

1                   BEFORE THE UNITED STATES DEPARTMENT  
 2                                   OF AGRICULTURE  
 3                   AGRICULTURAL MARKETING SERVICE

4

5	In the Matter of:	)	
		)	
6		)	
	MILK IN THE CENTRAL	)	Docket Nos.
7		)	AO-313-A48
	ORDER MARKETING AREA	)	DA-04-06

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16                                   TRANSCRIPT OF PROCEEDINGS

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18           The above-entitled matter came on for  
 19           hearing, pursuant to notice, at 1:00 p.m. on  
 20           Monday, December 6, 2004, at the Hilton Kansas  
 21           City Airport, 8801 NW 112th Street, Kansas  
 22           City, Missouri, before the Honorable Marc R.  
 23           Hillson, Chief Administrative Law Judge.

24

25                                   VOLUME I

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1 (Proceedings commenced at 1:04 p.m.)

2 JUDGE HILLSON: Let's go on the  
3 record. Good afternoon, everybody. We're in  
4 Kansas City, Missouri, on December 6th, 2004,  
5 and this is a milk hearing in the Central  
6 marketing area. This is Docket No. AO-313-A48  
7 and DA-04-06.

8 Basically what I have in front of me  
9 indicates that there are 15 proposals to  
10 change the Central Federal Milk Marketing  
11 Order. My name is Marc Hillson, I'm the  
12 Administrative Law Judge in this case. This  
13 is a public hearing. Anyone can present  
14 evidence, but if you present evidence, you are  
15 subject to cross-examination and whatever  
16 evidence it is that you've presented.

17 As the Administrative Law Judge, I  
18 preside over this proceeding, I make sure the  
19 evidence is received in an orderly manner, I  
20 rule on objections. What I don't do is I  
21 don't have any role in deciding of the final  
22 outcome of this matter. That's up to the  
23 administrator.

24 Just a couple of procedural things.  
25 One is that under the rules you need to turn

1 in four copies of any exhibits. You need to  
2 give them to the reporter to mark. I would  
3 also note that as per the practice over the  
4 last several years, the transcript of this  
5 proceeding will be posted on the AMS website  
6 so that you can access it through the  
7 Internet.

8 This rulemaking is under 5 USC 556  
9 and 557. All testimony will be under oath or  
10 affirmation. I will swear people in. If you  
11 don't want to take an oath, so help me God  
12 type of oath, you just need to tell me that,  
13 maybe in advance if you can, and you can just  
14 take an affirmation rather than swear.

15 After the direct testimony it's open  
16 to cross-examination, and if it's they way  
17 it's been done in the past, there will be  
18 multiple people who want to cross-examine. So  
19 one thing I want to emphasize is that, and I'm  
20 going to remind people of this over and over  
21 again over the next several days, is you need  
22 to identify yourself before you ask any  
23 questions of the witness. Even though you've  
24 done it before, even though I know who you  
25 are, you need to do it again and again because

1 we don't know if we'll have the same reporter  
2 all four days or what, so it's important that  
3 you identify yourself. If you have business  
4 cards to give to the reporter, that will  
5 increase the chances of your name being  
6 spelled correctly as well.

7 At the conclusion of the hearing I  
8 will set a briefing schedule. I will also set  
9 a schedule for turning in any suggested  
10 corrections to the transcript.

11 One other preliminary procedural  
12 matter is I've been informed that we only have  
13 the room through the end of the day on  
14 Thursday. I think the end of the day means  
15 like 8:00 or 9:00 p.m. I can start early, I  
16 can go late. I've noticed in the past that it  
17 doesn't work for everybody, so I'm going to  
18 try -- the goal is if it's reasonably  
19 possible, we'll finish the hearing by the end  
20 of the day Thursday, if not sooner. And  
21 that's all up to you, I guess. And I will  
22 just try to be as flexible and adjust the  
23 schedule.

24 Today I don't think I want -- because  
25 a lot of people got up and traveled from the



1 East Coast, I don't think I want to go much  
2 beyond 5:30 or 6:00 today. Tomorrow we can  
3 talk about it at the end of the day. We'll  
4 start at 8:00 or 8:30 and we'll try to go till  
5 6:00 if we need to do that, but if we need to  
6 go much later than that, we can talk about  
7 that as time goes on.

8 I also want to emphasize that  
9 everyone who wants to testify will get the  
10 chance to testify. If there are people on any  
11 given day, and I'll try to make this  
12 announcement each day, if someone is only here  
13 for that particular day, whether it be today  
14 or tomorrow or the next day or Thursday and  
15 they need to testify, they will have an  
16 opportunity to come to me before -- either  
17 during a break or before the hearing starts  
18 for that day and we'll try to find a way to  
19 work you in.

20 I know the government has a number of  
21 witnesses to call and number of exhibits to  
22 get in, but at the first break or certainly at  
23 the end of the day today I'm going to try to  
24 get a list of witnesses and what days they  
25 plan to testify here just so we can make an

1 intelligent plan to get this over and done in  
2 a timely manner.

3 Are there any other preliminary  
4 matters before we take in the -- the noticed  
5 exhibits that the government has?

6 I would like to just go around the  
7 room once to have people enter their  
8 appearances. These are people who are here in  
9 a representative capacity. I'll start with  
10 the government table with Mr. Stevens.

11 MR. STEVENS: My name is  
12 Garrett B. Stevens. I'm with the Office of  
13 General Counsel at the U.S. Department of  
14 Agriculture, Washington D.C.

15 MR. ROWER: I'm Jack Rower.  
16 I'm a marketing specialist with AMS Dairy  
17 Programs, order formulation and enforcement  
18 branch.

19 MS. WARLICK: Good afternoon.  
20 I'm Carol Warlick with Agricultural Marketing  
21 Services in the Dairy Programs, order  
22 formulation and enforcement branch.

23 MR. RICHMOND: Bill Richmond,  
24 also with the Agricultural Marketing Service  
25 Dairy Program, order formulation and

1 enforcement branch.

2 JUDGE HILLSON: I'm not going  
3 to pass the mic around, so we'll just go --  
4 starting behind the USDA table and we'll work  
5 our way around. Anyone else that's here in a  
6 representative capacity, wants to introduce  
7 himself.

8 Start with you, sir.

9 MR. METZGER: Erick Metzger,  
10 General Manger of National All-Jersey.

11 MR. WEIS: Joe Weis, Foremost  
12 Farms USA Cooperative.

13 JUDGE HILLSON: Okay, here on  
14 this side of the room, moving forward now.

15 MR. MILTNER: Ryan Miltner,  
16 Yale Law Office, representing Select Milk  
17 Producers and Continental Dairy Products.

18 MR. RICCIARDI: Good afternoon,  
19 your Honor. I'm Al Ricciardi. I'm here on  
20 behalf of Sarah Farms.

21 JUDGE HILLSON: Anyone else in  
22 a representational capacity?

23 Okay, Mr. Beshore.

24 MR. BESHORE: Marvin Beshore on  
25 behalf of the proponents of Proposals 1 and 2,

1 Dairy Farmers of America, Inc. and Prairie  
2 Farms Dairy, Inc.

3 MR. HOLLON: Elvin Hollon,  
4 Dairy Farmers of America.

5 MR. LEE: Gary Lee, Prairie  
6 Farms Dairy.

7 MR. ENGLISH: Charles English  
8 with Thelen Reid & Priest, here with Dean  
9 Foods Company, Proposals 4 through 13 in the  
10 hearing notice. Also not with me today is  
11 Mr. Paul Christ. He'll be with us later today  
12 or tomorrow.

13 MR. KINSER: Evan Kinser, Dean  
14 Foods.

15 JUDGE HILLSON: Now, our  
16 reporter had to take a lot of names down  
17 phonetically, so I'm hoping that those of you  
18 will all give her business cards so she can  
19 get the correct spelling, or else we'll have  
20 plenty of opportunity later on to get your  
21 names and spelling.

22 Mr. Stevens, does the government have  
23 some exhibits that they want to enter?

24 MR. STEVENS: We do, your  
25 Honor, and we've handed a copy to you for your

1 use and there are copies in the back of the  
2 room. I've given the reporter four copies.

3 The first document we want marked is  
4 the original hearing notice to propose the  
5 public hearing, a Federal Register document,  
6 Volume 69, pages 56725 through 56730. I would  
7 like that marked as 1, Exhibit 1.

8 JUDGE HILLSON: Mark that as  
9 Exhibit 1.

10 (Exhibit 1 was marked for  
11 identification.)

12 MR. STEVENS: The second  
13 document is another Federal Register cite  
14 document, which is an amendment to the  
15 hearing, notice of changing the date, I  
16 believe, is what it does. And that document  
17 is a Federal Register document, also Volume  
18 69, page 61323. Exhibit 2, please.

19 JUDGE HILLSON: Okay.

20 (Exhibit 2 was marked for  
21 identification.)

22 MR. STEVENS: Third document is  
23 a one-page document with the title AMS News  
24 Release. The copy I'm looking at has a date  
25 of 11/29/2004. I'm just trying to give some

1 identifying --

2 JUDGE HILLSON: This is off the  
3 website?

4 MR. STEVENS: Yes, it is a  
5 document taken off of the website.

6 JUDGE HILLSON: That will be  
7 Exhibit 3.

8 (Exhibit 3 was marked for  
9 identification.)

10 MR. STEVENS: And Exhibit 4,  
11 please, is another press release indicating  
12 delay of the hearing and the new date.

13 JUDGE HILLSON: Mark that as 4.

14 (Exhibit 4 was marked for  
15 identification.)

16 MR. STEVENS: Then we have the  
17 Certificate of Officials Notified signed by  
18 the docket clerk of the Department of  
19 Agriculture indicating that the governors of  
20 the states of Colorado, Illinois, Iowa,  
21 Kansas, Michigan, Minnesota, Missouri,  
22 Nebraska, Oklahoma, and Wisconsin have been  
23 notified of the hearing.

24 JUDGE HILLSON: I just have  
25 two, I guess they're in reverse order. Number

1           5, I assume, should be the original one that  
2           was September 23rd and No. 6 should be  
3           November 29th. Mine are in reverse order. I  
4           assume you want them in chronological order.

5                         MR. STEVENS: If I could, your  
6           Honor, please. So that's Exhibit 4. And the  
7           other -- Exhibit 5, I'm sorry.

8                         (Exhibit 5 was marked for  
9           identification.)

10                        JUDGE HILLSON: And the second  
11           one, the one dated October 19th will be  
12           Exhibit 6.

13                        (Exhibit 6 was marked for  
14           identification.)

15                        MR. STEVENS: Thank you very  
16           much. And the last of the notifications is --  
17           there are two documents signed by the Market  
18           Administrator. First one, Determination re  
19           Mailing of Notice of Hearing, one-page  
20           document dated 9/22/2004. I would like that  
21           marked as Exhibit 6.

22                        JUDGE HILLSON: 7, I think.

23                        MR. STEVENS: 7, thank you very  
24           much.

25                        (Exhibit 7 was marked for

1 identification.)

2 MR. STEVENS: And another  
3 Determination re Mailing of Notice of Hearing  
4 marked as Exhibit 8, signed by Nicholson.

5 (Exhibit 8 was marked for  
6 identification.)

7 MR. STEVENS: Now, those are  
8 the notice documents, the first eight. I have  
9 other documents that I would like marked --

10 JUDGE HILLSON: Through the  
11 witnesses?

12 MR. STEVENS: Through  
13 witnesses. These are the compilation of data,  
14 either requested by parties or otherwise  
15 prepared by the Market Administrator's offices  
16 for use of the parties at the hearing.

17 JUDGE HILLSON: And I assume  
18 you want these exhibits admitted?

19 MR. STEVENS: I would like to  
20 have them admitted.

21 JUDGE HILLSON: I assume  
22 there's no objection. Exhibits 1 through 8  
23 are received in evidence.

24 Is it time to call the first witness.

25 MR. STEVENS: I have my first



1 witness, David Stukenberg.

2 DAVID C. STUKENBERG,  
3 a Witness, being first duly sworn, testified  
4 under oath as follows:

5 JUDGE HILLSON: Could you  
6 please state and then spell your name for the  
7 record.

8 THE WITNESS: My name is David  
9 Stukenberg. That's S-T-U-K-E-N-B-E-R-G.

10 JUDGE HILLSON: Your witness.

11 DIRECT EXAMINATION

12 BY MR. STEVENS:

13 Q. Mr. Stukenberg, what is your  
14 employment?

15 A. I'm with the Market Administrator's  
16 office here in Lenexa, Kansas.

17 Q. How long have you been in that  
18 capacity?

19 A. I've been with the Market  
20 Administrator's office for 34 years.

21 Q. And give us a brief description of  
22 your duties in that position in the Market  
23 Administrator's office.

24 A. I am responsible and oversee the  
25 statistical department and also the marketing

1 service laboratory.

2 Q. And have you testified in hearings  
3 before in rulemaking hearings?

4 A. Yes, sir.

5 Q. Presented evidence for the Market  
6 Administrator's office?

7 A. That's correct.

8 Q. And did you prepare documents here in  
9 evidence that you brought with you here today?

10 A. Yes, sir.

11 MR. STEVENS: Your Honor, I  
12 would like marked for identification an  
13 exhibit which is bound in a binder, it has a  
14 cover page, has 103 pages in the document.  
15 The title of the document is Central Federal  
16 Order No. 32, Compilation of Selected  
17 Statistical Data 2000 through 2004 Year to  
18 Date.

19 And the face of the document is  
20 self-explanatory. It was prepare for this  
21 hearing. There are copies available at the  
22 rear of the room for the parties if they would  
23 like to get a copy and follow along.

24 JUDGE HILLSON: Okay, I've  
25 marked that as Exhibit 9.

1                   (Exhibit 9 was marked for  
2                   identification.)

3                   MR. STEVENS: I would like to  
4                   mark for identification No. 10, a cover page,  
5                   I think it has 42 pages. The reason I say  
6                   that is because of the second or third page of  
7                   the document calls it page 3 of 42 pages, so  
8                   I'm going to say 42, 42 pages more or less.

9                   It is a document entitled Central  
10                  Federal Milk Order No. 32, Compilation of  
11                  Selected Statistical Data As Requested By  
12                  Elvin Hollon.

13                  JUDGE HILLSON: I'll mark that  
14                  as Exhibit No. 10. I will note, my copy has a  
15                  supplemental attached to it.

16                  MR. STEVENS: Yes, and I think  
17                  I would like that -- we can give that pretty  
18                  much any number. We can call it 10A or 11.

19                  JUDGE HILLSON: I'm talking  
20                  about the pagination in my Exhibit No. 10.  
21                  You said it has 42 pages and mine actually  
22                  goes up to and includes the supplemental  
23                  attached to page 60.

24                  MR. STEVENS: Okay, yours may  
25                  be unique in that regard.

1 JUDGE HILLSON: So I've marked  
2 the Elvin Hollon request as Exhibit No. 10.

3 (Exhibit 10 was marked for  
4 identification.)

5 MR. STEVENS: I appreciate what  
6 you're saying there. I have one that the copy  
7 I'm looking at has 60 pages.

8 JUDGE HILLSON: Okay. I've  
9 marked that as Exhibit No. 10.

10 MR. STEVENS: Okay. And I  
11 would like to have marked as Exhibit No. 11  
12 the document that is, again, a series of  
13 tables, does not have page numbers on those  
14 tables, but it contains 19 tables and a back  
15 page that does not have a table number, it's  
16 77 pages, I see here, so the back would make  
17 it 78.

18 JUDGE HILLSON: That's the one  
19 called Elvin Hollon Supplemental?

20 MR. STEVENS: Yes, I would like  
21 to have that marked 11.

22 JUDGE HILLSON: So marked.

23 (Exhibit 11 was marked for  
24 identification.)

25 MR. STEVENS: Then as Exhibit

1       No. -- I would like marked for identification  
2       Exhibit No. 12, a document that is also a  
3       Compilation of Selected Statistical Data As  
4       Requested by Evan Kinser, as so stated on the  
5       front page of the document. It's to be 53  
6       pages.

7                       JUDGE HILLSON: We'll mark that  
8       as Exhibit No. 12.

9                       (Exhibit 12 was marked for  
10       identification.)

11                      MR. STEVENS: We would like  
12       marked as Exhibit No. 13 a similar  
13       compilation, supplemental for Evan Kinser, a  
14       document of -- this one doesn't have page  
15       numbers. Bear with me a minute.

16                      I believe it's ten tables attached to  
17       that document.

18                      JUDGE HILLSON: These are all  
19       on double pages?

20                      MR. STEVENS: They are. They  
21       are all double sized, double page statistical  
22       tables.

23                      JUDGE HILLSON: I've marked  
24       that as Exhibit No. 13.

25                      (Exhibit 13 was marked for

1 identification.)

2 MR. STEVENS: We would like  
3 marked Exhibit 14 a similar type document,  
4 Compilation of Selected Statistical Data As  
5 Requested by John Vetne, looks to be a 53 page  
6 document.

7 JUDGE HILLSON: I've marked  
8 that as Exhibit No. 14.

9 (Exhibit 14 was marked for  
10 identification.)

11 MR. STEVENS: I see page 53,  
12 having looked at it, I've looked at the last  
13 page and it's marked 24. If somebody has a  
14 different one, I -- I want to make sure --

15 JUDGE HILLSON: Mine has 24  
16 pages.

17 MR. BESHORE: It says 53 of 53  
18 at the top.

19 MR. STEVENS: It says 53 of 53  
20 at the top, the last page of it is 24, so  
21 we'll go through it, I guess --

22 JUDGE HILLSON: I'm just  
23 looking, as you go through the exhibit, it  
24 says page 13 of 53, 21 of 53 --

25 MR. STEVENS: These are two

1 sided documents, most of them, so --

2 JUDGE HILLSON: We'll use the  
3 numbers at the top.

4 MR. STEVENS: When I look at  
5 it, I see, going into the document to the last  
6 page that is marked 24 at the bottom, it says  
7 page 53 of 53.

8 JUDGE HILLSON: We'll call it  
9 53. It's marked as Exhibit No. 14.

10 MR. STEVENS: And we have some  
11 other witnesses, but these are the documents  
12 that relate to this witness.

13 JUDGE HILLSON: Okay. I've  
14 marked Exhibits 9 through 14.

15 MR. STEVENS: Now, if you  
16 permit me, your Honor, we'll go through the  
17 documents and try to do this as quickly as we  
18 can. We understand there's a lot of material  
19 here. What we're going to try to do is just  
20 go through them and give examples of what is  
21 there and talk about some of the particular  
22 data that's in there, not to belabor and go  
23 through it in too much detail, but to give you  
24 a feeling for what is here.

25 Q. (By Mr. Stevens) David, start with

1 Exhibit 9, and I will ask you -- I'll ask you  
2 the questions and, of course, they relate to  
3 most -- to each of these various exhibits.  
4 These were prepared by you or pursuant to your  
5 supervision?

6 A. That's correct.

7 Q. And they come from documents of your  
8 office --

9 A. Yes, sir.

10 Q. -- the Department of Agriculture,  
11 other officials documents?

12 A. Yes, sir, they do.

13 Q. And before we get too far into it,  
14 these are not presented for or against any  
15 proposal, are they?

16 A. No, they're not.

17 Q. They're prepared for the use of the  
18 parties in the hearing for the purposes that  
19 they choose to use them for?

