

UNITED STATES DEPARTMENT OF AGRICULTURE

BEFORE THE SECRETARY OF AGRICULTURE

IN Re:	X	FEBRUARY 23, 2004
	X	1:00 p.m.
MILK IN THE APPALACHIAN AND SOUTHEAST MARKETING AREAS; NOTICE OF HEARING ON PROPOSED AMENDMENTS TO TENTATIVE MARKETING AGREEMENTS AND ORDERS	X X X X X X	DOCKET NOS. AO-388-A15, AO-366-A44 and DA-03-11  WESTIN ATLANTA HOTEL 4736 BEST ROAD ATLANTA, GA

VOLUME I OF IV

APPEARANCES:

JUDGE PRESIDING: HON. VICTOR W. PALMER  
USDA

USDA: MS. SHARLENE DESKINS  
  
USDA/OGC

USDA/AMS/DAIRY PROGRAMS: MS. ANTOINETTE M. CARTER  
MR. JACK ROWER  
MR. BRAD STOKER

OTHERS PRESENT:

MR. MARVIN BESHORE  
SOUTHERN MARKETING AGENCY, INC.

MR. JEFF HITCHELL  
KROGER COMPANY

AL RICCIARDI  
SARA FARMS AND MICHAEL SUMNERS

MR. CHARLES ENGLISH  
THELAND, REED & CREEST

MR. GARY LEE  
PRAIRIE FARMS

MR. EARNEST YATES  
MR. WILLIAM CURLEY  
DEAN FARMS

MR. PAUL CHREST  
MR. CARL CONOBER  
CONSULTANTS

MR. JOHN VETNE  
SOUTHEAST MILK, INC.

REPORTER:

JANICE ADDINGTON

CONTRACTOR (not present):

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

February 23, 2004:

THE COURT: The purpose of the hearing as noticed in the Federal Notice is in response to industry requests to consider proposals to amend the Appalachian and the Southeast Federal Milk Marketing Orders, a proposal by the Southern Marketing Agency Inc., SMA, would merge the Appalachian and Southeast Milk Marketing areas into a single milk marketing areas.

A separate SMA proposal and a proposal by the Kroger Company would expand a proposed merger Ordered to include certain currently-unregulated counties and cities in the state of Virginia.

Also, a proposal submitted by Prairie Farms and Dean Foods Company would create a "Mississippi Valley" milk marketing area by breaking a southeast Order into two Orders.

Additional proposals that seek to amend certain other terms, provisions of the Orders also will be considered at the hearing that is commencing today, February 23 at 1 p.m. here at the Weston Atlanta Airport Hotel in Atlanta, Georgia.

Evidence today will be taken under oath. There will be opportunities for Cross Examination. The rules of practice are found in a volume known as Seven Code of

1 Federal Regulations, Part 900.

2 So anyway, the rules of practice to cover this  
3 hearing are found there and that outlines the fact that we  
4 take evidence under oath, etceteras, and you have an  
5 opportunity to file proposed findings and your thoughts on  
6 the matter, etceteras at the end of the hearing. We will  
7 set that at the end of the hearing. We will tell you when  
8 to file them. We will try to be democratic and find out  
9 what your different problems and needs are in getting to  
10 that.

11 I have actually marked some preliminary exhibits  
12 already. If you will just make a note of that for your  
13 record - -

14 One thing, if anybody has a cell phone; this is a  
15 good time to turn it off. All cell phones, now turned off.

16 The very first exhibit, which we are going to  
17 mark as Exhibit Number 1 is the Notice of Hearing.

18 (Whereupon, the exhibit referred to was marked  
19 for identification as Exhibit Number 1.)

20 So the Court Reporter has received that and has  
21 marked it.

22 The second exhibit - Exhibit Number 2 - is the  
23 certificate that officials of various states were notified  
24 of this hearing.

25 (Whereupon, the exhibit referred to was marked

1 for identification as Exhibit Number 2.)

2 Exhibit Number 3 is a certificate that the  
3 various news media were told about the hearing, and it  
4 actually contains a copy of the release that was sent to  
5 them.

6 (Whereupon, the exhibit referred to was marked  
7 for identification as Exhibit Number 3.)

8 Then we have as Exhibit 4 a certificate of actual  
9 mailing of the Notice by the Market Administrator, Mr.  
10 Fredly.

11 (Whereupon, the exhibit referred to was marked  
12 for identification as Exhibit Number 4.)

13 And as Number 5, a certificate of the actual mailing  
14 by Market Administrator, Ms. Mosely.

15 (Whereupon, the exhibit referred to was marked  
16 for identification as Exhibit Number 5.)

17 So those five exhibits are already in the record,  
18 part of the record and received.

19 (Whereupon, the document referred to, having been  
20 previously identified as Exhibit Numbers 1 - 5, was  
21 admitted into evidence.)

22 The only way you are going to be able to make a record  
23 for yourself when you question or speak is to be at a  
24 microphone. We have microphones over there at that table,  
25 which will be for the witness, and we also have a lectern

1 in the middle. We have some microphones at the government  
2 table, but the rest of you do not have microphones so you  
3 are going to have to come up to the lectern to make your  
4 points and address questions to a witness.

5           What I would like to do is find an Orderly way of  
6 presenting evidence today. Over the years, as many of you  
7 know, I have presided at some of these hearings in the  
8 past. Over the years, the practice kind of changed. At  
9 one time, a witness would just take the stand, speak from  
10 prepared notes. Then later on, we started giving prepared  
11 statements in advance. The concept was that we were going  
12 to do what most Federal Agencies do now, where everybody  
13 exchanges their direct testimony in advance of the hearing  
14 and then the witness just takes the stand and is ready for  
15 Cross Examination.

16           As I recall, we tried that. It did not quite  
17 work out quite too well. I think everybody was saying  
18 well, what is he really talking about, and we really needed  
19 some kind of an explanation of the statement.

20           So the better way, I think, would be to have the  
21 prepared statement that we mark as an exhibit, take it, but  
22 the witness gets on the stand and makes some little summary  
23 of it. Of course, that is dependent upon these statements  
24 having been exchanged.

25           Let's go off the record and see where we are on



1 that.

2 Off the record.

3 (OFF THE RECORD)

4 THE COURT: Back on the record.

5 We were discussing the procedures to be followed,  
6 and although each person will have a written, prepared  
7 statement they will be reading, I presume everybody wants  
8 the written statement to prevail over the transcript of it.

9 If there is a deviation between the written statement that  
10 we take as an exhibit and what the witness said on the  
11 stand, which should prevail? Any thoughts on that?

12 MR. BESHORE: I think the written statement would  
13 prevail, unless the witness specifically says..

14 THE COURT: Says I am correcting it - okay. So  
15 that will be understood. The written statement will  
16 prevail unless the witness says otherwise.

17 That will be pretty much our procedures. It does  
18 not seem like we have as many witnesses as I had  
19 anticipated, and they seem like they will - other than the  
20 first statement from the proponent - be fairly short.

21 We received something in the mail that the  
22 Counsel handed me. It is from Lupell. I will read it; I  
23 will mark it as Exhibit 6.

24 (Whereupon, the exhibit referred to was marked  
25 for identification as Exhibit Number 6.)

1 I only have one copy of it, so here is one that  
2 is not going to be a bunch of copies but I will put it in  
3 anyway as Exhibit 6. I will read it in.

4 It says "To Ms. Sue Mosely, Market Administrator,  
5 United States Department of Agriculture, Post Office Box  
6 491778, Lawrenceville, Georgia, 30049. Dated February 5<sup>th</sup>,  
7 Notice of Hearing, Appalachian and Southeast. Lupell Dairy  
8 will be unable to attend the hearing on proposed amendments  
9 to the Appalachian and Southeast Milk Orders. Please  
10 consider this letter our formal proposal to improve the  
11 Producers' Settlement Fund."

12 Then they say minimum one full business day  
13 notice of balance due after final pool. Results are  
14 finalized before financial penalty can impose.

15 And the second one is electronic wiring of funds  
16 should not be necessary. Overnight should be sufficient.  
17 Thank you for considering our suggestions. And it is  
18 signed by James Brisco.

19 Well, I am marking it as an exhibit and putting  
20 it in as part of the record, just to show that we got it  
21 and did not throw it away. But without evidence, you can  
22 not really put any proposal forward so - - there is no  
23 evidence that they are going to present, so all it is  
24 something that will just be put in for the record.

25 (Whereupon, the document referred to, having been

1 previously identified as Exhibit Number 6, was admitted  
2 into evidence.)

3 But it is not something that we are going to  
4 treat.

5 Alright, is the Government ready to proceed? Do  
6 you want a little break or - -

7 MS. DESKINS: It might help to take a little  
8 break because the exhibits are massive. I think it is  
9 going to take us a couple of minutes just to...

10 THE COURT: Fine, let's take a break while the  
11 exhibits are numbered.

12 (OFF THE RECORD)

13 THE COURT: ..go through the Counsel.

14 MS. DESKINS: My name is Sharlene Deskins,  
15 spelled D-e-s-k-i-n-s. I am with the Office of General  
16 Counsel of the United States Department of Agriculture, and  
17 I represent the Agriculture Marketing Service in this - an  
18 agency of the United States Department of Agriculture.

19 MS. CARTER: My name is Antoinette Carter. That  
20 is spelled A-n-t-o-i-n-e-t-t-e, Carter - C-a-r-t-e-r.

21 I am employed as a Marketing Specialist with the  
22 United States Department of Agriculture, Agricultural  
23 Marketing Service, Dairy Programs, Order Formulation and  
24 Enforcement Branch in Washington D.C.

25 MR. ROWER: Jack Rower, R-o-w-e-r. I am a

1 Marketing Specialist with USDA in Washington, D.C.

2 MR. STOKER: Brad Stoker, S-t-o-k-e-r, Marketing  
3 Specialist, USDA, Washington D.C.

4 THE COURT: Fine. And for the proponents?

5 MR. BESHORE: Marvin Beshore, B-e-s-h-o-r-e,  
6 representing Southern Marketing Agency Inc.

7 With me are Jeffrey F. Simms, the Administrator  
8 for Southern Marketing Inc. and Elvin Holland, Director of  
9 Fluid Marketing and Economic Analysis for Dairy Farmers of  
10 America, who will be a witness on behalf of the proponent.

11 THE COURT: You told me during the break that you  
12 now have the exhibits out?

13 MR. BESHORE: Yes. Thank you.

14 THE COURT: So now it is everybody's obligation to  
15 take a copy so that they do not say I never got one. They  
16 are all out there now, I presume?

17 MR. BESHORE: Mr. Holland's prepared statement, as  
18 well as the exhibits which accompany it, are available for  
19 all participants. I know we will have the same advance  
20 copies from all the other participants.

21 THE COURT: Of course you will.

22 MR. HITCHELL: My name is Jeff Hitchell, spelled  
23 H-i-t-c-h-e-l-l. I am the General Manager of Raw Milk  
24 Procurement for the Kroger Company based in Cincinnati,  
25 Ohio, and I will be the witness giving testimony for

1 Proposal Number 4.

2 THE COURT: Alright, sir. Anybody else at that  
3 table?

4 MR. RICCIARDI: Your Honor, good afternoon. I am  
5 Al Ricciardi. I am here on behalf of Sara Farms in  
6 opposition to Proposal 7. I am also here on behalf of  
7 Michael Sumners, who is the proponent of Proposal Number 8.

8 MR. MILTNER: Your Honor, my name is Ryan  
9 Miltner, M-i-l-t-n-e-r, on behalf of Select Milk Producers  
10 and Continental Dairy Products.

11 THE COURT: Anyone else on the other side? Yes,  
12 sir.

13 MR. ENGLISH: Your Honor, I am Charles English,  
14 E-n-g-l-i-s-h, with the law firm of Theland, Reed and  
15 Creest in Washington D.C. I represent Dean Foods and  
16 Prairie Farms, proponents of Proposal Number 5 and some of  
17 those afterwards - I think it is 7 and 10.

18 With me tomorrow will be Gary Lee from Prairie  
19 Farms. Also from Dean Foods, Ernest Yates, William Curley  
20 - C-u-r-l-e-y - and then as Consultants, Paul Chrest - C-h-  
21 r-e-s-t - and Carl Conober - C-o-n-o-b-e-r.

22 THE COURT: Any other appearances? Okay.

23 Very well, the Government is ready?

24 MS. DESKINS: Yes. Our first witness is Jeff  
25 Gooch.

1 Whereupon

2 JEFFREY GOOCH,

3 having been first duly sworn, was called as a witness

4 herein and was examined:

5 EXAMINATION

6 BY MS. DESKINS, ESQUIRE:

7 THE COURT: Give you full name now, sir.

8 THE WITNESS: Jeff, J-e-f-f, G. Gooch, G-o-o-c-h.

9 MS. DESKINS: Thank you.

10 Q. Could you please tell us what your business  
11 address is?

12 A. Post Office Box 18030, Louisville, Kentucky,  
13 40261.

14 Q. Could you just tell us briefly about your  
15 educational background?

16 A. I have a Bachelor's Degree in Accounting from the  
17 University of Kentucky.

18 Q. Can you tell us what your current job position  
19 is?

20 A. Assistant to Market Administrator in charge of  
21 Pooling Operations and Auditing.

22 Q. For which Milk Marketing Order?

23 A. The Appalachian Marketing area, Federal Order  
24 Number 5.

25 Q. And can you just tell us what area that Marketing

1 Order covers?

2 A. Southern parts of Indiana, central Kentucky, east  
3 Tennessee, southwest Virginia, North Carolina and South  
4 Carolina.

5 Q. How long have you held your current position?

6 A. Since 1996.

7 Q. Have you held any other positions with the Milk  
8 Market Administrator's Office?

9 A. I was a Field Auditor prior to that.

10 Q. And how many years were you a Field Auditor?

11 A. From 1984 to 1996.

12 THE COURT: Off the record for a second.

13 (OFF THE RECORD)

14 THE COURT: A little problem with the audio - -

15 EXAMINATION RESUMES

16 BY MS. DESKINS, ESQUIRE:

17 Q. Alright, you were just telling us you were an  
18 auditor for a number of years with the Milk Market  
19 Administrator's office?

20 A. Yes, from July 1984 to January, 1996.

21 Q. In regards to your current position, can you just  
22 tell us in general what your job duties are?

23 A. Primarily, to supervise the pooling of the milk  
24 under Federal Order 5, supervise the people that conduct  
25 the audit program and also producers and statistics, and

1 any data processing associated with those two functions.

2 Q. As part of those job duties, did you prepare any  
3 exhibits for this hearing today?

4 A. Yes, or people that I supervise...

5 Q. I'm sorry, I interrupted. I believe you said yes,  
6 either you prepared some information or the people you  
7 supervise did?

8 A. Yes.

9 Q. Let's start with something that is pre-marked as  
10 Exhibit Number 7.

11 (Whereupon, the exhibit referred to was  
12 identified for the record as Government Exhibit Number 7.)

13 Let me just identify it for you - it is called  
14 Compilation of Statistical Material, Appalachian Marketing  
15 Area, January - December 2000.

16 Do you have that?

17 A. Yes.

18 THE COURT: This is the one that has been pre-  
19 marked as Exhibit7?

20 MS. DESKINS: Yes.

21 THE COURT: Thank you.

22 MS. DESKINS: I think I have read off what the  
23 title is about it. Let's just go through it so that we  
24 understand what is in it.

25 Q. The first page would be Page 1 and the second



1 page is Page 2, and it is a map?

2 A. This would be a map of the distributing plants on  
3 Federal Order 5.

4 Q. And that would be for December 2000?

5 A. That is correct.

6 Q. Let's look at Page 3 - can you tell us what that  
7 is?

8 A. That is a map of the producers, by state and  
9 county in December of 2000.

10 Q. Let's go on to Page 4.

11 A. That is a summary total of our annual statistics  
12 for the year 2000. These are released monthly.

13 THE COURT: Sir, could you keep your voice up.  
14 Go ahead.

15 Q. Let's go on to Page 5 - can you tell us what that  
16 is?

17 A. It is a listing of the advance prices for 12  
18 months of 2000.

19 Q. Below it there is another table - Table 3. What  
20 is that a table of?

21 A. For the final prices, released on about the 5<sup>th</sup>.

22 Q. It says here that there is an abbreviation -  
23 NASS. Can you tell us what that is?

24 A. That is the National Agricultural Statistic  
25 Service.

1 Q. Are they an agency with the United States  
2 Department of Agriculture?

3 A. Yes.

4 Q. Let's go on to Page 6 - can you tell us what that  
5 is a table of?

6 A. That is a table of the Class I-II-III-IV and the  
7 uniform prices for skim, butterfat, for the year 2000.

8 Q. Let's move on to Table 5, which is Page 7 - what  
9 is that a table of?

10 A. This is a classification of pool handlers total  
11 milk receipts, sometimes known as Gross Utilization.

12 Q. Let's move on to Table 6.

13 A. It is the receipts and Utilization of other  
14 source milk, overages and opening inventories.

15 Q. Let's go on to the next page, Page 8, Tables 7 and  
16 8 - can you tell us what those tables show?

17 A. This is a classification of pool handlers total  
18 producer milk receipts for the year 2000.

19 Q. Let's move on to Table 9 on Page 9.

20 A. It is the Class I Utilization, broken down by  
21 product for the package, and the other, giving the total  
22 Class I use.

23 Q. Let's look at Table 10 - what does that show?

24 A. This is the Class II Utilization for 2000.

25 Q. Let's move on to Page 10. There are two tables on

1 that page. Can you tell us about them?

2 A. Table 11 is the Class III Utilization and Table  
3 12 is the Class IV Utilization.

4 Q. Let's move on to Tables 13 and 14 on Page 11.

5 A. Table 13 is the Class I package products, in and  
6 out of area distribution.

7 Q. When you have in and out of area, by in area, do  
8 you mean within Federal Order Number 5 Marketing Area?

9 A. That is correct.

10 Q. Let's go on to Page 12.

11 A. Table 15 is the number of producers by states for  
12 the year 2000.

13 Q. Let's go on to Table 16.

14 A. Table 16 are the pounds of milk received by  
15 producers, by states for the year 2000, state and  
16 geographic codes.

17 Q. Let's then go on to Table 17, which is on Page  
18 14.

19 A. Table 17 is a listing by state and county of  
20 producers' milk for the month of May, 2000.

21 Q. And that table goes on for a couple of pages,  
22 correct?

23 A. That is correct - through Page 23.

24 Q. And on Page 24, is it the same table except for a  
25 different month of 2000?

1 A. Yes, it would be for December 2000.

2 Q. And does the table move on for a couple of pages?

3 A. Through Page 34.

4 Q. Let's turn to Page 35 then. Can you tell us what  
5 Page 35 shows?

6 A. Table 19 is a monthly listing of pool  
7 distributing plants that participated in the pool. It moves  
8 on a listing of the supply plants, cooperatives qualifying  
9 as pool handlers, other Order plants within area route  
10 distribution, listed by Order, producer/handler plants,  
11 partially regulated plants and governmental agency plants.

