight in  
10 the case of the Manitowoc County deliveries.

11 With the easy producer association standard  
12 and the loose diversion standard, however, a one-time  
13 delivery of 32,587 pounds is able to qualify the entire  
14 volume and turn the losses into gains of \$282,265 in  
15 the case of the Buffalo County delivery and \$282,314 in  
16 the case of the Manitowoc County delivery. All that is  
17 necessary is to touch base one time and not lose  
18 association with the Order.

19 Since the counties are in the Marketing Area  
20 of Federal Order 30, it is a little more difficult to  
21 avoid being associated with that Order than losing the  
22 association with Order 32. But Order 30 and 32  
23 recognize the split plant provisions making it somewhat  
24 easier to remain unassociated with Order 30 as a  
25 delivery to the non-pooled side of a split

1 manufacturing plant would not cause loss of  
2 association.

3 As before, the pooling handler must have  
4 sufficient sales to qualify for the diversion, a  
5 standard made easy by the Central Order provisions  
6 which allow the ability to pyramid deliveries in order  
7 to qualify larger volumes of milk.

8 Table 13 uses the same calculation method but  
9 applies the delivery standards to 20 and 25 percent  
10 that we propose and the gains are reduced. In a  
11 scenario of the Buffalo County delivery, they are  
12 reduced from a \$1.34 down to 93 cents per  
13 hundredweight, and in the case of the Manitowoc County  
14 delivery, down to 96 cents per hundredweight.

15 Again, this return must be compared with the  
16 returns generated by the manufacturing plant if the  
17 milk is to ship to the market every day and also with  
18 the Order 30 return. In our experience, producer  
19 premiums in Order 30 are among the largest that we know  
20 of. Marketing this milk to St. Louis every day would  
21 not generate enough dollars to attract and retain a  
22 milk supply.

23 Note again that this example does not  
24 consider the possibility that local in-area milk could  
25 qualify the milk shown in this example and thus affect

1 the return, but only considers how our proposal would  
2 work if this milk were to be forced to perform every  
3 day on its own. Clearly, however, based on economic  
4 factors alone, this milk would rarely, if ever, deliver  
5 to the market on a regular basis.

6 Exhibit 9, Table 14, shows a return  
7 calculation based on Stearns County, Minnesota, and the  
8 City of Melrose. Stearns County had the second largest  
9 volume of milk pooled on Order 32 from a Minnesota  
10 county overall, but it had zero pounds pooled in  
11 December of 1998. It is also a major milk-producing  
12 county in Minnesota.

13 Kansas City was selected as a likely demand  
14 point since it is a major consumption point in the  
15 market and a location most likely to be served by the  
16 supply point, and while there are closer demand points  
17 available, the volume of supply is large and would need  
18 to ship further and further south in order to get  
19 accommodated on a daily basis; thus, the selection of  
20 the Kansas City as a demand point.

21 Making the same type of calculations as  
22 before on an every-day shipment from Stearns County,  
23 Minnesota, to a Kansas City demand point would lose  
24 \$151,380 or approximately 72 cents per hundredweight.  
25 The aforementioned producer association and diversion

1 standards allow a one-time delivery of 32,587 pounds to  
2 be able to qualify the entire volume and turn the  
3 losses into gains of \$282,222 or a \$1.34 a  
4 hundredweight.

5 Again, these counties are in the Federal  
6 Order 30 -- are in the Marketing Area of Federal Order  
7 30, and it's a little more difficult to avoid becoming  
8 associated with that Order and losing the association  
9 with Order 32. But Order 32 and 30 recognize the split  
10 plant provisions and making it somewhat easier to  
11 remain unassociated with Order 30 as it's delivered to  
12 the non-pooled side of the split manufacturing plant  
13 would not cause loss of association.

14 As before, a pooling handler must have  
15 sufficient sales to qualify for the diversion, a  
16 standard made easy by the Central Order provisions  
17 which allow the ability to pyramid deliveries in order  
18 to qualify larger volumes of milk.

19 Table 15 uses the same calculation method but  
20 applies the delivery standards to 20 and 25 percent  
21 that we proposed, and the gains are reduced from a  
22 \$1.34 down to 90 cents per hundredweight. Again, this  
23 return must be compared with the returns generated by  
24 the manufacturing plant, if the milk is to ship to the  
25 market every day and also with the Order 30 return.

1           As indicated, the Wisconsin deliveries making  
2 -- marketing this milk to Kansas City every day would  
3 not likely generate enough dollars to attract and  
4 retain a milk supplier.

5           As before, this example does not consider the  
6 possibility that local in-area milk could qualify the  
7 milk in this example and thus affect the return but  
8 only considers how our proposal would work if this milk  
9 were to be forced to perform on its own.

10           Clearly, however, if, based on economic  
11 factors alone, this milk would rarely, if ever, deliver  
12 to the market on a regular basis. These examples  
13 demonstrate why the economic incentives to exploit the  
14 lax pooling provisions of Order 32 and why the large  
15 volumes of milk detailed in the Market Administrator's  
16 exhibits are being drawn to the Order.

17           As explained in the final rule, there can be  
18 no rational explanation why this practice is a good  
19 idea for the market.

20           What is the effect on on the Order 32 blend  
21 price of the milk from distant or non-historic  
22 locations? Data computed in Exhibit 9, Table 16 and  
23 17, entitled "Impact on PPD of Distant Milk Pooled on  
24 the Central Order and Computations for Impact  
25 Analysis", provide some insight into the amount.

1           Table 17 is a reasonable attempt to quantify  
2 the cost to the pool of the location adjustment value  
3 from distant milk. Since the exact county location is  
4 not known for every month, an estimate was made.

5           For the case of Minnesota and Wisconsin, a  
6 percentage factor was developed using the September  
7 data. The pounds that were taken from the Market  
8 Administrator's exhibit, the location adjustment  
9 calculations were made with exact county comparisons,  
10 if known, or best estimates, if not known.

11           Extending the rates times the pounds yielded  
12 a dollar amount of the loss in pooled value and the  
13 total pounds -- and the total of the pounds -- the  
14 volume of milk attributed with the dollars.

15           Table 16 uses this data to compute a pooled  
16 loss. The total dollar value of the pool was taken  
17 from the monthly producer settlement statement. The  
18 total value was reduced by the component values. To  
19 the remaining dollars, the location adjustment value as  
20 computed from Table 17 was added back into the sum to  
21 get a proxy value as if those pounds had not been  
22 pooled. Dividing this proxy value by the actual pounds  
23 pooled and by the pounds that would have been pooled if  
24 the pool had been -- if the milk from non-historic  
25 locations were not pooled results in a proxy PPD value

1 based on each volume.

2 In each month, the proxy PPD from the entire  
3 volume is very close to the actual PPD. Netting the  
4 two figures yields an approximate loss to the distant  
5 milk becoming part of the pool. The per-hundredweight  
6 loss ranges from a \$1.17 per hundredweight to 64 cents  
7 per hundredweight for the four months selected to test.  
8 The total dollar value of the loss to the remaining  
9 producers ranged from \$3.7 million to \$9.5 million per  
10 month.

11 Supplies of milk becoming associated with the  
12 market pooling requirements for Order 32, which work  
13 well for milk produced in the Marketing Area, do not  
14 work well when applied to milk produced out of the  
15 Marketing Area.

16 This, coupled with the change in pricing  
17 service, makes open pooling very lucrative. The Order  
18 32 standards have touched base -- are easy to meet and  
19 even more so when coupled with the ability to pyramid  
20 deliveries for additional qualifications.

21 Exhibit 9, Table 18, entitled "Example of  
22 Pyramid Qualification", demonstrates how the pyramiding  
23 of qualification works. In essence, existing Order  
24 provisions in the most generous case allow for one load  
25 to qualify 15 additional loads. The handler on these

1 loads must be both a 132.9(c) handler and a pool plant  
2 operator at the same time.

3 As demonstrated in the MA exhibits, the  
4 steadily-increasing pounds being pooled on the Order  
5 and further amplified in the English Exhibits which are  
6 6, Table 2, entitled "Plants Included in the Central  
7 Federal Order, Pool Computation, January 2000 to Date"  
8 with reference to qualifying Order provisions, there  
9 were 14 cooperatives using this designation, and eight  
10 of the 14 were represented on the supply plant or plant  
11 operator list.

12 BY MR. BESHORE:

13 Q Mr. Hollon, I'd like to take you -- just ask  
14 you a couple of questions about your statement thus  
15 far.

16 If you go to Page 30 of Exhibit -- Exhibit 8,  
17 the second full paragraph at the top, you compared --  
18 the second and third lines from the end of the  
19 paragraph. You compared 601 million pounds in  
20 September 2000 and 657 million pounds, is that in  
21 September 2001?

22 A Yes.

23 Q Okay. Now, on Page 23 of your statement and  
24 perhaps elsewhere, you referred -- you made some  
25 comments about the -- the price surplus model which

1 underlie or was utilized in developing the price  
2 surplus out of Federal Order Reform.

3 A Correct.

4 Q Is that the model that was done at Cornell  
5 University --

6 A Yes.

7 Q -- that you're referring to?

8 A Yes.

9 Q Okay. Did you have the opportunity to  
10 confirm with persons at Cornell whether your  
11 interpretation of the model as stated in your testimony  
12 was correct?

13 A I did. I spoke with Dr. Novockock for about  
14 30 minutes and went through the assumptions and bounced  
15 them back and forth with him and discussed them, and he  
16 asserted that my -- my comments were correct, and they  
17 reflect how it works.

18 Q Okay. Now, I'd like to go to Exhibits 9 --  
19 Exhibit 9 and just -- just walk through -- you've  
20 commented on these tables and charts, but I just want  
21 to go through them in your testimony, just want to go  
22 through them individually and see if there's any -- any  
23 additional information that we should bring to light or  
24 focus on with respect to each exhibit.

25 A Okay.

1           Q     Table 1 is a rather simple one. It just  
2 shows the relative total annual volumes of Class 1  
3 utilization of the 11 Orders presently, is that  
4 correct?

5           A     That is correct. Taken from the annual  
6 summary of that Order's distance.

7           Q     Okay. And the Central Order stands in what  
8 rank among the Orders?

9           A     Third largest in terms of overall Class 1  
10 use.

11          Q     Okay. Exhibit 9, Table 2, did you prepare  
12 that information?

13          A     I did. This is information that is taken  
14 from a summary table obtained from the Dairy Program  
15 staff comparing certain provisions Order-by-Order, and  
16 I've taken parts of this table they provided me and  
17 made them available for this.

18          Q     And essentially, it demonstrates that  
19 different delivery requirements and pooling provisions  
20 are tailored to ostensibly to meet the needs of the  
21 market?

22          A     That's correct. That -- that different  
23 Orders have different requirements, and that in  
24 general, those requirements have been evaluated and fit  
25 that Order.

1           Q     Okay. Table 3, can you describe how that was  
2 prepared, and what it --

3           A     Table 3 came from the same summary document  
4 as before that I got from the Dairy Program staff some  
5 months ago, and it simply takes Order-by-Order, and it  
6 summarizes in brief form the minimum pooling standards  
7 for supply plants in the various Federal Orders, and  
8 I've taken some of the columns out of that table and  
9 dropped them into this exhibit, again designed to show  
10 that there are varying standards in each Order.

11 They're not all the same, but they generally have the  
12 same application as to say this is what you need to do  
13 in order to qualify to be a supply plant.

14           I also wanted to point out that some Orders  
15 have what's called a "free ride period" and some don't.

16           Q     Does the Central Order have a free ride  
17 period?

18           A     It does, currently, and that is the month of  
19 May, June and July.

20           Q     And what -- what does that mean for supply  
21 plants in the Central Order during that period?

22           A     It means that in -- in certain months, if --  
23 if you perform, then you have months that you do not  
24 have to perform in, and one of the things that's  
25 happened is in those non-performing months, we've seen

1 large quantities of milk added to the market because  
2 the supply plant requirement -- the supply plant  
3 performance requirements aren't -- do not have to be  
4 met in those months.

5 Q So, is there any limit for a supply plant on  
6 -- presently on Order 32 that was qualified during  
7 August through April, is there any limit to the volume  
8 of milk which may be associated with it during the  
9 months of May, June and July?

10 A I think the answer to that question is so  
11 long as they can figure out how to do the one pound  
12 qualifies 16, they can get up to that limit. That's  
13 the max.

14 Q Okay. Would it not be the case that during  
15 the free ride period, that supply plant has no delivery  
16 obligations whatsoever to the fluid market?

17 A I'd have to go back and look. At the next  
18 break, I'll have to go back and look at the Order  
19 regulations.

20 Q Okay. Table 4 is just a mileage chart  
21 showing the distances that you pulled off the Rand  
22 McNally information from one point to another, is that  
23 correct?

24 A That is correct.

25 Q Okay. Now, Tables 5-A and B and 6-A and B --

1       how many sets are there? About five sets?

2           A     I think there's four sets.

3           Q     Four sets. 5, 6, 7 and 8-A and B, which were  
4       commented upon in some detail in your testimony, would  
5       -- if we just look at the exhibits now, just focus on -  
6       - on 5-A and B, are the net -- the net numbers shown on  
7       the two bottom lines of each page?

8           A     Yes, that is correct. That's a comparison of  
9       blend draws, adjusted for location, and then netted  
10      against transportation dollars to see where the most  
11      attractive market between the two comparisons would be.

12          Q     Okay. So, staying with 5-A then, you were  
13      comparing the returns under Order 5 at Madisonville,  
14      Kentucky, and Order 32, for a producer who was -- has  
15      options, for producers located in Southern Illinois or  
16      Southeastern Missouri?

17          A     That is correct. A producer located in those  
18      areas would have those options to seek a market for  
19      their milk.

20          Q     Okay. And the point of the comparison is  
21      that with the presence of low utilization in Order 32  
22      and unfavorable blend prices, producer price  
23      differential, there's a tremendous advantage to move to  
24      Federal Order 5?

25          A     That's correct.

1           Q     Okay.  And has such movements occurred, and  
2     do they show up in some of the statistics that Mr.  
3     Stukenberg was asked about this morning?

4           A     That is correct.  Such movements have  
5     occurred.  They do show up, and those pressures are as  
6     great as they had been during this entire period.

7           Q     And -- and for instance, we've seen that  
8     there's less milk from Illinois pooled on Order 32 now  
9     than there was a couple of years ago?

10          A     That is correct.

11          Q     And some of that reduction is because the  
12     milk has been attracted to Order 5?

13          A     That is correct.

14          Q     Okay.  And going on in Table -- Exhibit 6-A  
15     and 6-B are comparing the returns available to  
16     producers in the Ada, Oklahoma, milk shed which you've  
17     discussed in -- in your testimony.  They're options for  
18     Order 32.  Their home Order versus Order 7, correct?

19          A     That would be correct.  The producers in that  
20     area would have options in Order 7.

21          Q     By the way, if, in Ada -- Ada, Oklahoma, is  
22     in the milk shed.  It's right near Tulsa.  It's  
23     historically supplied fluid plants in the Tulsa area.

24          A     That is correct.

25          Q     If -- if milk in Ada, Oklahoma, is going to

1 start supplying plants in, you know, Little Rock or --  
2 or elsewhere in Order 7, where's the supply for Tulsa  
3 going to come from?

4 A You'd have to bid it up or haul it in from a  
5 further distance away at a greater -- greater freight  
6 rate. New production would have to go into existence  
7 there. The likely scenario would be, you know,  
8 initially to haul it in from greater distances.

9 Q Okay. Going on to Table 7, 7-A and B, you're  
10 comparing here the returns available under Order 32 and  
11 Order 30 for producers located in -- in and around  
12 Lancaster, Wisconsin, or Southern Minnesota, is that  
13 correct?

14 A That's correct.

15 Q By the way, is Lancaster, Wisconsin, in  
16 Federal Order 32 Marketing Area?

17 A It is.

18 Q Okay. Going then to your final comparison  
19 table, 8, 8-A and 8-B, these are comparisons of the  
20 returns available to producers in and around Norman,  
21 Oklahoma, in the Order 32 area?

22 A That is correct.

23 Q And whether it remains under present Order 32  
24 utilization of blend price, whether it's viable for  
25 them to continue to deliver to Order 32 and Oklahoma

1 City or Norman or --

2 A That is correct, and the purpose here is to  
3 show that currently, it is, but it's getting closer and  
4 closer, and despite a 300-mile haul, this milk could be  
5 attracted to the Dallas market without much of a change  
6 in price.

7 Q Okay. And if -- if it were, then it would  
8 need to be replaced; that local market in and around  
9 Norman, Chandler, Oklahoma City, would have to be  
10 replaced with milk from a longer distance?

11 A That's correct.

12 Q Okay. Table 9, 9-A and B, simply sets the  
13 statistical information for Order -- Order 32 drawn  
14 from the Market Administrator's data?

15 A That is correct.

16 Q By the way, how does the utilization under  
17 the Order compare with the utilization projected under  
18 Federal Order Reform in the decision which you  
19 referenced in your testimony?

20 A Well, it appears like there's a column  
21 labeled "Class 1 Percentage", and the highest number on  
22 the page is 31.8. So, -- no. 38.1. I'm sorry. So,  
23 the closest it's come to the 50.1 percentage would be  
24 12 -- 12 percentage points.

25 Q Projected of 50 percent, but it peaks at 38.1

1 percent?

2 A That's correct.

3 Q In February of 2000?

4 A If you took the -- all of the months that we  
5 had and just took a quick eyeball average, you'd get  
6 about 29 percent, maybe.

7 Q Okay. For September, the last month  
8 available, September 2001, it was 28.2 percent?

9 A That's correct.

10 Q Okay. You described Chart 1, I think, in  
11 your -- in your testimony.

12 Would you go to Table 10 of Exhibit 9? Now,  
13 10 -- 10, 11, 12 and 13, 14 and 15 are all comparisons  
14 of the economic return if distant milk that we know has  
15 been pooled or is being pooled on Order 32 was required  
16 to perform for the market under some delivery standard?

17 A That is correct.

18 Q Okay. And where are the key numbers on --  
19 just looking at Table 10, are the key numbers in the  
20 boxes at the bottom?

21 A The key numbers are in the boxes at the  
22 bottom, such that if, for example, if California milk  
23 were to perform to the Kansas City market, the way that  
24 local milk does, it would lose \$5.72 for every hundred  
25 pounds that -- that performed or Idaho milk would lose

1       \$3.97 per every hundred pounds that performed.

2           Q     Okay.  And that's -- those are Column 2  
3 numbers?

4           A     Correct.  And yet, with the -- with the  
5 ability to only have to deliver once, then assuming  
6 that there's a handler who can have enough  
7 qualification to -- to qualify these deliveries, that  
8 \$5.72 per hundredweight loss could be converted into a  
9 \$1.34 per hundredweight gain, all using a million  
10 pounds as an example.

11          Q     So, the Column 3 is the present status quo?

12          A     Correct.

13          Q     Okay.  And the same columns -- the same  
14 conclusions are on each table, 11 through -- 11 through  
15 --

16          A     Table 11, --

17          Q     -- 15.

18          A     -- Columns 1 and 2, are identical, and Column  
19 3 in Table 11 says if the delivery standard that we  
20 would propose would be in place, then some of those  
21 gains would be reduced, but clearly, there are still  
22 some months that there's economic advantage, and if --  
23 if the handler chose to deliver on an every-day basis  
24 under this standard, then that would be the gains that  
25 they would face, and they could make that decision to

1 do it, if they chose to. Even if they were a long way  
2 away, they could still choose to make that.

3 Q And the delivery requirement you are testing  
4 there is the 25 percent or 20 percent delivery  
5 requirement proposed in Proposals 1 through 5?

6 A That's correct. If we look down the column,  
7 the very first column, you see that some months have an  
8 italics print, and some months have a non-italics  
9 print, and so, the non-italics months would be 20  
10 percent, and the italics months would be 25 percent.

11 Q Okay.

12 A And so, then, Tables 12 and 13 would repeat  
13 that pattern for the two Wisconsin counties and St.  
14 Louis, and Tables 14 and 15 would repeat that pattern  
15 for the Minnesota county and Kansas City deliveries.

16 Q Okay. Table 16 then is your calculation of  
17 the impact of -- on the Order 32 Producer Price  
18 Differential of distant milk which is currently being  
19 pooled using the months of what, March, June, July and  
20 September of --

21 A That's right.

22 Q -- 2001? How did you -- what -- what milk,  
23 just so we're clear, did you identify as, you know, not  
24 being historically pooled under the Order?

25 A That calculation comes off of Table 17, and I

1 went through the Market Administrator exhibit, and I  
2 picked out those states with -- that I designated as  
3 distant but nonetheless, Arkansas, California, Idaho,  
4 Minnesota, New Mexico, North Dakota, Texas, Wisconsin,  
5 Wyoming, and then I reduced the Minnesota and Wisconsin  
6 deliveries by a -- deliveries from those counties in  
7 the Marketing Area in order to get some type of a  
8 percentage that I could use for future months when I  
9 didn't have that individual data, and so those became  
10 the counties.

11 The pounds came from each month. I had  
12 individual -- I had -- had pound data for every month  
13 and county data for only a single month, and so those  
14 became the -- the source of the county and pound data.  
15 With respect to the distant market differential, if I  
16 was able to, for example, in New Mexico, go back and  
17 see that all the milk came from the same county, then  
18 -- the same two counties, I was able to establish the  
19 differential.

20 In the case of Arkansas, it looked like there  
21 were four or five counties with varying differentials.  
22 So, I assumed what I thought was the best estimate of  
23 one. For the case of California, I used the number  
24 that was published in -- by the Market Administrator in  
25 response to Mr. English's request.

1           In North Dakota, I had to assume best  
2 estimate that I could make that a \$1.65 was the  
3 representative number, and in Wisconsin, again I had to  
4 make the best estimate of -- of a series of counties  
5 and what was the differential number, and in Wyoming, I  
6 think all the milk came from the same counties. So, I  
7 used that as a determination.