20 A. That's correct.

21 Q. Now, looking at No. 9, there's a  
22 table of contents and there's various tables  
23 given there that describes what's in the  
24 documents -- it gives you an indication of  
25 what's in the exhibit, so that's



1 self-explanatory. When we get to the tables,  
2 like starting at No. 1, which is on page 2,  
3 just tell us something about that. I mean,  
4 what does it represent?

5 A. This is for the Central Federal  
6 order, and the first section there has to deal  
7 with the class prices at 3.5 percent  
8 butterfat. And then the next four columns are  
9 the numbers that go to make up the class  
10 prices that are used to calculate the Class I  
11 prices.

12 Q. Okay. And reading across at any line  
13 there, of course I see averages for the years,  
14 I see monthly prices, monthly data, that's  
15 what's represented there?

16 A. That's what's represented.

17 Q. That's what the document shows.

18 A. And going back to the year 2000, we  
19 also have it in graphic form, so if there's  
20 any variations there, should be evident as to  
21 the prices going up or down.

22 Q. So the tables, those are  
23 representations at the bottom of the page  
24 you're talking about?

25 A. Yes, sir.

1 Q. The second table, what does that  
2 represent?

3 A. That is the Class II prices. And  
4 again, the Class II price in the first column  
5 and then the other three columns are what make  
6 up the Class II prices, or the Class II price  
7 at 3.5 percent butterfat.

8 Q. So-called proponent prices?

9 A. That's correct.

10 Q. And the 3.5 price, Class II, is that  
11 represented by the table -- the graph at the  
12 bottom of the page?

13 A. That's correct.

14 Q. So you can see the yearly averages  
15 and the monthly averages for that?

16 A. Correct.

17 Q. And it goes year to date for 2004?

18 A. That's correct.

19 Q. Table 3?

20 A. Table 3 is basically the same thing.  
21 We have the Class III price at 3.5 percent  
22 butterfat and, again, the component prices  
23 that are used to calculate the Class III price  
24 at 3.5.

25 Q. And the graphic representation at the

1 bottom of the page?

2 A. Right.

3 Q. Averages for the year?

4 A. Uh-huh.

5 Q. Monthly year to date for 2004?

6 A. Right.

7 Q. How about Table 4?

8 A. Table 4 is the same thing again only

9 for the Class IV price at 3.5 percent

10 butterfat. It lists the components: The

11 butterfat, nonfat solids, and skim; and the

12 averages for the year, along with a graphic

13 representation at the bottom back to the year

14 2000.

15 Q. And you have year-to-date information

16 for 2004?

17 A. Year to date for 2004 is correct.

18 Q. And graphic representation at the

19 bottom of the page?

20 A. Correct.

21 Q. This is similar for each of these. I

22 guess we can go through each one of them, but

23 we probably don't have to in the course of

24 time, people can ask you questions about them

25 if they want.

1                   Table 5, that's producer prices for  
2 Jackson County?

3           A.    At Jackson County, yes, at the \$2.00  
4 location differential.

5           Q.    With the same information represented  
6 as in the previous graphs?

7           A.    That's correct.

8           Q.    Table 6 is advanced Class III and IV  
9 pricing factors?

10          A.    That's right.

11          Q.    Same information?

12          A.    Same information.

13          Q.    But no graphic representation, I see  
14 on that page.

15          A.    Right.

16          Q.    Let me move on to Receipts At Pool  
17 Plants. I should say just for the record that  
18 that section was component and producer  
19 prices, and now we're moving into Receipts At  
20 Pool Plants.

21          A.    Right.

22          Q.    Table 7.

23          A.    Table 7.

24          Q.    Why don't you tell us about that.

25          A.    First column is the total receipts

1 pooled, which includes the other source and  
2 other Federal order receipts, the inventory,  
3 and the overages. And if you subtract the  
4 three columns from that, you end up with a  
5 total producer milk that was pooled on the  
6 Central order during each of the years 2000,  
7 2001, 2002, and by months for 2003 and year to  
8 date for 2004.

9 I might mention that there is a  
10 mistake on here. Under the -- for October  
11 2004, the October total receipts pooled and  
12 the total producer milk, those two numbers  
13 need to be switched.

14 Q. Okay. Which columns?

15 A. The first column and the last column  
16 for October 2004.

17 Q. So tell me if I'm wrong, but I'm  
18 looking at a \$15 million figure reversing with  
19 another figure?

20 A. No, for 2004 for October.

21 Q. I'm sorry.

22 A. October 2004.

23 Q. Thank you very much.

24 MR. HOLLON: What table are you  
25 on, Garrett?

1 THE WITNESS: 7.

2 MR. STEVENS: Table 7.

3 Q. (By Mr. Stevens) For October 2004,  
4 the first column and the last column --

5 A. Yes.

6 Q. -- are reversed?

7 A. Right.

8 Q. It has a graphic representation?

9 A. Right.

10 Q. Now, Utilization By Class.

11 A. Oh, I might mention too, the  
12 year-to-date numbers are also reversed.

13 Q. Are they? Okay.

14 Then we move on to Utilization By  
15 Class, Table 8.

16 A. Table 8 consists of how the Class I  
17 milk was utilized. First column is the whole  
18 milk, the next column is reduced fat, and  
19 lowfat followed by the skim and -- or skim and  
20 fat free milk.

21 Next page, we can continue on with  
22 the flavored milk, the buttermilks, and the  
23 eggnog. Altogether these numbers total up to  
24 equal the total Class I sales on routes by  
25 distributing pool plants.

1 Q. All right.

2 A. On Table 8, then, continued on with  
3 the Class I to nonpool plants is added in to  
4 obtain the number at the end, as are the Class  
5 I ending inventory and the excess shrinkage,  
6 altogether then total the right-hand column,  
7 the gross Class I utilization.

8 Again, these are yearly data for  
9 2000, 2001, 2002, monthly data with a year  
10 total for 2003, and year to date for 2004 by  
11 month.

12 Q. Go ahead.

13 A. The next page, page 14, if you  
14 subtract from the previous column on page 13,  
15 take away the other source -- or other order  
16 and other source milk and the beginning  
17 inventory and overage, you end up then with  
18 the total producer milk utilized in Class I.

19 The next column is the percent that  
20 is of the total producer milk pooled.

21 Q. And the tables numbered 8, that's all  
22 Class I utilization?

23 A. That's all Class I, that's correct.

24 Q. Now we move to 9.

25 A. 9 --

1 Q. Are you finished with Class I there?

2 Is there anything else you would like to say?

3 A. No.

4 Q. Then the next tables?

5 A. Table 9 --

6 Q. Next set of tables, I should say.

7 A. Table 9 is the Class II products,  
8 starting off with fluid cream, then sour cream  
9 and dips, yogurt, cottage cheese, frozen  
10 desserts, and other Class II. Then add to  
11 that the Class II to nonpool plants, Class II  
12 shrinkage, and we end up then with the gross  
13 Class II utilization. Adding up all the  
14 previous columns combined, you end up with the  
15 gross Class II utilization. Again, these are  
16 yearly totals with monthlies for 2003, 2004  
17 year to date.

18 Take away from the gross Class I  
19 total the other source milk and other order  
20 milk, less the beginning inventory and  
21 overages, and you end up again like before,  
22 the total producer milk utilized in Class II,  
23 with the last column being the percent that is  
24 of the total producer milk pooled.

25 Q. Just like the other set of tables,



1       this is for the years 2000 through 2004 year  
2       to date?

3           A.    That's correct.

4           Q.    Could you move on to Table 10?

5           A.    Table 10 is the same thing only with  
6       Class III this time.  The first column is  
7       Class III products, which primarily is cheese.  
8       Added to that the approved dumps and animal  
9       feed, Class III to nonpool plants and  
10       shrinkage, and we determine then the gross  
11       Class III utilization.

12                Like before, we take away the other  
13       source milk and the other order milk and the  
14       beginning inventory, and we calculate then the  
15       total producer milk utilized in Class III.  
16       And the last column being the percent that is  
17       of the total producer milk pooled.

18           Q.    All right.  And that information is  
19       for years 2000 through 2004 year to date?

20           A.    That's right.

21           Q.    You want to tell us about Table 11?

22           A.    Table 11 is a similar format where we  
23       start out with the Class IV products, the  
24       improved dumps and animal feed that got  
25       allocated to Class IV, the Class IV to nonpool

1 plants, ending inventory and shrinkage to  
2 determine the gross Class IV utilization.  
3 From that we subtract the other source and  
4 other order milk, the beginning inventory and  
5 overages, and we calculate then the Class IV  
6 producer milk. And the last column is the  
7 percent that is of the total producer milk  
8 pooled.

9 Q. And we have this information for the  
10 years 2000 to 2004 year to date?

11 A. That's right.

12 Q. Tell us about Table 12.

13 A. Table 12 is the assembling of all the  
14 percentages put together on one page for Class  
15 I, II, III and IV, how that producer milk was  
16 utilized.

17 Q. And that's information for the years  
18 2000 - 2004 to date?

19 A. That's right.

20 Q. And also a graphic representation of  
21 that?

22 A. Right.

23 Q. Table 13, please.

24 A. Table 13 are the pounds of producer  
25 milk utilized by class: Class I, II, III and

1 IV, with the totals on the right-hand column.  
2 Again, for the -- by year 2000, 2001, 2002,  
3 and monthly data with the total for the year  
4 for 2003 and year to date for 2004 by month.

5 Q. And then two graphic representations?

6 A. Two graphic representations.

7 Q. All right. Now, let's move on to the  
8 Fluid Milk Sales section. Table 14.

9 A. Table 14 is the listing of all inside  
10 area sales by pool and nonpool plants. First  
11 column is the in-area sales by the pool  
12 plants. This is on routes distributed inside  
13 the marketing area. Table 2 is the in-area  
14 sales by the nonpool, which includes other  
15 Federal order and partially regulated  
16 handlers, producer handlers, and any other  
17 that is not a regulated handler. Then the  
18 total of that is on the right-hand side.

19 Q. Then the graphic representation,  
20 information for the years 2000 - 2004 to date?

21 A. That's correct.

22 Then the next page, continuation of  
23 Table 14, it's a breakdown by Federal order  
24 within area sales by the nonpool plants.  
25 Start off with the Northeast and Appalachian

1 orders combined due to confidentiality.

2 Q. All right.

3 A. Then we have the Southeast order, the  
4 Upper Midwest order, the Mideast order, the  
5 Pacific Northwest, Southwest, Western and  
6 Arizona, Las Vegas orders combined. Then  
7 in-area sales by partially regulated plants,  
8 producer handlers, and then by exempt plants.  
9 The total, then, on the right-hand side is the  
10 total in-area sales by these nonpool plants.

11 Q. And that information is displayed for  
12 the years 2000 to 2004 to date?

13 A. That's correct.

14 Q. Move on to Table 15.

15 A. Table 15, then, is the out-of-area  
16 sales by the nonpool plants. The in-area  
17 sales is the first column and shows to be  
18 approximately 85 to 86 percent of the sales by  
19 the regulated handlers, or inside the  
20 marketing area, with the remaining 12 to 15  
21 percent outside of the marketing area. And  
22 then the last column is a total of the handler  
23 sales.

24 Continuation of Table 15 on page 29  
25 is a breakdown by which areas these sales went

1 to. The first column is the Northeast and the  
2 Appalachian order, followed by the Southeast,  
3 the Upper Midwest, sales into the Mideast.  
4 And then combined we have the Pacific  
5 Northwest, Southwest, Western, and Arizona/Las  
6 Vegas orders. And this is followed, then, by  
7 the unregulated sales, sales in unregulated  
8 areas, and then last column is the total  
9 out-of-area sales by the regulated pool  
10 handlers.

11 Q. All this information given represents  
12 the data from years 2000 to 2004 to date?

13 A. That's correct.

14 Q. Now, moving to the section entitled  
15 Price Components in Producer Milk starting  
16 with Table 16.

17 A. Table 16, the first column is the  
18 pounds of butterfat in the producer milk that  
19 was pooled and the average tests. The next  
20 column is the price of that butterfat and the  
21 value of that butterfat in total dollars. And  
22 again, that is for the years 2000 through 2004  
23 to date.

24 The next --

25 Q. Go ahead.

1           A.    Table 17 is the protein in producer  
2           milk.  The pounds of protein that was marketed  
3           in the producer milk is the first column, the  
4           average test is the next column, the average  
5           price for the protein is then listed, followed  
6           by the total protein value in the pool of the  
7           producer milk.

8                    Table 18 is the other solids.  Again,  
9           the same format.  We have the total pounds of  
10          other solids pooled, the average test, the  
11          other solids price, and the other solids  
12          value.

13                   Table 19, we show the pounds of  
14          butterfat in the producer milk by class.  And  
15          this is priced at the handlers at Class I in  
16          the first column, Class II in the second  
17          column, followed by Class III, IV, and then  
18          the total pounds of producer butterfat.  This,  
19          again, is for the years 2000 through 2004 year  
20          to date.

21                   Table 20 is the utilization of the  
22          butterfat in producer milk by class:  Class I,  
23          II, III, and IV on a percentage basis, so  
24          coming across the last column equals 100 for  
25          the years 2000 to 2004 year to date.

1           The next column is the skim milk that  
2           is priced. This is primarily in Class I. The  
3           first column is the --

4           Q.   Excuse me a second. I believe you  
5           said the next column. The next table, Table  
6           21?

7           A.   I'm sorry, 21. The skim pounds in  
8           producer milk. The first column is the total  
9           pounds of skim milk in producer milk, and the  
10          next column is the Class I skim milk that was  
11          priced at the handlers plant. And, again, we  
12          have in the last column we have the percent of  
13          the producer skim milk that is priced at Class  
14          I of the total producer milk marketed.

15          Table 22, we have the same thing with  
16          the protein. We have the protein pounds that  
17          were marketed by the producers. And since  
18          protein is priced only in Class III at the  
19          handler, the next -- middle column, then, it  
20          lists the pounds of protein that were priced  
21          at these handlers and the percent of the  
22          protein that is priced at the handlers for the  
23          years 2000 through 2004 year to date.

24          Table 23 is the same with other  
25          solids. We have the other solids that was

1 marketed as producer milk, followed by a  
2 column that shows the other solids that were  
3 priced at the Class III handlers -- or priced  
4 at Class III at the handlers. And the last  
5 column is the percent of the other solids that  
6 was priced as Class III.

7 Table 24 is the solids-not-fat, which  
8 is a combination of the protein and other  
9 solids. First column is the Class II pounds,  
10 the next column is the Class III pounds, which  
11 includes the other solids and the protein, and  
12 the Class IV column is primarily the other  
13 solids, and together they total up, then, to  
14 the total solids-not-fat pounds that were  
15 priced at the handlers. I'm sorry, that's  
16 total producer nonfat -- solids-not-fat  
17 pounds.

18 Table 25 is the utilization of the  
19 solids-not-fat in producer milk by class.  
20 First column is the percent that was utilized  
21 in Class II, Class III is followed, Class IV,  
22 followed by the percent of producer  
23 solids-not-fat which was priced at the  
24 handler.

25 Table 26 lists the somatic cell count



1 in the producer milk. First column is the  
2 average marketwide average of the somatic  
3 cells for years 2000 through 2004 year to  
4 date. The next column is the rate at which  
5 the somatic cells were priced.

6 JUDGE HILLSON: Why don't you  
7 spell somatic? I know it's right in front of  
8 you, just so we have it correct in the  
9 transcript.

10 A. Okay. Somatic is spelled  
11 S-O-M-A-T-I-C.

12 And the last column is the value to  
13 the pool of the somatic cell adjustment.

14 Q. (By Mr. Stevens) Now, moving on to  
15 the section of the exhibit entitled Producer  
16 Receipts By State and County of Origin.

17 A. Table 27 on page 44 lists the  
18 marketings by state for the years 2000 and  
19 2001, and we list the number of farms and the  
20 pounds of milk marketed from each of the  
21 states listed.

22 On page --

23 Q. That document starts on page 44?

24 A. That's correct, page 44.

25 Q. And ends?

1 A. Ends on 49.

2 Q. What you've described is the  
3 information contained for the various states  
4 on those pages?

5 A. Right, for the years 2000 and 2001.

6 Q. We pick up at what page, then?

7 A. On Table 28, then, we start with the  
8 same data for different years, for the years  
9 2002 through 2003, by state listing the number  
10 of farms and the pounds of milk marketed.  
11 This continues on for another six pages.

12 Q. So that runs from page 50 --

13 A. 50 through page 55.

14 Q. Okay. Pick up there.

15 A. And then Table 29 on page 56, it's  
16 the same thing but for the year 2004,  
17 marketings by state --

18 Q. To date, right?

19 A. To date, right. Well, through  
20 September.

21 Q. I hear you. Okay, exactly. This is  
22 based on the latest data you have available, I  
23 assume, for this hearing?

24 A. Right.

25 Q. And that information runs from what

1 page?

2 A. From page 56 through page 60.

3 Q. Now, tell us about Table 30.

4 A. Table 30 are two maps for the month  
5 of September 2004. What is listed is actually  
6 pooled --

7 Q. There's a misspelling there I see on  
8 the page, I see that. Do you see that,  
9 "actual"?

10 A. Actual.

11 Q. You're a milk marketer, not a --

12 A. Right, right.

13 Q. But that is "actual" is the word?

14 A. That's right, actual.

15 Q. That just jumped out at me. I'm not  
16 picking on you, it just jumped out at me. It  
17 can happen. It can happen. Okay.

18 A. Map on the left-hand side shows the  
19 graphic representation, breaking it down into  
20 five different categories. The first one is a  
21 very light blue showing less than 1 million  
22 pounds of milk from which there were 459  
23 counties that marketed milk or pooled milk on  
24 the Central Federal order.

25 The pink is 1 to 4 million pounds for

1       61 counties, followed by 4 to 12 million  
2       pounds in the blue, and then the darker blue,  
3       from 12 to 32 million pounds from ten  
4       counties, and one county had in excess of  
5       100 -- the 104 million -- had between 100 and  
6       104 pounds of milk pooled on the Central  
7       order.

8           Q.    Right.

9           A.    And listed below that are the total  
10       marketings that were pooled during the month  
11       of September 2004.  And followed by the pounds  
12       of milk that came from within the marketing  
13       area and the pounds of milk that came from  
14       outside the red line that's indicating the --  
15       that is indicative of the marketing area.

16          Q.    Okay.  And the other map on that  
17       page?

18          A.    The other map on that page on the  
19       right-hand side indicates since September was  
20       a month where there was a great deal of milk  
21       that was depooled, we had been asked to  
22       present data to indicate how much of the  
23       depooled milk -- or where the depooled milk  
24       was actually located that was depooled.

25          Q.    And that document, I'm not going to

1 ask you to go through each of the colors and  
2 whatever, but looking at the legend in the  
3 box, you can determine the location of these  
4 various depoolings and volumes by the colors  
5 that are represented there?

6 A. That's correct.

7 Q. And I'm doing this, I guess, in an  
8 effort to move it along as quickly as we can.  
9 I mean, the document speaks for itself,  
10 certainly, and what it represents. You might  
11 say the same thing about the other tables that  
12 we're going to go into starting with Table 31.

13 So I guess, unless there's an  
14 objection, to me it seems they are  
15 self-explanatory, you can just say what they  
16 are but we don't have to go through each of  
17 the legends, just give us a brief description  
18 of each of them.

19 A. Table 31, then, shows the county  
20 marketings for September 2003 and September  
21 2002. And again, down at the bottom we have  
22 the total pounds that were marketed, how much  
23 came from inside the marketing area, how much  
24 came from outside.