12 Q. Did you get a chance to look through what has  
13 been marked as Exhibit 7?

14 A. Correct.

15 Q. Is it correct, to the best of your knowledge?

16 A. Yes.

17 Q. This was prepared under your supervision and  
18 control?

19 A. Yes.

20 MS. DESKINS: Your Honor, at this time, I would  
21 move for the admission of Exhibit 7.

22 THE COURT: Any objections? There being none,  
23 exhibit 7 is received.

24 (Whereupon, the exhibit referred to was received  
25 into the record as Government Exhibit Number 7.)

1 Q. Let's move on to what has been marked as what is  
2 going to be Exhibit 8, 9 and 10.

3 (Whereupon, the exhibit referred to was  
4 identified for the record as Government Exhibit Numbers 8 -  
5 10.)

6 Let me hand a copy to Judge Palmer.

7 MS. DESKINS: Just so we know we are working with  
8 the same documents, I have Exhibit 8 as the Compilation of  
9 Statistical Material, Appalachian Marketing Area, January -  
10 December 2001.

11 THE COURT: Correct.

12 MS. DESKINS: Then I have Exhibit 9 which would  
13 be the same thing, but for 2002.

14 THE COURT: That is correct.

15 MS. DESKINS: And Exhibit 10 would be the same  
16 thing, except the year would be 2003.

17 THE COURT: That is correct.

18 Q. Since you prepared this exhibits, did you get a  
19 chance to look through them?

20 A. Yes.

21 Q. Are these the same tables and maps as we saw in  
22 Exhibit 7, but for different years?

23 A. Yes.

24 Q. I think there is one exception - a map that is  
25 missing from 2003?

1           A.    For 2003 - the number of producers by state and  
2 county is not included in 2003.

3           Q.    But other than that, it would be the same  
4 statistical tables, except for different years?

5           A.    Correct?

6           MS. DESKINS: Judge Palmer, I do not know that we  
7 need to go through each one of those exhibits, unless  
8 people would like us to.

9           THE COURT: Any problems with it? Anybody want  
10 to question about any of those particular exhibits?

11           Do you want to offer those three then, I presume?

12           MS. DESKINS: Yes. I just want to ask him one  
13 more question.

14           Q.    You had a chance to look through them. Are they  
15 correct, to the best of your knowledge?

16           A.    Yes.

17           MS. DESKINS: Okay, now I would like to move for  
18 their admission.

19           THE COURT: Alright, they are received - Exhibits  
20 8, 9 and 10.

21           (Whereupon, the document referred to, having been  
22 previously identified as Government Exhibit Numbers 8 - 10,  
23 was received into evidence.)

24           Q.    Let's move on to what has been pre-marked as  
25 Exhibit 11.

1           (Whereupon, the exhibit referred to was  
2 identified for the record as Government Exhibit Number 11.)

3           Let me read what it is - it is called Producer Milk  
4 Pounds, Source of Milk Production by Order, Unregulated by  
5 State. It is for January 2000 through December 2003.

6           The other exhibit related to it is Exhibit 12.

7           (Whereupon, the exhibit referred to was  
8 identified for the record as Government Exhibit Number 12.)

9           I am just going to read what it is - Number of  
10 Producers, Source of Milk Production by Order, Unregulated  
11 by State, and it is January 2000 through December 2003.

12           Do you have those in front of you?

13           A. Yes.

14           Q. I have read the title of them. Can you just - -  
15 do you have anything you want to add to them, or is that  
16 title self-explanatory?

17           A. Self-explanatory.

18           Q. I have got a question for you. It does have, on  
19 both Exhibit 11 and 12, Northeast, Southeast, Upper Midwest  
20 - does that mean that the - - like for 11, the total  
21 producer pounds came from those marketing areas?

22           A. Yes.

23           Q. But they were pooled on the Appalachian Order?

24           A. That is correct.

25           Q. You have had a chance to look through 11 and 12?

1 A. Yes.

2 Q. Are they correct, to the best of your knowledge?

3 A. Yes.

4 Q. And were they prepared under your supervision and  
5 control?

6 A. Yes.

7 MS. DESKINS: Judge Palmer, I move for the  
8 admission of Exhibits 11 and 12.

9 THE COURT: Mr. Beshore?

10 MR. BESHORE: Just for clarification, is 11 the  
11 Producer Milk Pounds and 12, the number of Producers?

12 MS. DESKINS: Yes.

13 THE COURT: Fine. 11 and 12 are received.

14 (Whereupon, the document referred to, having been  
15 previously identified as Government Exhibit Numbers 11 and  
16 12, was received into evidence.)

17 Q. We have marked as 13 a document that is called  
18 Pool and Payment Dates Per Section, 1000.90, 2000 to 2003.

19 (Whereupon, the exhibit referred to was  
20 identified for the record as Government Exhibit Number 13.)

21 It should have on the front of it Page 162. Do  
22 you have that document?

23 A. Yes.

24 Q. Can you just tell us what it is?

25 A. It is a schedule listing the final pool release



1 dates, the dates that the monies are due to the Producer  
2 Settlement Fund, the Transportation Credit Balancing Fund,  
3 the Administrative Fund and the Market Service Fund, the  
4 dates that monies are payable from the Producer Settlement  
5 Fund, the Transportation Credit Balancing Fund - also when  
6 Mill payments are due to cooperatives and to non-member  
7 producers.

8 Q. Just so I can clarify something, when it has  
9 Issue 10-22-02 on Page 162, that is the date this actually  
10 would have been published?

11 A. Yes.

12 Q. And the same thing where it is listed Date on  
13 these pages - that is when it was actually published?

14 A. Correct.

15 Q. And this was prepared under your direction and  
16 control?

17 A. Yes.

18 MS. DESKINS: Your Honor, we move for admission  
19 of Exhibit 13.

20 THE COURT: Any objection? There being none, it  
21 is received.

22 (Whereupon, the document referred to, having been  
23 previously identified as Government Exhibit Number 13, was  
24 received into evidence.)

25 Two things that I did not get to see - - did you

1 get your copies over there? Fine.

2 We all understand we need - - I do not know if I  
3 need it this early. We need an original and four exhibits,  
4 so you might make note of that. That is what we are doing  
5 here - getting an original and four more exhibits that are  
6 going in. Very well, Exhibit 13 is received.

7 Q. The next exhibit is marked as 14 and it is a map.  
8

9 (Whereupon, the exhibit referred to was  
10 identified for the record as Government Exhibit Number 14.)  
11 It is called Pool Distributing Plant, Appalachian Marketing  
12 Area, December 2003. Do you have that?

13 A. Yes.

14 Q. Was this map prepared under your direction and  
15 control?

16 A. Yes.

17 Q. And just tell us for the record what the stars on  
18 the map mean?

19 A. They are locations of Pool distributing plants in  
20 Federal Order 5.

21 MS. DESKINS: Your Honor, move for the admission  
22 of Exhibit 14?

23 THE COURT: Any objections? There appear to be  
24 none. It is received.

25 (Whereupon, the document referred to, having been

1 previously identified as Government Exhibit Number 14, was  
2 received into evidence.)

3 Q. The next exhibit I have - it would be Exhibit 15  
4 - is called Appalachian Marketing Area Maps for the year  
5 2000.

6 (Whereupon, the exhibit referred to was  
7 identified for the record as Government Exhibit Number 15.)

8 Let's just look at this. If you open it up on  
9 Page 168, there is a map.

10 A. Yes.

11 THE COURT: What page?

12 MS. DESKINS: It should be page number 168. Yours  
13 does not have page numbers? Can we go off the record?

14 THE COURT: Yes.

15 (OFF THE RECORD)

16 THE COURT: There was a little confusion about  
17 the numbering, but the way these exhibits are, even though  
18 we started with Exhibit Number 7, it is going through  
19 Number 21 for the Government, and the pages have been  
20 numbered consecutively, starting with Number 7 and going all  
21 the way through.

22 So you may have, for example, in this particular  
23 exhibit - - let's take a look at Exhibit 14. It has a page  
24 number at the bottom - Page 166, even though it is a one-  
25 page exhibit. New sets have been distributed to everybody,

1 so we now know those numbers.

2 Okay, back to testimony.

3 EXAMINATION RESUMES

4 BY MS. DESKINS, ESQUIRE:

5 Q. Let's look at Exhibit 15. Turn to the Page 168 -  
6 it is a map of Appalachian Marketing Area, Federal Order  
7 Number 5. Do you see that?

8 A. Yes.

9 Q. Can you tell us what this map is supposed to  
10 show?

11 A. It is showing milk production by state and county  
12 for unrestricted data.

13 Q. What do you mean by unrestricted data?

14 A. Three or more producers.

15 Q. Okay, so if the data is less than three  
16 producers, you can not release it?

17 A. Correct.

18 Q. And that is because it would be giving away  
19 confidential information?

20 A. Correct.

21 Q. Okay, let's then turn to the next page. Can you  
22 tell us what that is?

23 A. That is a table showing the amount of pounds of producer  
24 milk. The top line is the amount representing what is on  
25 the map. Then there is a listing of other states with

1 county restricted data, and then a subtotal restricted  
2 data, and a total of producer milk with the percent totals  
3 running down the right hand column.

4 Q. Just so I understand, you take the information  
5 from here, it is plotted on this map?

6 A. The information in the first line.

7 Q. Okay, the first line of - - let's just run through  
8 an example. We take - - let's just start with Kentucky.  
9 How is that information plotted on the map?

10 A. The Kentucky information that is on the map would  
11 be included in the total of the 450,284,545. The Kentucky  
12 production under other states, county data restricted for  
13 1,391,462 is not colored on the map.

14 Q. Okay. Let's move on then to the next map. This  
15 would be the same information, but for a different month in  
16 2000?

17 A. That is correct. This is for February.

18 Q. And it has the table behind that now?

19 A. Correct.

20 Q. And this just goes through for every month in  
21 2000 - it plots on the map this information?

22 A. Correct.

23 Q. You have had a chance to look through this,  
24 correct?

25 A. Yes.

1 Q. Is it correct, to the best of your knowledge?

2 A. Yes.

3 Q. And was it prepared under your direction and  
4 control?

5 A. Yes.

6 MS. DESKINS: Your Honor, at this time, I move  
7 for the admission of Exhibit 15.

8 THE COURT: Does everybody understand 15? Any  
9 objection to it?

10 It is received.

11 (Whereupon, the document referred to, having been  
12 previously identified as Government Exhibit Number 15, was  
13 received into evidence.)

14 Q. We have already marked as Exhibit 16 a document  
15 that is entitled Appalachian Marketing Area Map for 2001.

16 (Whereupon, the exhibit referred to was  
17 identified for the record as Government Exhibit Number 16.)

18 Exhibit 17 has been marked as Appalachian  
19 Marketing Area Map for 2002.

20 (Whereupon, the exhibit referred to was  
21 identified for the record as Government Exhibit Number 17.)

22 And Exhibit 18 is Appalachian Marketing Area Map for  
23 2003.

24 (Whereupon, the exhibit referred to was  
25 identified for the record as Government Exhibit Number 18.)

1 Do you have those in front of you, sir?

2 A. Yes.

3 Q. We just talked about what 15 contained. Were  
4 Exhibits 16, 17, and 18 prepared the same way?

5 A. Yes.

6 Q. And what they show is a map of the marketing  
7 area, with the counties showing milk production?

8 A. Correct.

9 Q. Have you had a chance to look through 16, 17 and  
10 18?

11 A. Yes.

12 Q. Were they prepared under your direction and  
13 control?

14 A. Yes.

15 Q. Are they correct, to the best of your knowledge?

16 A. Yes.

17 MS. DESKINS: Your Honor, unless there is an  
18 objection, I would move for the admission of 16, 17 and 18.

19 THE COURT: Is there any objection?

20 There appears to be none. Let's receive them.

21 (Whereupon, the document referred to, having been  
22 previously identified as Government Exhibit Numbers 16 -  
23 18, was received into evidence.)

24 Q. Let's move on to Exhibit 19.

25 (Whereupon, the exhibit referred to was

1 identified for the record as Government Exhibit Number 19.)

2 I have Exhibit 19 marked as Total Sales into  
3 Federal Order 5 From Other Areas, Appalachian Marketing  
4 Area, and it is for the years 2000 to 2003.

5 A. Yes.

6 Q. Do you have that document in front of you?

7 A. Yes.

8 Q. Is there anything you want to tell us about this  
9 document?

10 A. I think it is self-explanatory.

11 Q. Was this prepared under your direction and  
12 supervision?

13 A. Yes.

14 Q. And is it accurate, to the best of your  
15 knowledge?

16 A. Yes.

17 Q. Let me just clarify one thing. It has on here  
18 Federal Order 1, Federal Order 7, Federal Order 32 and  
19 Federal Order 33.

20 When you have those on there, does that refer to  
21 milk that came to Order 5 from those areas?

22 A. Yes.

23 MS. DESKINS: Your Honor, I move for the  
24 admission of Exhibit 19.

25 THE COURT: That one, I did not get yet.



1           Any problem with receiving Exhibit 19? There appears  
2 to be none. 19 is received.

3           (Whereupon, the document referred to, having been  
4 previously identified as Government Exhibit Number 19, was  
5 received into evidence.)

6           Q. Let's move on to what I have marked as Exhibit  
7 20.

8           (Whereupon, the exhibit referred to was  
9 identified for the record as Government Exhibit Number 20.)

10           It should read Total Class I Sales of  
11 Distributing Plants, Appalachian Marketing Area, Federal  
12 Order 5, January through December 2000.

13           I have on the bottom the page number as 268. Do  
14 you have that?

15           A. Yes.

16           Q. Do you want to tell us anything about it, or is  
17 the title self-explanatory?

18           A. I think it is self-explanatory.

19           Q. When you look at this document, behind it there  
20 is - - it is for the next year, 2001?

21           A. Yes.

22           Q. And then it would also be for 2002 on Page 270?

23           A. Correct.

24           Q. And for 2003 on 271?

25           A. Correct.

1 Q. You have had a chance to look through it,  
2 correct?

3 A. Yes.

4 Q. And is it correct, to the best of your knowledge?

5 A. Yes.

6 MS. DESKINS: Your Honor, I would move for the  
7 admission of Exhibit 20.

8 THE COURT: Any objection? It is received.

9 (Whereupon, the document referred to, having been  
10 previously identified as Government Exhibit Number 20, was  
11 received into evidence.)

12 Q. The next exhibit I have has been marked as  
13 Exhibit 21, and it is called Computation of Uniform Prices,  
14 Appalachian Marketing Area, Federal Order Number 5, January  
15 2000 to December 2003.

16 (Whereupon, the exhibit referred to was  
17 identified for the record as Government Exhibit Number 21.)

18 A. Yes.

19 Q. You have that document in front of you?

20 A. Yes.

21 Q. My first question for you is, if you look at Page  
22 273 of that exhibit, which is Exhibit 21, and Page 274 they  
23 looked at - -

24 A. We changed the format in February of 2000 to  
25 better fit on our web page.

1 Q. But it would contain the same information?

2 A. Correct.

3 Q. And just so the record is clear, it is published  
4 on both the front and back?

5 A. Correct.

6 Q. Was this prepared under your direction and  
7 control?

8 A. Yes.

9 Q. And is it correct, to the best of your knowledge?

10 A. Yes.

11 MS. DESKINS: Your Honor, I move for the  
12 admission of Exhibit 21.

13 THE COURT: Any objection? There being none, it  
14 is received.

15 (Whereupon, the document referred to, having been  
16 previously identified as Government Exhibit Number 21, was  
17 received into evidence.)

18 MS. DESKINS: Your Honor, I have another group of  
19 exhibits. Could we go off the record so we can get...?

20 THE COURT: Yes, let's take a short recess while  
21 you get those together.

22 (OFF THE RECORD)

23 THE COURT: You want to continue, please, Ms.  
24 Deskins?

25 MS. DESKINS: Yes.

## EXAMINATION RESUMES

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BY MS. DESKINS, ESQUIRE:

Q. Mr. Gooch, did you prepare any material for this hearing at the request of any of the parties?

A. Yes.

Q. Let's look at the material you prepared at the request of people. I have marked something as Exhibit 22, and its title is Appalachian Pricing Zones?

(Whereupon, the exhibit referred to was identified for the record as Government Exhibit Number 22.)

A. Correct.

Q. Do you have a copy of that?

A. Yes.

Q. Let's just clarify this. I think it is for the next 7 exhibits, you prepared them at the request of somebody?

A. Yes.

Q. Can you tell us who you prepared them for?

A. These were prepared for Chip English.

Q. And you have a copy of Exhibit 22, which is Appalachian Pricing Zones?

A. Correct.

Q. Was this prepared under your supervision and control?

A. Yes.

1 Q. And is it correct, to the best of your knowledge?

2 A. Yes.

3 MS. DESKINS: Your Honor, I move for the  
4 admission of Exhibit 22.

5 THE COURT: Any objection? There being none, it  
6 is received.

7 (Whereupon, the document referred to, having been  
8 previously identified as Government Exhibit Number 22, was  
9 received into evidence.)

10 Q. The next exhibit I have marked as 23, and what it  
11 is called is Producer Milk Pounds Not Produced in the  
12 Marketing Area, Appalachian Marketing Area, Federal Order  
13 5, January 2000 to December 2003.

14 (Whereupon, the exhibit referred to was  
15 identified for the record as Government Exhibit Number 23.)

16 Sir, do you have a copy of that document?

17 A. Yes.

18 Q. And was that one also prepared at the request of  
19 Mr. English?

20 A. Yes.

21 Q. It seems like the title is self-explanatory, but  
22 is there anything else you want to add about it?

23 A. I think it is self-explanatory.

24 Q. Is it correct, to the best of your knowledge?

25 A. Yes.

1 Q. And this was prepared under your direction and  
2 control?

3 A. Yes, it was.

4 MS. DESKINS: Your Honor, I move for the  
5 admission of Exhibit 23.

6 THE COURT: Being no objection, it is received.

7 (Whereupon, the document referred to, having been  
8 previously identified as Government Exhibit Number 23, was  
9 received into evidence.)

10 Q. The next exhibit I have marked as Exhibit 24, and  
11 the title of it is Producer Milk Pounds, Milk Produced in  
12 the Market Area and Outside the Market Area, Appalachian  
13 Marketing Area, Federal Order 5, and it is January 2000  
14 through December 2003.

15 (Whereupon, the exhibit referred to was  
16 identified for the record as Government Exhibit Number 24.)

17 Do you have that document in front of you, sir?

18 A. Yes.

19 Q. I have got a question for you on this. Well,  
20 maybe I don't. Actually I don't have a question for you on  
21 it.

22 Was this prepared under your supervision and  
23 control?

24 A. Yes.

25 Q. And is it correct, to the best of your knowledge?

1 A. Yes.

2 MS. DESKINS: Your Honor, I would move for the  
3 admission of Exhibit 24.

4 THE COURT: No objection? It is received.

5 (Whereupon, the document referred to, having been  
6 previously identified as Government Exhibit Number 24, was  
7 received into evidence.)