8           Q     Okay. Now, is Exhibit 16 with 17 as its  
9 database, is this an attempt by you to estimate, as  
10 well as you can, but it's an estimation, what the  
11 impact is of the, call them, non-economic pooling that  
12 is going on in Order 32 now on the Producer Price  
13 Differential in the Order?

14          A     That would be true. It would be some way to  
15 try to quantify the open pooling aspect, and the  
16 methodology is that you would take the blend settlement  
17 page each month as published by the Market  
18 Administrator. For example, in March, if we had that  
19 document, it would say that the total value of the pool  
20 was \$202,654,934.

21          Q     Okay.

22          A     And there is component values from protein  
23 butterfat, other solids, and a cell count value, and so  
24 those are what I would consider as in and out items.  
25 So, I reduced the 202 million by those to get down to

1       \$18,267,220.

2                   Then I looked at the distant locations and  
3       said that there was an additional \$1,700,000 drawn out  
4       of the pool to fund those location adjustments. So, if  
5       I add that -- those dollars back, I have \$19.9 million.  
6       I know how much the pool was to start with, and from my  
7       computations of -- of the milk involved, I have a  
8       volume for the milk non-historically associated. So,  
9       that gives me two different pool numbers and two  
10      different -- and a dollar value, divide one by the  
11      other, and I get some proxy for the Produce Price  
12      Differential, an actual proxy, which was two or three  
13      cents -- within two or three cents each month of the  
14      actual PPD.

15                   Dividing again, I can get a proxy as if the  
16      longest -- the milk from non-historic areas were not  
17      here, and subtracting the two gives me some idea of how  
18      much the -- the effect was, how much the per  
19      hundredweight effect was. Multiplying that against the  
20      pounds gives me a total dollar, and this methodology is  
21      -- was developed by Cameron at Ohio State, and he's --  
22      he's published that in some of their Extension work,  
23      and it was also used in the Order 33 hearing as a  
24      method of establishing an estimated value.

25                   Q     You're not asserting its precise, but it's an

1 estimate and gives us an idea of what the impact --

2 A That's correct. That is right. I wouldn't  
3 have the -- the access to all of the information, and  
4 the Market Administrator would not be able to reveal  
5 all of the exact information in order to be able to do  
6 this computation. So, anybody who does it has to make  
7 a certain set of assumptions.

8 Q Okay. Now, Mr. Hollon, you also -- have you  
9 also prepared for -- for presentation some comments  
10 with respect to how the particular proposals, 1 through  
11 5, how each of them are intended to -- to work in this  
12 Order?

13 A That is correct.

14 Q Okay. And have those been distributed and  
15 made available?

16 A Made available, yes. Those were passed out  
17 this morning before lunch.

18 Q Would you proceed at this point with -- with  
19 that portion of your -- of your testimony?

20 A Yes.

21 Q Comment on the language and intent in  
22 Proposals 1 through 5.

23 A Comments on the language and intent of  
24 Proposals 1 through 5.

25 The general intent of our proposal is to

1 better align actual performance shipments with poolings  
2 on Order 32. Our goal, simply stated, is if you desire  
3 to pool 100 pounds of milk on the Order, you should  
4 ship 25 pounds to a distributing plant.

5 This shipment can deliver to the market in  
6 whatever manner is most efficient and yields the best  
7 return to the supplier. We have no preference as to if  
8 it comes directly off the farm or reloaded in a supply  
9 plant.

10 The practice of pyramiding performance as a  
11 method of attaching milk to the market should be ended.  
12 Additionally, nearby milk should not be used to qualify  
13 far-away supply plant milk that would not be able to  
14 perform readily -- I'm sorry -- would not be able to  
15 readily perform to the market.

16 Proposals 1 through 5 deal with our efforts  
17 to better relate Order language to the performance  
18 standards needed to serve Federal Order 32. The  
19 specific Order language that supports Proposal 1 amends  
20 Section 1032.7(c) as follows, and this is language  
21 that's taken directly out of the Notice of Hearing.  
22 So, unless somebody desires it to be read, I think I'll  
23 pass.

24 But comments on Page 2 regarding our intent  
25 on this language, our proposals seek to better

1 correlate performance on the market -- I'm sorry -- to  
2 the market shipments to distributing plants with the  
3 volume of milk pooled on the market.

4 We have chosen the 20 and 25 percent levels  
5 as the performance standard for supply plants. We also  
6 propose that a free -- I'm sorry -- that a shipping  
7 standard is needed every month and make no provisions  
8 for a free ride month.

9 The current pyramid ability afforded by the  
10 current standards is too lax and leads to too much  
11 abuse, as we have documented in our exhibits, in every  
12 month of the year. The net effect of our proposals  
13 should eliminate the pyramid effect, and thus the  
14 actual shipping standard can be reduced to a more  
15 realistic level.

16 We have selected August through November as  
17 the month in which higher standards are needed because  
18 we find that our customers need additional milk  
19 supplies in August. We move January to the lower  
20 requirement months.

21 We have limited qualifying shipments to those  
22 pooled distributing plants physically in the Marketing  
23 Area as we cannot find any reason to allow  
24 qualification for sharing in the Order 32 pooled  
25 proceeds by shipping to other Order plants.

1           The provisions that allow for qualification  
2           to be earned from shipments to other Order plants are  
3           generally associated with reserve supply orders and are  
4           written to aid the suppliers from the reserve order to  
5           better make the reserve shipments. We do not consider  
6           Order 32 to fit that description and thus would  
7           eliminate shipments to other Orders from the definition  
8           of what earns qualification.

9           Furthermore, data from Exhibit 5, Table 15,  
10          Market Administrator exhibit, shows that deliveries to  
11          other Federal Order plants increased markedly in the  
12          Fall of Calendar Year 2000 and noticeably in the Fall  
13          of Calendar Year 2001 at precisely the time that milk  
14          was needed in Order 32.

15          Table 16-A shows that the shipments to Order  
16          7 distributing plants in the Fall of Calendar Year 2001  
17          were used as the basis for qualifying milk on Order 32  
18          at a time when we were seeking milk to supply Order 32  
19          handlers. Thus, milk delivery shared in the Order 32  
20          blend pool but delivered to distributing plants  
21          elsewhere at the exact time it was needed most in this  
22          market.

23          Additionally, some of the other Order  
24          shipments made in what is now the Marketing Area of the  
25          Central Order, dated back to the pre-reform time

1 period, were made from what was a Predecessor Order to  
2 another Predecessor Order. With the combination of  
3 several of the lower Midwest Orders into the current  
4 Central Order, all of those shipments are now in the  
5 Marketing Area.

6 Because direct ship milk is the most  
7 economical manner to supply the market, we want to  
8 preserve the standards that allow for it to earn  
9 qualification for in-area milk supplies. However, we  
10 cannot find a reason to support the practice that in-  
11 area shipments can be used to qualify milk that  
12 originates far away from the market and rarely, if  
13 ever, performs to the market and would likely lose  
14 money if it had to perform in a manner similar to local  
15 milk supplies. Thus, we limit the ability to use in-  
16 area shipments to qualify out-of-area supply plants.

17 The specific Order language that supports  
18 Proposal 2 amends Section 1032.7(d) as follows, and  
19 this language was lifted out of the Order, and this  
20 section describes what was known as the "cooperative  
21 supply plant" and was used to abet primarily perform  
22 and to some extent touch base.

23 Because the performance standard and method  
24 we have chosen allows performance with real shipments  
25 and because we have not proposed to alter the touch-

1 base standard of once for life, provided one does not  
2 lose association with the market or lose the Grade A  
3 permit status, we do not find a need for this  
4 provision, plus English Exhibit Number 2 shows it  
5 unused at the current time.

6 The specific Order language that supports  
7 Proposal 3 amends Section 1032.7(f) as follows, and  
8 this language again was lifted from the Notice of  
9 Hearing.

10 Comments on Page 4, because we feel that the  
11 supply plant units provide value to the market, we  
12 think they should remain. They allow for milk supplies  
13 to serve the market in a more efficient manner. They  
14 currently have the geographical requirement that they  
15 must be located inside the Marketing Area in order to  
16 receive the benefit from being in the unit.

17 We think the Secretary -- excuse me. We  
18 think the Secretary correctly understood that this  
19 benefit should exact a stricter performance standard,  
20 and in this case geographic, and we support it.

21 However, there are some benefits and  
22 efficiencies gained by the unit members that they might  
23 not otherwise be able to gain. These may include  
24 access to the market, a greater return due to reduced  
25 cost of transport from shipping nearby milk in place of

1 far-out milk, greater plant efficiencies in the  
2 manufacturing operation of the supply plant due to  
3 reduced shipping obligations, the ability of the unit  
4 to, among its members, arrange for a standby reserve  
5 supply agreement that may entitle it to extract a  
6 premium from the market and perhaps even a reduction in  
7 the meeting of some of the Order's paperwork  
8 requirements.

9 In addition to these -- in addition to these  
10 gains, we propose that a unit perform at a slightly  
11 higher performance standard than that required of a  
12 stand-alone plant.

13 As the net result of all of our performance  
14 standard requests will result in the elimination of  
15 pyramided performance, we think that there may be a  
16 renewed interest in supply plant units in the market.  
17 Thus, our proposal would help the market get additional  
18 milk supplies in the most efficient manner.

19 This concept was a part of pre-reform Order  
20 30, so it is not a new and unique proposal. There, the  
21 unit qualification was double the percentage  
22 requirement for an individual supply plant in the  
23 qualifying months; that is, stand-alone plants had to  
24 ship five percent while unit performance was 10  
25 percent, and in the remaining months, three percent

1       versus six percent for the unit.

2               The specific Order language that supports  
3       Proposal 4 and Section 1032.7(f) as follows, and again  
4       this simply lifts the information out of the Notice of  
5       Hearing, and this provision authorizes the Market  
6       Administrator to adjust shipping percentages to remove  
7       the reference to Paragraph (d) by revising the first  
8       sentence of Paragraph (g). This is a conforming-type  
9       change only.

10              The specific Order language that supports  
11       Proposal 5 amends Section 3213(d)(2) as follows.  
12       Again, the language is lifted directly from the Notice  
13       of Hearing. Comments on the bottom of Page 5.

14              This provision parallels our proposals in  
15       Section 7(c). In light of proposals that limit  
16       pyramided performance, we propose a relaxed diversion  
17       limit. The language specifies that shipments must be  
18       made each month in order to perform and that deliveries  
19       must be made to pooled distributing plants or a unit of  
20       such plants only in order to earn qualification by the  
21       handler.

22              These percentages are subject to an  
23       adjustment by the Market Administrator or, rather, are  
24       subject to adjustment by the Market Administrator. Our  
25       overall goal is again to better correlate shipping

1 standards and pooling performance. Thus, if a handler  
2 is asked to pool 100 pounds in August, he must ship 25  
3 pounds to the market.

4 MR. BESHORE: Your Honor, I would like to  
5 have marked as Exhibit 10 for the record, the six-page  
6 statement that Mr. Hollon just read from. He didn't  
7 read all of it, but he made some allusions to the text.

8 JUDGE BAKER: I don't have a copy of it.

9 MR. BESHORE: I apologize.

10 THE WITNESS: There was one in your folder, I  
11 think. I hope.

12 JUDGE BAKER: Maybe. Maybe I didn't  
13 recognize it.

14 THE WITNESS: Nope.

15 MR. BESHORE: We will -- we will provide you  
16 with a copy of the exhibit for the record.

17 JUDGE BAKER: Okay.

18 MR. BESHORE: I would propose to have it --  
19 have it marked.

20 JUDGE BAKER: It will be so marked, and I  
21 need a copy of it.

22 (The document referred to was  
23 marked for identification as  
24 Exhibit Number 10.)

25 MR. BESHORE: There is some further testimony

1 that I'd like to have Mr. Hollon offer. However, Mr.  
2 English has a witness that he would like -- and I  
3 wonder if there might be a time when we take a short  
4 break and proceed further.

5 JUDGE BAKER: Very well. We'll take Mr.  
6 English's witness then now, and then we'll take our  
7 mid-afternoon break.

8 MR. BESHORE: Okay.

9 MR. ENGLISH: I would call Mr. Warren  
10 Erickson.

11 JUDGE BAKER: Very well. Thank you.  
12 Whereupon,

13 WARREN ERICKSON  
14 having been first duly sworn, was called as a witness  
15 herein and was examined and testified as follows:

16 DIRECT EXAMINATION

17 BY MR. ENGLISH:

18 Q Mr. Erickson, would you state your name,  
19 please?

20 A Warren Erickson.

21 Q Why don't you go ahead and present your  
22 statement?

23 A Good afternoon. My name is Warren Erickson.  
24 I am the Executive Vice President and CFO of Anderson  
25 Erickson Dairy Company. We operate one pool

1 distributing plant in Des Moines, Iowa. The plant is  
2 regulated by the new Central Order and was subject to  
3 regulation pursuant to the Iowa Order prior to Federal  
4 Milk Order Reform.

5 Federal Order Reform impacted our operations  
6 in two ways that are relevant to today's proceeding.  
7 First, as to the Class 1 Differential, we now pay more  
8 relative to our competitors to the south than we paid  
9 prior to Federal Order Reform. This is important  
10 because we have historically sold a significant portion  
11 of our bottled milk in the Kansas City market.

12 Today, our Class 1 Differential is \$1.80  
13 compared to \$2 in Kansas City. Prior to Federal Order  
14 Reform, this 20-cent difference was 37 cents, \$1.55 in  
15 Des Moines and \$1.92 in Kansas City.

16 Second, since it is blend prices that  
17 actually move milk to fluid milk plants, the increased  
18 milk pooled on Order 32 during 2001 has necessarily  
19 negatively impacted the blend price available to  
20 producers who ship to our plant.

21 Blend prices are based upon Class 1  
22 Utilization. AMS in Federal Order Reform believed that  
23 the new Central Order would have a 50 percent Class 1  
24 Utilization. See Proposed Final Rule, 64 Federal  
25 Register, at Page 16072.

1           Instead, Central Order Class 1 Utilization of  
2           28.6 percent for 2000 and 25.4 percent for the first  
3           nine months of 2001 are far below that predicted Class  
4           1 Utilization level.

5           Our ability to obtain raw milk for Class 1  
6           bottling and our resulting raw milk procurement costs  
7           are tied directly to pooling provisions of Federal Milk  
8           Orders. In particular, as a Class 1 bottler that pays  
9           the Class 1 Differential on the vast majority of our  
10          milk, it is important to note that it is blend prices  
11          and especially relative blend prices that move milk to  
12          where it is needed.

13          With Federal Order Reform, we have a higher  
14          Class 1 Differential, but according to AMS'  
15          predictions, even with a 50 percent Class 1  
16          Utilization, a lower blend. We are paying more and  
17          have less potential to attract a milk supply. We do  
18          not object to the present level of price, if that is  
19          needed to encourage an adequate supply, but the  
20          increased dollars that we are now paying should be used  
21          to attract milk to our plant and other distributing  
22          plants that are also paying this higher price.  
23          Unfortunately, this does not occur.

24          As a Class 1 processor, we believe that some  
25          stricter limits on pooling are needed so as to tie the

1 benefits of pooling to the actual performance of such  
2 milk and to increase the Class 1 Utilization. However,  
3 some proposals under consideration today, at least as  
4 presently written, could well be too tight in that we  
5 may be economically foreclosed from pursuing reasonable  
6 alternative milk supplies. Some proposals also fail to  
7 recognize historic pooling arrangements.

8 As to the hearing proposals under  
9 consideration here today, we have the following  
10 specific comments and reserve the right to support or  
11 oppose specific proposals on brief.

12 Milk should not be allowed to double dip into  
13 pool dollars on a federal and state Order marketwide  
14 pool. There is no need for the same milk to qualify  
15 for pool benefits on two Orders, regardless of whether  
16 both of these Orders are federal or one of the two  
17 Orders is a state-operated marketwide pool.

18 The handler on such milk should -- should  
19 choose on which order the milk will be pooled. Double  
20 pooling of the same milk is simply -- should not be  
21 permitted. The Market Administrator chart, entitled  
22 "English Number 6", which is in Exhibit Number 6, shows  
23 that such milk is outside a 500-mile radius from any  
24 existing Central Order pooled distributing plant. Such  
25 milk cannot realistically be available to the Class 1

1 market on a regular basis, and if diverted back to  
2 plants over 500 miles away, the diverted milk cannot be  
3 considered part of a reasonable reserve for this  
4 market.

5 For this reason, we support Proposal 8. Milk  
6 from producers who happen to be located outside certain  
7 state lines need not be treated based solely on the  
8 location of the farms differently than producer milk  
9 produced inside those certain state lines.

10 We note that the old Iowa Order had 50+  
11 million pounds of Minnesota milk pooled long before  
12 Federal Order Reform.

13 Shipping percentages should be both realistic  
14 and real. Diversion limitations should be both  
15 realistic and real. We understand the present Order  
16 provisions permit pyramiding of pooled milk. We oppose  
17 such pyramiding.

18 We do not agree that shipments to 7(e) plants  
19 that are not also 7(a) plants should be qualifying  
20 shipments with respect to shipping percentages. The  
21 relatively large non-Class 1 volume of milk associated  
22 with such 7(e) plants is not the same as the relatively  
23 small non-Class 1 volume associated with 7(a) plants.

24 Permitting those operations to receive  
25 shipments as qualifying shipments will reduce the

1 actual need for qualifying shipments of milk made to  
2 Class 1 pooled distributing plants.

3 We also understand from our past efforts to  
4 increase shipping percentages in the old Iowa Order  
5 that the Market Administrator does not take Class 2  
6 volumes into consideration.

7 There's no need for separate cooperative  
8 supply plant definitions on this Order, especially as  
9 no plant is presently qualifying pursuant to  
10 Subparagraph 7(d), and the touch-base provision is as  
11 important, if not more important, than the actual level  
12 of shipping percentages. Since there is no proposal to  
13 increase the touch-base provision from one day's  
14 production provision, it is all the more important to  
15 eliminate the automatic supply plant definition.

16 The commitment to supply the Central Order  
17 and the decision to be pooled on the Order should be a  
18 year-around commitment, requiring monthly qualifying  
19 shipments to pooled plants.

20 Thank you for your time and consideration.

21 Q Mr. Erickson, a few questions, especially  
22 since your testimony, as a favor from Mr. Beshore and  
23 Mr. Hollon, is going relatively early.

24 Your testimony is given in light of the fact  
25 that -- that maybe some changes are coming, and you

1 recognize that, correct?

2 A Correct.

3 Q But you don't necessarily know or have not  
4 had an opportunity to understand what all those changes  
5 might be, but you understand that there are those  
6 changes?

7 A That's correct.

8 Q With respect to Paragraph Number 1 on Page 3  
9 and your support of Proposal 8, do you understand that  
10 -- that there's going to be an expert witness proposed,  
11 Mr. Conover, to testify about the details of that  
12 proposal and the detail need for Proposal 8, is that  
13 correct?

14 A Yes, sir.

15 Q And with respect to Paragraph 2, the DFA  
16 testimony just given for 1998, December 1998, reflects  
17 a number closer to 38 million pounds; the 50 million  
18 pounds referenced in Paragraph 2, is that from an  
19 earlier year, 1996?

20 A I believe that's the historical average for  
21 '96, yes.

22 Q And in addition to the statement in Paragraph  
23 4 with respect to 7(e) plants, do you also support the  
24 proposal from DFA that would eliminate qualifying  
25 shipments to other Order distributing plants?

1           A     Yes.

2           Q     One final question, and that is, perhaps some  
3     in the Department remember this, and certainly you and  
4     I and others in Anderson Erickson remember, but could  
5     you briefly describe the reference in Paragraph 4 on  
6     Page 4 with respect to past efforts to increase  
7     shipping percentages?

8                     Have you in the past at Anderson Erickson had  
9     difficulties attracting a milk supply to your plant?

10          A     We have.

11          Q     And in those instances, have you asked the  
12     Market Administrator to increase shipping percentages?

13          A     Yes.

14          Q     And it is in those direct instances that you  
15     have been told by the Market Administrator's office  
16     that they do not include Class 2 need for the purpose  
17     of qualifying shipments?

18          A     Yes.

19                     MR. ENGLISH: Thank you. That's all I have  
20     for this witness. He's available for cross  
21     examination.

22                     JUDGE BAKER: Thank you, Mr. English.

23                     Are there any questions for Mr. Erickson?

24     Yes, Mr. Beshore.

25                     MR. BESHORE: Thank you.

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CROSS EXAMINATION

BY MR. BESHORE:

Q Mr. Erickson, let me pick up right where Mr. English left off.

I don't think you meant to say that shipments to plants such as yours which have both Class 1 and Class 2 utilization are not qualifying shipments. You didn't mean to say that, did you?

A That's correct.

Q Your -- at your plant in Des Moines, you have both Class 1 and Class 2 production, correct?

A Correct.

Q What Class 2 products do you make there?

A We would make yogurt, sour cream, dips, whipped cream, higher-fat products.

Q Do you have any ice cream production?

A We have ice cream mix production but not ice cream production per se.

Q Is that done at Des Moines?

A Yes.

Q Is that also a Class 2?

A That would be considered Class 2, yes.

Q Now, so, your -- your single plant at Des Moines is a 7(a) distributing plant, although it has both Class 1 and Class 2 products in the same facility,

1 correct?

2 A Yes.

3 Q Okay. And so, any shipments that anybody  
4 makes under the Order to -- to that plant are -- are  
5 qualifying shipments to a 7(a) plant, whether that  
6 particular milk is in Class 1 or Class 2, isn't that  
7 correct?

8 A Yes.

9 Q Now, in Comment 4 at the bottom of Page 3,  
10 I'm -- I'm not sure I understand your -- your concern  
11 here. 7(e) plants are -- maybe -- let me see if our  
12 understanding -- if my understanding and yours is the  
13 same with respect to what 7(e) plants are.