25 Q. Okay.

1           A.    Page 65, we show the same data for  
2           September 2001, followed by September of 2002.

3                    Page 67 --

4                            JUDGE HILLSON:  Hold on.  On  
5           page 65, you said September 2002.

6                            THE WITNESS:  I'm sorry, 2000.  
7           You're right, 2000.

8           A.    Table 33, page 67 through page 83,  
9           the next 16 pages are listing, then, of  
10          marketings by state and county for December of  
11          the years 2000, 2001, December 2002, and  
12          December 2003.

13          Q.    (By Mr. Stevens)  That document is  
14          self-explanatory in the representation with  
15          the state, the county and the volumes?

16          A.    I hope so.

17          Q.    And that's what it's intended to  
18          do --

19          A.    Yes.

20          Q.    -- that's how you made it.

21          A.    Right.  So for comparison sake, we  
22          have all four years -- all four Decembers  
23          listed on the same line.

24          Q.    That goes through --

25          A.    That goes through page 83.

1           Q.   Now, starting with the section  
2           entitled Plants Regulated Or Associated With  
3           the Central Federal Order, Table 34.

4           A.   Table 34 is a listing of all the  
5           plants.  First one is the distributing plants  
6           that were pooled, the listing of all the  
7           distributing plants that were pooled, what  
8           city and state they were located in, followed  
9           by the ZIP Code and the FIPS code.

10          Q.   FIPS being -- you might explain,  
11          FIPS.

12          A.   FIPS is the geographic code that is  
13          used in data processing, for the most part, I  
14          think, as a delineation of state and county.

15          Q.   All right.

16          A.   For instance, the -- on  
17          Anderson-Erickson, the FIPS code there is 19.  
18          19 is indicative of the state code and the  
19          next three digits are the county code in which  
20          that plant is located.

21          Q.   Okay.

22          A.   The next column is the Class I  
23          differential applicable at each of these  
24          plants.  And the January through December for  
25          the year 2003 is the months in which these

1 plants were pooled, as indicated by the number  
2 32.

3 Table 35 is the same thing for the  
4 year 2004 to date, through October.

5 Table 36 is the listing of these  
6 plants and graphic representation that were  
7 pooled in October 2004.

8 Table 37 is a listing of the supply  
9 plants during the year 2003. Again, the same  
10 data, the city, the state, the FIPS, the ZIP  
11 Code and then the FIPS code, followed by the  
12 differential applicable at those plants, and  
13 each of the months in which these plants were  
14 pooled as indicated by the number 32.

15 Table 38 on page 90 is the same  
16 information for the year 2004.

17 Table 39 is a map showing the  
18 location of these supply plants for October  
19 2004.

20 Table 40 on page 93 lists the  
21 cooperatives that filed a report that they  
22 acted as handler on, for the year 2003, as  
23 indicated by an X in each of the boxes for the  
24 corresponding months in which reports were  
25 filed.



1           Q.    So the absence of an X would mean no  
2   report?

3           A.    They did not file a report for the  
4   cooperative, the same as milk as pooled on the  
5   Central order.

6                    Below that is a listing of the  
7   producer handlers that are pooled that --  
8   sorry, I shouldn't say pooled -- but producer  
9   handlers that marketed milk on the Central  
10   Federal order during the year 2003, followed  
11   by partially regulated plants that also  
12   marketed milk on the order.

13          Q.    Also shows their location?

14          A.    And their location, that's correct.

15                   Table 41 is for the year 2004, and it  
16   shows the cooperatives that have filed a  
17   report where they acted as the handler on that  
18   milk.  And again, underneath that is a listing  
19   of the producer handlers by city and state,  
20   and also the partially regulated also by city  
21   and state that have marketed milk on the  
22   Central Federal order.

23                   Table 42 is a graphic representation  
24   of where these plants are located, or where  
25   their headquarters are for the cooperatives

1 that pooled the milk.

2 Q. Let me make sure I understand that.  
3 It's not where the plant is located?

4 A. No.

5 Q. It's, again?

6 A. The cooperative headquarters are  
7 where they pooled the milk. For instance, DFA  
8 here in Kansas City is not a plant, it is an  
9 office. That's where the report is filed  
10 from.

11 Q. Now, you've included an appendix with  
12 this exhibit?

13 A. Yes. For the appendix on the first  
14 one, page 99, we show a listing -- or a  
15 graphic representation of the Class I  
16 differentials broken down into six different  
17 zones.

18 Q. The legend of the document indicates  
19 the -- say it again.

20 A. The applicable Class I differentials  
21 at each of these counties.

22 Q. Okay.

23 A. 44 on page 101 shows the Central  
24 marketing area in the multitude of colors  
25 there, along with a listing of certain cities

1 where these plants are located, and gives you  
2 an indication of the Class I differentials  
3 applicable at those cities.

4 Q. And the number in parentheses in the  
5 legend?

6 A. How many counties are included in  
7 the -- first one, for instance, says 22.  
8 That's how many counties are at the \$1.70  
9 Class I differential, primarily up around the  
10 Sioux Falls area in this case.

11 Q. Okay.

12 A. On page 103, this is a map showing  
13 the current Federal order marketing areas as  
14 of April 1, 2004.

15 Q. Okay.

16 MR. STEVENS: Your Honor, what  
17 I propose to do is have the witness go through  
18 the exhibits that he has and then offer him  
19 for cross-examination as opposed to each  
20 individual exhibit.

21 JUDGE HILLSON: I think that's  
22 a good idea. I have no problem with that. I  
23 don't want to have each document one at a  
24 time, cross-examination; this will be in a  
25 more orderly. You can remember your

1 questions, I'm sure.

2 Q. (By Mr. Stevens) Moving on to  
3 No. 10, Exhibit No. 10. You prepared  
4 information for the hearing?

5 A. That's correct.

6 Q. You were requested to prepare  
7 information for the hearing by more than one  
8 individual companies?

9 A. That's right.

10 Q. And could you tell us, with respect  
11 to the information in Exhibit 10, does a  
12 letter that constitutes the first three pages  
13 or so of that exhibit, does that basically  
14 describe how you came to prepare this exhibit  
15 or the reasons why or you had a request so you  
16 prepared documentation?

17 A. Right. That's the reason it's listed  
18 here is to show that there was a request  
19 submitted, and we prepared it to the best  
20 ability based on the data that we had  
21 available.

22 Q. And the documents that are included  
23 in this exhibit are that?

24 A. That's correct.

25 Q. All right. Would you go through them

1       briefly, describing what they are, the  
2       request, and what was then prepared and  
3       presented?

4           A.    Okay, sure.  In regards to DFA  
5       Request No. 1, as found on page 5, we have  
6       listed the state and county data for the  
7       Central order in our own exhibit, Exhibit  
8       No. 9.  And DFA also requested state and  
9       county data for the Western order, and that  
10      will be presented by a representative from the  
11      Seattle Marketing Administrator's office a  
12      little later.  And he also requested data for  
13      the Upper Midwest, or Order 30, state and  
14      county marketings, and that is included in the  
15      supplement marked Exhibit 11.

16           Moving on to No. 2, the request was  
17      for the various highway distances, or  
18      distances from one point to another.  First  
19      one starts out with Des Moines, and the grid  
20      that's set up or the matrix that is set up  
21      here is Des Moines and Boise.  We have listed  
22      the quickest highway distance at 1,396 and the  
23      shortest at 1,347.  And it corresponds that  
24      way throughout the whole matrix here.  And our  
25      source for this was Trip Maker Deluxe.

1           Q.    On what pages of the exhibit do you  
2           find that information?

3           A.    That was on page 6 of the exhibit.

4           Q.    All right.

5           A.    That corresponds to his Request  
6           No. 2.

7                    And on Request No. 3, we started off  
8           with the Southern Illinois-Eastern Missouri  
9           Federal order, which is before Federal Order  
10          Reform, so going back to the years 1997, '98  
11          and '99.  In the first column we listed what  
12          the Class I price is at Alton, Illinois,  
13          followed by the Class II price and the Class  
14          III price and the uniform price, which was  
15          also at Alton, Illinois.

16                   And then there was also a request for  
17          what the PPD would have been, so we determined  
18          a proxy for the PPD, producer price  
19          differential that is, by subtracting the  
20          uniform price and the Class III price.  And as  
21          you can see on the first one there for January  
22          of '97, turned out to be \$1.01.

23                   On page 8 we have a listing of the  
24          utilization of the producer milk as pooled.  
25          Class I in the first column, followed by Class

1       II and III. There were only three classes  
2       back then. And the fourth column is the total  
3       of those three class producer pounds combined.

4               This is followed, then, by the  
5       percent utilization, which is basically the  
6       Class I price divided by the total producer  
7       price to come up with a percent that was  
8       utilized in Class I. And the same follows for  
9       Class II and III. And the requester also  
10      asked that we would estimate the producer milk  
11      not pooled, and that is found in the last  
12      column.

13              They also asked for the  
14      Nebraska-Western Iowa order, Order 65. And  
15      again, it's in the same format where we show  
16      the Class I, II and III prices. In this case  
17      there was a Class III-A price, which included  
18      milk that was used to manufacture nonfat dry  
19      milk. The next column is the statistical  
20      uniform price, and the producer price  
21      differential in the last column.

22              On page 10 we have the pounds of milk  
23      that were pooled in each of the three classes.  
24      We combined Class III and III-A because the  
25      Class III-A data was confidential. So when

1       you add those three across, you come back to  
2       the total producer milk pounds pooled along  
3       with the Class I percent, Class II and Class  
4       III percentages and then an estimate for the  
5       producer milk that was not pooled due to  
6       price. These, again, are for the years '97,  
7       '98 and '99.

8               On page 11, the same data is  
9       contained as before, where we list the Class  
10       I, II and III prices along with a Class III-A  
11       price, the statistical uniform price and the  
12       producer price differential.

13              Page 12 is the listing of the pounds  
14       of producer milk pooled by class along with  
15       the total, then the percents, Class I, II and  
16       III, and we have listed in this case the III-A  
17       pounds that were pooled for most months.  
18       Several months were restricted, in which case  
19       they are not combined with the Class III over  
20       here. In fact, none of this is combined with  
21       the Class III. III-A in this column here  
22       stands alone. Class III concludes the Class  
23       III and III-A.

24              Q. Now, just so the record reflects,  
25       when you say restricted, you mean that you are



1 not allowed to give out information which  
2 would do what?

3 A. If there were less than three  
4 handlers involved. So it would be no problem  
5 for one handler, if he had this data, to  
6 subtract -- if he knew what his pounds were,  
7 he could subtract and determine what the other  
8 one was, know how many pounds the other one  
9 did.

10 Q. Okay, go ahead.

11 A. On Exhibit -- on page 13, DFA Request  
12 4A, the request was for how much or what  
13 effect Idaho milk would be on the PPD if it  
14 were included at the rate of either 25 million  
15 pounds, 50 million pounds, 75 or 100 million  
16 pounds.

17 The actual PPD for November 2003 was  
18 \$0.20, including Idaho milk at the tune of 25  
19 million pounds, would have lowered the PPD by  
20 \$0.06 during the month of November. And as  
21 you can see, it continues to decrease. We  
22 base this on a location, Class I location  
23 value of \$1.75 and determine the producer milk  
24 based on the component values for the Western  
25 Federal order.

1           The same data is also contained here  
2           for December 2003 and January 2004 listing the  
3           actual prices and recomputation of using the  
4           additional Idaho milk based on the criteria  
5           I've set forth in the first one.

6           Page 14, we list the producer price  
7           differential computation with the effect of  
8           the incremental increase of the depooled  
9           producer milk utilized in Class III. So this  
10          is saying if the depooled milk was added back  
11          in, what effect would that have on the  
12          producer price differential at the various  
13          percentages as listed across the top.

14          First column contains the producer  
15          milk as pooled, the next column is the Class  
16          III estimated depooled pounds, followed by the  
17          weighted average PPD. And this is before the  
18          Producer Settlement Fund is adjusted; in other  
19          words, the minus \$0.04 to \$0.05 taken out.

20          In fact, all of these numbers are  
21          indicative of the same, so there would be no  
22          question as to the rounding of the Producer  
23          Settlement Fund. The first column is the 25  
24          percent effect, then followed by the 50  
25          percent, and then 75 and 100 percent.

1           On page 15 we have just the opposite.  
2           We have what the actual Class III pounds were  
3           listed. And if these pounds were reduced by  
4           the increments of 25, 50, 75 and 100 percent  
5           and that particular effect on the PPD. And  
6           this goes for the months January -- or July  
7           2003 through May 2004.

8           Page 16 is the estimated volume of  
9           maximum milk allowed to be depooled at the 125  
10          percent depooling limit with a three month lag  
11          time. So in the first month, 49 percent of  
12          the milk, followed by 36 percent in the second  
13          month, and 20 percent in the third month, or a  
14          three month average of 35 percent.

15          Number 6, DFA Request No. 6 is also  
16          found on page 16 as the estimated volume, but  
17          115 percent of the depooling limit with the  
18          three month lag time. First month is 34  
19          percent, followed by 24 percent, 13 percent in  
20          the third month, or the three month average of  
21          24 percent.

22          DFA Request No. 7 is found on page  
23          17. It's the pounds of milk transported from  
24          supply plants to distributing plants in  
25          increments of 100 pounds during the year --

1 Q. Excuse me. Increments of 100 miles?

2 A. 100 miles. I'm sorry, 100 miles,  
3 during the year 2003. So in the first one  
4 with less than 100 mile distance shift, there  
5 was 12,048,687 pounds. And this is going down  
6 in various increments. Two of the areas were  
7 restricted because there were less than three  
8 handlers involved, and the 101 to 200 mile  
9 range and at the 500 to 600 mile range. Total  
10 for the year, then, that moved from supply  
11 plants to distributing plants was 213,786,101.

12 Page 18 is the pounds of producer  
13 milk that were actually pooled with their  
14 percent change from the previous month. This  
15 is not on a daily basis, this is a strictly  
16 percent change.

17 DFA Request No. 9 is found on page  
18 19, and it's the hauling rates by state.  
19 First off we list Colorado, Iowa, Illinois,  
20 Kansas and Minnesota and Northern Missouri on  
21 this first page, and this is for the years  
22 2000, 2002 and year-to-date 2004.

23 The next page, 20, is for the states  
24 Nebraska, New Mexico, North and South Dakota  
25 combined, Oklahoma, and then Wisconsin.

1           Page 21 is a county breakdown of the  
2           hauling rates for the year -- for the month  
3           January 2004. Again, this is listed by state  
4           and by county for each of the counties that  
5           pooled milk on the Central Federal order  
6           during the year -- during January 2004. This  
7           goes on for eight pages.

8           Q. Now we're at page?

9           A. 29. DFA Request No. 10, the question  
10          was: What is the Class I contribution to the  
11          pool.

12                 To determine this, we determined the  
13          value -- the value as the difference between  
14          the Class I price at the location and the  
15          producer milk differential at location. The  
16          Class I price is based on the announced Class  
17          I skim and butterfat prices and applying the  
18          market average component values to the same  
19          milk being used to compute the producer  
20          component prices or -- excuse me -- the same  
21          milk using the producer component prices and  
22          somatic cell adjustments.

23          Q. What you've stated is in the  
24          footnote, the asterisk, the record should  
25          reflect that's what you mean?

1           A.    That's correct.

2           Q.    In other words, column 1 is modified  
3 or is explained by what is after the asterisk?

4           A.    That's correct.

5           Q.    Thank you.

6           A.    The next column is the Class I value  
7 as pooled followed by the total pool value.  
8 Then the next column is the percent Class I  
9 value is of the total. In other words, taken  
10 in the first line up there, the 46.9 million  
11 divided by the 128.6 million to equal the 36.5  
12 percent. And the PPD that was applicable for  
13 each of those months, January 2000 through  
14 October 2004.

15                   Page 31 is a combination of the DFA  
16 Request Nos. 11 and 12. First might add that  
17 for January 2004, this was a verbal request by  
18 Foremost Farms, and the August and October was  
19 requested by DFA.

20                   For January 2004, what is shown here  
21 on the first column is the actual PPD as  
22 pooled. Then followed to the right of that is  
23 the total pounds included in the pool and then  
24 the value of the pool itself, with the PPD  
25 determined before the Producer Settlement Fund

1 adjustment is made.

2 In calculating, then, the assembly  
3 credits, we came up with an assembly credit  
4 value of \$388,808, and that is added in and  
5 we -- no, subtracted, I'm sorry -- subtracted  
6 and determined the PPD before the Producer  
7 Settlement Fund adjustment of 70.3530 cents.

8 Q. As represented on the document  
9 .703540?

10 A. That's right. And taking out the  
11 more than four but less than 5, we end up with  
12 a PPD of \$0.66, or a reduction of \$0.03.

13 And then on the transportation  
14 credit, as defined, we subtract off another  
15 \$142,619 and determine a PPD before the  
16 Producer Settlement Fund of .692344, or PPD  
17 after the Producer Settlement Fund adjustment  
18 of \$0.65. This is the same methodology that  
19 was used, then, for August 2004 and October  
20 2004.

21 On page 32, DFA Request No. 13, they  
22 asked for splitting up the marketing area --  
23 or distributing plants, I should say, in four  
24 different regions. And to start off with in  
25 Area 1, included primarily the Colorado

1 distributing plants. Area 2 was labeled as  
2 Nebraska and Iowa, which does include the  
3 plant in Sioux Falls, South Dakota, and a  
4 plant at Kansas City, Missouri, here.

5 Q. Now, reading across one of those  
6 areas, you describe the information, you said  
7 the name of the plant and where it is, what  
8 state. What else is represented here?

9 A. The ZIP Code is the next number that  
10 is listed, followed by the Class I location of  
11 that plant.

12 Area 3 is primarily the Illinois and  
13 Missouri plants -- or it is Illinois and  
14 Missouri plants. And on Area 4 is combining  
15 the Oklahoma and Kansas plants. And at the  
16 bottom is a listing of the supply plants that  
17 were used in these maps.

18 So on the first one on page 33 at the  
19 top for January 2004, for the Colorado area  
20 handlers, 95,808,529 pounds of milk were  
21 received directly at these plants.

22 Q. In accordance with the material in  
23 the legend, with the description in the legend  
24 as to the volumes at specific distributing  
25 plants?



1           A.    Right, the five different color  
2           gradients listed there.

3                    The bottom section of that page is  
4           for July 2004 for the same area, the Colorado  
5           area.

6                    Page 34 is for the Iowa and Nebraska  
7           area plants.  Also showing January 2004 at  
8           158,671,671 pounds were received directly at  
9           distributing plants from the farm.  Listed  
10          below is the same data for July 2004.

11                   On page 35 we have the Illinois and  
12          Missouri plants, that's eastern Missouri area,  
13          not counting the one in Kansas City because  
14          that's part of the previous page, page 34.  So  
15          for January 2004 we have 130.6 million pounds,  
16          and listed below is July at 121.6 million  
17          pounds received directly at distributing  
18          plants.

19                  Q.    Now, we can read along here to each  
20          of these tables and we see similar information  
21          for the months represented there and the  
22          locations indicated on the tables; in other  
23          words, they describe this situation at  
24          locations, various locations for various ones  
25          as demonstrated on those pages?

1           A.    That's correct.

2           Q.    And that information continues --

3           A.    Continues on to page 36.  Is also  
4           January and July 2004 data.  And then on page  
5           37 we have August data for the Colorado area  
6           on the top, the Iowa and Nebraska area on the  
7           bottom, followed by the eastern Missouri and  
8           Illinois data, at the bottom of that is the  
9           Kansas/Oklahoma data.  And on page 39 is the  
10          supply plant marketings by county that were  
11          received directly at supply plants.