8 Q. The next exhibit I have marked as Exhibit 25.

9 (Whereupon, the exhibit referred to was  
10 identified for the record as Government Exhibit Number 25.)

11 The title of this is Estimated Computation of  
12 Uniform Prices. Do you have that document in front of you?

13 A. Yes.

14 Q. For Exhibit 25, that is just the first page, that  
15 is the 2000 summary. What else is contained in that  
16 exhibit?

17 A. The back-up, showing where the price computations  
18 for Section 60 were combined for the 12 months of 2000.

19 Q. Have you had a chance to look through Exhibit 25?

20 A. Yes.

21 Q. And is it correct, to the best of your knowledge?

22 A. Yes.

23 Q. And again, this was - - you prepared it at Mr.  
24 English's request?

25 A. Correct.

1 MS. DESKINS: Your Honor, I move for the  
2 admission of Exhibit 25.

3 THE COURT: Very well. There being no objection,  
4 it is received.

5 (Whereupon, the document referred to, having been  
6 previously identified as Government Exhibit Number 25, was  
7 received into evidence.)

8 Q. The next document I have is the same thing,  
9 except it is for the year 2001. It should be marked as  
10 Exhibit 26.

11 (Whereupon, the exhibit referred to was  
12 identified for the record as Government Exhibit Number 26.)

13 Do you have Exhibit 26 with you?

14 A. Yes.

15 Q. This was prepared under your supervision and  
16 control?

17 A. Yes, it was.

18 Q. And is it correct, to the best of your knowledge?

19 A. Yes, it is.

20 Q. Okay, it is the same thing as Exhibit 25, except  
21 it is for 2001?

22 A. Correct.

23 MS. DESKINS: Your Honor, I move the admission of  
24 Exhibit 26.

25 THE COURT: No objection? It is received.



1           (Whereupon, the document referred to, having been  
2 previously identified as Government Exhibit Number 26, was  
3 received into evidence.)

4           Q.    The next exhibit is Exhibit 27.

5           (Whereupon, the exhibit referred to was  
6 identified for the record as Government Exhibit Number 27.)

7           It is the same thing as 25 and 26, except it is  
8 for the year 2002. Do you have a copy of Exhibit 27 in  
9 front of you?

10          A.    Yes.

11          Q.    And you have had a chance to look through it?

12          A.    Yes, I have.

13          Q.    Is it correct, to the best of your knowledge?

14          A.    Yes.

15          MS. DESKINS: Your Honor, I would move for the  
16 admission of Exhibit 27.

17          THE COURT: Very well. Received.

18          (Whereupon, the document referred to, having been  
19 previously identified as Government Exhibit Number 27, was  
20 received into evidence.)

21          Q.    The next exhibit is the same thing, except it is  
22 a summary for the year 2003. Have you had a chance to look  
23 through Exhibit 28?

24          (Whereupon, the exhibit referred to was  
25 identified for the record as Government Exhibit Number 28.)

1 A. Yes.

2 Q. Is it correct, to the best of your knowledge?

3 A. Yes.

4 MS. DESKINS: Your Honor, I move for the  
5 admission of Exhibit 28.

6 THE COURT: Very well. It is received.

7 (Whereupon, the document referred to, having been  
8 previously identified as Government Exhibit Number 28, was  
9 received into evidence.)

10 Q. In addition to Mr. English, did anyone else ask  
11 you to prepare some exhibits for this hearing?

12 A. Yes.

13 Q. Was one of those people the Organization of  
14 Southern Marketing Agency?

15 A. Yes.

16 Q. Do you have in front of you a document that is  
17 titled Transportation Credit History - I'm sorry,  
18 Transportation Credit Fund History for January 2000 - 2003?

19 A. Yes.

20 Q. We were on Exhibit Number 29 - -

21 THE COURT: Yes, 29 is next open.

22 (Whereupon, the exhibit referred to was  
23 identified for the record as Government Exhibit Number 29.)

24 Q. Sir, I believe the title of 29 is self-  
25 explanatory. Is there anything you want to add to it?

1           A.    No.

2           MS. DESKINS:  Your Honor, I would move for the  
3 admission of Exhibit 29.

4           THE COURT:  No objection.  It is received.

5           (Whereupon, the document referred to, having been  
6 previously identified as Government Exhibit Number 29, was  
7 received into evidence.)

8           Q.    The next exhibit that I have marked is 30.

9           (Whereupon, the exhibit referred to was  
10 identified for the record as Government Exhibit Number 30.)

11           It is titled Non-Pool Plants, Appalachian  
12 Marketing Area, Federal Order 5, September 2003.  Do you  
13 have a copy of that exhibit?

14           A.    Yes.

15           Q.    Is there anything you want to add to it, about  
16 what this exhibit contains?

17           A.    I think it is self-explanatory.

18           MS. DESKINS:  Your Honor, I move for the  
19 admission of Exhibit 30.

20           THE COURT:  Any objection?  There being none, the  
21 exhibit is received.

22           (Whereupon, the document referred to, having been  
23 previously identified as Government Exhibit Number 30, was  
24 received into evidence.)

25           Q.    I have what I am marking as Exhibit 31, called

1 Route Disposition 2000.

2 (Whereupon, the exhibit referred to was  
3 identified for the record as Government Exhibit Number 31.)

4 It is for the Appalachian Marketing Area. Do you  
5 have a copy of that in front of you?

6 A. Yes.

7 Q. Is it correct, to the best of your knowledge?

8 A. Yes.

9 MS. DESKINS: Your Honor, I would move for the  
10 admission of Exhibit 31.

11 THE COURT: There being no objection, it is  
12 received.

13 (Whereupon, the document referred to, having been  
14 previously identified as Government Exhibit Number 31, was  
15 received into evidence.)

16 Q. The next exhibit I have - which I have marked as  
17 32 - is Producer Milk Pounds, Source of Milk Production by  
18 Order, and it is January 2000 through December 2003.

19 (Whereupon, the exhibit referred to was  
20 identified for the record as Government Exhibit Number 32.)

21 Do you have that document?

22 A. Yes.

23 Q. I think there is a related one, which I will mark  
24 as Exhibit 33, and it is called Number of Producers, Source  
25 of Milk Production by Order, and it is January 2000 through

1 December 2003.

2 (Whereupon, the exhibit referred to was  
3 identified for the record as Government Exhibit Number 33.)

4 A. Yes.

5 Q. That would be Exhibit 33 - did you prepare those  
6 documents?

7 A. Yes.

8 Q. And you prepared them at the request of the  
9 Southern Marketing Agency?

10 A. Yes.

11 Q. Are they correct, to the best of your knowledge?

12 A. Yes.

13 MS. DESKINS: Your Honor, I move for the  
14 admission of Exhibit 32 and 33.

15 THE COURT: Mr. English?

16 MR. ENGLISH: Are they identical to Exhibits 11  
17 and 12? Are they the same as what is also in Exhibits 11  
18 and 12?

19 THE WITNESS: No.

20 THE COURT: Does that take care of it for you?

21 If you are going to have some questions later,  
22 fine. But there is no objection, so they are both  
23 received. Thank you.

24 (Whereupon, the document referred to, having been  
25 previously identified as Government Exhibit Numbers 32 and

1 33, was received into evidence.)

2 Q. Do you have in front of you - - okay, all those  
3 documents that we have been admitting, let me just get the  
4 numbers right. It would be 29 - 33 - you did those at the  
5 request of the Southern Marketing Agency?

6 A. Correct.

7 Q. Okay, now were there some exhibits that you  
8 prepared both for the Southern Marketing Agency and also  
9 for Mr. English?

10 A. Yes.

11 Q. I am going to mark a document. It is titled  
12 Compilation of Statistical Material - - I'm sorry, no. Oh,  
13 yes, that is on the cover - Compilation of Statistical  
14 Material Prepared at the Request of Chip English and  
15 Southern Marketing Agency - do you have that document?

16 (Whereupon, the exhibit referred to was  
17 identified for the record as Government Exhibit Number 34.)

18 A. Yes.

19 Q. This would be the one that is for January 2000.  
20 Do you have it?

21 A. Yes.

22 Q. Let's talk about that document. It is really a  
23 list of Producer Milk by state and county, correct?

24 A. Correct.

25 Q. It is pretty long, but it just all shows each

1 month, how many Producers in a county in milk production?

2 A. Correct.

3 Q. And you also - - did you do any for Mr. English  
4 and Southern Marketing Agency for any other years?

5 A. The date is here for 2000, 2001, 2002 and 2003,  
6 as backup for the schedules.

7 MS. DESKINS: Let me hand those to the Court.  
8 Let me just identify for the record what 35 is.

9 (Whereupon, the exhibit referred to was  
10 identified for the record as Government Exhibit Number 35.)

11 35 would be the statistical information for 2001  
12 regarding Producer Milk by state and county.

13 36 is Producer Milk by state and county for 2002.

14 (Whereupon, the exhibit referred to was  
15 identified for the record as Government Exhibit Number 36.)

16 And then 37 is Producer Milk by county for 2003.

17 (Whereupon, the exhibit referred to was  
18 identified for the record as Government Exhibit Number 37.)

19 Q. Do you have all of those exhibits?

20 A. Yes.

21 Q. And you have had a chance to look through all of  
22 them?

23 A. Yes.

24 Q. Are they correct, to the best of your knowledge?

25 A. Yes.

1 MS. DESKINS: Your Honor, I would move for the  
2 admission of Exhibits 34 - 37.

3 THE COURT: Any objection to any of those? There  
4 appears to be none. They are all received.

5 (Whereupon, the document referred to, having been  
6 previously identified as Government Exhibit Numbers 34 -  
7 37, was received into evidence.)

8 Q. Sir, did you prepare any other exhibits at  
9 someone's request?

10 A. No.

11 MS. DESKINS: Your Honor, that is all I have.

12 THE COURT: Are you ready for examination,  
13 Counsel? Do you want to start Mr. Beshore?

14 MR. BESHORE: I would happy to confer.

15 THE COURT: If anybody wants to take a second  
16 just to collect their thoughts, would that help?

17 MS. DESKINS: I think it would.

18 THE COURT: Okay, let's take a recess for just a  
19 minute.

20 (OFF THE RECORD)

21 THE COURT: Let's go to record. First, Ms.  
22 Deskins, can you explain that numbering by page of those  
23 exhibits again?

24 MS. DESKINS: Sure. Let me just get my notes.

25 Okay, the way the numbering works is from Exhibit



1 7 through 21, they are numbered sequentially, and those are  
2 the exhibits that the Market Administrator's office prepared  
3 for the hearing.

4 For the documents that were prepared at the  
5 request of Mr. English, they are also numbered  
6 sequentially, and those would be Exhibit 22 through 28.

7 And then for the exhibits that were prepared at the  
8 request of the Southern Marketing Agency, they are numbered  
9 sequentially and they start with Exhibit 29 through Exhibit  
10 33.

11 And that is how the sequential numbering works.

12 THE COURT: Very well. Thank you so much.

13 Would you come to the microphone and give your  
14 name?

15 MR. RICCIARDI: Good afternoon, Mr. Gooch. I am  
16 Al Ricciardi. I am here on behalf of Sara Farms and also  
17 Mr. Sumners. I have been overwhelmed by this statistical  
18 information, but I will try to see if I can keep it in some  
19 kind of Order.

20 EXAMINATION

21 BY MR. RICCIARDI, ESQUIRE:

22 Q. I am going to refer you to Exhibits 7, 8, 9 and  
23 10 initially. Ready to go?

24 A. Yes.

25 Q. Let's start with Exhibit 7. As I understand it

1 from the title, this is information for the period in the  
2 Appalachian Marketing Area from January to December of 2000  
3 - am I correct?

4 A. That is correct.

5 Q. Can you tell me how many producer/handlers there  
6 were during that period of time, sir?

7 A. According to the list, three.

8 Q. Are those producer/handlers within the marketing  
9 area of Order Number 5?

10 A. Yes.

11 Q. Can you list those for us?

12 A. Bob Jones University, Jackson Dairy and Mapleview  
13 Farms.

14 Q. And is Mapleview Farms actually a  
15 producer/handler or is it a full distributing plant?

16 A. It is a producer/handler.

17 Q. Can you take a look at the second page of Exhibit  
18 Number 7, which has a map showing Federal Order Number 5,  
19 full distributing plant - do you see that?

20 A. Yes.

21 Q. Is Mapleview listed there as a full distributing  
22 plant?

23 A. Yes, they are.

24 Q. So is Mapleview a producer/handler or a full  
25 distributing plant?

1           A.    That map would be in error.  It would be a  
2 producer/handler.

3           Q.    So the map is wrong and not the statistical  
4 information?

5           A.    Correct.

6           Q.    How do you know that?

7           A.    Just from my experience in running the pool,  
8 Mapleview has always been a producer/handler.

9           Q.    Can you tell us, in the information in Exhibit 7  
10 or anywhere else, the amounts of production per month into  
11 Order Number 5 during the period from January to December  
12 of 2000, by pounds, by Mapleview Farms?

13          A.    That would be proprietary.

14          Q.    So the information, because there are three or  
15 less producer/handlers, is proprietary - is that correct?

16          A.    Yes.

17          Q.    Let's go then to Exhibit Number 8.  I will ask the  
18 same question - during the period from January of 2001  
19 through December of 2001, how many producer/handlers were  
20 there in Federal Order Number 5?

21          A.    Two.

22          Q.    And what are those?

23          A.    Jackson Dairy and Mapleview Farms.

24          Q.    So Bob Jones University had dropped out as a  
25 producer/handler in the year from 2000 to 2001 - is that

1 correct?

2 A. Correct.

3 Q. Let's go ahead and get to Exhibit Number 9. For  
4 the information that I am asking you, you are taking a look  
5 specifically at Table 19 that is attached to Exhibits 7, 8,  
6 9 and 10, correct?

7 A. Correct.

8 Q. Let's go to Exhibit Number 9, this time for the  
9 period of January to December of 2002, and I will ask  
10 specifically then how many producer/handlers were there in  
11 Order Number 5 during that period of time?

12 A. One.

13 Q. And who was that?

14 A. Mapleview Farms.

15 Q. So now we have another producer/handler that has  
16 dropped out in that succeeding year, correct?

17 A. Correct.

18 Q. Let's go to Exhibit Number 10. This is the period  
19 of January through December of 2003, and how many  
20 producer/handlers were there during that period of time in  
21 Order Number 5?

22 A. One.

23 Q. Who was that?

24 A. Mapleview Farms.

25 Q. Is Mapleview Farms currently a producer/handler

1 in this Order?

2 A. Yes.

3 Q. And because of the fact that, again, there are  
4 three or less producer/handlers in Order Number 5, there is  
5 no statistical information as to the amount of pounds  
6 produced by Mapleview Farms, correct?

7 A. Correct.

8 Q. I noticed that on Exhibit 10, as part of Table 19  
9 on the next to the last page - and I don't have it numbered,  
10 I apologize - there is an indication that there was some  
11 milk that was sold from Order Number 131 by Shamrock Foods  
12 into Order Number 5. Am I correct about that?

13 A. Correct.

14 Q. That was in December of that year?

15 A. Yes.

16 Q. Let me ask you to take a look now if you would  
17 for me at Exhibit Number 15. These are all documents that  
18 you testified that you had prepared or were prepared under  
19 your direction - am I correct?

20 A. Correct.

21 Q. The last page for December of 2000 - do you have  
22 that?

23 A. Yes.

24 Q. There is a footnote there - Footnote Number 1 -  
25 it is restricted information, but apparently from the

1 footnote, it represents milk production from New Mexico and  
2 Oklahoma. Am I to understand that certain amounts of source  
3 of milk production into Order Number 5 during the period of  
4 time in December of 2000 was from New Mexico and Oklahoma?

5 A. Correct.

6 Q. Do you have any information as to the cost of  
7 transportation that was paid for that milk?

8 A. No, I do not.

9 Q. Because that would be information that is  
10 restricted or information that you do not normally have?

11 A. I do not have that information. It is not  
12 required to be reported to us.

13 Q. I understand. Let's go ahead then and move to  
14 Exhibit Number 30. Explain to us again - - I know we have  
15 a title here that says Non-Pool Plants, Appalachian  
16 Marketing Area, Federal Order Number 5, September of 2003.

17 But tell us what Exhibit Number 30 is, please.

18 A. It is a listing of the non-pool plants  
19 geographically located within the boundaries of Federal  
20 Order Number 5.

21 Q. For that particular month?

22 A. Yes, September of 2003.

23 Q. Alright, and I understand that we looked at a  
24 little more than halfway down - there is a listing for  
25 Mapleview in Hillsborough, North Carolina as a processing

1 plant, and the plant status is producer/handler. Am I  
2 correct?

3 A. Correct.

4 Q. Would that be the only producer/handler plant in  
5 Order Number 5, as of September 2003?

6 A. Yes.

7 Q. As of December 2003, if you know, was Mapleview  
8 the only producer/handler plant in Order Number 5?

9 A. Yes.

10 Q. And sitting here today in February of 2004, if  
11 you know, is Mapleview the only producer/handler in Order  
12 Number 5?

13 A. Yes.

14 MR. RICCIARDI: For the time being, Your Honor,  
15 depending on the questions that are raised, I do not have  
16 any further questions right now.

17 THE COURT: Very well.

18 I gather that Page 2 of each of those exhibits  
19 that we talked about before needs to be revised, in that it  
20 shows Mapleview being something other than a  
21 producer/handler.

22 THE WITNESS: Yes.

23 THE COURT: Which exhibits were they again?

24 MR. RICCIARDI: Exhibits 7 and 8, Your Honor.

25 THE COURT: Just 7 and 8? What about 9 and 10?

1 THE WITNESS: They are removed on 9 and also on  
2 10.

3 THE COURT: So it is just 7 and 8. Does any  
4 other part of those exhibits need correction because of the  
5 Mapleview producer/handler status?

6 THE WITNESS: Not that I am aware.

7 THE COURT: Good enough. The exhibits will be  
8 considered, so subject to correct.

9 Yes, Mr. Beshore?

10 MR. BESHORE: Marvin Beshore, Southern Marketing  
11 Agency.

12 Good afternoon, Mr. Gooch.

13 EXAMINATION

14 BY MR. BESHORE, ESQUIRE:

15 Q. Let me pick up from Exhibit 30, the last exhibit  
16 about which you were questioned.

17 Go to the September 2003 list of non-pool plants.

18 I notice on this list, right below Mapleview, you  
19 list Jackson in Dunn, North Carolina. The category there  
20 is - - the plant status is listed as exempt.

21 Is that the same Jackson Dairy in Dunn, North  
22 Carolina that is listed as a producer/handler on Exhibit 7?

23

24 A. Yes.

25 Q. Can you tell us why it is listed as exempt on



1 Exhibit 30 and as producer/handler on Exhibit 7?

2 A. They changed status in between the two dates.

3 Q. Have they changed their operation in any way, to  
4 your knowledge?

5 A. The level.

6 Q. So for clarification, it is part of the  
7 Regulations that an exempt plant is a plant that processes  
8 a volume less than 150,000 pounds a month?