14 7(e) plants, as defined in the Order, are a  
15 distributing plant unit where you've got facilities  
16 under two different roofs in Class 1 and Class 2, and  
17 if they were under one roof, such as yours, they'd  
18 qualify as 7(a). The Order says that because they're  
19 under two separate roofs, if they meet the same  
20 percentage test, they'll be considered as under one  
21 roof, correct?

22 A That's correct, as I understand it.

23 Q Okay. And in fact, the 7(e) plant units have  
24 some additional requirements that they must meet that  
25 are not the same to a 7(a) plant, such as the Class 2

1 facility? It has to be in a lower Class 1 area or not  
2 in a higher area and things of that sort? Are you  
3 aware of that?

4 A I am not aware of that.

5 Q Okay. Well, the language is in the Order,  
6 and it will speak for itself.

7 Now, assuming that that 7(e) unit meets all  
8 the same requirements as -- as -- for Class 1  
9 Utilization as your 7(a) plant, why do you feel that it  
10 wouldn't be entitled to the same treatment as your  
11 single 7(a) plant?

12 A Our main concern was to not afford a 7(e)  
13 plant an advantage over a 7(a) plant.

14 Q Why would that give an advantage? I mean, if  
15 shipments to that -- to those two plants that just  
16 happen to be under two different roofs, maybe one's  
17 across the street from the other, if they're treated  
18 the same as if it was to one plant under the same roof,  
19 if they had the same utilization, the same products in  
20 the aggregate, same volume and everything, everything's  
21 the same, except it's two different roofs, why would  
22 that give them an advantage?

23 A I'm going to repeat my last answer. Our  
24 concern was that the 7(e) plants wouldn't be given an  
25 advantage that 7(a) plants would. If everything was

1 exactly the same, then we wouldn't -- wouldn't be an  
2 objection to that.

3 Q All right. So, if the proposal -- if the  
4 proposal really doesn't give them an advantage, you  
5 don't have any problem with it?

6 A That would be true.

7 Q Okay. Now, with respect to your concern  
8 about producers being -- who happen to be located  
9 outside certain state lines would be treated  
10 differently based solely on the location of the farm,  
11 is it -- you've also said that you don't expect to be  
12 relying on -- need to rely on milk from distant  
13 locations, such as California, for your milk supply,  
14 correct?

15 A That's correct.

16 Q Okay. You don't expect to rely on milk from  
17 Idaho for your milk supply? I mean, you don't need any  
18 supplemental supplies from Idaho, correct?

19 A At this time, no.

20 Q Okay. Do you expect to rely on milk -- do  
21 you expect to rely on them for your supply?

22 A I can't answer that.

23 Q You've never had to do that?

24 A We've gone as far away as Texas, never gone  
25 north to South Dakota.

1 Q Because there wasn't milk available in Iowa?

2 A A significant portion of our milk comes from  
3 outside of Iowa.

4 Q The Southern Minnesota counties, is that what  
5 you're referring to from outside of Iowa? Southern  
6 Minnesota?

7 A There's some Southern Minnesota and there's  
8 some Wisconsin milk that would come from outside Iowa  
9 that would come to our plant.

10 Q And those would be the locations that you  
11 referred to as historically associating with the Iowa  
12 Order?

13 A These are milk that we procured regularly in  
14 the past.

15 MR. BESHORE: Thank you.

16 JUDGE BAKER: Very well. Thank you.

17 Are there any other questions for Mr.  
18 Erickson? Ms. Brenner, then you, Mr. Vetne.

19 CROSS EXAMINATION

20 BY MS. BRENNER:

21 Q Mr. Erickson, with regard to the elimination  
22 of allowing shipments to other Order distributing  
23 plants to qualify -- to be qualifying shipments, don't  
24 those count as Class 1 use in the Central Marketing  
25 Area?

1           A     My main concern is to -- to procure milk at  
2 my plant locally, that that was the -- the intent of  
3 the testimony here, was to not encourage milk to go out  
4 of our Order and be used in other places because I'm  
5 trying to fulfill my Class 1 and 2 needs at my plant.

6           Q     You were --

7           A     I don't know the answer to your question.

8           Q     You were noting that the blend price would be  
9 higher of the Class 1 use and that would attract more  
10 milk, and --

11          A     Correct.

12          Q     And if the -- if the Class 1 use on the  
13 market were enhanced, that would enhance the blend  
14 price, too, wouldn't it?

15          A     Certainly an increase in the blend price  
16 would enhance our position and the ability to procure  
17 milk.

18          Q     In Paragraph 6, you refer to the "automatic  
19 supply plant definition". Are you talking there about  
20 the period of what we sometimes refer to as a "free  
21 ride" or a plant -- a supply plant that's qualified for  
22 a period of time doesn't have to meet those performance  
23 standards for another block of months in order to pool  
24 the milk?

25          A     Yes.

1 Q Is that what you're --

2 A Yes.

3 Q Okay.

4 MS. BRENNER: That was all I had.

5 JUDGE BAKER: Very well. That brings us to a  
6 time for our afternoon recess, and when we come back,  
7 Mr. Vetne, you indicated you have some questions.

8 We'll take a 15-minute recess at this time.

9 (Whereupon, a recess was taken.)

10 JUDGE BAKER: We are now back on the record  
11 after our afternoon recess.

12 Mr. Erickson is on the stand. Mr. Vetne, I  
13 believe you had some questions.

14 MR. VETNE: Yes, I do, Your Honor. John  
15 Vetne.

16 CROSS EXAMINATION

17 BY MR. VETNE:

18 Q I wanted to follow a little bit up on your  
19 comments on the Section 7(e) plant, distributing plant  
20 units. First, for reference, roughly what is your  
21 average Class 1 use to your total use?

22 A Roughly, 80 percent.

23 Q So, you're -- you're a dedicated Class 1  
24 facility?

25 A Yes, sir.

1           Q     Is 80 percent or thereabouts the percentage  
2 of Class 1 you would ordinarily find in a distributing  
3 plant that is Class 1, that has some Class 1 use --  
4 Class 2 use?

5           A     Yes.

6           Q     The 9(e) plants must -- must meet an  
7 aggregate for the pooled distributing plant  
8 qualification, and you're aware that that's 25 percent  
9 total utilization, --

10          A     Yes, sir.

11          Q     -- not 70 or 80 percent?

12          A     Yes, sir.

13          Q     And of that 25 percent, 25 percent has to be  
14 distributed in the Marketing Area. So, a plant that  
15 has -- a company that has multiple plants, including  
16 dedicated Class 2 plants, could qualify on the basis of  
17 a little over six and a half percent distribution of  
18 Class 1 products in the Marketing Area?

19          A     Yes, sir.

20          Q     Okay. As far as being on equal footing,  
21 would you agree that you're not on equal footing if  
22 shipments of milk qualify for dedicated Class 2 use if  
23 the purpose is to get milk to Class 1 facilities?

24          A     Yes.

25          Q     You referred in your testimony to blend

1 prices moving milk twice on the bottom of Page 1 and  
2 again on Page 2. In all cases, you -- once, you used  
3 the term "relative blend prices". Is that you mean by  
4 blend prices movement of milk?

5 A You could -- you could refer to either.  
6 Relative -- you're always relative to your competition.  
7 So, --

8 Q In all cases, --

9 A -- relative blend price would probably be the  
10 most accurate.

11 Q Most accurate. Okay. It's not the level of  
12 blend prices at your plant, it's the level of blend  
13 prices for milk delivered to your plant versus the  
14 level of blend prices to other plants in other areas  
15 around --

16 A That is correct.

17 Q Okay.

18 A Yes.

19 Q And you also referred to a lower -- a lower  
20 blend even with 50 percent Class 1 utilization. Again,  
21 are we referring to a relative blend?

22 A Yes.

23 Q You're not referring to the -- the mover  
24 there at that point, you're referring to the proceeds  
25 to producers above the mover, whatever it is?

1           A     Yes.

2           Q     Now, it's the lower of Class -- higher of  
3     Class 3 or 4, before it was the basic formula price,  
4     before it was the MW price?

5           A     Correct.

6           Q     Okay. Have you looked at the level of the  
7     difference between the mover and the PPD since January  
8     of 2000 and the difference between the basic formula  
9     price and the blend price prior to January 2000 to  
10    compare those numbers?

11          A     Could you restate? I'm sorry. I may have to  
12    write it down.

13          Q     You might have to write it down. Referring  
14    to a lower blend in your testimony, --

15          A     Hm-hmm.

16          Q     -- by blend, you're referring to the PPD, am  
17    I correct?

18          A     Hm-hmm.

19          Q     Okay. And would you agree with me that the  
20    comparative equivalent for purposes -- for this  
21    purpose, prior to January of 2000, is the difference  
22    between the blend price and the BFP, the mover? That's  
23    the extra amount that the producers receive?

24          A     Yes.

25          Q     Have you compared those two numbers before

1 and after January 2000 in preparation of your  
2 testimony?

3 A Yes.

4 Q Do you have data, either general or specific,  
5 relating to those differences before and after 2000?

6 A I do not have data available to me right  
7 here.

8 Q Okay. Fine.

9 MR. VETNE: That's all I have. Thank you.

10 JUDGE BAKER: All right. Thank you, Mr.  
11 Vetne.

12 Are there any other questions of Mr.  
13 Erickson? Mr. Beshore?

14 REDIRECT EXAMINATION

15 BY MR. BESHORE:

16 Q I had just one other question, Mr. Erickson,  
17 and this anticipates some testimony which Mr. Hollon  
18 has not yet presented. So, if you and everybody else  
19 will bear with us a minute, you know, you're testifying  
20 now, and you've got to leave.

21 Assume with me Mr. Hollon is going to present  
22 some testimony that would modify the particulars of  
23 Proposals 1 through 5 to add some, what we call, "net  
24 shipments" language to the qualification provisions, so  
25 that it were -- was not possible for any -- for

1 producers or supply plants to qualify by pumping milk  
2 in and -- into and back out of the distributing plant  
3 in order to be part of the Order or ship milk one day  
4 and buy milk back the next day, and so that there's no  
5 net delivery, so to speak.

6           Would you support those sorts of protective  
7 provisions in the Order, so that whatever qualification  
8 of performance standard there is, it's an actual net  
9 performance for the work?

10           A     Yes.

11           Q     Thank you.

12           JUDGE BAKER: Thank you.

13           Are there any other questions of Mr.  
14 Erickson? Yes, Mr. English?

15           MR. ENGLISH: Just one question on redirect.

16                         REDIRECT EXAMINATION

17           BY MR. ENGLISH:

18           Q     With respect to the series of questions asked  
19 by Ms. Brenner and qualifying shipments to pooled  
20 distributing plants on other Orders, would it be fair  
21 to say that your concern is the idea you have a  
22 shipping percentage of 25 percent that's being met by  
23 shipping to someone else?

24           A     Yes. My primary concern is to get people  
25 into my plant, and by shipping outside the Order to

1 another plant, that's not helping Anderson Erickson.

2 MR. ENGLISH: That's all I have.

3 JUDGE BAKER: Thank you.

4 Are there any other questions for Mr.  
5 Erickson?

6 (No response)

7 JUDGE BAKER: There appear to be none.

8 Thank you very much, Mr. Erickson.

9 THE WITNESS: Thank you. I thank Your Honor  
10 for your indulgence, and I thank Mr. Beshore and Mr.  
11 Hollon again.

12 JUDGE BAKER: Very well. Thank you both.

13 (Whereupon, the witness was excused.)

14 JUDGE BAKER: Mr. Beshore, Mr. Hollon is  
15 still on the stand.

16 Whereupon,

17 ELVIN HOLLON

18 having been previously duly sworn, was recalled as a  
19 witness herein and was examined and testified as  
20 follows:

21 DIRECT EXAMINATION (RESUMED)

22 BY MR. BESHORE:

23 Q Okay. Continuing with your direct testimony,  
24 Mr. Hollon, you heard me refer -- direct a question to  
25 Mr. Erickson just a moment ago with respect to proposed

1 shipment provisions which you have not -- not yet  
2 testified to.

3 I -- do you have some brief testimony with  
4 respect to those modifications to the proposals to  
5 present at this time?

6 And there is a two-page statement which is  
7 available. I'm not going to propose that this be  
8 marked as an exhibit and presented for the record, but  
9 it is available for everyone to follow as you present  
10 it, Mr. Hollon.

11 Would you proceed with that --

12 A Okay.

13 Q -- statement, please?

14 A The statement is titled "Modifications  
15 Offered by Dairy Farmers of America to Proposals 1  
16 through 5".

17 We offer the following modification to our  
18 proposals to make sure that all performance measures  
19 are based on -- on net or real shipments. This  
20 modification in no way detracts from any of our  
21 proposals made thus far and serves to further define  
22 our intent.

23 All of the shipments that we propose to  
24 measure, those used to determine supply plant  
25 qualifications in Section 7(c) and producer milk

1 standards in 13(d), should be subject to net  
2 calculations; that is, any shipments made to a pooled  
3 distributing plant for the purpose of qualification  
4 should be reduced by shipments made from the  
5 distributing plant back to the pooling handler.

6 Thus, we would propose to modify our proposal  
7 by adding a new Paragraph C-5 to read as follows.

8 1327(c)(5). "Shipments used in determining qualifying  
9 percentages shall be transferred or diverted and  
10 physically received by distributing pooled plants less  
11 any transfers or diversions of bulk fluid milk products  
12 from such distributing pooled plants."

13 And 13(d)(3). "Receipts used in determining  
14 qualifying percentages shall be milk transferred to or  
15 diverted to and physically received by plants described  
16 in 1327(a), (b) or (e), less any transfers or  
17 diversions of bulk fluid milk products from such  
18 distributing pooled plants."

19 And we have renumbered Sections 3 through 5  
20 to be Number 4 through 6.

21 The new Section 7(c)(5), as modified,  
22 proposes a net shipment provision common to many  
23 Orders. It prevents a supply plant from shipping milk  
24 into the front door of a pooled distributing plant and  
25 then reloading and shipping the milk back out the back

1 door.

2 Without this modification, qualification  
3 standards could be met and yet the manufacturing plant  
4 can retain use of the milk, hardly a method of making  
5 milk available for the market, and it allows for  
6 suppliers to qualify additional milk on the market,  
7 even though it would not perform for the market. Our  
8 proposal would prevent this from occurring.

9 Two. The new Section 13(d)(2) and 3 as  
10 modified proposes a net receipts provision. It further  
11 defines the standard of performance to make sure that  
12 the measure of receipts is based on real shipments and  
13 does not allow a pooling handler to strike a deal to  
14 cycle milk through a distributing plant to bulk up its  
15 qualification volume.

16 The large economic incentive for attaching  
17 supply plant milk to Order 32, coupled with our  
18 proposals to better rationalize performance standards,  
19 may tempt parties to make arrangements to ship out the  
20 back door, even though the haul costs may be  
21 substantial in order to collect the pooled draw.

22 The Market Administrator must audit these  
23 shipments as a part of his regular audit practices.  
24 The temptation to skip the delivery part of the  
25 transaction and just report it as occurring also

1 becomes great as a method to avoid the costs. Removal  
2 of the financial incentive as our proposal intends  
3 would eliminate the temptation to fake the delivery.

4 We realize that in some cases, the cost of  
5 making these types of arrangements will prohibit their  
6 occurrence. However, we know from our own experience  
7 that it does not always do so, thus we propose these  
8 modifications.

9 MR. BESHORE: Now, at this time, Your Honor,  
10 with -- with your -- your permission and everyone's  
11 consent, I would like Mr. Hollon to also present his  
12 testimony which relates to Proposal 7, which is a DFA  
13 proposal that involves the same issues of pooling as  
14 relate to Orders -- Proposals 1 through 5 and logically  
15 should be discussed in the same context as Proposals 1  
16 through 5.

17 JUDGE BAKER: Very well, Mr. Beshore.

18 MR. BESHORE: Thank you.

19 BY MR. BESHORE:

20 Q Mr. Hollon, you have a statement and also a  
21 set of exhibits that relate to Proposal 7?

22 A That is correct.

23 MR. BESHORE: Okay. I would like to mark  
24 then Mr. Hollon's statement on Proposal 7 as Exhibit  
25 11, and his exhibits with respect to Proposal 7, which

1 are under separate cover, as Exhibit 12.

2 JUDGE BAKER: They shall be so marked, Mr.  
3 Beshore.

4 (The documents referred to  
5 were marked for identification  
6 as Exhibit Numbers 11 and 12.)

7 MR. BESHORE: The statement is 11, the  
8 exhibits are 12.

9 BY MR. BESHORE:

10 Q You also have two other separate -- separate  
11 documents, which are -- one is a map of the State of  
12 Minnesota, the other a map of the State of Wisconsin.

13 A Correct.

14 MR. BESHORE: And we'd like those to be  
15 marked as -- which are statements -- exhibits relating  
16 to Proposal 7 as Exhibits 12 for Minnesota --

17 JUDGE BAKER: No. 13. 13.

18 MR. BESHORE: 13, for Wisconsin.

19 JUDGE BAKER: No. His -- the last exhibit  
20 was 12. So, it would be 13 and 14.

21 MR. BESHORE: I'm sorry. Yes, 13 and 14.

22 JUDGE BAKER: And now, which one do you want  
23 marked first?

24 MR. BESHORE: Minnesota 13.

25 JUDGE BAKER: All right. That's Exhibit 13.

1 Then Wisconsin is Exhibit 14.

2 MR. BESHORE: Wisconsin 14.

3 (The documents referred to  
4 were marked for identification  
5 as Exhibit Numbers 13 and 14.)

6 MR. BESHORE: We will make sure that the  
7 reporter's provided with --

8 JUDGE BAKER: Thank you.

9 MR. BESHORE: -- three copies of those --

10 JUDGE BAKER: Thank you.

11 MR. BESHORE: Those exhibits, and they should  
12 be available in the room to all the -- all the  
13 participants.

14 BY MR. BESHORE:

15 Q Would you -- are you ready to proceed with --

16 A I'm ready.

17 Q -- your statement on Proposal 7 then, Mr.  
18 Hollon?

19 A Statement on Proposal 7. The case for milk  
20 from states with no counties in the Marketing Area.  
21 Exhibit 5, Table 11, entitled "Central Federal Order  
22 Number of Producers and Pounds of Milk Pooled by State,  
23 2000 and 2001", furnished by the Market Administrator,  
24 illustrates the volume of distant milk that is pooled  
25 on Order 32.

1           Table 12, a map of this data, also produced  
2 by the Market Administrator, graphically details the  
3 information. Data provided by handlers on the sources  
4 of pooled milk as required by each Federal Order is the  
5 source of data for this map. It shows the Order  
6 Marketing Area and the sources of milk pooled on the  
7 Order.

8           In an earlier statement, specific mileage and  
9 economic return data was presented to demonstrate that  
10 this milk could not serve the market regularly and  
11 generate a positive return.

12           We have demonstrated that the evidence  
13 presented by Federal Order Reform clearly shows that  
14 milk from these areas was specifically excluded from  
15 the Marketing Area and never intended to be a part of  
16 the Order 32 pool.

17           Evidence about Marketing Area and blend price  
18 calculation and the underlying logic of the models that  
19 generated the Order's pricing surplus support our  
20 contention and will not be detailed here again.

21           The Proponents of Proposal 8 share the same  
22 concern that we do, that milk is sharing in the Federal  
23 Order 32 Blend Price but does not perform for the  
24 market in a reasonable manner.

25           We would propose that specific Order language

1 be adopted to define the performance requirements for  
2 milk located outside of the Marketing Area. In  
3 general, our proposal would be patterned after the  
4 language that exists currently in Federal Order 1 and  
5 existed in Federal Order 2 for many years prior to  
6 Order Reform.

7 That language states that milk from specific  
8 geographic areas be grouped together in individual  
9 state units by individual handler, and then each  
10 individual unit must meet the prevailing performance  
11 standard exacted on in-area milk.

12 Before we spell out the specifics of our  
13 language, however, we would like to detail why we  
14 propose that certain Minnesota and Wisconsin counties  
15 must also be treated with the same standards.

16 In the case of Minnesota and Wisconsin  
17 supplies to Order 32, the Market Administrator Exhibit  
18 5 requested by Hollon shows specific information about  
19 the milk pool on Order 32 --

20 Q Mr. Hollon?

21 A Yes?

22 Q Could I interrupt you there? It's the Market  
23 Administrator's Exhibit which had information requested  
24 by you as Exhibit 7.

25 A Okay. Sorry. Shows specific information

1 about the milk pool on Order 32 for Minnesota and  
2 Wisconsin in December of 1996, 1998 and 2000.

3 These periods were requested in order to show  
4 the extent of milk pooled in Order 32 as designated by  
5 its current boundaries and as if the current boundaries  
6 which contain Predecessor Orders had been in effect  
7 then and that presently associated with the Order  
8 through the open pooling schemes that are currently in  
9 use.

10 The map shows only a few blue areas in 1998;  
11 that is, only a few Minnesota and Wisconsin counties  
12 not located in the Marketing Area with milk pooled on  
13 Order 32.

14 In December 2000, in either state, there were  
15 only a few counties that did not pool any milk in Order  
16 32, a remarkable change. Many of those counties with  
17 no milk pooled on Order 32 have no milk production at  
18 all. The accompanying table provides numerical detail  
19 for the map.

20 In December of 1998, 14 Wisconsin out-of-area  
21 counties pooled 38,820,757 pounds of milk on Order 32.  
22 By December of 2000, the county count was 66, and the  
23 volume at 394,747,229 or up 917 percent.

24 For Minnesota, there were 23 counties  
25 supplying 37,259,609 pounds of milk in 1998. By

1 December 2000, the county count was 67, and the volume,  
2 146,300,098 or a 292-percent increase.

3 In sum, 540,750,328 pounds exceeded the total  
4 Class 1 and 2 pounds in the Order in December of 2000.  
5 The calculations presented earlier noted that milk from  
6 these areas did not provide a positive return -- did  
7 provide -- I'm sorry -- a positive return but not  
8 likely enough to pay the procurement costs or bid it  
9 away from a manufacturing plant.