12          Q.    The previous documents are  
13          distributing plants?

14          A.    Strictly distributing plants.

15          Q.    And the last is supply plants?

16          A.    That's correct.

17                 On page 41 we have DFA's Request  
18          No. 14.  The request was to go through a  
19          sample of the assembly and transportation  
20          credits as proposed.

21                 So we picked, for instance, a plant  
22          in Des Moines, Iowa.  These numbers are not  
23          indicative of the actual marketings,  
24          production at that plant or any other things,  
25          these are just purely for an example purposes.

1 Q. A hypothetical?

2 A. Hypothetical, right. Say, for  
3 instance, that that plant had a gross Class I  
4 utilization, then, of 22 million pounds, and  
5 we backed off, as described in the proposal,  
6 some of the various other receipts at that  
7 particular plant, and we end up, then, with a  
8 remainder of 20 million pounds.

9 Of the physical receipts of that  
10 plant, following on down five or, just small  
11 (i), (ii) and (iv), these are references to  
12 the proposal. Under A we have the producer  
13 milk that was received directly at that plant,  
14 followed by the producer milk that was  
15 received as 9(c), or cooperative acting as  
16 handler, and then, for instance, we have three  
17 supply plants listed, or other pool plants is  
18 what's indicated here, and by totaling those  
19 up we end up with 25 million pounds.

20 Taking the 20 million pounds listed  
21 up above, divided by the 25 million pounds, we  
22 end up, then, with a pro rata of 80 percent,  
23 which is listed along that same line with the  
24 20 million pounds.

25 So with that pro rata, then, we take

1 the numbers here, for instance on the producer  
2 column, we take the 3 million -- or producer  
3 line, we take the 3 million pounds times the  
4 80 percent to come up with the 2.4 million  
5 pounds as listed. We do the same thing all  
6 the way down the line and end up exactly again  
7 with the 25 and 20 million pounds.

8 To the pro rata numbers, we take the  
9 rate of \$0.10 per hundredweight to come up  
10 with the values as listed there, which would  
11 be the assembly credit values. At \$0.10 a  
12 hundredweight comes down to \$20,000.

13 This is followed, then, underneath  
14 that with the transportation credit example as  
15 listed in the proposal as 55(a). We use the  
16 three supply plants, one at Grant County,  
17 Wisconsin, Morgan County, Colorado, and  
18 Houston County, Minnesota. Using the rate of  
19 \$0.30 as specified and the 217 miles on the  
20 first one for Grant County, for instance, we  
21 determine, then, a rate of 65 -- or \$0.6510  
22 and determine the value, then, of applying the  
23 1.6 million pounds at that rate to come up  
24 with the \$10,416.

25 Then as specified under 3, A 3, we

1 take the transferee's price, which is the  
2 plant at Des Moines, from the transferor  
3 price, which is at Grant County, Wisconsin,  
4 and come up with a difference of \$0.05. And  
5 that effect of the \$0.05 is the \$800 as listed  
6 below.

7 So in effect, what we do is take the  
8 \$0.6510 and from that we subtract the \$0.05 as  
9 listed there and come up with a value, then,  
10 or a rate of .601 times the 1,600 pounds to  
11 determine the \$9,616 credit.

12 In the middle column I might add that  
13 there is no difference in the transferee price  
14 or transferor -- there is a difference in that  
15 price, but there is no positive -- we only  
16 deal with positive numbers only as specified  
17 in the proposal.

18 On the back side of that on page 42  
19 we show the miles that were used. In this  
20 case we used the shortest highway distance  
21 miles.

22 On page 44 -- actually, 43 is the  
23 supplement made to back up the maps on Request  
24 No. 13. This was requested after we had  
25 prepared the exhibit together, and the

1 question was, well, where is the data. Well,  
2 this was added late Friday afternoon.

3 Q. So in order to supplement the  
4 information included on the maps, you created  
5 this information at the request of Mr. Hollon?

6 A. That's right.

7 Q. This information is contained on the  
8 pages of this document from what pages?

9 A. Page 44 till the end, page 60. It is  
10 for two months, for the month January 2004 and  
11 July 2004.

12 Q. Could I direct your attention to the  
13 exhibit marked for identification as No. 11?  
14 Now, that information, you received a request  
15 to prepare that information?

16 A. Right. This is part of Elvin  
17 Hollon's Request No. 1. Like I mentioned  
18 before, the data for Order 32 was contained in  
19 the Market Administrator's exhibit, the data  
20 for Order 30 is contained here.

21 Q. All right.

22 A. All it is, for the year 2000 through  
23 date or as much as possible through August of  
24 2004, is the marketings by state along with a  
25 map showing where these counties are located,

1 and then the individual county listings follow  
2 for each of the months of December 2000 and  
3 December 2001, December 2002, December 2003.

4 The numbers at the bottom correspond  
5 to an exhibit that was prepared for the Upper  
6 Midwest hearing back in August, I think it  
7 was, and that's why there may be some  
8 confusion over the numbers listed down at the  
9 bottom. It was taken directly from that  
10 particular exhibit with the exception of the  
11 last page, which updates the marketings by  
12 state.

13 Q. Is there anything else you want to  
14 add with respect to Exhibit 11?

15 A. No, sir, other than it was prepared  
16 by the Minneapolis Marketing Administrator's  
17 office.

18 Q. And so the record clearly reflects  
19 that, you received a request?

20 A. I received a request from Mr. Hollon.

21 Q. And then you referred that request  
22 to?

23 A. To an individual up in the Upper  
24 Midwest -- or the Minneapolis Marketing  
25 Administrator's office.

1 Q. And this information was prepared by  
2 them pursuant to your direction?

3 A. At my request, yes.

4 Q. And as you would testify from their  
5 records, to your knowledge?

6 A. To the best of my knowledge, right.

7 Q. Did you receive any other request for  
8 information for the hearing?

9 A. Yes. We received a request from  
10 Elvin Kinser.

11 Q. And directing your attention to the  
12 exhibit marked 12. The first page of that  
13 document, what does that represent?

14 A. First page of that document are, or  
15 page 2 is what you're referring to?

16 Q. Right, right.

17 A. That is the letter he sent requesting  
18 the data that's contained in this exhibit.

19 Q. All right. Starting with page 3  
20 page.

21 A. Starting with page 3, it's using the  
22 same areas as before: The Colorado, the  
23 Nebraska/Iowa, the eastern Missouri and  
24 Illinois, and the Kansas/Oklahoma areas.  
25 Areas 1, 2, 3 and 4 in the same order. And



1 followed under that are the supply plants,  
2 direct receipts by which counties, and the  
3 total producer receipts.

4 This is listed, then, for November  
5 and May of -- well, November -- November of  
6 the year 2000 and then -- well, November 2000,  
7 2001, 2002 and 3, and then May, 2001, May  
8 2002, 3 and 2004. The same information for  
9 each of those.

10 This is followed, then, on page 4 by  
11 a map. First one shows the supply plants and  
12 where the direct receipt of that milk came,  
13 from which counties that the milk came from.  
14 And the color variation of this one is a  
15 little bit different, there's only four color  
16 variations listed.

17 Page 5 is for the distributing plants  
18 in the month of November 2000. And again,  
19 there's just four color variations there, same  
20 area supplied. Page 6 is for November 2001.  
21 In the middle is the total producer receipts  
22 listed at these distributing plants for all  
23 four areas combined.

24 Page 7 is for November 2002. Page 8,  
25 November 2003, followed on page 9 is for May

1 for supply plants, May 2001 through May 2004,  
2 respective Mays. This is followed, then, by  
3 May 2001 direct receipts at the distributing  
4 plants for each of the four regions again.

5 Page 11 is for 2002 May data. May 2003 is on  
6 page 12, followed by May of 2004 on page 13.

7 Page 14 is a listing of the counties  
8 for May 2004 by each of the four areas, plus  
9 supply plants on the fifth column and milk  
10 that was shipped or received directly at  
11 nonpool plants on the last column. This  
12 carries on, then -- the May data goes to page  
13 23. Then this is followed by November 2003  
14 data on page 24 and continues on to page 43  
15 and then on page 44 we start the May 2003  
16 data, again for the four areas plus supply  
17 plants plus nonpool plants.

18 Q. All right. And that finishes on  
19 page?

20 A. It finishes on page 53.

21 Q. This material was responsive to the  
22 request contained in the letter of November  
23 30th?

24 A. That's correct.

25 Q. 2004?

1           A.    That's correct.

2           Q.    Let me direct your attention to the  
3           exhibit that has been marked for  
4           identification as No. 13.  You prepared this  
5           exhibit?

6           A.    Yes, sir.

7           Q.    And you prepared it pursuant to a  
8           request?

9           A.    Pursuant to a phone call request from  
10          Mr. Kinser on Friday.

11          Q.    So after the letter you received a  
12          phone call request, and these tables, I  
13          believe, correct me if I'm wrong, but I  
14          believe there are ten of them?

15          A.    There's actually --

16          Q.    You tell me.

17          A.    Two pages make up one year.

18          Q.    So there's two pages making up one  
19          year and there are --

20          A.    Five -- from the year 2000 through  
21          2004, so there would be five years' worth of  
22          data here.

23          Q.    Fine.

24          A.    And all it is is information that we  
25          post on our website every month updating it,

1 listing by each of the Federal orders. There  
2 are Class I price, the statistical uniform  
3 price, the PPD if applicable, and the producer  
4 receipts, and the class utilizations: I, II,  
5 III and IV. The weighted average prices and  
6 utilization and total pounds are listed on the  
7 far right-hand column.

8 Q. We can find this information on the  
9 website?

10 A. This is found on our website.

11 Q. You prepared it per request for use  
12 of the hearing?

13 A. Yes.

14 Q. This represents what time period?

15 A. Starting with January 2000.

16 Q. To?

17 A. To October 2004.

18 Q. All right. Then the information is  
19 related there, and I look -- at each of the  
20 end there's a summary of each -- when I look  
21 at the second page, they are two page  
22 documents?

23 A. Right.

24 Q. There's a total --

25 A. For all Federal orders. They were

1 combined into one, right.

2 Q. Did you receive -- is there anything  
3 else you want to say about that document?

4 A. Not at this point.

5 Q. Thank you. With respect to the  
6 exhibit marked No. 14, did you receive further  
7 requests from individuals for information?

8 A. This request was submitted by  
9 Mr. John Vetne.

10 Q. And with the letter that appears on  
11 the back side of the cover page dated November  
12 11th, 2004, what does that reflect?

13 A. This is a copy of the letter that was  
14 submitted to our office requesting the data  
15 that's contained in the pages that follow.  
16 And I might add that at this point that the  
17 page number that you are looking at the lower  
18 right-hand column is the page number as  
19 submitted by Mr. Vetne and he set it up in  
20 this particular format. So in a lot of cases  
21 we plugged the number into the format he had  
22 prescribed, and the page numbers at the top  
23 are the ones that we'll be referring to.

24 Q. So he sent the format and you filled  
25 in the numbers from the data in your office?

1           A.   That's correct.  And we listed the  
2           pages at the bottom to show that there were  
3           none missing.

4           Q.   All right.

5           A.   On the first page, or page 3, he  
6           broke it down into distributing pool plants  
7           and the size ranges based on the criteria he  
8           has listed here.  The first one is for  
9           million.  I might add Mr. Vetne had a problem  
10          spelling million, since you want to --

11          Q.   That's fair.

12          A.   Shame he's not here.

13                    The first one that is equal to or  
14          more than a million pounds, there were two  
15          plants.  Normally we would consider this  
16          confidential data, with the exception that we  
17          did a survey in our office and nobody guessed  
18          the correct two plants.  So that's --

19          Q.   We'll except that verification.

20          A.   I doubt if anybody else can in the  
21          industry either.  But anyhow, what's listed  
22          here, then, is the total receipts of all fluid  
23          milk products at that particular -- at these  
24          two plants in the next column, followed by  
25          their Class I dispositions.

1           The next line is for the range of 15  
2 million but less than 25 million. There were  
3 12 such distributing plants, along with the  
4 pounds listed and their Class I dispositions.  
5 I think the next line is pretty  
6 self-explanatory, doing the same, more than 5  
7 million but less than 15 million, 16 plants,  
8 along with their pounds and their disposition.  
9 And this is for December 2003. And the same  
10 information for July 2004.

11           On page 4 it's listed as handlers.  
12 In this case we didn't look at individual  
13 plants as such, we looked at a combination of  
14 plants. For instance, the Dean Foods plants  
15 were combined into one, the Hiland plants were  
16 combined into one, Prairie Farms plants were  
17 combined into one and so forth.

18           Q. As the footnote explains?

19           A. As the footnote explains, right.

20           So for the 25 million pounds or more,  
21 there were six handlers marketing -- or  
22 receiving 430 million pounds with Class I  
23 dispositions of 320 million. The same is  
24 true, then, for the next range there, 15 to  
25 25, and then 5 to 15, and then the 5.

1           Q.    You stand by the numbers that are in  
2           the documents; in other words, what that says  
3           is what you found from your review of your  
4           office records?

5           A.    That's correct.

6           Q.    All right.

7           A.    The next page, page 5, is a listing  
8           of the pool distributing plant handlers supply  
9           sources. So for that same, by handler size.  
10          Again, handler size is looked at, upon --

11          Q.    Subject to the footnotes?

12          A.    Subject to the footnotes.

13          Q.    Footnotes describe what those terms  
14          mean?

15          A.    So for the less than 25 million  
16          pounds -- or greater than 25 million pounds in  
17          this case, under the 9(c) or cooperative  
18          acting as handler, there were 338.6 million  
19          pounds received; patron producers, or the  
20          handler is paying the producers, there were 67  
21          million pounds received; 14.9 million pounds  
22          from supply plants; and 10.2 from other  
23          sources that were received in bulk form, not  
24          packaged. And this is done also on the same  
25          criteria as far as the size ranges: 15 to 25,



1       5 to 15, and 5, and below that is the July  
2       2004 data.

3               The next page is the same data as the  
4       previous page but only on a percentage basis.  
5       And I might add that on the top one for  
6       December 2003 for the 15 to 25 range, that 12  
7       that's listed under "supply plants" should be  
8       moved over to the "other source, bulk milk."

9               Q.    So the number under the "supply  
10       plant" percent of supplied is zero?

11              A.    That's correct.

12              Q.    And the number under the column  
13       "other source bulk milk" percent of supplied  
14       is 12?

15              A.    That's right.

16              Q.    Thank you.

17              A.    Down on the bottom of that page is  
18       the July percentages.

19              Q.    And again, these -- as represented on  
20       this from your office information, as modified  
21       by the footnotes?

22              A.    That's correct. Page 7 is a listing  
23       of the plants. These are distributing plants,  
24       not handlers as such, where their Class I  
25       utilization was over 90 percent, between 75

1 and 90 percent, and less than 75 percent. So  
2 we have listed here, and there are no 7(e)'s,  
3 so it's all plants under 7(a). We have 14, 9,  
4 and 8 under the respective classes, with Class  
5 I dispositions listed in the next column,  
6 followed by the percent of the total Order 32  
7 route dispositions, and the last column is the  
8 milk used to produce non-Class I products.  
9 This is data for December 2003, and on the  
10 bottom of that page is for July 2004.

11 On page 8 we have the producer milk  
12 receipts of distributing pool plants for which  
13 the handler -- or which the distributing plant  
14 is the handler. This is no 9(c), cooperative  
15 as handler milk. Strictly where the handler  
16 received the milk and not as a coop acting as  
17 a handler. These are listed by month from  
18 January 2003 through October 2004.

19 Q. Let me ask you on that -- on page 8,  
20 you're saying these are proprietary --  
21 something that would be referred to as  
22 proprietary handlers?

23 A. Proprietary handlers.

24 Q. What does that mean?

25 A. That's where the handler --

1 Q. It's not a coop?

2 A. It's not a coop, right.

3 Q. It would be a business in the  
4 business of processing milk?

5 A. That's correct.

6 Q. But not a cooperative?

7 A. No cooperative. With the exception  
8 of, if you look at Prairie Farms, for  
9 instance, they are a cooperative but yet they  
10 own plants. These plants -- well, they would  
11 not be included in here to begin with, but  
12 that would be maybe a little different  
13 variation of what you had just described.

14 Q. Okay.

15 A. On page 9 we have the producer  
16 receipts and utilization by the pounds and by  
17 pounds of where the plant is located. In  
18 Colorado, all the plants located in Colorado,  
19 for instance, had a Class I utilization of  
20 71.6 million pounds; Class II of 17 million;  
21 Class III, 65; Class IV, 14.5 million, for a  
22 total at the Colorado plants where the  
23 producer milk was received of 171.6 million  
24 pounds. This is true for each of the states  
25 listed here.

1           And this also includes nonpool plants  
2           that are located in the various areas, along  
3           with commercial food processing  
4           establishments, which we would describe as a  
5           nonpool plant anyhow, but Mr. Vetne chose to  
6           special subgrade it, but it is included. And  
7           then for the three different miscellaneous  
8           areas that he has here, these states would be  
9           included in each of the areas that he has  
10          listed.

11          Q.    And all this information is subject  
12          to the footnotes at the bottom?

13          A.    That's correct. On page 10 we have  
14          the same data for May 2004.

15          Q.    Let me ask you, just to make sure the  
16          record reflects.

17          A.    Sure.

18          Q.    The information that you have plugged  
19          in here pursuant to Mr. Vetne's request, you  
20          stand by the numbers that are on the  
21          documents. I believe, and I just want to make  
22          sure the record reflects, I think you misspoke  
23          on the last time, you said 71 million instead  
24          of 74 for the page 9. So not to belabor the  
25          fact, but what your testimony is is what's on

1 the documents. In other words --

2 A. That's correct.

3 Q. Unless you amend it.

4 A. Right.

5 Q. What is on the documents is what you  
6 found --

7 A. Right.

8 Q. -- when you looked in your records  
9 and answered Mr. Vetne's request?

10 A. That's correct.

11 Q. And that would be true for all of  
12 these?

13 A. That's correct.

14 Q. All this information you've put in so  
15 far?

16 A. That's correct. If I misstate --

17 Q. It can happen. There are a lot of  
18 numbers here.

19 A. Tell me about it.

20 Q. You know better than any of us. So  
21 thank you.

22 A. Okay. On page 11 we have the data  
23 for October 2004. And at this point I would  
24 like to make a correction. On Wisconsin, for  
25 Class III, the number should read 268,470,684.

1 Then that amends the total, then, to  
2 269,922,802. Do I need to repeat that?

3 Q. Your Class III you gave a number,  
4 right?

5 A. Right.

6 Q. What was the number?

7 A. Class III should be 268,470,684.

8 Q. Then that changed the number on the  
9 total?

10 A. That's correct.

11 Q. All this information, as with the  
12 others, subject to the footnotes?

13 A. That's correct. On page 12,  
14 Mr. Vetne asked for a little different  
15 breakdown on the distributing plants as  
16 listed. We chose to maintain the areas that  
17 we had previously selected from the standpoint  
18 that to switch them around could possibly  
19 reveal some data that we consider  
20 confidential.

21 And in looking at the whole picture,  
22 the handlers compete more readily with  
23 producer milk in the areas which we have  
24 originally selected, so we asked him to look  
25 at the Dean's exhibit for the months that he

1 has listed here of January, May and October,  
2 or at least close to it.