9 A. That is correct.

10 Q. So if a plant is a producer/handler by structure  
11 - that is, it processes milk that is produced on its own  
12 farm and it is owned by one entity and operates as one  
13 small vertically integrated entity - if it is above 150,000  
14 pounds a month, it is on your producer/handler list and if  
15 it is below, it is on the exempt list, but it is the same  
16 operation, correct?

17 A. Correct.

18 Q. How about on Exhibit 30, Spring Ridge Dairy in  
19 North Carolina? It is listed as exempt. Do you know if -  
20 - has Spring Ridge ever showed up as a producer/handler?

21 A. No.

22 Q. Do you know if it is a producer/handler type  
23 operation, a farm with its own processing plant?

24 A. It would be the same as Jackson.

25 Q. Okay. Do you know if there are any other small -

1 - I will call them producer/handlers. I know they do not  
2 meet the volume, but it is the small - - meet the volume  
3 criteria, one-farm processing plants in the marketing area  
4 that are considered exempt because of their volume?

5 A. None in the marketing area - none that I am aware  
6 of.

7 Q. Let me ask you to turn to Exhibits 15 and 18. I  
8 want to look at the page in Exhibit 15 for January 2000,  
9 and the page in Exhibit 18 for December 2003.

10 The first month for which we have data in this  
11 series, in the last one - - okay? If we look at those data  
12 sets side by side, I notice that the first line of data  
13 production represented on your maps - in January, you  
14 depict that 89 percent of the production in the pool -  
15 total producer milk 89 percent on the map. But in December  
16 2003, you were only able to depict 80 percent of your  
17 producer milk on the map. Do you see that?

18 A. Yes.

19 Q. Can you enlighten us at all as to why there has  
20 been a - - you are unable to depict ten percent - a change  
21 of ten percent less of the producer milk on your map?

22 A. The map and tables were constructed using data  
23 that could be presented on the map without restriction, so  
24 whatever is different would be due to changes in  
25 restriction of the producer data.

1 Q. And for these purposes - for purposes of these  
2 exhibits - restricted data would involve a county in which  
3 there were only one or two producers, for instance -  
4 correct?

5 A. Correct.

6 Q. Other than a county where there are just one or  
7 two producers, are there any other data sets that are not  
8 depicted on the map?

9 A. That would apply for state totals also.

10 Q. So if there is a state in which there are only  
11 one or two producers, you do not show the state total?

12 A. Not as a stand alone state.

13 Q. Okay. Are there any other data sets or data  
14 situations that would require you to restrict the data  
15 shown on this series of maps?

16 A. The maps were constructed using the state and  
17 county data that is released in these last exhibits.

18 Q. And those are exhibits numbered - -

19 A. 34, 35, 36, and 37.

20 Q. So the maps in 15 - 18 depict the data that is  
21 shown in more detail in 34 - 37?

22 A. That is correct.

23 Q. Now sticking with January 2000 and December 2003,  
24 data sets in Exhibit 15 and 18 for a moment, there are a  
25 couple of states that seem to have - - that are in the

1 county data restricted category, that have large increases  
2 in aggregate totals - Michigan, for instance, in January  
3 2000, was 11.6 million and in December 2003, milk has more  
4 than doubled but it is still restricted with 24.5 million.

5 Would that tend to indicate, Mr. Gooch, that  
6 there were a small number of very large farms in Michigan  
7 which came on to the milk supply of Order 5, in all  
8 likelihood?

9 MR. RICCIARDI: Objection, Your Honor. Calls for  
10 speculation.

11 THE COURT: We will let the witness tell us if he  
12 can answer or not. Do you know from the material there?

13 THE WITNESS: All I can say is the Michigan  
14 counties in that period do not meet the requirement to  
15 unrestrict and put them on the map as we presented it.

16 THE COURT: Does that answer your question, Mr.  
17 Beshore?

18 MR. BESHORE: It tells me some.

19 Q. If you look at the Michigan map or the map for  
20 December 2003, are there any Michigan counties identified?

21 A. I do not know.

22 Q. You can not - - I'm sorry. Do you have Exhibit  
23 18?

24 A. Yes.

25 Q. Can you help me read the map, or make sure I am

1 reading it right?

2 A. Sure.

3 Q. Are there any Michigan counties - and I am not  
4 even asking for the names of them or anything - grayed in  
5 or identified on that map?

6 A. None.

7 Q. Now, with that - - but if we look at - - let's  
8 look at Indiana. Indiana went from 9.6 million in January  
9 of 2000 to 15.3 million in December of 2003. In both cases,  
10 it was in the county data restricted category, correct?

11 A. Correct.

12 Q. If we look at Indiana in December 2003, there are  
13 in the map a number of counties identified as sources of  
14 milk production for the Order, correct?

15 A. Correct.

16 Q. But there are none in Michigan - would that mean  
17 that there were no counties in Michigan providing that 24  
18 million pounds with more than two producers?

19 A. If they are not on here, that was the selection  
20 criteria that was used.

21 Q. Okay, and Indiana - just so I understand, and we  
22 all understand what the map shows - - what it shows is some  
23 counties in Indiana which provided milk for the Marketing  
24 Area where there were three or more producers, but some  
25 counties where there were only one or two producers are not

1 identified by shading - is that correct?

2 A. Correct.

3 Q. Let's look at Exhibits 34 and 37 then. Let's look  
4 at January 2000 in Exhibit 34 and December 2003 in Exhibit  
5 37.

6 If we look at December 2003 first, that is toward  
7 the back of Exhibit 37. Do you have that?

8 A. Yes.

9 Q. I think that provides, as you indicated in  
10 previous response to my question, some additional detail to  
11 the mapping in Exhibit 18, correct?

12 A. Correct.

13 Q. And as you indicated, Michigan's lack of shading  
14 on Exhibit 18 is because the counties that supplied milk  
15 had only one or two milk producers within counties, as  
16 indicated on Exhibit 37, correct?

17 A. Correct.

18 Q. So there were a total of twelve producers in  
19 Michigan supplying that 24 million pounds of milk for  
20 December 2003, if I understand Exhibit 37 correctly.

21 A. That is correct.

22 Q. Let's look at Michigan in January of 2000 on  
23 Exhibit 34, if we can. In January of 2000, I gather there  
24 were 16 producers in Michigan that supplied that 11.7  
25 million pounds?

1 A. Correct.

2 Q. Eleven of them supplied all of 142 or 3 thousand  
3 from - - counties, correct?

4 A. Yes.

5 Q. And the other five supplied 11.4 million or so -  
6 does that look about right?

7 A. That would be what the tables...

8 Q. So you had about five dairies - - in Michigan in  
9 January of 2000, you had five dairies averaging between  
10 them 2 million-plus a month. And in December 2003, we have  
11 got 12 dairies averaging 2 million-plus a month for  
12 Michigan. Is my arithmetic about right on those?

13 A. That would be on an average.

14 Q. Let's look at Indiana, January 2003 in Exhibit 34.  
15 We had - - by the way, part of the state of Indiana in the  
16 Marketing Area of Order 5, correct?

17 A. That is correct.

18 Q. The southern tier of counties there - -

19 A. The lower part bordering Kentucky on the western  
20 side.

21 Q. So in January of 2000, there were 282 producers  
22 in the state that supplied 46.4 million pounds of milk to  
23 the Order, I gather from Exhibit 34 - is that correct?

24 A. That is correct.

25 Q. How did that change from December 2003, according

1 to the information on Exhibit 37?

2 A. The total pounds went to 92,694,494. And the  
3 producer count is 291.

4 Q. Is there - - we can set those county figures side  
5 by side for January 2000 and December 2003, and compare  
6 them. Jasper County in Indiana, for instance, had two  
7 producers, then it went to four producers with 22 producers  
8 whose production was restricted in 2000, and went to four  
9 producers with 23.3 million in 2003 December. Is that  
10 correct? Is Jasper County in the Marketing Area, by the  
11 way?

12 A. No, it is not.

13 Q. How about Newton County?

14 A. No, it is not.

15 Q. I have just one other question on this data set,  
16 Mr. Gooch, and then I will move to another topic.

17 Do you - - can you shed any light on what  
18 happened in the state of Indiana with the increase in  
19 production and supply to your market, from 36 million in  
20 January 2003 to 92 million in December - - I'm sorry, 36  
21 million in January of 2000 to 92 million in December of  
22 2003?

23 A. I presented the tables. That is all I can  
24 disclose.

25 Q. Okay, that's fair. Could you turn to Exhibit 29,



1 please, which is titled Transportation Credit Fund History?

2 I want to call your attention to about the middle column  
3 titled Assessments.

4 There are six entries, if I am counting  
5 correctly, of zero dollars in the column for assessments.  
6 Can you explain what that zero dollar indicates?

7 A. Those would be periods in which the Market  
8 Administrator waived the assessment on the Transportation  
9 Credit Fund.

10 Q. So taking the first entry in May 2001, there was -  
11 - the Market Administrator waived any assessment, therefore  
12 there were no funds collected from handlers for the  
13 Transportation Credit Fund in Order 5 - is that correct?

14 A. That is correct.

15 Q. And the same thing in June 2001 and in the other  
16 months when zero is indicated on Exhibit 29?

17 A. Correct.

18 Q. Where there are dollar figures shown in the same  
19 column under Assessments, what is the rate of assessment  
20 that is collected in those months?

21 A. Six and a half cents per hundred weight for milk  
22 classified in Class I.

23 Q. Is that collected from fully regulated handlers  
24 under the Order?

25 A. Correct.

1 Q. Do partially regulated handlers pay into the  
2 Transportation Credit Fund?

3 A. No, they do not.

4 Q. So any of those exhibits that show sales from  
5 other plants in the Order - volumes from other plants -  
6 those volumes do not - including from Order 7 - generate  
7 any transportation credit dollars for the Order, correct?

8 A. Only pool distributing plants pay into the  
9 Transportation Assessment.

10 Q. Okay, and that is on their total Class I volume?

11 A. Class I utilization in that plant - producer  
12 milk.

13 MR. BESHORE: Thank you.

14 THE COURT: Mr. English?

15 MR. ENGLISH: Thank you, Your Honor.

16 I am Charles English for Dean Foods and Prairie  
17 Farms.

18 EXAMINATION

19 BY MR. ENGLISH, ESQUIRE:

20 Q. Let me start, sir, where Mr. Beshore ended, to  
21 see if I can understand one of my favorite subjects -  
22 Transportation credits.

23 THE COURT: Mine, too.

24 MR. ENGLISH: I remember that, Your Honor, and  
25 no, this is not going to be Charlotte 1992.

1 Q. Was there any particular reason why in August  
2 2003, the Market Administrator waived payment of  
3 assessments?

4 A. The Order requires that the assessment be waived  
5 when the fund balance reaches a level that exceeds the  
6 amount of claims paid out in the prior period.

7 Q. So there is a set amount - it is not like there  
8 is any ability of the part of the Marketing Administrator  
9 to make that determination independent of what the fund  
10 numbers actually are, correct?

11 A. Correct. I mean, timing is the only thing.

12 Q. What I mean is the Market Administrator does not  
13 have the option, does not get to look it and say oh, I  
14 think there is enough money - it is a specific Order  
15 language as to the level, based on prior payouts, correct?

16 A. Right, in Section 82 and 81.

17 Q. Talking about August 2003, was that an unusual  
18 month for Order 5, with respect to pricing and resulting  
19 pooling decisions? Was August 2003 an unusual month?

20 A. Are you referring to the class price situation?

21 Q. Yes.

22 A. It was different than most, yes.

23 Q. Is it fair to say that in August 2003, the Class  
24 III price was higher than the - - price for August of 2003  
25 of quarter five? Do you recall?

1 A. Yes.

2 Q. Yes, you recall or yes, it was?

3 A. Yes, it was.

4 Q. Did that result in any unusual percentages of  
5 milk on Order 5, priced at Class III?

6 A. I think the statistical summaries we presented will  
7 show that there was less Class III milk the prior year.

8 Q. Turning back to Exhibit 7 for a moment, I need a  
9 couple clarifications.

10 You were asked some questions by Mr. Ricciardi on  
11 Table 19 regarding the number of producer/handlers. Was  
12 Bob Jones University actually a producer/handler or was it  
13 a government exempt plant?

14 A. They were a government exempt plant.

15 Q. So in reality, instead of being listed for the  
16 four months of 2000 on Table 19 as producer/handler under  
17 Section 1005.8B, they would be more properly listed under  
18 Government Agency Plant on the next page, Section 1005.8E?

19 A. They are a Governmental Agency Plant - yes.

20 Q. So in fact, during 2000, there were always two  
21 producer/handlers, correct?

22 A. Correct.

23 Q. And the rule is not that we do not disclose three  
24 or fewer - it is that we do not disclose two or fewer,  
25 correct?

1           A.    Three or more, we can unrestrict.

2           Q.    But both those plants - the Jackson Plant and the  
3 Mapleview - are still in operation today, correct?

4           A.    Correct.

5           Q.    Going to Exhibit 28 and 27 in front of you, which  
6 are two of the exhibits prepared in response to my request  
7 on behalf of Dean Foods and Prairie Farms, one starts at  
8 Page 32 and runs through 44, and one starts at 45 and runs  
9 through 57. Do you have those in front of you, sir?

10          A.    Yes.

11          Q.    Let me first, by way of example, just ask what  
12 you did to prepare these materials and see if I can confirm  
13 it. For instance, in January of 2002, you simply used  
14 historical data for prices and for the percentage of milk  
15 pooled, but then you waited for the amount of milk on  
16 Orders 5 and 7 in Order to come up with these numbers - is  
17 that correct?

18          A.    I simply combined - - the detail sheets are  
19 behind the summary. I simply combined the Section 60  
20 computations from both Orders into one Section 60  
21 calculation, and presented the numbers as they resulted  
22 from that combination.

23          Q.    But the combination was in terms of absolute  
24 numbers. You did not just average the percentages of 60  
25 percent Order 5 and 57.99 percent Class I, correct?

1 A. No.

2 Q. Turning again to August of 2003, and comparing  
3 it, for instance, to August 2002, and looking at the Class  
4 III utilizations in these markets - Orders 5 and 7 - you  
5 would agree with me that for Order 5, the Class III  
6 utilization dropped from 7.57 percent to 0.79 percent of  
7 the total, correct?

8 A. Correct.

9 Q. And that is an example of what we were talking  
10 about earlier, decisions being made having to do with  
11 pricing, in that the Class III price was ultimately higher  
12 than the blend price for Order 5, correct?

13 A. There was significantly less Class III in August  
14 of 2003 on Order 5, than there was in 2002.

15 Q. Has the industry come to create a term of art for  
16 that circumstance called de-pooling?

17 A. I do not know.

18 Q. Sorry?

19 A. I do not know.

20 Q. You do not know. Do you know of any reason other  
21 than the price that would cause a drop like that, from  
22 month to month, from year to year in your experience, other  
23 than the fact that the Class III price was higher than the  
24 blend price for that one?

25 A. I know of no reason that would cause it.

1 Q. Let me turn, finally, to Exhibit 13. And you  
2 have laid out very clearly, and I appreciate it very much -  
3 - and by the way, I want to thank you. I thought your data  
4 you presented has been tremendous and, if anything, it has  
5 overwhelmed us. But overall it is very complete, and that  
6 is appreciated.

7 Let me ask you do you know whether the payment  
8 dates for Order 5 differ in any way from 1 or 7?

9 A. Not that I am aware of.

10 MR. ENGLISH: Thank you very much.

11 THE COURT: Any other questions? Alright, I  
12 guess we are ready to go on to the next exhibits.

13 Are you ready to proceed?

14 MS. DESKINS: Yes, Your Honor.

15 THE COURT: Go ahead.

16 MS. DESKINS: Can we go off the record?

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

18 (OFF THE RECORD)

19 MR. BESHORE: I need to ask another question,  
20 sir.

21 THE COURT: Please do so.

22 EXAMINATION

23 BY MR. BESHORE, ESQUIRE:

24 Q. In Exhibit 29, the Transportation Credit Fund  
25 History, were there any months in that 48-mont period when

1 payments made from the Fund were pro-rated because there  
2 was not enough money in the Fund to pay the rate to which  
3 claims were otherwise entitled?

4 A. Yes.

5 Q. Can you spot those on the exhibit? I do not know  
6 if they are identified or identifiable or not. How can we  
7 tell if we were going to try and figure that out?

8 A. Well, obviously it is not when there is going to  
9 be a huge balance in there, so as you see the ending  
10 balance, when the ending balance plus the assessment are  
11 not sufficient to pay, that causes a proration. In this  
12 particular example, we cut off at the end of the pool in  
13 December 2003. So additional claims would not be covered  
14 by the balance in that month.

15 Q. So in December 2003, there was definitely a  
16 proration?

17 A. Correct.

18 Q. Has there been proration in other months, to your  
19 knowledge?

20 A. No.

21 MR. BESHORE: Thank you.

22 THE COURT: Let's go off the record for a moment.

23 Short recess.

24 (OFF THE RECORD)

25 Whereupon



1                                   STEVEN DUPREY,  
2   having been first duly sworn, was called as a witness  
3   herein and was examined as follows:

4                                   EXAMINATION

5   BY MS. DESKINS, ESQUIRE:

6                   THE COURT: Ms. Deskins?

7                   MS. DESKINS: Good afternoon.

8           Q.    Could you please state for the record what your  
9   name is?

10          A.    My name is Steven Duprey, D-u-p-r-e-y.

11          Q.    And can you tell us what your current job  
12   position is?

13          A.    I am an Economist with the Southeast Milk  
14   Marketing Order.

15          Q.    And when you say Southeast Milk Marketing Order,  
16   can you tell us what area that Order covers?

17          A.    It covers most of Georgia, all of Alabama,  
18   Mississippi, Louisiana, Arkansas, parts of southern  
19   Missouri, parts of western Tennessee and southwestern  
20   Kentucky.

21          Q.    Also could you just tell us what your educational  
22   background is?

23          A.    I have a Bachelor's Degree in Economics and a  
24   Master's Degree in Agriculture Economics. Both of those  
25   were obtained from Michigan State University.

1 Q. Now how long have you had your current position?

2 A. I have worked since August of 2000 with the  
3 Market Administrator's Office.

4 Q. Now for this hearing, did you prepare any  
5 materials?

6 A. Yes, I did.

7 Q. Okay. You have a document on it that has a green  
8 cover, and I have marked it as Exhibit 38, and it is called  
9 Southeast Marketing Area, Federal Order Number 7, 2000  
10 Annual Statistics.

11 (Whereupon, the exhibit referred to was  
12 identified for the record as Government Exhibit Number 38.)

13 Do you have that document in front of you?

14 A. Yes, I do.

15 Q. Why don't you tell us about this document? First,  
16 was this prepared under your supervision and control?

17 A. Yes, it was.

18 Q. And it was prepared on information from the Milk  
19 Market Administrator's Office?

20 A. That is correct.

21 Q. Okay, why don't we go through it and you can  
22 explain to us what it is.

23 The first thing I see is a map.

24 A. This is a map of the marketing area, with cities  
25 listed where the plants were located at the time, and the

1 Class I location differentials in those particular counties

2 Q. Okay, when you say the Class I location  
3 differentials, that is represented by the numbers that are  
4 next to the city names?

