BEFORE THE UNITED STATES
DEPARTMENT OF AGRICULTURE
AGRICULTURAL MARKETING SERVICE

In the Matter of:	Docket No.:
Milk in the Mideast	AO-166-A68
	DA-01-04
Marketing Area	VOLUME I

Tuesday, October 23, 2001

The Holiday Inn Express Motel
Galaxy Banquet Center
231 Park Centre Drive
Wadsworth, Ohio

BEFORE:

THE HONORABLE JILL CLIFTON
Administrative Law Judge

APPEARANCES:

GREGORY COOPER, Esq.
GINO TOSI
United States Department of Agriculture
AMS
14th & Independence Avenue SW
Washington, DC 20250
(202) 690-1366

MARVIN BESHORE, Esq.
Attorney at Law
130 State Street
Harrisburg, PA 17108
(717) 236-0781

BENJAMIN F. YALE, Esq.
Attorney at Law
102 West Wapakoneta Street
Waynesfield, Ohio 45896
(419) 568-5751

APPEARANCES (Cont'd.)

CHARLES M. ENGLISH, JR., Esq.
Attorney at Law
701 Pennsylvania Avenue, NW
Washington, DC 20004
(202) 508-4000

ALLEN WARSHAW, Esq.
Attorney at Law
305 North Front Street
Harrisburg, PA 17101
(717) 237-5500

RODNEY K. CARLSON
5367 Lance Road
Medina, Ohio 44256
(330) 723-3872

JIM HAHN
Land O'Lakes, Inc.
4001 Lexington Avenue
Arden Hills, Minnesota
(651) 481-2521

DENNIS TONAK
Mid-West Dairymen's Company
4312 West State Street
Rockford, Illinois 61102
(815) 623-8064

I N D E X

WITNESSES:	DIRECT	CROSS	REDIRECT	EXAM
Sharon Uther	8	14-59	28, 60	
Jack Groselle	71	77-83		
Earl Stitzlein	86	90-103		
Larry Baer	105	106		
Elvin Hollon	116	181-208	210	
Gary Lee	213			
Anne Rady	222	228-229	231	
Ken Stromski	233	239-244		
Carl Rasch	248	260-303	304	

E X H I B I T S

NUMBERS:	FOR IDENTIFICATION	IN EVIDENCE	REJECTED
1	7	8	
2	7	8	
3	7	8	
4	8	8	
5	10	64	
6	66		67
7	71	78	
8	72	78	
9	75	78	
10	75	78	
11	88	105	
12	115	132	
13	116	132	
14	116	132	
15	116	132	
16	214	214	
17	237	240	
18	248	249	
19	248	262	

P R O C E E D I N G S

JUDGE CLIFTON: We are on the record. This record is being made in Wadsworth, Ohio. It's October 23, 2001. It's approximately 8:36 in the morning.

My name is Jill Clifton. I am the Administrative Law Judge who is assigned to conduct this proceeding. The purpose of this proceeding is to gather evidence to be used in rule-making.

I would like now to acknowledge those participating for the government. I would like to being with Mr. Cooper. Mr. Cooper, would you identify yourself for the record.

MR. COOPER: Gregory Cooper, Office of General Counsel, US Department of Agriculture, Washington, DC.

JUDGE CLIFTON: Thank you, Mr. Cooper. Mr. Tosi?

MR. TOSI: Gino Tosi, with Dairy Programs, USDA.

JUDGE CLIFTON: Mr. Tosi, would you introduce anyone else at your table who should be introduced at this time and ask them to face the audience, please.

MR. TOSI: I would like to introduce Bill Richmond, marketing specialist with USDA, and also Richard

Cherry, marketing specialist, USDA.

JUDGE CLIFTON: Mr. Cooper, would you approach the microphone and suggest to me the manner in which we might best proceed this morning.

MR. COOPER: Your Honor, we normally start with a number of words, pretty much pro forma, that notice the hearing and the indications that proper notice have been given to the parties. After that, we usually like to take the government witness, someone from the Market Administrator's office will put in statistics that everybody can use during this hearing.

At the conclusion of that, we have a number of dairy farmers here and we would like to take them after the government witness, so that would be very early this morning, so as to allow them to get back to their cows. Thank you.

JUDGE CLIFTON: Thank you, Mr. Cooper. Is there any objection to that procedure? That would be that we take the market administrator's representative first to put in the statistical information that provides the background and then take the testimony of those dairy farmers who would like to be heard and get back to work? Is there any objection to that procedure?

All right, there being none, you may call your market administrator witness.

MR. COOPER: First, Your Honor, we have the notification documents. The first item is the notice of hearing that was published in the Federal Register, Volume 66, page 49571 and I have three copies and I would ask it be marked as Exhibit 1.

JUDGE CLIFTON: It will be so marked.

(Exhibit 1 is marked for identification.)

MR. COOPER: Secondly, Your Honor, we have something known as the certificate of officials notified, that indicates that the governors of various states have been notified of the hearing and I would like to have this marked as Exhibit 2.

JUDGE CLIFTON: It will be so marked. You may hand it to the court reporter.

(Exhibit 2 is marked for identification.)

MR. COOPER: The third item is something called the determination regarding mailing notice of hearing, which simply states that the notice of hearing was sent to interested persons and we would like to have to have that marked as Exhibit 3.

JUDGE CLIFTON: It will be so marked. You may hand those to the court reporter.

(Exhibit 3 is marked for

identification.)

MR. COOPER: And finally we have something entitle AMS News Release, release number 210-01, which is basically a press release that is issued announcing that the hearing is taking place. We would like to have that marked as Exhibit 4.

JUDGE CLIFTON: It will be so marked. You may hand that to the court reporter.

(Exhibit 4 is marked for identification.)

MR. COOPER: These are the pro forma exhibits that are entered into at the beginning of every hearing and we would like to have them received, Exhibits 1 through 4.

JUDGE CLIFTON: Thank you, Mr. Cooper. Is there any objection to the admission into evidence of any of the Exhibits 1 through 4? There being none, Exhibits 1 through 4 are hereby admitted into evidence.

(Exhibits 1 through 4 are received into evidence.)

JUDGE CLIFTON: Mr. Cooper?

MR. COOPER: Now, we would like to call the Assistant Market Administrator to the stand, please.

JUDGE CLIFTON: I would like you to be seated so that you can speak in to the microphone. Before

I swear you in, I would like you to identify yourself, please, for the record.

THE WITNESS: My name is Sharon Uther. I work for the US Department of Agriculture, the Mideast Market Administrator's office, Federal Order 33.

JUDGE CLIFTON: Thank you. Ms. Uther, would you spell your first and last names, please.

THE WITNESS: S-H-A-R-O-N, U-T-H-E-R.

Whereupon,

SHARON UTHER

called as a witness, after first being duly sworn, testified as follows:

JUDGE CLIFTON: Mr. Cooper, you may proceed.

DIRECT EXAMINATION

BY MR. COOPER:

Q Ms. Uther, you indicated you worked for the Market Administrator's office in the Mideast marketing area?

A Yes.

Q In what capacity?

A My title is assistant to the market administrator.

Q Have you brought with you today a document entitled "Compilation of Statistical Material, Federal

Milk Order Number 33, Mideast Marketing Area"?

A Yes, I have.

Q Was this a document that was prepared by you or under your supervisor?

A Yes, it was.

Q Do you have four copies with you?

A Yes.

MR. COOPER: I would like to have this document marked as Exhibit 5.

JUDGE CLIFTON: Could you hand them to me, please. This document will be marked as Exhibit 5 and I am handing these copies to the court reporter.

(Exhibit 5 is marked for identification.)

BY MR. COOPER:

Q Ms. Uther, can we go through this document table by table and explain what each one is? First, let me ask you one question. I notice there are 14 tables and then there are five appendices. Is there a difference in the preparation of these materials?

A Yes, the first 14 tables are statistics that we normally release as part of our normal statistical releases and annual releases and the five appendices were prepared in response to requests from various parties.

Q Are all of the materials in here taken from the official records of the Milk Market Administrator, whether they were prepared specially for this hearing or whether they were normally prepared?

A Yes, they were.

Q Thank you. Could you describe each table?

A Table one and the corresponding figure next to it is a list of handlers that file pool reports and Order 33 and the map shows the location of the distributing plants and supply plants for the market for May 2000.

JUDGE CLIFTON: Let me interrupt you for a moment. How can we eliminate some of the feed back? Move the microphones? Let me try turning mine off. That's better. Go ahead.

BY MR. COOPER:

Q Go ahead.

A Table one shows the distributing plants and supply plants for each location adjustment area, which co-op associations at the bottom.

Going to table two and figure two, it's the same information for May of 2001. Table three is producer prices and producer production summaries, recapping the producer pay prices, statistical uniform price and average percentages of producer delivers, numbers of producers.

Table four, producer receipts by classification, lists the total pounds by class. In all cases, these are January 2000 through I believe September 2001.

Tables five and six are also broker down by classification, the skim and butterfat portions of the producer milk.

Table seven is all receipts at pool plants including producer receipts and other source receipts, inventory and overages.

Table eight, Class I disposition at pool plants. It's the Class 1 package products by item, including bulk sales, shrinkage and inventory. Class II disposition at pool plants shows the Class II utilization by product, Class III disposition, Class III products, Class IV disposition broken down by products.

Table 12 is a recap of packaged fluid milk sales, with package sales at pool plants, non pool partially regulated, producer handling exempt plants, other order sales into the marketing area, sales out of the marketing area, which net Order 33 sales and the average daily sales.

Table 13 lists producer milk by state for January 2000 through August 2001, listed by state and there are some footnotes at the bottom, some of the smaller states that were included with others.

Table 14 is the number of producers by state that correspond with the pounds in the previous table.

Going now to appendices, Appendix A shows the map of milk marketing for May 2000 - May 2001. the numbers include milk that was marketed, but may include milk that was not pooled, so these pounds will not agree with pooled pounds and the pages following the maps are the numbers to go with those maps. Looking at the numbers, you will see it's broken down by counties that are located in Order 33 and counties located outside the area. Some states have both. The whole state is not included in the area.

Appendix B is the same information but for December 1998 and December 2000. For December 1998, we used milk that was pooled on the predecessor orders of 33, 36, 40, 44 and 49.

Appendix C is a producer milk from outside the historic procurement area delivered to pool plants within Federal Order 33 area and the first column of numbers is milk not historically associated with Order 33. the next column is actual receipts located at plants within the Order 33 marketing area of this milk, the third column being the percent of the milk received of the total.

Appendix D is producer receipts at pool supply plants requesting non-pool status for a portion of the plants and it is the milk that is actually pooled on the report of those supply plants, pooled as producer milk on those plants.

Appendix E is a graph of producer milk in the mideast Order building quarter for six selected states. The first four columns are for 2000. The last two are for the first two quarters of 2001.

Q Are the numbers that you used in this exhibit audited numbers or unaudited numbers?

A The numbers presented in the appendices are actually audited -- in the month of January in particular, of 2000, we had quite a large reporting error at pool time, so you will see that the pounds vary from the pooled numbers by about 10 million pounds. And that was an error that was found between pool and the payroll, so that is an audited number. You may see some slight differences for the same reason in other months. Between appendix C and total producer milk on table four. As I stated before, the pounds in Appendix A and B will vary from the total pooled milk because milk that was not pooled but was marketed is included in those numbers.

Q Is Exhibit 5 being offered in support of any particular proposal or for informational purposes only?

A Informational purposes only.

MR. COOPER: I have no further questions, Your Honor. I'll tender the witness over for cross-examination.

JUDGE CLIFTON: Thank you, Mr. Cooper. Cross-examination? Would you please approach the podium and identify yourself.

MR. YALE: Thank you, Your Honor. Benjamin F. Yale, Yale & Associates, Waynesfield, Ohio on behalf of Continental Dairy Products, Inc., a proponent in support of Proposals 1, 2, 3, 4, and 5.

JUDGE CLIFTON: Thank you. Can you hear him in the back? Good. You may proceed.

CROSS-EXAMINATION

BY MR. YALE:

Q Good morning. I have a couple of questions about your exhibit that I would like to work through. Do you have a copy in front of you?

A Yes.

Q First off, I would like you to look -- well, first of all, before we get to that, I have some background questions to ask. You indicated earlier that there were five previous orders. Could you explain what you meant by that?

A Well, in order to recreate what the order was prior to order reform, to compare as closely as we could, we used the numbers from the former Order 33, which was Ohio Valley Order 36, which was Mideast Ohio, Western Pennsylvania, Order 40, Southern Michigan, Order 44, the upper peninsula and Order 49, an Indiana order.

Q Were there portions of any other orders that were brought into the new order 33?

A I don't believe so.

Q Are there any areas that were not part of any of those orders that were brought into the new 33?

A There was one plant that was previously in the upper peninsula that did go to Order 30, a small plant, but I can't think of any other. There were some counties possibly, but I don't know off hand.

Q Were there any changes or difference in the number of Class I handlers in the new 33 as opposed to the prior orders?

A Not because of the merger that I can think of.

Q Now, if you would, please, look at your Exhibit 5 and look at figure one and figure two. Figure one, first let's talk about that. This identifies what?

A Figure one identifies plants that were pooled as fully regulated pool plants on the market for that month. The yellow triangle designates a distributing plant and the red star designates a pool supply plant.

Q Now, look at figure two. Is that the same situation?

A Yes.

Q But different months.

A Yes.

Q May of 2000 versus May of 2001; is that right?

A Correct.

Q Are there in May of 2001, are there any additional distributing plants on this map that were not in figure one, figure two that were not in figure one?

A I don't think there were. We do have an area in Pennsylvania that is not on May 2001 and because some months they are an exempt plant, so that one does not appear in 2001. Other distributing plants, I don't believe so.

Q What about supply plants? Was there any significant difference?

A Well, you can see by the star symbols that there are some additional supply plants.

Q Were any of these supply plants on any of the prior orders to your knowledge?

A Not the orders, the five orders which I discussed.

Q Now, on the tables one and two, that I guess these charts are taken off of and at the bottom you have cooperative associations - 1033.9(c). Can you explain what those are?

A Those are cooperative associations that file a 9(c) report in our market and act as 9(c) handlers.

Q And that is the same situation with table two?

A Yes.

Q And these additional -- if you compare table two at the bottom of the cooperative associations, there are some additional cooperatives; is that correct?

A Yes.

Q Do you know whether any of these cooperatives had any association with the orders prior to 2000?

A I don't believe so.

Q I would like you, if you would, to turn over to table four. Let me just ask a general question. Are you aware of any significant shift in Class I sales, upward shift in Class I sales in Order 33 as it is now constituted as compared to just immediately before the merger?

A No, I am not aware of any.

Q And if you would look at table four, going down through the columns -- these are thousands of pounds under Class I that was actually treated as Class I and the pool received money on a Class I basis; is that correct?

A Yes.

Q And those tend to stay pretty well within the same range comparing month to month, do they not?

A Yes.

Q But to the left of that -- or the right of that is a column of percentages?

A Yes.

Q And notice for example in May of 2000, there were 49 percent Class I utilization in 2000, but it's what -- 37.3 in 2001? May of 2001. What would be an explanation for that change?

A Well, you look at the total pounds of milk and as you stated, the Class I stays relatively stable and you derive that into a total number, you are going to have a lower percent.

Q So, over here under the Class III, there is a significant increase in the Class III pounds, is that right, between 2001 and 2000?

A Yes.

Q And the pounds in the early part of 2000, how would those compare to the pounds of the total orders, the five previous orders in the year prior to the merger?

A They were comparable. As we stated before, we couldn't come up with the exact numbers as they would have been, but they are our best estimates.

Q Now, to your knowledge, -- I know you don't really list them as such, because they are not necessarily pool plants, but are you aware of any additional cheese or manufacturing plants that were constructed or began operation in Order 33 within its marketing area during the year 2000 or year 2001?

A Not that I am aware of.

Q Are you aware of any major increase in any production of any cheese plant already existing under that order?

A I'm not sure.

Q Moving on over to table eight, this total at the end of this column, along the righthand column, how does that differ from back along table four, the total Class I pounds?

A This is the total of Class I utilization, but then the producer milk number would be the pounds as allocated as producer milk, so you would have your gross utilization less the receipts in Class I to come up with the net utilization that you saw on the previous table of allocation of producer milk.

Q Then going over to table 10, what is this identifying?

A This identifies different products in the Class III disposition at pool plants.

Q There is an increase in the amount of hard cheese in the total in 2001 as compared to 2000; is that right?

A Yes.

Q And this is milk that was attached to those distributing plants and diverted to cheese plants to process --

A It would be a combination of plants in our markets that can actually produce cheese or milk that was sold to plants.

Q Moving over to table 12. You have got the daily average sales. Can you explain that, please?

A The daily average sales is just the daily average of the previous column, the Order 33 sales, which is arrived at by the packaged sales at pool plants, plus sales of -- I'm sorry -- receipts of milk from non-pooled sources, partially regulated, producer handling exempt, receipts of other orders, packaged sales in to the marketing area and then less the packaged sales out of the marketing area to arrive at a net figure of packaged sales in the marketing area.

Q You have an average, I guess for the year of 2000 and that is for what, the first eight months of 2001?

A Yes.

Q You don't happen to have the average of the first eight months of the year 2000 to compare with those two?

A No, I don't.

Q But this is a simple arithmetic --

A Yes.

Q We could compute that.

A If you were to draw a total after August of 2000, you could do the same thing.

Q But this -- would this not indicate kind of the level of sales in Order 33 during this period of time?

A Yes, packaged sales.

Q And indicates a fairly stable amount of sales through that period?

A Yes.

Q Now, turning over to table 13, how did you come up with the information for this table?

A The information from this is derived from producer's payrolls that are given to our office, producer information that we obtain and break down by state.

Q So, if you look at, for example, Indiana, you can see that is the amount that you have been able to determine that came from Indiana during each of those months, is that right?

A Right, milk that was pooled in our market by Indiana.

Q So, it's got milk -- all of 2000 and part of 2001, is that correct?

A Yes.

Q And then over in Iowa though, there shows none in early 2000, but yet there is some in early of 2001; is that correct?

A Yes.

Q So that indicates that that is new milk that came through the Order?

A Yes.

Q Then I notice you have a foot note six under 2000 that says that producer milk from South Dakota -- is that because the number of producers in South Dakota were too small to add? Why is that put in there?

A It was -- yet, prior to where we included it, it was too small of a number.

Q So, looking down in South Dakota, there are -- were some pounds that came during the last two months of 2000 from South Dakota. We just don't know what those are.

A Right, they are included in the Iowa numbers.

Q But then down in Minnesota for 2001, it shows four months of deliveries in 2001, but none in any of the other months; is that correct?

A Right. But in the months of June, July and October of 2000 it was included with the Wisconsin numbers due to restricted information.

Q Do you know whether any milk from Minnesota came in in September? It's not on this table, but do you know?

A I don't know. According to this table, it's not unless that was a typographical error.

Q Is there -- is the September information available for that yet? I mean, would we be able to obtain that information?

A For September 2001?

Q Yes.

A No, it's not. We don't have all the payroll information in yet.

Q Moving on to Appendix A, you have got two maps there of May 2000 and 2001.

A Yes.

Q This yellow line, that is the marketing area?

A Yes.

Q And this indicates the fact -- this graphically shows the shift of the milk supply into the marketing area, both -- primarily from the west of the marketing area?

A Yes, you see a greater area.

Q I want to move on to Appendix C. I want to try to characterize this percent of total and then tell me if I am correct. Doesn't this indicate that of all this additional milk, -- well, first of all, let me back up. The producer milk not historically associated with Federal Order 33, how did you come up with that number?

A It is milk that was pooled in the market that had no previous association with the market and they were new co-ops not located on the market, had never had an association or divisions of co-ops that were existing in the market but new divisions of those in different areas or non-member producers from locations outside of the marketing area that had never been pooled before.

Q What about if you had a producer that was associated with a cooperative that shows up in table one, who has been a member or a longstanding supplier of milk under the Order and then joined a new co-op in 2001?

Would his milk show up in this table and being non-historically associated?

A No, if you had previously been associated and even if you changed co-ops, you would have an historic association and would not be included.

Q Even if this change of co-ops was to a new co-op?

A Possibly if it were a new co-ops outside of the marketing area, but I don't think the local producer would join outside of the area.

Q So, with that background, this percent of totals, just saying that all of this additional milk that shows up here in this column, the third column over on Appendix C, that this is the only percent that showed up at a pool plant?

A Yes, which we determined stayed --

Q Which stayed in the pool.

A Yes.

Q That is why you have the word net in there.

A Yes.

Q And we are talking about all pool plants or just pool distributing plants?

A All pool plants.

Q So, this would even include pool supply plants?

A Yes, if it is within the marketing area.

Q Moving on to Appendix D, you have got a long title there. If we use the term split plant, does that -- is that what this is talking about?

A If you would like to use that term.

Q Well, it's shorter and I may not be able to say this over and over again without twisting my tongue.

MR. YALE: I have no other questions. Thank you.

JUDGE CLIFTON: Any other cross-examination of this witness? Yes, would you please approach the podium and identify yourself.

MR. WARSHAW: My name is Allen Warshaw and I represent a group of milk dealers from Pennsylvania and Ohio.

JUDGE CLIFTON: Would you please spell your first and last names?

MR. WARSHAW: It's A-L-L-E-N, W-A-R-S-H-A-W.

CROSS-EXAMINATION

BY MR. WARSHAW:

Q I just have a question regarding clarification of tables 13 and 14. I do the math, which I think is correct to come up with an average and I come up with different averages than you did for some of these. Can you explain how you derived those averages?

A The averages located at the bottom of each column?

Q Yes. Actually, I have not done the math on this one, but can you explain to me how these were derived, especially the righthand column, the 2001 column?

A I believe it's a simple average.

Q Turning to 14, I am going to ask you to look at Wisconsin and I kind of question how those could be the averages given that in one case, the average is almost higher than any of the months and the average in 2001 is lower than any of the months.

A That must be a typographical error. I a not sure that it possibly was supposed to be 2499. I would have to --

Q How about the first column?

A There is apparently something wrong there. I will have to check into that.

Q Would it be possible for you to do that and recalculate those and perhaps provide them?

A Yes, I will check into that.

Q Just for clarification.

MR. WARSHAW: Thank you.

JUDGE CLIFTON: Thank you, Mr. Warshaw. Mr. Cooper?

REDIRECT EXAMINATION

BY MR. COOPER:

Q Yes, if you look at that again, is it not a fact that you are dividing by the total number of months in the year, 12? How come --

A It's possible. I'll check into that. West Virginia, there is obviously a problem in West Virginia also.

Q Look at table 13 for Kansas for 2000.

A Yes.

Q During November we are over 2,800,000.

A Right.

Q And December there were 4,560,000 and the average is 614,000, which without my calculator looks like 12 into that total.

A Yes, I am sure it probably is.

Q I assume the other ones were done that way?

A I am guessing you are probably right. We will check into that and get the corrected numbers for you.

MR. COOPER: Thank you.

JUDGE CLIFTON: Mr. Beshore, would you

approach the podium and identify yourself.

MR. BESHORE: Marvin Beshore, M-A-R-V-I-N, B-E-S-H-O-R-E, with the law firm of Milspaw & Beshore in Harrisburg, Pennsylvania, representing Dairy Farmers of America, Michigan Milk Producers and Prairie Farms Cooperative.

CROSS-EXAMINATION

BY MR. BESHORE:

Q Ms. Uther, let me start with the list of pool handlers in Exhibit 5. The pool handlers are identified by distributing plants and supply plants in part, as well as cooperative associations. The designation supply plant, does that require any manufacturing operations at the location?

A Well, the pool supply plant -- no, the definition of supply plant does not require manufacturing. It requires supply and distributing plants.

Q So, the plants that are identified as supply plants may or may not be actually milk manufacturing facilities?

A Correct.

Q With table 10, as title Class III disposition at pool plants, does that mean that the products manufactured, hard cheese, condensed and evaporated, et cetera, shown on the table, that the processing was done at the pool plant facilities?

A Not necessarily. It could be done at those facilities or it could be sold to a plant that makes those products.

Q So, when table 10 says Class III disposition at pool plants, it's not reporting a manufacturing of milk physically at those facilities?

A No, it's showing utilization of the milk from those facilities. The utilization includes sales to other plants.

Q So, in other words, the milk that is show as Class III disposition at pool plants in table 10, the pool plants -- it's called disposition at pool plants, but those pool plants maybe distributing plants or supply plants, correct?

A Yes.

Q And to clarify the terminology used, would it be possible for pool distributing plants to have Class III disposition, which is reflected on table 10?

A Yes.

Q So pool distributing plants which are listed on tables one and two, are primarily plants which process and distribute fluid milk products; is that correct?

A Yes, they qualify based on that.

Q In fact, in order to be on table one and two as a distributing plant in Federal Order 33, that plant would have to meet the route disposition requirements of Section 1033.7(a), I guess; is that correct?

A Yes.

Q So, although they are primarily fluid milk processing plants, can you explain how those fluid milk processing plants would be pool plants, which reflect disposition into hard cheese on that table 10?

A It would be through either diversion or bulk transfers to a cheese plant.

Q And what do you mean by a diversion?

A It would be diverted directly from farms to another plant or it could be brought into their plant and bulk transferred to another plant.

Q So, the distributing plant operator would report to the Order milk being picked up at a dairy farm, taken directly to a cheese plant at some location for manufacturing into cheese and you have reported that disposition as a Class III disposition at the pool distributing plant on table 10?

A If they pool it on every quarter and if it has association with their plant to enable them to pool that milk, yes.

Q Now, the cheese plant that that milk was diverted to from that pool distributing plant, would that plant be listed on the pool plant list, table one or two?

A It may or may not be.

Q So, there are plants which Class III products, which cheese is, shows up in this table as Class II disposition which are not listed on tables one and two?

A If they are non-regulated plants, they would not be listed.

Q And they are what you call non-pool plants and you haven't provided any list of non-pool plants to which pooled milk went, correct?

A No.

Q Now, would tables eight, nine, 10 and 11, show respectively Class I disposition at pool plants, Class II disposition at pool plants, Class II disposition at pool plants, Class IV disposition at pools plants -- do the same principles apply to those tables?

A Yes, they do.

Q This disposition, or the products made, the usage didn't necessarily occur at the pool plants.

A Right.

Q It occurred at the plant of eventual delivery of the milk which may have been reported by the pool plants but directly, so called diverted from the dairy farm to another location, which might be a non-pool plant that isn't reported anywhere in these exhibits, correct?

A Yes.

Q Does the -- when plants in Order 33 distributing plants, let's just say a fluid milk plant in Cleveland, Ohio -- are there any in Cleveland?

A Yes.

Q A fluid milk plant in Cleveland, Ohio -- if it was reporting milk of a dairy farmer on it's pool plant so that the milk shows up as disposition at that plant, does that farm have to be anywhere near Cleveland?

A Not necessarily, but it has to be physically associate with that plant before it can be pooled there.

Q What is required for physical association with that plant, under your regulations as they are presently written?

A They would have to receive one day's production into that plant.

Q So, let's say hypothetically a farm located -- a dairy farm located in North Dakota was delivered to that plant one day, could that plant then report that North Dakota farm production assuming it's delivered to a local cheese plant on all the other days, could it report that North Dakota farm production as disposition at the Cleveland pool plant for Class III?

A If the Cleveland pool plant filed a report with that on it, and it has association, yes, they could.

Q And association is one day's delivery under the present regulations, correct?

A Yes.

Q And after that, it could be delivered to the plant in North Dakota, the cheese plant, and be pooled on the Order?

A Provided the plant met the other qualifications, yes.

Q Now, does that same concept of association with the plant applied to supply plants? That is, do supply plants report as disposed of at their plant producer milk even though it's diverted to other locations?

A Yes.

Q And I think you indicated supply plants do not have to be manufacturing plants. They can simply be -- what? A receiving point for milk?

A They qualify based on their deliveries to distributing plants.

Q The facilities that are required at a supply plant can simply be a receiving tank for milk?

A It has to be a -- qualified as a plant, yes.

Q To qualify as a plant, it has to have certain physical facilities.

A Yes.

Q And a permit for shipping and receiving grade A milk.

A Yes.

Q And a supply plant inside or outside the market in the area, if a producer's milk was received there one day so it was associated with it and a supply plant met any other requirements, that producer's milk wherever located could be delivered to a non-pooled cheese plant after that and reported on the supply plant's report as part of pool, correct?

A Yes.

Q Could I direct your attention to Appendix C in Exhibit 5?

A Okay.

Q Now, in looking at the total of the average line, the bottom line of Appendix C in Exhibit 5, does this show that up through August of 2001, there were more than four billion pounds of milk defined as not historically associate as you related in a question to Mr. Yale that were pooled on Order 33?

A Yes, it's for the months of June 2000 through August 2001 that the total is representing all of those months.

Q And of those more than four billion pounds of milk, only 2.75 percent of that total was delivered to pool plants within the marketing area?

A Delivered and stayed at those pool plants.

Q Delivered and stayed in those pool plants?

A Right.l

Q What do you mean and stayed at those pool plants?

A Were not bulked back.

Q So that is what your net receipts indicate.

A Yes.

Q At the title of the second column.

A Yes.

Q So, would I be correct to assume that the remainder of the -- if the milk was not being delivered to pool plants, that it was being diverted as we have just described in most cases to non-pool plants at some distant location.

A Yes.

Q And the diversions could have been reported by either distributing plants or supply plants.

A Yes.

Q Let's look at Appendix D for a moment. Appendix D represents, I believe you testified in response to Mr. Yale and Mr. Cooper, the pooled milk reported on the pool reports of the operators of so-called split plants. Is that correct?

A Yes.

Q How many split plants are there in Order 33?

A We don't release the designation of split plants in our plant descriptions.

Q Can you tell me how many plants there were, which I assume -- let me put it this way. May I assume that there are more than three split plants or you wouldn't report the figures at all.

A Yes.

Q And this might clarify some of the other aggregations on some of your other tables, but is it the market administrator's practice to not report numbers that represent only two -- the operations of two handlers or two dairy farms?

A Yes.

Q So, when you were aggregating states of producers on several of the tables, would it be correct to assume that there were only one or two dairy farms in that state?

A Yes.

Q During that month?

A Yes.

Q To follow that point through for a moment, going to table 13 and taking the State of Minnesota, which on table 13, Minnesota -- you reported totals only for the months of May, June, July and August of 2001, but the footnote indicated that there may have been milk from Minnesota aggregated on the -- with the Wisconsin milk in three other months. Would it be fair to understand that those months were situations where there were only one or two dairy farms in Minnesota?

A Yes.

Q Same thing would apply to North Dakota or any state in which the totals were combined with another state.

A Yes, that's right.

Q So, with respect to Minnesota, just looking at those numbers, I take it that the milk was pooled on the Order in May or June, July and those months in 2001. It was not servicing the market in any respect in any other month, correct?

A Right, it was not pooled in the other months.

Q I want to get back to Appendix D in a second, but just another question on table 13 here. Look at the State of Wisconsin here a moment or two, if you would, and compare May 2000 and May 2001. The pooling shown for the State of Wisconsin increased from 1,706,006 to 398,985,556 in 2001 and the number of dairy farms represented, which is on your next table 14, increased from 10 in 2000 to 2,776 in May 2001.

A Yes.

Q What is presently required under the Order to increase the number of producers pooled and the pounds of milk in the State of Wisconsin from 10 to 2,700 producers and from less than two million pounds to 398,000,000 pounds from year to year?

A I'm sorry -- what is required?

Q For each producer, what was required?

A They would have to physically be received at a pool plant prior to being and then the pooled the pool plant would pool that milk on their report. It would be part of our statistics.

Q So, for the months of May 2001, it could have been received at a pool plant in Wisconsin, which are supply plants listed in table two?

A They could have been.

Q Or a pool plant in the State of Ohio?

A Yes.

Q Or Illinois. Wherever there was a pool plant. And after they were received for a day at that pool plant, the milk could have been delivered to a non-pool plant and just reported as pooled.

A Could have been, yes.

Q In May, were there any limitations on the amount of milk that can be pooled by diversion?

A No, there are no diversion limitations.

Q No limitations whatsoever.

A April through August, there are unlimited diversions.

Q So, the present order for the months of April through August, once a producer has delivered for one day to on pool plant, milk can be diverted in unlimited amounts during those months?

A Yes.

JUDGE CLIFTON: Mr. Beshore, remember where you are. I would like to take about a 15-minute break and resume at 10 minutes to 10:00.

(Off the record.)

JUDGE CLIFTON: We are back on the record at 9:52. Mr. Beshore, you may resume.

MR. BESHORE: Thank you, Judge Clifton.

BY MR. BESHORE:

Q Mr. Uther, go into Appendix D of Exhibit 5. I want to ask a couple more questions about split plants. Of course, it's information which you are not able to provide. I understand that. Can you tell me whether any of the split plants, which are pooled producers of milk, which are reported on Appendix D are located outside the marketing area?

A I can't really say, since we don't identify the split plants.