10 So, why would I become attracted to Order 32?  
11 Because it could easily associate minimally perform and  
12 still collect from the blend pool. The combination of  
13 easy market association and lax pooling requirements  
14 made the opportunity too easy to pass up.

15 Furthermore, while we can easily support the  
16 concept that in-area shipments be used to qualify milk  
17 produced in the Marketing Area, it is more difficult to  
18 define how in-area shipments could -- should be used to  
19 qualify out-of-area supplies.

20 Without our proposal, it will become too easy  
21 for in-area milk production and sales to provide  
22 qualification for milk supplies produced out of the  
23 Marketing Area. Since these supplies are in such close  
24 proximity, we think the provisions governing them need  
25 additional specification. Thus, we would propose that

1 certain counties in Minnesota and Wisconsin also be  
2 subject to the same type of qualification standard as  
3 milk from more distant areas, such as California or New  
4 Mexico.

5 I've lost track of which exhibit number it  
6 is, but Exhibit Number something, Tables 1-A and 1-B --  
7 Tables -- oh, that's because we haven't put this  
8 exhibit in yet.

9 Q That's Exhibit --

10 A 12.

11 Q -- 12.

12 A Exhibit 12, Table 1-A and B, entitled  
13 "Minnesota and Wisconsin Counties that Pooled Milk on  
14 Order 32 and Its Predecessor Orders That Are Not In the  
15 Marketing Area, December 1998 and December 2000",  
16 outline our approach.

17 The question succinctly is, what out-of-area  
18 counties should be afforded the qualification  
19 privileges of being associated with in-area milk, and  
20 what counties should be held to a more stringent  
21 standard?

22 We would propose that milk from counties  
23 associated with the Marketing Area in 1998 and had a  
24 supply volume in excess of one 50,000-pound-per-load-  
25 per-day be included with the in-area standard. All

1 other counties would be included with the out-of-area  
2 standard.

3 The historical link to the prior period with  
4 the recognizable and substantial marketable volume  
5 seems to be reasonable and a justifiable standard. For  
6 Minnesota counties, Table 1-A shows that 37 million  
7 pounds shipped from counties that had any association  
8 in 1998. This volume grew to 146 million in 2000.  
9 Application of our standard would reduce this volume to  
10 52 million.

11 For Wisconsin counties, Table 1-B shows that  
12 39 million pounds shipped from counties that had any  
13 association in 1998. This volume grew to 395 million  
14 in 2000. Application of our standard would reduce this  
15 volume to 66 million.

16 Note that any volume could still qualify to  
17 share in the Order 32 pool but would have to meet the  
18 out-of-area performance standard.

19 While we share the same view with the  
20 Proponents to Proposal 8, that there is an issue of  
21 concern due to the open pooling provisions allowing  
22 distant milk from -- I'm sorry -- allowing milk distant  
23 from the market to pool without performing, we differ  
24 on how to correct the problem.

25 The solutions they propose are insufficient

1 in several areas. Proposal 8 does not recognize the  
2 primacy of a Marketing Area nor does it address the  
3 concerns of a performance standard.

4 We feel that any proposal must incorporate  
5 these fundamentals. The setting of an arbitrary  
6 standard that cannot be measured with an economic ruler  
7 is not the right way to go and may suffer from future  
8 legal challenge.

9 Proposal 8 does not address the total  
10 universe of potential supply that can attach itself to  
11 the market but never serve the market. In this  
12 specific case, milk from Idaho, Minnesota, Wisconsin or  
13 New Mexico, for example, would still not be affected in  
14 any way by the proposed relief but could likely still  
15 pool with minimal performance.

16 Proposal 8 may result in unforeseen negative  
17 consequences between milk pooled in Federal Orders and  
18 milk pooled in state Orders. There are state Milk  
19 Marketing Orders in California and Nevada, North  
20 Dakota, Montana, Virginia, Pennsylvania, New York and  
21 Maine. There have been proposals in recent years in  
22 Texas, Kansas, Nebraska and even occasionally Wisconsin  
23 for state Orders to be promulgated.

24 The interface between Federal Orders and  
25 existing state Orders is difficult to determine and

1 impossible with potential future state Orders. In  
2 fact, I participated in discussions last week with the  
3 Trade Association of Dairy Farmers seeking input on the  
4 establishment of a new state Order.

5 We see no reason to seek a solution that will  
6 -- that may incur future trouble when better solutions  
7 are available. Proposal 8 may result in unforeseen  
8 negative compacts between milk pooled in Federal Orders  
9 and milk pooled in compacts.

10 While currently the existence of compacts is  
11 threatened, we suspect that they are not dead. There  
12 is even talk of a national compact that would include  
13 the Upper Midwest. We see no reason to seek a solution  
14 that may incur future trouble when better solutions are  
15 easily available.

16 Proposal 8 requires an additional audit  
17 burden and the authority to collect that information  
18 that may not be available. To our knowledge, the  
19 California state -- California state officials are  
20 under no requirement to furnish audit data or to  
21 furnish data for audit to the Federal Order System, and  
22 enactment of Proposal 8 would only migrate the problem  
23 to other Order areas.

24 A more uniform application to all Orders that  
25 would solve or alleviate greatly this concern is a

1 superior choice.

2 With regard to our Proposal 7, we'd note that  
3 the concept is already in place in Federal Order 1, the  
4 Northeast Order, and was in place in Federal Order 2  
5 prior to reform, so it has already stood the test of  
6 time.

7 It recognizes the principles of both the  
8 Marketing Area and the performance aspect of marketwide  
9 pooling. It has already been proposed for use in  
10 Federal Order 30, and its continued use would be  
11 consistent here. It carries little additional  
12 recordkeeping or audit burden. It has a measurable  
13 economic consequence that is in line with existing  
14 Order principles, that if the economics are positive,  
15 regulation does not prohibit pooling. Yet it provides  
16 a reasonable and justifiable hurdle for distant milk to  
17 overcome.

18 The provision that each state must be treated  
19 individually and perform as a stand-alone entity under  
20 the same 20 or 25 percent performance standard as any  
21 other -- as any other in-area milk supply provides a  
22 reasonable economic test of whether or not the return  
23 will justify the performance. The economic return must  
24 be earned in the marketplace and not in the pooling  
25 report.

1           As shown in Exhibit 9, Tables 10 through 15,  
2           at the 20 or 25 percent shipping level and the same PPD  
3           and delivery costs, there are months of negative  
4           returns and some months of positive ones, thus raising  
5           the hurdle of economic risk.

6           By requiring performance -- by requiring  
7           performance similar to other local milk supplies, the  
8           intangibles of rejected loads, bad weather and a  
9           variable demand from bottlers causes the return to be  
10          less dependable and the risk greater. This, however,  
11          causes the decision-making process faced by the distant  
12          supplier to be more like that faced by local milk  
13          suppliers.

14          The individual state unit concept is an  
15          adequate and reasonable safeguard for Order 32.  
16          Furthermore, the requiring each state unit to perform  
17          individually prevents in-area milk from qualifying  
18          distant milk. It also discourages distant milk from  
19          seeking a large supply block from a nearby state,  
20          informing a unit to ease the performance requirements.

21          We find schemes similar to this occurring in  
22          other Federal Orders, and they disrupt orderly  
23          marketing practices there. We wish to avoid their  
24          spread.

25          We find many examples of geographic

1 distinction in current Order provisions. Currently,  
2 Order 32 and Order 30 supply point units must be  
3 composed of plants in the Marketing Area.  
4 Transportation credits paid in Federal Orders 5 and 7  
5 must be made from milk originating outside of the  
6 Marketing Area.

7           In the former Texas Order, balancing credits  
8 could be paid only on milk produced in certain  
9 counties. In the former Michigan Order, direct  
10 delivery differentials were paid only on shipments to  
11 bottlers located in specific counties.

12           In this proceeding, we are proposing a higher  
13 performance standard for supply plant units, and they  
14 must be composed of plants located in the Marketing  
15 Area. Thus, our proposed language would read -- in  
16 each case, the proposed language is identical to the  
17 Notice of Hearing, with the exception of the paragraph  
18 that specifies the counties.

19           So, I'll simply read Paragraphs 1327(c)(4).  
20 Our proposed language would read, "If milk is delivered  
21 to a plant physically located outside the states of  
22 Colorado, Illinois, Iowa, Kansas, Missouri, Nebraska,  
23 Oklahoma, South Dakota, and the Minnesota counties of  
24 Fillmore, Houston, Lincoln, Mower, Murray, Nobles,  
25 Olmstead, Pipestone, Rock, and Winona, and the

1 Wisconsin counties of Crawford, Grant, Green, Iowa,  
2 Lafayette, Richland and Vernon, by producers also  
3 located outside the areas specified in this paragraph,  
4 producer receipts at such plants shall be organized by  
5 individual state units, and each unit shall be subject  
6 to the following requirements."

7 Turning the page and reading the same  
8 paragraph -- similar paragraph in 3213(e), "Milk  
9 receipts from producers whose farms that are physically  
10 located outside the states of Colorado, Iowa, Illinois,  
11 Kansas, Missouri, Nebraska, Oklahoma, South Dakota, and  
12 the Minnesota counties of Fillmore, Houston, Lincoln,  
13 Mower, Murray, Nobles, Olmstead, Pipestone, Rock and  
14 Winona, and the Wisconsin counties of Crawford, Grant,  
15 Green, Iowa, Lafayette, Richland and Vernon, such  
16 producers shall be organized by individual state units,  
17 and each unit shall be subject to the following  
18 requirements."

19 Q Now, Mr. Hollon, are the maps that have been  
20 marked as Proposed Exhibits --

21 JUDGE BAKER: 13 and 14.

22 BY MR. BESHORE:

23 Q -- 13 and 14, are they visual depictions of  
24 the counties for in-area and out-of-area that you have  
25 just enumerated in the proposed language in support of

1 Proposal 7?

2 A That would be correct. In Exhibit 13,  
3 reflective of the Minnesota counties. The black line  
4 on the southeast corner, Houston, Fillmore, Mower,  
5 Olmstead and Winona, would be afforded the in-area  
6 qualification, as well as Lincoln, Pipestone, Rock and  
7 Nobles.

8 Currently, some of those counties are already  
9 in the Order boundaries, and in some cases, they are  
10 not. Any remaining county would then fall under the  
11 standard of having to stand alone as a unit by each  
12 handler and ship the required percentage.

13 Looking to the Wisconsin map, in Exhibit 14,  
14 in the southwest corner of the state, Vernon, Crawford,  
15 Richland, Grant, Iowa, Lafayette, Green, those counties  
16 would be afforded the in-area and qualify under that  
17 standard. Grant and Crawford are already in the  
18 Marketing Area. Any remaining county in Wisconsin  
19 would then have to meet the out-of-area standard that  
20 says stand-alone as a unit and meet the shipping  
21 requirements.

22 Q Now, those counties as you've described in  
23 your testimony were identified on the basis of the  
24 source of milk information reflected in the tables in  
25 Exhibit 12?

1           A     That is correct.

2           Q     Okay.  And that reflects production for this  
3 market or its predecessors in December 1998 and  
4 December of 2000, correct?

5           A     That is correct.  Those -- those numbers were  
6 taken directly off of the numbers provided by the  
7 Market Administrator table in response to my questions  
8 to him.  They listed a list of counties and that's  
9 where that equation came from.

10          Q     Okay.  Now, some question has been asked, I  
11 think, earlier this morning or today with respect to  
12 whether the December 1998 data would be reflective of  
13 depoolings of milk, whether it would not be  
14 representative because it was a month when milk may not  
15 have been pooled but was regularly pooled under the  
16 Predecessor Order.

17                   Do -- do you recall that inquiry?

18          A     Yes.

19          Q     Okay.  Now, I have a request, and I want to  
20 note this on the record, of Mr. Stukenberg to check  
21 with their office to -- and report back tomorrow to  
22 determine whether the information provided to you in  
23 support of Exhibit 12 reflected all milk, including  
24 pooled and depooled milk, that's regularly associated  
25 with the Order or whether it reflected only pooled milk

1 for that month.

2 A Okay.

3 Q So, we're going to know before we leave the  
4 hearing whether that's all milk regularly associated or  
5 just pooled milk.

6 In the event that the information did not  
7 include milk regularly associated with the market  
8 because it happened to be depooled that month, would  
9 you support making the same determination with respect  
10 to counties but using data that's published and has  
11 been published by the -- by the Dairy Programs Branch,  
12 Source of Milk Data, for these Orders for -- for other  
13 years?

14 A That would be a suitable modification or  
15 change, to look for a more extended period of time, and  
16 we did not have all of that data readily at hand. So,  
17 the general principle is associated with the market in  
18 the historical period and has some substantial volume  
19 associated with the Order.

20 MR. BESHORE: Depending upon the information  
21 we get from Mr. Stukenberg tomorrow, we will request  
22 that official notice be made of those publications, to  
23 the extent that they may be pertinent, Your Honor.

24 JUDGE BAKER: Very well.

25 MR. BESHORE: With that, I would like to move

1 the admission of Exhibits 8 through 14, which Mr.  
2 Hollon has presented in his direct testimony, and he  
3 would be available for cross examination.

4 THE WITNESS: I just would like to make one  
5 point with regard to the -- to the -- to the actual  
6 statements. Proposals 1 through 5 are supported by the  
7 three Proponents. Proposal -- the modification with  
8 regard to net shipments provisions is at this time  
9 supported by Prairie Farms and Dairy Farmers of  
10 America, and the proposal, Proposal 7, is solely Dairy  
11 Farmers of America.

12 MR. BESHORE: Okay. As -- as stated in -- in  
13 the hearing notice, Proposal 7 is solely advanced by --  
14 by DFA and the modifications are advanced by DFA and by  
15 Prairie Farms.

16 JUDGE BAKER: Very well. Are there any  
17 questions or objections with respect to what have been  
18 marked for identification as Exhibits 8 through 14?

19 (No response)

20 JUDGE BAKER: Hearing none, said Exhibits 8  
21 through 14 are admitted into evidence.

22

23

24

25

1 (The documents referred to,  
2 having been previously marked  
3 for identification as Exhibit  
4 Numbers 8 through 14, were  
5 received in evidence.)

6 JUDGE BAKER: And that concludes Mr. Hollon's  
7 direct testimony?

8 MR. BESHORE: Yes, it does.

9 JUDGE BAKER: Thank you.

10 MR. BESHORE: Thank you.

11 JUDGE BAKER: Are there any questions for Mr.  
12 Hollon?

13 (No response)

14 JUDGE BAKER: Mr. Beshore, there appear to  
15 be no questions -- oh.

16 MR. VETNE: You're a little slow there. I  
17 wish you'd been a little faster.

18 JUDGE BAKER: Mr. Vetne?

19 CROSS EXAMINATION

20 BY MR. VETNE:

21 Q Mr. Hollon, --

22 A Good afternoon.

23 Q -- I'm John Vetne. First, your statement  
24 regarding Proposals 1 and 5. You -- DFA previously  
25 proposed and supported by testimony some modifications

1 to the Upper Midwest Order, a hearing for which was  
2 held early Summer this year, correct?

3 A That's right. I appeared at that hearing.

4 Q And is the testimony that you provided in  
5 this Exhibit 8 largely identical to the testimony  
6 provided in Minneapolis?

7 A It would be similar in philosophy but not  
8 identical in content.

9 Q The content difference being market-specific  
10 --

11 A Correct, yes.

12 Q -- statistics?

13 A That's a fair characterization.

14 Q And you make the same -- you advocate the  
15 same policy position in this hearing that you did in  
16 the Upper Midwest?

17 A I think that's correct.

18 Q I had a question on Page 27 of your statement  
19 on 1 through 5. That was marked as Exhibit 8.

20 You referred to some producers in Western  
21 Colorado.

22 A Yes.

23 Q There were 20 pooled producers in Western  
24 Colorado prior to consolidation, --

25 A Yes.

1 Q -- is that right?

2 A Yes.

3 Q And were they all DFA members?

4 A Yes.

5 Q And with respect to -- and was there any  
6 other supplier, any other cooperative supplier to  
7 Western Colorado plants?

8 A No, no.

9 Q What was the Class 1 Utilization of Western  
10 Colorado market?

11 A It was the unpublished market. It was high.

12 Q I know. So, I'm asking you. You know, don't  
13 you? It was two years ago. You want to share it with  
14 us now?

15 A It was an unpublished market, but it was  
16 high.

17 Q When -- when do you think it'll be safe to  
18 share that information?

19 A I'm not sure.

20 Q You -- you -- okay. With respect to surplus  
21 associated with the Western Colorado Market, would it  
22 be fair to say that surplus and reserve supplies were  
23 carried by adjoining markets?

24 A Actually, in that case, there was a pretty  
25 good balance, and while there was some surplus and some

1 additional reserves, it was pretty minimal, but  
2 certainly if you needed a load of milk, it had to come  
3 from somewhere else because it wasn't there, and  
4 although they paid for it, and if you had to haul a  
5 load out of there, which occasionally happened, it had  
6 to go to somewhere else because, you know, there were  
7 not facilities there and that market paid for it.

8 Q Elsewhere in your testimony, you refer to a  
9 generous reserve estimation --

10 A Hm-hmm.

11 Q -- for a Class 1 Market?

12 A Hm-hmm.

13 Q Could you state whether or not the Western  
14 Colorado Market operated with a reserve non-Class 1 use  
15 that was greater or lesser than the generous amount you  
16 estimated?

17 A I don't know the specific calculations, but  
18 again there was -- you know, in that situation, there  
19 was a general balance.

20 Q With respect to your Western Colorado  
21 producers, whatever the Class 1 may have been, did  
22 those producers receive a paycheck that was the Federal  
23 Order Blend Price for that market?

24 A I'm not familiar with the exact details. So,  
25 I can't answer. I just don't know. Obviously there

1 were returns earned from that market, but whether they  
2 got the blend plus/minus exactly, I can't tell you.

3 Q Does DFA blend milk proceeds between Federal  
4 Markets in payments made to producers?

5 A In general, we market milk to the best of our  
6 ability and collect those proceeds and pay producers  
7 and those producer payment determinations are subject  
8 to the oversight of each council, each area council,  
9 which there are seven of them, and they provide  
10 oversight to management on how those things are done.  
11 So, local area producers have input in how things are  
12 done.

13 Q I'm not sure that answered my question. My  
14 question was, do you reblend proceeds throughout your  
15 organization?

16 A I think that was the answer that you got to  
17 your question.

18 Q Is the answer yes?

19 A The answer was that local DFA area councils  
20 have input over all of those types of decisions.

21 Q And -- and they -- and they make -- they're  
22 the only ones making those decisions?

23 A They oversee the decisions that management  
24 makes, and from time to time, they change them.

25 Q Okay. So, locally management, other than the

1 local area councils, have no input?

2 A Say it again.

3 Q Management above the local area councils have  
4 no input as to what the pay-out price will be?

5 A There is -- there is some input from time to  
6 time, but again the bottom line resides in the local  
7 area councils.

8 Q Okay. And the bottom line, by that, you  
9 mean, how the revenues in the region will be  
10 distributed among dairy farmers within the region?

11 A And how, you know, the expenses are  
12 distributed and how the overall cooperative is operated  
13 and run.

14 Q Okay. The region that we're -- we're now  
15 located in, what -- what DFA region is that?

16 A The -- excuse me -- the Central Area Council  
17 is the -- predominantly in the Central Order.

18 Q Okay. Does the Central Area Council include  
19 producers outside of the Central Area, Central --

20 A Order?

21 Q -- Order Marketing Area?

22 A There may be some producers in Missouri who  
23 are a part of the Southeast Order, but for the most  
24 part, the boundaries are reasonably close.

25 Q Okay. DFA has pooled some milk in -- in this

1 Order and in the Upper Midwest from farms located in  
2 California, correct?

3 A No, that's incorrect. We -- we -- we have  
4 pooled milk from California in the Upper Midwest. We  
5 have not pooled any California milk in the Central  
6 Order.

7 Q Okay. The Upper Midwest. The organizational  
8 revenues earned on California milk pooled in the Upper  
9 Midwest, do those revenues --

10 MR. BESHORE: Your Honor?

11 JUDGE BAKER: Yes?

12 MR. BESHORE: Excuse me for interrupting, but  
13 I have an objection. The internal provision of  
14 revenues within DFA of milk pooled in the Upper Midwest  
15 has nothing to do with this hearing at all. It was  
16 testified to up in Minneapolis anyway, but any other  
17 questions about the internal operations of -- of DFA  
18 are -- I think, are beyond any relevance to the  
19 hearing, and I object.

20 JUDGE BAKER: Mr. Vetne, do you want to  
21 respond to that?

22 MR. VETNE: Okay.

23 JUDGE BAKER: Well, it sounds like a valid  
24 objection on its face.

25 MR. VETNE: The -- I think we're -- we're

1 clear so far in this -- in this record that what  
2 happens here carries over into other markets, and this  
3 witness has specifically referred to blend price and  
4 PPD impact on producers.

5 I think it's very pertinent to this record to  
6 find out whether blend price and PPD impact is a real-  
7 life impact or paper impact. We've referred to paper  
8 pooling, and in fact, the price that I believe Mr.  
9 Hollon's producers received, if his testimony here is  
10 consistent with prior testimony, is -- is one that's  
11 reblended between markets; that is, the actual money  
12 flowing to a producer in one place may come from  
13 revenues produced here may come from revenues in the  
14 Upper Midwest and in -- in Georgia and California, who  
15 knows where.

16 I'm trying to find out how, if he's willing  
17 to share it for the record, how the largest producer  
18 organization in the country between the markets that  
19 are subject to separate hearings is distributed to  
20 those members.

21 JUDGE BAKER: Well, he -- he replied by  
22 indicating they're a separate council with respect to  
23 each of these Marketing Areas, and that they have a say  
24 with respect to how these revenues are allocated or  
25 done, is that not correct?

1                   MR. VETNE: I heard him say that. I have no  
2 clue what that means, however. I'm trying to find out.