5 A. Yes.

6 Q. Okay, let's go on to Page 2. What is on Page 2?

7 A. It is the receipts and classifications of Druser  
8 Milk for January through December of the year 2000, by  
9 class. It also lists the total proofs of receipts.

10 Q. Okay, and let's look at Page 3. What is on Page  
11 3?

12 A. Page 3 is the receipts and classifications of  
13 other source opening inventories. It is by those three  
14 categories, and then it is those three categories broken  
15 out by class, I - IV.

16 Q. Okay. Let's go on to Page 4, if you can tell us  
17 what that is - -

18 A. It is the classification of total receipts by  
19 class, also including the total receipts.

20 Q. Okay, let's look at Page 5. What is on Page 5?

21 A. That is total Class I utilization by pool  
22 handlers, by the various categories.

23 Q. Okay, let's go on to Page 6. What is on that  
24 page?

25 A. Page 6 deals with Class I route sales, also known

1 as Dropus position. The first table shows total disposition  
2 on routes inside the marketing area by pool plants, by  
3 product. The second table shows total disposition on  
4 routes inside the marketing area - - I'm sorry, outside the  
5 marketing area by pool plants. And the third table is a  
6 summation of the first two tables. That is the total sales  
7 by pool plants, inside and outside the area.

8 Q. Okay, let's move on to Page 7. What does that  
9 show?

10 A. It shows total sales in the marketing area,  
11 broken out by pool plants and non-pool plants. The top  
12 table shows disposition in the marketing area by non-pool  
13 plants. The second table is route sales by pool plants,  
14 and the third table is total route sales inside the  
15 marketing area.

16 Q. Let's move on to Page 8. What is on Page 8?

17 A. Page 8 shows total Class II utilization by pool  
18 handlers, by the various categories of use.

19 Q. I notice on Page 8 you use the term non-fluid.  
20 What does that mean?

21 A. It would be, I believe - - actually, I am - -

22 Q. Would it be like dried milk?

23 A. I think it would be powder milk that is used in  
24 Class II, I believe.

25 Q. Okay, let's go on to Page 9. What is on that

1 page?

2 A. This shows total Class III utilization by pool  
3 handlers, by the various categories.

4 Q. Okay, let's look at Page 10. What is on that  
5 page?

6 A. This shows Class IV utilization by pool handlers,  
7 again, by the various categories.

8 Q. The next page is 11. What is shown on Page 11?

9 A. This shows the skim and butterfat price for Class  
10 I, II, III, and IV. Also, those prices at 3.5 percent.  
11 And then the bottom chart in the left hand corner, it shows  
12 the uniform skim and butterfat prices and also that uniform  
13 price at 3.5 percent.

14 Q. Okay, let's look at Page 12. What is on Page 12?

15 A. Page 12 shows the dairy product price averages, I  
16 guess collected by NASS - the National Agricultural  
17 Statistical Service - for the two week survey that they  
18 conduct - that is the top table. And then the four week  
19 survey is the lower table.

20 Q. Okay, and on Page 13?

21 A. Page 13 begins bruser milk by county and state  
22 report, showing the origin and the number of farms by  
23 county, of producer milk for the month of May in 2000.

24 Q. Okay, in Order for you to list a county, you have  
25 to have at least three producers?

1 A. That is correct.

2 Q. And that runs on for a couple of pages, and then  
3 on Page 20 there is a new producer milk by county table?

4 A. It is an identical report, as the previous one,  
5 but this shows December 2000.

6 Q. Okay, that runs for a couple of pages until Page  
7 28. What is on Page 28?

8 A. This is a summary of our Transportation Credit  
9 Balance Fund for the year 2000.

10 Q. Okay, and what is on 29?

11 A. 29 is a listing of our fluid milk distributing  
12 plants, our pool supply plants, cooperative pool handlers,  
13 other Order plants by Order who have sales into our  
14 marketing area. Also exempt distributing plants, partially  
15 regulated distributing plants, and producer/handlers.

16 Q. Okay. Now this is for the year 2000. In front  
17 of you, you should also have one for the statistics for  
18 2001?

19 A. Correct.

20 Q. Which I have marked as Exhibit 39.

21 (Whereupon, the exhibit referred to was  
22 identified for the record as Government Exhibit Number 39.)

23 And the next one is the annual statistics for 2002,  
24 which should be marked as Exhibit 40.

25 (Whereupon, the exhibit referred to was

1 identified for the record as Government Exhibit Number 40.)

2 And then the last one would be the statistics for  
3 2003, and I have that marked as 41.

4 (Whereupon, the exhibit referred to was  
5 identified for the record as Government Exhibit Number 41.)

6 Okay, now all of these documents - 38 to 41 -  
7 were prepared under your control and supervision?

8 A. Yes, they were.

9 Q. You have had a chance to look through all of  
10 these?

11 A. Yes, I have.

12 Q. Are they correct, to the best of your knowledge?

13 A. To the best of my knowledge, they are correct.

14 Q. Okay. In regards to 39 and 41, it contains the  
15 same information as we discussed for 38 - it is just a  
16 different year?

17 A. That is correct.

18 MS. DESKINS: Okay. Your Honor, I would move for  
19 the admission of Exhibit 38, 39, 40 and 41.

20 THE COURT: Any objections? There appear to be  
21 none. They are all received.

22 (Whereupon, the document referred to, having been  
23 previously identified as Government Exhibit Numbers 38 -  
24 41, was received into evidence.)

25 Q. The next exhibit I have is called Compilation of

1 Statistical Material, Federal Order 7, Southeast Marketing  
2 Area. Do you have that exhibit?

3 (Whereupon, the exhibit referred to was  
4 identified for the record as Government Exhibit Number 42.)

5 A. Yes, I do.

6 Q. I have marked that exhibit as 42, and why don't  
7 you tell us a little bit about that exhibit? What does it  
8 contain?

9 A. It contains some general market information that  
10 we prepared for the hearing, just to help aid in the  
11 decision-making process.

12 Q. Okay. So the first one is a map. Tell us about  
13 what this map shows. It is Figure 1.

14 A. Figure 1 shows for the entire year of 2000,  
15 county production for those that are not restricted and  
16 those states that are not restricted.

17 Q. By restricted, you mean if there were fewer than  
18 three producers, it was not listed?

19 A. Yes. In the legend of the map, it describes that  
20 counties with fewer than three producers and states with  
21 fewer than three handlers are not shown.

22 Q. Okay. Let's go on the next one. It is Page 2 and  
23 it is Figure 2 for 2001.

24 A. It is an identical map that was used to prepare  
25 this map, just simply using 2001 data.



1 Q. Okay, let's go on to Figure 3. What is that?

2 A. Same method. This is for the year 2002.

3 Q. Okay, let's look at Figure 4. Can you tell us  
4 what that is?

5 A. It is the same method used - it is simply for  
6 2003.

7 Q. Okay, let's look at Table 1. Tell us what that  
8 is.

9 A. These are pool and payment dates, those dates of  
10 which we release the uniform price, the dates to which  
11 monies are due to our Producer Settlement Fund,  
12 Transportation Credit Balance Fund, the Administrative  
13 Fund, and also the Market Service Fund - the dates to which  
14 monies are due to those funds, and then payment dates to  
15 cooperatives and to non-member producers.

16 Q. Just so it is clear on the record, P/S means  
17 Producer Settlement Fund?

18 A. Yes, it does.

19 Q. T/Credit means Transportation Credit?

20 A. Yes, it does.

21 Q. ADM means Administrative Fund?

22 A. Yes, it does.

23 Q. And M/S means Market Services Fund?

24 A. Yes, it does.

25 Q. Okay. And then Table 2 would be the same

1 information, but for 2001?

2 A. Correct.

3 Q. And then Table 3 is the same information, but for  
4 2002?

5 A. Correct.

6 Q. And Table 4 is the same information, but for  
7 2003?

8 A. Yes.

9 Q. Okay, and Table 4 is the same information, but  
10 for 2004?

11 A. That is correct.

12 Q. Okay, let's then go on to Page 10. It says  
13 Appendix A. Can you tell us what that is?

14 A. It is a similar report to those which were in the  
15 annual statistics for May and December. This is for  
16 September of 2000, the origin of producer milk by state and  
17 county for that information which is not restricted.

18 Q. Okay, let me just ask you something on this -  
19 when it has milk, say, from Ohio or North Carolina, that is  
20 milk that is coming to the Southeast Milk Marketing Area?

21 A. Yes.

22 Q. Okay, and then you would have the same  
23 information starting on Page 14 for September 2001?

24 A. Correct. Appendix B - yes.

25 Q. And then on Page 19, same information, but for

1 September 2002?

2 A. Correct.

3 Q. And then on Page 24, same information, except for  
4 2003?

5 A. Correct.

6 Q. Now have you had a chance to review the  
7 information in Exhibit 42?

8 A. I have.

9 Q. And it is correct, to the best of your knowledge?

10 A. It is.

11 MS. DESKINS: Your Honor, I would move for the  
12 admission of Exhibit 42.

13 THE COURT: Any objections? There being none, it  
14 is received.

15 (Whereupon, the document referred to, having been  
16 previously identified as Government Exhibit Number 42, was  
17 received into evidence.)

18 Q. Now, Mr. Duprey, did anybody ask you to prepare  
19 some material for this hearing?

20 A. Yes.

21 Q. Okay, why don't you start with material that  
22 people asked you to prepare? Did Southern Marketing Agency  
23 ask you to prepare something?

24 A. Yes, they did.

25 Q. Do you have it in front of you?

1 A. Yes, I do.

2 Q. Let's mark that as Exhibit 43.

3 (Whereupon, the exhibit referred to was  
4 identified for the record as Government Exhibit Number 43.)

5 Sir, could you please tell us what they asked you  
6 to prepare for them?

7 A. Several tables and two maps.

8 Q. Let's just look at them. The table that Table 1  
9 Origin of Federal Order 7, Producer Milk.

10 A. This shows the total producer milk that was  
11 pooled during the month. We have January 2000 through  
12 December 2003 shown. And it also shows the originating  
13 Federal Order, where the milk came from.

14 Q. Okay. Let's go on then to Table 2, if you could  
15 tell us what that is.

16 A. For January 2000 through December 2003, this  
17 table shows the total number of farms that were pooled in  
18 our market. It also shows the origin, the location of  
19 those farms by Federal Orders.

20 Q. Okay. Let's go on then to Table 3, if you could  
21 tell us what that is.

22 A. Table 3 shows - - by Federal Order 7, Pool  
23 Plants. The first column - this is for January 2000  
24 through December 2003. The first column shows Federal  
25 Order 7 Pool Plant sale into the Federal Order 7 Marketing

1 Area. The second column shows Federal Order 7 Pool Plant  
2 Sales into the Federal Order 5 Marketing Area.

3 Q. Okay. Let's go on then to Table 4, if you could  
4 tell us what that shows.

5 A. Table 4 tries to summarize plants that have route  
6 disposition from Federal Order 5 into Federal Order 7, and  
7 then Federal Order 7 plants who have sales into Federal  
8 Order 5. Also it counts the number of months which those  
9 plants had sales into the other marketing area, since  
10 January of 2000.

11 Q. Okay. Let's go on then to Table 5, if you could  
12 tell us what that is.

13 A. Table 5 shows the non-pool plants that are  
14 located with the Federal Order 7 Marketing Area. The main  
15 divisions here are the plant status, so there are four  
16 plant statuses exempt - University, partially regulated,  
17 and unregulated supply.

18 Q. And this is only for the year 2003?

19 A. Yes. This is - - it tries to be the most current  
20 information that we could revive, and yet be as complete as  
21 possible. So if we chose, simply, December 2003, it might  
22 look a little different. So I chose to view the whole year  
23 of 2003.

24 Q. Okay. Let's then look at Figure 1. Can you tell  
25 us what that is?

1           A.    We were asked to provide some maps that combine  
2 the Federal Order 5 Milk Shed and Federal Order 7 Milk  
3 Shed. This actually adds up with Federal Order 5  
4 production for a particular county, along with the Federal  
5 Order 7 pool production for that particular county. And it  
6 is displayed on this map.

7           Q.    And then let's look at Figure 2. If you can tell  
8 us what that is - -

9           A.    Figure 2 tries to show the Federal Order 7 pool  
10 plants and the marketing area into which they had sales,  
11 and the Federal Order 5 pool plants and in which Order the  
12 had sales. But it is only concerned with Federal Order 7  
13 and Federal Order 5 - did not look into any other areas for  
14 this particular map.

15                   The Federal Order 7 pool plants are shown as  
16 triangles. If it is a blue triangle, the plant did not  
17 have sales into Federal Order 5. If it is a red triangle,  
18 it did have sales into Federal Order 5. Federal Order 5  
19 pool plants are shown as circles, blue circles - blue  
20 circles are Federal Order 5 plants that have sales into  
21 Federal Order 7. The red circles are Federal Order 5  
22 plants that did not have sales into Federal Order 7.

23                   The green shading represents county population,  
24 which was obtained from the U.S. Census Bureau.

25           Q.    Okay. You have had a chance just now to go

1 through Exhibit 43. Is it correct, to the best of your  
2 knowledge?

3 A. It is, to the best of my knowledge.

4 MS. DESKINS: Your Honor, I move for the  
5 admission of Exhibit 43.

6 THE COURT: Objections? Being none, it is  
7 received.

8 (Whereupon, the document referred to, having been  
9 previously identified as Government Exhibit Number 43, was  
10 received into evidence.)

11 Q. The next document I have, I have marked as  
12 Exhibit 44 and it was an exhibit that you prepared for  
13 Prairie Farms and Dean Foods?

14 (Whereupon, the exhibit referred to was  
15 identified for the record as Government Exhibit Number 44.)

16 Do you have that exhibit in front of you?

17 A. Yes, I do.

18 Q. Can you tell us what it is you prepared for them?

19 A. Table 1 displays uniform and class prices at  
20 select pricing zones - zones that were requested to be  
21 shown. It shows those prices for Federal Order 7 at four  
22 pricing zones, and it also shows the Federal Order 32 blend  
23 and Class I price for the two dollar Class I zone in the  
24 city of St. Louis, Missouri.

25 MS. DESKINS: Your Honor, I move for the

1 admission of Exhibit 44.

2 THE COURT: Any objection? 44 is received.

3 (Whereupon, the document referred to, having been  
4 previously identified as Government Exhibit Number 44, was  
5 received into evidence.)

6 Q. Did you prepare some material for Dairy Farmers  
7 of America?

8 A. Yes, I did.

9 Q. Do you have that in front of you?

10 A. Yes, I do.

11 Q. Why don't you identify for the record what it is?  
12 I have it marked as Exhibit 45.

13 (Whereupon, the exhibit referred to was  
14 identified for the record as Government Exhibit Number 45.)

15 A. Exhibit 45 is a table of the Federal Order 7  
16 uniform price, at the observed butterfat test, rather than  
17 the announced price of butterfat - - I'm sorry. Rather than  
18 using the announced uniform price at 3.5 percent butterfat,  
19 it was requested that we show the uniform price at the  
20 actual observed butterfat test. So this was prepared for  
21 DFA.

22 MS. DESKINS: Your Honor, I move for the  
23 admission of Exhibit 45.

24 THE COURT: Being no objection, it is received.

25 (Whereupon, the document referred to, having been



1 previously identified as Government Exhibit Number 45, was  
2 received into evidence.)

3 Q. Mr. Duprey, did you prepare anything for Mr.  
4 Michael Sumners?

5 A. Yes.

6 Q. Can you tell us what you prepared for him?

7 A. It was requested to show the origin of Federal  
8 Order 7 of producer milk by state. Figures 1 and 2 tries  
9 to do that.

10 Q. Let's market that as Exhibit 46.

11 (Whereupon, the exhibit referred to was  
12 identified for the record as Government Exhibit Number 46.)

13 And it is correct, to the best of your knowledge?

14 A. To the best of my knowledge, it is correct.

15 MS. DESKINS: Your Honor, I move for the  
16 admission of 46.

17 THE COURT: Alright, it is received.

18 (Whereupon, the document referred to, having been  
19 previously identified as Government Exhibit Number 46, was  
20 received into evidence.)

21 Q. And I do believe, Mr. Duprey, that is the end of  
22 all the exhibits that you prepared?

23 A. That is correct.

24 MS. DESKINS: Your Honor, I have no further  
25 questions.

1 THE COURT: Any questions? Do you need a moment?

2 Mr. Beshore - -

3 EXAMINATION

4 BY MR. BESHORE, ESQUIRE:

5 Q. Marvin Beshore for Southern Marketing Agency.

6 Good afternoon, Mr. Duprey and thank you for presenting and  
7 collecting the information that we and others requested.

8 I want to inquire with respect to the some of the  
9 producer source information, if we look first of all at  
10 your annual statistics, Exhibits 38 - 41, if my quick look-  
11 through is correct, the state of Indiana - there is no  
12 information presented with respect to either numbers of  
13 producers or volumes of production, or names of counties in  
14 the annual statistical reports, beginning with Exhibit 38.

15 Is that correct, or did I miss them somewhere?

16 A. I believe that is correct. Actually, December  
17 2002 - Exhibit 40 - does show some Indiana production.

18 Q. What does it show for December 2002 in Exhibit  
19 40?

20 A. We were able to disclose three counties  
21 individually, and the state as a whole had 4.2 million  
22 pounds.

23 Q. 21 producers that month?

24 A. And 21 farms.

25 Q. 21 farms - I'm sorry. The other years when it is

1 not disclosed - either numbers of farms or aggregate  
2 volumes - can you explain again why there is no  
3 information, either in terms of aggregate number of farms  
4 or production for the state of Indiana?

5 A. If there are fewer than three farms in a  
6 particular county, you cannot show that county. It could  
7 be that all the counties in Indiana had less than three  
8 producers, so we would not show them.

9 The other possibility is that the numbers of  
10 handlers for the state of Indiana was fewer than three, in  
11 which case we would not show aggregate production from that  
12 state.

13 Q. And what - - I think you are going to have to  
14 explain that a little bit more, because I do not believe we  
15 have heard that restriction criteria previously.

16 Do you have any pool plants - - Order 7, are  
17 there any pool plants in Indiana?

18 A. No.

19 Q. Are there any handlers - - okay, what would you  
20 mean, then, by talking about restriction by handler?

21 A. The handler of record for the milk that came from  
22 Indiana - that is what I am referring to. If there were  
23 fewer than three of those, we would not disclose that.

24 Q. So if one cooperative, for instance, were  
25 supplying milk for the state of Indiana as the handler of

1 record, even if there were ten producers in a given county,  
2 you would not disclose any data for that state because  
3 there was only one cooperative involved?

4 A. Correct. We would not want to release the  
5 proprietary information for that handler in that state.

6 Q. Okay, now let me ask you, then, about Exhibit 43,  
7 the data that you prepared at the request of Southern  
8 Marketing Agency, Inc.