Q Now, if we look at the totals shown on Appendix C and Appendix D of Exhibit 5 and compare them for a moment, if you assume with me for a moment, and I understand you have not confirmed this, but if you assume with me for a moment that a portion of the milk reported on Appendix C as non-historically associated with Federal Order 33, which basically you have described as milk originating from farms outside the marketing area or from organizations or cooperatives not historically associated with the market, you assume that portion of that milk is associated with the supply plants located outside the marketing area, which you have identified on tables one and two.

A Yes.

Q And if you assume that -- again, I know you can't confirm this, but if you assume that a portion of some of those supply plants are so-called split plants, whose volumes of pool producer milk are shown on Appendix D, would I be correct to deduce that the remainder of the producer milk non-historically associated with Federal Order 33 is reported as part of the pool because it's reported by and therefore associated with pool distributing plants?

A It could be reported by pool distributing plants and also could be reported by cooperatives on 9(c) reports.

Q With -- let's look at cooperative 9(c) reports. What performance requirements are required for cooperatives to report milk on 9(c) reports? Does the milk have to meet all the producer milk definitions in part 13 of the order?

A Yes, and it has to be associated with the market by being received at a pool plant. They are subject to diversion limitations during the months of diversion limitations.

Q Not subject to any limitations when the order does not have any diversion limitations.

A Correct.

Q And the same thing would apply to distributing plants.

A Yes.

Q Now, let's -- do you have the language of the order available to you?

A Yes.

Q The current order?

A Yes.

Q I would like to look at some of the provisions in part seven of the current order, which are the pool plant requirements and in particular subpart C of part seven, which are the requirements for supply plants; is that correct?

A Yes.

Q By the way, is subpart five of the supply plant definitions under subpart C5, is that the so-called split plant language in Order 33?

A Subpart C of seven, no. Subpart C of seven -- is that what you said?

Q Can you point out for me the language in the order, which authorizes so-called split plants?

A I believe it's under --

Q H7 of --

A Yes, on -- mine is page seven, but the portion of a regulated plant designated as a non-pooled plant that is physically separate and operated separately from a pooled portion of such plant -- designation of a portion of a regulated plant as a non-pooled plant must be requested in advance, must be a certified market administrator --

Q So, that is part H(7) of the pool plant provisions of the order?

A Yes.

Q Let's get back to the supply plant, which is subpart(c) of part seven. I would like to direct your attention to subsection two under supply plants, which says the operator of a supply plant may include deliveries, pool distributing plants directly from farms and producers pursuant to 1033.13(c) as up to 90 percent of the supply plants qualifying shipments. Do you see that language?

A Yes.

Q Now, does that language authorize what I think you described earlier in your testimony as the reporting for qualifying deliveries from a supply plant of milk from farms delivered directly to distributing plants regardless of whether the farm is geographically close to the supply plant?

A Yes, if it's pooled on that supply plant's record. This is identifying that 90 percent of their 30 percent can be direct from the farm.

Q So that hypothetically, farms in the State of Ohio, which are reported as on report of a supply plant in the State of Wisconsin could serve to qualify that supply plant at up to 90 percent of its required deliveries in a performance month?

A Yes, if it is associated with that plant and that plant pools their milk.

Q And all of the milk delivered or otherwise associated that supply plant outside the order could be left right where it is, delivered locally and to distance areas and pooled on the order?

A We are looking at the total receipts on that report when we determine their qualifications.

Q Now, paren four under C, first sentence says that the supply plant that meets the shipping requirements during each of the immediately preceding months of September through February shall be a pool plant during the months of March through August unless -- and I am paraphrasing -- it loses its grade A permit or otherwise -- fails to meet a shipping requirement instituted by a marketing administrator pursuant to paragraph G, or the plant operator voluntarily de-pools, is that correct?

A Yes.

Q So, during the months of March through August, there are no requirements currently made of a supply plant for deliveries to distributing plants within the order?

A Correct, as long as they qualified it, even the months of September through February.

Q Is that sometimes referred to as the free ride period for supply plants? Have you heard that?

A I have heard that, yes.

Q And under the order as presently written, volume that a supply plant can associated during that free ride period does not need to be related in any to the volume by which the supply plant performed during the months of September through February, does it?

A No, it's not related to that.

Q So that as presently written, a supply plant could perform at a level of let's just say a million pounds of total receipts during the September through February and pool 50 million pounds during the free ride months without performance, so long as it met the other requirements?

A Yes, any new producers brought on would still have to be brought into a pool plant to get an association.

Q But the pool plant could be that very supply plant?

A Could be any pool plant, yes.

Q And that supply plant is a pool plant at that --

A Correct.

MR. BESHORE: May I just --

JUDGE CLIFTON: Certainly. Let's go off record for just a moment.

(Off the record.)

MR. BESHORE: Judge Clifton.

BY MR. BESHORE:

Q I would like to go to the producer milk definitions 1033.13 in the Order for just a moment.

A Okay.

Q We talked about milk being associated with distributing plants and reported by distributing plants. Does the producer milk definition in part describe the limitations, the rules for associating milk with distributing plants, producer milk, this part of the Order?

A Yes, it relates to association with the market and the diversion limitations.

Q Now, are there no diversion limitations whatsoever during certain months for distributing plants?

A Yes, earlier I stated April through August. I misstated it. It's actually March through August are the months of unlimited diversions.

Q And is that reflected in the language of

1033.13 and if so, is that in D(2), I guess?

A Where it says the -- diverted to non-pool plants not more than 60 percent during the months of September through February and those -- that is the only place it gives you a limitation.

Q So, that is D(3) of part 13?

A Yes.

Q So, when it says there is a limitation of not more than 60 percent during September through February, that means there is no limitation whatsoever from March through August.

A That's correct.

Q Now, with respect to the 60 percent limitation during the months of September through February, what diversions are limited? Is that -- as I read the language, it's only diversions to non-pool plants; is that correct?

A Correct.

Q Now, now does the order presently work if a distributing plant diverts producer milk to a pool supply plant at a distant location? Is that subject to the 60 percent limitation?

A No, because that would be a diversion to a regulated pool plant. It would not be a non-pooled plant, so it would not be a part of the 60 percent. It would be part of the total producer milk.

Q During the months of September through February when there is a limitation of 60 percent diversions to non-pooled plants, what limitation is there on diversions to pool plants?

A There is no limitations on diversions to pool plants.

Q So for the association of producer milk at a pool plant in the order, there is no limitation on diversions whatsoever during March through August, correct?

A Correct.

Q There is no limitation on the diversion of milk to pool plants during any month, correct?

A That's correct.

Q And the limitation during the months of September through February is presently 60 percent of the total receipts?

A Yes.

Q Has there been a change under the current order from the predecessor orders, which you identified in questions from Mr. Yale, in terms of the price that is applicable, that is returned under the order for milk diverted to non-pooled plants outside the marketing area?

A I'm not sure I understand your question.

Q Is it not correct that prior to January 1, 2000 diversions of milk to non-pool plants wherever located were so-called zoned out, subject to prices -- zone blend prices, which were based in part on mileage from the marketing area?

A Yes, that is correct.

Q So, that -- simplifying it, the further the milk was from the marketing area, the lower the price which it was entitled to draw from the pool, correct?

A Yes.

Q And has that changed with the current orders so that there is simply a stipulated relationship between the blend price at each county in the country?

A Yes, our milk is priced at where it is physically received and those locations are priced at a location adjustment zone.

Q And if you look at table one of Exhibit 5, you have identified the Class I differential rate. You have identified the pool plants by a Class I differential rate; is that correct?

A Yes.

Q So, in this present order, all of the plants in the top bracket on table one, a $1.80 Class I differential rate, would all of those plants receive the exact same blend price under the order?

A That would be the minimum price.
Q Producer price differential?
A Yes, the price that we announce is at the $2 zone and producers located in these areas shipping out to these plants, would be priced at the different adjustment plus or minus $2.
Q So that if you look at table two, the current difference in price applicable at a supply plant in Remus, Michigan, a supply plant in Black Creek, Wisconsin is a nickel, is that correct?
A That's correct.
Q The difference was substantially greater under the prior order, was it not? The difference in price applicable at those locations?
A Yes, I can't remember the exact calculation. Different orders did it differently.
MR. BESHORE: Thank you.
JUDGE CLIFTON: Thank you, Mr. Beshore. Mr. Cooper, any redirect?
MR. COOPER: I'll wait.
JUDGE CLIFTON: All right. Mr. English. Would you please identify yourself when you get to the podium. I would ask every questioner, attorney or otherwise to provide a business card or at least your name and address to both the court reporter and Mr. Tosi before

you leave today.

Mr. English, would you identify yourself, please?

MR. ENGLISH: Thank you, Your Honor. My name is Charles English. I represent the Suiza Foods Corporation.

CROSS-EXAMINATION

BY MR. ENGLISH:

Q A couple clarification questions first. You have been discussing for more than a few minutes now this concept of historic procurement area. How do you define or how does the market administrator's define the historic procurement area for 33?

A We looked at the procurement area prior -- both prior to January 2000 and prior to June of 2000 and we were seeing basically the same areas of procurement.

Q Would it be fair to say then that Appendix D would show milk marketings for December '98 and Appendix A which are milk marketings for May 2000 show that?

A Yes, it should. I mean, there are some differences, but --

Q Are there any differences that stand out in your mind today as you are on the witness stand?

A Not that stand out in my mind. If you were to look at December '99 compared to May of 2000, it may be closer. We were requested to show December '98.

Q With respect to -- I don't want to spend a lot of time on this issue, but you had a discussion with Mr. Yale about the difference between producer receipts by classification and Class I disposition at pool plants. What is the underlying difference between those two, total numbers?

A Between producer receipts classified as Class I and --

Q The disposition.

A The Class I disposition would basically be the gross Class I utilization at milk at pool plants where the producer milk classified as Class I would be the net allocation. When we go through the allocation process for pool, you are going to subtract out receipts in Class I and then -- then you are going to write a net allocation and that is what producer milk Class I represents.

Q Could one do those calculations from the tables that are here based on a particular month?

A Probably not by class. Table seven shows the receipts at pool plants. That shows you your total receipts. So, if you were to take your different classes, your Class I utilization and II, III, IV and add them up and you would come up with -- representing the total receipt column and then compare that to your producer receipts. You are not seeing it broken down by class, but you are seeing it in total there.

Q Thank you. Understanding the issue of confidentiality, can you at least disclose to this record as a benchmark whether in January of 2000, right after federal reform, the number of split plants, as the phrase has been used here, as indicated on Appendix D, non-pool status for a portion of the plant requested, was zero in January of 2000?

A That's correct.

MR. ENGLISH: That's all the questions I have. Thank you.

JUDGE CLIFTON: Thank you, Mr. English. Any other questions for Ms. Uther? If you will approach the podium, please.

MR. CARLSON: My name is Rodney Carlson, R-O-D-N-E-Y, C-A-R-L-S-O-N, and I am representing Scioto County Cooperative Milk Producers.

JUDGE CLIFTON: Would you spell Scioto for the record?

MR. CARLSON: S-C-I-O-T-O.

JUDGE CLIFTON: Thank you, Mr. Carlson.

CROSS-EXAMINATION

BY MR. CARLSON:

Q Ms. Uther, Appendix C of Exhibit 5, when you were referring to the column headed net receipts, one of the questions, you mentioned a term called bulked out. What do you mean by that term?

A If these plants received milk that had not historically been pooled, but they in turn did a bulk transfer of that amount or even greater back to the source, then we netted it from these numbers.

Q So, in supply plant or a plant that wanted to qualify as a supply plant could ship milk to a pool distributing plant and in return receive that same volume of milk back at their plant; is that correct?

A It had to be physically received in to the pool distributing plant, yes.

Q And then the distributing pool plant could bulk out the milk back to that originating plant?

A Yes, they could.

Q So, in effect that supply plant would lose access to none of the milk that they originally received in that type of method. It could qualify as a pool plant without losing use of that milk; is that correct?

A It's possible.

Q When you were talking to Mr. Beshore about Section 7(c)(4) in the free ride months, is there any limit as to how much milk a supply plant can qualify during those free ride months?

A No.

Q So a supply plant that qualifies during the qualifying shipment period could quality on a million pounds of milk during the month, but during the free ride months, could add unlimited volumes of milk and still qualify?

A Yes, as long as they associated the producers with the market.

Q And that means that those producers have to be received at their plant.

A At a --

Q Or at a pool plant.

A Yes.

Q Theirs or someone else's. And they just have to receive that producer once, one day production and then they can divert it the rest of those free ride months.

A Yes.

MR. CARLSON: Thank you.

JUDGE CLIFTON: Thank you, Mr. Carlson. Other questions for Ms. Uther? Yes, if you would approach the podium, please?

MR. TONAK: My name is Dennis Tonak, T-O-N-A-K, with Midwest Dairyman's Company and also Lakeshore Federated Dairy Cooperative.

BY MR. TONAK:

Q A couple of questions on some of this Class I stuff. If there is a shipment from an Order 33 supply plant to a distributing plant regulated by another order and that shipment is partially at least classified as Class I, that Class I portion would add value to the Order 33 pool, would it not?

A Any milk classified as Class I is going to add value to your pool, yes.

Q And the same would happen with any milk diverted to a Class II usage as long as the Class II price is above the producer prince?

A Yes.

Q I would like you to turn to pages 17 and 18. On these producers numbers, if a producer was pooled under the market for one day or for all 30, 31, 28 days -- doesn't make any difference -- his number is included there; is that correct?

A Yes.

Q Have you noticed in this so called tradition area of Federal Order 33 or the predecessor orders, any shifts of producers out of the Order 33 area to other orders?

A There has been some.

Q Would that explain possibly the reason as an example in Michigan the producer numbers went from 2,827 in November of 2000 to 2,593 in December of 2000?

A Well, the producer numbers, they were not pooled in our market. Where they were pooled or if they were pooled, isn't really designated. It's just that they were not part of our pool that month.

Q Same with any of the other months where there were some shifts back and forth.

A Yes.

Q It could be that producers weren't pooled. It could be that they were pooled in other markets.

A Yes.

MR. TONAK: Thank you.

JUDGE CLIFTON: Thank you, Mr. Tonak. Other questions for Ms. Uther? Mr. Yale?

CROSS-EXAMINATION

BY MR. YALE:

Q Following up on Mr. Carlson's question on pooling, I want to make sure this is clear -- that a producer associated with the order -- well, let's back up. Let's say there is a supply plant located in the distance outside of the Federal Order marketing area, you indicated that for a producer to be associated with an order, that producer needed to deliver to that pool plant or another pool plant; is that right?

A Right, they have to be delivered to a pool plant in the order. It doesn't specify --

Q So, it's possible then that those distant plants, that some of those producers may never have delivered milk to a plant located within the market area; is that right?

A It's possible.

JUDGE CLIFTON: Thank you, Mr. Yale. Mr. Beshore?

CROSS-EXAMINATION

BY MR. BESHORE:

Q Ms. Uther, Mr. Tonak asked you about shipments from supply plants to other order distributing plants, I think, and I wondered if you could identify and explain for the record how the present order regulations work in that respect and I am looking at Section 7(c)(1)(iv). Does that provision presently allow a supply plant, let's say located in the State of Wisconsin to make qualifying shipments, shipments for purposes of qualifying under Federal Order 33, to make 50 percent of those shipments to, for instance, a local distributing plant in Wisconsin that is a pool plant under Order 30?

A Yes, they are allowed to make up to half of their qualifying to shipments to other order plants, as long as other than II, III or IV is requested, utilization.

Q As long as they are not requesting II, III or IV utilization?

A Right.

Q Okay. So, really as presently written, those supply plants during the qualifying period, they only have to provide half of the qualifying shipments to Order 33 pool distributing plants?

A Yes, it has to be at least half.

Q At least half.

JUDGE CLIFTON: Thank you, Mr. Beshore. Any other cross-examination questions? There being none, any redirect, Mr. Cooper?

MR. COOPER: Yes, Your Honor.

REDIRECT EXAMINATION

BY MR. COOPER:

Q This is with regard to tables 13 and 14. Some questions were raised by Mr. Warshaw and hopefully, I didn't contribute to the confusion, but let's clarify it on the record here to make sure we have it right.

Can you turn to table 13, Exhibit 5?

A Okay.

Q And just for clarification of the methodology used here, why don't we take the State of Kansas.

A Okay.
Q For 2000 on Kansas on table 13, first 10 months we have zero listed in the column. The last two months we have respectively 2,818,205 and 4,560,709 pounds. Am I correct in assuming that we add the 10 zeros and those two numbers and we divide by 12 and that gives us 614,910 below that?
A Yes, it is an average of the months shown, so it's divided by 12.
Q Including all the months with zeros in them?
A Yes.
Q The next column, 2001, we have six months where we have several million pounds a month and then we have two months of zero and then we have four months not reported basically because they haven't occurred yet.
A Right.
Q In that case, we add up all those numbers and divide by eight. In other words, the total number of months reported even though two of those months are zero.
A Yes.
Q And that is how we get the 5,727,294 pounds.
A Right.
Q The same methodology is used in table 14;

is that correct?

A Yes, with the exception of --

Q Given that you do have two typos there. Two states have typos in table 14 and that is the average column for West Virginia and Wisconsin; is that correct?

A Yes.

Q And if people would turn to table 14 and look at West Virginia and Wisconsin and the monthly figures are correct in both of those states, are they not?

A Yes, they are.

Q So, it's just those average numbers at the bottom, those four numbers going across. Could you give us the correct numbers? Instead of 2,807 and 2,668 for West Virginia, what are the correct numbers?

A 2000 should be 101 and 2001 should be 86.

Q And for Wisconsin, instead of 1,653 and 1,499?

A We should have 627 and 2,361.

Q And as far as you know, those are the only errors in this chart?

A As far as I know.

MR. COOPER: I would ask that Exhibit 5 be received into evidence, Your Honor. I have no further redirect.

JUDGE CLIFTON: Is there any objection to the admission into evidence of Exhibit 5? There is none and Exhibit 5 is received into evidence.

(Exhibit 5 is received into evidence.)

JUDGE CLIFTON: Ms. Uther, you may step down. Thank you.

(Witness excused.)

JUDGE CLIFTON: May I have those dairy farmers who would like to be heard now stand, please. Let me see how many there are. I am seeing only three. Any particular order in which you would like to go? Yes, please approach the witness stand.

Please take your seat and identify yourself for the record including your mail address, please.

MR. GROSELLE: Jack Groselle, 11204 Ryder Road, Hiram, Ohio 44234.

JUDGE CLIFTON: How is your last name spelled?

MR. GROSELLE: G-R-O-S-E-L-L-E.

JUDGE CLIFTON: Let me swear you in.

Whereupon,

JACK GROSELLE

called as a witness, after first being duly sworn, testified as follows:

JUDGE CLIFTON: You may proceed.

THE WITNESS: First of all, I want to thank you for having this hearing. It was very nice of the people from the USDA to allow us to have this. Obviously, we have a huge problem here in our Federal Order.

First of all, I want to enter into evidence a couple of tables and they are in the book, but I wanted to make sure they got entered. I asked for this table C and I have three copies of each.

JUDGE CLIFTON: Mr. Groselle, you say they are in the book. Do you mean they are in Exhibit 5?

THE WITNESS: Yes, I believe it's part of table five -- well, no, it's not. It's part of table six.

JUDGE CLIFTON: The one that you have marked as Federal Order 33, producer receipts by classification, table five is actually a part of table six in Exhibit 5?

THE WITNESS: I didn't come up with the exact same numbers.

JUDGE CLIFTON: So, it is somewhat different.

THE WITNESS: It has producer receipts by classification and the other one was --

JUDGE CLIFTON: Let me stop you. The first one, is that the one you would like to have ben Exhibit 6?

THE WITNESS: Yes, that's fine.

JUDGE CLIFTON: And where did you get the information?

THE WITNESS: I got that off the internet from Federal Order 33, the announcement they put up for 2000.

JUDGE CLIFTON: I am going to ask the court reporter to mark these as Exhibit 6, please. I have handed her the three copies.

(Exhibit 6 is marked for identification.)

THE WITNESS: The other one is the same as Appendix C. That was something that I requested from the Cleveland market administrator's office a few months ago and certainly very telling information there.

JUDGE CLIFTON: Let me ask you -- at the bottom of this document, your document is entitled producer milk from outside historic procurement area delivered to pool plants within Federal Order 33 area and at the bottom, it says it's prepared by the market administrator's office in the mideast marketing area 10-1-01.

THE WITNESS: Yes.

JUDGE CLIFTON: Is it in any respect different from what is in Exhibit 5 at page 27?

THE WITNESS: Not from an initial examination. It looks like the same numbers.

JUDGE CLIFTON: I would like to avoid duplicates, if we can.

THE WITNESS: I just wanted to make sure. I didn't know if everything in the book is automatically in, but I did want to make sure that that gets in.

JUDGE CLIFTON: Everything that is in Exhibit 5 is automatically in.

THE WITNESS: Okay.

JUDGE CLIFTON: So, for your testimony, if you will refer to page 27 of Exhibit 5 rather than me taking another exhibit.

THE WITNESS: That's fine.

JUDGE CLIFTON: Then we regard to your Exhibit 6, do you still have a copy to refer to?

THE WITNESS: Yes, I do.

JUDGE CLIFTON: And to the extent that it's similar to a page in Exhibit 5, what is it most similar to? Table four?

THE WITNESS: Yes, it is. It's similar to the first half of table four.

JUDGE CLIFTON: And the first half of table four is found on page six of Exhibit 5. Now, you are moving the admission into evidence of your Exhibit 6.

THE WITNESS: Yes.

JUDGE CLIFTON: Have copies been distributed so that people can tell how it's different from what is in the Exhibit 5?

THE WITNESS: It isn't any different as far as I know -- from the top half of that.

JUDGE CLIFTON: It is identical to the top half of the table that is found on page six of Exhibit 5?

THE WITNESS: Yes.

JUDGE CLIFTON: And you have had a chance to look at it and you are sure that it's identical.

JUDGE CLIFTON: What I would like to do again is avoid duplicates and instead of referring to your exhibit, if you would just refer to page six of Exhibit 5, the top half.

THE WITNESS: That's fine.

JUDGE CLIFTON: Do you need to mark those so you can back and forth easily?

THE WITNESS: No, I'm fine.

JUDGE CLIFTON: Very good. Then I am going to ask the court reporter to mark Exhibit 6 as rejected as a duplicate and, Mr. Groselle, you may proceed.

THE WITNESS: Thank you very much. As you can see from those two tables I Appendix C, I guess I wonder as a dairy farmer and I am hoping someone can explain to me why we need almost double the Class I usage from outside the marketplace available to this market. This to me seems to be the issue at hand. I understand the reason for the pooling is to have that Class I milk available. I certainly don't understand why we need double milk.

When the market orders were expanded, I think there is rarely the need to get the milk from outside the market order, certainly not double the Class I utilization.

I have heard of plants that are in our Federal Order that have needed milk in the last couple of months and they call the people who are profiting from the pooling here to get milk and these people wanted a $4 give up charge. They have taken over 60 million dollars out of our Federal Order and they want another $4 give up charge. Needless to say, this plant didn't get the milk from the people that have been stealing our money. They got the milk from somewhere else.

Obviously people can see from figure two that we have for supply plants outside of our Federal

Order and I think it's somewhat been talked about how you have -- all they have to do is they have silos that are split. And they say this silo is in Federal Order 33 and the other silos are in their order, but that milk goes through that plant just as if -- it makes absolutely no difference, the silos. The milk just goes right that cheese plant the same as the rest. Obviously something needs to be changed.

And I do find it very ironic that Wisconsin is doing this pooling and at the same time, they were asking for relief from the pooling that was done from them from California and Idaho, which was only about half the amount of milk that they are pooling on us and they had a Federal Order hearing on that and I don't know that they have had a conclusion to what is going to happen there.

I would like to enter into evidence -- this is three copies of the Milk Marketers Marketing Area for Appalachia and some of their pooling provisions.

JUDGE CLIFTON: Now, this is a production out of the federal regulations; is that correct?

THE WITNESS: That's correct, for Appalachia, which I believe is Order 5.

JUDGE CLIFTON: And at the top, it says Part 1005, Milk in the Appalachian Marketing Area, effective January 1, 2000, modified January 31, 2001. Where did you get this document?

THE WITNESS: I got it off the internet from Appalachia's marketing area administrator's site.

JUDGE CLIFTON: I am going to ask the court reporter to mark these three copies as Exhibit 7.

(Exhibit 7 is marked for identification.)

THE WITNESS: Also, off the internet I got highlights of changes from Order 7 and I have three copies of each of the pages. There is only one page that really matters, that I thought made a difference, which is the Producer Association and Diversion Limits, so I don't know if you want just that page --

JUDGE CLIFTON: No, I would like to have all four pages of it. So, you have three copies of each of the four pages.

THE WITNESS: Correct.

JUDGE CLIFTON: And the title of this document, which I will have marked as Exhibit 8 is Highlights of Changes in Federal Order 7, the Consolidated Southeast Order, and it refers to the section in the Federal Register as Consolidation, Section 1007.2. It indicates the expanded southeast Order includes all of Arkansas, 44 counties in southern Missouri and 22 counties in Kentucky. I am going to have the court reporter mark the top page, page one, of each of these three copies as Exhibit 8.

(Exhibit 8 is marked for identification.)

JUDGE CLIFTON: Let's have you speak first as to what it is of interest to you out of Exhibits 7 and 8.

THE WITNESS: Exhibit 7 talks about in any months of July through December, no less than six days production of producers whose milk is diverted is physically received at a pool plant during the month.

Number two, in any month of January through June, no less than two production of producers whose milk is diverted is physically received at a pool plant during the month.

Number three, the total quantity of milk so diverted during the month by cooperative association shall not exceed 25 percent during the months of July through November, January and February, and 40 percent during the months of December and March through June of the producer's milk that the cooperative association caused to be diverted to and physically received at pool plants during the month.

Number four, the operator of the pool

plant that is not a cooperative association may divert any milk that is not under control of the cooperative association that diverts milk during the months pursuant to paragraph (d) of this section. The total quality of milk so diverted during the months shall not exceed 25 percent during the months of July through November, January and February and 40 percent during the months of December and March through June, of the producer's milk physically received at the plant or such unit of plants in the case of plants that pool as a unit pursuant with 1005.7(d) during the month excluding the quantity of producer milk received from a handler described in Section 1000.9(c). That I believe -- that is Appalachian marketing areas.

Now, for the producer association and diversions for Federal Order 7 from the other one, the other Exhibit 8, I think the important thing there is January through June at least four days of producer's production must be delivered to a pool plant. July through December, at least 10 days of a producer's production must be delivered to a pool plant. A pool plant may divert its non-member milk up to the following percentages of it's physical receipt of non-member milk. A cooperative association may divert milk to the following percentages of milk if it physically delivers to pool plants. January through June, no more than 50 percent. July through December, no more than 33 percent.

The reason that I entered those is that when Congress asked to go from 33 to 11 Federal Orders, they asked that the orders be somewhat similar, yet it seems to me that we are much more like Orders 5 and 7, that are both right next to us, than we are to a Wisconsin order or anything like that.

So, it seems in that feeling that Congress had, their intent, it certainly seems that we should have provisions that are similar to 5 and 7. That way, not receiving so much undelivered milk from Appendix C.

We need an emergency change for this because the Class I price is much higher or it is getting to be much higher than the Class III and IV. So, we need an emergency change. We don't need this to take six months or something like that.

The last two pieces that I would like admitted came from Cameron Frank from the extension at Ohio State University. One is titled Pool-Riding Revenue Impact on Ohio Dairy Farmers.

JUDGE CLIFTON: I am going to have this one marked as Exhibit 9. Where did you get this information?

THE WITNESS: I got it off of his site,

his website from the OSU extension.

JUDGE CLIFTON: So, it's from the Ohio State University extension website.

THE WITNESS: That's is correct.

JUDGE CLIFTON: The document that I am having marked as Exhibit 9 is entitled Table 5, Pool-Riding Revenue Impact on Ohio Dairy Farmers. The dates indicate it begins September 2000 and runs through July 2001.

(Exhibit 9 is marked for identification.)

THE WITNESS: And then the other one is a Milk Pooled, Value, Calculated Pool-Riding and PPD in Federal Order 33, so this is the impact of all of Federal Order 33 and not just Ohio,

JUDGE CLIFTON: Is this also from the Ohio State University extension website?

THE WITNESS: Yes, that's correct. All right, I am going to mark this one Exhibit 10 and the title of it is Table 4, Milk Pooled, Value, Calculated Pool-Riding and PPD in Federal Order 33. The dates indicated on this table begin September 2000 and run to July 2001. This will be marked as Exhibit 10.

(Exhibit 10 is marked for identification.)

THE WITNESS: I think basically what these show, in less than a year -- I mean, if you go from September and July -- it doesn't even include the month of August, for Federal Order 33 -- I mean, that is 60 million dollars that has come out of our Federal Order. Now, I don't know what has happened to that money. Gee, I certainly hope -- I truly hope the dairy farmers got it. Unfortunately, from things I read, I am afraid that a lot of that did not go to dairy farms and that is too bad.

But on the other side, from producers here in Ohio and in the rest of the Federal Order, it certainly has been a tremendous, tremendous loss to us. Part of this time when this was being done and part of the time when they were actually taking some of the higher -- or the pool-riding ended up being higher because we are going into those months now where the Class I price is going to be much higher, the milk price was very low and basically farmers were not making end meets in those months, so they were taking away basically all of our profit and more on those months. So, that certainly hurts us a lot.

If you think of 60 million dollars and how much money that could have helped with farmers, whether it was to fix up a tractor, buy a new tractor, whatever it be might that they needed on that farm to survive, pay off some debt, whatever it might be, it certainly is pretty hard, has been pretty hard and probably has been devastating to some farmers and caused them to go out of business unfortunately.

Again, I think that we don't need double the Class I milk pool from outside our Federal Order. I would ask for an emergency order since the Class III and IV prices are declining now. This will make the pooling costs even higher for us here in Ohio.

Ohio farmers will gladly compete with any Wisconsin farmer who wants to deliver their milk here. Otherwise, I think I would suggest that they move here if they want to get more of a Class I market. I think they have those choices.

We certainly do understand that milk does move, but with the give up charges and everything, it's going to move, so I would ask for much tighter provisions, more like Order 5 and Order 7 have.

Thank you very much for your patience and allowing me to speak.

JUDGE CLIFTON: Thank you, Mr. Groselle. Before I ask for cross-examination of Mr. Groselle, I would like to deal with the four exhibits that he has asked be admitted into evidence. The first one is Exhibit 7 and it deals with the Appalachia milk marketing order. Is there any objection to the admission into evidence of that document? There being none, Exhibit 7 is admitted into evidence.

(Exhibit 7 is received into evidence.)

JUDGE CLIFTON: With regard to Exhibit 8, it concerns the Arkansas and other counties, regions. That is Exhibit 8. Is there any objection to that document being admitted into evidence? There being none, Exhibit 8 is admitted into evidence.

(Exhibit 8 is received into evidence.)

JUDGE CLIFTON: Exhibit 9 came from the Ohio State University extension website and so did 10. Is there any objection to the admission into evidence of either Exhibits 9 or 10? There being none, Exhibits 9 and 10 are also admitted into evidence.

(Exhibits 9 and 10 are received into evidence.)

JUDGE CLIFTON: Now, I would invite cross-examination of Mr. Groselle. Mr. Yale?

CROSS-EXAMINATION

BY MR. YALE:

Q Ben Yale on behalf of Continental Dairy Products. Good morning, Mr. Groselle. First of all, you indicated -- I get the implication, although you never said it in testimony, that you are a dairy farmer.

A That is correct.

Q And you operate a dairy near Hiram?

A In Hiram, yes.

Q How far away is that from here?

A Took us about an hour to get here.

Q What county is that located in?

A Portage County.

Q Is there a lot of milk in Portage County?

A Getting less and less every year.

Q Where does your milk go?

A Our milk goes to Dairymen's.

Q You made this comment about the emergency and I wanted to kind of clarify this situation. You indicated falling prices. What do you mean by falling prices?

A Well, I watched the Chicago Board of Trade prices, which is pretty much suggesting what the cheese market is going to be doing and it's gone down over $2, many over $3 now, and when it goes down, then the Class I becomes much more valuable and the pool-riding -- there are a lot more pool dollars obviously, so if that is what appears to be happening right, I would ask for an emergency hearing so that we wouldn't have to lose those dollars, because obviously the whole milk price is going to be going down, so we are going to be getting into a time again like we were in the second half of 2000 where the price was very low and the farmers really weren't meeting ends and all our profit was being taken away from us.

Q If you would, Exhibit 9 -- is that the table four from the report? I stand corrected. I guess it's Exhibit 10 you have.

A Okay.

Q That is the one that has the producer price differential without pool-riding and producer price differential. Do you see that? Have I got the right table?

A Yes, the one for the whole from?

Q Right.

A Yes.

Q So what you are pointing out, if you would, look at November of 2000. That indicates an .85 per hundredweight drop. Do I understand what that table is telling us?

A Yes.

Q And the next month indicates what? About --

A .78.

Q -- .78. And these are the kind of losses that you don't want to see on top of otherwise lower price levels.

A Yes.

Q And you see those coming up right away, those lower price levels?

A Absolutely. I see those with what is happening in the cheese market right now, that we are going to be back to the same that we were there and it was a real struggle. In some months, you didn't make ends meet.