3 We weren't -- since he's asking for a  
4 wealth of data, it was almost impossible to  
5 gather every month that anybody's requested,  
6 but we gave it our best shot in the time  
7 constraints that we had. If we had more time,  
8 we would be glad to do more. But it was  
9 impossible for us to do all the months that  
10 were requested.

11 So in that -- with page 12 and page  
12 13, I might add, too, that the DFA exhibit  
13 would also include some of the data he asked,  
14 especially for January 2004. And on page 14.

15 On page 15 we have listed the  
16 producer milk receipts at pool supply plants,  
17 or as he listed here 7(c) supply plants, which  
18 is the pool supply plant definition, and  
19 utilization at these plants for the years --  
20 for the months January 2003 through October  
21 2004. First column is the Class I utilization  
22 followed by Class II, III, IV and then the  
23 total.

24 Page 16 is the supply plant receipts  
25 and dispositions. First column is the

1 producer milk for January 2003 through October  
2 2004, followed by the pool plant receipts. In  
3 other words, these are receipts from another  
4 supply plant. And the next column is from  
5 other Federal orders and followed by nonpool  
6 plant receipts.

7 The dispositions, first column, is to  
8 the pool plants followed by two other Federal  
9 orders and then dispositions to nonpool  
10 plants.

11 Page 17, the answer to that one was  
12 easy, "None."

13 On page 18 is the producer receipts  
14 by 9(c) handlers, excluding supply plant milk.  
15 On the first column is the Class I and it's  
16 for January 2003 and goes on down to, again,  
17 October 2004. The utilization of Class II,  
18 III and IV are listed.

19 The unclassified is milk that's been  
20 shipped to distributing pool plants and would  
21 be allocated at the respective distributing  
22 pool plants. And then the total is on the  
23 right-hand column -- right, totals on the  
24 right-hand column of 9(c) milk.

25 On page 19 we have the producer



1 receipts by the type of handler. First column  
2 is the 9(c) followed by the supply plants  
3 followed by the distributing pool plants where  
4 they have patron receipts. The first column,  
5 then, for January 2004, for instance, was 56.4  
6 percent of the total that was pooled, followed  
7 by 12.7 percent of the supply plants, and 30.9  
8 of the distributing pool plants. Together  
9 would equal 100 percent. Again, that goes  
10 through January -- or October 2004.

11 On page 20, which actually continues  
12 on, then, to page 21 through page 47 is a  
13 listing of the nonpool plants which received  
14 producer milk directly. In other words, where  
15 the producer milk was diverted to.

16 Continuing on, then, on page 48, it  
17 was requested to break down the largest --  
18 three largest 9(c) handlers by volume and to  
19 groups. So for Group 1, being the three  
20 largest, followed by the Group 2 being the  
21 next three largest, and so forth on down.

22 So for January 2002 for Group 1, we  
23 show the Class I pounds and followed by the  
24 Class II pounds, the III pounds, the IV  
25 pounds, and the unclassified again. And total

1 across is, in this case, 1 billion pounds.

2 On the second grouping, the next  
3 three largest, the numbers I think pretty well  
4 speak for themselves as you go across. And  
5 followed, then, by the Group 3, which is the  
6 groups -- or the plants that would be the --  
7 or the 9(c) handlers that are the seventh  
8 through the ninth largest.

9 I might add that in some of these a  
10 little farther down there was one other one or  
11 sometimes two other ones, so they were also  
12 combined in the last groups. This goes for  
13 January and July of 2002, January and July of  
14 2003, January and July of 2004.

15 On page 49, he wanted the estimated  
16 monthly volume of producer milk that would  
17 have been depooled to meet the proposed  
18 diversion limits of 75 to 80 percent -- or 75  
19 or 80 percent, I should say. He requested for  
20 January of 2002 through October 2004.

21 As mentioned above the footnote at  
22 the bottom, prior to March 2003 the data was  
23 not calculated due to an order amendment which  
24 eliminated the pyramiding of some of the --  
25 well, eliminated some of the plants. And that

1 amendment became effective March 1, 2003.  
2 Data prior to that would be, as far as we're  
3 concerned, meaningless and it would not  
4 indicate what is truly going on at the present  
5 time.

6 So for March 2003, we list the pounds  
7 pooled and then the estimated volume that  
8 was -- would have been depooled to meet the  
9 either 75 or 80 percent criteria. And this  
10 goes on through October 2004.

11 The next page is in regard to  
12 Proposal 5, and it lists either the 65 or 75  
13 percent, depending on the month. And again,  
14 the pounds pooled are listed followed, then,  
15 by the estimated volume that would have been  
16 depooled to meet the either 65 or 75 criteria,  
17 depending on the month.

18 On page 51, the request was the  
19 monthly volume of producer milk pooled by  
20 supply plant handlers at specified percent  
21 ranges of shipments to distributing pool  
22 plants. Under the first column it says less  
23 than 20 percent, so in other words, less than  
24 20 percent of the milk was -- of this volume  
25 of milk was moved to -- it was from plants

1 that moved less than 20 percent to  
2 distributing pool plants. So in March of  
3 2003, we have the 89,101,000 pounds, that was  
4 the milk that was pooled at supply plants that  
5 shipped less than 20 percent so distributing  
6 pool plants.

7 The next column is identical. In  
8 other words, there was nobody in that area  
9 between the 20 and 25 percent, so the numbers  
10 stayed the same. And the last column -- or  
11 the third -- next to the last column is the  
12 less than 35 percent, so again, the number  
13 would increase because we had additional --  
14 some additional plants. And then the last  
15 column is the Order 32 supply plant milk,  
16 total supply plant milk that was pooled. And  
17 this goes on for March of 2003, again because  
18 the order amendment, and through October 2004.

19 On page 52, looking here at the  
20 monthly volume of additional supply plant  
21 shipments to distributing plants that would be  
22 required under Proposals 1 and 5. So for  
23 listing in March, again, we did not do data  
24 prior because of the order amendment.

25 In March 2003 under Proposal 1, what

1       that's showing is 13,058,055 pounds of  
2       additional supply plant milk that would  
3       have -- that would have been required to be  
4       shipped.

5                 Under Proposal 5, is the next line  
6       over -- or the next column over, showing it  
7       was 50.8 million pounds, and the number of  
8       plants that would have been effected are also  
9       listed. And this data goes on through October  
10      2004.

11                On page 53, we list here the  
12      estimated total producer milk eligible to be  
13      pooled by handlers that was voluntarily not  
14      reported as pool milk. In other words,  
15      depooled milk. And this is listed -- and this  
16      is not separated, as he requested, under 9(c),  
17      supply plant handlers, or other plant  
18      operations, because the data is not kept in  
19      the manner in which we could extract it to  
20      meet this request. So what is listed here are  
21      the depoiled pounds by all handlers that were  
22      pooled.

23                And that includes Mr. Vetne's  
24      request.

25                Q. Now, with respect to the documents

1 that you have just talked about, now I'm  
2 referring to Exhibits 9 through Exhibit 14,  
3 these were prepared by you or at your  
4 direction from records of your office or other  
5 offices of the Market Administrator?

6 A. Yes, sir, they were.

7 Q. And they were prepared at the request  
8 of outside parties, that is non-governmental  
9 people, some of this information was requested  
10 by individuals or companies?

11 A. That's right.

12 Q. And you prepared this to the best of  
13 your ability pursuant to those requests?

14 A. Yes, sir.

15 Q. From the information that we have  
16 described, the data sources are indicated on  
17 the documents, they come from official records  
18 of your offices?

19 A. Yes, sir.

20 Q. And they are not presented for or  
21 against any proposal?

22 A. That's correct.

23 MR. STEVENS: I don't have any  
24 further questions of the witness --

25 A. May I --

1 Q. (By Mr. Stevens) Do you have  
2 anything that you would like to add?

3 A. Yes. May I make one correction?

4 Q. Sure.

5 A. On Exhibit No. 10, Elvin Hollon, the  
6 DFA request on page 13, I stated before that  
7 the location used was \$1.75. That should be  
8 \$1.60.

9 Q. What page?

10 A. Page 13 on Exhibit 10.

11 Q. Okay. Now, what's your correction?

12 A. I stated that the location adjustment  
13 which was used was \$1.75. It should have been  
14 \$1.60.

15 Q. Where is that reflected on the  
16 document?

17 A. That would be reflected in the  
18 recomputation of the producer price  
19 differentials by adding back in Idaho milk.

20 Q. So on the document, you don't see the  
21 numbers that you just said, though?

22 A. Right.

23 Q. Just repeat them so I can make sure I  
24 have my document right.

25 A. The correct location adjustment

1           stated should be \$1.60, not \$1.75.

2           Q.    It's not on the document, make sure  
3           that's clear in the record.

4           A.    Right.

5           Q.    But you are now amending the document  
6           by your remarks?

7           A.    That's correct.

8                         JUDGE HILLSON:  Are you done  
9           with this witness, Mr. Stevens?

10                        MR. STEVENS:  That's all I  
11           have.  And I certainly intend to offer these  
12           to be admitted.  I know the witness is subject  
13           to cross-examination.

14                        JUDGE HILLSON:  And I'm  
15           thinking it might be a fine time for our  
16           afternoon break.  So let's take exactly, by my  
17           watch, we'll come back at 3:15.

18                        (Recess.)

19                        JUDGE HILLSON:  Who wants to  
20           begin the cross-examination?

21                        MR. ENGLISH:  I think he has  
22           something to say.

23           A.    May I make one more correction to the  
24           Market Administrator's Exhibit No. 9.  On page  
25           23, over on the right-hand column down towards



1 the bottom, the total producer receipts there  
2 were also misstated. For the month of October  
3 they should read the same as what's contained  
4 back over on page 9.

5 So in other words, total producer  
6 receipts for October should be 1,204,175,137,  
7 and the total year to date is also incorrect,  
8 it should be 10,115,576,193. I'm sorry about  
9 that.

10 JUDGE HILLSON: Mr. English.  
11 Once again, identify yourself and who you're  
12 representing.

13 MR. ENGLISH: Charles English  
14 for Dean Foods.

15 CROSS-EXAMINATION  
16 BY MR. ENGLISH:

17 Q. And first, sir, an obvious thank you  
18 for this wealth of data. Appreciate it very  
19 much. I know it was a lot of hard work,  
20 especially on short notice.

21 A. You're welcome.

22 Q. I'm going to try to take this in  
23 order so we don't jump around from exhibit to  
24 exhibit, but it may turn out it doesn't work  
25 out that way.

1           I would like to start with Exhibit 9  
2           and have a short discussion, at least, on  
3           using page 13 as a reference, Table 8, which  
4           is the Other Class I Utilization, Class I to  
5           nonpool class. Could you tell us what kind of  
6           milk or what kind of transfers might occur for  
7           Class I to be going to nonpool plants?

8           A. This would include package transfers  
9           to other Federal order plants to partially  
10          regulated plants to almost anybody else other  
11          than a pool plant that's pooled under the  
12          Central Federal order, and it could also  
13          include sales to producer handlers. And I  
14          think that's probably about it at that point.

15          Q. If it is bulk milk that has been  
16          received at a nonpool plant, let's say a plant  
17          outside the marketing area that does not  
18          qualify as a pool plant and is processed into  
19          Class I, is someone responsible to the Central  
20          order pool for the Class I price on that milk?

21          A. Yes, they would be.

22          Q. Turning to page 18, the Class III.  
23          Looking for a moment as one example, in  
24          February of 2004 there was almost 621 million  
25          pounds of Class III and in June there was 636

1 million pounds of Class III, but in between  
2 for March, April and May, we had quantities  
3 that were as low as 20 million pounds;  
4 correct?

5 A. That's correct.

6 Q. To your knowledge, did those class --  
7 did those nonpool plants that normally process  
8 Class III simply stop processing milk into  
9 cheese during those months?

10 A. No, they do not.

11 Q. What, in fact, actually happened that  
12 explains these numbers?

13 A. Well, there was a lot of milk  
14 depooled, and I would assume at this point  
15 most of that milk that was depooled was milk  
16 that was utilized or would have been utilized  
17 in Class III or at these plants that make the  
18 cheese products.

19 Q. And you've now used the term depooled  
20 with me but also in answer to questions from  
21 Mr. Stevens and also in some of the exhibits.  
22 Could you, for the record, tell us what the  
23 term depooled means?

24 A. Well, when the price alignment gets  
25 to be such where the coop or even a handler,

1 for that matter, a distributing pool plant  
2 handler decides that it would cost or you  
3 would have to pay into the pool because of a  
4 higher Class III price, he elects not to pool  
5 that milk, or as we call depooling.

6 Q. And that is what you mean when you  
7 have other documents and exhibits where you  
8 made assumptions as to milk that would have  
9 been associated with this market except for  
10 the fact it was depooled?

11 A. That's correct.

12 Q. Now, at a pool distributing plant,  
13 milk received at a pool distributing plant  
14 such as the Anderson-Erickson operation in Des  
15 Moines, Iowa, can it be depooled?

16 A. No, it cannot.

17 Q. And the reason why it cannot be  
18 depooled is because Class I pool distributing  
19 plants are fully regulated pursuant to the  
20 regulation, all the milk received there is  
21 regulated; correct?

22 A. That's correct.

23 Q. Turning to page 27 of Exhibit 9, I'm  
24 also going to reference here one of your  
25 documents which listed a listing of producer

1 handlers. And for the moment I just want to  
2 understand, when you list producer handlers,  
3 do you include plants that otherwise would  
4 also be exempt plants?

5 A. There's a fine line definition  
6 between exempt plant and producer handler  
7 plant. To be an exempt plant you have to have  
8 less than 150,000 pounds of Class I sales. We  
9 look upon it if a producer handler is a  
10 bottler who markets less than 150,000 pounds  
11 of Class I sales, we will include him as a  
12 producer handler, because he is responsible  
13 all the way from the cows to distribution of  
14 the milk.

15 Q. And so the other chart you actually  
16 list the name -- I don't have it in front of  
17 me right now -- you actually list the name of  
18 producer handlers, some of those may also turn  
19 out to be exempt plants?

20 A. Well, if you want to define it as an  
21 exempt plant because they have less than  
22 150,000, that's correct.

23 Q. For purposes of page 27, you've got  
24 listed a column Pacific Northwest, Southwest,  
25 and Arizona/Las Vegas, Class I sales in such

1 an order by nonpool handlers. Once the  
2 Western order was terminated, did the  
3 treatment of processing plants located in the  
4 Western order for this table change or did  
5 they remain included in that column?

6 A. They did not remain included in that  
7 column. Two of them moved to the partially  
8 regulated column and one of them moved to  
9 the -- well, one of them did stay in that  
10 column because he was pooled under the  
11 Southwest Federal order. Two others went to  
12 the partially regulated.

13 Q. Turning to page 29 for a moment and  
14 your listing of Class I route sales by Central  
15 order pool handlers. The out-of-area sales  
16 into the Upper Midwest appear to have changed  
17 rather significantly from October to November  
18 of 2003.

19 A. Right.

20 Q. Without stating the entire hundred  
21 percent of that was due to any one entity,  
22 would it be fair to say that one difference  
23 between October and November 2003 was the  
24 change in pooling status of one plant as  
25 listed in your later data?

1           A.    That's correct.

2           Q.    It's not, again, that suddenly milk  
3           just stopped being sold in the Upper Midwest,  
4           it is probably now showing up in the Order 30  
5           data?

6           A.    That's correct.  Of course, you'll  
7           see the same increase in area sales from Order  
8           30.

9           Q.    Thank you.

10          A.    Or from the Upper Midwest Federal  
11          order.

12          Q.    So looking back on Table 14 on page  
13          26, we see an increase of October to November  
14          of Upper Midwest sales pursuant to what you  
15          just said?

16          A.    Yes.

17          Q.    Thank you very much.

18                 Turning to page 67.  And for the  
19          moment, a clarification, I think everybody in  
20          this room probably knows, but for the record  
21          in case somebody later is looking at this and  
22          wondering, there is a period of time prior to  
23          December '01 when there is no milk marketed  
24          from California and there's a period of time  
25          after, for December '03, for which there is

1 zero milk marketed from California.

2 Were those marketings from California  
3 the result of pooling regulations that have  
4 been changed since that time?

5 A. Correct, effective March 1st of 2003.

6 Q. And with that change, the economic  
7 incentive to pool that California milk was  
8 changed and as a result that California milk  
9 is no longer associated with this market;  
10 correct?

11 A. Correct.

12 Q. It's not, again, that that California  
13 milk simply ceased to exist, it's whatever  
14 economic incentive it had has been altered;  
15 correct?

16 A. That's correct.

17 Q. One last question on this exhibit,  
18 page 93. I want to tie this back. This is  
19 the list of producer handlers that some of  
20 which may also qualify as exempt plants;  
21 correct?

22 A. That's correct.

23 Q. And turning to the next page --  
24 forget what I said about the last question --  
25 are any of these plants partially regulated



1 during 2004 the plants that you refer to that  
2 became partially regulated that had been  
3 regulated under the Western order?

4 A. Yes. The West Farm Foods down in  
5 Boise, Idaho, and the Gossner Foods at Logan,  
6 Utah.

7 Q. Thank you. Turning to Exhibit 10,  
8 page 13. No, you already covered that.

9 Page 30. You have a Net Class I  
10 Contribution to the Pool. Is there a reason  
11 why you didn't use the term Gross Class I  
12 Contribution to the Pool?

13 A. The gross is actually the Class I  
14 value as listed there.

15 Q. And so that would be what the -- the  
16 net class contribution -- I guess what I'm  
17 getting at, are there times when the -- a  
18 Class I plant, when it reports on its milk,  
19 may actually draw out of the pool?

20 A. Yes, that has happened.

21 Q. Does that happen at times when we  
22 have depooling?

23 A. Yes.

24 Q. For instance, did it happen -- when  
25 you look at March and April of 2004, the net

1 Class I contribution to the pool is under \$2  
2 million.

3 A. Uh-huh.

4 Q. Were there plants during those months  
5 that actually drew from the pool -- Class I  
6 plants that actually drew from the pool?

7 A. Yes, I'm sure there were.

8 Q. Was any of that milk that was Class I  
9 milk received at nonpool plants?

10 A. I'm sure there was some Class I milk  
11 that was received at nonpool plants, because  
12 of the small amount that may have moved to  
13 producer handlers, but excluding that, no.

14 Q. I have no questions on Exhibit 11.

15 On Exhibit 12, and just looking at  
16 page 14 as an example, but this is the  
17 information you provided in the answers to  
18 Mr. Kinser's questions about the pounds, and  
19 this is a little different, I think, from the  
20 answers to the questions for Mr. Hollon.

21 As I understand it, what you've  
22 listed here, for instance, looking at the  
23 county of Fremont, Colorado, there is  
24 2,361,293 pounds Colorado, that would be  
25 Colorado distributing plants?

1 A. That's correct.

2 Q. And then the final column, there's  
3 450,673 nonpool, if I've got the right line  
4 for Fremont.

5 A. Right.

6 Q. So the total number of pounds  
7 associated with Order 32 in May 2004 would be  
8 those two numbers added together; correct?

9 A. Yes, should be.

10 Q. But if you listed milk under nonpool,  
11 that means it was received at a nonpool plant?

12 A. That's correct.

13 Q. And if you listed milk at a supply  
14 plant, it was at least initially received at a  
15 supply plant?

16 A. That's correct.

17 Q. You don't, for this table, trace it  
18 on to where it ended up, whether it was  
19 distributing or nonpooled?

20 A. No, strictly what was received at the  
21 supply plant.

22 Q. And for this purpose for May 2004,  
23 are all these supply plants located within the  
24 marketing area?

25 A. No, there's one that's outside the

1 marketing area, if I remember right.