9 If you go to Figure 1, December '03 - - I'm sorry,  
10 that is 5 and 7 combined. That is not the one I  
11 want.

12 I wanted 42, which is compilation of statistical  
13 material for Federal Order 7. If you look at Figure 1, the  
14 county production map - and this is on an annual basis for  
15 the year 2000, I take it?

16 A. Correct.

17 Q. Okay, now there are a number of counties colored  
18 in that map in Exhibit 1 - one of them is a red color. Can  
19 you tell me which red category that county is in?

20 A. What the name of the county is or what the  
21 category is?

22 Q. Both - what county is that?

23 A. I do not know specifically what county that is.

24 Q. Okay, what category is it in, in terms of annual  
25 production for Federal Order 7?

1           A.    I believe it is the 48 million to 120 million  
2 category.

3           Q.    If you go to Figure 2 of Exhibit 42, the same  
4 county in Indiana - what color is the county for 2001, and  
5 what volume does that represent for the year?

6           A.    I believe it is the first category listed - 120  
7 to 480 million.

8           Q.    So in 2001, if I am reading the little chart in  
9 the upper left hand corner of the map, which is Figure 2 -  
10 there were eight counties that provided 120 million to 480  
11 million pounds of milk for the Order for the year - is that  
12 correct?

13          A.    In Figure 2, 2001, that is correct.

14          Q.    And one of those eight was the county in  
15 northwestern Indiana, correct?

16          A.    Yes.

17          Q.    So that county - these are annual figures.  If it  
18 had level production every month, it was delivering at  
19 least ten million pounds per month?

20          A.    Correct.

21          Q.    And because - - does that - - because there is no  
22 county data, does that mean there are less than three farms  
23 in that county?

24          A.    What do you mean by no county data?

25          Q.    Well, there is no county data in any of the

1 county breakouts.

2 A. Yes, I was not asked to provide yearly county  
3 data.

4 Q. But for any months in which you provided county  
5 data, you were unable to provide it for the state of  
6 Indiana except for December 2003?

7 A. For the month that we entered into the record,  
8 May and December and September - those months, in some case  
9 were not able to show information for the state of Indiana.  
10 But in other months, information was not restricted, but  
11 it was not requested to be entered into the record so it  
12 was not prepared.

13 Q. Let's go to Figure 3 for 2002 - that county in  
14 Indiana is now among the top six county sources of supply  
15 for Federal Order 7 - is that correct?

16 A. Of those able to be displayed, yes.

17 Q. Help me with your qualification on that. Is it  
18 possible that there is a county that had more than 120  
19 million pounds provided to Order 7 during 2002, which is  
20 not displayed on Figure 3 of Exhibit 42?

21 A. It is possible. I simply can not state with  
22 certainty that that is not the case.

23 Q. What would - - how would that be possible?

24 A. That a particular county had two large producers?

25 Q. That you would not display a county for the

1 entire year that had more 120 million pounds of milk?

2 A. The state could be restricted. It could be  
3 located in a state that had fewer than three handlers. Or  
4 its county could have fewer than three producers.

5 Q. Let's look at 2003 data, then. The same county in  
6 Indiana remains among your top six counties that are  
7 displayed - is that correct?

8 A. That is correct.

9 Q. Does that mean there are at least three producers  
10 in that county supplying your Order?

11 A. Correct.

12 Q. Sometime during the year?

13 A. Correct.

14 Q. And there were at least three handlers..

15 A. I should correct myself. When you refer to  
16 producers, I refer to farms. They are based on farms, not  
17 producers.

18 Q. What is the difference?

19 A. In our record-keeping system, one farm can have  
20 more than one producer number. There could be two  
21 producers for one particular farm, because they want to  
22 send split checks or something like that, to individuals  
23 who work at that farm. But the farm count is only one.  
24 That is what the restrictions are based on.

25 Q. Okay. If you now go to Exhibit 43, Figure 1,

1 which is the December '03 county production data for Federal  
2 Order 5 and Federal Order 7 combined, how many counties in  
3 Indiana supplied 10 million to 50 million pounds during the  
4 month of December '03, to the two Orders combined?

5 A. It looks like potentially three. It is hard to  
6 discern these colors.

7 Q. Can we be certain that at least those two  
8 counties in northwestern Indiana...

9 A. I think you are correct. It must be only two -  
10 at least those two.

11 Q. Possibly another county there in Indiana?

12 A. Yes.

13 Q. Is there - - let's get back to Exhibits 38 - 41  
14 for a moment. I want to compare the data that was  
15 available to you for the display - source of milk data in  
16 2000 versus 2003.

17 To your knowledge, has there been an increase the  
18 proportion of milk supplied to Order 7, the origin of which  
19 you can not depict because it is restricted?

20 A. I think the maps in Exhibits 42 address that.  
21 Figure 1 in Exhibit 42 in the lower right hand corner...

22 Q. Yes - shows that in 2000, you could display just  
23 under 90 percent of the milk?

24 A. That is correct.

25 Q. And in 2003 on Figure 4, it was...



1 A. 82.3 percent.

2 Q. Okay - which is a trend similar to what the Order  
3 5 information showed, from 90 to 80 or approximately that -  
4 do you recall that?

5 A. I believe so, if I follow the testimony properly  
6 - yes.

7 Q. I turn your attention to the list on that,  
8 Exhibit 41, Page 30 - in the list of cooperatives  
9 qualifying as pool handlers, I notice that one of the  
10 members of - - one of the proponent cooperatives of  
11 Southern Marketing Agency, Arkansas Dairy Cooperative  
12 Association, is not listed. Can you explain that?

13 A. They were not a qualified pool handler during  
14 January through December.

15 Q. How about Continental?

16 A. If they do not appear on this list, they did not  
17 qualify as pool handlers.

18 Q. Okay, is Continental recognized as a cooperative  
19 under your Order?

20 A. They are not recognized as a qualified pool  
21 handler.

22 Q. Well, are there other reasons to recognize  
23 cooperatives under the Order?

24 A. I suppose there might be. I am not exactly sure.

25 Q. Well, for purposes of, you know, the marketing

1 service fee, for instance..

2 A. Yes, there might be some other producer data kind  
3 of things that we do get from cooperatives who are not  
4 listed here.

5 Q. Let's stick with your handler list here for a  
6 minute, Exhibit 41. On Page 34, there is a list of exempt  
7 distributing plants. Can you tell me which of those are  
8 individual farm producer/handler type operations, which are  
9 exempt - listed as exempt plants here?

10 A. Actually, no, I can not.

11 Q. I assume College of the Ozarks is not, right?

12 A. That is not.

13 Q. And Louisiana Tech University is not?

14 A. That is not.

15 Q. Nor is Mississippi State University?

16 A. That is not.

17 Q. They are exempt institutional plants?

18 A. Correct.

19 Q. Are any of the other listed institutions,  
20 governmental institutions that are exempt?

21 A. No.

22 Q. So the rest of them are either exempt  
23 producer/handlers or they are exempt because they are very,  
24 very small bottling plants - buying from somebody else, but  
25 with total volume of less than 150 thousand a month. Is

1 that fair?

2 A. That is fair.

3 Q. There are no other possibilities there? To be  
4 exempt, you have to be a governmental institution or an  
5 operation that is less than 150 thousand?

6 A. Yes, I believe those are the only options.

7 Q. Of course, you do show two producer/handler  
8 plants on Page 35 of Exhibit 41, I take it - Martin Dairy  
9 and W.H. Braum?

10 A. Correct.

11 Q. Those two producer/handlers that you just  
12 mentioned - are they located in the marketing area?

13 A. No.

14 Q. Neither of them?

15 A. No.

16 MR. BESHORE: That is all I have at the moment,  
17 Your Honor. Thank you.

18 THE COURT: Very well. Who is next? Mr.  
19 English?

20 EXAMINATION

21 BY MR. ENGLISH, ESQUIRE:

22 Q. Charles English for Dean Food and Prairie Farms.  
23 First, sir, let me also thank you for putting together the  
24 information, and particularly the information that you  
25 provided in response to my request.

1           But let me ask you a few questions about  
2 information that you were unable to provide, if that is  
3 okay, and the reason for that is so the record has what it  
4 was we tried to get, and the fact that we can not get it.

5           First, do you recall a request from me on behalf  
6 of Dean Foods and Prairie Farms for calculation using  
7 historical data, but at what blend prices would be under  
8 the various proposals?

9           A.    I do.

10          Q.    And what was your response to that?

11          A.    That we would have liked to have been able to do  
12 it, but the assumptions that that analysis required were  
13 really beyond what we felt comfortable doing.

14          Q.    That analysis being whether or not plants - - for  
15 instance, whether or not plants that were outside the area  
16 would associate more or less milk with the market, based  
17 upon the change in circumstances? That is among those  
18 circumstances?

19          A.    That is among those, yes.

20          Q.    Another would be, for instance, I requested a  
21 listing - if Proposal 5 were adopted - where various plants  
22 would be regulated, correct?

23          A.    Correct.

24          Q.    And you were unable for the same reason - that is  
25 to say, you were uncomfortable making assumptions and you

1 lacked data as to where sales were, correct?

2 A. Yes, that was more of that we lacked that data.

3 Q. But since you lack that data, you would not know  
4 where those plants were regulated, and therefore you were  
5 unable to provide blend prices because you would not even  
6 know where the plants were regulated?

7 A. That is correct.

8 MR. ENGLISH: Thank you, and again thank you for  
9 providing what you did.

10 Let me turn to a moment to Exhibit 41 and Exhibit  
11 43, Page 3, which happens to be Table 3.

12 Q. For Exhibit 41, I am looking at Exhibit 6 - Total  
13 Disposition on Routes Outside Market Area by Compliance.

14 A. 41, Page 3?

15 Q. No, 41 is Page 6. 43 is Page 3, and if you could  
16 have them side by side - first, if you look and compare,  
17 and look at Exhibit 41, Page 6 to 43, Page 3, I am correct  
18 that in the first table -Total Disposition on Routes Inside  
19 of Marketing Area Pool Plants - would I be correct that  
20 each of the numbers in the last column for 2003 are what  
21 appear in the first column for 2003 on Exhibit 43, Page 3?

22 A. That is correct.

23 Q. Now turning to the second table on Exhibit 41 -  
24 Total Disposition on Routes Outside the Marketing Area Pool  
25 Plants - would I be correct that the number that appears on

1 Exhibit 43, the second column for Federal Order 5 - for  
2 instance, December '03, 8,082,143 - that that number would  
3 be part of the total of the December 2003 of 59,937,023?

4 A. That is correct.

5 Q. Would you be able before the close of the  
6 hearing, without disclosing confidential information, to  
7 break down the - - and we have only got eight million of  
8 the 59 million - where the other 59 million is going?  
9 Obviously you may have to group Orders, but I prefer not to  
10 group the bottom, Order 6, Order 126, Order 32. If you  
11 have to group them, I understand.

12 A. I believe that is possible.

13 Q. And then other would be fine for anything else,  
14 as far as I am concerned, although I do note there is  
15 unregulated territory that some call the Missouri Doughnut.  
16 If that can be broken out, that would be fine, but if not,  
17 I can understand - that would be a very small area.

18 In addition, we had some information from Order  
19 5, but I look at the third table on Page 6, and I wonder if  
20 we could create a new chart. We know from Order 5, but  
21 obviously you could repeat it - would you be able to tell  
22 us - - you have total disposition on routes in and out of  
23 the market area - -

24 I'm sorry. Is Table 3 the combination of 1 and  
25 2?

1 A. That is correct.

2 Q. Okay, that's it. That's all. Thank you.

3 Do you have, for Page 7, for disposition inside  
4 the marketing area - would the first column on Page 7,  
5 Disposition on Routes Inside the Market by Non-Pool Plants,  
6 include other Order plants?

7 A. The first column?

8 Q. The first table. Would that final column, Total  
9 Non-Pool, in the first table include dispositions inside  
10 the marketing area by other Order plants - for instance,  
11 plants from Order 5?

12 A. Yes, it would.

13 Q. Could we break that down if at all possible,  
14 recognizing confidential information, by 32-127? I think  
15 we already have 5, but obviously it would nice to have 5 to  
16 corroborate, and then any other Orders that you can break  
17 out. I am not suspecting you are going to have much coming  
18 up from 6 that would not be confidential, but if you can  
19 break out 6, that would be great.

20 A. I believe that would be possible.

21 MR. ENGLISH: Thank you, sir. I have no further  
22 questions.

23 EXAMINATION

24 BY MR. RICCIARDI, ESQUIRE:

25 MR. RICCIARDI: I appreciate it, Your Honor. I

1 am Al Ricciardi.

2 Mr. Duprey, let me just tell you the areas that I  
3 intend to ask you questions about, and more particularly,  
4 the exhibits, so you will have them there. If you would  
5 have Exhibits 38, 39, 40 and 41 available, and also 43, I  
6 intend to ask you questions either specifically about those  
7 or questions that might have you refer to those documents.

8 Q. Do you have those documents there?

9 A. I do.

10 Q. I think you testified you have been in this  
11 current position since approximately August of 2000 - is  
12 that right?

13 A. That is correct.

14 Q. And has the Southeast Marketing Area changed at  
15 all from August of 2000 until today?

16 A. Yes.

17 Q. Okay, and what has changed? What has either been  
18 deleted or included in the Southeast Marketing Area during  
19 that period of time?

20 A. I am not quite sure what you mean. The marketing  
21 area has not changed..

22 Q. And that was my question. That is why I asked it  
23 that way. If I confused you at all, I apologize.

24 I think you testified, and let me make it clear  
25 that Humansville, Missouri and Tuttle, Oklahoma are not



1 included in the Southeast Marketing Area - is that correct?

2 A. To my understanding, they are not in our  
3 marketing area - that is correct.

4 Q. I appreciate it. And so for the period - - if  
5 you need to refer to Exhibits 38 - 41, feel free. For the  
6 period from 2000 through 2003, at least based upon the  
7 statistics that are provided in Exhibits 38 - 41, there are  
8 no producer/handlers in the Southeast Marketing Area,  
9 correct?

10 A. That is correct.

11 Q. Let me ask you a question, then, about Exhibit  
12 39, Page 38. I will ask you a more general question, then  
13 a specific one about this particular page.

14 If producer/handlers like Martin Dairy and Braum  
15 are included under the producer/handler plants in this  
16 statistics, does that mean that there were sales into the  
17 marketing area by these producer/handlers?

18 A. Correct.

19 Q. The one time that Promised Land Dairy appears in  
20 these exhibits is for three months, for April, May and June  
21 of 2001, correct?

22 A. Correct.

23 Q. Do you know if, prior to April of 2001, Promised  
24 Land Dairy was a pool plant?

25 A. On which Order?

1 Q. On any Order.

2 A. I have no knowledge of that, no.

3 Q. Okay. But for at least these three months in  
4 2001 - April, May and June - Promised Land Dairy in Texas  
5 was a producer/handler that had sales into this marketing  
6 area, correct?

7 A. Correct.

8 Q. And then after that, in June and for the rest of  
9 the year, Promised Land changed to Federal Order 126 and  
10 was a regulated pool plant, correct?

11 A. Correct.

12 Q. Do you know why they decided to become a  
13 regulated pool plant at that time?

14 A. I do not know that it was their decision, but  
15 they became - - they met the qualifications for 126's pool  
16 plant.

17 Q. Where is Federal Order 126?

18 A. Texas.

19 Q. Let's move on to Exhibit 43, Figure 2. Can you  
20 explain to us more specifically what is depicted on Figure  
21 2 of Exhibit 43, please?

22 A. It tries to show, in a general way, the overlap of  
23 pool plant sales between Orders 5 and 7. Again, if there  
24 is a triangle, it means it is a Federal Order 7 plant. If  
25 it is a circle, it means it is a Federal Order 5 plant.

1 Those blue triangles are Federal Order 7 plants that did  
2 not sell Class I product into Federal Order 5. And the red  
3 triangles are Federal Order 7 pool plants that did have  
4 sales into Federal Order 5.

5 Q. Can you tell by looking at Figure 2 whether or  
6 not there were any producer/handlers that had sales in  
7 Federal Order 7 or 5?

8 A. No.

9 Q. Were there any producer/handler sales in Federal  
10 Order 7 or 5 during the period depicted on this particular  
11 map?

12 A. Yes, there were. If you refer to Exhibit 41,  
13 Page 35, there were two producer/handlers that had route  
14 sales into the Federal Order 7 marketing area in December  
15 of 2003.

16 Q. And that would be Marvin Dairy and W.H. Braum out  
17 of Newmansville, Missouri and Tuttle, Oklahoma, again,  
18 outside the market area but with sales in the marketing  
19 area, correct?

20 A. Correct, and this only shows pool distributing  
21 plants.

22 Q. I understand. And because of the fact that we  
23 have two or less, there is no information as to the amount  
24 of sales, pounds per month or anything like that, contained  
25 in these statistics, correct?

1 A. Yes, that is correct.

2 MR. RICCIARDI: Nothing further. Thanks.

3 THE COURT: Any other questions? Mr. English.

4 EXAMINATION

5 BY MR. ENGLISH, ESQUIRE:

6 Q. Following up on that line of questioning, but  
7 going back to Exhibit 39, Page 38, and not to continue to  
8 overwork you - -

9 We do have three months for which we have three  
10 producer/handlers with dispositions in the marketing area,  
11 even though they are from outside the marketing area.

12 A. Yes.

13 Q. Could we get, before the end of the hearing, the  
14 total volume from those three, for those three months of  
15 route disposition in the marketing area?

16 A. I believe that might be possible.

17 MR. ENGLISH: I would appreciate that. I realize  
18 you might have to talk about it in your office and all, but  
19 if you could...

20 THE WITNESS: If I could keep that caveat, then...

21 MR. ENGLISH: Of course you can.

22 THE WITNESS: It is my boss's decision.

23 MR. ENGLISH: I do not think you whether we say  
24 you get to keep it or not - - you get to keep it.

25 With those requests - and I appreciate it - I

1 would hope to see you later in the hearing with whatever  
2 information you can provide. Thank you.

3 THE COURT: Anything else at all? No other  
4 questions?

5 MR. BESHORE: I have something.

6 EXAMINATION

7 BY MR. BESHORE, ESQUIRE:

8 Q. Mr. Duprey, with respect to the identification of  
9 plants - I am looking at Page 38 of Exhibit 39 - was that  
10 so-identified on the basis of the producer/handler  
11 definition in Order 7, or in the Order in which they were  
12 located?

13 A. This is Federal Order 7's producer/handler - actually, I  
14 believe it might be the Order in which the plant is  
15 located, but I can not say with 100 percent certainty.

16 Q. But in any event, they were located outside the  
17 Order. They were identified as producer/handlers, either  
18 by the Order in which they were located or by Order 7, or  
19 by both perhaps.

20 A. I believe it is the Order in which they were  
21 located, but...

22 Q. And they had route disposition into Order 7?

23 A. Yes.

24 Q. Now, when Promised Land Dairy changed to an Order  
25 126 pool plant, it continued to have route disposition in

1 the area. It shows up as another Order plant, from Order  
2 126 distributing and Order 7 - does it not, on your  
3 exhibits?