Q I have kind of gone back on the thing I asked you. Are you speaking on behalf of anybody else? Any of your neighbors at the coffee shop or anything tell you to --

A Yes, I mean, there are neighbors that talk, but as a dairy farmer, there is nobody else that sent me here.

Q Any of your neighbors who are also dairy call and say I understand you are going to testify, that they are in support of this current situation?

A Yes, I brought a neighbor with me.

Q In support of you, not in opposition.

A Absolutely.

Q Nobody in opposition.

A Right. The dairy farmer that came with me happens to be a member of DFA. I think this is nothing to do with co-ops or independents or anything. This is -- we are all together in this.

Q I want to talk about something you didn't talk about. There is a proposal to change the advance payment. Are you aware of that?

A You know, I didn't read a lot about that. I did read it, but I am really -- I wouldn't be able to talk a lot about it.

Q Let me just ask you about your operation. You get two checks a month?

A That's correct.

Q Is it important to you as a dairy farmer that those checks be more equal in their amounts than having a much larger one at the end of the month?

A It would be nice. I mean, I have to be honest, -- it would be nice to get that money a little bit earlier. We structure our loans so that we would be able to kind of off-set that -- when the payment of the loans was, but it would be nice --

Q What do you mean by off-set the payment of the loans?

A Well, we get a much lower check at the end of the month, which is the initial payment and then -- it's sometimes two to three times as much, the check that we will get in the middle of the month.

Q Because of assignments?

A No, no, because of the difference in the way you get paid.

Q What -- you indicated loan payments. Would you explain that for the record, what you mean by the loan payments?

A We just structure it so that our loans, the majority of our loan payments are in the middle of the month and are coming out of the check that comes out -- we are supposed to have them for sure by the 18th, which we do, and we set it up so that most of our loans are paid then when the check comes.

Q And these are paid by assignment out of your check? I mean, do you actually see the money and write the check yourself or is the loan payment made by the person who pays for your milk?

A We have some of both.

Q Can you explain -- I mean, you use assignments and you assign part of your milk check for some of your loan payments?

A That's correct.

Q Is that a common practice in the --

A Well, on most mortgages, I think it is probably a requirement.

Q But as a producer, you don't fully understand proposal four, but you are not opposed to increasing the amount of payment that you receive on the advance?

A It would be nice if they were closer.

MR. YALE: I have no other questions.

JUDGE CLIFTON: Thank you, Mr. Yale. Mr. Groselle, was there anything that Mr. Yale brought out that you would like to expand upon or clarify before we go on to the next questioner?

THE WITNESS: No, I'm fine. Thanks.

JUDGE CLIFTON: Any other questioning for Mr. Groselle? Yes, Mr. Beshore.

CROSS-EXAMINATION

BY MR. BESHORE:

Q Mr. Groselle, have you had the opportunity to look at proposals one, two, three and five, which DFA and Michigan Milk. It's what organizations have proposed for changing the pooling regulations.

A Yes.

Q And do you have any thoughts with respect to this?

A Yes, I don't think they go far enough.

Q You support them as far as they go, but you would like to see them go a little further?

A Yes, I stated before, I think that Orders 5 and 7 much closer to what our Federal Order is -- or what it used to be, I should say, in our Class I utilization before the pooling took place. If you go back and look, we were a lot months 55 percent and much more similar to Orders 5 and 7 than Orders to our north.
Q With respect to the proposal four, the payment proposal that Mr. Yale was asking you about, when you talk about the check at the end of the month being smaller than the other check, are you talking about the check that you get on the 26th or 27th of the month?
A Yes, it's called the advance.
Q The so called advance check and that one is substantially less than the final check.
A Yes.
Q Have you noted -- how long have you produced milk in Portage County?
A My family or just me?
Q Either?
A Well, our farm dates back -- my ancestors came here in 1813.
Q Well prior to the federal regulations.
A Yes, I actually took over the operation in 1976.
Q Well, since you have been operating the

farm, just prior to the change in the regulations January 1, 2000, were you under Order 33 at that time or Order 36?

A You know, I'm not sure. Whatever order was in northeast Ohio and western Pennsylvania.

Q Have you observed that since January 1, 2000, the relationship of the two checks you get has changed to your detriment? That is, is the advance less than it used to be?

A Much less. It was pretty close before. There might be a few percentage different, but -- it was a pretty good estimate, however they did it.

Q Now it's much less.

A Yes.

MR. BESHORE: Thank you.

JUDGE CLIFTON: Mr. Groselle, is there anything else that you would like to expand on or clarify that Mr. Beshore raised before we go on to the next question?

THE WITNESS: No.

JUDGE CLIFTON: Any other questions for Mr. Groselle? There are none. Mr. Groselle, thank you for your testimony.

THE WITNESS: Thank you.

(Witness excused.)

JUDGE CLIFTON: Would the next dairy

farmer who would like to speak now please come forward? Please be seated. Would you please identify yourself for the record and spell your name and give your address, please.

THE WITNESS: My name is Earl M. Stitzlein, S-T-I-T-Z-L-E-I-N. I'm a dairy farmer from northwestern Holmes County, Loudonville. I am president of the Independent Milk Producers Association. We are a group of 200 dairy farmers that sell our milk directly to Reiter Dairy. Our board meets once a month and discuss topics and concerns among us and the Reiter Dairy personnel.

JUDGE CLIFTON: I think your name is spelled S-T-I-T-Z-E-L-I-N?

THE WITNESS: L-E-I-N.

JUDGE CLIFTON: All right. And the first name is Earl.

THE WITNESS: Right.

JUDGE CLIFTON: Thank you. Would you raise your right hand and I will swear you in.

Whereupon,

EARL STITZLEIN

JUDGE CLIFTON: You may proceed, Mr. Stitzlein.

THE WITNESS: I would like to say that the producers in our area are unique because in the old Federal Order, we had 36 and 33, and we had dairy farmers right next to each at different times because of the difference in Federal Order pricing got more for their milk, so we were very supportive with that Federal Order change going down to the north to try to give stability to our marketing area. Little did we realize what was going to take place in the following months.

What I have done is I have got an example of a 100-cow dairy farm and what the net income does not realize due to this pool-riding. My numbers were taken from the market administrator and I would like to have that as an exhibit, please. I am not picking on Wisconsin, but those were the numbers that I was using.

JUDGE CLIFTON: The title of this document is example of a 100-cow dairy farm. I am going to ask the court reporter to mark it as Exhibit 11.

(Exhibit 11 is marked for identification.)

JUDGE CLIFTON: Would you step down to the podium to Mr. Yale and ask him to distribute them as far as they go? Thank you.

Let's start with that exhibit. Because the others do not necessarily have copies, please explain it fully, just as it weren't going to be a part of the record.

THE WITNESS: What I did was I got the difference, the PPD that would happen if Wisconsin had not been pooling in our area. It begin August 2000 and goes through July 1st. I took a 100-cow farm because I thought 200,000 pounds of milk sold a month would be a nice round figure to deal with. It could go up or down depending on each dairy farm. That could be realized up or down -- 50 cows, 100 cows, 500, whatever.

What I done was I started August -- .15 not realized and it goes all the way up to .65 and back down to .26. This is just if Wisconsin had not been pooling in our area. I realize that if you start bringing in Kansas, Dakota and every place else, it's going to keep pumping this up. The person who spoke before me, he used the highest date. I'm sure he is using all those numbers.

I just want to try and give you an example of the income that was not realized. Through that one-year period, it was $11,700 that was not realized by a dairy farmer. And the average PPD was .49.

With my dairy board, we were very upset when we started seeing that our PPD was eroding. We couldn't understand it because we always enjoyed a high class on utilization. And yes, we are kind of self-interested, because we do sell to a Class I fluid plant, but we also realize that excess milk for the cheese, that milk is diverted to cheese plants.

We also know that we can't build a wall to keep outside milk out. We are a milk deficit area and we need to have milk come back in to keep our plants processing, keep our infrastructure in place.

However, we feel we need some kind of stability in our Federal Order, to have some structure to our dairy industry and not be at a price disadvantage because of some quirk in the order rules or whatever that is going on out there.

Some of the questions producers ask me is are the dairy farmers in Wisconsin enjoying the benefit of our pool dollar leaving and that I cannot answer.

I would like to see some type of tightening up of our order. I realize that we cannot have all the milk that comes in, say okay, your milk comes in here, you share a pool, because my limited understanding of how a pool works is you can't set up things like that. You have to have averages of certain days milk comes in, certain days of the year, certain amount, and that is how I understand the pooling process works.

But as a dairy farmer, I am concerned about an unfair disadvantage we have because it's almost like we are at the end of the pot. Milk can come into our

Federal Order, but we can't take milk out of our Federal Order to someplace else, so we are stuck right here where we are at right now.

I am glad that the hearings are taking place. I am thankful for the opportunity to represent our dairy farmers and be able to bring this to light and hopefully we can get this rectified here a short period of time, because as the person who spoke in front of me, probably the lowest prices we received for our milk was last quarter of 2000 and that is when the PPD really dropped and that is when the dollars were leaving our Federal Order and I think we are heading for the same situation here again.

I thank you for the opportunity to speak to you.

JUDGE CLIFTON: Thank you, Mr. Stitzlein. I would like to ask if anyone has either voir dire on Exhibit 11 or cross-examination questions for Mr. Stitzlein or a combination of both. Mr. Yale?

CROSS-EXAMINATION

BY MR. YALE:

Q Good morning. Ben Yale from Continental Dairy Products. Mr. Stitzlein, why did you choose a 100-cow dairy?

A Basically because that is pretty close to where I am at and I can kind of relate to what the cost was to me, but also because of round numbers. Therefore, if someone has 200 cows, they can double it. If they have 50 cows, they can cut it in half and get an idea and perspective.

Q How does this number -- is this number representative of the other members of the independent --

A We currently have 200 members, 200 dairy farmer that are members of IMPA and I am guessing that our smallest herd probably is 25, 30. Our largest herd is 750 to 800 cows.

Q And these numbers, you say you got them from the Federal Order 33 marketing administrator?

A The bulletin that I got the numbers from used Wisconsin. I realized that I could have used other pooling states and their numbers would probably be a little higher.

Q So, that might explain why this would differ slightly from some other numbers such as OSU?

A Yes, OSU did all the numbers. I didn't include the Dakotas or Kansas or some of the others.

Q Do you ever market milk to Wisconsin?

A No.

Q Have you ever had anyone come to you -- you are in Holmes County, right?

A Right.

Q Next to Wayne County?

A Yes.

Q Fairly large amount of milk production in that region?

A Wayne is the largest and Holmes County is number two or three.

Q Do you have individuals come to you requesting that you market milk through them as opposed to where you are currently marketing the milk?

A I have had a few calls from DFA on occasion. Outside -- no one else.

Q They know where you are going?

A Yes.

Q But are there people who work through that area? Do you hear of field men coming from other organizations seeking --

A We know if there is a dairy farm that is not happy or content with where his milk is being marketed. There are a few of them out there that they can contact, but as far as I know, they don't go knocking on your door saying we want your milk.

Q Are you aware of any field men in that area who are seeking to market or take milk and move it into Wisconsin?

A No.

Q Or into New York?

A No.

Q There was -- I want to kind of go back to -- you said 200,000 pounds. How do you figure that? You are talking about --

A Well, 100 cows -- what I did was just figured it out. With 200,000, 90 cows milking 70 pounds a day. I just kind of rounded the numbers off.

Q Okay. Then the income I realize is just a simple multiplication.

A Right. I just wanted to make and example of how per month the more that PPD goes up, the more income we don't realize in that situation.

Q This change in income -- what does $11,000, $12,000 mean to a 100-cow dairy farmer?

A Well, when milk price is good -- picture as the person who spoke before me -- sometimes when the dollar gets short, we put off repairs, we don't reinvest like we should. The first thing we do is try to make our bill commitments, then what is left over, family expense and after that, then we can put the money back into the farm.

Q This difference in this 11,700, is there any difference in cost in your operation that you see that you would have to receive it?

A As far as costs go, the cost reduction is there, whether we get $16 for our milk or $12 for our milk, on a dairy farm, the costs are the same -- unless feed would happen to go up. The one thing we do though is repairs and things you need to buy for the farm, those can be a fixed expense every year.

Q You indicate you meet once a month. When is the last time you met with your members?

A We met on October 12th.

Q Do you follow the Chicago Mercantile Exchange?

A Yes, I do. Not very good right now. I do not participate in futures, but yes, I do look to see what milk prices have done and they have taken a major tumble here in the last month.

Q An earlier witness had indicated that he would like to see this PPD corrected as soon as possible because of impending low prices. Did you hear that?

A Yes.

Q Do you agree with that?

A As long as we can follow the rules of how the Federal Order is set up and we follow those rules, yes, if we get and emergency ruling, maybe we can do something about it. But I realize also these orders are set up that have a structure basis and we just can't go out tomorrow and write something in there.

Q I want to change subjects to another issue and that is there is a proposal to increase the amount of total dollars that you get each month, but put more of it in the advance as opposed to the final. Are you aware of that?

A Yes.

Q And do you have any opinion as to whether that would be beneficial to you as a producer?

A My opinion of that is, I have been a dairy farmer for 25 years and we know what the next payment is going to be, what is announced and we kind of do our business plan that way -- we know when the checks come. And that is kind of the way I run my farm. I know this amount is going to come at the end of the month, which is the advance payment based on the higher class -- whatever the Class III price is and then we know what the settlement check is going to be at the end of the month. So, we are only talking 15, 18 days.

Q That is not an issue for you?

A Not for me.

Q Has anybody else indicated it is an issue for them?

A Not that I know.

MR. YALE: I have no further questions.

JUDGE CLIFTON: Thank you, Mr. Yale. Mr. Stitzlein, do you have anything you would like to expand upon or clarify based on what Mr. Yale talked to you about?

THE WITNESS: No, I do not.

JUDGE CLIFTON: Does anyone else have any questions for Mr. Stitzlein? Yes, Mr. Beshore.

CROSS-EXAMINATION

BY MR. BESHORE:

Q Mr. Stitzlein, have you been in attendance at the hearing so far this morning?

A Yes.

Q Did you hear some of the questions that I asked of the assistant market administrator with respect to how some of the different pooling provisions work?

A Yes.

Q Did you know that there are a number of different ways -- loopholes would could call them -- in the order to allow milk from distant areas to be easily pooled on a order without performing in any particular way?

A Yes.

Q Your proposal addresses just one provision in the order, the touch base requirement. Do you understand that doing anything with touch base doesn't necessarily affect the fact that you still have unlimited diversions.

A Right.

Q And you still have a free rider period for suppliers.

A Right.

Q Would you support the proposals which address those provisions that your proposal does not?

A Yes, I would. As far as the pool restriction, rewriting the number of days that -- when I first heard it, I misunderstood that to be able to speak at this Federal Order hearing you had to know the proposal. That is why I kind of hurried up and put one together and I did call a few people and they said well, you can't say 100 percent, because that is not the way pooling works. They said find the middle ground and submit a proposal, so that is what I did. I'll be the first to admit it was being done the evening before it was due.

Q You have never had a free ride, have you?

A Only one I got was in college.

Q You didn't have a chance to focus on the free ride portion of the regulations?

A No.

Q Have you noticed with respect to the payment provisions as Mr. Groselle did that under the present regulations, the amount of your advance check has declined since January 2000?

A Yes.

Q You are not opposing any adjustment that would even that out a little bit to what it was before, are you?

A Well, I have been in dairy for 25 years and I kind of know what it is going to be -- in my case, 18 days and a few pennies is not going to make it or break it.

Q You figured out how to work with that.

A Pardon?

Q You figured out a way to live with it the way it is.

A As the person who spoke before me, we schedule our payment plan on settlement check time on any loans that we have. We know that it's three to five days after and is set up like the 25th of the month.

Q And your bank charges you interest on your money --

A Once you are set up that way, it doesn't make any difference. You can pay it a little earlier like a car or anything else, and they will make the interest a little less.

Q So, the later you pay, the more interest you pay?

A The later I pay -- but once you are set, you pay on the 25th of every month. If you just move up one month, you can only gain so many days and that it when your period would be from then on. That is basically how mine works.

MR. BESHORE: Thank you.

JUDGE CLIFTON: Thank you, Mr. Beshore. Mr. Stitzlein, which of these proposals was the one that you crafted?

THE WITNESS: Right here.

JUDGE CLIFTON: So, it's proposal number six that was submitted by the Independent Dairy Producers of Akron.

THE WITNESS: That is the organization I represent.

JUDGE CLIFTON: Do you want to say anything more about that proposal at this time?

THE WITNESS: As I said, I was under the assumption that to be able to address this body, I needed to have a written proposal in, so this happened the day before it was due, so I kind of went through and I did call some people and I am on the Land O'Lakes Leadership

Council and I do have access to some people there. I did call a person at Land O'Lakes and they kind of told me -- I realize they are the ones that will probably benefit from this, but he said pooling can't be 100 percent, so try to get some middle ground somewhere. So, that is what I did.

JUDGE CLIFTON: Do you still support the proposal as written or do you have any other thoughts at this point?

THE WITNESS: I have no other thoughts at this point.

JUDGE CLIFTON: You still are a proponent of proposal number seven?

THE WITNESS: At this time, I'm not sure. I kind of wrote that up in a hurry. I was just trying to find some middle ground. I have heard discussion on both ways.

JUDGE CLIFTON: Could you be more clear about what parts of that you feel uncertain about at this point?

THE WITNESS: I guess the proposal I have, I will just leave it the way it is, but it's kind of middle of the ground.

JUDGE CLIFTON: Thank you. Any other expansion or clarification before I see if there are any other questions? No? Any other questions for Mr. Stitzlein? Yes, Mr. Groselle.

CROSS-EXAMINATION

BY MR. GROSELLE:

Q Would you be opposed to the regulations that Order 5 and Order 7 have presently?

A At this time, no.

MR. GROSELLE: Thank you.

JUDGE CLIFTON: Thank you, Mr. Groselle. Any other questions for Mr. Stitzlein? Yes, Mr. Carlson.

CROSS-EXAMINATION

BY MR. CARLSON:

Q Mr. Stitzlein, obviously there was some discussions as you tried to craft these proposals and on the second part of your proposal, you were asking for the quantity of producer milk physically received during the month, a limit -- diversion limitations based on physical receipts.

A Right.

Q Did you have some discussions there because the current provisions include diversions as well as physical receipts in determining diversion allowances? Did you have some discussions with people about that?

A Not really.

Q Can you give us some idea why you ended up with that restriction in there?

A I guess I was thinking about the percentage of 60 percent, a little more than half -- would be a little advantageous, that the milk -- half physically received --

Q And you think physical receipts is more desirable --

A Yes, definitely.

MR. CARLSON: All right. That's all I have. Thank you.

JUDGE CLIFTON: Thank you, Mr. Carlson. Mr. Tosi?

CROSS-EXAMINATION

BY MR. TOSI:

Q Good morning, Mr. Stitzlein. In our notice of hearing, we indicated that the department wanted to take evidence on whether to determine if in your opinion emergency marketing conditions existed, if you would want us to take action on this as soon as possible or perhaps go through a recommended decision and take comments or if you would like us to just come forward with something that would put this thing to a vote right away.

A Yes, I think the people I represent would appreciate that.

MR. TOSI: Thank you very much.

JUDGE CLIFTON: Are there any other questions for Mr. Stitzlein? Yes, Mr. Cooper.

CROSS-EXAMINATION

BY MR. COOPER:

Q Yes, why do you see the need for an emergency decision here?

A The reason I see it as an emergency, those of us as dairy farmers, we have to make decisions day to day. Some of us that really can't make this decision for a certain amount of time, are losing dollars while it's not being done. As the person who spoke before me said, we are in a downward spiral and how far it's going to go, I don't know. Some people say it's not going to go that far as it did in the last quarter of 2000. Others say we may be back down there. It's a guess. If I knew the answer to that, I would be playing the futures market.

I guess I just don't want to see this phenomena of milk leaving dollars -- in our Federal Order again, which is probably what is going to happen the current way it stands. I don't know if there would be any type of assistance, regulation or procedure we can do to slow this down or give us a more even playing field.

MR. TOSI: Thank you.

JUDGE CLIFTON: Any further questions for Mr. Stitzlein? I would like both Mr. Groselle and Mr.

Stitzlein, if they have business cards, to leave one with Mr. Tosi and one with the court reporter.

All right, Mr. Cooper?

MR. COOPER: I am not sure if we received Exhibit 11. I don't have it marked as received.

JUDGE CLIFTON: That's correct. Is there any objection to the admission into evidence of Exhibit 11? There being none, Exhibit 11 is hereby admitted into evidence.

(Exhibit 11 is received into evidence.)

JUDGE CLIFTON: You may step down.

(Witness excused.)

JUDGE CLIFTON: Who is the next dairy farmer who would like to speak? You may approach the podium and be seated, please. Please identify yourself for the record.

THE WITNESS: Larry Baer from Marshallville. I'm a dairy farmer. My address is 12599 Bolton Road, Marshallville, Ohio.

JUDGE CLIFTON: Spell your last name, please?

THE WITNESS: B-A-E-R.

JUDGE CLIFTON: And spell the name of your town?

THE WITNESS: M-A-R-S-H-A-L-L-V-I-L-L-E.

JUDGE CLIFTON: Thank you. Mr. Baer, will you raise your right hand, please?

Whereupon,

LARRY BAER

called as a witness, after first being duly sworn, testified as follows:

JUDGE CLIFTON: You may proceed.

THE WITNESS: I have no evidence to present at this time, but I feel that in all reality, that these market orders were not designed to have milk transferred all over the country.

And I feel that when they were put together and they shortened them up from 36 orders down to 11 orders, that this was not the objective of the federal government. If so, you may as well only have one order and we will all share in the Class I price.

I feel that the provisions that Mr. Groselle presented for tightening up the order is in respect very adequate and should be addressed immediately due to the falling cheese prices at the present time that we are witnessing and therefore, if we don't do something, we are actually contributing milk and creating trucker money than we are money for the farmers.

JUDGE CLIFTON: Thank you, Mr. Baer. What you have said is evidence just as if it had come in in some document and I thank you for your direct testimony.

Cross-examination of Mr. Baer? Mr. Yale?

CROSS-EXAMINATION

BY MR. YALE:

Q Ben Yale for Continental Dairy Products. Good morning.

A Good morning.

Q Marshallville -- Wayne County?

A That is correct.

Q A lot of dairies up in that area?

A Yes, there is.

Q What are some of the nearby towns that someone can locate Marshallville.

A Orville.

Q Not too far from here. About 20 or 30 miles?

A No, about 10 or 15.

Q That's right. We are half way there from Akron. Approximately what size operation do you have?

A We have 300 cows.

Q How does that compare to the other dairies around Marshallville that you work with?

A Well, in Marshallville, there are some pretty big dairies.

Q I understand that, but there are also some about your size, too, right?

A Yes.

Q There is this question about the advance payments. Do you notice when the order changed that there was a change in the way you received your money monthly?

A Well, there is when the Class III, Class IV price is on the increase and Class I has not picked up. It runs out pretty much the same. But, yes, there has been a significant difference.

Q Do you have any objections to increasing the amount you receive in the advance as opposed to the final?

A Well, I don't have a great deal of making out my priority. I think my priority is in the order change to tighten up the money that is going out of our order.

Q You find that .40, .50, .70, .80 a hundredweight a significant loss to you, do you not?

A Yes.

Q There are some questions -- what we call an emergency hearing process and that means that the secretary does not have to issue a recommended decision, accept comments and issue a final decision. He or she can go right to a final decision and go to a referenda of the producers and if it's approved, put it into effect. Do you have an opinion as to whether you wish to moved ahead quickly or would you rather have more comments made?

A No, I feel this is an emergency situation.

Q Do you have any reason to before that you would have any more comments that you would make on the proposal than what you have today?

A Well, my proposal -- as stated in the issues here, I feel it should be tightened up more like it was presented earlier by Mr. Groselle.

Q A recommended decision isn't going to change your mind on that?

A No, sir.

MR. YALE: I have no other questions. Thank you.

JUDGE CLIFTON: Thank you, Mr. Yale. Any other questions for Mr. Baer? All right, thank you. And, Mr. Baer, if you do have a business card, if you would give one to Mr. Tosi and the court reporter. Are there any other dairy farmers who would like to speak now? None at this time.

It's 11:34. This seems to me to be a good time to break for lunch. Could you all take an hour and 15 minutes? Would that work? That would put you back here at 12:45. Mr. Cooper?

MR. COOPER: I just wanted to note that we are happy to receive the testimony of dairy farmers any time during this hearing. We will be here tomorrow certainly and probably the day after. So, if anyone couldn't make it today, we will be happy to have them tomorrow.

JUDGE CLIFTON: Mr. Beshore?

MR. BESHORE: In terms of proceeding, are we ready after the lunch break to go forward with witnesses on behalf of proposals one through five? If so, Mr. Hollon is the first witness. We have materials and we want to be ready to distribute them and be ready to proceed if we are up.

JUDGE CLIFTON: Yes, I think the most logical way to proceed is in the numerical order of the proposal numbers, beginning with proposal one.

MR. BESHORE: The testimony is grouped one, two, three and five together and that is how we would intend to present it. Might I also suggest that whatever time is right for Your Honor, we may want to look forward a bit and I have a number of witnesses -- I know a number of witnesses have approached me.

They have particular timeframes that they need to attempt to make during the hearing here. We have five witnesses in support of the proposals, one, two, three, four, five. The presentation is going to take a substantial period of time.

We are prepared to accommodate people who may need to be accommodated, although we want to be able to make our presentation as well, but I think it would help everyone if we are able to have the time that you choose to attempt to see what we need to accommodate them.

JUDGE CLIFTON: I appreciate that. We will talk about that when we get back.

MR. RASCH: If I may, I would like to note that I am one of those people who would like to get a witness on before noon tomorrow.

JUDGE CLIFTON: Fine, we will talk about it when we get back at 12:45.

(Recess for lunch at 11:34 a.m.)

JUDGE CLIFTON: We are back on the record now at 12:45 approximately. Before Mr. Beshore begins, there are a couple of housekeeping items that I would like to address.

One is simply the caption for the case. I want the court reporter to know how we view this case caption and what I think is that it should be called Mideast Milk Marketing Order. Is that acceptable to those of you in here?

MR. BESHORE: I can offer this.

JUDGE CLIFTON: This is even better. It says in the matter of Milk in the Mideast Marketing Area. Very good. I am going to ask the court reporter to use what Mr. Beshore is about to present as our case caption and it's entitled "Statement Regarding Proposals 1 - 3 & 5".

Then the order in which we proceed is the next issue and Mr. Beshore began to address it before we broke lunch. Generally, I like to take proposals in numerical order and Mr. Beshore is prepared to go forward on one through three and because five is lumped with three, he would like to address that one as well.

We also indicated that for those who need to be heard promptly who will not be available tomorrow, he would be happy to yield those folks, so I would like to know who you are, those of you who would like to make sure that you are heard this afternoon and perhaps you have a definite time by which you must leave this afternoon.

Mr. Warshaw, you had indicated -- could you borrow Mr. Tosi's microphone?

MR. WARSHAW: Actually, our deadline is tomorrow by noon.

JUDGE CLIFTON: Tomorrow by noon?

MR. WARSHAW: Yes, so I would think it

would make sense from our perspective for him to proceed, so long as maybe we could have an hour tomorrow morning.

JUDGE CLIFTON: Mr. Warshaw, are you associated with a particular proposal?

MR. WARSHAW: Proposals eight and nine. Nine is actually pretty much being abandoned in favor of one of their proposals, although we will be presenting testimony on that issue, but eight is a separate one.

JUDGE CLIFTON: You say nine is essentially being abandoned in favor of one of Mr. Beshore's?

MR. WARSHAW: Yes, I think it's proposal three -- 60, 70 percent.

JUDGE CLIFTON: Good. Who else has a deadline by which they need to be heard? That's good. If one comes up, let me know and we will accommodate everyone as best we can.

Another suggestion that was made before we broke for lunch is that we go late tonight. I understand that we probably have the room until 7:00. Some of you may not be able to go that long. I would like for you to just show my by your hands whether you are available to proceed as late as 7:00 tonight. But before I ask the group that, I would like to know from the court reporter.

COURT REPORTER: Yes, of course.

JUDGE CLIFTON: Good. Those of you who are available, even if you might not like it to proceed as late as 7:00 tonight, would you raise your hands. All right. Those of you who are not available and to whom it would be objectionable if we went as late as 7:00? None. Okay, we will play it by ear. Mr. Cooper?

MR. COOPER: I would point out that we scheduled this hearing for three days, so we would have sufficient time for anybody that wants to testify.

JUDGE CLIFTON: Let me say that much, Mr. Cooper, because you didn't speak into the mike and I am not sure everyone heard you. Mr. Cooper said that we do have three days available. We have reserved that long. It may not be necessary to work until the middle of the night to get this done. So, again, we will be guided by people's schedules.

Can you think of any other -- oh, yes, creature comfort issues. Yes, it is horribly hot in here. It's been 79 degrees. So, the establishment is aware that the unit needs to be worked on and in the meantime, they have provided us any air the other room can lend us.

Mr. Beshore, you may proceed to the podium and you may begin.

MR. BESHORE: Thank you, Your Honor. Mr. Hollon will be our first witness and I would like before he begins testifying -- there is a statement which he is going to make. There are copies available. There are three exhibits, actually one and a modification and a second one to go with it. There are copies available in the room for everyone and copies have been made available to the court reporter for the record.

I would like to, if I could, have the exhibits identified.

JUDGE CLIFTON: Mr. Beshore, let's stop until people have had a chance to get them. Let's go off the record for just a moment.

(Off the record.)

JUDGE CLIFTON: We are back on record at approximately 12:56. Mr. Beshore, the next exhibit is number 12 and I have placed that on the statement regarding one through three and five that has on the face sheet, Elvin Hollon's name.

(Exhibit 12 is marked for identification.)

JUDGE CLIFTON: Then I have marked as Exhibit 13 a document that looks just like that, but is exhibits supporting those proposals. So, the two are deceptively similar.

(Exhibit 13 is marked for identification.)

JUDGE CLIFTON: Then I have marked as Exhibit 14 the pages that we will substitute in within Exhibit 13, two pages and you can tell us more about those in a moment.

(Exhibit 14 is marked for identification.)

JUDGE CLIFTON: Then I have marked as Exhibit 15, the document entitled Comparison of Federal Order Definitions and Qualification Provisions. And that on the first page compares Order 40 and Order 33.

(Exhibit 15 is marked for identification.)

MR. BESHORE: I am informed that we need two more copies of Exhibit 12 for the record and we will provide those. With your permission, we will make sure they are submitted.

JUDGE CLIFTON: Thank you both, Mr. English and Mr. Beshore. I am going to ask, does the court reporter now have three copies of Exhibit 12? Okay. In the event you fall short, let us know.

Mr. Beshore?

MR. BESHORE: Thank you, Your Honor. By way of clarification before Mr. Hollon proceeds, with respect to what has been marked as Exhibit 14, this is tables seven and eight -- corrected tables seven and eight of Exhibit 13, and while it's marked as Exhibit 14, we are going to assume that we will be referring to these as the correct tables of seven and eight. There were some computational errors on table seven and eight that are in the stapled Exhibit 13 that has been made available to everyone, so that is the difference.

With that, I would call Mr. Elvin Hollon as our first witness in support of proposals one through three and five.

JUDGE CLIFTON: Thank you. Mr. Hollon, would you identify yourself, please?

THE WITNESS: My name is Elvin Hollon. I work for Dairy Farmers of America.

JUDGE CLIFTON: Would you spell your first and last name?

THE WITNESS: E-L-V-I-N, H-O-L-L-O-N.

JUDGE CLIFTON: Raise your right hand, please, so that you might be sworn.

Whereupon,

ELVIN HOLLON

called as a witness, after first being duly sworn, testified as follows:

JUDGE CLIFTON: You may proceed.

DIRECT EXAMINATION

BY MR. BESHORE:

Q Mr. Hollon, would you state your business address and tell us in what capacity you are presently employed with Dairy Farmers of America?

A My business address would be Northpointe Towers, Suite 1000, 10220 North Executive Hills Blvd., Kansas City, Missouri 64153 and I am employed by Dairy Farmers of America as the director of fluid marketing and economic analysis.

Q What is your educational background?

A I have a Bachelors of Science in Dairy Manufacturing and Masters of Agriculture Economics.

Q For how many years have you been employed in your field of expertise?

A Since 1979, I have been employed by the Dairy Farmers of America or one of its predecessors.

Q In what capacities?

A Initially, I did economic analysis, national agriculture policy work and evaluated marketing opportunities for Associated Milk Producers, Inc. from '79 to '84. From '84 to '95, I worked for Associated Milk Producers, Inc. in the upper mid-west area and Morninglory Farms region.

My responsibility includes the day to day buying and selling of milk, negotiating contracts, participating in paying producers. I have day to day contact with fluid milk handlers and manufacturing Class II handlers. I also dealt with Federal Orders and the market administrators both net orderM<M<M<M<M<M<M<M and nationwide.