2 Q. We would not know looking at page 14  
3 or thereafter whether the pooled plants were  
4 in or outside the marketing area; correct?

5 A. That's correct. Other than going  
6 through and identifying each county that's in  
7 the marketing area and out of the marketing  
8 area.

9 Q. But the county of the -- I'm sorry.  
10 The county is the county of the milk  
11 production or the county of the location of  
12 the plant for this purpose, for page 14?

13 A. No, it's -- you're right, it's  
14 strictly the location of the milk, milk  
15 production.

16 Q. Turning to Exhibit 13. I'm sorry,  
17 14. I believe I heard it, just to make clear,  
18 on page 7 of 53, which has John Vetne's five  
19 at the bottom, you -- he prepared the chart  
20 that you filled in; correct?

21 A. Right.

22 Q. And his chart was number of plants  
23 for 7(e) units?

24 A. Uh-huh.

25 Q. That's correct?

1 A. That's correct.

2 Q. Did I hear you correctly say there  
3 are no 7(e) units?

4 A. That's correct.

5 Q. That's fine, thank you. On page 9 of  
6 53, 10 of 53 and 11 of 53, in a number of line  
7 items, for example, Wisconsin Class I, you  
8 have a hyphen.

9 A. Right.

10 Q. I assumed that was zero --

11 A. That's correct.

12 Q. -- but I wasn't sure the record --  
13 that's correct, all of those hyphens are  
14 zeros?

15 A. That's correct.

16 Q. And that's true for pages 9, 10 and  
17 11; correct?

18 A. Same is true there too.

19 Q. And page 18 of 53, producer milk  
20 receipts by 9(c) handlers, excluding 9(c)  
21 supply plant milk, you have Class I, II, III,  
22 IV and unclassified. And I'm sorry, maybe you  
23 told us what unclassified was and I wasn't  
24 paying attention. What does unclassified mean  
25 in this instance?

1           A.    These are shipments directly to  
2           distributing pool plants and the milk is  
3           classified when it is received at the plant.  
4           So our way of keeping track of the class  
5           utilization, we do not -- we would have to do  
6           a bunch of prorations to come up to it for the  
7           individual 9(c) handlers, and it's --

8           Q.    You just don't do it that way?

9           A.    We just don't do it that way,  
10          correct, that's why we list it as  
11          unclassified.

12          Q.    But for purposes of this and for the  
13          record, there could be a footnote that  
14          reflected these are shipments directly to pool  
15          distributing plants?

16          A.    Pool distributing plants, that's  
17          correct.

18          Q.    And now I confess I got very confused  
19          by page 19 of 53, especially when I tried to  
20          compare it to -- and maybe I'm not supposed to  
21          compare it -- to page 8 of 53. Page 8 of 53  
22          was producer milk receipts of pool  
23          distributing plants for which the distributing  
24          plant is a handler.

25                    And I guess I would have thought that

1 number would have corresponded to the last  
2 column, what is page 19 of 53, distributing  
3 plant patron milk receipts. So I'm not clear  
4 about something and maybe you can set me right  
5 about which -- what each one means.

6 A. On page 8 of 53 is reference, then,  
7 to where the proprietary is paying the  
8 producers, receipts from milk directly from  
9 producers and takes care of the pooling of  
10 that producer milk. Whereas, on page 19 of  
11 53, the 9(c) handler there, that number would  
12 not be reflected over on page 8 of 53.

13 Q. That's the 9(c). What about the  
14 column for distributing patron milk receipts?

15 A. That number would be included as part  
16 of that, then.

17 Q. So for instance, for January of 2003  
18 on page 8, there was producer milk receipts of  
19 pool distributing plants for January of 2003  
20 of 71,365,081?

21 A. That's right.

22 Q. Which column, if any, on page 19  
23 would the 71,365,081 appear?

24 A. It would be included in the last  
25 column there.

1 Q. The last column of 517,396,553?

2 A. That's correct.

3 Q. What is the difference -- yes, what  
4 else, what is the 400, whatever, 46 million,  
5 if it is not --

6 A. On this particular table, the 9(c) is  
7 also included in the distributing pool plants  
8 as distributing pool plant receipts direct  
9 from farms. Whereas the 9(c) is where the  
10 cooperative itself, it would be the milk that  
11 was diverted by the 9(c) handlers.

12 Q. I'm still just focusing on column 3.  
13 Column 3 of page 19, which has 517 million, I  
14 understand that includes 71 billion plus of  
15 producer milk receipts of pool distributing  
16 plants for which distributing plants is not  
17 the handler. I guess what I'm wondering is,  
18 what makes up the other 446 million in that  
19 third column?

20 A. The additional 9(c) milk.

21 MR. ENGLISH: Okay, you got it,  
22 I don't.

23 A. The 9(c) is only what went to nonpool  
24 plants in this case; whereas, under the  
25 distributing plant column, it includes the



1 9(c) plus the milk that was received for which  
2 the distributing plant was the handler on the  
3 producer milk.

4 Q. Let me see if I'm following you at  
5 all. And this is my fault.

6 A. No.

7 Q. Would the 446 million, would that  
8 difference also appear in column one? Is it  
9 assumed in column 1?

10 A. No, it is not. It would be added to  
11 column 1 if you want to look at -- it's all  
12 9(c) milk.

13 Q. Is there anywhere else where I would  
14 see a breakdown of this 517 million so -- I'm  
15 trying to understand what --

16 A. Right, I understand where you're  
17 coming from, but...

18 Q. I'm almost there. Is it the  
19 unclassified? I just looked at it, I'm  
20 wondering --

21 A. It would come close to be the  
22 unclassified.

23 Q. If you take the unclassified on page  
24 18 --

25 A. Right.

1 Q. -- and add page 8, so for January  
2 2003 you add the 446 million to 71 million, is  
3 that how you come up with the 517 million?

4 A. That should come pretty close, right.

5 Q. Thank you.

6 A. We can blame Mr. Vetne for not  
7 setting up the table properly.

8 Q. Especially since he's not here.

9 A. Exactly.

10 Q. I understand he's stuck in Chicago.

11 A. Poor soul.

12 Q. If we turn to page 49 of 53,  
13 Mr. Vetne's page 20. Did he leave out the  
14 months of July, August and September, or did  
15 you just list months for which the months  
16 would have impacts?

17 A. We just listed the months where there  
18 would be an impact, except for -- well,  
19 originally we had this set up on a spreadsheet  
20 that showed both these together, page 50 and  
21 49 together, and that's the reason we have  
22 zeros under there for July and October.

23 Q. Of 2004?

24 A. Right. But the months not listed did  
25 not have any. Should be zeros also.

1 Q. And just for clarification, the first  
2 column is what was pooled, and given  
3 Mr. Vetne's request, the second column is what  
4 you estimate would -- of that portion of  
5 column 1, what would not be pooled in order to  
6 meet the diversion limitations?

7 A. That's correct.

8 Q. And again, if there's nothing listed,  
9 your estimate was zero?

10 A. Correct.

11 Q. Turning to page 52 of 53. Again, I  
12 understand that Mr. Vetne set up the chart.  
13 The chart is titled Monthly Volume of  
14 Additional Supply Plant Shipments to  
15 Distributing Plants That Would Have Been  
16 Required Under Proposals 1 and 5. That is it  
17 would have been required or you can opt to  
18 pool less milk; correct?

19 A. That's correct.

20 Q. If you pool less milk, these numbers  
21 would not necessarily apply, you wouldn't have  
22 to ship more milk if you chose to pool less  
23 milk --

24 A. That's right.

25 Q. -- because of the rule?

1           A.    That's right.

2                         MR. ENGLISH:  Thank you, that's  
3   all I have.

4                         JUDGE HILLSON:  Any other  
5   cross-examination?  Mr. Beshore.

6                         CROSS-EXAMINATION  
7   BY MR. BESHORE:

8           Q.    Mr. Stukenberg, let me join in, I'm  
9   thanking you and your staff --

10                        JUDGE HILLSON:  Please identify  
11   yourself.

12                        MR. BESHORE:  Marvin Beshore  
13   for DFA and Prairie Farms.

14           Q.    (By Mr. Beshore)  I thank you and  
15   your staff for this wonderful amount of work  
16   you've done for our benefit and our request.

17           A.    Thank you.

18           Q.    Let's start with Exhibit 9.  First of  
19   all, where you identify, starting on page --  
20   on Table 1, the pricing point of reference is  
21   Jackson County, Missouri.  That's Kansas City,  
22   I take it?

23           A.    That's correct.

24           Q.    And that's considered like the base  
25   point for your announced prices for the order?

1           A.    That's right, base point.

2           Q.    When you go, then, to Table 5, on  
3           page 6, the column producer price  
4           differential, can you explain or define for  
5           the record what the producer price  
6           differential is in the order?

7           A.    Well, it's basically what is left  
8           after all the milk has been priced.  We  
9           determine a total value for the milk that is  
10          received by handlers or pooled by handlers  
11          based on how the milk is used.  From that we  
12          subtract away the value of the producer milk  
13          or the value of the butterfat in the producer  
14          milk, subtract away the protein, subtract away  
15          the other solids, the value of the other  
16          solids, subtract away any adjustments for  
17          somatic cells, whether it be positive or  
18          negative, and what is left, then, is what  
19          is -- and location of adjustments, I forgot  
20          about them, but then what is left after all  
21          these adjustments are made is what's left over  
22          of the total value of the milk and is  
23          determined to be the producer price  
24          differential.

25          Q.    So in the column for producer price

1 differential on page 6 of Exhibit 9 where you  
2 have negative numbers, how do they arise?

3 A. Because there was more value in some  
4 of the component -- on the total pounds of the  
5 component milk that was pooled, and once the  
6 milk -- or the price -- the monies have been  
7 paid out in terms of, say, the protein and the  
8 butterfat, the other solids, what's left  
9 happens to be negative.

10 Q. So then you, in essence, with a  
11 negative producer price differential, you  
12 blend down the values in the pool by that  
13 amount per hundredweight?

14 A. Right. It's on a per hundredweight  
15 basis. Others are on a per pound basis.

16 Q. Let's turn to page 9, Table 7 of  
17 Exhibit 9. I want to, starting with the  
18 numbers on this table, discuss this phenomenon  
19 of depooling and how it works in Order 32.

20 When you look at the total producer  
21 milk pooled, the right-hand column of page 9,  
22 and you see the large differences in the pool,  
23 say, between May and June of 2004, those are  
24 reflective of what we call depooling and what  
25 you've defined to Mr. English as depooling?

1           A.    That's correct.

2           Q.    Now, how easy or hard is that in  
3           Order 32?  These numbers move in huge  
4           percentages and from month to month.  Is it a  
5           matter of simply paper entries, in essence, on  
6           a handler's report?

7           A.    As far as we're concerned?

8           Q.    Yes.

9           A.    That's basically all it is.

10          Q.    And for the handler, is that all  
11          that's pretty much involved?

12          A.    It's a matter for deciding which milk  
13          needs to be depooled and where it's going.  He  
14          has the obligation that at least one day's  
15          production be pooled somewhere along the line.  
16          So, you know, it's a little more  
17          responsibility on the handler's part than it  
18          is on ours, because ours is just a matter of  
19          receiving his pool report, and then when we go  
20          to audit, then if there is some that is  
21          reported, that has to be verified.

22          Q.    When you say he has the obligation of  
23          one day's production being pooled, can you  
24          explain how that works in Order 32, please?

25          A.    To maintain pool status, at least one

1 day's milk production has to be received at a  
2 pool plant sometime during the month.

3 Q. And what if a handler's -- if none of  
4 a producer's production is received at a pool  
5 plant during a month, what happens?

6 A. Then he has to requalify by being  
7 received at a pool plant either the following  
8 month or whatever month they decided to bring  
9 the producer back on.

10 Q. So if we turn to some later tables in  
11 Exhibit 9 -- let me find the right one I want  
12 to ask you about. Let's go to Table 29, page  
13 60. If you look in the Wisconsin column for  
14 2004, just compare say February and March,  
15 February there were 1,384 producers, farms in  
16 Wisconsin, with 230 million plus pounds of  
17 milk pooled on the order. Is that what that  
18 shows?

19 A. That's right.

20 Q. And then in March there were  
21 actually, what, another 130, 128 farms, but  
22 only less than 10 percent, or about 10 percent  
23 of the milk production pooled, 24 million  
24 pounds pooled; correct?

25 A. That's right.



1           Q.    And then you get down to June when  
2           we're back to 236 million pounds pooled and  
3           1,352 farms.  The numbers of farms reflected  
4           there vary much less than the pounds of milk  
5           marketed.  Is that --

6           A.    Yes, much less.

7           Q.    And does that reflect, perhaps, the  
8           fact that one day's production from many of  
9           those farms is being pooled just in order to  
10          have the right to pool the rest out the next  
11          month if it works?

12          A.    That would be correct, right.

13          Q.    Now, in some instances I've noted if  
14          all of the -- if any given month there's no  
15          production from farms in a given county that  
16          occurs somewhere in some of these exhibits,  
17          or -- it's pooled but it all goes to nonpooled  
18          plants, okay, in order for that milk to come  
19          back on the order the next month, when does it  
20          have to be delivered to a pool plant?

21          A.    It can be delivered any time during  
22          the month, but we're not going to start  
23          counting it as producer milk under the order  
24          until it is received at a pool plant.

25          Q.    So in order for the entire month to

1 be pooled, it would have to be delivered on  
2 the first day of the month?

3 A. That's correct.

4 Q. I've noted in the data with respect  
5 to Class II utilization, Class II volumes in  
6 the order -- Class II volumes as opposed to  
7 utilizations, that they -- and I don't know  
8 what table it's on here, but they were made  
9 relatively flat, relatively steady during  
10 these months of large fluctuations in Class  
11 III volumes.

12 Does that reflect, in part, the  
13 substantial -- that those volumes are  
14 substantially processed at pooled distributing  
15 plants?

16 A. Yes and no. Some of it is and other  
17 parts of it is sometimes some Class III  
18 price -- or Class IV price is high. Likewise  
19 the Class II price will be and handlers elect  
20 not to pool all the milk that goes to Class  
21 III -- or Class II or Class IV plants.

22 Q. In any event, the Class II production  
23 that is at a pool distributing plant,  
24 regardless of the price relationship of the  
25 class prices in the order, must be pooled?

1           A.    That's correct.

2           Q.    With respect to California,  
3           Mr. English asked you about the end of  
4           California pooling in Order 32 being effected  
5           by the amendments that occurred effective  
6           March 1, 2003.

7           A.    Right.

8           Q.    Your data shows that in the year  
9           2000, for instance page 67, Table 33 of  
10          Exhibit 9, in December 2000 there were no  
11          poolings from California on Order 32, but  
12          there are poolings, then, in December '01 and  
13          '02. Was there any difference in regulations  
14          under Order 32 in the year 2000 versus '01  
15          that could account for there not being  
16          California milk pooled?

17          A.    No, there wasn't.

18          Q.    To your knowledge, was there any  
19          change in the regulations of other orders such  
20          as Order 30 that effected the ability of  
21          California milk to be pooled there prior to  
22          the time of when Order 32 was changed?

23          A.    Somewhere along the line there was.  
24          The exact date I can't recall, but yes, there  
25          was an amendment that went into effect in the

1 Upper Midwest Federal order and, consequently,  
2 some milk may have ended up being pooled down  
3 here for that very reason. I can't say for  
4 sure, it would be speculation.

5 Q. Well, setting aside the reason, I  
6 don't want you speculating about it, did you  
7 observe that in Order 32, after the Order 30  
8 regulations were changed, more milk from  
9 California got pooled on Order 32?

10 A. That's correct.

11 Q. Let's turn, then, to Exhibit 10. If  
12 you look at page 14 of 42 on Exhibit 10, if we  
13 look at the month of April 2004, which had the  
14 largest negative PPD in Order 32 -- by the  
15 way, that's the same -- the 397 on this table,  
16 it's the same as the 402 figure on the other  
17 one but for the rounding factor, or the --

18 A. Right.

19 Q. -- reserve.

20 A. Settlement fund.

21 Q. Now, you show in the right-hand  
22 column the month of April on this exhibit that  
23 the producer price differential would have  
24 been, what, minus \$1.82 rather than minus  
25 \$3.97, applying the assumptions you were asked

1 to apply; is that correct?

2 A. That's right.

3 Q. So it was -- if additional milk had  
4 been pooled, if the Class III milk that was  
5 depooled had been pooled, the change would  
6 have been about \$2 for the -- \$2 per  
7 hundredweight for the producers in the pool  
8 who didn't have the opportunity to depool?

9 A. That's right.

10 Q. By the way, in making estimates of  
11 this sort, were you able to do them with some  
12 precision because of the fact that you have  
13 the one day pooling requirement and you can  
14 identify producers who are likely to remain on  
15 the order and had been associated with the  
16 order?

17 A. That's correct, right.

18 Q. And you applied that when you were  
19 making these kinds of estimates?

20 A. That's right. Producers with a  
21 history of being pooled on the Central Federal  
22 order and based on previous months' marketings  
23 and so forth, right.

24 Q. Now, would you turn to page 16 of 42  
25 in Exhibit 10. The top half of the page, DFA

1 Request No. 5, I want to make sure we're  
2 following this correctly. Does this show that  
3 in month one, assuming that the 125 percent  
4 limitation in the proposal in the hearing,  
5 which is Proposal 2, assuming that the 125  
6 percent in Proposal 2 was applied, did you  
7 calculate how much a handler, in effect, could  
8 depool in month one and have 100 percent  
9 repooled in month four?

10 A. That's correct.

11 Q. So a handler, even with this proposal  
12 being adopted -- by the way, it doesn't  
13 eliminate the pooling?

14 A. No.

15 Q. And it would allow or enable 49  
16 percent of the milk to be depooled in month  
17 one and have it all back on in the fourth  
18 month?

19 A. That's right.

20 Q. So the three month average of 35  
21 percent is, what, just an arithmetic average?

22 A. Just a simple average.

23 Q. Of how much milk during those, what,  
24 three months could be off?

25 A. Uh-huh.

1           Q.   Now, if you go to page 19 of 42 in  
2           Exhibit 10.  Can you just tell me, the bottom  
3           three lines on this page and the next page,  
4           minimum charge, maximum charge and range, can  
5           you just explain what those are?

6           A.   Well, for the minimum charge, for  
7           instance, under Colorado, if you look at the  
8           .323, if you look somewhere up in the column  
9           you will find a .323.

10          Q.   Is that just the minimum average per  
11          month for the state?

12          A.   Average for the state, right, or --  
13          yeah, for the state.

14          Q.   So those are just observations with  
15          respect to the data that's set directly above  
16          it?

17          A.   That's correct.  And the whole idea  
18          is to show the range down there, that there's  
19          not a whole lot of variation from the --  
20          however many months are listed here.  
21          Thirty-two.

22          Q.   On the second page of this table,  
23          which is page 20 of 42 in Exhibit 10.

24          A.   Okay.

25          Q.   North and South Dakota are combined.

1           A.    Yes.

2           Q.    Why was that?

3           A.    Because we did not keep data where we  
4           separate out the two states.  A lot of this is  
5           based on data that we had readily available  
6           due to the information we were required to  
7           provide Washington concerning mailbox price  
8           surveys.  We had it broken down by these  
9           states and it fit right in that.