4 A. Yes, Page 36 has it showing that.

5 Q. So it is basically the same operation continued  
6 to distribute it into Order 7, but perhaps was required to  
7 go through another farm, or for some reason was no longer  
8 considered a producer/handler, but a regulated pool plant?

9 A. Correct.

10 MR. BESHORE: Thank you.

11 THE COURT: Very well. Anything further at all  
12 for this witness? Subject to all the nice offers you have  
13 made to Mr. English, you are excused.

14 Any more Government witnesses?

15 MR. HODGE: No.

16 THE COURT: So the Government part is complete  
17 and we are now ready for SMA? It is now a quarter to five  
18 - -

19 MR. BESHORE: Well, we do have several witnesses  
20 - three witnesses, in fact - that have rather brief  
21 statements, that are prepared to come forward, and we are  
22 prepared to present them.

23 I would first ask Mike Asbury to testify.

24 Whereupon

25 MIKE ASBURY,

1 having been first duly sworn, was called as a witness  
2 herein and was examined as follows:

3 EXAMINATION

4 by MR. BESHORE, ESQUIRE:

5 Q. Mr. Asbury, thank you for appearing here today.  
6 Could you just first state your name and your business  
7 address?

8 A. My name is Mike Asbury - A-s-b-u-r-y - and I am  
9 the Director of Milk Accounting and Economic Analysis for  
10 Maryland and Virginia Milk Producers Cooperative  
11 Association. My address is 1985 Isaac Newton Square West,  
12 Reston, Virginia, 20190.

13 Q. Mr. Asbury, is Maryland and Virginia Milk  
14 Producers Cooperative Association a proponent cooperative  
15 and a member or a part of Southern Marketing Agency?

16 A. Yes, sir.

17 Q. And you have a statement on behalf of Maryland  
18 and Virginia...

19 A. I sure do.

20 Q. ...relative to the proposals?

21 A. Yes, I do.

22 Q. Could you proceed with that, please?

23 A. Yes, I will.

24 Maryland and Virginia Milk Producers Cooperative  
25 Association Incorporated supports the consolidation of the

1 current Southeast Federal Milk Marketing Order Number 1007  
2 and current Appalachian Federal Milk Marketing Order Number  
3 1005 into the proposed new Southeast Federal Order Number  
4 1007. Maryland and Virginia Milk Producers Cooperative  
5 Association Incorporated currently delivers milk to plants  
6 fully regulated under both the Southeast Order and the  
7 Appalachian Order. In addition, Maryland and Virginia Milk  
8 Producers Cooperative Association Incorporated delivers  
9 milk from producers holding Virginia Milk Commission Base  
10 to plants regulated by the current Order 1005.

11 The producer-directs of Maryland and Virginia Milk  
12 Producers Cooperative Association Incorporated are aware of  
13 the milk marketing circumstances in the southeast, and are  
14 conscious of the evidence and testimony which will be  
15 presented in this hearing. The producer-directors of  
16 Maryland & Virginia Milk Producers Cooperative Association  
17 Incorporated believe that consolidation of the 2 Orders is  
18 appropriate in light of changes in the marketing structure  
19 in the southeast, both in the production and processing  
20 sectors, and believe that consolidation of the two Orders  
21 will enhance market equity, allow for logistical  
22 efficiencies in supplying the southeast's deficit milk  
23 market to be increased, and will eliminate the disruptive  
24 and disorderly marketing conditions which currently exist  
25 in the 2 separate marketing orders. Therefore, Maryland and



1 Virginia Milk Producers Cooperative Association  
2 Incorporated supports Proposal Number 1 and Proposal Number  
3 2, as listed in the Notice of Hearing.

4 In addition, Maryland and Virginia Milk Producers  
5 Cooperative Association Incorporated supports the expansion  
6 of the proposed Southeast Marketing Area into the western  
7 portion of the state of Virginia, as described in Proposal  
8 Number 3 in the Notice of Hearing. As was stated earlier,  
9 Maryland and Virginia Milk Producers Cooperative  
10 Association Incorporated has member-producers who are  
11 holders of Virginia Bas, who are located in the marketing  
12 area as proposed to be expanded, markets those members' milk  
13 in the area of proposed market area expansion, and markets  
14 milk to the plant at Mount Crawford, Virginia which would  
15 become a Southeast Order pool distributing plant under  
16 Proposal Number 3.

17 Maryland and Virginia Milk Producers Cooperative  
18 Association Incorporated is not opposed to the expansion of  
19 the proposed Southeast Marketing Area into the smaller  
20 territory in the state of Virginia, as defined in Proposal  
21 Number 4 in the Notice of Hearing. However, Maryland and  
22 Virginia Milk Producers Cooperative Association  
23 Incorporated believes that the broader expansion of the  
24 marketing area defined in Proposal Number 3 is preferable  
25 to the smaller area defined in Proposal Number 4.

1           Maryland and Virginia Milk Producers Cooperative  
2 Association Incorporated is opposed to the splitting of the  
3 current Southeast market into a smaller Southeast Order,  
4 covering principally Alabama, Georgia and middle Tennessee  
5 and Mississippi Valley Order covering principally Arkansas,  
6 Louisiana, Mississippi, southern Missouri and western  
7 Tennessee as defined in Proposal Number 5, as listed in the  
8 Notice of Hearing.

9           Maryland and Virginia Milk Producers Cooperative  
10 Association Incorporated is not opposed to a change in the  
11 producer milk definition as provided in Proposal Number 6,  
12 which would limit pooling of milk simultaneously on a  
13 Federal Milk Marketing Order and a state-order which  
14 provides for market-wide pooling. Maryland and Virginia  
15 Milk Producers Cooperative Association Incorporated is not  
16 opposed to this proposal, only to the extent that such a  
17 change would be applicable to the Southeast Federal Milk  
18 Marketing Order as defined in Proposals Number 1 and 3.  
19 However, Maryland and Virginia Milk Producers Cooperative  
20 Association Incorporated would be opposed to such amended  
21 producer milk language if the Federal Order provision  
22 change impacted in any way the pooling of milk on the Order  
23 from Virginia Milk Commission base-holder producers.

24           Maryland and Virginia Milk Producers Cooperative  
25 Association Incorporated strongly supports the change in

1 the definition of a producer-handler as defined in Proposal  
2 Number 7. We would note, however, that we are not opposed  
3 to the extent that such a change would be applicable to the  
4 Southeast Federal Milk Marketing Order as defined in  
5 Proposals Number 1 and 3.

6 Maryland and Virginia Milk Producers Cooperative  
7 Association Incorporated is opposed to a change in the  
8 definition of a producer-handler as defined in Proposal  
9 Number 8.

10 Thank you. This concludes my statement.

11 Q. I have just one other question for you, Mr.  
12 Asbury. You know that Mr. Hollon has worked on a detailed  
13 statement...

14 A. Sure do.

15 Q. ...going into the particulars of all the proposals.  
16 Are you looking to him to provide that detailed  
17 justification?

18 A. Yes, I am, sir.

19 MR. BESHORE: Thank you. The witness is  
20 available.

21 THE COURT: Other questions? Yes, Ms. Carter?

22 MS. CARTER: Antoinette Carter with USDA

23 EXAMINATION

24 BY MS. CARTER, ESQUIRE:

25 Q. You mentioned during your statement that there

1 were changes in the Southeast Marketing Area, in terms of  
2 conditions with production and - - I don't know if you said  
3 sales. Could you expand on that, in terms of what changes  
4 you have observed?

5 A. Changes in production in the Southeast Market?  
6 Well, we are in a deficit market in the southeast. More  
7 and more is coming in from outside, and we overlap on  
8 orders, as far as sales going back between Federal Order 7  
9 and Federal Order 5.

10 Q. You also mentioned disorderly marketing  
11 conditions that currently exist in, I guess, the current  
12 Appalachian and Southeast Marketing Areas. Could you  
13 explain what you mean by that?

14 A. When I was talking about milk going between 7 and  
15 5, you have to meet pooling days for each order and it  
16 could cause problems if, say, you were in a 10-6 situation  
17 on the two orders. You go five days with one and nine to  
18 another, and not be pooled on either one, so that is what  
19 we are talking about.

20 Q. So are you saying that the merger of those two  
21 Orders - - have you looked at any other possible  
22 alternatives with which you could address those issues as  
23 you have explained?

24 A. Of course, we look at it monthly when we are  
25 pooling our milk to try and avoid that, so it is -- but no,

1 that is what we are trying to make it more efficient and  
2 more easier to pool the milk, since we are criss-crossing.

3 Q. Just to kind of expand on that, with regards to  
4 possible revisions and some of the pooling provisions or  
5 touch-base requirements, have you looked at or considered  
6 any of those types of options?

7 A. I have considered what we might - - I think Elvin  
8 will give that in his testimony. We would like to have a  
9 percentage basis instead of the daily basis.

10 MS. CARTER: Okay, thank you.

11 THE COURT: Ms. Deskins.

12 MS. DESKINS: Sharlene Deskins, United States  
13 Department of Agriculture, Office of the General Counsel.

14 EXAMINATION

15 BY MS. DESKINS, ESQUIRE:

16 Q. You said that you are a member of the Maryland  
17 Virginia Milk Cooperative?

18 A. No, I am not a member. I am the Director of Milk  
19 Accounting and Economic Analysis for Maryland Virginia Milk  
20 Producers.

21 Q. Approximately how many members does your  
22 organization have?

23 A. We have 1,450 to 1,500 - it varies.

24 Q. How many of them are located in Virginia?

25 A. How many are located in Virginia? I do not know

1 the exact number, but it would be over a hundred.

2 Q. I am just trying to find out if these additional  
3 Virginia counties and cities are included. Do you know how  
4 many of your members would be affected by that?

5 A. How many are in those - - I do not know right off  
6 the top of my head, no, ma'am.

7 Q. Also, if you have any idea, would you have any  
8 idea of how many of your members would support the  
9 proposals as you stated?

10 A. We did not have a member vote. We are directed  
11 by our Board of Directors, who are elected by our members.

12 Q. Okay, the Board of Directors supports these  
13 proposals?

14 A. That is correct.

15 Q. I am just trying to understand your testimony.  
16 You said that your organization would support a larger  
17 marketing area rather than a smaller one?

18 A. That is correct.

19 Q. So the inclusion of these Virginia counties and  
20 cities in some form - either the Appalachian Order or the  
21 Southeast - would be supported by your members?

22 A. That is correct.

23 Q. You would not have any idea of how many of your  
24 members would be small businesses - just so you know the  
25 definition of a small business, a dairy farm that has

1 annual gross receipts of less than 750,000 dollars.

2 A. I do not right off the top of my head. It would  
3 be a guess.

4 MS. DESKINS: That is all the questions I have.  
5 Thank you.

6 THE COURT: Do you have questions?

7 MR. RICCIARDI: Just a few, Your Honor.

8 EXAMINATION

9 BY MR. RICCIARDI, ESQUIRE:

10 Q. Mr. Asbury, Al Ricciardi - some questions based  
11 on your testimony.

12 What is the relationship between Maryland and  
13 Virginia Milk Coop and the FA?

14 A. What is the relationship? We are both members of  
15 the SMA. That is the only relationship we have.

16 Q. Let me understand your testimony a little bit.  
17 Do you support - - and by the way, you are speaking on  
18 behalf of the coop. You are not speaking personally today,  
19 correct?

20 A. That is right - on behalf of the coop, yes.

21 Q. So you are authorized...

22 A. That is correct.

23 Q. ...to speak on behalf of the coop? Does the coop  
24 have a position as to whether or not - under Proposal 7E -  
25 that there should be a change in the definition of

1 producer/handler to impose a hard cap of three million  
2 pounds per month?

3 A. Do we have a position on that?

4 Q. Yes, sir.

5 A. We support that definition, yes.

6 Q. Tell me why.

7 A. Why do we support the cap?

8 Q. Yes.

9 A. Because if there is no cap, it causes a  
10 competitive situation - a favorable competitive situation  
11 for the handler, compared to regulated producers.

12 Q. Tell me the number of producer/handlers in the  
13 marketing area you are in now.

14 A. In Federal Order 7, Federal Order 5?

15 Q. Either Order.

16 A. We have the Jackson Dairy, who was mentioned -  
17 maybe not now, but has been a producer/handler.

18 Q. And tell me the instances of disorderly marketing  
19 that have occurred, as a result of producer/handlers in the  
20 marketing area since Federal Order reform in '99, 2000.

21 A. As far as in Federal Order 5 and 7, disorderly  
22 marketing?

23 Q. Yes.

24 A. When I was referring to disorderly marketing, I  
25 was talking about between Orders. I was not talking about



1 - -

2 Q. The fact is there are a limited number of  
3 producer/handlers in both Federal Order 5 and 7, correct?

4 A. That is correct.

5 Q. And there is no producer/handler that has  
6 anywhere close to three million pounds per month, correct?

7 A. That is correct.

8 Q. And so there really is no basis, at this point,  
9 to limit it. This is an attempt at a prospective change  
10 without any basis, correct?

11 MR. ENGLISH: Objection - calls for a legal  
12 conclusion. There is law from the Administrative Law  
13 Judges holding that a prospective problem can be addressed  
14 as part of disorderly marketing.

15 MR. RICCIARDI: And I am asking this witness  
16 factually if there is no basis, at this point, in his  
17 testimony, for any kind of a change. They can make an  
18 argument about the law, Judge, but there is no basis in his  
19 testimony...

20 THE COURT: Well, I will allow the question, but  
21 I will also allow that objection to be shown on the record.

22 I think it clarifies it.

23 Go ahead.

24 THE WITNESS: It would be based on futures, as  
25 far as I am concerned.

1 Q. Okay. Now, with regard to Proposal Number 8, is  
2 it my understanding that in your role on behalf of the  
3 cooperative, you are opposed to that change?

4 A. Yes.

5 Q. Do you know what balancing costs are?

6 A. Yes, I do.

7 Q. And in fact, as a representative of a  
8 cooperative, you would acknowledge that there are balancing  
9 costs that your members have to deal with - you, on behalf  
10 of the members?

11 A. That is correct.

12 Q. And a producer/handler would have the same type  
13 of balancing costs, correct?

14 A. That is possible, yes.

15 Q. At this point, as far as your understanding of  
16 both Orders 5 and 7, there is no amount of milk that a  
17 producer/handler can purchase, because if he purchases one  
18 gallon, he becomes a regulated handler, right?

19 A. That is correct.

20 Q. You also understand that, during certain portions  
21 of the year in the southeast, there is a major drop-off in  
22 production of milk, correct?

23 A. Oh, yes, sir.

24 Q. And that would be in a period from what month to  
25 what month?

1 A. I would say July through October, November.

2 Q. It is difficult at that point to produce enough  
3 milk to be able to sell because of the drop in production  
4 by the cows?

5 A. That is correct.

6 Q. And so the proposal here of allowing a  
7 producer/handler during the months to increase - go from  
8 nothing to either ten percent or thirty percent - your  
9 position is that that would be unreasonable?

10 A. Yes.

11 Q. And what is the factual basis for that?

12 A. I do not have it in front of me.

13 THE COURT: Other questions? Mr. Beshore?

14 MR. BESHORE: Just one question on Re-Direct.

15 EXAMINATION

16 BY MR. BESHORE, ESQUIRE:

17 Q. I think this is clear, but just so there is no  
18 question about it - Mr. Asbury, your cooperative is  
19 operating as a democratic organization...

20 A. That is correct.

21 Q. ...governed by the Board of Directors?

22 A. Governed by the Board, who elected by the  
23 members.

24 Q. And all of thee positions that you stated here  
25 today were deliberated upon and endorsed by the Board of

1 Directors?

2 A. That is correct.

3 Q. One other question. The definition of small  
4 business - assume with me that, as stated in the Hearing  
5 Notice, requires 750 thousand dollars of annual receipts on  
6 a dairy farm, to be - - if you are less than that, you are  
7 a small business. Now assume, with some quick math that  
8 Mr. Sims has done here, that to have 750 thousand dollars  
9 of milk sales at 15 dollars a hundred weight - just picking  
10 a number - you got to ship about five million a month,  
11 okay? Assume that is correct.

12 What percentage of your members are smaller than  
13 that?

14 A. At five million a month?

15 Q. I'm sorry, five million a year, which is like 400  
16 thousand or so a month.

17 A. It would be 89 percent.

18 MR. BESHORE: Okay, thank you.

19 THE COURT: No other questions, I take it. You  
20 are excused, sir.

21 Do you have another witness?

22 MR. BESHORE: Floyd Wiedower.

23 Whereupon

24 FLOYD WIEDOWER,

25 having been first duly sworn, was called as a witness

1 herein and was examined as follows:

2 EXAMINATION

3 BY MR. BESHORE, ESQUIRE:

4 Q. First, give us your name and address, please, Mr.  
5 Wiedower.

6 A. My name is Floyd Wiedower. Our business address  
7 is P.O. Box 540, Damascus, Arkansas.

8 Q. By whom are you employed?

9 A. Arkansas Dairy Coop.

10 Q. They are a member of Southern Marketing Agency?

11 A. Yes, they are.

12 Q. And a proponent of the positions being advanced  
13 by Southern Marketing Agency in this hearing?

14 A. Yes.

15 Q. Is Arkansas Dairy Cooperative just that - a  
16 cooperative of dairy farmers in Arkansas and nearby states?

17 A. Yes.

18 Q. Do you have a statement to present?

19 A. Yes, I do.

20 Q. Would you proceed, please?

21 A. My name is Floyd Wiedower and I am General Manager  
22 of Arkansas Dairy Cooperative Association. My business  
23 address is P.O. Box 540, Damascus, Arkansas, 72039.

24 I am here today to testify on behalf of Arkansas  
25 Dairy Cooperative Association and Lone Star Milk Producers,

1 Incorporated. Lone Star Milk Producers, Incorporated's  
2 business address is 301 Baird Lane, Windthorst, Texas, zip  
3 code 76389.

4 Arkansas Dairy Cooperative Association and Lone Star  
5 Milk Producers, Incorporated each support the consolidation  
6 of the current Appalachian Federal Milk Marketing Order  
7 Number 1005 and the current Southeast Federal Milk Market  
8 Order Number 1007 into the proposed new Southeast Federal  
9 Order Number 1007. Arkansas Dairy Cooperative Association  
10 currently delivers milk to plants fully regulated under the  
11 Southeast Order and has in the past delivered milk to  
12 plants fully regulated under the Appalachian Order. Lone  
13 Star Milk Producers, Incorporated currently delivers milk  
14 to plants fully regulated under both the Southeast Order  
15 and to plants fully regulated under the Appalachian Order.

16 The producer-directors of Arkansas Dairy  
17 Cooperative Association and Lone Star Milk Producers,  
18 Incorporated have reviewed the milk marketing situation in  
19 the southeastern United States, as well as the evidence to  
20 be presented in this hearing, and believe that  
21 consolidation of the two Orders will foster market equity,  
22 offer the opportunity for increased market efficiencies and  
23 remove disruptive and disorderly marketing conditions which  
24 currently exist in the two separate marketing orders.  
25 Accordingly, Arkansas Dairy Cooperative Association and

1 Lone Star Milk Producers, Incorporated each support  
2 Proposal Number 1 and Proposal Number 2, as listed in the  
3 Notice of Hearing.