My job responsibilities also included working with the old boardM<M<M<M<M<M<M pricing agency in that market and several other markets both on a day to day basis as well as on a policy making type basis.

Since 1995, I spent two years with AMPI Southern Region in Arlington, Texas, working on Federal Order and marketing issues, producer payment issues and from 1998 to date, my responsibilities with Dairy Farmers of America in Kansas City have included analysis work on the national agriculture policy, pricing and forecasting of dairy commodity prices, interface with all Federal Order systems and evaluating marketing opportunities between DFA accounts.

Q Have you previously testified as an expert witness in a Federal Milk Order proceeding?

A I have.

MR. BESHORE: Your Honor, I would offer Mr. Hollon as an expert in agricultural economics and milk marketing for this testimony.

JUDGE CLIFTON: Would anyone like to voir dire the witness regarding his qualifications as an expert in agricultural economics and milk marketing? Is there any objection to my accepting him as an expert in those fields? There being no objection, Mr. Hollon, I accept your testimony as that of an expert in the field of agricultural economics and milk marketing.

THE WITNESS: Thank you.

BY MR. BESHORE:

Q Review briefly the exhibits which have been marked and to which you will refer during the course of your testimony. First of all, Exhibit 13 is a set of 11 tables and one chart; is that correct?

A Right.

Q Could you proceed through them sequentially beginning with table one and describe what the information is and how it was prepared.

A Each of these tables was either prepared by me or someone working with me. The source data would be Federal Order published data. Some of the data was especially requested for this hearing.

Table one is simply a reproduction of segments of the Producer Milk Definition as present in 11 of the current Federal Orders. It lists the salient points for what it takes to qualify as a producer in each Federal Order.

Table two is again taken from each

existing order and it attempts to detail the salient points of what it takes to be a supply plant in the various orders. Both table one and table two were taken directly out the CFRs that regulate orders.

Q   And in each case, table one, those are part 13 of each order relating to producer milk?

A   That's correct.

Q   And table two would be supply plant definitions, which are under part seven of each order.

A   That's correct.

Q   Table three?

A   Table three was taken from the internet published summary statistics of federal milk marketing orders. Those are available by going to the website and it takes each order, order number and the total pounds of Class I milk in each order for entirety of calendar year 2000. For example, the northeast order would have 10 billion pounds of Class I milk.

Q   The column to the right, which says total million pounds would be more completely identify as total Class I in millions of pounds.

A   That is correct.

Q   Table four?

A   Table four is information taken from the monthly summaries of the blend price calculations. Many of these numbers are also in the exhibits that you have put on the record this morning and they simply list each month for calendar year 2000 and calendar year 2001 for the mideast order, Order 33, the Class I, II, III and IV pounds and the percentages that those represent and a blend price and producer price differential calculation.

Q Table four is comprised of two pages in Exhibit 13?

A That is correct. The first page is calendar year 2000 data and the second page is calendar year 2001 data.

Q Go on then to table five of Exhibit 13.

A Table five is some computations that were made to give some example of the distance from market for some of the supply plants, out of the area supply plants, the split plant groups and these locations -- the Black Creek, Wisconsin, Kiel, Wisconsin, Elkhorn, Wisconsin and Stockton, Illinois were taken from the list of handlers that published each month by the market administrator.

The mileages were taken from a Rand McNally Trip-maker program. Those were miles to Springfield, Ohio, a location of a distributing plant that is central in the middle of the order.

Rate per loaded mile is an approximation of a typical cost of hauling milk. Some are higher, some lower, but in our experience, that is a reasonable typical cost.

And the rate per hundredweight is simply the calculation that is outlined at the bottom of the page to reduce those costs to rate per hundredweight for further analysis and comparison.

Q Table six?

A Table six, seven and eight are tables put together -- I put these together. They have information concerning blend prices, differences in pooling, returns from different orders, the shipment and diversion percentages, the current and the proposed, the miles applicable to this example, the haul rate for this example, a calculation that is designed to show that if all of the milk that was associated with this example were delivered to the market every day of the month, what the financial returns would be. There is a column of current provisions that demonstrates the economic consequences in terms of volume of the current provisions. And the last four columns, pool draw, total dollars, cost total dollars, net total dollars and net per hundredweight or total dollars and for hundredweight returns of results of those marketing decisions.

Tables six, seven and eight have as the same basis the blend price, same basis and the same location to and from. They differ in two regards. One regard is under the current provisions, shipment and diversions. You can see that those are the proposed diversion and shipment limitations. And in the column labeled current provisions shipment volume, there is some differences there. And in the column labeled current provisions pool volume, there are some differences there.

I need to point out that as I was putting this packet together, I inadvertently at table six -- you can see that under the difference for 33 versus 30 at Stockton, the first number is .94.

Q That is the fourth column from the left?

A Fourth from the left. If you will see the next two tables, that number should be the same. If you can see that it is labeled .74, so however you choose to do it, tear these two tables out and put Exhibit 14 in place or mark through them, but the correct information and this is the only data piece that is different, is what is in Exhibit 14.

Q Exhibit 14 has the correct numbers for the column difference, 33 versus 30, for table seven and eight.

A That is correct and that number gets used in the calculations to the right of the page.

Q Table nine?

A Table nine is a computation that we made to try to give at least a proxy indication of the dollar loss association with the distant milk pooling on the order. This type of computation, there are a number of ways to do this. You can simply ask the market administrator to do it for you, but they are a little constrained by some of the information sometimes that they can provide.

This particular methodology was referred to by earlier witnesses. Dr. Thraen from Ohio State has published this as a methodology that has been in the marketing area for I would say maybe 15 months or so, so it's had plenty of opportunity to be criticized and reviewed as a methodology. It attempts to make a computation of what the distant milk cost and numbers are in line with those referred to this morning.

JUDGE CLIFTON: Mr. Hollon, would you spell Dr. Thraen's name, if you know.

THE WITNESS: T-H-R-A-E-N.

JUDGE CLIFTON: Thank you.

BY MR. BESHORE:

Q On table nine, that is for the indicated individual months of June 2000, December 2001, March 2001 and June 2001?

A That is correct. Again, these are

attempted to be reasonable proxies of the exact calculations. We do not, nor would anyone have the exact details that would be available to these pools, but these are reasonable approximations, the methodology is reasonable and the results match up with what has been published in other places.

Q Table 10?

A Let me say one more thing. This is not the exact calculation, but it uses the same method, so I am not attempting to put his actual work on here, but we used his method to make the calculations.

Q But the abbreviation PPD on table nine means what?

A Stands for the term producer price differential, which is payment value that is published each month and it represents the value for the -- added value of Class I and II milk to the pool.

Q Exhibit 13, table 10.

A Table 10 is an exhibit designed to try to point out the methodology for which additional milk can be pooled on the market. It's a hypothetical construction based on the current language and potential practice and it is designed to show that this will be the same plant profiled under three different scenarios and as that particular plant has additional diversions to pool plants, the ability to divert to non-pool plants increases and we wanted to point that out as a loophole or a language construct that we feel stills needs to be corrected. So, this example demonstrates how that works.

Q And that involves some of the language that Ms. Uther described this morning.

A That is correct.

Q Exhibit 13, table 11?

A Table 11 is a construction from the market administrator provided data. Columns one, the month, column two, pooled at split plants -- split plants being our term that Mr. Yale identified and pooled from non-historic sources. Both of those two numbers came from the market administrator detail or exhibit. The pooled at distributing plants number is a subtraction of -- I'll have some more comment about that in my statement -- and the percent from split plants would be, for example, in January if you took 71,084,469 and divided by 303,000,000, you should get approximately 23 percent.

Q Now, that is the 11 tables in Exhibit 13. You also have what you identified as chart one. Could you describe that, please?

A Chart one was an attempt to make a visual representation of the changes in pooling of classified milk pounds and it was an attempt to do it on an indexed basis to give some idea of proportion, so in January of 2000 -- as you can see, my software refused to convert it to January, but that number 36526 is January of 2000. That was the base of the index, so I took Class I plus Class II pounds and adjusted on a daily basis to take up some of the daily fluctuations, and then I divided each month published Class I and Class II pounds by that number, which gave me a percentage. So, in every case, the smaller of the two bars is the Class I plus Class II pounds monthly converted to a daily basis and converted to an index.

The column, Class III plus Class IV pound index would then be the Class III and Class IV pounds as published each month divided by the January 2000 levels to get some kind of index base and that ends up being the larger bar. And a quick review points out that Class I and Class II approximates -- is not a lot of fluctuation and Class III and Class IV has shown a dramatic increase.

Q The bars that have the number 36892 under them --

A That would be January of 2001.

Q So the bars are just each month sequentially from January 2000 through August 2001, which was the latest data you had available?

A That is correct.

Q Now, would you describe briefly what has been marked as Exhibit 15, which is an eight page exhibit entitled Comparison of Federal Order Definitions and Qualification Provisions.

A Exhibit 15 was prepared by the other members of our group who are testifying and myself and the goal here was to look at certain provisions in the order. The right side of the page being the current Federal Order 33 mideast market and the left side of the page being the piece of the current Order 33 that was defined as a predecessor order.

Federal Order 40 was the southern Michigan market. Federal Order 36, eastern Ohio, western Pennsylvania. Federal Order 33, the Ohio Valley market, and Federal Order 49, the Indiana market.

And each of these major divisions were contrasted between the current provisions and the former provisions. We did not do a comparison contrast for the Michigan Upper Peninsula market. It was a very small market and we didn't include it in the comparison.

The general breakdown across the page was -- minimum route disposition under Federal Order 40. That language captures the major points and the current mideast market captures the major points.

From time to time, we may make references in our statements that contrast predecessor orders and current orders, so we provided this to document that.

Q With that introduction, would you proceed with the statement in support of proposals one through three and five, which you have prepared.

A Before I start, I would like to make a comment. If you haven't noticed this yet, you will remember it very quickly. There are several pages that quote directly from the final rule and my purpose in doing that is to point out the immense amount of brainpower, sweat and work that went into describing some of these things and I wanted to point out that there was a lot of work in those areas. However, it would be somewhat tedious to read all of those, but I don't want to gloss over that because it is extremely important to point out that a lot of work went into deciding that, so I am quite prepared to discuss in those -- the subsections and the footnotes at the bottom provided we can have some assurances that the record will recognize, no pun intended, the weight at the evidence.

JUDGE CLIFTON: What I would like to do with regard to this statement is I would like it to actually be admitted into evidence even though Mr. Hollon will speak into the transcript much of what is in the exhibit and we will therefore have some duplication. I still think it is more clear if we have the entire statement as an exhibit admitted into evidence that is one reason I had it marked. So, to the extent, Mr. Hollon, you want to skip around in it, to the extent you want to emphasize certain portions, to the extent you want to read some of the verbatim and not read all of the verbatim, you are totally at liberty.

Now, let's see if we can get these documents admitted into evidence before you speak further or if there's any need to voir dire by any of the participants.

First of all, with regard to Exhibit 12, I have already indicated I would like it to be admitted into evidence so that we have that is part of the record, but I would invite anyone who wants to voir dire the witness on how it was prepared or anything of the like, if you wish. You may want to wait until after he has testified and I would certainly understand that.

With regard to Exhibit 13, the exhibits, you have already 13 and 14, 14 replaces two of the tables in 13. You have already heard, I believe, enough about a those to be to voir dire the witness on those now if you wish. Is there anyone who wishes to voir dire Mr. Hollon on Exhibits 13 and 14, ask any questions about his preparation of those so that you will know whether you object to them coming into evidence? Is there any objection to Exhibits 13 and 14 being admitted into evidence? There being none, Exhibits 13 and 14 are admitted into evidence.

(Exhibits 13 and 14 are received into evidence.)

JUDGE CLIFTON: With regard to Exhibit 15, which is the comparison of the old order and the current order, is there any objection to Exhibit 15 being admitted into evidence? All right, there being no objection, Exhibit 15 will be received into evidence.

(Exhibit 15 is received into evidence.)

JUDGE CLIFTON: Now, let me go back to 12. Is there anyone who wants me to wait before admitting it into evidence into the completion of Mr. Hollon's direct examination and cross-examination? No one indicates that need. Is there any objection at this point to the admission into evidence of Exhibit 12? There being none, Exhibit 12 is received into evidence.

(Exhibit 12 is received into evidence.)

JUDGE CLIFTON: All right, you may proceed. Mr. Hollon?

THE WITNESS: Statement of proponents.

The proponents of proposals one through five are Continental Farms Cooperative, Inc., Dairy Farmers of America, Michigan Milk Producers, Inc. and Prairie Farms Cooperative, Inc.

Continental Farms Cooperative, Inc. is a member owned Capper Volstead cooperative of 12 farms that produce milk in three states.

Continental Farms Cooperative members pool milk on three of the 11 federal milk marketing orders including the Mideast order.

Dairy Farmers of America is a member owned Capper Volstead co-operative of 16,905 farms that produce milk in 46 states. DFA pools milk on 10 of the 11 federal milk marketing orders including the Mideast Federal Order.

Michigan Milk Producers Association is a member owned Capper Volstead cooperative of more than 2,600 members that produce milk in four states. MMPA pools milk on three of the 11 federal milk marketing orders, including the Mideast Federal Order.

Prairie Farms Co-operative is member owned Capper Volstead co-operative of 800 farms that produce milk in six states. Prairie Farms pools milk on two of the 11 federal milk marketing orders including the Mideast Federal Order .

The proponents are ardent supporters of

federal milk marketing orders and we believe that without them, dairy farmer's economic livelihood would be much worse. Federal Orders are economically proven that marketing tools for dairy farmers. The central issue of this hearing, providing for orderly marketing and economically justifying the appropriate performance qualifications for sharing in the market wide pool proceeds of an order is the heart of the federal order system.

If these issues are not addressed properly system-wide, orders will be jeopardized. That would be detrimental to all the members of our group, both in their day-to-day dairy farm enterprises and the milk processing investments that they have made.

Summary of proposals for this hearing. The proponents have an interest in the proposals being heard at this hearing. These amendments are being requested by producers due to the present-day dynamics surrounding the pooling of milk in federal milk marketing orders. We are the proponents of proposals one through five and will present testimony and evidence to support them at this hearing.

Proposals one through three and five deal with the opening pooling of large volumes of milk from locations, most of which are so distant to the market we really question if they would ever regularly serve the market in any capacity. We note that the proponents of proposals six, seven and nine share the same interests that we do -- that is, distant milk needs to have additional performance requirements that are workable and consistent system-wide with the Federal Order policy. We, however, have a different concept of how best to achieve that end result.

Proposal four reflects the position that the use of the lowest prior month's class price to set the advance price payment to producers is no longer reasonable mechanism.

Proposal eight seeks to limit the access to a blend draw from producers who regularly supply the market, that are associated with manufacturing plants who periodically withdraw from the pool for economic reasons due to price inversion. We will oppose this proposal.

Our witnesses and their topics are as follows: myself and my statement will cover the need for the hearing, structure set by federal order reform, submission of and testimony referring to various exhibits and comments on the market administrator exhibits.

Mr. Lee, specific concerns from a co-operative handler with bottling plant operations. Ms. Rady, specifics of daily milk marketing in the old Order

49 area. Mr. Stromski, specifics of daily milk marketing in the old Order 33 and 36 area. Mr. Rasch, specifics of daily milk marketing in the old Order 40 area and Mr. Rasch will then follow up with a different segment on the specifics and intent of our proposal language.

And then I will be the final witness again, when those proposals come due, with comments on proposal eight. We will provide support data and evidence on proposal four and a summary of our proposals and a comment on the need for an emergency decision.

Not just a Federal Order 33 issue. With regard to proposals one through three and five, we note that the underlying issue is not just a local Order 33 issue. We have concerns identical to those expressed by other proponents here and in the Pacific Northwest, Western, Central and Upper Midwest Federal Orders -- that milk from distant areas pooling on the order and drawing down the blend price, but not serving the market in any regular form.

We find this practice detrimental to our members, our customers and the entire Federal Order system. We plan to express that concern in other Federal Order hearings and seek a solution that is consistent and in line with Federal Order principles system-wide.

The central issue in each case is the

interface between the pricing surface, altered by Federal Order Reform, referred to from here forward as Order Reform, and the pooling provisions found in each order. Those relationships were changed by reform. The link between performance and pooling was altered and needs review.

Organizations including DFA and many of the other proponents as these proposals here have moved quickly to take advantage of these changes in order rules. Indeed, in the competitive dairy economy, if a competitor makes a pooling decision that results in increased funds, you must attempt to do the same or face a more difficult competitive position. Individual organizations cannot unilaterally disarm.

We think this process of extensive distant market open pooling is inconsistent with the Federal Order policy and clearly disparaged in the order reform record. We are offering proposals here and will be offering proposals in the scheduled Order 32 hearing and are supporting similar proposals that have been submitted in the proposed Order 124 hearing that reflects this philosophy.

We have already offered proposals in the Order 30 hearing consistent with the principles advanced here.

Federal order reform. The Final Rule published on September 1, 1999 in the Federal Register culminated in the Federal Order Reform process. It was a lengthy process, but produce needed beneficial results for the industry, which could not have been accomplished without that informal rule-making process.

Through it, the number of federal orders were reduced from 31 orders or marketing areas down to 11. It provided clear rules for what constitutes a market. The pricing provisions were improved, modernized and made more uniform and transparent across the federal order system. A more common classification system and standardization of the provisions common to all orders was instituted. The option 1-A differential surface that was the result of extensive computer modeling that was extensively evaluated by university, government and industry persons, a superior Class 1 advance price mechanism, the "higher of" pricing mechanism and the common multiple component pricing provisions across all orders using component pricing were valuable improvements to the Federal Order program.

Even though the process was a lengthy and thorough, the dairy industry is dynamic and changing and we currently find that provisions of the order system need review and alteration. Areas that need review include the pricing provisions that were addressed in the Class III and IV hearing held last spring, Docket Number AO-14-A69, et cetera.

The combination of an absolute versus a relative price surface that we now have and its interface with the prevailing pooling provisions is an issue that is now plaguing the industry and is being addressed at this and other hearings.

Federal Order benefits and principles. Federal Orders offer benefits to both producers and handlers and have always operated in a deliberate and organized manner guided by basic economic principles. Two primary benefits of orders are to allow producers to gain from the orderly marketing of milk and to share the proceeds of marketwide pooling.

Orderly marketing embodies principles of common terms and pricing that attracts milk to move to the highest valued market when needed and clears the market when not needed. The marketwide pooling allows qualified producers to share the returns from the market equity and in a manner that provide incentives to supply the market in the most efficient manner.

The concept of a market. Fundamental to the Federal Order principles are the concepts of a marketing area and the concept of performance to the market, in order to be qualified to share in the returns, from the market. The Federal Milk Order Market Statistics and Annual Summary defines a marketing area as a "designated trading area within which the handling of milk is regulated by the Federal Order." It is clearly and identified geographic area and defined deliberately by a set of rules and for a specific purpose. In every set of federal order regulations, Section 2 defines the geographic area of the marketing order.

Federal order reform sought out industry comment on marketing areas, established seven criteria for their establishment and then use those criteria to divide much of the lower 48 states into 11 Federal Order markets.

The criteria and the department's explanation of them, taken directly from the final rule are as follows: the same seven primary criteria, which I will refer to as the set of rules, as were used in the two preliminary markets and the proposed rule were used to determine which markets exhibit is sufficient degree of association in terms of sales, procurement and structural relationships to warrant consolidation, the specific purpose of those rules.

The final rule explained the criteria are as follows The first criteria was overlapping route disposition. From here, I will skip down to the second criteria, overlapping areas of milk supply.

Overlapping areas of milk supply. This criterion applies principally to areas in which major proportions of the milk supply are shared between more than one order. The competitive factors affecting the cost of the handler's milk supply are influenced by the location of the supply. The pooling of milk produced within the same procurement area under the same order facilitates the uniform pricing of producer milk.

Dropping down to footnote one, I would point out the milk procurement areas were considered as criteria for Order 33 boundaries and the distant areas in question here were not found to be a part of the order's marketing area.

Moving back up to the body, consideration of the criterion of overlapping procurement areas does not mean that all areas having overlapping areas of milk procurement should be consolidated. And are that supplies a minor proportion of an adjoining area's milk supply with a minor proportion of its own total milk production, while handlers located in the area are engaged in minimal competition with handlers located in the adjoining area likely does not have a strong enough association with the adjoining area to require consolidation.

For a number of the consolidated areas it would be very difficult, if not impossible, to find a boundary across which significant quantities of milk are not procured for other marketing areas. In such cases, analysis was done to determine where the minimal amount of route disposition overlap between areas occurred and the criterion of overlapping route disposition generally was given greater weight than overlapping areas of milk supply.

Some analysis was done to determine whether milk pooled on adjacent markets reflects actual movements of milk between markets or whether the variations in amounts pooled under a given order may indicate that some milk is pooled to take advantage of the price differences, rather than because it is needed for Class I use in the other market.

Dropping down to footnote two, opening pooling was reviewed and was not considered to be criteria for deciding marketing area and certain areas were not put together as markets if their basis of commonality was for "economic paper pooling" versus meeting the criteria established. Additional analysis was done to make sure whether or not milk supplies that were associated with an order, including those that were paper-pooled, really should be a factor in determining the marketing area. In the case of Order 33, the distant milk in question here was not included in the marketing area.

Moving back up to the body, the third criteria, the number of handlers within a market. Formation of large size markets is a stabilizing factor shifts of milk and for plants between markets become less other disruptive factor in larger markets also the existence of Federal Order markets with handlers too few and number to allow meaningful statistics to be published without disclosing proprietary information should be avoided.

The fourth criteria, natural boundaries. Natural boundaries and barriers such as mountains and deserts often inhibit the movement of milk between areas and generally reflect a lack of population limiting the range of consumption area and lack of milk production. Therefore, they have an effect on the placement of marketing area boundaries.

In addition, for purposes of marketing consolidation, large unregulated areas and political boundaries are also considered a type of natural barrier.

Five, cooperative association service areas. While not one of the first criteria used to determine marketing areas, cooperative membership may be an indication of market association. Therefore, data concerning cooperative membership can provide additional support for combining certain marketing areas.

Other than pooling was reviewed and was not considered to be a criteria for deciding marketing area and certain areas were not put together as markets of their basis of commonality was for economic paper pooling versus needing the criteria established. Additional analysis was done to make sure whether or not milk supply is that were associated with in order, including those that were paper pooled, really should be a factor in determining the marketing area. In the case of Order or 33 the distant milk in question here was not included in the marketing area.

Dropping down to number six, features for regulatory provisions common to existing orders. Markets that already have some or regulatory provisions that recognize some or marketing conditions may have a head start on the consolidation process. With calculation of the basic formula price replacement on the basis of components, however, this criterion becomes less important. The consolidation of markets having different payment plans will be more dependent on whether the basic formula component pricing plan is appropriate for a given consolidated market, or whether it would be more appropriate to adapt to pricing plan using hundredweight pricing derived from component prices.

Number seven, milk utilization in common dairy products. Utilization of milk in some are manufactured products, she's versus butter-powder, was also considered to be an important criterion in determining how to consolidate the existing orders.

The final rule went on to describe Federal Order 33 geographically and how the seven criteria were applied to form the boundaries for the marketing area.

The Mideast. The current marketing areas of the Ohio Valley, Eastern Ohio-Western Pennsylvania, Southern Michigan and Indiana Federal Milk Orders, plus zone two of the Michigan Upper Peninsula Federal Milk Order, and most current unregulated counties in Michigan, Indiana and Ohio. One partial and three entire counties in North Central Ohio are left unregulated since they represent the distribution area of a currently partially regulated distributing plant, which is Toft Dairy in Sandusky, Ohio.

Major criteria for this consolidation included the overlap of fluid sales in the Ohio Valley marketing areas by handlers from other areas to be consolidated. With the consolidation, most route disposition by handlers located with in the Mideast order would be within the marketing area. Also, nearly all milk produced within the area would be pooled under the consolidated order. Emphasis added.

Dropping down to footnote three. The analysis done concluded that none of the milk from the distant locations under considerations here should be included in the marketing area.

The portion of the Michigan Upper Peninsula marketing area included in the Mideast consolidated area has sales and milk procurement areas in common with the Southern Michigan area and has minimal association with the western end of the current Michigan Upper Peninsula marketing area.

Dropping down to the block that begins with geography. The Mideast market is described geographically as follows: Indiana, 72 counties, 64 or Order 49, two currently in Order 33, six currently unregulated on the western edge of the state just south of the northwest corner.

Kentucky, 18 counties, all currently in Order 33. Michigan, the 77 counties, two whole and three partial counties are unregulated. The rest of the area is currently included in Orders 40, 44, 49, and 33. Of the total 83 Michigan counties, only six in the western end of the Upper Peninsula are not included in the consolidated Mideast marketing area.

Ohio, 84 whole and one partial counties, three whole and two partial counties to be included currently are unregulated. All of the state currently is included in Orders 33 and 36, except for three partial and six whole counties.

Pennsylvania, 12 whole and partial counties currently in the Order 36 area. West Virginia, 37 counties, 20 in the current Order 33, 17 currently in Order 36.

The consolidated Mideast marketing area lies directly south of the Great Lakes with the State of Michigan enclosed on the east and west sides by Lakes Huron and Michigan. On the eastern border of the marketing area between the Mideast and Northeast marketing areas is Pennsylvania, state-regulated territory and the Allegheny and Appalachian Mountains. On the Northeast border, Western New York State order area.

The east to west distance across the consolidated marketing area is approximately 450 miles from locations on the eastern edge at the area in western Pennsylvania to the border of Indiana and Illinois.

Northwest to south east from Marquette, Michigan in the Upper Peninsula to the northeast area of Kentucky in the marketing area is just over 800 miles. From the northern tip of a lower Michigan to southern Indiana, the more direct north-south area, is 530 miles.

The consolidated Mideast marketing area is contiguous to three other consolidated marketing areas. The consolidated central marketing area would provide the western border of the Mideast marketing area along the Indiana-Illinois border and the consolidated Appalachian area would provide the southern boundary.

The western end of Michigan's Upper Peninsula, part of the consolidated Upper Midwest area, would adjoin the Mideast portion of the Upper Peninsula.

In terms of physical geography, most of the consolidated Mideast marketing area is that low elevations and relatively flat. The climate and typography are favorable to milk production, with dairy being the number one agricultural commodity in terms of financial receipts in the State of Michigan in 1996.

Dairy also ranks high in terms of financial receipts in the rest of the area, third in Ohio and West Virginia and fifth in Indiana.

Skipping over to page 11, beginning with the bottom paragraph, milk production. In October 1997, nearly 11,000 producers from 335 counties in 12 states pooled one billion pounds of milk on Federal Orders 33, 36, 40, 44 and 49. Over 90 percent of this producer milk came from Mideast marketing area counties. The states of Indiana, Michigan, Ohio and Pennsylvania supplied 97 percent of the milk (13 percent, 39.6 percent, 30.6 percent, and 11.9 percent, respectively) with 90 percent coming from the counties that would be in the consolidated Mideast area. Just over two-thirds of the milk pooled under these orders was produced in Michigan and Ohio county is located within the consolidated marketing area.

Other states pooling milk on the orders consolidated in the Mideast area were Illinois with .5 percent, Iowa of with .1 percent, Kentucky with .1 percent, Maryland with .4 percent, New York with 2.7 percent, Virginia with .1 percent, West Virginia with 1.0 percent and Wisconsin with .1 percent. These states contributed a total of 4.9 percent of the milk pooled on the five orders. Emphasis added.

Dropping down to footnote four. After extensive analysis, which clearly considered some of the milk from distant locations in question at this hearing, none were included in the marketing area of Order 33.

JUDGE CLIFTON: And that is a correction, 1033?

THE WITNESS: Yes, 1033.

JUDGE CLIFTON: That does mean the same as 33?

THE WITNESS: Yes. Moving over to page 14, utilization. The according to October 1997 pool statistics for handlers who would be fully regulated under the Mideast order, the Class 1 utilization percentages for the Ohio Valley, Eastern Ohio-Western Pennsylvania, Southern Michigan, Michigan Upper Peninsula and Indiana markets were 58, 58, 55, 89 and 70 percent respectively. Based on calculated weighted average use values for 1) the current order with current use of milk and 2) the current order with projected use of milk in the consolidated Mideast order, the potential impact of this consolidation on producers who supply the current market areas is estimated to be: Ohio Valley, a four cent per hundredweight increase, from $13.46 to $13.50, Eastern Ohio-Western Pennsylvania, a four cent per hundredweight decrease from 13.51 to 13.47, Southern Michigan, a six cents per hundredweight increase from 13.27 to 13.33, Michigan Upper Peninsula, a 25 cent per hundredweight decrease from $13.34 to the $13.09, and Indiana, 11 cents per hundredweight decrease from the $13.52 to $13.41.

The large decrease for Michigan Upper Peninsula is the result of changes from its marketing individual handler pooled provisions to the marketwide pool -- very little reserve milk is pooled under Order 44. Instead, it is pooled on the Southern Michigan order.

For October 1997, combined Class I utilization for Orders 33, 36, 40, 44 and 49 was 58.7

percent based on 601.6 million pounds of producer milk used in Class I out of 1.025 billion total producer milk pounds pooled. The weighted average use value for the consolidated the Mideast market is estimated to be $13.42 per hundredweight. Emphasis added.

Dropping down to footnote five. Neither the utilization calculations nor the resulting blend price calculations included the milk from distant locations in question here as a part of Federal Order 33.

Moving back up to the text, the Mideast is one of two consolidated marketing areas that as a significantly higher than average percent of its milk used in Class II. Currently, the southern Michigan, Ohio Valley and Indiana markets have Class II utilization over 20 percent. When the markets are combined, the average for the consolidated market will be just under 20 percent.

Other plants. Also located within the Mideast marketing area during May 1997 were 59 supply or manufacturing plants, one in Charleston, West Virginia, four in Pennsylvania, 18 in Michigan, nine in Indiana and 27 in Ohio. Nine of the 59 plants are pool plants. Of these pool plants, six are supply plants. One manufactures primarily Class II products, three manufacturers primarily powder and two have no primary product, only shipping to distributing plants.

Three pool plants are manufacturing plants manufacturing primarily cheese. Of the 50 non-pool plants in the Mideast marketing area, one is a supply plant that manufactures primarily cheese. The other 49 non-pool plants are manufacturing plants. In this area of high Class II use, 28 of the non-pool plants manufacture primarily Class II products. In addition, one manufactures primarily butter, one manufactures primarily powder, 27 manufacture primarily cheese and two manufacture primarily other products.

There are also to manufacturing plants in the currently unregulated area of Ohio, a non-pool plants and manufacturers primarily Class II products in the unregulated county of Erie, Ohio and a non-pool plant that manufacturers primarily cheese in the unregulated area of Sandusky, Ohio.

Dropping down to footnote six. None of the supply plants from the distant locations in question here were ever given consideration as being part of the market during the Federal Order Reform analysis.

Dropping down to the paragraph, criteria for consolidation. Overlapping route disposition, overlapping production areas, natural boundaries and multiple component pricing are all criteria that support the consolidation of these current order areas into a consolidated Mideast marketing area. Handlers who would be fully regulated under the consolidated order or distribute approximately 90 percent of their route dispositions within the consolidated marketing area and 93 percent of the milk distributed within the marketing area is from handlers who would be regulated under the order.

Many of the counties from which milk was pooled on the individual orders supplied milk to three or four of those orders. For instance, milk from a number of the same Michigan counties was pooled on the Ohio Valley, Indiana and Southern Michigan orders. Milk from several of the same Indiana counties was pooled on the Ohio Valley, Southern Michigan and Indiana counties and milk from some of the Ohio counties was pooled on the Ohio Valley, Indiana and southern Michigan orders.

The Great Lakes serve as a natural boundary on the northern edge of the area and on the eastern and western sides of Michigan, as do the mountains in central Pennsylvania. Emphasis added.

Dropping down to footnote seven, the source of much of the milk from distant locations under consideration at this hearing were specifically excluded from the Mideast marketing area by actual boundaries. This exclusion would have been based on the fact that these supplies could not regularly serve the market.

All of the orders involved in the consolidated Mideast area contain multiple component pricing provisions. Instead of the Southern Michigan component pricing plan, proposed for the consolidated Mideast order in this proposed rule, the same component pricing provisions adopted for the other consolidated orders have been incorporated in the Mideast order.

Discussion of comments and alternatives. Prior to the issuance of the proposed rule, alternatives to the consolidation of the Ohio Valley, and Eastern Ohio-Western Pennsylvania, Southern Michigan, Indiana and partial Michigan Upper Peninsula marketing areas that were considered included the addition of Pennsylvania milk marketing board, area six to the consolidated Mideast area, with some consideration being given to the addition of currently unregulated areas of Maryland and West Virginia and moving the southern part of Ohio and part of West Virginia to the Appalachian order area.

Ten comments that pertain specifically to the consolidated Mideast marketing area were filed by eight commentors in response to the proposed rules. Three of the comments from Michigan Milk Producers Association, United Dairy, Inc. and DFA, plus a very large number of comments that did not specifically mention the Mideast area addressed the inclusion of unregulated areas in consolidated federal order areas. The DFA comment included signatures of 600 producers to a petition to eliminate all unregulated market areas in Pennsylvania.