3                   MR. BESHORE: Well, my objection is that the  
4 issues for the hearing are what revenues go to  
5 producers or their designated cooperative association  
6 which, under the Act, is entitled to stand in their  
7 shoes and receive their funds, and it is beyond any  
8 business of Mr. Vetne, you know, or the Secretary,  
9 frankly, how the cooperative within its elected system  
10 distributes those revenues.

11                   JUDGE BAKER: Well, the witness can decline  
12 to answer, Mr. Beshore, if that's what he wants to do.

13                   MR. BESHORE: Well, he -- he can, and he's  
14 certainly able to, but I'm saying the subject matter is  
15 completely irrelevant to the issues before the  
16 Secretary in the hearing. The subject of the question,  
17 that is, what DFA does with the money once it gets it,  
18 whether it gets it from California milk or -- or milk  
19 anywhere else, what it does with it has no bearing on  
20 this decision-making process and is not pertinent to  
21 this hearing record at all.

22                   JUDGE BAKER: Mr. Vetne?

23                   MR. VETNE: I suppose -- I suppose Mr.  
24 Beshore can instruct his witness not to answer this  
25 line of questions. He's chosen not to do it for

1       whatever reason, and it's up to the Administrative Law  
2       Judge to rule on whether the line of questioning can be  
3       pursued as a matter of administrative law relevance,  
4       and I think it has administrative law relevance. At  
5       such point as it may involve evidence that the witness  
6       is unwilling to provide, that's a different question.

7                 JUDGE BAKER: Well, would you agree that it  
8       goes to the internal workings of DFA?

9                 MR. VETNE: Sure. Absolutely. Absolutely.  
10       That's very relevant because these proposals are  
11       addressed at the internal workings and pooling and --  
12       and revenue distribution of -- of this mostly outside  
13       milk --

14                MR. BESHORE: Absolutely not. These  
15       proposals have nothing to do with how a dairy farmer or  
16       a cooperative, what they do with the money once they  
17       get it. They have to do with the -- the collection and  
18       disbursement of monies in these pools, and those are  
19       the issues.

20                I mean, we could be here -- if -- if the  
21       internal workings of DFA are pertinent, okay, the  
22       internal workings of every other cooperative  
23       represented here, including all of Mr. Vetne's clients,  
24       are pertinent to, I suppose, and we can be here  
25       forever. It has nothing to do with the decision-making

1 process, and it shouldn't be inquired into, and if we  
2 need to dispose of it by my instructing Mr. Hollon, you  
3 know, not to answer the questions, I'll do that, but it  
4 ought to be clear on this record, and I'd ask for a  
5 ruling, that it's not relevant.

6 What a cooperative does with it -- it has no  
7 pertinence under the Act or the regulations.

8 JUDGE BAKER: Well, I think the ultimate goal  
9 that Mr. Vetne has in mind relates to the extent to  
10 which milk is moved around, the extent to which it's  
11 imported, the extent to which it's exported from  
12 certain markets and that that may be tied in with the  
13 internal procedures of DFA.

14 Mr. Cooper, does the Dairy Division have  
15 anything it wishes to say?

16 MR. COOPER: No.

17 JUDGE BAKER: You are the ones who are going  
18 to -- to make the decision here. What opinion do you  
19 have with respect thereto?

20 MS. BRENNER: I guess my feeling is, it's  
21 kind of an interesting topic, but it probably doesn't  
22 have any bearing on any decision we'd be writing.

23 JUDGE BAKER: Let the record reflect that  
24 representatives of the Secretary, through the Dairy  
25 Division, have indicated that they -- probably it will

1 have no bearing upon the decision which you will be  
2 required to write.

3 I will -- in the absence of anything further,  
4 I gather that you are not anxious to have this -- these  
5 answers relative to the internal workings of DFA in the  
6 record, is that right, Ms. Brenner?

7 MS. BRENNER: That's correct.

8 JUDGE BAKER: Very well. Thank you. That's  
9 the ruling, Mr. Vetne.

10 MR. VETNE: Yes. My understanding of the  
11 ruling and the basis for the ruling is that we don't  
12 need to go further in this area because if the evidence  
13 is developed, it will be disregarded, and with that  
14 understanding, I will go on to something else.

15 BY MR. VETNE:

16 Q I'm not sure if it's Exhibit 16 or it must be  
17 Table 16, Impacts on PPD.

18 A Okay.

19 Q Okay? I think I understood this, but maybe  
20 you can confirm my understanding. The bottom line  
21 there in the far right-hand -- is -- represents  
22 negative impact of milk that you don't think should be  
23 pooled in this market and would represent positive  
24 impact if, as you hope, the milk removes itself from  
25 the market?

1           A     Yes.

2           Q     With respect to location within the Marketing  
3 Area or certain designated counties, you are aware, are  
4 you not, that there have been instances in the past,  
5 and I don't know about this market but there are in  
6 other markets, distributing plants that are fully  
7 pooled on a -- on an Order that are regulated at a  
8 distant location, regulated under an Order in a distant  
9 location?

10          A     That's correct. I am.

11          Q     If a distributing plant located outside of  
12 the Marketing Area or the designated counties became  
13 fully regulated, is it your -- is it your intention to  
14 apply these unique pooling provisions to -- to that  
15 distributing plant so that it really is supplied in a  
16 manner that is different than other fully-regulated  
17 distributing plants who are more favorably located  
18 geographically?

19          A     I'm not sure if I've given that particular  
20 instance any thought.

21          Q     You would agree with me, however, that the  
22 way it's written, the rules would differ for  
23 distributing plants, too, based on where they're  
24 located?

25          A     Why don't you walk through a for instance and

1 let's see if we can sort it out?

2 Q Well, for instance, let's put a distributing  
3 plant just across the line in that little -- that  
4 little dip in -- in -- in Minnesota. Okay. Say the  
5 eastern part of that little dip --

6 A Okay.

7 Q -- that's on the Iowa border --

8 A Okay.

9 Q -- or Nebraska border. Let's say that that  
10 distributing plant is -- is supplied by producers  
11 located outside of your boundaries in both Wisconsin  
12 and Minnesota. Each of those producer's supplies would  
13 have to perform separately --

14 A Yes.

15 Q -- in delivering to that --

16 A Yes.

17 Q -- distributing plant which would --

18 A Yes.

19 Q -- be more burdensome than the supply for a  
20 distributing plant located on the correct side of the  
21 border?

22 A That -- that -- that could be true. I would  
23 agree. I'm not sure if there are any, but yes, that  
24 could be true.

25 Q Now, whichever way you go around the

1 geography, the same thing would apply?

2 A Yes.

3 Q If your proposals are granted completely by  
4 USDA, you --

5 A I expect that.

6 Q Yeah. You expect that milk will disassociate  
7 from this pool. Can you comment on where you think, if  
8 it's able to reassociate at all with any pool, where it  
9 would go?

10 A Well, I'm not necessarily sure that your  
11 first assumption, you know, I would make. It's just  
12 that it would -- it would have to face a different  
13 economic decision on what it would choose to do or not  
14 do, and at that point, the people who make that  
15 decision would have to -- would have to decide.

16 Q Well, let's say the milk was depooled. This  
17 Order has geography all around it.

18 A Yep.

19 Q It's not bordered by Canada.

20 A Correct.

21 Q The excess reserve here might go to  
22 Wisconsin, but the Wisconsin reserve can't go to  
23 Saskatchewan.

24 A Under -- under that example, that -- you  
25 know, if -- if the -- if the milk was in Wisconsin, and

1 its choice would be to go to another Order or to go to  
2 Order 30 or to not pool at all.

3 Q To the extent that it's -- that these distant  
4 -- these distant counties that you've identified would  
5 expect that milk to be associated, if at all, with the  
6 regulated market closest to the farm milk supply?

7 A Yes, that would be the most likeliest of  
8 economic choices.

9 Q Okay. Is it -- is it a part of DFA's  
10 regulatory philosophy in this proposal that the pooling  
11 provisions for Order 32 should be structured  
12 essentially to provide pooling for Class 1 use and what  
13 you termed the "generous" reserve supply and leave it  
14 there?

15 A I think our general philosophy is to have all  
16 over the country, to have, I guess, provisions that  
17 reflect market and economic conditions in each market,  
18 and that there be, you know, performance decisions made  
19 that are reflective of the conditions in that market.

20 Q I've referred to Order 32. Is it -- is it  
21 the regulatory philosophy that you're espousing that  
22 for Order 32, the performance standards would be  
23 structured so as to discourage milk in excess of what  
24 you termed the "generous" reserve supply?

25 A There is some -- there is -- in our view,

1       there is -- there are milk supplies attached to Order  
2       32 that are above that standard, and that while you may  
3       not agree with that exact standard, even -- you know,  
4       pick one, and we can see if it's more than that.

5               But, yes, in general, it appears like Order  
6       32 is attracting more milk than is needed in the  
7       market, that without the -- some of the regulations  
8       that we have now probably would not serve the market,  
9       and so we would propose standards that would evaluate  
10      that performance and then let it decide if it wanted to  
11      pool here or not.

12             Q       Was that a yes?

13             A       That was the answer.

14             Q       Was that a yes to my question? The question  
15      being, --

16             A       I'm not sure if I'm able to give you a direct  
17      yes or no to that question.

18             Q       The question being, the regulatory policy  
19      that should frame the decision in Order 32 is such that  
20      it would be designed to pool the reserve needed but not  
21      more? Can you give a yes or no answer?

22             A       In general, that would be a reasonable  
23      answer, yes.

24             Q       Thank you.

25                     Is it your belief that Grade A milk produced

1 that exceeds the reserve should really not be  
2 accommodated in this system?

3 A That -- that question becomes, you know, an  
4 interesting philosophical question, and I would frame  
5 that by backing up, I guess, a step and saying that  
6 first, the concept of a market gets -- gets to the  
7 first level in that we have a market. We define a  
8 market. We define what a market is, and then within  
9 that market, we establish standards that would decide  
10 if something would pool or not pool.

11 To blanket say yes or no, I don't think that  
12 that can be done, and part of the framework in  
13 decisions that you would decide for Florida, for a  
14 Florida market, would -- would be different than what  
15 you might decide for the Central Order or for the  
16 Western Order or Pacific Northwest Order.

17 Q So, does your answer mean that in some areas,  
18 it's okay to accommodate the pooling of milk, Grade A  
19 milk supplies that exceed the reserve? Is that -- is  
20 that a fair paraphrase at least of part of your answer?

21 A Each market is going to have to make some  
22 definition of how it's going to handle and -- and --  
23 and -- and -- and pay for its own reserves, and no  
24 market should be free of that burden, I don't think.

25 Q My -- my question is, is -- is it -- is my

1 understanding correct, if I say that my understanding  
2 is that in some markets, the regulations ought to  
3 accommodate more than the Class 1 and a generous  
4 reserve?

5 A That could happen.

6 Q I -- I understand it could happen. Is that  
7 -- are you saying that as a matter of regulatory  
8 policy, that's okay with DFA?

9 A Our market-by-market case, where you examine  
10 all of the -- the requirements and all of the needs,  
11 and if you get to the end of that decision, and you can  
12 -- that becomes the answer, I would say yes, but you  
13 can't -- again, you can't make a one definition fits  
14 all decision. There may be some markets where that  
15 would be true. There may be some where it wouldn't be.

16 Q It may be true, and if true, it's okay with  
17 DFA to pool more than the reserve?

18 A Yes. Provided the other conditions are met.

19 Q You referred to the Cornell Pricing Grid, --

20 A Yes.

21 Q -- and you referred to some conversations  
22 with Mr. Novockock?

23 A Yes.

24 Q The Cornell Pricing Grid did not produce the  
25 differences between markets that were eventually

1 reflected in Option 1-A, is that correct?

2 A I think -- well, first of all, I'm not sure  
3 that anybody ever saw -- at least -- well, there's  
4 probably a few people in this room who saw it, but they  
5 aren't talking.

6 The absolute answers that came out of the  
7 models, so those were not, to my knowledge, those were  
8 not available to the -- to the general public. Those  
9 were available to the Dairy Programs Group that worked  
10 on that and perhaps at some point even to some of the  
11 pricing committees, but the differential surface that  
12 then became public was -- was, I assume, something  
13 close to that, and there were two sets of  
14 differentials.

15 In general, my understanding, Option 1-B  
16 close -- more closely approximated the results of the  
17 model, and Option 1-A were those results with some  
18 judgment added to it.

19 Q And including the judgment of Congress?

20 A Actually, I'm not sure that -- did Congress  
21 actually change any individual differential?

22 Q No. Congress mandated the adoption of 1-A.

23 A That -- that is true, but, you know, I think  
24 your question led me to think that they -- they said,  
25 well, in this county, instead of \$2, it ought to be

1       \$2.15. I don't think that happened.

2           Q     Okay.

3           A     I think Congress said here's a 1-A set and  
4       that sets okay with us.

5           Q     Okay. Let me see if I understand the models  
6       that we're referring to.

7           A     Okay.

8           Q     We have the Cornell model.

9           A     Yes.

10          Q     We have Option 1-B, which is a USDA  
11       determination that approximates but does not exactly  
12       reflect the Cornell model.

13          A     That's -- that's my view. I think that's  
14       what it is.

15          Q     Option 1-B, and then Option 1-A, which even  
16       further departs from the Cornell model?

17          A     To some degree. Again, that's my view that I  
18       think is the answer.

19          Q     And it's that 1-A that was mandated to be  
20       adopted --

21          A     Yes.

22          Q     -- and is now --

23          A     Yes.

24          Q     Now -- now the rule?

25          A     Yes.

1 Q Okay.

2 A I agree with that.

3 Q You have -- you have at least read the  
4 Cornell summaries and descriptions of the model and how  
5 it produced the --

6 A Yes. Over time, I have -- I have been  
7 through them.

8 Q Okay.

9 A I haven't read all the appendixes and  
10 everything, but I understand the general way that they  
11 work.

12 Q Okay. And -- and in fact, the Cornell model  
13 that you referred to didn't -- didn't project, deal  
14 with or consider how milk would move under a pricing  
15 grid that was eventually adopted and mandated by  
16 Congress as 1-A, is that correct?

17 A No. I think that -- I'm doing recollection  
18 now, but I think that some of the -- some of the study  
19 results did -- did evaluate more than one end result,  
20 and that the back and forth between the folks at  
21 Cornell and the Dairy Program staff did look at some of  
22 the other pricing models, and I suspect that they  
23 looked at both the absolute 1-B and the absolute 1-A  
24 and provided some input back and forth.

25 Q Are you aware of any description of the model

1 that came chronologically or -- or any tweaking of the  
2 model that came chronologically after 1-A was proposed  
3 and mandated?

4 A No.

5 Q So, you suspect but you're -- you're not  
6 aware of how the model would move milk under 1-A? You  
7 suspect that somewhere along the line, something like  
8 that was considered, but you're --

9 A Something was evaluated. Yes, I -- I suspect  
10 --

11 Q But you're not --

12 A -- it was, but --

13 Q -- specifically aware --

14 A No, I'm not sure if all those results, just  
15 like some of the initial results, were made public.

16 MR. VETNE: Okay. I'm going to sit down and  
17 regroup. I will probably have a little bit more, but  
18 I'll pass the mike on to --

19 JUDGE BAKER: Are there any other questions  
20 for Mr. Hollon?

21 MS. BRENNER: I've got a couple.

22 JUDGE BAKER: Ms. Brenner?

23 MS. BRENNER: I don't know where Mr. English  
24 is. Oh, there he is.

25 JUDGE BAKER: Are there -- are there other

1 questions, Ms. Brenner?

2 MS. BRENNER: I'll go ahead.

3 CROSS EXAMINATION

4 BY MS. BRENNER:

5 Q On your statement regarding Proposals 1  
6 through 5, on Page 2, I guess 1 going on to 2, you say,  
7 "Milk distant to the market needs to have additional  
8 performance requirements that are workable and  
9 consistent systemwide with Federal Order Policy."

10 Performance requirements that are additional  
11 to what?

12 A The current requirements, we think, needs  
13 some -- I guess, some more definition to them and that  
14 there seems to be a one-size-fits-all, and we think  
15 that perhaps milk more distant from the market should  
16 have the proposals that -- that we've made.

17 Q But if some of the other proposals that  
18 you've made about supplies not shipping standards and  
19 diversion limits were adopted, that would apply to all  
20 milk, wouldn't it?

21 A Yes, it would. No doubt.

22 Q And wouldn't it kind of tighten up the market  
23 for -- for everybody?

24 A Yes, we would agree with that. I understand,  
25 I see where your -- where your question's coming, and

1 that is correct. The -- and so, if -- if 25 percent  
2 were the requirement, that would provide some -- some  
3 more definition and some more direction.

4           Would that be, you know, enough? Maybe, and  
5 especially with the case of such large volumes of milk  
6 so close to the market, we think maybe not, and we  
7 didn't make -- while we did suggest that in-area milk  
8 not be able to qualify out-of-area supply plants, we  
9 did -- we have no proposal about in-area milk being  
10 able to qualify distant milk, other than, you know, the  
11 20 and 25 percent limit, and we're somewhat concerned  
12 that such large volumes of milk so close to the market  
13 that there may be some additional supplies that can be  
14 qualified within area -- within area milk sales.

15           So, that's part of the reason why the distant  
16 proposal was made.

17           Q     And you think there's -- you think there's an  
18 economic justification for setting higher standards for  
19 some participants, even if they're willing to meet the  
20 -- the performance standards than other  
21 participants?

22           A     Well, the Order system does have more than  
23 one performance standard. Just in Order 32 now,  
24 there's a -- I'm sorry. The supply plant unit has an  
25 additional level of performance standards. For

1 example, all the plants have to be in the Order.

2 There are some additional specification  
3 there, and in other places in the Order, while maybe  
4 they don't all deal directly with performance, you  
5 know, the transportation credits in the Southeast  
6 provide an additional standard in order to earn those  
7 credits, and so we -- we would apply those here.

8 Q Okay. On Page 30, you refer to MA Exhibit  
9 12, and at the time you were testifying, there hadn't  
10 been an MA Exhibit 12. I was wondering if you meant --

11 A Table?

12 Q -- Table 12?

13 A Probably.

14 Q In Exhibit 5, probably?

15 A I suspect this was written before that was  
16 done.

17 (Pause to review document)

18 THE WITNESS: Yes, that's correct.

19 BY MS. BRENNER:

20 Q Okay. And the other questions I have deal  
21 with comments and the language in Proposals 1 through  
22 5.

23 A Okay.

24 Q On the second page, where you're discussing  
25 taking out the ability to qualify on the basis of

1 shipments to other Order distributing plants, I'll ask  
2 you the same question I asked Mr. Erickson.

3 Don't those shipments add Class 1 use to the  
4 Order 32 market?

5 A Yes, they do. The concern, though, is that  
6 at the same time that, you know, we're trying to supply  
7 our customers, that -- and -- and at times, we find  
8 that difficult to do, there are milk supplies going to  
9 other Orders that, if I had my druthers, you know, I'd  
10 rather see in this Order since this -- since this is  
11 where the blend price is going to be determined, and so  
12 that's why we would propose that, and we don't -- we  
13 don't see Order 32 as being a reserve supply order, and  
14 we think that those provisions, you know, generally  
15 were written to -- to help suppliers in reserve supply  
16 orders -- in fact, somebody supplied me with some old  
17 Order 30, I think, hearing records that seemed to  
18 indicate that in the testimony.

19 So, that's why we proposed to -- to not allow  
20 4, shipments to other Orders to help you earn --

21 Q Order 30? Order 30 transcripts or decisions  
22 that --

23 A That helped put Order --

24 Q -- indicated what?

25 A -- 30 together or perhaps even some of the

1 Predecessor Orders. In fact, I think that was the case  
2 with some -- some of the Predecessor Orders to Order  
3 30, where the Appleton Order, the Milwaukee Order,  
4 where there was some talk about using shipments to  
5 other Orders to earn a qualification.

6 Q Hm-hmm.

7 A And that just doesn't seem to fit the model  
8 for -- for an Order that is not a reserve supply order,  
9 and I think --

10 Q Okay.

11 A -- Mr. Erickson's reply was that it doesn't  
12 help me get milk to my plants, and we hear that from  
13 our customers.

14 Q Okay. And on Page 3 of that same document,  
15 there's the parenthetical phrase "and would likely lose  
16 money if it had to perform in any manner similar to  
17 local milk supplies".

18 Are the local milk supplies held to a higher  
19 standard of performance than the distant milk supplies?

20 A You mean currently?

21 Q Right.

22 A Not in Order standard, but if there's  
23 additional costs needed to supply a market, generally  
24 the local milk supply bears that cost. If -- if -- if  
25 DFA members who supply handlers in St. Louis, if

1       there's not enough milk, and, you know, there's a --  
2       there's a balancing -- a balancing because getting  
3       reserve, getting additional milk, some of that cost  
4       comes back to the local milk supply, and so to that  
5       extent, where there's -- the blend price gets  
6       deteriorated, they seem to suffer, but they also seem  
7       to get the extra costs associated with that.

8                        So, to the extent that we can either, you  
9       know, map performance standards that get more milk to  
10      the local market, you know, that would be a goal.

11             Q       Okay. But you're -- you're not saying that  
12      there's a higher standard in the Order for local milk  
13      supply?

14             A       No, no.

15                       MS. BRENNER: That's all I have.

16                       JUDGE BAKER: Thank you, Ms. Brenner.

17                       Now, -- yes, Mr. English?

18                       MR. ENGLISH: Yes. Charles English for  
19      Swisse Foods and Anderson Erickson Dairy Company.

20                                       CROSS EXAMINATION

21                       BY MR. ENGLISH:

22             Q       Let me follow up on a couple questions ago by  
23      Ms. Brenner.

24                       With respect to this issue concerning the  
25      delivery of milk to other Order distributing plants, is

1       it the intent of your proposal that such movements  
2       cannot occur?

3             A       No.

4             Q       Is it the intent of your proposal only that  
5       such movements, if they occur, do not meet the  
6       qualifying shipments?