4 In addition, Arkansas Dairy Cooperative  
5 Association and Lone Star Milk Producers, Incorporated each  
6 support the expansion of the proposed Southeast marketing  
7 area into certain counties and cities in the state of  
8 Virginia, Proposal Number 3, as listed in the Notice of  
9 Hearing.

10 Arkansas Dairy Cooperative Association and Lone Star  
11 Milk Producers, Incorporated are not opposed to the  
12 expansion of the proposed Southeast marketing area into  
13 certain counties and cities in the state of Virginia, as  
14 defined in Proposal Number 4, as listed in the Notice of  
15 the Hearing. However, Arkansas Dairy Cooperative  
16 Association and Lone Star Milk Producers, Incorporated feel  
17 Proposal 3 is preferable to Proposal 4.

18 Arkansas Dairy Cooperative Association and Lone Star  
19 Milk Producers, Incorporated are both opposed to the  
20 division of the current Southeast marketing area into a  
21 Southeast Order and a Mississippi Valley Order, as defined  
22 in Proposal 5, as listed in the Notice of Hearing.

23 Arkansas Dairy Cooperative Association and Lone Star  
24 Milk Producers, Incorporated are not opposed to a change in  
25 the definition of producer milk, as defined in Proposal

1 Number 6, limiting pooling of milk simultaneously on a  
2 state-order with market-wide pooling and a Federal Milk  
3 Marketing Order, only to the extent that such a change  
4 would be applicable to the Southeast Federal Milk Marketing  
5 Order as defined in Proposals 1 and 3.

6 Arkansas Dairy Cooperative Association and Lone Star  
7 Milk Producers, Incorporated strongly support a change in  
8 definition of a producer/handler as defined in Proposal  
9 Number 7, only to the extent that such a change would be  
10 applicable to the Southeast Federal Milk Marketing Order as  
11 defined in Proposals 1 and 3.

12 Arkansas Dairy Cooperative Association and Lone Star  
13 Milk Producers, Incorporated are opposed to a change in the  
14 definition of a producer/handler as defined in Proposal 8.

15

16 Thank you. That concludes my statement.

17 Q. Mr. Weidower, keeping in mind that the definition  
18 of small business for this hearing applies to dairy  
19 farmers, if they have annual gross revenues of 750 thousand  
20 dollars or less, what percentage of Arkansas Dairy  
21 Cooperative's membership would be considered small  
22 businesses under that definition?

23 A. We have about 160 producers in four states, and  
24 we would probably have four producers that would qualify at  
25 the maximum, but in my math - if I am doing it right -



1 somebody else might have to do the math - I would think it  
2 would be four out of 160 - whatever that is going to be.

3 Q. Would be larger than the 750 thousand dollars?

4 A. Yes. Most of our producers are small.

5 MR. BESHORE: Thank you.

6 THE COURT: Other questions? Yes, sir.

7 EXAMINATION

8 BY MR. RICCIARDI, ESQUIRE:

9 MR. RICCIARDI: Is it pronounced Weidower or  
10 Weidower?

11 THE WITNESS: If you look at the spelling, you  
12 can pronounce it any way you like. My family has always  
13 pronounced it Weidower, but I think you can pronounce it  
14 any way you like.

15 MR. RICCIARDI: And as someone whose name is  
16 pronounced all kinds of ways, I understand how that goes.  
17 As long as we can understand each other, that's great.

18 THE WITNESS: Yes, and I will respond either way.

19 MR. RICCIARDI: I appreciate it.

20 Q. Did you write the statement that you just  
21 presented?

22 A. No, sir, I did not.

23 Q. Who wrote that for you?

24 A. We agreed on this at the Southern Market  
25 Association.

1 Q. And who actually wrote it?

2 A. I am not sure of that.

3 Q. Okay. You may have personal opinions that may be  
4 different from the statement, but you are here expressing  
5 those on behalf of the two coops...

6 A. Yes, Arkansas and Lone Star. Yes, sir.

7 Q. Questions were asked of you with regard to  
8 whether or not the members would qualify as small  
9 businesses. You heard some testimony asked of a number of  
10 producer/handlers in Order 5 and 7?

11 A. Yes.

12 Q. Isn't it true that, even though there is a limited  
13 number, the probability is that those would also qualify as  
14 small businesses?

15 A. I - -

16 Q. Under the same definition -

17 A. I am not sure.

18 Q. Okay, fair enough. I am going to ask you similar  
19 questions that I asked of Mr. Asbury. You do not have any  
20 kind of factual information you intend to present to the  
21 Secretary, that there is disorderly marketing in either 5  
22 or 7 caused by producer/handlers, correct?

23 A. No, I do not.

24 Q. And with regard to the issue of equity that is  
25 fairness, you believe that producer/handlers should be

1 treated fairly just like regulated handlers, correct?

2 A. True.

3 Q. You also acknowledge that there are certain  
4 balancing costs that are required, particularly in the  
5 Southeast and in the summer months when the milk production  
6 goes down, correct?

7 A. Yes.

8 Q. And you understand at this point that under the  
9 current Orders 5 and 7, that a producer/handler can not  
10 even go out and buy one gallon of milk - otherwise, he will  
11 become a regulated handler?

12 A. That is the way I understand it, yes - that they  
13 have to be totally separate in the supply and distributing  
14 other milk.

15 Q. Do you think it's fair?

16 A. Sir?

17 Q. You do?

18 A. I did not understand you.

19 Q. Do you think it is fair?

20 A. That is the way it is defined. I do not really  
21 know the - -

22 Q. You do not know one way or the other whether you  
23 think...

24 A. No. I would have a problem deciding that. A lot  
25 of things have been told to me that I would not agree. My

1 judgment is not the one that is important.

2 Q. It is the judgment of the Board of Directors of  
3 the Coop?

4 A. Yes.

5 MR. RICCIARDI: Thanks.

6 THE COURT: Other questions?

7 EXAMINATION

8 BY MS. DESKINS, ESQUIRE:

9 Q. Just to clarify, you said you are here  
10 representing Lone Star Cooperative?

11 A. Yes.

12 Q. In what capacity are you representing them?

13 A. Arkansas Dairy Coop also is a - - has a joint  
14 marketing agreement, I guess is the best way of explaining  
15 it, with Lone Star Milk Producers.

16 Q. They are aware that you are here today..

17 A. Yes.

18 Q. ...saying that you are presenting..

19 A. Yes, yes.

20 Q. Okay. And also, do you know how many members  
21 Lone Star has?

22 A. Lone Star has about the same number of members  
23 that we do - in the hundred and sixty range - but their  
24 producers are larger than ours.

25 Q. Are they all located within Texas?

1 A. No, no.

2 Q. Where are their members located?

3 A. Their members are located in Missouri, Texas,  
4 Louisiana, I think even in Mississippi - all through the  
5 southeast.

6 Q. Do you know approximately how many of their  
7 members would be affected by the proposals we are  
8 discussing here?

9 A. Like the combining of these two Orders?

10 Q. Yes. How many of them would be located within  
11 the Orders, if they are combined - if you know?

12 A. Most all of them would be pooled in this Order,  
13 which would be affected by this but - - I would say  
14 probably at least half or maybe more are actually located  
15 in the boundaries.

16 Q. And also in regard to your members, you said they  
17 are located in four states. What states are they located  
18 in?

19 A. They are located in Arkansas, southern Missouri,  
20 eastern edge of Oklahoma and the eastern edge of Kansas.

21 Q. How many of your members would be included within  
22 a merged Order?

23 A. Actual boundaries?

24 Q. Yes.

25 A. All but 17, I believe.

1 Q. Okay. Can you tell us how you think that the  
2 consolidation of the two marketing Orders and increasing  
3 them to include some of these Virginia counties and cities  
4 would help your members?

5 A. I do not know that.

6 Q. You do not know...

7 A. Far as Virginia counties, no.

8 Q. Okay, what...

9 A. As far as what our dairy coop would - - being a  
10 part of Southern Marketing Agency, we would pool all of our  
11 milk together and exclude those, so it would make it more  
12 easy to market that milk, I believe.

13 Q. I am just trying to understand - so if the two  
14 Orders were consolidated, that would help your members  
15 because it would be easier for them to market their milk?

16 A. Yes.

17 Q. Do you see any negative problems with  
18 consolidating the two Orders for your members?

19 A. No, ma'am.

20 MS. DESKINS: I have no further questions.

21 THE COURT: Any other questions?

22 MS. CARTER: I have a few questions.

23 EXAMINATION

24 BY MS. CARTER, ESQUIRE:

25 Q. Antoinette Cartier, USDA Just a couple of

1 questions - -

2           You mentioned during your statement disorderly  
3 marketing conditions currently under the Appalachian, as  
4 well as the Southeast Order. Would you explain in detail  
5 what you mean by disorderly marketing conditions?

6           A. The difference in pooling requirements and the  
7 difference in the transportation credits.

8           Q. With regards to the members the cooperatives that  
9 you are testifying on behalf of, what is the volume of milk  
10 that is pooled on the current Appalachian and Southeast  
11 Order for those cooperatives - what percentage does it  
12 represent?

13           A. In Arkansas Dairy Coop, it represents 95 percent,  
14 and we have approximately 20 million pounds a month - that  
15 is what we have had in the past. It is a little less than  
16 that now, because dairy farmers went out of business. But  
17 that is a good number for us to look at. With Arkansas, it  
18 is about 90 to 95. With Lone Star, it is at least 50  
19 percent, I would think.

20           MS. CARTER: That is all I have. Thank you.

21           THE COURT: Any other questions? Doesn't appear  
22 to be. No questions anywhere? You are excused, sir.  
23 Thank you so much.

24           MR. BESHORE: I would like to call Kathy Bray.

25 Whereupon

1 KATHY BRAY,  
2 having been first duly sworn, was called as a witness  
3 herein and was examined as follows:

4 EXAMINATION

5 BY MR. BESHORE, ESQUIRE:

6 Q. Could you state your name and address, please,  
7 Ms. Bray?

8 A. My name is Kathy Bray and it is P.O. Box 832,  
9 Mountain Grove, Missouri.

10 Q. Who are you employed by?

11 A. Dairymen's Marketing Cooperative Incorporated.

12 Q. Have you ever testified in one of these hearings  
13 before?

14 A. No.

15 Q. Tell us a little bit about your marketing  
16 cooperative?

17 A. We are a small dairy marketing cooperative in  
18 Missouri, and we do have milk in southern Illinois. We are  
19 part of the SMA Agency Group.

20 Q. Do you have a statement to present here on behalf  
21 of Dairymen's Marketing Cooperative, with respect to these  
22 proposals?

23 A. Yes.

24 Q. Would you proceed, please?

25 A. My name is Kathy Bray and I am Assistant General



1 Manager of Dairymen's Marketing Cooperative, Inc. My  
2 business address is P.O. Box 832, Mountain Grove, Missouri,  
3 65711. I am here today to testify on behalf of Dairymen's  
4 Marketing Cooperative, Inc.

5 Dairymen's Marketing Cooperative, Inc. supports  
6 the consolidation of the current Appalachian Federal Milk  
7 Marketing Order Number 1005 and the current Southeast  
8 Federal Milk Marketing Order Number 1007 into the proposed  
9 new Southeast Federal Order Number 1007. Dairymen's  
10 Marketing Cooperative, Inc. currently delivers milk to  
11 plants fully regulated under the Southeast Order and has in  
12 the past delivered milk to plants fully regulated under the  
13 Appalachian Order.

14 Dairymen's Marketing Cooperative, Inc.'s  
15 producer/directors have reviewed the milk marketing  
16 situation in the southeastern United States and have  
17 studied the evidence which is expected to be presented at  
18 this hearing, and have concluded that consolidation of the  
19 Appalachian and Southeast Orders is justified. We feel  
20 consolidation of the two Orders will allow cooperatives and  
21 other marketers of milk to serve the market more  
22 efficiently, and merging the Order will remove the  
23 disruptive and disorderly marketing conditions which  
24 currently exist in the two separate marketing Orders.  
25 Further, Dairymen's Marketing Cooperative, Inc. believes the

1 area currently covered by the Appalachian and Southeast  
2 Orders is one market, and all of the producers delivering  
3 producer milk to that market should share a common Federal  
4 Order blend price. As such, Dairymen's Marketing  
5 Cooperative, Inc. supports Proposal Number 1 and Proposal  
6 Number 2 as listed in the Notice of Hearing.

7 In addition, Dairymen's Marketing Inc. supports  
8 the expansion of the proposed Southeast marketing area into  
9 the state of Virginia, as listed in Proposal Number 3 in  
10 the Notice of Hearing.

11 Dairymen's Marketing Cooperative, Inc. is not  
12 opposed to the expansion of the proposed Southeast  
13 marketing area into the state of Virginia, as proposed by  
14 the Kroger Company in Proposal Number 4, but we believe the  
15 broader marketing area expansion proposed under Proposal  
16 Number 3 is superior to Proposal Number 4. Dairymen's  
17 Marketing Cooperative, Inc. is opposed to dividing the  
18 current Southeast marketing area into a Mississippi Valley  
19 Order and Southeast Order, as proposed by Prairie Farms and  
20 Dean Foods.

21 Dairymen's Marketing Cooperative, Inc. is not  
22 opposed to changing the producer milk definition to limit  
23 the pooling of the same milk at the same time, on a state-  
24 order with market-wide pooling and Federal Milk Marketing  
25 Order. We support this proposal only to the extent that it

1 would apply to a consolidated Southeast Federal Milk  
2 Marketing Order as proposed in Proposals Number 1 and 3.

3 Dairymen's Marketing Cooperative, Inc. supports  
4 changing the producer handler definition described in  
5 Proposal Number 7. We support this proposal only to the  
6 extent that it would apply to a consolidated Southeast  
7 Federal Milk Marketing Order, as proposed in Proposals  
8 Number 1 and 3.

9 Dairymen's Marketing Cooperative, Inc. is opposed  
10 to a changing in the milk receipt limits for a  
11 producer/handler, as defined in Proposal Number 8.

12 Thank you. This concludes my statement.

13 Q. Thank you, Ms. Bray. Was this statement adopted  
14 by Dairymen's Marketing Cooperative, and you were requested  
15 to present it today?

16 A. Yes, by the Board of Directors.

17 Q. What percentage of the members of your  
18 cooperative ship less than 400 thousand pounds a day - -  
19 no, a month?

20 A. I would say probably between 90 and 93 percent.

21 Q. So at least 90 percent of your members would be  
22 in the small business category we have been discussing?

23 A. Yes.

24 MR. BESHORE: Thank you. No further questions.

25 THE COURT: Questions? Do you have some?

1 MR. RICCIARDI: Just a few, Your Honor.

2 EXAMINATION

3 BY MR. RICCIARDI, ESQUIRE:

4 Q. Let me see if I understand some of the questions  
5 that were asked of you. The statement seems familiar,  
6 because it seems identical to the one that was read by Mr.  
7 Asbury and Mr. Weidower. You did not prepare the  
8 statement, correct?

9 A. Correct.

10 Q. Did you even read it before you came...?

11 MS. DESKINS: Your Honor, I object to that. He  
12 is badgering the witness. She had already testified on  
13 Direct that she did not prepare it, she was asked to give  
14 it. Now more than that is unnecessary.

15 MR. RICCIARDI: I am not badgering anybody, Jeff.

16 THE COURT: I agree, but go on.

17 Q. Have you read the information in the Notice for  
18 this hearing in the Federal Register?

19 A. Yes.

20 Q. As I understand it, you are here to make this  
21 presentation simply on behalf of Dairymen's Marketing Coop,  
22 correct?

23 A. Correct.

24 Q. What is the relationship, if you know, between  
25 Dairymen's Marketing Coop and SMA?

1 A. We are a member of SMA.

2 Q. And what is the relationship, if you know,  
3 between Dairymen's Marketing Coop and the FA?

4 A. None, other than we are both members of SMA.

5 Q. I feel like asking you did you listen to my  
6 questions before to the other two and do you agree with the  
7 same things, but I won't. I will ask you a couple of  
8 questions.

9 You do not have any factual information regarding  
10 any issue of disorderly marketing created by  
11 producer/handler, or allegedly created by a  
12 producer/handler in 5 or 7, correct?

13 A. No.

14 Q. And with regard to the question of balancing  
15 costs, are you even aware of what balancing costs are?

16 A. Yes.

17 Q. And Dairymen's Marketing Cooperative understands  
18 that those are actually significant costs to it and its  
19 members, correct?

20 A. Correct.

21 Q. And a producer/handler would have those same kind  
22 of costs, correct?

23 A. Correct.

24 MR. RICCIARDI: I do not have anything further.

25 Thank you.

1 THE COURT: Ms. Carter?

2 MS. CARTER: Antoinette Carter, USDA

3 EXAMINATION

4 BY MS. CARTER, ESQUIRE:

5 Q. Can you tell us how many member/producers is your  
6 cooperative comprised of?

7 A. 168.

8 Q. And where are they generally located?

9 A. In southern Missouri and southern Illinois.

10 Q. I believe you stated that your member/producers'  
11 milk is currently pooled under Federal Order 7 - is that  
12 correct?

13 A. Correct.

14 Q. Can you comment on the volume of milk that is  
15 pooled?

16 A. We have about six million - maybe a little less -  
17 on 7.

18 Q. You also noted disruptive and disorderly  
19 marketing conditions that currently exist between Federal  
20 Order 5 - the Appalachian Order - as well as Federal Order  
21 7 - the Southeast Order. Could you explain what you - in  
22 detail - mean by disorderly conditions in those Orders?

23 A. We have just been on Federal Order 7, but in the  
24 past, we had pooled milk on 5 and it is the same - you have  
25 to really watch to be able to pool your milk. If you are

1 not careful, you will not be able to pool on either Federal  
2 Order.

3 MS. CARTER: Thank you.

4 EXAMINATION

5 BY MS. DESKINS, ESQUIRE:

6 Q. Sharlene Deskins, Office of General Counsel, USDA  
7 You used the term marketing cooperative - can you tell us  
8 what that is?

9 A. We purchase the milk from our members, and then  
10 we sell it onto the plants. We market for our members.

11 Q. So that is not the same thing as a cooperative?

12 A. Yes.

13 Q. Cooperative and market cooperative are the same  
14 thing?

15 A. Yes.

16 MS. DESKINS: I have no further questions.

17 THE COURT: Any other questions? There being  
18 none, you are excused.

19 Anybody else, Mr. Beshore? Where are we now?

20 MR. BESHORE: We have reached Mr. Hollon. My  
21 suggestion would be that we begin with him in the morning.

22 THE COURT: I think that is a good idea, and I  
23 think we will probably start tomorrow at 9:00 a.m. Does  
24 that seem right to everybody?

25 All right, 9:00 tomorrow morning. The hearing is

1 closed for the day.

2 (Whereupon, the hearing in the above mentioned matter was  
3 adjourned at 5:30 p.m.)

4

\* \* \* \* \*