Although the large number of comments not specifically mention the Mideast area were unclear about exactly what additional area should be added to the marketing area, it appeared to favor of the addition of PMMB area six and perhaps some western Maryland and West Virginia territory to the eastern edge of the Mideast area.

As stated in the introduction to the consolidation discussion, the consolidation of the existing orders does not necessitate expansion of the consolidated orders into currently unregulated areas, especially if such expansion would result in the regulation of currently unregulated handlers. Therefore, PMMB area six and the unregulated portions of Maryland and West Virginia should not be added to the consolidated Mideast order area.

Two comments from DFA recommended including Charleston, West Virginia and areas of West Virginia south of Charleston, as well as the Ohio counties surrounding Cincinnati and the northern counties of Kentucky in the Appalachian market to help provide an economic incentive through the expected higher blend prices to producers to supply milk to the plants in that area.

A comment by Trauth Dairy in Newport, Kentucky also urge the inclusion of the northern areas of Kentucky in the Appalachian area instead of the Mideast area. These comments are addressed in the description of comments and alternatives considered for the Appalachian order area.

Schneiders Dairy suggested that a pass-through provisions similar to that of the current New York-New Jersey order be incorporated in the Mideast order to ensure that regulated handlers distributing fluid milk products in unregulated areas where they compete with unregulated handlers are not disadvantaged.

As discussed in the section dealing with the North East regional issues, Class I prices are determined by the need to the attract milk supplies to the location of the processing plant and not by where the fluid products are distributed. Therefore, a pass-through provision is not incorporated in either the Northeast order or this order.

Independent Cooperative Milk Producers Association and Schneiders Dairy supported the consolidation of order areas to form the Mideast area as proposed.

The concept of pooling market proceeds. All federal local orders today, save one, provide for the market wide pooling of milk proceeds among all producers supplying the market. The one exception to this form of pooling is found in the Michigan Upper Peninsula market, were individual handler pooling has been used.

Marketwide sharing of the classified use value of milk among all producers in the market is one of the most important features of a federal milk marketing order. It ensures that all producers supplying handlers in a marketing area receive the same uniform price for their milk regardless of other milk is used. This method of pooling is widely supported by the dairy industry and has been universally adopted for the 11 consolidated orders.

Additionally, each order has precise terms that a supplier must follow in order to share in the blend proceeds. These provisions are known by the industry as performance standards. This concept is explained, defended and endorsed in the final rural as follows: There were a number proposals and public comments considered in determining how federal milk orders should pool milk and which producers should be eligible to have their milk pooled in the consolidated orders. Many of these comments advocated a policy of liberal pooling, thereby allowing the greatest number of dairy farmers to share in the economic benefits that arise from classified pricing of milk.

And number of comments supported identical pooling provisions in all orders, but other stated that pooling provisions should reflect the unique in prevailing supply and demand conditions in each marketing area. Fundamental to most pooling proposals and the comments was the notion that the pooling of producer milk should be performance oriented in meeting the needs of the fluid market. This, of course is logical for the purpose of the federal milk order program is to ensure inadequate supply of milk for fluid use.

Dropping down to footnote eight, the concept of a performance standard is fundamental to the Federal Order system.

Moving back up to the top of the page, a suggestion for open pooling where milk can be pooled anywhere has not been adopted, principally because open pooling provides no reasonable assurance that milk will be made available in satisfying the fluid needs of the market.

Dropping down to footnote nine, open pooling was totally rejected by the reform deliberations. Proposals to create and fund standby pools are similarly rejected for the same reason.

The pooling provisions for the consolidated orders provide a reasonable balance between encouraging handlers to supply milk for fluid use and ensuring orderly marketing by providing a reasonable means for producers within a common marketing area to establish an association with the fluid market.

Obviously, matching these goals to the very disparate marketing conditions found in different parts of the country requires customized provisions to meet the needs of each market.

For example, in the Florida marketing area where close to 90 percent of the milk in the pool will be used for fluid use, pooling standards will require a high degree of association with the fluid market and will permit a relatively small amount of milk to be sent to manufacturing plants for use in lower-valued products.

In the upper Midwest markets, on the other hand, a relatively small percentage of milk will be needed for fluid use. Accordingly, under the pooling standards for that order, smaller amounts of milk will be required to be delivered to fluid milk plants and larger amounts of milk will be permitted to be sent to manufacturing plants for use in storable products such as butter, nonfat dry milk, and hard cheese.

The specific pooling provisions adopted for each order are discussed in detail in the sections of this document pertaining to each of the consolidated orders

We find no compelling reason to change this guideline. Open pooling is a cause for concern from our groups' members in Federal Order 33. They are concerned when milk from distant areas shares in the blend price pool, but does not perform -- that is, it does not deliver a regularly, nor balance the market. The cost of providing the services to the market always falls on the back of the local milk supply. And if current practice is not amended it will guarantee a continuing low return for local dairy farmers who supply the local Class I market.

The resulting draw of blend price funds to distant producers who do not perform is not reasonable. It was analyzed and excluded by order reform and thus is an end run that should not be allowed now.

Performance standards are universal in their intention -- to require a level association to a market marked by the ability and willingness to supply that market. However, they're individualized in their application. Each market requires standards that work for the conditions that apply in the market. The reform record develops and defends this concept.

We have noted a new phenomenon occurring in the area of performance standards. Several of the entities that have established distant supply plants and associated milk supplies outside the marketing area are now soliciting milk in the marketing area to be used to qualify milk from outside of the marketing area. The additional local supplies then support even more milk to be attached through the distant supply plant.

This practice does not bring any new local milk and no more milk than the absolute minimum necessary seems to ship through the supply plant. The only result is the trading of its local pooling handler. No truly new money is available to local producers. The inducement is only a redistribution of the lowered blend price back to them. Surely this result is not an intended result of the federal order reform.

This practice is an abetted by the provision that allows a supply plant to use direct deliveries from farms to satisfy up to 90 percent of this performance requirement. This is found in 1003.7(c)(2). This is another standard that is a good practice inside the marketing area, but not good for milk supplies located outside the area.

It is difficult to consider this practice as orderly marketing and perhaps should be changed as a result of this proceeding. In principle, this limit should be very low for milk outside of the marketing area, perhaps even zero because of the rationale used in establishing the nationwide price surface.

This practice never happened in the pre-reform days because the blend price that outside the supply plants was zoned out of the market. Typically a reduction in the blend price was computed that related the distance to the market from the supply plant.

The principles underlying the models that formulated the price surfaces assumed that supplies of milk associated with the demand point and aggregated into a market actually shipped from the counties they were located in to the population centers where the demand points were fixed.

To the best of our knowledge, there were no provisions in the mathematical equations for those models allowing for milk to be associated with the market if it did not actually shipped to or supply the market. The current practices clearly exploit that price surface and if we are to retain it, which we support doing, we must structure the regulations to parallel the model.

This means that using direct deliveries from inside the marketing area to qualify supply plants and milk supplies from outside the marketing area should be greatly limited, if allowed at all. The principle of allowing direct ship milk to qualify a supply plant was instituted to allow the achievement of the economies of direct ship milk, saving the cost of reload and pump over. It is now being used for another purpose -- to substitute milk produced in the market for supplies located out of the market in the qualification equation. This runs counter to the initial intent of the provision and to the principles that formed the pricing grid.

For supply plants that are located outside the marketing area direct ship milk volumes that are used to qualify those plants should originate from the farms that are located in the same county as the plant or from distances that are farther away than the plant.

This way, the principles that underlie the pricing surface could be adhered to, but still allow for the economies that come from direct ship milk. The accounting for this practice would be no more difficult to administer than similar practices that govern transportation credits in Orders 5 and 7 or the surplus milk pricing adjustments that existed in the Texas order prior to reform.

A review of the various Federal Order performance standards shows the diversity of standards, but the common requirement of performance to the market in order to share in the blend price pool. During the reform process, as individual order performance standards for being evaluated, many times a particular standard was chosen from one of the predecessor orders. Frequently, the most lenient standard was selected from among a group of available choices. This attempt, however good in its intent, has not always proven to be workable and is one of the reasons for this proceeding,

Exhibit 13, table one is a comparison of the Federal Order producer milk standards. Note that while the intention of the various standards are the same -- to establish the requirements necessary to share in the orders proceeds, the specifics vary from order to order.

Exhibit 13, table two is a comparison of Federal Order pooling standards. Again, note that while the intention of the various standards are the same -- to establish the requirements necessary to share in the order proceeds, the specifics vary from order to order. Note that several orders call for an automatic pool qualification period commonly referred to as a free ride period.

This term means that some level of performance in a prior period grants the performer a benefit in a future period that does not require performance during that time frame. Several times in our statement we refer to the free ride period and this is the definition of that term.

Exhibit 13, table three shows a table of annual classified usage for all federal orders. Note that Federal Order 33 has the second largest volume of Class I usage in all orders. Clearly, Federal Order 33 represents a major market for Class I milk and the performance requirements associated with it should reflect that by providing for sufficient association and performance to the market in order to share in the blend price.

We note that several other markets was smaller total Class I sales volumes have more restrictive pooling standards.

Exhibit 13, table four shows a table of pounds pooled by month on Federal Order 33 from January 2000 to date taken from monthly order statistical publications. Exhibit 13, chart one, drawn from this data, details this information on an indexed basis.

For each month, Class I and Class II usage is combined, converted to a pounds per day basis and then indexed with January 2000 as the base. Identical computations for Class III and Class IV utilizations are made. Class I and II usage represent the products from which value is derived for the pool.

Class III and IV represent the products

that maintain the reserve supply for the added value products and serve to balance the fluctuating demands of the market. Clearly, the volume of Class I and IV usage has changed little in the 21 months of reform for Federal Order 33. In fact, if anything, the market has lost Class I and II sales volume. But the supply of reserve has grown astronomically. It will be difficult to justify the need for a near 250 percent increase in the reserve associated with the market.

I would like to add a sentence to reflect something that came up this morning during Ms. Uther's comments that for the most part, the decline in the Class I and Class II index reflects primarily the Class II milk that was de-pooled for economic reasons. And I suspect that if it was adjusted for that, I would suspect that there wouldn't be any difference in the value of the Class I and II milk.

Market Administrator Exhibit 5 furnished by the market administrator illustrates the source and volume of distant milk in a geographic sense that is pooling on Order 33. Exhibit 5, table 13 details the value of milk by state by month for each month that the reform to Federal Order 1033 has been in existence.

Market Administrator Exhibit 5, table 14 details the same information except from the standpoint of farm count instead of volume of milk. The maps labeled Milk Marketings on the Mideast Federal Order for the periods from December 1998 and December 2000 and May 2000 and May 2001 exhibit this detail graphically.

Market Administrator Exhibit 5, Appendix A delineates the same data from the standpoint of sources from inside the marketing area versus outside the marketing area for the period December 1998 and December 2000 and May 2000 versus May 2001. These months were requested in order to show pattern that existed well before any influence of reform and for the same geography after reform.

Several conclusions can be drawn from these data. The states with significant increase in pooling -- Illinois, Iowa, Kansas, Minnesota, New York, North Dakota, South Dakota and Wisconsin are located primarily outside of the marketing area.

There was a learning curve to the art of open pooling as the best evidence by the Wisconsin data. Clearly, pooling slowly increased as handlers realized the potential income opportunity and the ease of obtaining it. Once the methodology became understood, the volume pooled increased heavily.

The free ride months of March through August became a temptation that could not be ignored.

This is again best exhibited by the data from Wisconsin and South Dakota where volumes increased markedly beginning in March and in Minnesota, where there were no volumes pooled at all except in the free ride period of 2001.

Additionally, the list of pooled handlers filing reports from August 2001 versus September 2001 shows that Bongard's Creamery in Bongard, Minnesota, Cass Clay Creamery in Fargo, Ellsworth Cooperative Creamery in Ellsworth, Wisconsin, Family Dairies USA in Madison, Wisconsin and Midwest Dairymen in Rockford, Illinois did not pool at all when there was no free ride to take advantage. This means that they're qualifying agent likely maxed out their own diversion limit could not qualify them in the non free ride month.

From the reportable data, only one state, Kentucky, showed an increase in pooling of some locations within the market area, but only on a small volume of milk. Many of the distant locations, such as Kansas, Iowa and Wisconsin showed substantial increases -- most from a zero base.

In the aggregate, the volume of milk pooled on the order produced on farms located outside the marketing area increased by 395.66 percent. This represents 430,222,763 pounds. This amount is far greater than any reasonable calculation of a reserve supply.

As best evidence by the maps, much of the distant milk is from such a long distance that it cannot serve the market easily on a regular basis.

Exhibit 5, Appendix C from the market administrator data points out the source and volume of the distant milk from the perspective of the pooling provisions that allow it to associate with the market. The volumes are identified as producer milk from outside the historical procurement area and from plants identified as split plants.

Appendix D is derived from these data and computes the percentage of the total deliveries from split plants with the assumption that the balance is taken mainly from small qualifying deliveries to disturbing plants and large diversions off of those deliveries.

Several conclusions can be drawn from these data. The volume of delivery started small at 16 million pounds in June of 2000, but grew to large proportions, peaking at 480.5 million pounds in June 2001.

The percentage of the volume that delivered through split plants ranged from 69 to 171 million pounds for the month of January 2001 through August 2001.

JUDGE CLIFTON: Let me just clarify that

number. Would you reread that subsection?

THE WITNESS: Let me go back to my table.

JUDGE CLIFTON: Bottom of page 25.

THE WITNESS: The pounds of milk that delivered through split plants ranged from 69 to 179 million pounds for the months of January 2001 through August of 2001.

The proportion of milk that originated in a split plant ranged from 23 percent to 48 percent. The balance represents milk that originated primarily from diversions off of distributing plants. The actual deliveries that supported these poolings were very small. On a volume basis the range was 50,000 pounds, which would only represent a single load of milk, up to 14.6 million pounds. On a percentage basis the amount ranges from 0.14 percent up to a maximum of 6.6 percent.

Based on some of the data that was provided this morning, if you sum up all of the pounds that actually delivered, it would be 113.5 million pounds and if you went to the table from the market administrator that showed the Class I use during this same period, it would be 11.1 billion pounds. It would be an extremely small percent that actually ever supplied the market.

Clearly the liberal pooling provisions allow too much milk to be associated with the market for such a small level of performance.

Exhibit 13, table five lists the mileage and the necessary hauling rate per hundredweight needed to transport milk from certain points in the distant areas noted by the maps. The point selected represent the location of supply plants pooled on the market enlisted in market administrator data. The choice of Springfield, Ohio as a destination point represents a location central to the market and considered to be receiving location for quantities of open pooled milk.

The rates per mile used in the calculation is $1.90 and a reasonable proxy for one-way transportation costs. This cost does not include any procurement to come on assembly or reload cost, just the transportation component. Inclusion of these other costs would raise the cost to deliver milk to the market.

The distance from Black Creek, Wisconsin to Springfield, Ohio is 479 miles or $1.82 per hundredweight in transportation costs. Keil, Wisconsin is 440 miles from Springfield and that represents $1.67 per hundredweight cost. Stockton, Illinois is 417 miles from the bottling plant or $1.58 per hundredweight in transport cost. Elkhorn, Wisconsin is 368 miles from Springfield or $1.40 per hundredweight away in transportation costs.

These costs would have to be recovered

from the sale of milk in addition to the procurement, assembly and reload costs before any profit could be generated from the sale of milk to an Order 33 bottler in Springfield.

These supply plants exist as split plants, a new term to Federal Order 33. It became effective in this order as the result of the uniform provisions efforts of reform. Its insertion in the Federal Order 33 was not explained in the final rule, only noted, so no justification was given for its inclusion.

A split plant is the designation described under Section 1033.7(h)(7). A split plant is usually, but not always, a manufacturing plant. It has multiple silos on the premises and has designated one of the silos and the associated pumps and piping as a pool plant, while the remainder of the plant is designated as the non-pool plant. Each market administrator provides the local order with guidelines that they enforce as to the definition of a split plant. This definition was common in the pre reform days for orders with lower differentials and lower utilizations such as the former Order 30 or 68. Its initial purpose -- and I would say its initial purpose as best I can determine -- was to accommodate grade B milk. However, in recent pre reform history, its purpose has been to afford the supply plant the ability to make pooling for economic reasons decision more easily. We would argue that this provision has validity in low utilization, low differential orders, but does not have a reason for existence in the higher differential, higher utilization orders such as Order 33. The split plant serves no purpose for Federal Order 33 and there were no provisions supporting it in the predecessor orders and no plant inside the Order 33 marketing area makes use of it. It has become a tool to attach distant milk to the market that performs little, if any, in serving the market.

Exhibit 13 and 14, tables six, seven and eight depict the return from deliveries from these distant supply plants to the Federal Order 33 using the Stockton, Illinois plant is a basis. The volumes chosen indicate easy arithmetic and are not intended to represent any of the supply plants' actual receipts. However, the per unit calculations would be representative. The comparison uses the mileage and transport calculations developed in Exhibit 13, table five.

It shows the return if the milk was delivered to the market every day, which is the most typical practice for local milk, and is shown in the column labeled Monthly Return All Delivered to Bottler. This return is calculated by netting the difference in the two order blend prices at the supply plant location against the transportation costs. The effect of additional procurement costs and market premiums are ignored. If this milk were delivered to the market every day, the blend price gain would not even be enough to pay the transportation costs. No rational supplier would make this business decision to lose $3.4 million or approximately 56 cents per hundredweight.

Table six of Exhibit 13 further details this calculation utilizing the current supply plant pooling standards and showing the effect of the split plant. The current supply plant standard, from reform, calls for a 30 percent delivery in six months of the year and if that performance standard is met, no additional shipments are needed to be made in order for the supply plant to be afforded complete pooling status.

The split plant status of for the supply plant the ability to segregate its intake into a single day one million pound volume for the purpose of computing the monthly shipping requirement. While preserving the remaining 30 million pounds for manufacturing use, but more importantly, not having to qualify the remaining days of the month's production.

Furthermore, a plant may divert up to 60 percent of its poolings in the qualifying months and has no diversion limit in the free ride months. The standard is unreasonable for Federal Order 33. The application of the standard in our example shows that the shipment of only 300,000 pounds per month for only six months of the year would allow 190 million pounds to be pooled on the order. This combination turned a 56 cents per hundredweight loss from an everyday supply decision into a 94 cents per hundredweight gain when maximizing the provisions to their fullest, a practice known to be real by Market Administrator Exhibit 5, tables 13, 14 and Appendix A.

There can be no rational explanation as to why this practice is a good idea for the market. In this hypothetical example, $3.6 million a drawn away from the pool by open pooling, abetted by loose performance standards and the use of the split plant provision.

Table seven of Exhibit 14 shows the effect of instituting the shipping and diversion standards envisioned by proposals one through five. In this example, the split plant provision is still in effect. Here, due to the every month 30 percent shipping requirement, the supply plant must continue to ship some volume every month, a reasonable requirement in order to share in the blend price and have some limit on its diversions in the flush months.

The presence of the split plant does allow for continued segregation of the majority of the plants volume, but the institution of these two provisions reduces the total dollar draw on the blend approval by 30 fold. If you take the example on table six, the draw down was 3.5, six million dollars and on table seven was $112,000 and that is the reduction.

Table eight of Exhibit 14 shows the effect of instituting the proposed every month shipping and diversions standard. However, in this example, the split plant provision is no longer in effect. Again, in this example, the supply plant continues to ship some volume every month, a reasonable requirement in order to share the blend price and it has some limit on its diversions.

The removal of the split plant means that the supply plant does not have the ability to ride the pool by segregating its receipts, but must make the decision to perform based on the same economic factors that local milk must use. That is, what is the return for its entire milk supply and not an artificially segmented slice that is not totally unavailable to the market.

Clearly, the blend price gain is not enough to overcome the transport costs and if this milk is to be delivered to the market, it must receive some additional negotiated premium. In other words, the Order

33 market must bid the milk away from the Order 30 market all the time. This would be an intentional economic decision, not one made by exploiting a regulatory loophole.

The arrangements necessary to exploit these provisions are a source supply that can be associated with a split plant and a destination point that can qualify producer milk in Order 33. Furthermore, the pool side of the split plant functions as an outpost for qualifying producers on Order 33. Touch base deliveries can be made to the supply plant, in this case, 400 miles from the market and never even delivered in the marketing area -- hardly servicing the market.

While this combination sounds unique, the huge volumes of distant milk indicate that it is not hard to accommodate.

So, why is this milk becoming associated with the market? The pooling requirements for Order 33, which work well for milk produced in the marketing area, do not work well when applied to milk produced out of the area. This coupled with the change in the pricing surface makes open pooling very lucrative. The elimination of the zone out provisions makes open pooling economically feasible and may require this area to be revisited in the near future.

The Order 33 standards of touch base are easy to meet and even more so when coupled with the existence of a split plant.

The split plant provision makes retaining qualification relatively easy because an extremely low volume of milk can associate a huge volume of diversions and any economic loss associated with the pool side of the split plant is easily over-ridden by gains from diversions from the non-pool side.

The provision that allows a plant to meet up to 90 percent of its qualification requirements with diverted or milk shipped directly from the farm is another factor that is involved in this decision-making process. As shown in our exhibit, the economic burden of the delivery cost becomes a small factor in the total business decision.

Local producers, however, continue to serve the market, balance it weekly and seasonally for a decreasing return. Indeed, under this scheme, the only way milk would cease attachment is with a negative producer price differential. But with the split plant provision, even this impact can be minimized in order to retain market association.

A proxy for the estimated costs to the Federal Order 33 blend pool of the distant milk can be seen in Exhibit 13, table nine. These costs were estimated for just four months -- June and December 2000 and March and June of 2001. The impact of the distant milk on the June 2000 pool was estimated to be a reduction of 4 cents per hundredweight or $471,000. December 2000 was estimated to be a reduction of 71 cents per hundredweight or $7,100,000, May 2001 a reduction of 57 cents per hundredweight or $5,700,000 and June 2001 a reduction of 34 cents per hundredweight or $3,000,700. These impacts are sizable. No dairy farmer would think a 71 cents reduction in their own blend price was a small matter. This is an important issue.

BY MR. BESHORE:

Q Mr. Hollon, would you go to page 24 of Exhibit 12. You were identifying a couple of entities and their location and I want to make sure we have it correct. Cass Clay Creamery in Fargo should be North Dakota?

A Correct.

Q Bongard's is in Minnesota and Ellsworth is in Wisconsin, correct?

A Yes.

MR. BESHORE: At this point, Your Honor, Mr. Hollon has completed his prepared statement. I would like to suggest a short break, if we might. I might have a question or two on redirect and then he will be available for cross.

JUDGE CLIFTON: This is a great time for a break. I would like to take about a 20-minute break, so let's come back here at 2:40.

(Off the record.)

JUDGE CLIFTON: We are resuming at approximately 2:43 p.m. Mr. Beshore, you may proceed.

MR. BESHORE: Thank you, Your Honor.

BY MR. BESHORE:

Q Mr. Hollon, I would like you to turn your attention to table 10 of Exhibit 13 for just a minute of additional testimony and then I will turn it over for cross-examination.

Now, this table, as I understand it, is intended to address the present provisions of a particular portion of Federal Order 33 at present; is that correct?

A That's correct.

Q And it's not identified on the table itself, but can you tell us what portion of the order language this elaborates on?

A This exhibit describes or elaborates on the calculation describing the diversion limitation of 60 percent for a pool distributing plant and in all three examples, they would be the same plant under three different scenarios and in the first scenario, the plant would have 500 pounds of producer milk delivered to the plant, would make a diversion to non-pool plant of 600 pounds, would have a 9()c receipt on its report of 100 pounds, so that some of those is 1,000 pounds and the current provisions say that they can divert up to 60 percent, so its maximum allowed diversion would be 600 pounds and under this scenario and under the rules we now have, their diversions would be maxed out. They would be doing the maximum amount that they could.

Q So, example one shows the maximum allowable diversions from a distributing plant under the present order language.

A That is correct.

Q What is different in example two?

A In example two, the plant now has 500 pounds of milk that it chooses to divert to a non-pool plant --

Q To a pool plant.

A I'm sorry, to a pool plant, correct, and by the way the order language reads and the calculation procedures that follow, you now add 500 plus 500 plus 600 minus 100 and you have 1,500 pounds and the 60 percent diversion says now we can divert 900 pounds to a non-pool plant.

So, by arranging for a diversion to a pool plant, the amount that is divertible to a non-pool plant increases and again, this is because there is a silent spot in the order language that accommodates that and column three simply runs through this same thing, just increasing that 500 to 1,000 and so you have a multiple factor that allows you more for diversions and we don't think that that was the intention. We think that perhaps that was an oversight, so we would offer some language to correct that.

Q So, the particular language in the order that this is intended to illustrate is the language that in included -- that Ms. Uther described this morning in which -- there is no specific limitation in the order with respect to the volumes that a distributing plant can divert to pool plants.

A That is correct. It simply becomes a mathematical construct now to raise, if you will, the diversion amount to a non-pool plant. And we will offer some specific language in Mr. Rasch's statement to address this.

MR. BESHORE: Thank you. And with that, Mr. Hollon is available for cross-examination, Your Honor.

JUDGE CLIFTON: Thank you, Mr. Beshore. Mr. English?

CROSS-EXAMINATION

BY MR. ENGLISH:

Q Charles English, Suiza Foods Corporation. Mr. Hollon, for that last exchange with Mr. Beshore, the language that Mr. Rasch is going to offer is a further refinement to the amendments that are already in the order?

A That is correct.

Q That is not something that you and I could discuss right now, because Mr. Rasch is going to offer it.

A That's correct.

Q With respect to one other issue, it occurred to me perhaps a little late and I apologize, one issue is that proposal two, the second part of proposal two deletes the present (c)(4) and places in it new language, which as I read it, would be like a net shipments provision.

A That is correct.

Q That is to say, the 30 percent shipping requirements is a real hard 30 percent shipping requirement in that you can't pump it in and pump it back out. It's going to have to be 30 percent shipments.

A That's an accurate and good description. That's right.

Q And it occurred to me that at least as the order is presently written, you have plants qualifying as pool plants under C, D and F, all of which have one way or the other, built into them the same shipping requirement of 30 percent.

A That's correct.

Q F, in fact, specifically says that in order to qualify under F as a system and supply plant, that the individual, the plants have to meet the requirements of C, correct?

A Yes.

Q And the question I am raising with you is that if you adopt proposal two, the second part, deleting (c)(4) and inserting this net shipment provision, that will leave you in the position of F being taken care of, but by its nature, D, which is a plant operated by cooperative association, also having 30 percent, but it wouldn't have a net shipment provision.

A That is correct.

Q Do you agree with me that for equity purposes and consistency with having those rules all be the same, that adopting the second part of two would also suggest the need to adopt a similar provision in D?

A Yes, I think that would be a good practice, because it would prevent the temptation to try to set up a scheme -- and it was an unintended consequence of our language, so I would support that idea.

Q And that would be consistent with proposal 10 for the department for making changes necessary --

A Yes.

Q And as far as you know, your other members support that as well?

A As far as I know, yes, the other members support that.

MR. ENGLISH: That's all the questions I have. Thank you.

JUDGE CLIFTON: Thank you, Mr. English. Other questions for Mr. Hollon? Yes, Mr. Yale.

CROSS-EXAMINATION

BY MR. YALE:

Q Mr. Hollon, at the beginning of your testimony, you referred to Continental Farms Cooperative.

A Yes

Q During the break, we had a discussion. Do you know what the correct name of that is?

A It is not what I reported as Continental Farms Cooperative. It should be --

Q Continental Dairy Products, Inc.?

A I would request that every place where I have Continental Farms Cooperative, it be changed to Continental Dairy Products, Inc. It was my mistake.

Q And the farms that are listed under that, you said there were three states. Do you know what three states those are?

A Indiana, Ohio and Michigan.

Q And they are all located within the marketing area.

A They are all located in the marketing area.

MR. YALE: I have no other questions.

JUDGE CLIFTON: Thank you, Mr. Yale. Other questions for Mr. Hollon? Yes, Mr. Tonak?

CROSS-EXAMINATION

BY MR. TONAK:

Q I didn't catch you out in the hallway, so I will take this opportunity to clarify a couple things. In Exhibit 13, table nine where we calculate the impact of the PPD because of the distant milk being pooled --

A Yes.

Q Under the pool value protein, I am assuming that that is the producer's protein value?

A Yes.

Q So, along with the butterfat value and so on.

A Correct.

Q And I am also assuming as I look at this that when you adjust for the milk that is not historically associated, that you are not allowing any value for that milk other than those producer protein values, the other solids value, the producer butterfat value?

A The component value would be deducted. It comes off pool sheets and would have been taken out of that volume of milk also.

Q But in the case that some of this milk from the distant market diverting or being allocated to Class IV utilization, you are not making any adjustment or attempting to make any adjustment for a difference in value between the Class IV non-fat solids and the producer protein and other solids value?

A No.

Q So, when we look at the impact of the dollars from this pooling, this could be stated as a maximum impact and in all likelihood if milk was in this non-historically associated milk -- if some of that milk is allocated to a Class I utilization or into a Class II usage, Class IV usage, depending on price relationships, those values are not calculated. You have no way of calculating them really?

A I don't, but I think -- if you did have a way, you would calculate it for the before and after and I think they would be the same. So, I don't think once you get to the net it has an effect. It would be just like the protein value. It would be the same on either side of equation, so it's taken out, so I think in that case, what you are saying is that milk is allocated to III or IV, it may make a different contribution to the total pot. I am not trying to adjust for that, but I think in either case, it would make the same contribution.

Q Where does the contribution for the computed adjusted pool value come from?

A It's a subtraction of total pool minus all those pieces.

Q And those dollars in that pool would be the Class I skim value difference to the --

A I'm sorry. You said the pool value adjusted --

Q I apologize for not doing a good job of getting the question to you.

A It's 138 minus -- in the June 2000, it would be 138 minus 47, minus 56, minus two, minus 168, minus 41. You are left with 31.

Q Basically, that is the Class I differential value?

A Mm-hmm.

Q Class IV differential value, if there is one.

A All of the values would be in there.

Q And some of the milk that has not been historically associated with the pool was allocated into Class I, Class II and Class IV, they would have had -- added value to the pool that otherwise would not have been there.

A Yes.

Q And in that regards, your blend price impact is overstated, if these things happened, which they did.

A Well, again, I think it would be on both sides of the equation, so if you want to take them out, you would be taking out some of those dollar values and you could adjust four cents up or down, depending -- if you were able to make that calculation or not, I think.

Q If I had milk in this, not historically associated milk, and it shipped to a Class II usage and on that milk there was a 50 cent payment to the pool, that payment and the added value to the producer's PPD for milk not historically associated with the pool is not taken in to account in your impact analysis; is that correct?

A To make the assumption, yes, and then nobody else would feel that value, nobody else would make that sale. So, if it were a higher value, it might come from some other place, but if you make the assumption that nobody else would make that sale, then, yes, you are right.

Q Of if they pool the milk on another order and made the sale.

A Could have.

Q Either way, it's added value that is not -- the milk not historically associated with the pool has added pool value that is not adjusted for in your PPD computations.

A Under that assumption, yes.

Q And on page 22, the first full paragraph of your statement, when you are referring to price surfaces and this is more of a point of clarification for myself, but when I hear the term price surface, I think of the Class I price surface. Is that what you are referring here?

A Yes.

Q So, we are talking -- just make sure we are on the same wave length -- we are talking that the Class I price surface -- and one way of stating it for Chicago is $1.80 Class I differential and the surface in Cleveland is a $2 differential.

A Yes.

Q And your philosophy here is that as this was developed there was no thought given to where the counties were located at that had those Class I price surfaces assigned to them?

A No, no, the thought was that the models -- to milk supplies assigned to the counties and to milk demand in assignment of population centers and to the transportation cost and said fill all of the demand from this supply and minimize this transportation cost and that is the general methodology for those types of models. But there are not equations or there are not ways of modeling that we are going to have a big pocket of milk out here that is associated with this demand, but doesn't actually move to supply it.

So, the price surface can't account for that in its computation method. The computer can't do that. When we generated this set of prices as price surface, it assumed that when the demand was filled, they used all their milk supplies.

And now we have milk supplies that are associated with the area's demand and these price surfaces, but the model never included them, because you can't model that.

Q You mean the model was wrong in how it allocated the prices surfaces?

A No, that the exploitation that is going on now is wrong.

Q So, the Class I price surfaces as they were established in looking at milk production areas, milk demand areas were basically correct and now market courses and whatever else is causing milk to move in unintended manners?

A The models establishing prices surface under principles that seemed to be sound and the current exploitation of those principles are what is giving us problems.

MR. TONAK: Thank you.

THE WITNESS: You are welcome.

JUDGE CLIFTON: Thank you, Mr. Tonak. Any other questions for Mr. Hollon. Yes, can you come to the podium?

MR. HAHN: Jim Hahn with Land O'Lakes.

JUDGE CLIFTON: And your name is spelled?

MR. HAHN: H-A-H-N.

JUDGE CLIFTON: Thank you.

CROSS-EXAMINATION

BY MR. HAHN:

Q Good afternoon.