7             A       That's correct.  If -- if -- if I'm enticed  
8       by an economic return to go and do that, then that's  
9       okay, but I shouldn't be able to earn Order benefits  
10       here if the plant's in another Order.

11            Q       Okay.  In particular, when you look at the  
12       Central Order, except for a moment that I've done some  
13       mileage calculations and that, say, from the Grand  
14       Junction facility in Western Colorado to the Prairie  
15       Farms facility in Olney, that it's approximately 1,230  
16       miles, --

17            A       Okay.

18            Q       -- and it's about 600 miles from the now Dean  
19       Foods, the old Land of Lakes, facility in Sioux Falls,  
20       South Dakota, down to the Prairie Farms facility in  
21       Chandler, Oklahoma, --

22            A       Okay.

23            Q       -- except that, and all the Orders that  
24       surround that massive area, isn't it true that  
25       shipments almost to any other Federal Order basically

1       could be made from the Central Order and qualify as  
2       shipments under the Central Order?

3             A       Yes, that would be true.

4             Q       So, maybe in particular, this is an Order  
5       where that provision works to the detriment?

6             A       I had not thought of that, but yes, you're  
7       correct. Because of its proximity to so much of the  
8       U.S., yeah, there would be additional opportunities,  
9       maybe more so than in most Orders.

10            Q       With respect to the issues about the local  
11       milk, do you find that your customers make demands on  
12       you or requests upon you that they prefer local milk?

13            A       That is true.

14            Q       And have those requests or demands become  
15       increasingly difficult to fulfill with respect to  
16       facilities that you or the other entities that you  
17       represent have with respect to delivering milk,  
18       especially in Missouri and Southern Illinois?

19            A       That is correct. Those -- those supply  
20       arrangements are getting more difficult.

21            Q       With respect to some of the proposals you  
22       have made, you have not proposed increasing the touch-  
23       base requirement?

24            A       That is correct.

25            Q       Why is that?

1           A     I felt like that the adequate -- that the  
2     current touch-base requirements seem to meet the needs,  
3     and that again as -- as with most proposals, they're  
4     made in a group, in a consensus forum, and so in order  
5     to arrive at a proposal, that was one of the things  
6     that, you know, the consensus came to, was to not to  
7     increase the touch-base standard.

8           Q     But nonetheless, you then worked within the  
9     context of that touch-base requirement, which you  
10    talked about extensively in your testimony, you then  
11    make other proposals which using that touch-base  
12    requirement nonetheless recognized the need to supply  
13    this market, correct?

14          A     That's correct.

15          Q     So, taken as a package, your proposals are  
16    designed to say, okay, we're not increasing the touch-  
17    base requirement, --

18          A     But we will get more milk for the local  
19    Order, yes. We hope.

20          Q     Were you aware or do you remember back to the  
21    time when with respect to Federal Order Reform, when  
22    USDA initially, through some of their preliminary  
23    documents and then through the final reform, were you  
24    aware before you prepared for this hearing that the  
25    prediction was of a 50-percent Class 1 Utilization for

1 this market?

2 A Yes.

3 Q And did that prediction, which obviously has  
4 not turned out to be the case, but -- and that's  
5 certainly not casting blame on anybody, but did that  
6 prediction influence in any way decisions made with --  
7 by DFA with respect to where it thought various  
8 facilities should be regulated?

9 A When you evaluate -- try to, as -- as the  
10 reform process was going on, everybody would try to sit  
11 down and figure out how it would affect their business,  
12 and, sure, that would be -- you know, you would look at  
13 various regulatory possibilities and how they would  
14 affect the end result. So, that would have been one.  
15 Yes, I was aware of that.

16 Q So, for instance, had you and, for that  
17 matter, I, and I take my share of responsibility here,  
18 thought that the Class 1 Utilization in this market was  
19 going to be closer to 25 percent, we might have made a  
20 different recommendation with respect to the Grand  
21 Junction facility as to where it should be regulated?

22 A Yes, that would be true. I suspect many  
23 entities in the market would have looked at the results  
24 and maybe structured their comments differently.

25 Q And that would be particularly true around

1 the edges as you go sort of west down to south to the  
2 east, so that the Grand Junction facility, the Farm  
3 Fresh facility in Oklahoma, and the Prairie Farms and  
4 Swisse facilities in the St. Louis markets, correct?

5 A All of those facilities are experiencing  
6 stress in attracting and keeping a milk supply, and so  
7 that would have been a part of their decision-making  
8 factor and their influences on us.

9 Q And a primary reason for that stress is the  
10 blend price that has currently been returned, based  
11 upon milk delivered to those plants?

12 A That's true.

13 MR. ENGLISH: That's all I have at this time.

14 JUDGE BAKER: Thank you, Mr. English.

15 Are there any other questions for Mr. Hollon?  
16 Mr. Beshore?

17 REDIRECT EXAMINATION

18 BY MR. BESHORE:

19 Q Mr. Hollon, do you have Exhibit 16-A  
20 available?

21 A 16-A?

22 Q Market Administrator's Table 16-A.

23 A Yes.

24 Q Okay. And that's the exhibit which Mr.  
25 Stukenberg testified to, which details in part other

1 Order shipments from Order 32, correct?

2 A That's correct.

3 Q All right. Now, in the Year 2000, those  
4 shipments were highly concentrated in one other Order,  
5 is that correct?

6 A That is correct. They're predominantly in  
7 Order 30.

8 Q Okay. Now, in your view, your -- your  
9 proposal -- part of Proposals 1 through 5 would  
10 eliminate any qualification on Order 32 for those  
11 shipments in Order 30, correct?

12 A That is correct.

13 Q Okay. And can you -- in fact, would Order 30  
14 -- would shipments like that which presently qualify  
15 for producers -- for associations in Order 32 be a  
16 particular reason why that provision ought to be  
17 eliminated?

18 A That would -- yes, it would, because the --  
19 the -- it doesn't make any more milk available, and it  
20 helps to add milk to the pooled and depress the price.

21 Q In fact, you could -- we can't know for  
22 certain from the data where the milk is coming from,  
23 but in all likelihood, milk not historically associated  
24 with Order 32 that's in the Marketing Area of Order 30  
25 is supplying Order 30 distributing plants, being pooled

1 on Order 32 and being -- in order to be qualified to be  
2 pooled under Order 32 is being pooled on Order 32  
3 through the requirements that we're trying to change,  
4 correct?

5 A That is correct. That would be a likely  
6 scenario.

7 Q Okay. That's what Page 16-A shows is going  
8 on?

9 A Yes, that's true. That is true.

10 Q Now, Mr. Vetne asked you, and I think that  
11 I'll let you respond, put some words in your mouth you  
12 might want to reconsider.

13 He asked you whether -- whether you're  
14 proposing that if there's a distributing plant located  
15 in a southern tier of counties in Minnesota that are  
16 not in this Marketing Area, if I -- my notes are  
17 correct, Mr. Vetne said you're proposing to have more  
18 burdensome requirements for supplying that distributing  
19 plant than a distributing plant located in the  
20 Marketing Area. Do you recall that?

21 A Hm-hmm.

22 Q And I think you answered in the affirmative,  
23 that, you know, your Proposals 1 through 5 would make  
24 it more burdensome, puts more burdensome requirements  
25 on that distributing plant, is that correct?

1           A     Be only from the center where it was  
2     geographically located would face all the same  
3     requirements as everyone else.

4           Q     Well, if producers decided to carry a supply  
5     in a distributing plant, regardless of where they're  
6     located, is there anything in Proposals 1 through 5 or  
7     7 that does anything to it?

8           A     No.

9           Q     Proposals 1 through 5 and 7 address the --  
10    don't affect in any way milk that's -- that's delivered  
11    or impose any additional requirements on milk delivered  
12    to a pooled distributing plant, isn't that correct?  
13    The probably is we can't get anybody to deliver milk to  
14    the distributing plants, isn't that correct?

15          A     It's more difficult. That's correct.

16          Q     And regardless of where the distributing  
17    plant's located, and there are more than 32 pooled  
18    distributing plants, you're going to get credit for --  
19    for supplying it --

20          A     Yes, that's true.

21          Q     -- under Proposals 1 through 5 or Proposal 7,  
22    --

23          A     That's correct.

24          Q     -- isn't that correct?

25          A     That's correct.

1           Q     In fact, if there would be a distributing  
2     plant located outside the Order area, it would -- it  
3     would make it easier because it's geographically closer  
4     for producers outside the Order area to be part of the  
5     Order, isn't that correct?

6           A     If it was located in that part of Minnesota,  
7     there would be a lot of milk associated with that Order  
8     in that part of Minnesota. So, there would be a lot of  
9     supply.

10          Q     And in fact, Proposals 1 through 5 and 7 say  
11     nothing whatsoever about producers making -- it would  
12     do nothing to make it more burdensome for producers to  
13     supply distributing plants regardless of where they  
14     are?

15          A     That's right.

16          Q     Okay. So, if the record reflects that you  
17     agreed with Mr. Vetne that you were making it more  
18     burdensome to supply distributing plants in Minnesota,  
19     you really aren't, isn't that correct?

20          A     That's correct.

21          Q     Okay. Now, Mr. Vetne also asked you whether  
22     -- whether you were -- whether DFA was  
23     attempting to -- and I'm not purporting to quote him,  
24     but attempting to impose requirements on this Order  
25     that no more milk be pooled than the, you know,

1 conceptual reserve that you described in your  
2 testimony.

3 A Hm-hmm.

4 Q Do you recall that?

5 A Yes.

6 Q Now, isn't it -- isn't it correct, on the  
7 face of the proposals that you're here supporting, that  
8 if the requirements for delivery to pooled plants in  
9 the Order are only 20 percent or 25 percent of the  
10 total milk volume, then you're advocating performance  
11 requirements that accommodate reserves far in excess of  
12 the theoretical reserves that you --

13 A That would be true.

14 Q So, in fact, when Mr. Vetne was asking you  
15 almost hypothetically whether DFA would ever support  
16 reserves being pooled above that amount, you're here  
17 doing it today in these proposals, is that correct?

18 A That would be true.

19 Q Okay. Now, just -- just one other question.  
20 With respect to Proposal 7, isn't it correct that your  
21 concept of Proposal 7 and the letter of Proposal 7 is  
22 simply to require of milk supplies located outside the  
23 historical procurement areas of this Order require them  
24 to perform on the same basis as milk supplied within  
25 the Marketing Area and not on any higher or more

1 burdensome level?

2 A They would both have to meet the 20 or 25 or  
3 whatever, if the market administrator discretion  
4 changed it, they would have to meet the same standard,  
5 the same delivery standard presented.

6 Q Not a higher standard?

7 A Nope. It's not a higher percentage number  
8 standard.

9 Q Not a more burdensome standard than -- than  
10 milk within the Marketing Area, correct?

11 A It's not -- it's not -- it's the same  
12 standard, 20 to 25 percent.

13 Q Same standard --

14 A As it's proposed in DFA, yes, it's the same  
15 for everybody.

16 Q The only thing that you would like to  
17 eliminate is by the adoption of Proposal 7, is the  
18 situation we have now where milk outside the Marketing  
19 Area can pool distant from the Marketing Area, milk  
20 that could never economically be delivered on a regular  
21 basis in the Marketing Area, and be pooled and draw the  
22 blend price without doing anything more than touch base  
23 one day forever?

24 A That's correct.

25 Q And that's the only -- the only thing that

1 would be more burdensome than the present about what  
2 Proposal 7 would do to milk outside the Marketing Area  
3 is that it would have to touch base or perform at -- at  
4 pooled plants every month instead of once and forever?

5 A That would be true.

6 MR. BESHORE: Thank you.

7 JUDGE BAKER: Are there any other questions  
8 for Mr. Hollon? Mr. Vetne?

9 I take it, Mr. Vetne is the last person to  
10 have questions for Mr. Hollon. You -- you have some,  
11 Mr. English?

12 MR. ENGLISH: Yes, very few.

13 JUDGE BAKER: All right. Mr. Beshore, I'm  
14 going to try to get Mr. Lee tonight. Is he ready to --

15 MR. BESHORE: He's ready and waiting.

16 JUDGE BAKER: Very well.

17 RE CROSS EXAMINATION

18 BY MR. VETNE:

19 Q Mr. Hollon, --

20 A Yes, sir?

21 Q -- going back to the performance by location  
22 of distributing plant questions that I and Mr. Beshore  
23 asked you about, it is true, is it not, that for this  
24 hypothetical plant, wherever it's located, across the  
25 border of the area you designated, distributing plant

1 that receives milk from dairy farmers whose farms are  
2 located in two different states, that by virtue of your  
3 proposal to amend Section 13, that distributing plant  
4 would have to organize its milk supplies in two  
5 different performing units and shift those farm milk  
6 supplies as though those supplies were supply plants,  
7 separate supply plants?

8 A Until you got to the last point, but they  
9 would have to -- if it -- do -- do you -- I think the  
10 answer would be yes, but I'm not sure if you gave  
11 enough specifics in your example.

12 Q Those -- the producers delivering to that  
13 plant would be organized and reported as separate  
14 units?

15 A If the milk came from --

16 Q From two different states.

17 A -- which --

18 Q Two -- two different states, the plant and  
19 the sources being -- both being outside of the  
20 geography you've designated.

21 A Okay. So, if this plant got milk from Idaho  
22 and from California?

23 Q Or Minnesota and Wisconsin.

24 A In certain areas?

25 Q Outside the boundaries in most areas.

1           A     In most areas?

2           Q     That those producers would have to be  
3     organized in separate reporting units --

4           A     Yes.

5           Q     -- and separate performing units, --

6           A     Yes.

7           Q     -- and that performance would be the same as  
8     for supply plants?

9           A     It would be whatever the minimum was for that  
10    month, 20 or 25 percent.

11          Q     But they wouldn't be a supply plant; it would  
12    be basically a farm bulk --

13          A     It could -- it could be either in any or  
14    both. Our proposal doesn't specify how it gets  
15    delivered, it just has to meet that performance  
16    standard.

17          Q     Okay. And for that distributing plant  
18    located across the border, that form of supply would be  
19    more logistically burdensome than for distributing  
20    plants located on the correct side of the border with  
21    producers on the correct side of the border?

22          A     If that's where it chose to get its supply  
23    from, that would be true.

24          Q     Oh, okay. So, it can avoid that by, instead  
25    of getting milk basically where it's located, by

1 reaching into the -- into the --

2 A That -- that would conceivably happen.

3 Q The good -- the good counties, the benefitted  
4 counties, and have a single milk supply?

5 A That could be possible.

6 Q Without -- and it would not be treated as a  
7 unit within the Marketing Area?

8 A That's correct. Not just a separate unit.

9 Q And finally, the other thing that Mr. Beshore  
10 asked you about, you referred to some plants having  
11 stress in attracting milk supplies?

12 A Yes.

13 Q Were you referring there -- you referred to  
14 specific areas. The stress that's being created, is  
15 that the stress created by milk supplies exiting Order  
16 32 and moving into Order 5?

17 A Not in every case.

18 Q But in --

19 A In some cases, yes, and in some cases, no.

20 Q Is that the stress you were talking about  
21 when you talked about plants in Southern Illinois and -  
22 - and Eastern Missouri?

23 A In some cases, that stress is to milk going  
24 out of production, and in other cases, it's being drawn  
25 to other markets, and in other cases, it's simply not a

1 high-enough price to attract from another location.  
2 There could be a multiple of reasons, all of which  
3 we've identified.

4 Q All of which we've identified. Now, milk is  
5 being attracted to Order 5 as part of the stress, --

6 A Hm-hmm.

7 Q -- but there's no proposal here to amend  
8 Order 5 to take care of the stress from the receiving  
9 attraction end?

10 A There's no proposals here to amend Order 5.

11 Q Okay. I understand that. Why not? If -- if  
12 the milk is moving here from -- from here to -- from  
13 this market to Order 5, and you want to bring it back,  
14 how -- how does this -- how do these proposals bring it  
15 back to where you want it?

16 A One -- one way could be that the result of  
17 these proposals would have -- would -- would result, we  
18 hope, in a higher blend price in Order 32 that may help  
19 make it easier to retain milk or keep milk in  
20 production or perhaps even attract milk from other  
21 areas, if the Order 32 blend -- if the resulting Order  
22 32 blend price is higher.

23 Q Higher than?

24 A It is now.

25 Q Compared to?

1           A     Alternatives.

2           Q     The alternatives being?

3           A     You win.  The alternatives being all the ones  
4 we've identified, Federal Order 5, Federal Order 7,  
5 going out of business, Order 32, Order 30.  I think  
6 those are the all ones, and possibly even Order 126.

7           Q     Thanks.

8           JUDGE BAKER:  Thank you, Mr. Vetne.

9           Mr. English?

10          MR. ENGLISH:  Just a couple questions as a  
11 direct follow-up on that.

12                                RE CROSS EXAMINATION

13                                BY MR. ENGLISH:

14          Q     The problem and the stresses you've  
15 identified is the reason for the proposals?

16          A     Yes.

17          Q     And I'm not going to ask you to endorse this  
18 next one for a moment, but let me just suggest to you  
19 an alternative would be to vote out this Order,  
20 correct?

21          A     Yes, that could be an alternative.

22          Q     And another alternative with respect to  
23 especially areas where there's stress is to suspend the  
24 counties that caused the regulation of those particular  
25 plants, --

1           A     Yes.

2           Q     -- correct?

3           A     That -- that could be an alternative, neither  
4     of which -- you know, you're right. We wouldn't -- we  
5     don't endorse those, but, yes, those could be  
6     alternatives. I agree with you.

7                     MR. ENGLISH: Thank you.

8                     JUDGE BAKER: Very well. There are no  
9     additional questions then. Yes? Yes, sir? Mr. Tonak?

10                    MR. TONAK: My name is Dennis Tonak.

11                                 RE CROSS EXAMINATION

12                                 BY MR. TONAK:

13           Q     In the Market Administrator's Exhibit 5,  
14     Table 8, there's a supply plant identified at  
15     Earlville, Iowa, and for the months of January through  
16     September of 2000, at least there's a supply plant  
17     identified as being associated with Grande Cheese, and  
18     I note that in October and thereafter, there's a supply  
19     plant at Earlville, Iowa, associated with DFA. Is that  
20     the same facility?

21           A     Yes.

22           Q     Was there a substantial change in the  
23     producers delivering to or diverting to other locations  
24     in the locations they were delivering to between  
25     September and October of 2000?

1           A     I -- I do not know.

2           Q     There's approximately 1.1 billion to 1.5  
3 billion pounds being pooled under the Order, according  
4 to Exhibit 5. Keeping that in mind, would you  
5 characterize DFA as a fairly large participant or a  
6 small participant in the volume of milk pooled under  
7 the Order?

8           A     DFA pools milk on the Central Order.

9           Q     You wouldn't care to characterize them as if  
10 they're large or small or --

11          A     No.

12          Q     Would DFA have a significant effect on Order  
13 pricing as they made their internal decisions on what  
14 milk to pool or not pool under the Order?

15          A     Certainly there would be some effect.

16                 MR. TONAK: Thank you.

17                 JUDGE BAKER: Thank you.

18                 Are there any other questions?

19                 (No response)

20                 JUDGE BAKER: There are none. Thank you very  
21 much, Mr. Hollon.

22                 THE WITNESS: Yes, ma'am.

23                 (Whereupon, the witness was excused.)

24                 JUDGE BAKER: Mr. Beshore, do you want to --  
25 well, it's a little after 5. We'll take a 10-minute

1 recess, and then we'll hear Mr. Lee, and he's already  
2 to go.

3 Very well. We'll have a 10-minute recess at  
4 this time.

5 (Whereupon, a recess was taken.)

6 JUDGE BAKER: The hearing is in order after  
7 our recess.

8 This morning, I stated that we would start at  
9 8:30 tomorrow. I believe that by reason of  
10 arrangements made by the Market Administrator with  
11 respect to coffee service, we will start at 8:00  
12 instead of 8:30. So, we'll commence tomorrow morning  
13 at 8 a.m.

14 Mr. Beshore, you're going to call your  
15 witness, Mr. Lee, is that correct?

16 MR. BESHORE: Yes, that is correct, Your  
17 Honor.

18 Whereupon,

19

GARY LEE

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

22 MR. BESHORE: Before Mr. Lee proceeds, Your  
23 Honor, I would like to mark for purposes of  
24 identification his statement as Number 15, and the set  
25 of exhibits relating to his statement as Exhibit 16,

1 which consists of five tables. That will be Exhibit  
2 16, a cover page and five tables. Exhibit 15 of the  
3 statement is a cover page and I think it's 12 pages.  
4 They're not numbered, --

5 THE WITNESS: Yes.

6 MR. BESHORE: -- but 12 -- 12 -- a statement  
7 that's 12 pages, plus the cover page.

8 JUDGE BAKER: They will be so marked, Mr.  
9 Beshore.

10 (The documents referred to  
11 were marked for identification  
12 as Exhibit Numbers 15 and 16.)

13 MR. BESHORE: Thank you, Your Honor.

14 DIRECT EXAMINATION

15 BY MR. BESHORE:

16 Q Would you first tell us your name, your name  
17 and address, business address, Mr. Lee, for the record?

18 A My name's Gary Lee. I'm employed by Prairie  
19 Farms Dairy. It's P.O. Box 560, Carlinville, Illinois.

20 Q And what position do you hold, what capacity  
21 do you have with Prairie Farms?

22 A I'm the Vice President of Marketing and  
23 Procurement.

24 Q How long have you been employed by Prairie  
25 Farms?

1           A     I've been with Prairie Farms for 28 and a  
2 half years, two years in the current position.

3           Q     Okay. What's your educational background,  
4 Mr. Lee?

5           A     I have a Bachelor's degree in Agricultural  
6 Economics from Southern Illinois University, and a  
7 Master's degree in Agricultural Economics from the  
8 University of Missouri.

9           Q     In your capacity with Prairie Farms as Vice  
10 President of Marketing and Procurement, what are your  
11 duties and responsibilities?