10          Q.    Could you turn, then, to page 31 of  
11          42 in Exhibit 10.  The January 2004  
12          information at the top, I understood you to  
13          say that was initially requested by four  
14          months?

15          A.    That's correct.

16          Q.    Are these estimates calculations of  
17          the potential impact of Proposal 3?  
18          Foremost's proposal relating to assembly and  
19          transportation credits.

20          A.    Foremost's proposals?

21          Q.    I think so.

22          A.    Yeah, that sounds right, now that you  
23          mention it.

24          Q.    My question is that proposal, I  
25          believe, provides for a milk reload station



1 provision in the order?

2 A. Right.

3 Q. Was that factored in in any way?

4 A. This was not factored in. The milk  
5 reload portion was not factored in, correct.

6 Q. So essentially what this represents  
7 is just an identification of the volumes of  
8 milk in January 2004 which, what, moved  
9 through supply plants to distributing plants  
10 and received Class I classification?

11 A. That would be correct.

12 Q. And the assembly credit was, what,  
13 \$0.10 a hundredweight?

14 A. That's correct.

15 Q. And transportation credit was what?

16 A. It was \$0.30, but then it's adjusted  
17 by the differences in the Class I location  
18 differentials.

19 Q. Based on mileage from the --

20 A. And mileage, right.

21 Q. From the supply plant?

22 A. Transferor to transferee. From the  
23 supply plant to the distributing pool plant.

24 Q. On page 41 of 42 in Exhibit 10  
25 there's an 80 percent number in the middle of

1 that page there on line 5.

2 A. Yes.

3 Q. What is that? 80 percent of what?

4 A. Like I explained before, we started  
5 out with the gross Class I. And this  
6 particular case was 22 million pounds and  
7 ended up with a remainder of 20 million. And  
8 then the actual physical receipts down below  
9 happened to be 25 million pounds exactly. So  
10 the 20 million divided by 25 million gave us  
11 the 80 percent.

12 Q. The 80 percent appears above the 20  
13 to 25, it's actually derived from the  
14 information below it?

15 A. That's right.

16 Q. What proposal did you understand this  
17 information to be related to? The assembly  
18 credit?

19 A. Yes. Proposal 3.

20 Q. I have a question or two on Exhibit  
21 12, which you -- I may have a question or two  
22 in Exhibit 12. If you'll look at, for  
23 instance, page 22 of 53. This is, again,  
24 county, and you touched on this before, but  
25 make sure I understand. If you look at those

1 constant counties towards the bottom, Douglas,  
2 Dunn, Eau Claire, Fond du Lac, the only  
3 dispositions here are in the nonpool category  
4 for those counties, maybe Dodge also, if I'm  
5 looking at it right, would that -- was that a  
6 month of depooling, to your knowledge, May  
7 2004? Assume it was. If it was a month of --

8 A. Month of depooling?

9 Q. If you've got 100 percent of delivery  
10 at nonpool plants, how is the milk pooled,  
11 given the one day requirement you mentioned?

12 A. It's pooled by the cooperative being  
13 the handler on the milk and -- how's the  
14 others that work? Cooperative on the  
15 percentage basis receives -- or moves enough  
16 milk to a distributing plant to qualify those  
17 producers as producer milk. But --

18 MR. STEVENS: May I ask: Do  
19 you need a minute maybe to consult with your  
20 people in your office? It's important to ask.

21 THE WITNESS: Yes.

22 JUDGE HILLSON: You need say  
23 who you are.

24 MR. STEVENS: I'm sorry.

25 Garrett Stevens.

1                   So the record is correct, I mean,  
2                   maybe we should give him a chance to consult  
3                   with somebody from his office, if that's okay.

4                   (Off the record.)

5                   JUDGE HILLSON:  If it's not  
6                   within his knowledge and somebody else can  
7                   testify to that, but either way.  I mean, no  
8                   one seems to object, so.  He's just filling in  
9                   a gap over here.

10                  MR. BESHORE:  I certainly have  
11                  no objection.

12                  JUDGE HILLSON:  I haven't  
13                  decided, somebody coming over here and  
14                  whispering the answer in his ear, but...

15                  MR. BESHORE:  Whatever it takes  
16                  to get this figured out.

17                  JUDGE HILLSON:  That's fine.

18                  A.  One day's production is to get  
19                  qualified.  And once he's qualified, he can  
20                  then move to nonpool plant -- nonpool plants.

21                  Q.  (By Mr. Beshore)  So there is a "once  
22                  and done" --

23                  A.  "Once and done" in that regard,  
24                  right.

25                  Q.  And if that milk is then depooled?

1           A.    Then it needs to come back as being  
2           received at a pool plant.

3           Q.    But when we observe these situations  
4           where there's no liberties to pool plants from  
5           all the producers in the county in a given  
6           month --

7           A.    Right.

8           Q.    -- they remain in the pool pursuant  
9           to the initial association?

10          A.    Right, because they have to be pooled  
11          at least one day.  Not necessarily received at  
12          a plant, but at least pooled one day.

13          Q.    Let's turn to Exhibit 14, then, the  
14          information provided at John Vetne's request.  
15          On page 7 of 53, Vetne page 5, there was a  
16          question about 7(e) units.  And I know this is  
17          the categorization which John placed upon it,  
18          but could you just tell us what 7(e) units are  
19          under your order?

20          A.    These are distributing pool plants  
21          that qualify based on the percentages, if I  
22          remember right, based on percentages of the  
23          previous 12 months that they delivered the  
24          previous 12 months at the required  
25          percentages, and they can automatically be a

1 supply plant for the months that remain, or  
2 any months after that until they notify in  
3 writing to do otherwise.

4 Q. And nobody's taken advantage of that,  
5 I think was your testimony?

6 A. Not at this time, no. There has been  
7 in the past.

8 Q. Now, on the same exhibit, the  
9 right-hand column, milk used to produce  
10 non-Class I products, are those essentially  
11 the aggregate volumes of Class II or maybe  
12 even Class III or IV production at  
13 distributing -- pool distributing plants in  
14 the order?

15 A. That would be correct, right.  
16 Primarily Class II.

17 Q. Going to page 9 of 53 in Exhibit 14,  
18 and this is just for clarification for my  
19 benefit. The R-2's and R-1's in Kansas, does  
20 R-2 mean restricted with two entities?

21 A. That's correct.

22 Q. And R-1 means restricted by one  
23 entity?

24 A. That's correct.

25 Q. I'm sure you testified to that

1 before, but I missed it.

2 Go to page 19 of 53. Mr. English  
3 asked you a number of questions about this. I  
4 think I've got it now and I want to make sure  
5 if I do. And I know that these -- again, you  
6 were working with forms that were supplied to  
7 you and labels that were supplied to you, but  
8 in the first column that says 9(c) handlers,  
9 those volumes, as you have presented them  
10 here, are actually 9(c) handler volumes to  
11 nonpool plants?

12 A. That would be correct, right.

13 Q. So if we added to nonpool plants on  
14 that, it might help clarify the totals going  
15 across here.

16 The second column is deliveries that  
17 are --

18 A. Receipts at supply plants.

19 Q. Receipts at supply plants.

20 A. Right.

21 Q. Just receipts at supply plants and no  
22 other receipts of supply plant handlers?

23 A. That's correct.

24 Q. So we can call that one receipts at  
25 supply plants if we wanted to instead of

1 supply plant handlers.

2 A. Uh-huh.

3 Q. And the third column, then, is  
4 producer milk received at distributing plants,  
5 whether it be the distributing plants of  
6 independent producers or 9(c) cooperatives?

7 A. That's right.

8 Q. Turn to page 52 of 53, then. Again,  
9 I think Chip English may have asked you about  
10 this, but I want to make sure I understand how  
11 these numbers have been calculated.

12 For the column on Proposal 1, the  
13 March 2003 number, 13,058,055, that is the  
14 volumes of additional shipments from supply  
15 plants to distributing plants that you  
16 calculate would have been required to have  
17 those supply plants that were in the order  
18 continue to have all their milk pooled under  
19 the additional 5 percent shipment that would  
20 be required under Proposal 1?

21 A. That's correct. Be the additional.

22 Q. Just the additional?

23 A. Just the additional.

24 Q. And you did the same thing with  
25 whatever the percentages were that were



1 required by Proposal 5?

2 A. That's correct.

3 MR. BESHORE: Thank you,  
4 Mr. Stukenberg.

5 THE WITNESS: You're welcome.

6 JUDGE HILLSON: Anyone want to  
7 cross-examine?

8 MR. METZGER: Erick Metzger  
9 with National All-Jersey.

10 CROSS-EXAMINATION

11 BY MR. METZGER:

12 Q. Questions on behalf of Mr. Vetne,  
13 who, number one, appreciates the work that you  
14 put into assimilating this information.  
15 Number two, expresses his ingress for having  
16 gotten hung up in Chicago, flights canceled,  
17 etc.

18 He did call me with some questions  
19 that he wanted asked in regard to the data  
20 assembled by the Market Administrator's  
21 office. Most of them have to relate to  
22 Exhibit 14, so I'm going to start with Exhibit  
23 14 and then perhaps work back to a couple of  
24 the others for just a couple of follow-up  
25 questions.

1                   On Exhibit 14, pages 3, 4 and 5 of  
2                   53. The category of less than 5 million is,  
3                   of course, indicated as restricted, R-1. The  
4                   totals that would have appeared in that  
5                   category, are they included in the category of  
6                   being equally above that?

7                   A. No, they are not.

8                   Q. So they are not included anywhere.  
9                   Okay, very well.

10                   On page 5 and 6 of 53, the column  
11                   that is titled producer patrons, does that  
12                   include independents and coop members not on  
13                   9(c) reports?

14                   A. The question again was what?

15                   Q. Producer patrons, that column,  
16                   included in that column are independent  
17                   shippers and coop members not on 9(c) reports?

18                   A. That's correct.

19                   Q. That is correct, thank you.

20                   On page 10 of 53, under States W and  
21                   NW of the marketing area, the R-2, is that  
22                   data included in any other line or column?

23                   A. No, it is not.

24                   Q. And then on page 48 of 53, the Group  
25                   1 includes the top three; is that correct?

1 A. That's correct.

2 Q. And Group 2 includes the second  
3 three, which would be 4, 5 and 6?

4 A. That's right.

5 Q. And Group 3 would be 7, 8 and 9?

6 A. And possibly 10.

7 Q. And possibly 10. Very good.

8 A. Depending on the month.

9 Q. Okay. That was the question, whether  
10 anything that would have been in Group 4 was  
11 moved up to Group 3 if applicable?

12 A. If applicable, right. But we did not  
13 have enough to populate the Group 4.

14 Q. Okay, thank you.

15 Now, on Exhibit 12. This actually  
16 pertains to several of the pages that had  
17 distributing plant information in regards to  
18 distributing plants in areas 1, 2, 3 and 4.  
19 The question is: Are there any pool  
20 distributing plants that are not in areas 1,  
21 2, 3 or 4?

22 A. No, there are not. They're all  
23 included one way or another.

24 Q. And finally, this gets a little  
25 tricky going back and forth between Exhibit 10

1 and Exhibit 12. Again, referring to these  
2 four marketing areas. It has to do with  
3 variations in the amount of milk received at  
4 different distributing plants in these  
5 different regions and different months.

6 The general question is: Are there  
7 self-explanatory reasons why some of these  
8 volumes change, such as plants coming on-line,  
9 plants going off-line, plant being destroyed,  
10 etc.? For example, if we look at Exhibit 10,  
11 page 33, area 1, we have 96 million pounds of  
12 milk at distributing plants in January of '04.  
13 Page 37 of the same exhibit we have 102  
14 million pounds in August of '04, and  
15 cross-referencing to Exhibit 12 on page 13,  
16 May of '04 we had 91 million pounds.

17 So in other words, in January we go  
18 from 96 million, in May we go down to 91  
19 million, and then in August of '04 we go back  
20 up to 102 million pounds at distributing  
21 plants. Just the normal ebb and flow of...

22 A. Yes, it would be the normal ebb and  
23 flow. Things you've got to consider on here,  
24 too, is the number of days that milk is  
25 received. A lot of coops have instituted

1 uniform receipts credit, but even at that,  
2 there is still some variations between plants  
3 as to when they will and will not receive  
4 milk. And I would attribute most of that to  
5 just basically calendar composition.

6 Q. Okay.

7 A. And also time of year too, because  
8 when you're dealing with the summer months,  
9 milk production is obviously down, whereas  
10 during the fall or winter months, well even in  
11 the spring of the year, milk production would  
12 be up. So between the two of them, and also  
13 maybe some of the handlers elected not to  
14 receive all the milk and had to find a home  
15 elsewhere.

16 Q. Okay. In marketing area 2, if we  
17 look at Exhibit 12 on pages 5, 6 and 7, which  
18 are the months of November '01, '02 -- I'm  
19 sorry, 2000, '01 and '02, we see producer milk  
20 received varying from 188 to 194 million  
21 pounds; on page 13 of the same exhibit we see  
22 receipts at 146 million pounds for May of '04.  
23 Again, just --

24 A. That has primarily to do with one of  
25 the entities being pooled on another order

1 that was alluded to earlier.

2 Q. In area 3, on Exhibit 10, page 35, at  
3 the top of the page we see 130 million pounds  
4 in January of '04, 121 million pounds in July  
5 of '04. Again, just normal ebb and flow from  
6 winter to summer?

7 A. I think that has a lot to do with it,  
8 yes.

9 Q. In marketing area 4, Exhibit 12 on  
10 page 8, we have 79 million pounds in November  
11 of '03; on page 13 we have 71 million pounds  
12 in May of '04; and then Exhibit 10, page 36,  
13 we're back up to 78 million pounds in -- I'm  
14 sorry, page 38 on Exhibit 10, we're back up to  
15 78 million pounds in August of '04. So we've  
16 seen a decline of 8 million pounds and another  
17 increase of 7 million pounds.

18 A. There was no change as far as the  
19 number of handlers, as I recall. No, same  
20 number of handlers involved. Just has to do,  
21 I would guess primarily, with milk  
22 requirements of those particular distributing  
23 pool plants at that time.

24 MR. METZGER: Okay, thank you  
25 very much. No further questions.

1                   JUDGE HILLSON:  Anyone else  
2    have questions?  Mr. English, you can go  
3    again.

4                   RE CROSS-EXAMINATION

5    BY MR. ENGLISH:

6           Q.  Prices are out for November, pretty  
7    much?

8           A.  Yes.

9           Q.  Do you know yet whether there's going  
10   to be depooling for November?

11          A.  There might be some, but very little.  
12   Most of it will occur in December, I would  
13   guess, although I guess the cheese market  
14   dropped \$0.20 today, so I don't know.

15          Q.  But if the economics are there, you  
16   would expect to see the depooling again?

17          A.  Yes.

18          Q.  When milk is depooled, do you collect  
19   the market assessment on that, though, for  
20   that month?

21          A.  No, we do not.

22          Q.  So you effectively receive less money  
23   for the Market Administrator to be able to  
24   have the function or to have the reserve;  
25   correct?

1           A.    Right.  The administrative assessment  
2           is based on the total pounds of producer milk  
3           pooled.

4           Q.    For that month does the Market  
5           Administrator office put anybody on unpaid  
6           leave in order to save money?

7           A.    It's never amounted to that, but  
8           there is that possibility.

9           Q.    Has the Market Administrator ever  
10          laid off employees for months of depooling  
11          then brought employees back in future months?

12          A.    Not on the Central order.  I can't  
13          speak for the others.

14          Q.    Bottom line is, the cost of the  
15          Market Administrator continue regardless of  
16          whether the milk is pooled or depooled?

17          A.    That is correct.

18          Q.    I want to try one more time at the  
19          issue that you and Mr. Beshore had some  
20          discussion about.  I want to see what it  
21          really takes to pool, remain pooled and  
22          depool.  Let me see if I can give you an  
23          example.

24                        Say a 9(c) handler has a producer and  
25          for whatever reason, economics, they decide to



1 depool most of the milk. If they nonetheless  
2 list the producer and one day's production,  
3 but effectively depool by not listing the rest  
4 of production, the production that wasn't  
5 listed is not producer milk; correct?

6 A. That's right.

7 Q. For that month?

8 A. For that month.

9 Q. But the producer is still a producer;  
10 correct?

11 A. Because of the one day, right.

12 Q. Because they kept one day on?

13 A. Right.

14 Q. And so you can take off all but one  
15 day, which is basically 3 or 4 percent of the  
16 milk, basically 95 percent of the milk;  
17 correct?

18 A. That's correct.

19 Q. And in the next month you can bring  
20 that producer back entirely and not even  
21 deliver the milk to a pool distributing plant;  
22 correct?

23 A. That's correct.

24 Q. So long as it remains reported on a  
25 9(c)?

1           A.    That's right.

2                       MR. ENGLISH:  Thank you.

3                       JUDGE HILLSON:  No other  
4   questions?  Mr. Beshore.

5                       RE CROSS-EXAMINATION

6   BY MR. BESHORE:

7           Q.    Marvin Beshore.

8                       One other question, Mr. Stukenberg.  
9   On Exhibit 10, page 13 of 42, I want to look  
10  at the November of 2003.  In that month --  
11  basically, first of all, this page shows your  
12  recalculation of the Central Federal order  
13  PPD, or producer price differential,  
14  assuming -- with or without milk from assumed  
15  milk volumes from Idaho; correct?

16          A.    That's correct.

17          Q.    So as pooled, November 2003, the  
18  exhibit indicates there was a \$0.20 positive  
19  producer price differential; correct?

20          A.    That's correct.

21          Q.    But the PPD would have been negative  
22  if 100 million pounds of milk from Idaho were  
23  included on the pool; correct?

24          A.    That's correct, at the \$1.60  
25  location.

1 Q. And that assumes the same no changes  
2 from -- in class prices from what was in place  
3 in November of 2003?

4 A. That would be right.

5 Q. So I guess my question is: Does this  
6 demonstrate that you can have negative  
7 producer price differentials even without  
8 price inversions?

9 A. Yes, you can.

10 MR. BESHORE: Thank you.

11 JUDGE HILLSON: Any objection  
12 to Exhibits 9 through 14 being admitted into  
13 evidence? Okay, Exhibits 9 through 14 are  
14 received in evidence.

15 Do you have any redirect,  
16 Mr. Stevens, before we let this witness go?

17 MR. STEVENS: (Shakes head.)

18 JUDGE HILLSON: Okay, you may  
19 step down.

20 Mr. Stevens, you may call your next  
21 witness.

22 MR. STEVENS: John Mykrantz.

23 JOHN L. MYKRANTZ,  
24 a Witness, being first duly sworn, testified  
25 under oath as follows:

1 JUDGE HILLSON: Please state  
2 and spell your name.

3 THE WITNESS: My name is John  
4 Mykrantz, J-O-H-N, and Mykrantz is spelled  
5 M-Y-K-R-A-N-T-Z.

6 JUDGE HILLSON: Your witness,  
7 Mr. Stevens.

8 DIRECT EXAMINATION

9 BY MR. STEVENS:

10 Q. Mr. Mykrantz, could you tell us,  
11 where do you work?

12 A. I work for USDA AMS Dairy Programs as  
13 a marketing specialist for the Pacific  
14 Northwest in the Arizona market and Federal  
15 milk marketing orders in Bothell, Washington.