A Good afternoon, Mr. Hahn.

Q I think you are going to find that Land O'Lakes agrees with a lot of the proposals presented here this afternoon on behalf if DFA and the others. We do believe in performance oriented pooling, but I do have some questions for you.

In your direct testimony, you indicated that there were seven criteria that were listed by USD in defining marketing areas. Would you agree that not all seven criteria would necessarily correspond to the same marketing area? In other words, that there may be some contradictions.

A I would have to say that in general some criteria carries more weight than others depending on market area. In fact the final rule says that, that some carry more weight from time to time.

Q Would you agree that fluid sales carries more weight than the procurement area in an area defined as a marketing area?

A Why don't you try that again. Does fluid sales mean what I sell to someone or does it mean competition?

Q Fluid sales -- the boundaries defined as a marketing area have more to do with fluid sales defining a marketing area as opposed to procurement area?

A No, fluid sales means the competition of handlers within a geography for the Class I business or does fluid sales mean a sale from California to New York of Class I use? Which definition --

Q Package sales. I'm sorry. Package sales.

A So, handler competition in packages sales, yes, I would agree that that is a primary criteria.

Q Thank you. Would you agree from the final decision that we have not adopted open pooling?

A Yes, the final decision did not recommend or adopt open pooling.

Q So, pooling today is based on performance standards?

A Yes.

Q And that milk should be allowed to perform in the most cost effective manner -- I believe you stated that on page 22 of your testimony.

A That milk should be allowed to perform -- I think you probably need some more qualifiers, but in general, yes, cost effectiveness should carry some weight.

Q Is it reasonable to assume that virtually all the milk currently pooled on Order 33 will be pooled on some other order if in fact it is not pooled on Order 33?

A Yes, I would say it would be reasonable to assume that.

Q Does this not mean that a different Federal Order will carry the reserve currently being associated with the Mideast order, at least to some extent?

A Does reserve mean any volume that is pooled now, is the definition of reserve or do you have a more --

Q Class III and IV.

A The total?

Q Yes.

A The current amount of Class III and IV that is on 33, I don't think you could call that as reserve. It's too high a number.

Q But if the milk that you are referring to in your testimony is not allowed to be pooled on Order 33, defining that as a reserve supply or as part of the reserve supply that is currently pooled on Order 33, if that is not allowed to be pooled and is in fact pooled on some order, does that not mean that a different Federal Order will carry that volume of milk, for lack of a better term?

A I don't think you could make that blanket assumption. Let's look in June of 2001. There was 803 --

JUDGE CLIFTON: Which table?

THE WITNESS: I'm sorry. Table four. There was 803 million pounds of Class III and 97, 98 million pounds of Class IV. That combination, 900 million pounds, you have this pooled under Order 33, but I wouldn't call that Order 33 reserve. That is well in excess of what I need to reserve in 33.

BY MR. HAHN:

Q But wouldn't you agree that if at least a portion of that reserve supply of milk is not pooled on order 33, it will be pooled on some other order?

A Yes.

Q And it would then constitute a reserve on the other order?

A It may, but if half of that was a reasonable approximation of Order 33's reserve and half stayed and half went, I wouldn't say that the half that went -- that some other order is carrying Order 33's reserve.

Q No, but it would become reserve supplies on that other order, would it not?

A Yes.

Q Thank you. Was there anything in the final decision relative to Federal Order reform, which precluded milk produced in one marketing area from associating in another order provided the performance requirements are met?

A Straight out, no. The purpose of this hearing is to look at some of the performance requirements and see if they are reasonable, if they match up right and our point of view in some of the proposals is that they don't.

Q But again, was there anything in the recommended final decision which would preclude that milk to be pooled? In other words -- I am going to paraphrase, but did that final decision indicate that there would be some volumes of milk that would be pooled across orders?

A I'm not familiar with that. It may well have said that, but I am not familiar with it.

Q Is it not the intent of Federal Order blend prices to attract milk to orders which are deficit? In other words, we heard this morning from one of the dairy producers in the Mideast order that this is a deficit order and we can discuss whether it's deficit or not, but in fact, isn't it one of the intentions of the Federal Order program to attract milk to blend prices of higher orders defined as deficit?

A Yes.

Q We heard in testimony this morning that give up charges of $4 were being requested from handlers on the Mideast order and those shipments actually weren't made. Do you not agree that handlers that are servicing the Mideast order on a daily basis, on a year around basis, should share in the blend price generated by the Mideast order?

A Why don't you define service as part of your definition? If service means shipping one load of milk and pooling 33 million pounds, I wouldn't call that -- I would not define that as service.

Q Two loads of milk? We don't need to go there.

A There is a good joke that goes with that.

Q Elvin, do you believe more orderly marketing exists with extremely disparate blend prices between adjoining orders or blend prices which are allowed to equilibrate to the point of the transportation costs and differences in utilization?

A I think it would be pretty difficult to answer. I don't think I could handle that. I would need some more time to answer that.

MR. HAHN: Thank you.

JUDGE CLIFTON: Thank you, Mr. Hahn. If you do have business cards to leave with the court reporter and Mr. Tosi, I would appreciate it.

Other questions for Mr. Hollon or should we give him 10 minutes to figure out the answer to the last question? Mr. Yale?

CROSS-EXAMINATION

BY MR. YALE:

Q Since you slept at Holiday Inn Express, you should know the answer to that. Follow-up on Mr.

Hahn's question about the deficit in attracting milk. There is a table in there, is there not, that shows the percentage of Class I -- or the percentage of this extra milk that actually goes to pool distributing plants?

A That is correct.

Q What is that percentage?

A In the aggregate, that would be Exhibit 5, table -- Appendix C and it's entitled Producer Milk from Outside Historic Procurement Area Delivered to Pool Plants in Federal Order 33 Area. The low is .14 and the high is 6.56 and if you were to add up all of those pounds, which is 113 million pounds, and if you go back to the same months and see what the Class I sales were for those months, I think it comes out to about one percent.

Q So, assuming for a moment that this is a deficit market and you need to attract milk. Those procedures, this open pooling are not even satisfying that need, are they?

A That would be correct. You are not getting very much actually delivered, so your performance requirements -- it would be hard to say they were being met in the spirit of the law.

MR. YALE: Thank you.

JUDGE CLIFTON: Thank you, Mr. Yale. Other questions for Mr. Hollon? Mr. Carlson?

CROSS-EXAMINATION

BY MR. CARLSON:

Q Elvin, in page three, the top paragraph of your statement, you are stating we find this practice detrimental to our members, our customers and the entire Federal Order system. Is that your definition of disorderly marketing conditions?

A That would be part of that definition, yes.

Q The very next paragraph further down, we think this process of extensive distant market open pooling is inconsistent with Federal Order policy and clearly disparaged in the reform record. Again, would you term that disorderly marketing?

A Yes.

Q You have in a number of areas here, talked about one of the things that has changed with reform is the pricing surface, particularly the lack of location pricing from a market.

A Yes.

Q And you have said that that may be something that needs to be looked upon as we go on down the line.

A We are not proposing, nor advocating a change in the Class I differential surface. Pick your reasons from lack of political will to maybe lack of intellectual capital to develop a new one.

Q You have guessed my question. If it's part of the problem, why aren't you providing a proposal to solve that problem.

A But some of the proposals that we are making, do address that where we think we see some disconnects.

Q But location pricing, in your opinion, would help solve some of these things you see as disorderly marketing?

A The idea of maybe zone outs from the market could be a solution. We proposed some other solutions and we looked at that choice and just didn't pick it, but it could be a solution.

Q Another solution that you talked about at one time was having states outside the marketing area form supply units that would be required to meet certain standards.

A Correct.

Q You obviously turned that down as a proposed solution. Why is that?

A The group of proponents discussed a wide range of solutions and we felt like that after we went through them, we felt that these would be a better fit for this market than that particular solution.

Q But you are not wanting to keep milk off this market if it meets certain standards, isn't that correct?

A If the milk can economically perform -- understand similar to local milk, then they should be entitled to the market.

Q And does regularly perform.

A And does regularly perform, that is correct.

Q Question on the split plant thing that you referred to. Can you tell me what the difference is between a split plant and two separate plants? If you have a silo that is across the road, a receiving station and a silo across the road from your manufacturing plant.

A I guess in that case it would be in the eyes of the market administrator how the piping and pumping et cetera were set up. At a split plant, everything is under one roof.

Q So, what difference does it make if it's under one roof or under two roofs? Isn't the ability to do the things the same with two separate plants nearby, a grade A and a manufacturing plant as a split plant?

A If you had two separate plants, it could be feasible to do it.

MR. CARLSON: Thank you.

JUDGE CLIFTON: Thank you, Mr. Carlson. Other questions for Mr. Hollon? We are getting a little more creative. It's fun. Mr. Tosi?

CROSS-EXAMINATION

BY MR. TOSI:

Q Hello, Elvin. I have a few questions. Is it your intention to prohibit the pooling of milk in the terms as you describe in your testimony between historic and non-historic milk? Is it your intention not to be able to pool on Order 33 non-historic milk supplies?

A Not just on the basis of if it's historic or non-historic. That's not a criteria or definition for the standard. It's something to help us identify where some of the volumes are, but just because you didn't used to be here, that is not an acceptable reason for why you can't be here now. It has to revolve around can you perform in a reasonable method that is consistent with the market.

Q Thank you. Is it your opinion that diverted milk should be considered a part of the supply of the plant that diverts the milk?

A I need some more definite --

Q I'll give you a scenario.

A Okay.

Q You are a distributing plant, for example, located in Cleveland. When there is currently a lack of diversion limits for that distributing plant -- there is no diversion limits established on that plant, to the extent that that plant diverts milk, would you consider all of the milk that is diverted from that plant part of the supply of that plant?

A Yes.

Q And in that regard then, what criteria then would you recommend that the department consider in deciding where you want to establish a diversion limit between, say, 60 percent and 70 percent?

A That gets to be a pretty hard call and the best definition I can give you is as we discussed it amongst our five proponents, that was the place where we felt that we could settle at -- 60 in some months and 70 in some months. We felt there should be some flexibility during the calendar year and that those represent reasonable limits. I'm not sure if we can come up with a mathematical equation that you would plug in to get the answers, so we debated around for an hour and settled on 60 in some months and 70 in others.

Q So you in your deliberations with your colleagues, you thought that those numbers were reasonable?

A We debated from zero to 100 and talked about pros and cons of each, on the market, on the blend price and on our individual organizations and settled on those as something that the five of us could advance.

Q Now, let me go back to this number of 60 or 70 depending on the months being reasonable numbers. So, in a situation that we currently have where there are no diversion limits, for example, in a distributing plant, then all the milk that that plant is able to pool through diversions, would you consider all of that milk then to be a part of the integral supply of that distributing plant?

A We end up with a pretty excessive supply there. Some of the tables that we have demonstrate that, so there is a certain level of acceptance that we just can't find reasons to live with and we made some proposals to try and affect that.

Q Also, I just wanted to clarify something when Mr. Tonak was asking questions of you. You termed -- you used the term exploitation of principles regarding pooling. Could you please elaborate on what you see as the exploitation that is taking place right now?

A In the final rule, milk was given what we consider an absolute value and we somehow had a disconnect between distance for example from market and part of that I have come to conclude as part of the models that we used

-- not that they were bad in any way. They couldn't relate to some of the things -- for example, do we have a zoned up price to deal with? So, we now have situations where all of the folks in this room can find some of those distances and blend price discrepancies. If I can associate milk from here to here, I can collect a value greater than I thought I could before and greater than it would be worth if I had to make this transaction every day or even if I had to make -- if it was a reasonable reserve supply. So, that area seems to be the area of exploitation that in the final rule when open pooling was discussed and some of the phrases and terminologies and analyses that were done, we would consider that to be exploitation of the provisions. And we are a participant in those. I can't stand up and say that we don't do those, but comparatively, you are forced to do it to keep up.

So, some of the things that we proposed in some of the other hearings and some of the specific proposals we have today, we want to put in our view some more reasonable limits around that to make sure that milk that shares in the blend price performs to the market and bears some relation to the market needs before it gets to share the blend price.

Q Let me see if I can summarize to make sure

I understand it. Your explanation of exploitation is using what is currently there, the provisions that are currently provided for, as currently written, to use them to your maximum advantage, rather than say, as opposed to, say for example it is your opinion that the order falls short in the adequacy of some of its provisions that enforce the principles of pooling that were articulated in the final rule on order reform.

A That would be a fair summary. Again, I think a really good example of that is the idea of being able to use direct delivery milk to qualify supply plants. I really don't think that anybody had the idea that you would take milk from Hawaii and associate it with New York by taking milk one county away from New York and associating with the Hawaii supply. Nobody had that idea.

So, when some of those things were put together, we just didn't contemplate those. But now, we see that somebody, whoever it was, thought it was a good idea, from the standpoint of being able to enhance your revenues. So, they moved to take advantage of it. But it's not good for the system and orders are too important for dairy farmers to allow those kinds of things to create discord in this orderly market.

So, that is a really good example of a good intention, but somebody that has come up with a way to make it do something it probably wasn't intended to do to start with.

Q Thank you for those answers. One other question. To your knowledge, has the department ever taken a position or stated as its purpose that its intent is to align producer blend prices?

A No, I am not aware that it did. That is the only goal that there is out there.

Q Do you know -- to the best of your ability, can you articulate what the department's position is on blend prices?

A Well, I think the act says to assure and adequate supply of milk for uses and from there, everything else flows, so if A divided by B equals C this month, lines up perfectly nationwide and the math worked out in that case and if there is some difference in that, then did itM<M<M<M<M. But I think that that is a mathematical end result, that it didn't start out that way. If it ends up that way, that is how the math came out for that month.

Q Would you agree that producers make their longterm decisions on which market they choose to pool on the basis of blend prices?

A I think that factors in, but the location of that market -- if you could say everybody would like to be pooled in Florida and that is the highest price. But unless you can satisfy that market, get to that market, get access to that market, get hauled to that market, that is not a realistic thing. So, you generally are going to look and see what is around you and I think somebody said this morning that if Florida is better, maybe moving to Florida is the way you take advantage of the Florida blend price, not just some other way.

It's hard to say that somebody looks five years down the road, checks the blend price and makes all their business decisions on that.

MR. TOSI: Thank you very much. I appreciate it.

JUDGE CLIFTON: Thank you, Mr. Tosi. Yes, Mr. Carlson?

CROSS-EXAMINATION

BY MR. CARLSON:

Q I would like to follow up on some of the questions Mr. Tosi was asking. Page 21 of your statement. The last two paragraphs where you are talking about the new phenomenon.

A Yes.

Q And you are talking about how there is an inducement --

A Yes.

Q -- to those producers. How do you mean inducement? What are they --

A Okay, on day one blend price is $12 and you and I are in this market and we both get $12 or maybe we get $12.05 and we are reasonably happy with what we have. And then somebody comes and knocks on your door and you live five miles from the market center and somebody a long way away comes to your door and says, I would like to be your milk handler and for that I will pay you 25 cents over the blend price. So, you say, okay, I will do that. And the ability of you making that decision with your milk volume enables a tremendous amount of new milk to get associated with the milk market. Now, instead of having a $12 blend price, we have an $11 blend price. But you get $11.25 and all your neighbors just get $11.

So, on the surface it seems like you would be very happy, because you were just get a nickel over the blend before. Now you are getting a quarter over the blend. The problem is that the whole level in the bathtub has dropped tremendously and the source of your newly found gain is your own money reblended back to you.

Q And the dairy farmers individual have a difficult time understanding that their decision may have cost them money when it comparatively makes it look like they have gained.

A That would be true of any consumer decision. In this case, it really comes home and you can see the whole picture, but, yes, that is right.

Q You say in the next paragraph that this was another standard that is good practice inside the marketing area, but not good for milk supplies located outside the marketing area.

A Yes.

Q Would you be opposed to a proposal that would say you can direct ship and meet your qualifying standards if you are located within the marketing area, but you cannot use direct ship if your plant is located outside the marketing area?

A I would not be opposed to that standard. We did review it and we think again that the proposal, the language we are going to offer is better than that, but I would not be opposed to that standard.

MR. CARLSON: Thank you.

JUDGE CLIFTON: Thank you, Mr. Carlson. Other questions for Mr. Hollon? Mr. Beshore.

REDIRECT EXAMINATION

BY MR. BESHORE:

Q Just one question in one area on redirect, Elvin. Mr. Tosi asked you a question about diversions associated with a distributing plant and whether you considered -- if I understood your question or your answer -- whether you considered those diversions to be part of the supply for that plant. The question to you is, do you as an economist and a milk marketer, in an economic sense under the present regulations where you have unlimited diversion rights many months of the year and you have testified that you can infer from all data with respect to milk being pooled in Order 33, that distributing plants in the order are associating with their "supply" diversions to distant locations in huge quantities. Are those diverted quantities of milk part of the supply of that plant in any economic sense?

A No, when you see the data that shows exactly what came to the market to be the performance side of that equation, it would be so small it would be hard to contemplate that that was part of the reasonable supply.

MR. BESHORE: Thank you.

JUDGE CLIFTON: If there are no other questions for Mr. Hollon, I will allow him to step down. Are there any more? There being none you may step down, Mr. Hollon. We will recall you later, I know.

(Witness excused.)

JUDGE CLIFTON: Mr. Beshore, who will testify next?

MR. BESHORE: Mr. Lee.

JUDGE CLIFTON: Will you come forward, sir? All right, Mr. Lee, would you state your full name and identify yourself, please.

THE WITNESS: My name is Gary Lee, G-A-R-Y, L-E-E. I would like to clarify the name of our company also. It is Prairie Farms Dairy, Inc. I am employed there as the vice-president of marketing and procurement.

JUDGE CLIFTON: Thank you. Would you raise your right hand, please.

Whereupon,

GARY LEE

called as a witness, after first being duly sworn, testified as follows:

JUDGE CLIFTON: Mr. Beshore?

MR. BESHORE: Mr. Lee has a four-page prepared statement, which includes data in tabular form and I would like to ask that the statement be marked as Exhibit 16 and received into the record as an exhibit. He will go ahead and present it without the necessity for reciting the tabular data on the third page.

JUDGE CLIFTON: And you have provided three copies to the court reporter?

MR. BESHORE: Yes, I have.

JUDGE CLIFTON: I would ask that those copies be marked as Exhibit 16.

(Exhibit 16 is marked for identification.)

JUDGE CLIFTON: Is there any objection to Exhibit 16 being admitted into evidence? There being none, Exhibit 16 is admitted into evidence.

(Exhibit 16 is received into evidence.)

JUDGE CLIFTON: And you have copies on that same table --

MR. BESHORE: Yes, I have a few more.

JUDGE CLIFTON: Who else needs a copy? Thank you. You may proceed, Mr. Beshore.

DIRECT EXAMINATION

BY MR. BESHORE:

Q Mr. Lee, you may proceed with your statement.

A Prairie Farms is a dairy farmer cooperative headquartered in Carlinville, Illinois. We would like to express our support for proposals one, two and three.

Prairie Farms operates three pool distribution plants that are qualified on the Mideast Order 1033. Those plant are located in Ft. Wayne, Indiana, Anderson, Indiana, and Galesburg, Michigan.

The plant in Ft. Wayne, Indiana processes a full line of fluid milk products, as well as cottage cheese, sour cream, dips, packaged ice cream mix and bulk products for a Class II processor.

The plant in Anderson, Indiana processes a full line of fluid milk products, a liquid dietary supplement for people receiving chemotherapy, which is a Class I product and bulk ice cream mix for an ice cream novelty plant that we operate in Lafayette, Indiana.

The plant in Galesburg, Michigan processes a limited line of fluid milk products.

In September 2001, we had 176 producer members located in Indiana, Michigan and Ohio whose milk was pooled on Order 33 and delivered to these three plants. Those producers provided approximately 19 million pounds of milk in September 2001.

We have no other producers located in the three previously mentioned states whose milk is pooled on other Federal Orders. We have no producers located in other states whose milk is pooled on Order 33.

We purchase additional supplies of supplement milk at each of the previously mentioned plants from other cooperative associations. These purchases take place each month of the year at each plant.

The amount of milk processed at the Ft. Wayne and Galesburg plants has increased modestly in recent years. The amount of milk processed at the Anderson plant has decreased during that time.

In the past three years, our producer members at these plants have fallen slightly, while our volume of producer milk has increased slightly.

We realize that those persons given the task of authoring the order reform had a difficult task and we do not want to anything that we say here to be regarded as criticism of that effort. However, as earlier testimony has shown, certain provisions in Order 33 may have made it too easy to pool milk on this order without that milk serving the market.

We do not want to see orders written so restrictive that pooling any milk supplies beyond normal basic Class I needs is impossible. However, we also do not want to see order written so open that pooling milk becomes their function, rather than serving the Class I handler.

As Order 33 is currently written, it allows for pooling quantities of milk far beyond the day to day needs of the market plus a reasonable reserve supply. Data provided at this hearing by the Order 33 Market Administrator show that Class I usage by Order 33 plants has been relatively stable since this order was formed. At the same time, the amount of Class II and

Class IV milk pooled on the order has increased a great deal.

We feel our members have been caused financial harm by these additional supplies of milk being added to the order without necessarily serving the market. These additional quantities of milk that may just be riding the pool and lowering the return to our members and our supplemental suppliers who serve the market every day.

I have a chart attached to this testimony. It shows the difference in statistical uniform price for Order 33 versus Order 30 since January 1, 2000. I made this comparison because producer milk located in the area covered by Order 30 has traditionally served as a reserve supply area for Order 33 handlers.

I won't go over the numbers. I am just trying to show that the spread and the blend price between Order 33 and Order 30 have narrowed to a point where it will not cover the cost of transportation, emphasizing the point that this market has become an order in which it is advantageous to pool milk. People are not necessarily wanting to be on this market to serve the market.

When we examine the lists of supply plants and cooperatives acting as handlers with milk pooled on Order 33, it appears that there are several here now who were not here before January 1, 2000. We have no problem with them being part of Order 33 if they are here to serve the market. However, if they are here to ride the pool on their own or as part of a pooling unit, they are causing financial harm to our members and other organizations that supply handlers throughout the year.

We support proposals one, two and three as a reasonable attempt to revise Order 33 so that enough milk is available on the order to cover day to day needs of the market with adequate reserves. At the same time, these proposals would reduce the ability to pool excess quantities of milk on the order that may be merely riding the pool rather than serving the market.

Q Mr. Lee, you have indicated in your testimony that you are vice-president of marketing and procurement for Prairie Farms Dairy, Inc. Could you just tell us a little bit about your day to day duties and responsibilities in that capacity with Prairie Farms?

A I oversee the purchase of all of our milk and our other dairy products, handling the marketing for our approximately 800 producers and then the supplemental supplies of milk that we buy from others, disposing of surplus at times when we have any, lining up supplies of condensed products for our ice cream plants as well as powder. I am also involved in purchasing coffee creamers and half and half and whipping cream.

Q Does that cover geographically Prairie Farm's operations in the areas of Order 33 you described as well as other areas?
A Yes.
Q Can you just indicate what those other geographic areas are so that your testimony has the context of your knowledge of the extended region.
A We also operate six plants that are qualified on Order 32. One of those is a cultured product plant. The others are fluid milk processing plants and within the Order 32 area, we operate another six plants that are not regulated, that are either cultured products plants or ice cream plants or butter plants. And then through joint ventures with Dairy Farmers of America, we have involvement in another eight plants that are also pooled on Order 32 and I have involvement with DFA from time to time on milk supply for those plants.
Q Order 32 is the order which regulates the marketing of milk in what is called the Central area?
A Yes.
Q Your plants are located in what states, your Order 32 plants?
A Our plants are located in Illinois and Missouri.
Q Illinois and Missouri?

A Yes, the joint venture plants are located in Iowa, Nebraska, Kansas, Oklahoma and Missouri.

Q From what areas are you involved in procuring milk for those plants, your own plants and joint venture plants in Order 32?

A For our own plants, from the farm portion of it -- the payroll, setting producer prices, working, supervising our field staff, working with our milk haulers and so on. I have a very limited involvement in the milk supply for the joint ventures, because through the joint venture agreement, that is DFA's responsibility and they mostly consult with us on issues of over order premiums or competitive conditions.

Q For the Prairie Farms plants in Illinois and Missouri, what geographical region do you procure the milk supplies for those plants?

A We have out own members located in Illinois, Missouri and Iowa and then again, we purchase supplement supplies from four other cooperatives. Some of that milk comes from Illinois, Missouri, a lot of it from Iowa, Minnesota and Wisconsin.

Q Some of those supplement supplies have been procured over the years from the Order 30 market and --

A Yes.

Q -- the Order 30 marketing area, correct?
A Yes.
Q You indicated in your statement at the bottom of the third page, right after the table, the observation of the narrowing of the difference in the blend price here. If I understand your testimony correctly, the effect that that has on the economics of procuring supplemental supplies from another area; is that correct?
A Yes.
Q And does it detrimentally affect the economics of securing those supplement supplies from another area?
A It has a detrimental impact on our own members and on our supplemental supplies.
Q Would it be fair to observe, to say that you have observed in your experience in procuring milk supplies for your fluid plants that differences in blend prices between Federal Orders can serve the positive function of providing economic incentives for milk to move on a supplemental basis between those areas when needed?
A Yes.
Q When the blend price differences are lessened without -- it lessens the economic incentive for the milk to move when needed.

A Absolutely.

Q And you observed that that has been happening in Order 33 as your testimony has indicated that.

A Yes.

MR. BESHORE: Thank you. I have no other questions for you.

JUDGE CLIFTON: Thank you, Mr. Beshore. Does anyone else have questions for Mr. Lee? There being none, you may step down.

(Witness excused.)

MR. BESHORE: At this time we would call as our next witness Anne Rady. She does have a statement which she is going to read. I am not going to ask that it be marked, but we do have copies available for persons in the room and the record and Your Honor.

JUDGE CLIFTON: Let's go off record for just a moment.

(Off the record.)

JUDGE CLIFTON: Back on the record. Ms. Rady, would identify yourself for the record, please.

THE WITNESS: My name is Anne Rady. That is A-N-N-E, R-A-D-Y.

JUDGE CLIFTON: Thank you. Where are you employed?

THE WITNESS: I am employed by Foremost Farms in Indianapolis.

JUDGE CLIFTON: Raise your right hand, please.

Whereupon,

ANNE RADY

called as a witness, after first being duly sworn, testified as follows:

JUDGE CLIFTON: Mr. Beshore?

MR. BESHORE: Thank you, Your Honor.

DIRECT EXAMINATION

BY MR. BESHORE:

Q Ms. Rady, you are employed by Foremost Farms in Indianapolis. Could you tell us what is Foremost Farms?

A Foremost Farms is dairy cooperative. We are based in Baribou, Wisconsin. We have a facility in Indianapolis, Indiana that does marketing --

JUDGE CLIFTON: You need to pull the microphone a little closer.

BY MR. BESHORE:

Q In what capacity are you employed by Foremost Farms?

A My title at Foremost Farms is office manager and I manage the office in Indiana, which is responsible for being the agent for the Mideast Milk Marketing Agency currently.

Q In that capacity as office manager in Indiana, what are your duties and responsibilities?

A My primary duties and responsibilities are to direct milk marketing to the handlers in Indiana that are part of the Mideast Milk Marketing Agency.

Q How long have you been involved in that area of responsibility in Indiana?

A Twenty-five years.

Q So that was with Foremost Farms and some of its predecessors?

A Associated Milk Producers, yes.

Q You know the Indiana market pretty well?

A Pretty well.

Q And you have some testimony that you have prepared with respect to the Indiana market in support of proposals one through five.

A That is correct.

Q If you would go ahead and proceed with your statement.

A Thank you. Hoosier Milk Marketing Agency was formed in 1974. Its purpose was to supply raw milk to fluid bottlers in Indiana regulated under Federal Order 49. The agency was comprised of milk supply from co-operative members and marketed to handlers and established monthly premium. The premium was expected to pay for costs generated to obtain supplemental supply in the fall months and dispose as surplus supply in the spring months and holidays.

In addition, all freight costs associated with this milk movement would be absorbed by the agency premium. Any premiums remaining would then be distributed back to the member cooperatives, which in turn was paid back to the co-operative dairy farmer members.

I have been directly involved in marketing and balancing Hoosier's milk supply since 1975. Despite consolidation and sellout of fluid handlers and the past 25 years, Hoosier continued to market for August 2000 in excess of 100 million pounds of milk per month to customers including Dean Foods, Prairie Farms in Anderson and Fort Wayne, Crossroad Farms, all in Indiana, and Dannon Company in Minster, Ohio. Hoosier marketed nearly 70 percent of all milk regulated under Federal Order 49.

All of these plants are now customers of the Mideast Milk Marketing Agency (MEMA) which was formed in September 2000. MEMA was formed following Federal Order Reform as to separate agencies, Central Valley Milk and Hoosier, and have a common goal to service customers in what has become a much larger geographical area including Indiana, Ohio, West Pennsylvania, Western Kentucky and West Virginia.

The customers of Mideast Milk Marketing Agency have been purchasing milk from either Hoosier or CVM for a number of years and recognize the benefit of the agency's service. Once a week, we are in contact with each of our customers as they place their raw milk order for the following week.

Depending on seasonal needs and production, it may be necessary for the agency to obtain additional raw milk supply or perhaps dispose of too large a supply as in the spring flush or the holiday season. In addition, we are in contact monthly with all customers to announce over order premiums and review any challenges such as quality or receiving.

Due to the changing customers needs, in addition to variation and production, the agency has need to secure additional volumes of milk for the period of mid-August for mid-November. Generally, as school returns to session, a raw milk needs increase.

Annually, both agencies secured supplemental supply, most of which comes from long distances outside the marketing area. These negotiations usually beginning June orderly July and will be comprised of a specific find him of milk at a fixed price significantly greater than our return premium. Hoosier generally had a need for approximately 5 million pounds per month and MEMA requires an average of 30 million pounds per month.

Likewise, during months of increased production and decreased sales generally beginning in late April and continuing through mid-July, the agency assumes responsibility to sell any volume not required by our customers. This will result in sales to manufacturing plants such as Farmers Cheese and DFA Goshen, which are both within our marketing area and to plants as far away as Wisconsin and Minnesota.

This past flush season, MEMA averaged sales to manufacturing plants outside the marketing area of nearly 12 million pounds per month. Hoosier generally was able to sell its surplus primarily to DFA Goshen except for major holidays.

Often, these manufacturing sales are negotiated at a rate per hundredweight much below class pricing. In both cases, the cost to purchase, move and dispose of milk are borne by the members are the agency resulting in the co-operative patrons been paid a lesser premium on their checks.

All in all, both agencies, Hoosier and MEMA, secure enough raw milk through its member cooperatives and other suppliers within the marketing area to service is customers on a twelve-month basis with fall needs being an exception.

I cannot see any reason why our marketing order should have two to three times the milk supply to service its handlers.

Q Ms. Rady, this may be covered in your statement, but so there is no question about it, since January 1, 2000, have the handlers that you supply had increased demand proportionate to the additional pooling of milk that have been shown on Order 33?

A No, they have not.

Q In the bottom paragraph on the first page of your statement, you referred to negotiations in June or July relating to acquiring specific volumes of milk at prices significantly greater than your regular premium. Did you mean fixed prices or fixed premiums? How are those negotiations usually --

A This would be fixed premiums that the Agency would agree to pay for supplemental supplies.

Q So, it's a fixed amount above whatever the base price will end up being during this period of time.

A Correct.

MR. BESHORE: Thank you. I have no other questions for Ms. Rady. She is available for cross-examination.

JUDGE CLIFTON: Thank you, Mr. Beshore. Additional questions for Ms. Rady? Mr. English?

CROSS-EXAMINATION

BY MR. ENGLISH:

Q I realize that Mr. Rasch will talk about specific proposals, but one of the proposals or a series of proposals would make some changes to provisions with respect to months as to diversions, producer milk, all of those definitions. As I read those proposals, August is not presently sort of a higher performance month. It's placed with September through November, but it's correct that the proposal would place August with September through November, correct?

A Right.

Q Would it be fair to say that your statement at the bottom of page one which respect to the need to secure additional volumes of milk for the period mid-August through mid-November is tied directly to that proposal to add August as a higher performance month.

A Yes.

MR. ENGLISH: Thank you. That's all I have.

JUDGE CLIFTON: Any other questions. Mr. Carlson?

CROSS-EXAMINATION

BY MR. CARLSON:

Q Anne, you have said that you are now needing to purchase an average of 30 million pounds of milk per month as part of the Mideast Marketing Agency; is that correct?

A For supplement supply, yes.

Q For supplement supply. Now, with this additional milk that has been added to the market, as some people said, that is part of the reserve supply. Has that made it easier for you or less easy for you or the same to acquire this supplement supply?

A I have seen no change in ability to acquire the supplies.

Q You still have to go out and actively negotiate with suppliers that may or may not be on the market; is that correct?

A That's correct.

MR. CARLSON: Thank you.

JUDGE CLIFTON: Thank you, Mr. Carlson. Yes, Mr. Hahn?

CROSS-EXAMINATION

BY MR. HAHN:

Q Ms. Rady, in reference to Mr. Carlson's previous question, do you through your agency arrange for all of the milk supplies, all of the distributing plants in Order 33?