12          A     I am in charge of all of our milk and other  
13 dairy product procurement.

14          Q     What operations does Prairie Farms Dairy  
15 have?

16          A     I will be going over those in my testimony.

17          Q     Okay. Yeah. Let's -- let -- I withdraw that  
18 question.

19               MR. BESHORE: I would like to offer Mr. Lee,  
20 given his background and qualifications, as an expert  
21 in agricultural economics and milk marketing for his  
22 testimony to be presented in Exhibits 15 and 16.

23               JUDGE BAKER: Are there any questions or  
24 objections with respect thereto?

25               (No response)

1                   JUDGE BAKER: In the absence of any questions  
2 or objections, your request will be granted, Mr.  
3 Beshore.

4                   MR. BESHORE: Thank you, Your Honor.

5                   BY MR. BESHORE:

6                   Q     And now, Mr. Lee, please proceed with your  
7 testimony for this hearing.

8                   A     My name is Gary Lee. I'm employed by Prairie  
9 Farms Dairy, Inc., as the Vice President of Marketing  
10 and Procurement.

11                   Prairie Farms is a dairy farmer cooperative,  
12 headquartered in Carlinville, Illinois. Through direct  
13 ownership and joint ventures, we operate 14 milk  
14 processing plants that are regulated under Order 1032.  
15 The plants operated by Prairie Farms include a fluid  
16 milk plant in Carlinville, Illinois, fluid milk plant  
17 in Olney, Illinois, a plant in Peoria, Illinois, that  
18 processes fluid milk and fruit juices.

19                   In Quincy, Illinois, we have a fluid milk  
20 processing plant. In Granite City, Illinois, we have a  
21 fluid milk processing plant, and also there, we process  
22 extended shelf life products. In Carbondale, Illinois,  
23 we have a soft cultured products plant. By that, I  
24 mean cottage cheese, sour cream, dips, and in St.  
25 Louis, Missouri, we have a fluid milk processing plant,

1 and also there, we process soft cultured products, ice  
2 cream and fruit juices.

3 Prairie Farms also operates six unregulated  
4 plants in the area covered by Order 32. They include  
5 another plant in Quincy, Illinois, that processes soft  
6 cultured products. In Springfield, Illinois, a bulk  
7 ice cream mix plant. In Decatur, Illinois, an ice  
8 cream plant. In O'Fallon, Illinois, an ice cream and  
9 bulk ice cream mix plant.

10 In St. Louis, Missouri, a plant that  
11 manufactures butter and anhydrous milk fat, and in  
12 Brentwood, Missouri, a plant that manufactures frozen  
13 ice cream milk.

14 Of these six plants, only Quincy, Illinois,  
15 and Decatur, Illinois, receive producer milk on a  
16 regular basis. You will note that we have two plants  
17 in Quincy, Illinois. They are six blocks apart. You  
18 will also note that we have two plants in St. Louis,  
19 and they are approximately two miles apart.

20 Through -- we have a joint venture with Dairy  
21 Farmers of America, called Roberts Dairy, that operates  
22 the following plants pooled in Order 32: Iowa City,  
23 Iowa, fluid milk, Des Moines, Iowa, fluid milk, Omaha,  
24 Nebraska, fluid milk, sour cream and dip, bags of half-  
25 and-half and fruit juices, and here in Kansas City, a

1 plant that processes fluid milk and fruit juices.

2 A second joint venture with Dairy Farmers of  
3 America, called HiLand Dairy, operates the following  
4 plants pooled in Order 32: Wichita, Kansas, fluid  
5 milk, cottage cheese, yogurt, Norman, Oklahoma, fluid  
6 milk, sour cream and dip, Chandler, Oklahoma, fluid  
7 milk, cottage cheese, ice cream.

8 HiLand Dairy has three other fluid milk  
9 processing plants located in Springfield, Missouri, and  
10 Fayetteville and Fort Smith, Arkansas. Those plants  
11 are regulated by Order 7.

12 A third joint venture with Dairy Farmers of  
13 America operates the fluid milk processing plant in  
14 Evansville, Indiana, that's regulated by Order 5.

15 The joint ventures are structured so that  
16 Prairie Farms oversees the day-to-day operations while  
17 DFA arranges for the milk supplies. Therefore, my  
18 testimony will not go into milk supply issues for the  
19 joint ventures.

20 One point I do want to emphasize, however,  
21 is that none of the above-listed plants are engaged in  
22 manufacturing of hard products, such as cheese or  
23 powdered milk. We are not trying to support  
24 manufacturing plants in areas with a deficit milk  
25 supply.

1           The butter plant in St. Louis, Missouri, uses  
2           only bulk cream, much of it distressed, and scrap  
3           butter to manufacture its products.

4           However, as you can see, we have a  
5           considerable presence on Order 32, and what happens on  
6           Order 32 is very important to our members. In October  
7           2001, Prairie Farms had total membership of 797  
8           producers with total production of 88.5 million pounds  
9           of milk. Milk from 620 of those producers was pooled  
10          on Order 32. This amounted to approximately 68.9  
11          million pounds of milk.

12          The producers whose milk is pooled on Order  
13          32 are all located in Illinois, the southeastern one-  
14          fourth of Iowa, and the eastern one-half of Missouri.  
15          Milk from all of our members located in these three  
16          states is pooled on Order 32 or is not pooled.

17          Our other producer members are located in  
18          Indiana, Michigan, and Ohio. Their milk is pooled on  
19          Order 33 at plants that we operate in Fort Wayne,  
20          Indiana, Anderson, Indiana, and Galesburg, Michigan.

21          We also purchase supplemental supplies of  
22          milk from other cooperatives at our Order 32 plants.  
23          These purchases take place every week of the year and  
24          come from producers located in Illinois, Missouri,  
25          Iowa, Minnesota and Wisconsin. These purchases amount

1 to about 30 percent of the milk processed at our  
2 plants.

3 We do not participate in any pooling units  
4 with another entity on Order 32. We do not engage in  
5 any pooling of milk from another entity for a fee on  
6 Order 32. However, we do have a pooling unit made up  
7 of our plants located in Carlinville, Illinois, Olney,  
8 Illinois, Granite City, Illinois, Peoria, Quincy and  
9 Carbondale, Illinois.

10 The cultured product plant in Quincy,  
11 Illinois, is currently not part of this unit. If the  
12 statistical uniform price gets substantially below the  
13 cost of Class 2 milk, the Carbondale, Illinois, plant  
14 may soon be removed from this unit, also.

15 At this time, I would like to speak in  
16 support of Proposals 1, 2, 3, 4 and 5. I may ask to  
17 speak in support of Proposals 6 and 8 later in this  
18 hearing.

19 I do not want anything in this testimony to  
20 be regarded as criticism of those involved in the Order  
21 Reform process. They were given a very difficult task  
22 by Congress with fairly narrow parameters, and they  
23 carried it out -- carried out that task to the best of  
24 their ability, based on the situation at that time.

25 However, we feel dairy farmers located in the

1 states where we have members associated with Order 32,  
2 especially those in Illinois and Missouri, have fared  
3 very poorly under Order Reform.

4 We operate in an area that is a deficit milk  
5 production area virtually every day of the year, yet  
6 Order 32 has been written as if its main purpose was to  
7 allow for pooling milk rather than serving Class 1 and  
8 Class 2 handlers.

9 It is perhaps the most loosely written of all  
10 Orders. The case in point, if Order provisions are  
11 used to the maximum, one pound of direct ship milk  
12 delivered to a pooled distributing plant can pool up to  
13 15 more pounds of milk.

14 Having said that, I do not want to go back to  
15 what we had prior to January 1, 2000. The Orders that  
16 existed in this area prior to reform were written so  
17 tight, that pooling of milk beyond basic Class 1 needs  
18 are difficult. This was especially true in the  
19 previous Order 32 and in Order 50.

20 Almost every year, in the late Summer and  
21 Fall, we had to buy considerable quantities of other  
22 Order milk to cover needs after we had exhausted the  
23 supplies available from our regular supplemental  
24 suppliers.

25 At the same time, every few years, during

1 periods of high production, we would have to petition  
2 the Department for temporary relief from those high  
3 shipping percentages. This would often occur in  
4 December and January and was necessary to prevent  
5 inefficient and uneconomical movements of milk to meet  
6 pooling standards.

7 The way Order 32 is now written, it allows  
8 for efficient pooling of milk, and we support that to a  
9 point. While the old system was not perfect, it did  
10 allow for a decent return for those supplying milk to  
11 the Lower Midwest on a regular basis.

12 The uniform price was usually high enough to  
13 attract milk from the Upper Midwest and yet keep us  
14 competitive with markets located below the Ohio River  
15 and east of the Wabash River. That is now not usually  
16 the case.

17 Milk usage at the above-listed Prairie Farms'  
18 plants has grown steadily in recent years. That is not  
19 uniformly true at all of our plants but is true in  
20 total. At the same time, the available supply of milk  
21 in the three states where we currently procure milk for  
22 our Order 32 plants has been flat or declining.

23 Exhibit 16, Table 1, will show production by  
24 quarter from 1991 to the present in Illinois, Missouri  
25 and Iowa, to illustrate this point. Our current

1 producer member numbers and our member milk production  
2 are both currently lower than last year.

3 We are faced with a dilemma of our business  
4 growing but the nearby supply of milk not necessarily  
5 growing. Also, all dairy farmers in our procurement  
6 area may not want to be members of Prairie Farms. As a  
7 result, we have become increasingly dependent on the  
8 Upper Midwest for supplemental supplies of milk.

9 We feel that those cooperatives serving this  
10 market deserve a better return for doing so or they  
11 might seek other markets for their milk. For many  
12 years, milk processing plants located in down state  
13 Illinois and St. Louis, Missouri, have depended on milk  
14 from dairy farms located in the southern one-third of  
15 Illinois and the eastern one-half of Missouri for a  
16 large portion of their milk supply. Milk production in  
17 those areas has been flat or declining, as mentioned  
18 earlier.

19 Since January 1, 2000, the statistical  
20 uniform price for an Order 32 plant located in this  
21 area has not always been high enough to compete with  
22 plants pooled on Orders 5 and 7. Producers located in  
23 Southern Illinois and Southeast Missouri can switch to  
24 markets on Order 5 or Order 7 and get a higher price  
25 for their milk with little or no additional hauling

1 costs. This is happening regularly.

2 Exhibit 16, Table 1, shows a comparison of  
3 statistical uniform prices for the base zone of Order  
4 32, the base zone of Order 30, Order 5 zoned back to  
5 Evansville, Indiana, and Order 7 zoned back to Murray,  
6 Kentucky.

7 Q Do you mean Exhibit 16, Table 2, Mr. Lee?

8 A Yes. What did I say?

9 Q I think you said Table 1.

10 JUDGE BAKER: Table 1.

11 THE WITNESS: Okay. Sorry.

12 BY MR. BESHORE:

13 Q But it is Table 2?

14 A Yes.

15 Q Thank you.

16 A I won't dwell on this table. It does  
17 parallel a lot of what Mr. Hollon said in his  
18 testimony. I will just use it to emphasize the point.

19 Exhibit 16, Table 3, shows the distance from  
20 several current actual shipping points in the Upper  
21 Midwest to cities where we have plants located. The  
22 same table shows the distance from those locations  
23 where we have plants to the cities mentioned that are  
24 located in Order 5 and Order 7.

25 The point of this table is to show that we

1 have to rely on supplemental milk supplies that are not  
2 adjacent to the plants in the base zone of Order 32.

3 At the same time, dairy farmers in Southern Illinois or  
4 Southeastern Missouri, located near our plants, have  
5 fairly easy access to those markets on Orders 5 and 7.

6 Exhibit 16, Table 4, shows the approximate  
7 hauling cost to transport milk from these points in the  
8 Upper Midwest to the base zone plants on Order 32 and  
9 the approximately cost to transport the same load from  
10 those Order 32 plants to nearby markets on Orders 5 and  
11 7.

12 The point of this is to show that the return  
13 under the Order to ship milk from the Upper Midwest to  
14 the Lower Midwest will not cover the cost of hauling  
15 that milk. Many of those pooling milk on Order 32 may  
16 be doing so because of the return gained from pooling  
17 milk on the Order, not from serving the market.

18 Was this the intent of Order Reform? For the  
19 first few months of 2000, the statistical uniform price  
20 on Order 32 was high enough to provide a decent return  
21 to an Upper Midwest supply serving this market with a  
22 portion of their milk pooled on the Order. At the same  
23 time, an Order 32 plant could compete fairly well with  
24 a market on Order 5 or Order 7.

25 As some organizations became more adept at

1 riding Order 32 with excessive supplies of milk,  
2 combined with the low-class Class 3 price, this is no  
3 longer true.

4 Recently, as the Class 3 price improved, that  
5 problem has eased somewhat, but with the recent decline  
6 in the cheese market, we will probably soon be back to  
7 this price distortion.

8 Let me provide two examples to show why we  
9 feel this is a problem. In August, September and  
10 October of 2001, we exhausted the supplemental supplies  
11 made available to us by our other cooperative  
12 suppliers. We had to seek additional supplies of milk.

13 In August, we purchased 7.91 million pounds  
14 of milk and had to pay \$225,000 over regular announced  
15 prices and over-Order premiums. I need to clarify  
16 that. That's 7.91 million pounds over and above our  
17 regular supplemental purchases from our other suppliers  
18 and pay \$225,000 over and above the Order the announced  
19 over-Order price.

20 In September, that amounted to 5.95 million  
21 pounds and additional premiums of a \$152,000. Most of  
22 this milk came from supplies already pooled on Order  
23 32. However, because of current pooling standards,  
24 these suppliers did not have to ship the milk unless  
25 they extracted a give-up charge from us. We had to pay

1 a premium to purchase milk that should have been  
2 available as part of normal supplies and yet Class 1  
3 Utilization on Order 32 never got above 30 percent in  
4 these months.

5 Something is wrong with the system that  
6 enables suppliers on low Class 1 Utilization Orders to  
7 extort money from handlers for milk already pooled on  
8 the Order to meet basic Class 1 needs.

9 Second example. The fluid milk -- the fluid  
10 processing plant in St. Louis, Missouri, for many years  
11 received a high percentage of its milk supply from  
12 Dairy Farmers of America or predecessor organizations.

13 DFA approached us in the Summer of 2001 and  
14 said that unless we paid a substantial premium above  
15 regular over-Order premiums to them, they could not  
16 provide that plant with its regular milk needs  
17 beginning August 1, 2001. DFA took this step because  
18 they said they had opportunities to ship the milk going  
19 to this plant to markets on Order 5 and/or Order 7 and  
20 get a significantly-higher return.

21 When we approached several cooperatives with  
22 milk already pooled on Order 32 about supplying this  
23 plant at Order prices, plus announced over-Order  
24 premiums, they all declined. These two examples show  
25 the point we are trying to make.

1           The return on Order 32 is currently not high  
2 enough to attract milk to base zone plants without  
3 substantial over-Order premiums. At the same time, the  
4 return in the base zone is not high enough to keep  
5 nearby milk supplies from seeking markets on Order 5  
6 and Order 7.

7           If the Department feels that milk should flow  
8 north to south, they have created a problem in Southern  
9 Illinois and Eastern Missouri. Producer milk located  
10 in this area is trying to go south, but northern milk  
11 supplies do not want to flow into the area, and let me  
12 add that the north to south milk can come in a packaged  
13 form as well as in a raw milk bulk form. Some  
14 Midwestern processors are well positioned to supply the  
15 dairy product needs of consumers in the Southeast.

16           To those who say that we will just have to  
17 raise the over-Order premium even more, we would  
18 respond that if over-Order premiums are what move milk,  
19 then are the Orders really working, and if they are not  
20 working, why do we need them?

21           However, Exhibit 16, Table 5, shows that  
22 over-Order premiums in the Order 32 area are similar to  
23 or higher than those in nearby markets. My source of  
24 information on that was the Price Announcement from  
25 Dairy Farmers of America, dated October 16, 2001.

1           We want to emphasize that we do not want  
2 anything we propose at this hearing to harm producers  
3 on adjacent Orders. However, an examination of data  
4 provided by the Order 32 Market Administrator shows  
5 what we are talking about. The list of cooperatives  
6 and supply plants currently pooling milk on Order 32  
7 show several entities that had no association with this  
8 Order when it was formed on January 1, 2000.

9           We have no problem with them being part of  
10 this Order, if they are here to serve the market. Our  
11 fear is that they were drawn here by the returns from  
12 pooling milk on Order 32, not serving Order 32  
13 handlers. If we are wrong, hopefully those  
14 organizations will use this hearing as a forum to prove  
15 that.

16           The amount of milk -- the amount of producer  
17 milk pooled on Order 32 has increased considerably  
18 since January 2000. The amount of milk used in Class 1  
19 has remained relatively stable. The amount of milk  
20 used in Class 3 has increased in similar proportion to  
21 the increase in total producer milk. This has resulted  
22 in a no-win situation for Prairie Farms members.

23           The increase in producer milk in Class 3  
24 Utilization has lowered the statistical uniform price  
25 to our members. At the same time, this increased

1 producer milk is not readily available to us at  
2 announced prices to serve our plants as a supplemental  
3 supply.

4 To those who oppose what we are proposing  
5 here and say that we will merely transfer our problem  
6 to another Order show some goodwill. Offer some of the  
7 milk that you are currently pooling on Order 32 but not  
8 serving the market with to Class 1 handlers at  
9 announced local prices. Order 32 handlers in the base  
10 -- I'm sorry -- handlers in the base zone of Order 32,  
11 especially those in St. Louis and points south, would  
12 especially be interested in hearing from you.

13 Order provisions that are more conducive to  
14 pooling milk rather than serving the market should take  
15 place in areas of surplus, not deficit, production. We  
16 urge the Department to grant the changes that we are  
17 seeking with Proposals 1, 2, 3, 4 and 5. Proposals 1,  
18 2, 3, 4 and 5 are a good start at trying to alleviate  
19 the supply dilemma that we face.

20 The request in Proposal 1 to no longer allow  
21 shipments to other Order plants to help qualify a  
22 supply plant would correct a glaring shortcoming in  
23 Order 32.

24 Proposals 1, 3 and 5 would require shipping  
25 performance in every month of the year. The

1 performance would be at a level that should be  
2 tolerable to any organization concerned about the best  
3 interests of the Order.

4 To summarize what we are trying to say, it is  
5 our feeling that producers located in large areas of  
6 Order 32 have received serious financial harm with the  
7 way Order 32 has worked since January 1, 2000. The  
8 return for continuing to serve the market that they  
9 have served for many years has been lowered without  
10 justification. They are faced with choices that many  
11 find unpleasant. They can continue to ship to their  
12 traditional market a reduced or even negative return.  
13 They can switch to a potentially better but unfamiliar  
14 market or they can discontinue dairy.

15 We do not want to build a wall around this  
16 area. In fact, quite the opposite is the case. We  
17 need adequate reserves of milk pooled on this Order,  
18 but those pooling this milk should be expected to serve  
19 the market.

20 Q I have just a few additional questions for  
21 Mr. Lee.

22 Mr. Lee, the supplemental -- the additional  
23 supplemental supplies that you have testified to  
24 acquiring in August, September and October of 2001,  
25 were those -- the amounts that you had to pay

1 additional, were in addition to the levels of over-  
2 Order premiums similar to those reflected on Exhibit  
3 16, Table 5, is that correct?

4 A The dollars that I alluded to in my testimony  
5 were over and above what we would have paid following  
6 that price chart, yes.

7 Q Okay. So, if my quick arithmetic on those  
8 volumes and amounts indicated in your testimony is  
9 correct, you had to pay for milk already pooled on  
10 Order 32 between \$2.50 and \$3 per hundredweight in  
11 addition to the already-announced and prevailing over-  
12 Order premiums?

13 A Yes, and I'm admitting that in front of our  
14 regular milk suppliers. I wish I didn't have to, but,  
15 yes, that is correct.

16 Q Okay. And that's milk that was already  
17 pooled on Order 32 but not --

18 A Yes, sir.

19 Q -- otherwise available?

20 A Yes.

21 Q In spite of acquiring those volumes -- those  
22 additional volumes at those prices, did your plants  
23 suffer from not having milk available to operate when  
24 they needed to be operating?

25 A In August and September, there were many days

1 when we had to wait for several hours at a couple of  
2 our plants for milk to arrive, and so we had to run  
3 water through the machines to keep them going.

4 It reached a peak on September 15, when at  
5 our plant in Carlinville, we had to send all of the  
6 plant workers home at 2 in the afternoon and tell them  
7 not to come back till midnight because we had no milk  
8 to run and wouldn't until tankers from the Upper  
9 Midwest arrived on Saturday night.

10 So, we, in a sense, had to delay production  
11 by nearly a full day because the milk -- we simply  
12 couldn't get the milk that we needed.

13 Q And at any -- at any price?

14 A At any price. When we approached people, is  
15 there milk available at any price.

16 Q That was during September of this year, --

17 A Yes.

18 Q -- when there was what, 1.5 billion pounds or  
19 so, pooled on Order 32?

20 A Yes, in Class 1 Utilization of 28 and a half  
21 percent.

22 MR. BESHORE: Thank you, Mr. Lee.

23 JUDGE BAKER: Very well. Are there any other  
24 questions or any questions for Mr. Lee? Mr. English?

25

1 CROSS EXAMINATION

2 BY MR. ENGLISH:

3 Q Maybe you'll be a little more amenable to the  
4 suggestions I was making to Mr. Hollon.

5 Do you think a viable alternative is to vote  
6 this Order out?

7 A That's Choice Number 2.

8 Q And what about suspending various counties  
9 that would, by the suspension of those counties, would  
10 take some of these plants out from under regulation, at  
11 least under Order 32 regulation?

12 A That would be of interest to our company,  
13 also.

14 Q I'm not sure I understand. Are you going to  
15 be here tomorrow?

16 A Yes.

17 Q So, you'll make a decision tomorrow whether  
18 you're going to testify on Proposal 8?

19 A Yes. In all likelihood will not, though, in  
20 the interests of moving the hearing along.

21 Q In that case, understanding you're not going  
22 to undercut Proposals 1 through 5, do you support the  
23 concept of Proposal 8?