16 Q. And what is your position?

17 A. I'm a marketing specialist.

18 Q. And how long have you been in that  
19 position?

20 A. Since 1994.

21 Q. And what, basically, are your duties?

22 A. I oversee the pooling of payroll  
23 operations and also the economic analysis.

24 Q. Have you testified in Federal milk  
25 order hearings before?

1 A. I have.

2 Q. Have you been asked by any parties to  
3 prepare data for this hearing?

4 A. Yes.

5 Q. Would you care to explain how that  
6 came about for the record?

7 A. Elvin Hollon of Dairy Farmers of  
8 America requested the data in a letter dated  
9 November 26, 2004, that Dr. Nicholson, Market  
10 Administrator of the Central order.

11 Q. And pursuant to that request, you  
12 then received a request from Dr. Nicholson's  
13 office?

14 A. Yes.

15 Q. And pursuant to that request, you  
16 prepared certain information?

17 A. Correct.

18 Q. Did you bring it with you today?

19 A. I did.

20 MR. STEVENS: Your Honor, I  
21 would like to mark for identification two  
22 documents. The first one is a two-page  
23 document, it has on the first page a title of  
24 Volume of Eligible Milk Delivered By Producers  
25 By State of Origin, Western Marketing Area,

1 Federal Order No. 135, 2000 through 2003. Two  
2 page document.

3 JUDGE HILLSON: We'll mark that  
4 document Exhibit 15.

5 (Exhibit 15 was marked for  
6 identification.)

7 MR. STEVENS: And I would like  
8 to mark for identification as Exhibit 16 a  
9 two-page document which is titled Number of  
10 Producers and Milk Production By County,  
11 Western Order, Federal Order No. 135, December  
12 2000 through 2003.

13 JUDGE HILLSON: You say two  
14 page? Mine is three.

15 MR. STEVENS: I'm sorry, three  
16 pages.

17 JUDGE HILLSON: The three-page  
18 document I'll mark as Exhibit No. 16.

19 (Exhibit 16 was marked for  
20 identification.)

21 Q. (By Mr. Stevens) Do you have copies  
22 of these?

23 A. I do.

24 Q. I believe you have brought copies and  
25 put them in the back of the room for people to

1 take?

2 A. I guess there were copies at the  
3 beginning of the hearing. There are no more.  
4 We can make more.

5 MR. STEVENS: If people need  
6 copies, I guess we can get some more copies,  
7 but you can ask Mr. Mykrantz and myself and  
8 see if we can get those for you.

9 Q. (By Mr. Stevens) So these documents  
10 were prepared by you pursuant to your  
11 supervision?

12 A. Correct.

13 Q. And they come from official documents  
14 in the Market Administrator's office?

15 A. Yes.

16 Q. And they're not prepared for or  
17 against any proposal, are they?

18 A. No, they are not.

19 Q. For the use of the parties in the  
20 hearing to use as they want?

21 A. Correct.

22 Q. All right. Why don't you start with  
23 the first document and tell us basically what  
24 it is.

25 A. The first table entitled Volume of

1 Eligible Milk Delivered By Producers By State  
2 of Origin for the Western Marketing Area,  
3 Federal Order No. 135, 2000 through 2003, is a  
4 monthly listing by state of the origin of  
5 producer milk that was pooled on Federal Order  
6 135.

7 Q. All right. So it's a monthly -- it  
8 has a monthly representation of the milk  
9 pooled?

10 A. Correct.

11 Q. By state?

12 A. Yes.

13 Q. By month?

14 A. Yes.

15 Q. For a total -- the years 2000, 2001,  
16 2002 and 2003?

17 A. Correct.

18 Q. And it's subject to the footnotes on  
19 page 2 of 2?

20 A. Yes. There are footnotes at the  
21 bottom of this table that indicate restricted  
22 data during the time period and how the  
23 information was organized for publication.

24 Q. Why don't you tell us about the  
25 document that has been marked for



1 identification in Exhibit 16?

2 A. The second table, Number of Producers  
3 and Milk Production By County, is for the  
4 Western Order, No. 135, and applies to the  
5 same period, 2000 through 2003, but only for  
6 December of those years. And it is broken out  
7 by state and county but only on the basis of  
8 the county when that was possible.

9 Q. So again, this information would be  
10 for the years 2000 through 2003?

11 A. Correct.

12 Q. And it's organized by state and  
13 county?

14 A. Correct. And like the first table,  
15 there are footnotes at the bottom of the table  
16 that indicate restricted data during the time  
17 period and how that information was organized  
18 for publication.

19 Q. Okay. I see 11 footnotes there, is  
20 that right, page 3?

21 A. Yes, 11 footnotes.

22 MR. STEVENS: I have no further  
23 direct questions on this, your Honor. We want  
24 to offer this as an exhibit. We certainly  
25 subject the witness, offer the witness for

1 cross-examination.

2 JUDGE HILLSON: Any  
3 cross-examination of this witness?

4 Mr. English, come on up.

5 MR. ENGLISH: This is Charles  
6 English for Dean Foods Company.

7 CROSS-EXAMINATION

8 BY MR. ENGLISH:

9 Q. On Exhibit 15 you have a column, the  
10 last column for depool.

11 A. Correct.

12 Q. Is this the same term that we've been  
13 using today with the Order 32 Market  
14 Administrator's office?

15 A. I believe so.

16 Q. And you have a number, for instance,  
17 for October of 2001 of depool of 188,251,468.

18 A. Correct.

19 Q. Would that apply for all the states  
20 across to the left of that number that have --  
21 that otherwise have numbers in other months?

22 A. It applies to certain states.

23 Q. Do you know which states it applies  
24 to and can you tell us without reviewing  
25 restricted data?

1           A.    I couldn't tell you which states they  
2           are right off the top of my head.

3           Q.    When you did this calculation similar  
4           to Order 32, did you do it based upon your  
5           books and records and your best estimates for  
6           what those producers had pooled in past  
7           months?

8           A.    Yes, if not actual records received  
9           from handlers.

10          Q.    Nonetheless, you do believe it to be  
11          as accurate and reasonable reflection as you  
12          can come up with from your office?

13          A.    Yes.

14          Q.    Now, do you agree with the discussion  
15          earlier about what the economic incentives or  
16          disincentives may be to pool milk?

17          A.    I believe so.

18          Q.    I note that in the months of -- in  
19          2003, latter part of 2003, for instance  
20          August, September, October and November, there  
21          was milk that was over 150 million for each of  
22          those months that was depooled, according to  
23          your best estimates; correct?

24          A.    Correct.

25          Q.    But there was also milk that was

1 pooled from the state of Washington for those  
2 months; correct?

3 A. Correct.

4 Q. Is the economic incentive in any  
5 given month for different classes different as  
6 to whether you pool or not?

7 A. I guess price relations -- price  
8 relationships change from month to month.

9 Q. For instance, hypothetically  
10 speaking, the price relationship could have  
11 been during this period such that it was an  
12 economic -- a good economic decision to not  
13 pool milk that was going into cheese, but you  
14 would might want to pool milk that was going  
15 into nonfat, dry milk and powder?

16 A. Correct.

17 MR. ENGLISH: That's all I  
18 have. Thank you.

19 JUDGE HILLSON: Any other  
20 cross-examination? Any redirect?

21 Any objections to Exhibits 15 and 16  
22 being admitted into evidence?

23 I'm receiving Exhibits 15 and 16 into  
24 evidence. And you may step down,  
25 Mr. Mykrantz.

1                   You have one more witness?

2                   MR. STEVENS: We do, your  
3 Honor.

4                   JUDGE HILLSON: Should we take  
5 a 5 minute break or --

6                   MR. BESHORE: Let's take a  
7 witness.

8                   MR. STEVENS: This is  
9 Mr. Huber.

10                   PAUL HUBER,  
11 a Witness, being first duly sworn, testified  
12 under oath as follows:

13                   JUDGE HILLSON: Will you please  
14 state and spell your name for the record.

15                   THE WITNESS: Paul Huber,  
16 H-U-B-E-R.

17                   JUDGE HILLSON: He's your  
18 witness.

19                   DIRECT EXAMINATION

20 BY MR. STEVENS:

21                   Q. Mr. Huber, by whom are you employed?

22                   A. The Market Administrator's office in  
23 Cleveland, Ohio, the Mideast market.

24                   Q. What is your position?

25                   A. Assistant Market Administrator.

1 Q. How long have you been in that  
2 position?

3 A. I've worked there 30 years. I've  
4 been in that position for four years.

5 Q. Four years as the assistant?

6 A. Yes.

7 Q. And briefly, what are your duties?

8 A. I help administer our three offices  
9 in Cleveland, Novi, Michigan, and  
10 Indianapolis.

11 Q. Now, have you appeared in Federal  
12 order hearings before?

13 A. I have.

14 Q. Have you presented evidence?

15 A. Yes, I have.

16 Q. Were you asked to prepare any  
17 evidence or any data, documents to introduce  
18 in this hearing?

19 A. Yes, we were.

20 Q. And could you describe briefly for  
21 the record how that came about?

22 A. I believe the Market Administrator  
23 received an e-mail or mail from Evan Kinser.

24 Q. Market Administrator you're referring  
25 to there is?

1           A.    David Walker, about a week ago  
2           requesting two months' comparison in 2003 and  
3           2004 of some state data.  He then, after  
4           getting that data, he then asked for the same  
5           information for two other months.

6           Q.    Did you prepare information pursuant  
7           to that request?

8           A.    Yes, we did.

9           Q.    Did you bring it with you today?

10          A.    Yes, sir.

11          Q.    There were copies of this available  
12          in the back, I don't know if they're still  
13          there.

14          A.    I don't know if they're still there.

15                   MR. STEVENS:  And the same  
16          offer, I guess, exists:  If there are people  
17          who really need them, we will see if we can  
18          get more copies made, if they like, let us  
19          know.

20                   Your Honor, I would like marked for  
21          identification, I guess we're talking about  
22          17?

23                   JUDGE HILLSON:  17, yes.

24                   (Exhibit 17 was marked for  
25          identification.)

1                   MR. STEVENS: Exhibit 17, a  
2                   four-page document, it has four tables, and  
3                   the title on this document is Mideast  
4                   Marketing Area-Federal Order 33, Pounds of  
5                   Milk Pooled By State, February 2003 and 2004.

6                   JUDGE HILLSON: I have marked  
7                   it as Exhibit No. 17.

8                   Q. (By Mr. Stevens) Do you have a copy  
9                   of this?

10                  A. Yes, I do.

11                  Q. So the information in this was  
12                  prepared by you or pursuant to your  
13                  supervision?

14                  A. Yes, sir.

15                  Q. Pursuant to a request that you  
16                  received from whom?

17                  A. Dean Foods.

18                  Q. And it was prepared from official  
19                  records of the Market Administrator's office?

20                  A. Yes, it was.

21                  Q. And it's not being presented here  
22                  today in favor or in opposition to any  
23                  proposal, is it?

24                  A. No, sir.

25                  Q. For the use of the parties at the



1 hearing as they choose to use it?

2 A. Yes.

3 Q. Could you briefly describe for us  
4 what is contained in the exhibit?

5 A. It's four pages, they're all  
6 identical other than the months they  
7 represent. They represent a comparison  
8 between 2003 and 2004 of state production.  
9 The months that were compared were February,  
10 2003 and 4, and then June, July and August of  
11 2003 and 2004.

12 It lists the primary states from  
13 which producers supplied the market. The only  
14 difference being that at the end we have  
15 "Other" for some of the smaller states that  
16 had smaller amounts. And comparing the 2004  
17 to 2003 total production for the months that  
18 were asked for, the difference between the two  
19 years and a percentage change.

20 Q. All right. Maybe take an example of  
21 each for a state, just describe what it does  
22 with the numbers filled in.

23 A. Sure. The first page would be  
24 February, across -- the first column would be  
25 February 2004 pounds and then the states

1 below, Michigan, Ohio, Wisconsin, Indiana,  
2 Pennsylvania, in decreasing volumes. The next  
3 column would be February 2003 for the same  
4 states and volumes, and then the difference in  
5 pounds between the two years and the  
6 percentage changes.

7 The last row varies under "Other."  
8 Depending on the month that was chosen, you  
9 would have some miscellaneous states, and the  
10 miscellaneous states that are included under  
11 "Other" are footnoted.

12 Q. So the data that's submitted is  
13 subject to the footnotes on each page?

14 A. That's correct.

15 Q. And it's similar data for these  
16 areas, states and "Other" for comparing  
17 certain months in the year 2004 and 2003?

18 A. Yes, for the four months that were  
19 requested.

20 Q. Difference in pounds, percentage,  
21 that type of information is what's being  
22 described here?

23 A. Yes, sir.

24 MR. STEVENS: That's all I  
25 have. I offer the witness for

1 cross-examination.

2 I certainly ask these documents to be  
3 entered into evidence.

4 JUDGE HILLSON: Do you have  
5 cross-examination? Mr. English.

6 MR. ENGLISH: Charles English  
7 for Dean Foods.

8 CROSS-EXAMINATION

9 BY MR. ENGLISH:

10 Q. Mr. Huber, thank you for being here  
11 today.

12 I note that these are in millions of  
13 pounds; correct?

14 A. That's correct.

15 Q. I want to draw your attention for a  
16 moment to the June data. And I know you  
17 didn't actually do the chart for the May data,  
18 but I suspect you know some of the information  
19 for the May data. In June 2003 and June 2004,  
20 I note you have Vermont listed. Prior to June  
21 2004, to your knowledge have you ever had any  
22 milk from Vermont pooled on the Mideast order?

23 A. To my knowledge we have never had  
24 Vermont milk on Order 33.

25 Q. Not exactly in the marketing area?

1           A.    No.  No, sir.

2           Q.    The market extends into western  
3           Pennsylvania, but no farther north and east?

4           A.    That's correct, just east of  
5           Pittsburgh.

6           Q.    Nonetheless for June 2004, you have  
7           10,334,000 pounds of milk pooled on the  
8           Mideast order; correct?

9           A.    Yes, it is.

10          Q.    Vermont disappears for July, it's not  
11          there -- a separate listing is not there for  
12          "Other"; correct?

13          A.    We had no data for Vermont in July.

14          Q.    So you had this little one month  
15          phenomenon of 10 million pounds being pooled  
16          in your order; correct?

17          A.    That's correct.

18          Q.    Had you also -- looking at June 2004,  
19          you have a significant increase of 57 million  
20          pounds for New York from June 2003 to June  
21          2004.  To your knowledge, have you ever had as  
22          much as 150 million pounds of New York pooled  
23          on the order, Mideast order in the past?

24          A.    I couldn't say with certainty, but I  
25          would doubt it.

1 Q. And I note that it drops back again  
2 in July; is that correct?

3 A. Yes.

4 Q. I'm sure we had this data when we  
5 were at the other hearing. I notice that New  
6 Jersey is part of the footnote for June  
7 2004/June 2003. It's part of "other,"  
8 correct, so we don't know what the volume was?

9 A. Yes, it would be very small.

10 Q. But nonetheless, you had New Jersey  
11 milk in the past pooled on the Mideast order?

12 A. We would have had at least one  
13 producer from New Jersey that was pooled in  
14 our order, that's correct.

15 Q. To your knowledge, had you ever had  
16 that before?

17 A. I don't believe so.

18 Q. And by July it's gone; right? It's  
19 not part of the footnote.

20 A. If it's not in the footnote, that  
21 would be correct.

22 Q. Would it be reasonable to conclude  
23 that this milk ended up being pooled somewhere  
24 else in future months?

25 A. Which milk? The Vermont milk?

1 Q. The Vermont milk, yes.

2 A. That state is located in Order 1.

3 Whether it was pooled there or not, I have no  
4 knowledge. I can assume it would be.

5 Q. You have no reasonable to believe  
6 it's not being pooled in Order 1?

7 A. I do not.

8 Q. And the economic incentives -- let's  
9 backtrack for a moment. I haven't asked about  
10 depooling of you. I'm sure you are, but would  
11 you agree with the definition of depooling  
12 that's been used by the prior Market  
13 Administrator witnesses?

14 A. That it's an elective choice by  
15 handlers and cooperatives whether they choose  
16 to pool milk in a month.

17 Q. Based on economic incentives;  
18 correct?

19 A. Correct.

20 Q. And it's not an alternative that's  
21 available to pool distributing plants;  
22 correct?

23 A. That's correct.

24 Q. Do you know whether the economic  
25 incentive in -- was available in May to

1 depool? We heard that from other witnesses.  
2 Would you agree the economic incentive was  
3 there for people to elect not to pool milk in  
4 May of this year?

5 A. I don't have the May data here.

6 Q. I understand you don't have the May  
7 data, but I'm asking whether or not, to your  
8 knowledge, based upon your experience with the  
9 market this year and what you've heard today,  
10 that May was a month in which people had the  
11 economic incentive?

12 A. There was milk depooled in May,  
13 correct.

14 Q. Yet the incentive was to pool milk in  
15 June; correct? Certainly the economic  
16 incentive turned around?

17 A. In Order 33?

18 Q. Yes.

19 MR. ENGLISH: Thank you.

20 JUDGE HILLSON: Any other  
21 cross-examination of this witness?

22 MR. STEVENS: I offer Exhibit  
23 17.

24 JUDGE HILLSON: Any objection  
25 to Exhibit 17 being admitted into evidence?

1                   Hearing none, Exhibit 17 is received  
2                   in evidence. And you may step down,  
3                   Mr. Huber.

4                   THE WITNESS: Thank you.

5                   JUDGE HILLSON: That's the last  
6                   witness for the government. So the question  
7                   is, it's 8 minutes before 5:00, do we want to  
8                   start -- do we want to hear any more witnesses  
9                   or is this a logical time to take a break?

10                  MR. BESHORE: I think it's a  
11                  logical time to break. Mr. Hollon would be  
12                  our first proponent's witness for Proposals 1,  
13                  2 and he's also going to talk about 3. His  
14                  testimony is very lengthy, his exhibits are  
15                  lengthy.

16                  JUDGE HILLSON: One option is  
17                  taking his direct today and his cross  
18                  tomorrow. I mean, how do you feel,  
19                  Mr. Stevens? Do you just want to do the whole  
20                  thing tomorrow morning?

21                  MR. STEVENS: I think that's  
22                  fine. I would suggest maybe in terms of  
23                  planning to maybe go off the record and maybe  
24                  plan for what the witnesses might appear, we  
25                  have some producers, producer witnesses, I



1 understand, and we want to accommodate  
2 everyone. I know Mr. Beshore will feel the  
3 same way about that.

4 JUDGE HILLSON: I was going to  
5 do that tomorrow morning, but since we can  
6 finish tonight, we can do that tonight. So we  
7 can go off the record.

8 (Off the record.)

9 JUDGE HILLSON: Back on the  
10 record now. We just had a discussion, we're  
11 going to call it a day for today. We're going  
12 to reconvene tomorrow morning at 8:30,  
13 starting off with Mr. Hollon's testimony. So  
14 we're adjourned today.

15 (Hearing adjourned at 4:57 p.m.  
16 to commence at 8:30 a.m. on December 7, 2004.)

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CERTIFICATE

I, Glenda Moeller, a Certified  
Shorthand Reporter in and for the State of  
Missouri, do hereby certify that I appeared at  
the time and place first hereinbefore set  
forth, that I took down in shorthand the  
entire proceedings had at said time and place,  
and that the foregoing constitutes a true,  
correct, and complete transcript of my said  
shorthand notes.

WITNESS my hand and seal this 11th  
day of December, 2004.

Glenda Moeller, CCR No. 962, RMR, CRR