A The ones that are involved in the Mideast Milk Marketing Agency. That would be exclusive of Michigan.

Q That includes all of the distributing plants in Order 33 exclusive of Michigan?

A Of Michigan.

Q And includes all of the Dean plants?

A The ones that are participating in the Agency.

Q Not all the Dean plants participate.

A That is correct.

Q So, then you wouldn't necessarily be involved in negotiations for additional supplies for those plants; is that correct?

A That's correct.

Q This may be before your time. I know it is. supplies of Wisconsin milk serviced the Indiana market prior to Federal Order reform, did they not?

A Yes.

Q I can recall as far back as the mid 70s and in your statement you indicate Hoosier was formed in 1974.

A Yes.

Q I can recall the predecessor co-op to Foremost Farms being Wisconsin Dairies had volumes of milk pooled on Order 49; is that not correct?
A I do not recall Wisconsin Dairies having milk pooled on the order.
Q What about AMPI?
A AMPI had milk pooled on the order, yes.
Q To the extent of about 100 million pounds of milk in a 250 million pound market?
A I couldn't answer that question in volume at all.
MR. HAHN: Thank you.
JUDGE CLIFTON: Thank you, Mr. Hahn. Other questions for Ms. Rady? Mr. Beshore?

REDIRECT EXAMINATION

BY MR. BESHORE:

Q Just one follow-up with respect to Mr. Carlson's question. Is it your testimony, Ms. Rady, with 25 years experience in being involved in making milk supplies available to handlers in Indiana that the additional pooling of hundreds of millions of pounds of additional milk in Order 33 has not made that milk more available to the market when it's needed to supply the handlers in the market?
A That is correct.

Q In fact, you have still got to pay huge give-up charges in order to get the milk to the market; is that correct?

A That is correct.

Q Even though with the milk being pooled here already, the local producers who are supplying the market day in and day out have had their price blended down already by the additional milk, correct?

A That is true.

Q And you have still to got pay some of the same sources of supply additional give-up charges, correct?

A That's correct.

Q And several dollars a hundredweight not unusual.

A That is not uncommon.

MR. BESHORE: Thank you.

JUDGE CLIFTON: Thank you, Mr. Beshore. Any other questions for Ms. Rady? There being none, you may step down. Thank you.

(Witness excused.)

MR. BESHORE: Our next is Ken Stromski.

JUDGE CLIFTON: You may be seated, Mr. Stromski. Let's go off the record for just a moment.

(Off the record.)

JUDGE CLIFTON: We are back on record. It's approximately 4:01 p.m. Mr. Stromski, would you identify yourself. Begin please by spelling your names.

THE WITNESS: Ken Stromski, K-E-N, S-T-R-O-M-S-K-I.

JUDGE CLIFTON: I think you are also going to need that microphone pulled closer to you. That's better. And would you tell us your employment.

THE WITNESS: I am employed by DFA in the Mideast area currently in Ohio.

JUDGE CLIFTON: Would you raise your right hand and I will swear you in.

Whereupon,

KEN STROMSKI

called as a witness, after first being duly sworn, testified as follows:

JUDGE CLIFTON: Mr. Beshore?

DIRECT EXAMINATION

BY MR. BESHORE:

Q Mr. Stromski, you are employed by Dairy Farmers of America at what location?

A Fairlon, Ohio.

Q Fairlon? In what capacity are you employed by DFA?

A I am the manager of fluid milk

distribution.

Q For what region?

A For the Mideast area of DFA, which includes most of Federal Order 33.

Q What are your duties and responsibilities in that capacity?

A I have dispatch responsibility for member milk, pooling responsibility for pooling the producer milk, milk marketing and I'm responsible for administration of agency programs throughout that area to the agency customers.

Q Prior to being employed by DFA, were you self-employed for a period of years?

A I was self-employed for a period of years.

Q In what field?

A I was a dairy farmer.

Q How long were you a dairy farmer?

A From 1975 to 1990.

Q During those years, were you a member of a marketing cooperative?

A I was a member of Milk Marketing, Inc.

Q Did you hold any offices within Milk Marketing, Inc.?

A I was second vice-president the board of directors in Milk Marketing, Inc.

Q Did you hold a position with any regional cooperative organization over the years?

A After my self-employment, I was employed by a milk <M<M<M<M<MMM that never really functioned, but tried to function Federal Order 36 area in the late 80s.

Q Were you also a board member of the Regional Cooperative Marketing Agency in the northeast?

A Yes, I was.

Q How long have you been employed by DFA?

A Since 1992.

Q You described your duties in your present capacity and you have a statement to present with respect to your support for the proposals one through five as they affect your particular areas of responsibility. Would you proceed with your statement.

JUDGE CLIFTON: Mr. Beshore, given the names and the statistics within this statement, even though it's just one page, I would like to make it an exhibit.

MR. BESHORE: I have no objection to doing that. We can certainly do that. It would be Exhibit 17.

JUDGE CLIFTON: That's correct. Do you have enough copies for the court reporter?

MR. BESHORE: Yes.

JUDGE CLIFTON: And Mr. Stromski has extra, too. Does the court reporter now have three? All right.

(Exhibit 17 is marked for identification.)

MR. BESHORE: I would ask that Exhibit 17 be received in due course.

JUDGE CLIFTON: Yes, I will allow him to testify first and then we will do that.

BY MR. BESHORE:

Q Would you then proceed, Mr. Stromski.

A Central Valley Milk and the Federal Order 36 Equalization Agency operated in the former Federal Order 33 and Federal Order 36 areas for approximately 30 years. Both agencies functioned to balance their respective markets by acquiring supplemental supplies in fall months and disposing of surplus supplies in the spring months and holidays.

A premium was charges customers to cover the cost of balancing, including give-up charges and hauling. Proceeds in excess of balancing costs were distributed back to dairy farmer organizations, which were passed on their members.

Supplemental purchases from mid-August to mid-November range from 15 to 20 million pounds per month.

Manufacturing plants such as Goshen and Farmer Cheese serve to balance the majority of spring and holiday surplus.

The amount o milk participating in these two agencies varied from year to year. CVM handled approximately 175 million pounds of milk per month and the 36 agency, 90 million pounds of milk per month in the last quarter of 1999.

The agencies represented about 50 percent of producer milk in the geographical area. the two agencies served the following customers: Sterling Milk Company, Country Fresh in Toledo, Reiter Dairy in Springfield, Tamarack Farms in Newark, Smith Dairy in Orville, Smith Diary in Richmond, Broughton Foods in Marietta, Meyer Dairy in Cincinnati, Ohio, Trauth Dairy in Newport, Kentucky, United Dairy Farmers in Cincinnati, United Dairy in Charleston, West Virginia in the Federal Order 33 area.

In the Federal Order 36, it was Dean Dairy in Sharpsville, Pennsylvania, Meadow Brook in Erie, Oberlin Farms in Cleveland, Ohio, Reiter Dairy, Akron, Schneider Dairy, Pittsburgh, Superior Dairy in Canton, Ohio, United Dairy, Martins Ferry, Ohio Fikes & Sons Dairy in Uniontown, Pennsylvania.

Three separate agencies, 36 Agency,

Central Valley Milk and Hoosier, were consolidated for form Mideast Milk Marketing Agency in September of 2000. The geographical area remains the same as three predecessor agencies. All of the plants served by the previous agencies are now customers of MEMA.

Supplemental purchases from mid-August to mid-November are approximately 30 million pounds. These customers placed their order weekly with agency personnel. Division managers regularly visit plants to discussed pricing and the customer's changing needs.

In conclusion, I believe the market is the same today as it has been for years. The customers and their requirements have not changed significantly. The amount of milk available to serve customers is also similar. Therefore, I do not believe the additional reserve supply of milk that had resulted from Federal Order reform is necessary to meet market needs.

MR. BESHORE: Thank you, Mr. Stromski. I would move to the admission of Exhibit 17 and Mr. Stromski would be available for any further questions of any interested persons.

JUDGE CLIFTON: Thank you, Mr. Beshore. First of all, is there any objection to the admission into evidence of Exhibit 17. There is none and Exhibit 17 is hereby admitted into evidence.

(Exhibit 17 is received into evidence.)

JUDGE CLIFTON: Questions for Mr. Stromski. Yes, Mr. Yale?

CROSS-EXAMINATION

BY MR. YALE:

Q Good afternoon, Mr. Stromski. Ben Yale for Continental Dairy Products. Mr. Stromski, you indicated that -- and I am paraphrasing -- but there is an adequate supply to meet the Class I needs of this Mideast market at the present time; is that correct?

A Yes, except for the supplemental --

Q From time to time.

A Yes.

Q And would you characterize most of that milk as local milk or distant milk?

A The milk that meets the --

Q Right.

A -- Class I needs on the regular basis would be local milk.

Q I want to ties some things together. You indicated earlier that I think one of your first jobs outside of being self-employed was working with the Producer Equalization Committee?

A Yes.

Q What was the purpose of that PRC?
A It was a pricing agency attempting to price all the milk within the Federal Order 36 area at that time.
JUDGE CLIFTON: Let me stop you first just a minute. I think the problem is he is looking toward the questioner and the mike isn't there. Let's see if that will work.
BY MR. YALE:
Q These aren't trick questions. We're on the same time.
A Do you want me to look away?
Q Might be better for you anyhow. The reason you wanted to price this milk was what? Was it not to get more money to producers?
A Yes, to enhance dairy farmer's income.
Q And the reason for that was basically to maintain the supply of milk that was there, wasn't that true?
A If we enhanced dairy farmer's income, it will do that.
Q Now, there has been some testimony comparing to PPDs, that show some significant changes between what would be with or without this distant pool, this outside milk -- sometimes as much as 70 or 80 cents

and we also had some producers testify earlier today. Based upon your knowledge and experience as a dairy farmer, does that difference of 60, 70 cents, do you see that as an impact longterm in maintaining a local supply of milk?

A Absolutely.

Q So, eliminating this draw on the pool will -- would benefit maintaining the local supply of milk; is that correct?

A Correct.

MR. YALE: That's all I have. Thank you.

JUDGE CLIFTON: Thank you, Mr. Yale. Mr. Carlson?

CROSS-EXAMINATION

BY MR. CARLSON:

Q Good afternoon, Mr. Stromski.

A Good afternoon, Mr. Carlson.

Q You have said in the bottom paragraph of your statement that you do not believe the additional serve supply of milk has -- that has resulted since Federal Order reform, is necessary for the market's needs. Have you seen instances where that additional milk has been helpful in meeting the market's needs?

A I have not.

Q So, the milk that that added to the market from North Dakota, South Dakota, Kansas, Montana, none of those -- you haven't procured milk from any of those sources to meet your supplemental needs; is that correct?

A Correct.

Q Another question. You were talking about in the spring, the flush of the year, that you have to balance the market and that manufacturing plants such as the plant at Goshen and Farmers Cheese serves to balance the majority of spring and holiday surplus. Can those plant regularly handle all of the flush milk or do you have to dispose -- does the market have to dispose of milk outside of those plants?

A We have to dispose of some portion of it outside the market.

Q In many times, that may incur additional transportation costs?

A Yes, it does.

Q Sometimes do you even have to sell milk at distressed prices during those times?

A That's correct.

MR. CARLSON: Thank you.

JUDGE CLIFTON: Thank you, Mr. Carlson. Other questions? Mr. Hahn?

CROSS-EXAMINATION

BY MR. HAHN:

Q I see by your direct testimony that you historically have serviced two different Federal Orders and you have common handlers in both Federal Orders and I am looking specifically at Reiter, although there may be others, but there is a number of Dean plants. Have you found it to be the case in the past where as you service those accounts, milk that was typically destined for one of the plants would be needed at another and be directed to the other plant?

A Are you asking me that currently with the agency?

Q No, historically.

A We serve each plant and we decide which milk serves that plant. If they change orders, obviously we would do something different, but we didn't necessarily divert from one to the other.

Q But it could be a possibility that that would happen.

A They could change an order at one plant and ask us to deliver more milk at another plant.

Q So, it's not outside the realm of possibility that milk that is a dedicated supply of milk to an organization such as Dean's in one Federal Order, if that dedicated supply of milk is needed by a Dean plant at another Federal Order and delivered there, should that count as qualification?

A I'm not sure I understand.

Q In other words, if there is a supply of milk to meet certain commitments at Dean's plants in Federal Order 33 as an example and Dean indicates that four of the six load of milk to be delivered today, rather than deliver it at Springfield, Ohio, should be delivered at Huntley, Illinois and should that milk be delivered there, wouldn't it make sense that that milk count as qualifying shipments for the plant shipping that milk? It's servicing the same customer.

A You are asking me a question about Dean's -- I'm suggesting that our redirection of that milk should --

Q No, I am just asking you, have you had that experience in the past, where you have serviced a customer in several orders from the same supply of milk?

A Yes.

MR. HAHN: Thank you.

JUDGE CLIFTON: Thank you, Mr. Hahn. Any other questions for Mr. Stromski? Yes, Mr. Tosi?

CROSS-EXAMINATION

BY MR. TOSI:

Q Good afternoon, Mr. Stromski. I had one question. In your statement you referred to balancing costs. Could you give me some examples of what you consider to be balancing costs?

A In this context we are talking about the transportation that is involved in moving milk about as well as give-up charges that would result from supplemental supplies coming in to the market and hauling costs and distressed prices of milk leaving the market. I would say all those pieces are balancing costs.

MR. TOSI: Thank you very much.

JUDGE CLIFTON: Any other cross-examination of Mr. Stromski? Any redirect? All right. You may step down, Mr. Stromski.

(Witness excused.)

MR. BESHORE: Your Honor, our next with is Carl Rasch. Mr. Rasch has two separate statements, as Mr. Hollon had indicated previously. This might be an opportune time to take a short break. And we will make those statements available to everyone here and then we can proceed with Mr. Rasch's testimony after that time.

JUDGE CLIFTON: Very good. Let's take about 15 minutes. Please be back here at 4:35.

(Off the record.)

JUDGE CLIFTON: We are back on record now at approximately 4:38 p.m. The first item is a weather report. It's now 70 degrees in here after having been 78 nearly all the day. The problem was a broken belt. It was a new belt, but it broke and then because there had bee no air flowing through the unit, it had to be deiced before it could be made to work again. So, we are in business. But if there is any more trouble, we will just report it and the repairman will come right back.

Mr. Rasch, would you please state and spell your names and tell us about your employment.

THE WITNESS: yes, My name is Carl Rasch, spelled, C-A-R-L, R-A-S-C-H, and I am employed by the Michigan Milk Producers Association. I am the director of milk sales for MMPA.

JUDGE CLIFTON: Thank you. Would you raise your right hand, please.

Whereupon,

CARL RASCH

called as a witness, after first being duly sworn, testified as follows:

JUDGE CLIFTON: Mr. Beshore, you may proceed.

MR. BESHORE: Thank you, Your Honor. We would like to have marked prior to Mr. Rasch proceeding with his testimony the two statements, which he will be giving. The first one, an eight-page statement. They have similar covers, one longer than the other. I understand the eight-page statement will be identified as Exhibit 18 for the record. That is the statement that is narrative relating to the Michigan milk marketing area in particular.

Then a five-page statement, which relates to the detailed specifics of the proposed amendments to the marketing order language and we would ask that that be marked as Exhibit 19.

I would propose to have Mr. Rasch present his testimony with respect to Exhibit 18 first and offer and make him available for cross-examination on that subject matter and then when that is completed, have him present his testimony relating to Exhibit 19 and take examination and cross-examination with respect to that statement at that time, with your consent.

(Exhibits 18 and 19 is marked for identification.)

JUDGE CLIFTON: Thank you, Mr. Beshore. Yes, both of these exhibits, I think would be helpful for me to take them into evidence before the witness reads from them, because if he knows they are already in evidence, he may choose not to read word for word or he may feel more comfortable elaborating as he goes through.

At this time I would ask if there is any objection to the admission into evidence of Exhibit 18, which is the statement by Carl Rasch that has eight pages? There being no objection, Exhibit 18 is admitted into evidence and I will deal with 19 after his testimony.

(Exhibit 18 is received into evidence.)

DIRECT EXAMINATION

BY MR. BESHORE:

Q Mr. Rasch, you have indicated that you are presently employed by Michigan Milk Producers Association. Can you give us your business address for the record.

A 4131 Bridge Street, Novi, Michigan.

Q I think you indicated that you are director of milk sales, bulk milk sales for MMPA. Can you describe those responsibilities and tell us how long you have been in that capacity with Michigan Milk Producers Association.

A Yes, I have worked I that particular capacity since 1977. My daily responsibilities include purchasing and marketing milk from our member farms as well as purchasing milk from other sources through balancing arrangements, daily customers relations with the processing plants that we supply raw milk to. I do prepare -- we do pool milk routinely every month in Federal Order 33. There are times of the year we will pool milk in other markets. I am responsible for preparing and submitting those reports. I am involved in establishing pay prices for our producers and prepare testimony for public hearings such as this.

Q For how long have you been employed by Michigan Milk Producers Association in any capacity?

A Since 1977 I have been in the same capacity.

Q How many different forums have you testified at with respect to milk marketing and public policy issues related to it?

A It's difficult to say. Since 1979, routinely in any hearing that would involve Federal Order 40 prior to order consolidation. This would be the first hearing dealing with Order 33.

Q What is your educational background?

A I have a Bachelor of Science degree in food systems management.

Q Were you directly employed out of college with Michigan Milk?

A No, I spent approximately four years in a field audit program with the local market administrator, which at that time was the Federal Order 40 market. And then from there went to Michigan Milk Producers.

MR. BESHORE: I would like to offer Mr. Rasch and his testimony as an expert in milk marketing for these purposes, Your Honor.

JUDGE CLIFTON: Would anyone like to question the witness, voir dire the witness with regard to his qualifications as an expert in milk marketing? Is there any objection to Mr. Rasch being accepted as an expert in the field of milk marketing? There being none, I do accept your testimony, Mr. Rasch, as that of an expert in milk marketing.

BY MR. BESHORE:

Q Would you proceed with your first statement?

A Hereafter, I am going to refer to Michigan Milk Producers Association as MMPA. MMPA is a dairy farmer owned and operated co-operative engaged exclusively in the marketing of milk and dairy products for its 2,600 plus members.

MMPA's members produce milk in Michigan, northwest Ohio, northern Indiana and northeast Wisconsin. The production from these farms is 100 percent grade A and marketed almost entirely to plants with in the Mideast marketing area.

Michigan consistently ranks among the top 10 dairy production states in the country. Milk production per capita in Michigan has managed to keep pace with per capita dairy consumption during the past decade.

Consequently, Michigan is relied upon as a significant source of reserve milk supplies for deficit markets to the south of us.

To the extent it is feasible to ship milk directly from Michigan farms to distributing plants regulated by other federal orders and satisfy the performance requirements of these distant markets, MMPA does pool a portion of its member's milk production in the other Federal Orders for a portion of the year. This year, MMPA will deliver to and participate in the Federal Order 5 and Federal Order 7 market pools for the months of August through December.

The Michigan milk market is unique for a number of reasons. Because of the geographic features of the state, access to this market is limited. Michigan is a peninsula surrounded by the Great Lakes on both the east and the west as well as by Canada to the east and north. Because of barriers to international trade and the cost of transporting milk and dairy products around the lakes, the only practical point of access to the market is from the south.

Our experience, both before and after federal order consolidation, is that more milk in the form of both bulk and packaged product move south across the state border rather than to the north.

The marketing of milk and Michigan is concentrated among a few large entities. The two largest co-ops in the state are MMPA and Dairy Farmers of America. Combined, they market approximately 80 percent of the milk produced in the state. There are currently 14 distributing plants located within the state. Four of these plants are owned and operated by Suiza Foods. Dean Foods, Kroger, Bareman and Melody Farms own and operate one plants each. The combined volume of these eight plants account for approximately 90 percent of the milk which is processed into Class I and Class II packaged products within the state. All but one of these plants relies entirely upon either MMPA or DFA for their raw milk requirements.

Four large manufacturing plants are strategically located around the state. Two of these plants are solely owned and operated by MMPA. They produce liquid and dry dairy ingredients for a variety of customers. Both these plants also have the ability to produce bulk powder and butter which enables them to assist in clearing the market of surplus production.

The other two plants are cheese plants, which are jointly owned by MMPA and Leprino Foods and operated by Leprino. MMPA has a long-term agreement with Leprino to supply all the milk requirements for both of these plants. The supply agreement each year is structured so as to fully utilize the manufacturing capacity of these two plants when excess milk supplies are available. The supply agreement also provides for the release of milk to satisfy the supplemental milk requirements of the fluid market during peak demand periods.

All four of these plants play key role in providing balancing services for the fluid market. Consequently, they experience the large degree of variability in the daily operation of their plants. These plants are expected to fluctuate between a four-day and seven-day production weeks, depending upon the needs of the market. No other facilities exist within Michigan that have either the capacity or the desire to perform this function.

Marketing agencies in common have existed in one form or another in Michigan since 1956. Over time, small regional marketing agencies were consolidated to create a single agency called the Producers Equalization Committee, PEC, in 1966. Its scope of operation closely paralleled that of Federal Order 40, the southern Michigan marketing order.

In 1992, the structure and operation of the PEC was modified such that virtually all of the milk marketed in Federal Order 40 decided at that time to voluntarily participate in the PEC. In exchange for balancing services, all are the southern Michigan distributing plant operators agreed for the first time to pool over-order premiums on Class I and Class II sales. We are proud to report today, even after federal order reform and consolidation, participation in the PEC by Michigan processors is still almost universal.

With the aforementioned information submitted as background material, I would like to elaborate upon MMPA's position as a proponent of proposals one through five. MMPA wholeheartedly supported federal order reform. The process of consolidation and modernization was long overdue.

We concurred with the logic behind establishing the geographic boundaries of the Mideast marketing area. We believe the current boundaries fairly well reflect the consolidation that was occurring within the fluid processing industry as well as the expansion of product distribution territories. Despite the large volume of Class I sales in the Mideast market -- it is the second-largest market in terms of total Class I utilization -- we believe that the geographic boundaries of the order encompassed an adequate reserve milk supply necessary to service the needs of this market.

The changes in classified milk pricing that were implemented with order reform, in conjunction with the operation of the PEC, fairly compensated local dairy farmers and assured the market of inadequate supply. That was our belief then and it still is.

A brief review of production in sales data will support our argument that adequate milk supplies exist locally with in the Federal Order 33 to satisfy the requirements of at least the Michigan portion of the market. Very little change has occurred in the Michigan market since order consolidation. The Federal Order 40 and 44 markets consisted of 16 distributing plants and four pool plants.

As of September 2001, the Michigan portion of the Mideast market consists of all of the same distributing plants and supply plants with the exception of two. Pollard Dairy at Norway, Michigan became regulated by the Upper Midwest order because of where the market boundaries were established and where Pollard's route distribution was.

Calder Dairy at Lincoln Park, Michigan became an exempt plant because of an insufficient volume of route disposition and packaged sales to other plants. I have indicated here I have attached a list of pool plants located in Michigan for the months of December 1999 and September 2001. I don't. I am going to instead refer to the list of pool handlers that was submitted as part of Exhibit 5, so that would relate to the months of December 1999 and I believe May 2001.

Essentially the plants that I am talking about that were physically located in the Michigan part of the Mideast market are the same regardless of which months we choose here.

Because of order consolidation, it is difficult to use federal order statistics to evaluate sales trends within the Michigan after December 1999. Therefore, I have used sales information from the PEC for the past 36 months ending with August 2001 to evaluate the local market.

As previously mentioned, almost all of the Michigan processors are pooling their Class I sales, so this data is representative of the market. Class I sales by customers to the PEC for the past twelve months ending with August 1999 amounted to 2.09 billion pounds. Class I sales for the same plants for the twelve months ending with August 2001 amounted to 1.95 billion pounds. Class I sales within the PEC experienced a decline of approximately 114 million pounds. This represents a decline of 7 percent during the past two years.

While local Class I sales have been

declining, milk production in Michigan has been increasing. State production in 1999 increased by 19 million pounds versus the previous year. Production in 2000 when adjusted for leap year increased by another 235 million pounds. Through the first eight months of 2001, milk production is still increasing by in another 31 million pounds. Cumulative production increases since 1998 amount to 356 million pounds, which is equivalent to a seven percent gain in local supply.

So, at a time when fluid sales are declining and production is increasing, it appears illogical to be pooling additional quantities of milk supplies from distant sources, yet that is what is happening.

Total milk pooled in the Mideast market for the first months after order consolidation was 1.123 billion pounds. One year later it was 1.385 billion pounds. By July 2001, the Mideast market had peaked at 1.65 billion pounds. During the month of July 2001, more than 500 million pounds of milk produced on farms in New York, Wisconsin and Minnesota were pooled in the Mideast market. Almost all of that milk was utilized in either Class III or Class IV plants, in which severely depressed pay prices for the rest of the market.

In our opinion this has occurred because the performance standards required for pool qualification for this market are too lenient. Performance standards for both distributing plants and supply plants have been dramatically reduced. Supply plants can now designated portion of their facility to be a non-pool plant. Before order reform, they could not. Supply plants can now satisfy up to 90 percent of their performance with shipments directly from the farms of their producer supply.

The touch base requirement for producers has been reduced from six months to three months. Determination of the plant location adjustment for producer milk diverted to non-pool plant is now much less restrictive. All of these changes are described in the attached to table that compares various pooling provisions before and after order consolidation. And that is the table the Mr. Hollon included in his Exhibit 15 and I am referring to the provisions that related to Order 40.

Each of the five predecessor orders which were merged into the Mideast order had more demanding qualification standards and for good reason. We realize that pooling provisions are not intended to create barriers to pooling, but it is reasonable to expect that a market with a fluid demand as large as the Mideast order warrants a higher level of performance than the Upper

Midwest order or the western markets. It appears that a lot of the other interested parties agree with us. Every single proposal included in the hearing notice that pertains to performance standards proposes to increase the standards.

In conclusion, as a marketing cooperative that actively services the fluid market by supplying milk and also provides facilities to balance the variable demands of the market, MMPA urges the Secretary to adopt the changes requested in proposals one through five.

Lax performance standards have resulted in and an equitable distribution of proceeds from this market's pool. One of the principal responsibilities of the order program is to preserve the proceeds from the fluid market for those producers to demonstrate an ability and a willingness to service that market.

We also believe that emergency conditions exist which warrants omission of the recommended decision. We urge the Secretary to issue a decision on this matter in the most expeditious manner possible.

MR. BESHORE: I have no other questions for Mr. Rasch and he is available for cross-examination on the testimony, his statement.

JUDGE CLIFTON: Thank you, Mr. Beshore. Who has questions for Mr. Rasch? Yes, Mr. Carlson.

CROSS-EXAMINATION

BY MR. CARLSON:

Q Carl, on page two of your testimony, you were talking about your have MMPA owned plants that balance the market?

A Correct.

Q And you share ownership of plants with Leprino that balance the market.

A That's correct.

Q During the spring of the year, the flush of the year, how much of the capacity of those plants is being used?

A One hundred percent.

Q What is the capacity utilization of those plants during the last part of August, first part of September?

A Less than 60.

Q That will vary by plant, I would assume?

A Some, yes, but all of them are operating at less than capacity.

Q That obviously has an impact on the efficiency of running your plants.

A That's correct.

Q You would love to be able to maintain all the milk in your plants if the purpose is to try to cut the cost of production of those plants, wouldn't you?

A Our experience is that is when those plants are most profitable, when they are operating full.

Q So, some of your competition who can meet these lax qualification standards and still maintain that milk in their plants, obviously has a competitive advantage over you in producing those products, do they not?

A That's right.

JUDGE CLIFTON: Thank you, Mr. Carlson. Other questions for Mr. Rasch with regard to this exhibit only? All right, there appear to be none. Any further redirect, Mr. Beshore?

MR. BESHORE: No.

JUDGE CLIFTON: All right. Let's move to the next portion of Mr. Rasch's testimony and I would now ask if there is any objection to the admission into evidence of Exhibit 19. This is the document in which the statement consists of five pages. Does anyone want to voir dire the witness first before he testifies about these proposals. No, so at this point, I do receive into evidence Exhibit 19.

(Exhibit 19 is received into evidence.)

JUDGE CLIFTON: Mr. Beshore?

BY MR. BESHORE:

Q Just proceed with Exhibit 19, Carl.

A The purpose of the statement I'm about to read is to elaborate upon the intent of several of the proposals for which we are a proponent. I intend to identify problems or weaknesses that exist within the current Federal Order 33 pooling provisions and explain how the changes we have proposed will affect those provisions and address the problems.

Proposal number one reads amend Section 1033.7 by revising paragraph (a) to read as follows: a distributing plant, other than a plant qualified as a pool plant pursuant to paragraph (b) of this section or 1000.7(b) of any other federal milk order from which during the months of August through April are not less than 40 percent and during the months of May through July are not less than 35 percent or more of the total quantity of fluid milk products physically received at the plant (excluding concentrated milk received from another plants by agreement for other than Class I use) are disposed of as route disposition or are transferred in the form of packaged fluid milk products to other distributing plants. At least 25 percent of such route disposition and transfers must be to outlets in the marketing area.

This proposal amend the pool plant

definition for distributing plants by increasing the minimum route disposition performance standards from 30 percent to 35 percent for the months of May through July and from 30 percent to 40 percent for the months of August through April.

In the event that the split plant provision is eliminated as we have requested, the need to attach a supply plant to the market by transfer becomes more important. This language would constrain a pool distributing plant's ability to attach diversions to the market.

Prior to reform, the performance requirements for distributing plants in the predecessor orders were generally tighter. Federal Order 33 was 40 percent during the months of September through February and 35 percent for the months of March through August. Federal Order 36 required 50 percent during the months of September through March and 40 percent during the months of April through August. Federal Order 40 had a requirement of 50 percent for all months. And finally, Federal Order 49 required 40 percent during the months of September through February and 35 percent during the months of March through July and 30 percent for August only.

We have talked with all of our

distributing plant customers and have determined that none would become unregulated as a result of these changes. And we have made a provision for variable percentages for different months of the year to account for the seasonality of both Class I sales and milk production.

Proposal number two indicates that we would amend Section 7 of 1033 by removing paragraph (c) Section 1 Subsection 4 and revising paragraph (c)(4) to read as follows: shipments used in determining qualifying percentages shall be milk transferred or diverted and physically received by a distributing pool plants, less any transfers or diversions of bulk fluid milk products from such disturbing pool plants.

Replacement of the existing Section (c)(4) eliminates the automatic pool plant status for supply plants during the months of March through August. This change would require a supply plant to perform each month of the year in order to share in the pool proceeds. Since Order 33 has such a high volume of Class I sales, it seems reasonable to require year-round association with the market. Exhibits presented earlier in our testimony outline the economic consequences of not eliminating the automatic pool plant provision.

This proposal also eliminates 1033.7(c)(4). Shipments from a supply plant to distributing plants regulated by other federal orders would no longer count for qualification in Order 33. Order 33 has the second-largest volume of Class I sales amongst all orders. Traditionally, provisions that allow for qualification to be earned from shipments to other orders were associated with reserve supply orders. Since Order 33 is not a reserve supply order, it makes little sense to us to allow for this type of provision. In only makes it easier to attach milk to the order without serving the market, this particular market.

Prior to reform, many of the shipments made to other orders from the current local milk supply base of Order 33 were to plants which are now regulated by the Mideast order. Supplies and milk from Michigan regularly supplemented needs of the old Orders 49 and 33. Now those areas are part of the expanded Federal Order 33 market.

The new section 7(c)(4) as proposed institutes a net shipment provision common to many orders. It prevents a supply plant from shipping milk into the front door of pool distributing plant and then reloading and shipping the milk back out the back door. Without a net shipment provision, manufacturing plants are able to satisfy the qualification standards and still retain use of the milk -- hardly a method conducive to making milk available for the market. This proposal would prevent this from happening.

Currently the large economic incentive for attaching supply plant milk to Order 33 tempts both parties to ship out the back door even though the haul costs may be substantial. The market administrator must audit these shipments as part of his regular audit practices. The temptation to skip the delivery part of the transaction and just report it as occurring is also great. Removal of the financial incentive, as this proposal intends, would eliminate the temptation to fake the delivery.

We are also proposing to modify proposal to by inserting the following language at the conclusion of Section 7(c)(2) to read as follows: ;provided however that if the supply plant is located outside of the marketing area, any such qualifying shipments must be from farms located in the county of that supply plant, or a contiguous county or from any county further away. And this relates to the testimony that Mr. Hollon presented earlier in the Exhibit 12 dealing with the ability to meet 90 percent of your performance requirements with diversions directly from farms.

Proposal number three. We would amend Section 13 by redesignating paragraphs (d)(3) through (d)(6) as paragraphs (d)(4) through (d)(7) and revising paragraphs (d)(2) and (d)(4) and also adding a new paragraph (d)(3) to read as follows:

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

(d)(3) The equivalent of at least two day's production is caused by the handler to be physically received at a pool plant in each of the months of December through July if the requirement of Section 13(d)(2) for the prior August through November period are not met, except in the case of a dairy farmer who marketed no grade A milk during the prior August to November period.