24 A As a fall-back position. I honestly think  
25 what we're talking about in 1 through 5 takes care of

1 the distant milk problem, but as a fall-back position,  
2 you know, if we're only going to get part of what we're  
3 asking for, I would support 8.

4 Q Without going through great detail, were you  
5 in the Upper Midwest hearing?

6 A As an observer.

7 Q Yeah. I think I went through an example  
8 where even if adoption of proposals like 1 through 5  
9 were adopted, there were the possibility nonetheless of  
10 using condensed product from California and pooling.

11 If that were the case, would you support  
12 adoption of Proposal 8 as well as -- as a brick to make  
13 sure that that wouldn't also happen?

14 A Yes.

15 MR. ENGLISH: Thank you.

16 JUDGE BAKER: Thank you, Mr. English.

17 Are there other questions for Mr. Lee? Mr.  
18 Vetne?

19 CROSS EXAMINATION

20 BY MR. VETNE:

21 Q Mr. Lee, I'm John Vetne.

22 I want to turn your attention first to Table  
23 2 of Exhibit 16.

24 A Okay.

25 Q Part of the complaint, as I understand it, of

1 Prairie Farms and co-Proponents of 1 through 5, is  
2 changes that have taken place since Order Reform was  
3 effective in January of 2000?

4 A Yes.

5 Q Were you here when I asked a prior witness  
6 concerning equivalent comparison of blend price versus  
7 basic formula price prior to January of 2000?

8 A I was probably here. I don't remember the  
9 question.

10 Q Okay. In Exhibit 16, Table 2, you refer to a  
11 "difference" between Order 32 and Order 30.

12 A Yes.

13 Q Okay. And that is a -- the same number's the  
14 difference between PPDs, is that correct?

15 A Yes.

16 Q Okay. And if we were looking for an  
17 equivalent amount of money to make the comparison, if  
18 we look prior to January of 2000, wouldn't it be  
19 correct that that number would be the difference  
20 between the blend price for a month and the basic  
21 formula price movement for the month?

22 A I think so.

23 Q Pardon?

24 A I think so.

25 Q Have you in preparation for this hearing

1 looked at what that difference was?

2 A No, I have not. I thought it was irrelevant,  
3 trying to reassemble data, when there were so many  
4 Orders that made up the current Order 32.

5 Q When you refer to being increasingly  
6 dependent upon Upper Midwest milk for supplemental milk  
7 supplies, would that include Upper Midwest milk that is  
8 pooled in Order 30 as well as Order 32?

9 A We did buy some Order 30 milk. Actually, I  
10 think I'm wrong on that. I'd have to double-check  
11 that. Milk might have been pooled on Order 1, but we  
12 did buy some milk from someone in August and September  
13 that was not pooled on Order 32.

14 Q Okay. If Proposals 1 through 5 have the  
15 effect of disassociating some milk from Order 32, would  
16 -- would you still rely to the same extent on milk from  
17 the Upper Midwest for your supplemental supplies of  
18 milk?

19 A In all likelihood.

20 Q Is the Upper Midwest the place to which you  
21 looked for supplemental milk supplies before Order  
22 Reform?

23 A Yes.

24 Q That would include Wisconsin as well as  
25 Minnesota milk?

1           A     Yes.

2           Q     And when you received Wisconsin and Minnesota  
3     milk prior to Order Reform, was that milk that was  
4     pooled on Order -- either Chicago Order or the Upper  
5     Midwest Order?

6           A     I think what I alluded to was the way Order  
7     32 and 50 were previously written, we quite often had  
8     to rely on milk coming off of Order 30 -- off Order 30  
9     or 79 as a back-up supply after we had exhausted our  
10    regular Order 32 supplemental supplies.

11          Q     Order 79 being?

12          A     The old Iowa Order.

13          Q     Iowa.

14          A     And even Order 68.

15          Q     So I understand your prior answer, if  
16    Proposals 1 through 5 are granted, you expect to buy  
17    supplemental milk that is pooled on Order 30?

18          A     No. I'm hoping to not have to buy  
19    supplemental milk that's pooled on Order 30, if  
20    Proposals 1 through 5 are adopted.

21          Q     Okay. And is that because you do not expect  
22    milk that is now pooled on Order 32 to be disassociated  
23    with Order 32?

24          A     Our hope is that the return to shipping milk  
25    to the base zone of Order 32 will be decent enough that

1 current participants in Order 32 will be willing to  
2 ship there.

3 Q Okay. So, the -- the pool volume and pool  
4 percentage, you hope, would remain the same, only more  
5 milk will be flowing from the market suppliers to  
6 distributors?

7 A I'm not hoping that pool volume will remain  
8 the same. I'm hoping there will be less milk on the  
9 Order performing at a higher level.

10 Q Okay. And the milk -- if there's less milk  
11 on the Order, some milk is going to be disassociated.  
12 What milk do you see disassociating from the Order, if  
13 Proposals 1 through 5 are adopted?

14 A I would assume some milk located outside the  
15 Order area that's currently being pooled as part of the  
16 for-fee unit or perhaps milk that is located outside  
17 the Marketing Area as being qualified within-area  
18 shipments. By milk located in the Marketing Area,  
19 delivering to a pooled plant and using those shipments  
20 to qualify outside the market area supplies.

21 Q Okay. When you have received supplemental  
22 milk during the past, say, four years, that's two years  
23 of Order Reform, two years prior to Order Reform, --

24 A Okay.

25 Q -- do you know whether that milk has come at

1 least in part from farms located outside of the  
2 geographic area designated by Mr. Hollon in support of  
3 Proposal 7?

4 A Some of it would have.

5 Q Okay.

6 A Some of it would have come from the old Order  
7 68 area.

8 Q Okay. You -- I don't see here testimony  
9 concerning Proposal 7. Do you expect to provide  
10 testimony for or against Proposal 7?

11 A Just moral support. Elvin Hollon did an  
12 adequate job of --

13 Q So, other than -- other than your statement  
14 just now, that's the extent of your moral support?

15 A Yes.

16 Q You refer in your testimony to -- to your  
17 various -- various plants. You have some stand-alone  
18 Class -- at least one stand-alone Class 2 plant that is  
19 pooled in the unit with distributing plants --

20 A Yes.

21 Q -- at the moment? And you have another  
22 stand-alone Class 2 plant that is not pooled within a  
23 unit?

24 A We have several stand-alone Class 2 plants  
25 that are not part of the unit.

1           Q     That are not part of the unit, and they --  
2           they aren't pooled because, as non-pooled milk, the  
3           Class 2 return is greater than you could get from the  
4           PPD, is that correct?

5           A     I think so, if I understand your question.

6           Q     You would have to pay into the pool if you  
7           pooled them --

8           A     Yes.

9           Q     -- that not to, right?

10          A     Yes.

11          Q     Okay.  If -- if the Proposals 1 through 5 are  
12          adopted, and the PPD, Producer Price Differential, goes  
13          up as you hope, do you expect that these additional  
14          stand-alone Class 2 plants would join the Prairie Farms  
15          unit?

16          A     The only one that perhaps would would be the  
17          one in Quincy, Illinois.

18          Q     You would continue to operate others as  
19          stand-alone non-pooled Class 2 plants?

20          A     Yes, especially the plants that don't receive  
21          milk on a regular basis that is cream, condensed  
22          powder, items like that.  There would be no reason that  
23          you'd want to bring them in as part of the unit.

24          Q     Okay.  But the milk or milk products that  
25          they receive are pooled milk derived milk in those

1 products?

2 A The cream that they use is all derived from  
3 Prairie Farms' facilities.

4 Q Pooled facilities?

5 A Yes. From --

6 Q And condensed?

7 A Plus the condensed comes from all over the  
8 place, regulated and unregulated, and some of it is  
9 extra grade, so it wouldn't necessarily be from a  
10 regulated source.

11 Q So, the only --

12 A The majority of the powder, skim powder, is  
13 coming from California. So, obviously it's coming from  
14 outside of the system.

15 Q The only other plant then that receives milk  
16 that would be considered producer milk and producer-  
17 delivered milk is Quincy?

18 A Quincy, and then we do use some milk at the  
19 Decatur, Illinois, plant, but not enough to be of any  
20 consequence.

21 Q Then going back to my -- my question, if the  
22 PPD -- if -- if instead of having to pay into the pool  
23 as a result of -- of including Quincy in your unit, you  
24 could draw from the pool, you would include it?

25 A Yes.

1           Q     Could you tell me what the Class 1  
2 Utilization is of your combined Class 2 and Class 2  
3 facilities that --

4           A     Our combined Class 1 and Class 2 facilities?

5           Q     Class 1 and Class 2 facilities, yes.

6           A     Between 70 and 75 percent Class 1.

7           Q     Okay. And does that include Quincy?

8           A     Yes.

9           Q     Okay. On the next page of your testimony, I  
10 think it's 4 or 5, you refer to a purpose of the Order  
11 of serving Class 1 and Class 2 handlers. Do you --  
12 it's on the fourth -- the fourth page of text.

13          A     Okay.

14          Q     Do you have a source of authority or -- or  
15 policy for your statement that a purpose of assist the  
16 Order system is to serve Class 2 handlers?

17          A     I think it would be similar to the witness  
18 that was up here today. It's -- to me, I don't know  
19 how you can distinguish between a fluid operator who  
20 has a Class 2 wing on his plant and an operator who  
21 operates both Class 1 and Class 2 plants in the same  
22 geographic area.

23          Q     Are there stand-alone Class 2 plants that are  
24 operated by folks who do not have Class 1 facilities in  
25 this market or available to this market?

1           A     In our area?

2           Q     Yeah.

3           A     Yes.

4           Q     Is it not the case that having both kinds of  
5 plants as a Class 2 handler, you have an advantage over  
6 those folks because shipments, for example, to your  
7 stand-alone Class 2 facility count and shipments to  
8 somebody else's stand-alone Class 2 facility do not  
9 count?

10          A     I don't know how you could categorize that as  
11 an advantage because the unit is performing at the  
12 standards laid out in the Order. So, you know, whether  
13 -- whether our Class 2 plant is in the unit or out of  
14 the unit, I mean, by it being in the unit, we are  
15 performing at the same level as a stand-alone plant.

16          Q     Do any of the plants in your unit receive  
17 regular supplies -- strike that. Let me ask this  
18 first.

19                   Do you have your own farms --

20          A     Yes.

21          Q     -- that supply your plants and DFA supplies  
22 your plants?

23          A     And your clients as well.

24          Q     And a lot of folks supply your plants. Is it  
25 all of your -- is all of the Prairie Farm milk

1 delivered to your plants reported as 9(c)-delivered  
2 milk?

3 A In October, it was.

4 Q In October, it was. Prior months?

5 A I'll put it this way. Everything that is  
6 pooled is reported as 9(c) milk.

7 Q Okay. So, you are not -- you do not and have  
8 not sent reports as a distributing plant operator  
9 receiving producer milk and having diversions as a  
10 plant operator in your plant?

11 A Not since January 1 of 2000.

12 Q Prior to January 1, do you know?

13 A Prior to that, we did attach some diversions  
14 to pooled plants. It's just a matter of accounting.

15 Q In your role as a 9(c) handler supplying  
16 plants, do you divert milk to plants located in  
17 Wisconsin and Minnesota, outside of the Marketing Area?

18 A On occasion. Rarely, but on occasion.

19 Q Okay. Are these -- do they tend to be plants  
20 that supply you with supplemental milk when you need  
21 it?

22 A No. Usually those guys won't buy my surplus  
23 from me. They -- you know, when we need milk, their  
24 prices are exorbitantly high, and when we have milk to  
25 get rid of, they don't want it. So, --

1                   MR. VETNE: I withdraw the question and move  
2 to strike the answer.

3                   Thank you. That's all.

4                   JUDGE BAKER: Are there any other questions  
5 for Mr. Lee? Yes?

6                                   CROSS EXAMINATION

7                   BY MR. GOLDEN:

8                   Q    Mr. Lee, --

9                   A    Would you identify yourself, please?

10                  Q    Okay. I'm sorry. What was the question?  
11 Just one quick question.

12                  In the Fall of --

13                  JUDGE BAKER: Would you? I'm sorry.

14                  MR. GOLDEN: Neal Golden.

15                  JUDGE BAKER: Would you please identify  
16 yourself for the record?

17                  MR. GOLDEN: Okay. Neal Golden with  
18 Associated Milk Producers.

19                  JUDGE BAKER: Thank you.

20                  BY MR. GOLDEN:

21                  Q    One quick question. In the Fall of 2000, the  
22 blend difference between Order 30 and 32 per your  
23 Exhibits 16, Table 2, substantially higher than they  
24 were in the Fall of -- so far under the statistics in  
25 2001?

1           A     That is correct.

2           Q     And at that time, in the Fall of 2000, the  
3     AMP as a supplier to Prairie Farms was shipping X  
4     amount of milk at Order value and regular premium  
5     values?

6           A     Yes.

7           Q     Okay. Now, that blend price has dropped  
8     substantially, like you've indicated on your table, 50  
9     to 75 cents a hundredweight on average. Have we  
10    shipped you any less milk -- have we shipped you less  
11    milk in the Fall of 2001 than we did in 2000 at Order  
12    values at regular premiums?

13          A     No.

14          Q     Have we shipped you more milk at regular  
15    premium Order values in the Fall of 2001 than 2000?

16          A     Slightly.

17          Q     Yes, thank you.

18                 So, the fact that blend prices have come down  
19    75 cents or so, and we've shipped you more milk, does  
20    that fly in the face of your request to get blend  
21    prices up so that people will ship you more milk?

22          A     Are you saying that the lower the price goes,  
23    the more you'll sell us?

24          Q     For some reason, for some reason, I've done  
25    that, and now I've got to go back and figure out why.

1 All right. Seriously, do the premium -- do  
2 the -- do the blend prices have to get up -- back up to  
3 a dollar spread between 30 and 32; if that happens, are  
4 you going to -- are you saying that's going to attract  
5 more milk?

6 A I'm saying I think you deserve a better  
7 return than you're currently getting for supplying us,  
8 and I'd like to see that better return come in the form  
9 of a higher uniform price.

10 Q In the Fall months, we ship supplemental  
11 milk, as you were describing so eloquently. You're  
12 asking to get percentages -- percentage shipping  
13 percentages increased so that you can get more milk  
14 certain times of the year for Order prices.

15 Would you take that milk year-round? Would  
16 you take that amount of milk year-round if this  
17 proposal was adopted?

18 A Be more specific, if you would, please.

19 Q Well, if you're going to -- if the Order is  
20 going to ask us to ship 25 percent the way these  
21 proposals are laid out as roughly double what the  
22 current shipping requirement is, and if we ship, and so  
23 I assume you're -- what you're trying to do, am I  
24 right, that if -- you would like us to ship this  
25 supplemental milk in the Fall that you need at Order

1 value, and through these higher shipping requirements,  
2 you're attempting to get that?

3 A At the Order values, plus local announced  
4 over Order premiums.

5 Q Right. So, through the higher shipping  
6 requirements, --

7 A Local negotiated over Order premiums.

8 Q And you're trying -- part -- part of what  
9 you're trying to do through the higher shipping  
10 requirements is to -- is to do exactly that?

11 A Yes.

12 Q Okay. So, -- so, that would be a Fall issue  
13 to you. Would you be willing to take that milk year-  
14 round?

15 A Well, I think we've said that by saying we  
16 would like to see performance required all 12 months of  
17 the year.

18 Q But you don't need that milk year-round  
19 because you aren't calling for supplemental shipments  
20 in May and June. Where would that milk go?

21 A You're judging that based on past history.  
22 The current --

23 Q That's all I have.

24 A The current situation and the likely future  
25 situation is that non-Prairie Farms member milk in

1 Southern Illinois is not going to be available to us at  
2 any of our plants. So, our year-round supplemental  
3 needs are going to increase, and as I've said early,  
4 the trend is that milk production in the areas where we  
5 currently procure milk is going down. Our business is  
6 stable or slightly growing. So, I see us needing more  
7 milk, not less milk.

8 Q Is not your problem with the blend prices --  
9 am I right that your problem isn't as -- as much  
10 associated with the Order 30 and 32 spread as it is  
11 with the Order 32 and Order 5 spread?

12 A It's a two-fold problem. On the one hand,  
13 producers located in Southern Illinois and Southeastern  
14 Missouri no longer want to ship to their local markets  
15 because the return is so much greater going to Order 5  
16 or Order 7.

17 At the same time, the return, shipping milk  
18 from the Upper Midwest into St. Louis, obviously isn't  
19 high enough to attract all of the milk we currently  
20 need without give-up charges or some other term,  
21 whatever you want to call it.

22 Q Doesn't raising the blend price in Order 32  
23 transfer that problem from the southern part of the  
24 Order 32 market to the northern part of the 32 market?

25 A So?

1 Q What was -- what was -- what was the answer?

2 So?

3 A Yeah.

4 Q Oh, okay.

5 A I mean, --

6 Q Well, --

7 A -- you have -- you have -- the -- let me  
8 rephrase that.

9 A problem exists now in the lower end of  
10 Order 32. We may find this is an unsolvable problem,  
11 and the only way to solve it is to not have an Order  
12 32. I don't really want to go there, but that's --

13 Q But you agree that it would transfer the  
14 problem; it would transfer that exact problem that  
15 you're talking about between you and the Ozarks to  
16 between Iowa and Minnesota?

17 A Perhaps.

18 Q Minnesota's going to lose producers to Order  
19 32 and Wisconsin. Order 30's going to lose producers  
20 to Order 32 competitively, and that's what we're  
21 talking about here, is competition. Am I right?

22 A The way I see it unfolding, it's actually a  
23 better opportunity for you to get a better return on  
24 the milk you're currently shipping to us, and the  
25 additional milk you'll be shipping us in the future.

1 Q Okay.

2 MR. GOLDEN: That's all I have. Thank you.

3 JUDGE BAKER: Thank you very much.

4 Are there any other questions for Mr. Lee?

5 (No response)

6 JUDGE BAKER: Let the record reflect that  
7 there are no such questions.

8 Thank you very much, Mr. Lee.

9 THE WITNESS: Thank you.

10 (Whereupon, the witness was excused.)

11 JUDGE BAKER: Mr. Beshore, do you have any  
12 other witnesses to produce now?

13 MR. BESHORE: I do not have any other  
14 witnesses at this time.

15 Your Honor, there's one other gentleman, a  
16 dairy farmer member of DFA, who we may call tomorrow  
17 but not prepared to call him today.

18 JUDGE BAKER: Very well. Mr. Beshore,  
19 Exhibits 15 and 16 --

20 MR. BESHORE: I would like to move their  
21 admission.

22 JUDGE BAKER: Are there any questions or  
23 objections with respect thereto?

24 (No response)

25 JUDGE BAKER: Let the record reflect that

1       there are none. Exhibits 15 and 16 are admitted into  
2       evidence.

3                               (The documents referred to,  
4                               having been previously marked  
5                               for identification as Exhibit  
6                               Numbers 15 and 16, were  
7                               received in evidence.)

8               JUDGE BAKER: Is there anyone who wants to be  
9       heard at this time? Mr. Cooper?

10              MR. COOPER: Could we get a little idea of  
11     where we're going tomorrow time-wise here?

12              JUDGE BAKER: Well, I -- I don't know as much  
13     as you do because --

14              MR. COOPER: Well, I'll just ask the  
15     participants.

16              JUDGE BAKER: Oh, all right.

17              MR. COOPER: Anybody have an idea about what  
18     tomorrow is going to bring in terms of --

19              JUDGE BAKER: Mr. Vetne?

20              MR. VETNE: I have about five witnesses, but  
21     they're not anything like Mr. Hollon, and they're not  
22     going to read anything that's previously been published  
23     in the Federal Register. I'm very confident we'll be  
24     done tomorrow.

25              JUDGE BAKER: Well, I don't know about that.

1 How long do you think your five witnesses are going to  
2 take?

3 MR. VETNE: About 10 to 15 minutes at most on  
4 -- on direct.

5 JUDGE BAKER: Very well. Thank you.

6 Mr. Beshore, how long do you think your  
7 witness is going to take?

8 MR. BESHORE: The witness that I just alluded  
9 to --

10 JUDGE BAKER: Right.

11 MR. BESHORE: -- is short. Mr. Hollon does  
12 have a statement on Proposal 6 that we haven't  
13 addressed at all yet, which is not long.

14 JUDGE BAKER: Very well. Now, who else --  
15 Mr. English?

16 MR. ENGLISH: I have two witnesses on all  
17 proposals.

18 JUDGE BAKER: How long do you think it'll be?

19 MR. ENGLISH: One of them's direct will be 15  
20 minutes, and the other's probably 20 minutes.

21 JUDGE BAKER: Very well. Thank you, Mr.  
22 English.

23 Mr. Cooper, that's about as good as we can  
24 do.

25 Yes, sir?

1                   MR. BANDER: Duane Bander. I have a brief  
2 statement on Proposal 6.

3                   JUDGE BAKER: Would you like to give it now?

4                   MR. BANDER: Oh, no. Sorry, sorry. I  
5 apologize for my enthusiasm.

6                   JUDGE BAKER: Pardon me?

7                   MR. BANDER: Our -- I would like to wait for  
8 some coverage to allow tonight in the form of our  
9 corporate counsel.

10                  JUDGE BAKER: Very well.

11                  MR. BANDER: Thank you.

12                  JUDGE BAKER: Well, let the record reflect  
13 that right now, we can hear anyone who wishes to give  
14 testimony, and there is no one here in the room who  
15 wishes to give testimony tonight, and I want the record  
16 to clearly reflect that.

17                  If no one -- if there's nothing else to  
18 present at this time, then we will recess until 8:00  
19 tomorrow morning.

20                  Thank you all very much.

21                  (Whereupon, at 6:20 p.m., the hearing was  
22 adjourned, to reconvene tomorrow morning, Thursday,  
23 November 14th, 2001, at 8:00 a.m.)

24

25