(d)(4) Of the total quantity of producer milk received during the month, including diversions but excluding the quantity of producer milk received from a handler described in Section 9 (c), the handler diverted to non pool plants not more than 60 percent during the months of August through February and 70 percent during the months of March through July. We intend to modify (d)(4) and I will explain later in my testimony.

Revising paragraph (d)(2) increases the touch base requirement from one day to two days and adds August to the delivery month period. August is a month of high fluid needs and this proposal would recognize the market's need for additional milk and August.

The extra day of delivery does cause some more milk to move to the market and makes the distant supplier give more recognition to the economics of each supply decision. However, if the split plant status is not eliminated as we propose, we would not support this change because the majority of the effect will then be felt by local milk which currently supplies the market every day.

This touch base standard is more in line with that of higher utilization markets. There has been testimony earlier in the day that Federal Order 5 requires the equivalent of five days and Federal Order 7 requires the equivalent of 10 days.

The new paragraph (d)(3) would require physical delivery to a pool plant of the equivalent of at least two day's milk production during each of the months of December through July for producers who did not comply with the physical delivery requirement in each of the preceding months of August through November. Currently, a producer can be added in the free ride months with only a onetime delivery to a pool plant to establish association with the market. This privilege coupled with the current unlimited diversion privileges has resulted in huge quantities of new milk pooled on the market during the months of March through August. Clearly, this privilege should be limited to producers who have supplied the market in the shipping season.

An exemption for dairy farmers who were not marketing grade A milk during the entire preceding qualification period would be granted. Administration of this provision would be an administrative decision by the marketing administrator.

The revised paragraph (d)(4) establishes diversion limits in those months where none previously were enforced. We cannot come up with any reason why anyone should have the ability to divert 100 percent of their milk supply during any month or months during the year. Clearly, from the evidence provided here, this unlimited diversion ability has been a big factor in the volume of milk added to the pool and equally clear that little of it actually delivered to the market.

We also propose that Section 13(d)(4) be further amended to exclude from a handler's receipts any milk which is reported as a receipt and then diverted to another pool plant. Emphasis added to pool plant. This change will not limit a handler's ability to divert milk to another handler, but it will prevent them from using those diversions to also increase their ability to divert more milk to non-pool plants. This is a loophole that is currently being exploited and can be expected to grow if left uncorrected.

This is what Mr. Hollon was illustrating in table 10 of Exhibit 13. As you increase the amount of milk included on a distributing plant pool report as diversions to pool plants, they were able to enhance their ability to divert more milk to non-pool plants. Essentially for every 100 pounds of diversions to pool plants that were added, they could enhance their diversion to non-pool plants by a factor of .6 or 60 pounds.

In order to correct this oversight, the provision language should read -- this would be the new Section (d)(4) -- of the total quantity of producer milk received during the month and then (including diversions, but excluding the quantity of producer milk received from a handler described in Section 9(c) or which is diverted to another pool plant) the handler diverted to non-pool plant not more than 60 percent during the months of August through February and 70 percent during the months of March through July.

This hearing is being held to discuss pooling provisions and our wording change only corrects an oversight in the language in our original proposal that we submitted. It does not change our original intent. We still intend that performance standards be reflective of market needs. Just as we cannot find any reason to support a zero diversion limit for supply plants, we cannot support zero diversion limits to pool plants from a distributing plant.

Then finally, proposal number five would amend Section 7 by removing paragraph (h)(7) and this proposal eliminates the definition of a split plant from the Order 33 language. It was not defined in any of the predecessor orders. We cannot find any legitimate function performed by split plants in meeting the market supply needs of this order. Our previously introduced exhibits detail our concerns about the function -- about their function in this market and the exploitation by the industry.

Q Mr. Rasch, I have just a few additional questions with respect to this segment of your testimony. I would like to go first to the top of page two and this relates to proposal number one, the proposed change in the distributing plant definition. Would it be correct to say that in talking with your distributing plant customers you determined not only that none would become unregulated, but that they would not become partially regulated.

A That's correct. They would remain fully regulated by Order 33.

Q At the bottom of that page, in point

number three relating to proposal number two, you have indicated that supplies of milk from Michigan regularly supplement needs of the old Order 49 and 33, which are now a part of one market, the current Order 33. Were those volumes of milk from Michigan referred to earlier in testimony by Mr. Stromski and Ms. Rady as supplemental milk supplies coming into their market area, submarkets of this marketing area.

A We are one source of that supplemental supply.

Q So, the supplies out of Michigan -- when distributing plants in Ohio that are served by the MEMA groups or in Indiana, when they need supplemental supplies, some of those supplies come out of Michigan and some of them come out of areas beyond the order, but some come in the order from your supplies in Michigan.

A That's correct.

Q And they have historically come from those sources also as you testified.

A Yes, we have a historical working relationship with MEMA and the predecessor marketing agencies.

Q Now, on the final page of your testimony, the modified language relating to new -- proposed Section 13(d)(4), which is actually a modification of the existing language in 13(d)(3) -- is that correct? Do you have the present order?

A Yes.

Q Can you confirm whether that is correct?

A That is correct.

Q So, what is presently (d)(3) under proposal four becomes (d)(4) and your modified language for (d)(4) as stated in your testimony would add additional words in the middle of that clause, or which is diverted to another pool plant. Is that correct?

A That's correct.

Q So, those words that are in the parenthetical expression there that are being added in your testimony that were not in the proposal as advanced in the hearing notice, you are adding the words for which is diverted to another pool plant, correct?

A Anything that was added after reference to Section 10 (9)(c) is the new language we are inserting.

Q In the parenthetical.

A Yes.

Q You had already proposed modifications to that section for the performance months or the 70 percent months.

A Yes.

MR. BESHORE: Thank you. Mr. Rasch is

available for cross-examination.

JUDGE CLIFTON: Thank you, Mr. Beshore. Who has questions for Mr. Rasch. Yes, Mr. English.

CROSS-EXAMINATION

BY MR. ENGLISH:

Q Mr. Rasch, you were here earlier today when I examined Mr. Hollon.

A Yes.

Q And you heard the discussion we had about the net shipments provision in (c)(4), the proposal you actually made.

A Yes.

Q Do you concur with him that for equity's sake and making sure that the rules are uniform, that it makes sense to put that provision in (d) as a clean up matter?

A Yes, we can support that.

Q With respect to a potential other clean up matter, I note that in 1033.7 (f), the current version of (f) with respect to a system of supply plants, in (f)(3), the last sentence of (f)(3) presenting reads in any month of March through August, a system shall not contain any plant which was not qualified under this paragraph either individually or as a member of a system during the previous September through February. I read your proposals in Exhibit 19 as effectively in other sections rewriting the language such that August becomes a high performance month; is that correct?

A That's correct.

Q And to make it consistent, would you agree that a conforming change in (f) to read in any month of March through July a system shall not contain any plant to does not qualify under this paragraph either individually or as a member of a system during the previous months of August through February would make sense?

A It certainly does.

Q If in this process, we or USDA were to come up with other paragraphs or sections referring to performance which refer to September through February or September through November or whatever, and August being a lesser month, would you agree that as a matter of conformity, it would make sense to move August to the higher performance month?

A It would be consistent, yes.

Q In addition, I note -- would you agree with me that in (f)(1), again systems supply plants, (f)(1) refers to each plant in the system is located within the marketing area. Then there is a comma, or was a pool supply plant for each of the three months immediately preceding the effective date of this paragraph so long as it continues to maintain full status, comma. Would you agree that that section between the commas was added at time of Federal Order reform in order to be a savings clause for plants that had been covered before, correct?

A As I recall, the -- all of the discussion that led up to the final decision, there was concern about plants that had historically been part of the market all of a sudden becoming de-pooled because of consolidation and as I recall, that was a change to grandfather those plants into the market.

Q Would you agree that that language becomes superfluous at this time in that we are now well past three months after Federal Order reform and any plant that didn't qualify under that, would no longer qualify anyway?

A Yes, we are well past three months. I would agree with your observation.

Q And would you agree that that language and other superfluous language that was intended to grandfather in is no longer necessary at this time?

A Yes.

Q To your knowledge, at the time of federal reform, was there a pool supply plant for the preceding three months outside the marketing area? If you look at the statistics from the MA, would you agree with me that there was no supply plant for the preceding three months?

A To the best of my recollection, all of the supply plants were within the geographic area of the new order.

Q With respect to your statement in Exhibit 19, first page under proposal one, you reference in paragraph two, in the event that the split plant provision is eliminated as we have requested, the need to attach supply plants to the market by transfer becomes more important. Are you suggesting that the change that you are making up in proposal one is designed to prevent -- at least in part -- prevent someone from coming along and -- gee, if these other changes were made, making a change and none the less, getting their milk pooled?

A Yes, we would envision that you would see more physical diversion occurring at pool distributing plants in order to meet some of the performance requirements and currently with a 30 percent route disposition provision versus maybe 40 percent depending on which month you choose, just gives them the ability to attach this pool-riding milk.

Q And as you already stated, just to make it clear for the record, you know of no plants and in discussion with your customers, you know of no plants that are presently pool distributing plants under paragraph (a) that would be affected by this change?

A That is correct.

Q In other words, the only way the change would become affected is if someone were to choose to divert more milk.

A That's correct.

Q On page three of -- paragraph six, proposal two, your new modification to 7(c)(2), I'm trying to understand exactly how it works and what it means. I understand this to be limiting in a way the farms from which shipments can qualify for this 90 percent rule under (c)(2); is that correct?

A Yes, the current language says that the operator of a supply plant may use deliveries to pool distributing plants directly from farms to satisfy up to 90 percent of the qualifying shipments and our intent is to save that. Those farms, that that milk that is going to come directly from farms must be from those farms that are located in the same county that the supply plant is located in or a county contiguous to that location.

Q And then the last part, the part that confuses me, or from any county further away. I don't understand -- I don't know what that means?

A I guess rather than restrict to ability of the market to procure milk if there definitely is a need for milk, if they choose to take milk that is even further away from that supply plant and can go it -- with the size of the farms that we are now experiencing, that they can put together a tanker load of milk, if the milk is further away, then that demonstrates that the market definitely needs that milk.

Q Further away from what?

A From the supply plant that it is associated with. We are saying this is the farm supply that is associated with that supply plant. If they are truly associated with the supply plant, they need to be located somewhere in the approximate area of that facility.

Q I guess what I am adding up, is I am saying if you take all the counties of the supply plant, and the contiguous counties and those that are farther away, isn't that all the counties? What are you leaving out?

A The counties that would be -- those farms that are in counties located somewhere in between where the supply plant is and the distributing plant that is receiving the milk.

Q So that is the part that -- in other words, further away from the supply plant --

A We don't have and is further away.

Q Okay. But would it be better to say any from county further away from the supply plant and not between the supply plant and the distributing plant? I just want to know what this means.

A Well, just the way supply plants work, you typically have a milk shed that completely surrounds the supply plant, so we don't want for purposes of economic shipments, we don't want to preclude a plant that is historically part of the milk supply for that supply plant from being use to supply the fluid market if it's closer to the market, but we are going to put some limits on how far away that farm can be located from that supply plant and still realistically say that it's part of its every day milk supply.

Q Can you give me an express example of somebody's milk who is not going to be included?

A A producer that is associated with a supply plant in Black Creek, Wisconsin and the farm that they are using to satisfy their performance requirements is a farm located in Michigan, yet that appears to have producer receipts of supply plants at Black Creek and delivering milk to someplace -- to a pool plant someplace within Order 33.

Q So, you are saying a county further away from a supply plant, but close to a distributing plant?

A When we say further away, the distance from the location of the farm is further than what the distance is from the supply plant to its ultimate destination -- the distance from the farm to the point it delivered to exceeds the distance from the supply plant from that same destination.

Q All right. I'll let your lawyer take that up or Gino. On page five of paragraph seven, your alteration of (d)(4).

A Where was that again?

Q This is the new language having to do with dealing with what Elvin Hollon talked about in Exhibit 13 having to do with sort of a multiplier effect on the diversions because of the ability to divert the pool plants. So, this is page five, paragraph seven, your final revised language as to 1033.13 (d)(4), correct?

A Yes.

Q Without trying to get into the murkiness that I got into in the last set of questions, when I look at 1033.13, (d) itself refers to diverted by the operator of a pool plant or by cooperative associate described in 1000.9(c) to a non-pool plant subject to the following conditions. Does this mean that your provision in (d)(40 is meant to apply equally to non-cooperative operation pool plants or cooperative associations under 1000.9(c)?

This concept and this limitation of the multiplier effect is designed to be equal, correct?

A You are going to have to rephrase your question.

Q Are you by this proposal proposing to establish a limitation on pool plants that would not exist as a limitation on cooperative associations operating under 9(c)?

A It's our interpretation that this would put the same restrictions on the pool distributing plant that applies now for a co-op.

Q It's to create equality that you don't see right now.

A That's correct.

Q It is now, however, to give an advantage of one over the other. That is the intent of the proposal.

A It's to establish equality.

Q And that is the intent of those?

A correct.

MR. ENGLISH: I have no further questions.

JUDGE CLIFTON: Thank you, Mr. English. Mr. Yale?

CROSS-EXAMINATION

BY MR. YALE:

Q Ben Yale for Continental Dairy Products. Mr. Rasch. Let's go back to this murky area of this proposal. I don't know if it's all that murky,but I want to make sure it's clear.

First of all, let's kind of go back to the history, the purpose of supply plants. I know that you haven't been around all that long, but kind of what was the purpose of the supply plant originally in the Federal Order program?

A Well, primarily supply plants, a lot of times would be listed as nothing more than a re-lo point. For economics, it was the ability to assemble small loads of milk into economic quantities that could be shipped to wherever the fluid market demand was.

Q Sometimes called country plants?

A Correct.

Q And the idea was to assemble that milk more distant from the distributing plant and make an efficient delivery across longer distances to the distributing plant, right?

A That's correct.

Q Has that -- under that understanding, does it make sense to take milk closer to the distributing plant and consider it to be assemble through the supply plant?

A I believe that is what is bothering us at the point. It does not make sense to us, no.
Q That would be a form of disorderly market?
A That's is correct.
Q Let's go back with your example. You said there was a supply plant where?
A Black Creek, Wisconsin.
Q And you suggested that right now, the way the rules permitted, a producer anywhere in the Mideast marketing area could qualify -- be used to qualify that plant; is that your understanding?
A Correct.
Q Even if the producer was basically next door to the distributing plant.
A That's correct.
Q And the purpose of this rule is to make that no longer possible.
A Correct.
Q Wouldn't a better example be then if you are Black Creek, Wisconsin and the producer is located in say northeast Illinois, which would be out of the marketing area, but closer to the marketing area, that producer would not be eligible either to qualify that supply plant under your provision; is that correct?

A That's true.

Q So, wouldn't the clause at the end where it says we are permitting counties further away may be better stated from any county more distant from the marketing area than the supply plant?

A That is exactly what we are trying to say.

Q And that is to make the purpose of the supply plant more consistent with its historic purpose of assembling distant milk?

A Correct.

Q I want to change topics and deal with for a moment this two day's production. For most producers -- at least in Michigan, are they on every day or every other day pickup?

A About half and half.

Q So for the every other day pickup, this really represents no change, right?

A Correct.

Q But for those producers who are picked up every day, it would require two pickups.

A Yes.

Q In determining whether two days have been picked up, do you know how the market administrator determines whether two days have been picked up or a day has been picked up?

A I believe they take the milk production for that particular producer for the month, divide by the number of days. Currently the provision says they have to deliver one day's worth of milk, so to the extent that delivery to the pool plant exceeds their daily average, it represents one day of milk.

My interpretation of the new provision would say to the extent it exceeds twice the daily average would represent two day's milk or the equivalent of two days of milk.

Q Does it necessarily have to be and average of days? If it is in fact two day's production at the time it was delivered?

A There is a little gray area. I know we have experienced problems with new producers coming on the market, especially if they are large operations, that the first day they could start, they could have 100 cows there, so they are producing 6,000 pounds of milk that day. Next week they get a trailer load of cattle or several trailer loads in and now all of a sudden they have 200 cows there. So, their daily production is 12,000. The market administrator has told us as long as that shipment reflects their current production level at that point in time, that constitutes a day's work of production.

Q That is my point. You are not recommending any change from that interpretation?

A No.

Q Now, going to the top of page two of your testimony, you testified that you talked to all of your plants. Are you talking about plants in Michigan?

A The customers of ours that participate in the market agency in Michigan, correct.

Q Have you done inquiries or heard of anybody who has made an inquiry as to whether other pool distributing plants currently under Order 33 would be adversely impacted by this change?

A I believe -- we have a coalition of various co-ops involved in this proposal and as I understood it, it was the responsibility of the people involved with MEMA to check with the customers in Ohio, Indiana and I believe the response from those people were the same.

Q Which is that it would not impact?

A That is correct. If they are dealing just strictly with the milk that they received for purposes of satisfying the raw milk requirements of the plant they had, they would not have a problem with meeting either a 35 or a 40 percent route disposition requirement.

Q I want to look at the bottom of page two, your point number three. I think we discussed it before, but I want to make sure this comes across. There has been some discussion that during the reform process and the merging of the 30 to 40 orders in to 11, that when they combine orders, it was kind of like a least common denominator sometimes in qualifications or language for each of the orders that were used as part of the resulting merger order.

This provision from this other order shipment, was this in the original Order 33 prior to reform?

A I know it was in Order 40.

Q In 40? But again, it's purpose was in dealing with having two orders to the south of it that it was being a supplement supply to, right?

A Right, a lot of our shipments went to either Order 33 or Order 49.

Q That is no longer the case since you are now part of that market?

A We are still supplying a lot of plants, but now it's within market.

Q And your milk hasn't moved to the point you are now supplying plants to the south of like Order 5 or Order 7 that would make this necessary, a continuation of this provision necessary?

A No, as I said, the milk that we are supplying for Order 5 and Order 7 is primarily farm milk and we are pooling it on that market.

Q I want to turn to page four and point number two and this talks about this extra day delivery. And you indicate that if a split plant provision is retained, that you don't want to do that. Can you explain why that is? I mean, would this put an additional burden on marketing of milk that is traditionally associated with the order this extra day's shipment?

A Especially for the distant milk that is still within the geographic area, but may not be very close to the pool facility. We feel we have adequate reserves within the current marketing area to supply the needs of the fluid market. This demonstrates that the producers still have the ability to get their milk to the fluid market, but if it's not needed, why cause every producer to go two times a month when one time is sufficient to establish association and the fact that we have got enough local milk that is going 30 days out of the month to a pool plant to satisfy the local needs.

Q So, the purpose of the extra day is directly towards the distant or the split plants?

A That's correct.

Q And has no value if the Secretary in her wisdom decides the split plant should continue?

A That's correct, because there are other ways to get around the issue.

MR. YALE: That's all I have. Thank you.

JUDGE CLIFTON: Thank you, Mr. Yale. You are thinking very well on your feet for the time of night that it is. It's about 5:46 now. Yes, Mr. Warshaw?

MR. WARSHAW: Thank you.

CROSS-EXAMINATION

BY MR. WARSHAW:

Q Just a couple questions. First of all, with regard to proposal two, as I understand your proposal, it is to remove all the language in the existing (c)(4)?

A That is correct.

Q And replace it with the language that you propose for (c)(4)?

A Yes.

Q And that is because you believe the existing language in (c)(4) is inappropriate to the order?

A Yes, eliminating the current (c)(4) eliminates the automatic pool plant status during the free ride months and the new (c)(4) deals with a whole different issue, the issue of the net shipment provision, which that language currently doesn't exist in the provisions.

Q Got you. And then with regard to proposal one, you included August and April in the high performance months, the 40 percent months.

A Yes.

Q And I note looking at the prior orders that neither month typically was included in the high performance months and in fact in Order 49, August was an especially low performance month. Is there any reason for their inclusion as high performance months in light of that prior experience?

A I don't know the rationale behind the Order 49 provision, but we looked currently at the utilization of our customers on a Class I basis over the last couple of years and it didn't appear that the seasonality of milk production -- Class I sales were fairly stable until we got into May when a number of universities began to close for their school year and we began to see some loss of sales in public schools. Sales were fairly stable at least through April and that took care of the demand side. The seasonality of milk production really didn't kick in until we got into May also.

So, we thought that May, June and July were the most critical months in regards to both depressed

Class I sales and elevated milk production. May, June and July would better reflect what is considered the flush production months of this market.

Q If it hadn't raised the percent straight across the board and more during the major part of the year, might it not be overkill to have to broad a period for the much higher --

A Speaking on behalf of the Michigan market, we have 50 percent year around and that is what we were pushing for. In any kind of coalition, there is a compromise, so this is what we agreed upon. We were willing to settle for something less than 50 percent.

Q Are you aware of any survey that was done in Ohio and Pennsylvania regarding this issue?

A No.

Q And finally, with regard to the touch requirement, how did you pick the two days as opposed to a three or four day in light of the higher requirements in some of the surrounding areas?

A Well, as I gave my testimony to Mr. Yale, we have an awful lot of farms that perform every day of the month. Given the level of utilization, the amount of reserve that traditionally is here, we had a one day performance under the old order. Two days seemed to be sufficient to establish and determine the producer's ability to get the milk to market, especially if you are not going to have these outposts in plants qualifying a supply plant located outside the marketing area. We are looking at plants primarily within the marketing area and that established enough performance.

Q How about three days? Do you think that producers that are seriously performing in the market would have any problem meeting a three day requirement?

A As an organization that supplies 50 of our milk supply to the fluid market, we don't see where having three days requirement is going to influence our supplying the market versus two days. We felt two days was adequate.

MR. WARSHAW: I have no further questions.

JUDGE CLIFTON: Thank you, Mr, Warshaw. Other questions? Mr. Carlson?

CROSS-EXAMINATION

BY MR. CARLSON:

Q On page five, number seven on top of the page, you are limiting a handler's ability to divert milk to another pool handler and use that for qualifying purposes?

A That's right -- qualifying diversions to the non-pool plants.

Q I guess my question is if you would not allow diversions to be piled on top of diversions of any kind -- whether it's to a pool plant or non-pool plant, wouldn't that solve -- serve the same purpose and maybe even help limit some diversions? In other words, you can only base diversions based on physical receipts of the plant instead of any diversions. It would solve the problem that you have on diversions to pool plants, correct?

A   Yes, it would.

Q   Any reason why you would be opposed to including -- or to limiting diversion percentage based on physical receipts?

A   Yes, we felt that the prospects of getting the change that we proposed in the hearing notice were better than what you are proposing. We didn't think we could sell that one.

Q   Okay.

MR. CARLSON: Thank you.

JUDGE CLIFTON: Thank you, Mr. Carlson. Other questions? Mr. Hahn?

CROSS-EXAMINATION

BY MR. HAHN:

Q   Just a couple questions, Carl. Your proposal to delete that portion of a regulated plant designated as a non-pool plant, that is an optional designation as I read the order. That deletion of that paragraph would have no impact on that portion of a plant that is not approved grade A, would it? In other words, is not approved to be grade A, it doesn't meet the supply plant definition?

A I am assuming it could not be a pool plant if it doesn't meet the grade A definition.

Q What I am saying is a portion of the plant doesn't meet the grade A definition because it's not approved grade A, but a portion of it is approved grade A. That is fairly common.

A Maybe from where you are from, but it's not common here. That's why I am having problems relating to it.

Q What about the situation where you have a facility that has a portion of it owned by one legal entity and another portion owned by a different legal entity? In other words, the entire facility isn't owned and operated by the same legal entity, either through a lease or ownership arrangement. I assume in a situation like that, that the market administrator would only recognize the supply plant portion that is owned and or operated by --

A We are not involved in those kinds of arrangements, so I guess I am not sure how that works.

MR. HAHN: Thank you.

JUDGE CLIFTON: Mr. Yale?

MR. YALE: I want to follow-up on that last line.

CROSS-EXAMINATION

BY MR. YALE:

Q Let's take the situation where you have at a site a grade A pool plant and a non-grade A manufacturing plant. The grade B milk or manufacturing milk going into that non-grade A plant obviously cannot qualify to participate in the Federal Order, right?

A That is correct.

Q But there is nothing to prohibit that handler from moving that milk that is grade A into the non-grade A plant, right?

A Not as long as they are separate facilities to keep the two supplies segregated.

Q Well, my point is -- isn't one of the reasons that the split plant has that ability to quickly almost on a paper basis balance and move that milk in and out of the supply plant to maximize the amount of milk qualified even though that facility is still receiving a whole lot more milk than what you are writing down on paper?

A That is correct.

Q So, if you have got a Grade B or manufacturing plant and you got a grade A supply plant at that location, the ability to divert -- and it may not be the right term, but direct grade A milk into the grade B facility, first of all, is not prohibited by health regulations, right?

A No.

Q So you would have that ability, the handler would have that ability to manipulate those movements without any cost to the handler to maximize the amount of milk that is qualifying on that supply plant even though it's all going to basically to the same location.

A That is how we understand it.

Q Even if it is a grade B facility as opposed to a grade A.

A Correct.

Q One other thing, I want to touch base about the touch base. If you recall from the exhibits that the market administrator submitted, there were instances of less than three producers, more than one or one or two producers from Montana that qualified at some point on the order. Would that producer in Montana have to travel all the way to the Mideast order to qualify?

A No.

Q Where would they be able to touch base?
A To the nearest pool plant, wherever that might be.
Q And by increasing the touch base, -- they would only have to do that one time, right, under the previous --
A Yes, today you have to touch with one day's worth of milk .
Q So, the rest of the time, that milk could stay in Montana, right?
A Yes.
Q Do you ordinarily buy milk from Montana?
A No.
Q So that is an extreme example, but that is milk that is pooled on the order that really has no potential of being here, right?
A I can't envision it.
Q But that extra touch base would make it less economic -- doing that every month would make that milk if -- it would be a much better test of its ability to service the local market, would it not?
A Yes, the handler would have to take that into consideration in making that decision, what that cost is associated with doing that.
MR. YALE: I have no other questions.

JUDGE CLIFTON: Thank you, Mr. Yale. Any other questions before Mr. Cooper follows up? All right, Mr. Cooper.

CROSS-EXAMINATION

BY MR. COOPER:

Q Mr. Rasch, you originally indicated you were testifying for Michigan Milk Producers. Am I right in assume that your testimony in Exhibit 19 and the two modifications of the proposals contained therein are offered not only on behalf of Michigan Milk, but on behalf of DFA and the other two organizations that I can't remember the names of?

A Yes, whoever they are.

Q Secondly, I think you indicated that Michigan Milk pools milk on Orders 5 and 7; is that correct?

A At certain times of the year.

Q Is that milk originating from farms in Order 33?

A Yes.

Q And prior to Federal Order reform, did Michigan Milk pool milk on 5, 7 or their predecessors?

A Yes, we had some experience in pooling milk on Order 46. The others, I don't remember what the order numbers were, but yes, we pooled milk as far away as that Georgia market.

Q Have you increased significantly the amount of milk that you are pooling on 5 and 7 that originates in Order 33?

A Again, it depends on what the needs of that market are. We are typically dealing with the marketing agency in that market. We enter into an agreement to supply them during their supplemental needs season. This year, their needs may be more than what they were in previous years. I can't recall all the buys compared from one year to the other.

Q I guess what I am getting it is the general gist of your testimony and the other proponents is that a lot of milk is not historically associated with Order 33 is getting attached to Order 33 and throwing down on the pool and I am just curious as to whether any Order 33 milk or a significant amount is getting attached to orders and getting pooled on the orders qat higher blend prices and thus falling out the other end, so to speak.

A I don't know what you call significant buys, but to the extent --

Q Significantly higher than what you did prior --

A I don't think so.

MR. COOPER: Thank you.

JUDGE CLIFTON: Thank you, Mr. Cooper. Mr. Tosi?

CROSS-EXAMINATION

BY MR. TOSI:

Q Mr. Rasch, on page two of Exhibit 19 under proposal number two, in some of the reasons that you offer there under item two, you make reference to reserve supply orders. Just for the benefit of the record, who were you referring to as reserve supply orders?

A Probably the prior Orders 30 and 68.

Q So, basically the old Chicago regional and the upper Midwest?

A Sure.

Q My next question is will you please turn to page four of Exhibit 19 and the sentence that you have marked as number three, the touch base standard is more in line with the higher utilization markets and you are referring to Federal Order 5 and Federal Order 7 where they require a much greater number of days of touch base. And I guess in there, your testimony said a higher utilization market and I would like to key in on that phrase. At what point should the department or should we consider in order to be a higher utilization market?

A I guess first of all, they say it's more in line. One -- two days versus one day is closer to the requirements for those orders. High utilization markets I guess we would think would be something in the vicinity of 60 to 75 percent Class I utilization depending on the time of the year.

Q So, if the Mideast order had a utilization of 50 percent Class I, you would not consider that to be a higher utilization order?

A Not enough to justify these kinds of requirements.

Q My last question, on page five of your testimony on Exhibit 19, right below your proposed language for Section 13(d)(4), in your written statement you were referring to zero diversion limit for supply plants and not being able to support zero diversion limits to pool plants from a distributing plant. When you say zero there, I just want to be real clear about this. You are not saying that the diversion limit should be zero, are you?

A No.

Q You are saying that zero in this context would mean the lack of specifying any diversion limits; is that what you mean?

A To the extent diversion from distributing plants to other pool plants allow some entity to enhance their ability to divert even more milk to non-pool plants, there needs to be some restraint on that.

Q I understand. Zero in this context means a reference to an infinite number.

A That's correct.

MR. TOSI: Thank you. That's all I have.

JUDGE CLIFTON: Thank you, Mr. Tosi. Any other questions? Mr. Yale?

MR. YALE: I just want to follow up --

JUDGE CLIFTON: Please do, Mr. Yale.

CROSS-EXAMINATION

BY MR. YALE:

Q I just want to follow up on Mr. Cooper's questions about pooling in Orders 5 and 7. Do you have the supply plant that is pooled on Orders 5 and 7?

A No.

Q Do you have any period say like in the spring -- March, April, May or June, in which you have producers who do not deliver to any plants in the southeast, either in Order 5 or 7, but from which you receive money from that pool?

A No.

Q So, when you say you pool milk on Orders 5 and 7, that is because you are actually delivering milk to the distributing plants in those orders; is that correct?

A That is correct.

Q And that is different from the type of situation we are complaining about here with these supply plants from a distance that are supplying 33, is that correct?

A That's correct.

MR. YALE: No other questions.

JUDGE CLIFTON: Thank you, Mr. Yale. Anyone else before I ask Mr. Beshore if he has any redirect? None. Mr. Beshore?

REDIRECT EXAMINATION

BY MR. BESHORE:

Q Just one question, Mr. Rasch. With respect to characterizing an order as a reserve supply order as noted on point two, page two of your testimony, would I be correct to understand your testimony to that before the consolidation of the orders that now make up Order 33, before Orders 40, 33, 36 and 49, 44 were combined into the present order, Order 40 was in essence a reserve supply order for other orders and therefore, the provision that this addresses, that is the qualification of shipments to other order distributing plants was in that order to recognize the function that the Order 40 area performed?

A You have to review what the utilization of the five orders that were consolidated in order to form

Order 33. Order 40 had the lowest utilization because of the fact that we have a large amount of milk supply or I should say a large volume of Class I sales, but we had a larger reserve supply of milk production to go along with that also, so we were considering reserve supply. And there was another unique provision in our order, that to the extent you didn't pool the milk in that order, you just shipped it from a plant and Class I utilization was realized by Order 40, you would enhance the Class I utilization of this market and the Class I utilization of this particular market for this month determined what your performance requirements were going to be for next year. So, if we were going to make shipments to other markets, it was going to enhance our Class I utilization and cause us to have to perform at a higher level, well, then we needed to get credit for those shipments also. So, there were a couple of things that came into play in the provisions with Order 40.

Q But historically, the Michigan area has served as a reserve supply area for markets to the south, just as Wisconsin has or Minnesota.

A Yes.

Q Perhaps to a lesser volume, but nevertheless, regularly on a longterm basis.

A For most of my tenure with Michigan Milk

Producers, we have shipped milk to other markets for limited periods of the year.

MR. BESHORE: Thank you. I have no other questions for Mr. Rasch.

JUDGE CLIFTON: Thank you. Mr. Rasch, you have done an excellent job and I appreciate it. It's late and you have been on the stand a long time. You may step down.

(Witness excused.)

JUDGE CLIFTON:

Mr. Beshore, what is your pleasure as to what we do next?

MR. BESHORE: Adjourn.

JUDGE CLIFTON: Is there any objection? There being none, let's be back at 8:30 in the morning.

(Whereupon, at 6:07 p.m., the hearing was adjourned to reconvene October 24th, 2001.)

- - - - - - -

REPORTER'S CERTIFICATE

DOCKET NO.: AO-168-A68

DA-01-04

CASE TITLE: MILK IN THE MIDEAST MARKETING AREA

HEARING DATE: October 23, 2001

LOCATION: Wadsworth, Ohio

I hereby certify that the proceedings and evidence are contained fully and accurately on the tapes and notes reported by me at the hearing in the above case before the United States Department of Agriculture.

Date: October 29, 2001

____

Official Reporter