

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
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UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

IN RE:

MILK IN THE APPALACHIAN,	DOCKET NO. AO-388-A16,
FLORIDA, AND SOUTHEAST	AO-356-A38, and
MARKETING AREAS	AO-366-A45; DA-04-77

Thursday, October 7, 2004
Sheraton Gateway Hotel
Atlanta, Georgia

The above entitled matter came on for
hearing, pursuant to notice, at 9:00 a.m.

BEFORE: JILL CLIFTON
Administrative Law Judge

APPEARANCES:

On_Behalf_of_the_USDA:

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	INDEX				
	WITNESSES:	DIRECT	CROSS	REDIRECT	RECROSS
1					
2	STEVEN DUPREY				
3	By Ms. Deskins	26			
4	JASON T. NIERMAN				
5	By Ms. Deskins	34			
6	ALAN WAGNER				
7	By Ms. Deskins	38			
8	By Mr. Beshore		44		
9	JEFFREY SIMS				
10	By Mr. Beshore	52		138	
11	By Ms. Carter		112		134
12	By Mr. Rower		128		
13	By Mr. Cherry		131		
14	By Ms. Deskins		132		
15	By Mr. Kinser		136		
16	CALVIN COVINGTON				
17	By Mr. Beshore	143		180	
18	By Mr. Cherry		171		134
19	By Ms. Carter		173		
20	By Ms. Deskins		178		
21	FRANK H. JOHNS, JR.				
22	By Mr. Beshore	185		216	
23	By Ms. Carter		210		215
24	By Mr. Cherry		213		
25	By Ms. Deskins		214		
26	JASON BAIRD				
27	By Mr. Beshore	218			
28	By Ms. Carter		229		
29	By Mr. Cherry		230		
30	MIKE ASBURY				
31	By Mr. Beshore	232			
32	By Ms. Carter		240		
33	By Mr. Cherry		241		
34	By Ms. Deskins		241		
35	TESTIMONY OF GREG CRISHI		245		
36	TESTIMONY OF EVAN KINSER		259		

	INDEX TO EXHIBITS		
	NUMBER:	IDENTIFIED:	RECEIVED:
	<u> </u>	<u> </u>	<u> </u>
1			
2			
3	1	22	33
4	2	22	33
5	3	22	33
6	4	22	33
7	5	22	33
8	6	28	33
9	7	29	33
10	8	30	33
11	9	31	33
12	10	35	37
13	11	35	37
14	12	51	111
15	13	51	111
16	14	142	171
17	15	142	171
18	16	183	209
19	17	217	229
20	18	232	239
21	19	258	

(Exhibits retained by Judge Clifton)

22

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25

1 JUDGE CLIFTON: All right, let's begin our
2 record.

3 This record is being made on October 7,
4 2004, it's a Thursday. We're in Atlanta,
5 Georgia, and this is a rule-making hearing being
6 held for the Secretary of Agriculture to make a
7 decision with regard to milk.

8 I want now to read into the record the
9 heading and the caption for the transcript, as I
10 would like it to appear for each volume of the
11 transcript. The heading should be two lines, and
12 it should read on the first line, "United States
13 Department of Agriculture"; on the second line it
14 should read, "Before the Secretary of
15 Agriculture." The name of the case is "In Re:
16 Milk in the Appalachian, Florida, and Southeast
17 Marketing Areas."

18 The docket number for the case is Docket
19 No. AO-388-A16, AO-356-A38, and AO-366-A45;
20 DA-04-77. The purpose of this public hearing is
21 to gather evidence so that it can be considered
22 by the Secretary of Agriculture.

23 My name is Jill Clifton, C-l-i-f-t-o-n. I'm
24 a United States Administrative Law Judge. It is
25 not my purpose to be any part of the

1 decision-making process once the hearing is
2 completed. The sole extent of my decision making
3 is with regard to the evidence that will be
4 presented here.

5 There are two types of evidence; testimony
6 and exhibits, and so as we gather in the
7 exhibits, we'll be numbering those and they'll be
8 part of the official record to be considered, as
9 well as the testimony we receive.

10 I'd like now to have various participants
11 identify themselves up front. I also want every
12 speaker to again identify himself before he
13 speaks, and I want every speaker to be at a
14 microphone. And that may take a little time but
15 it will make for a much better record and a much
16 better understanding by those who are here and
17 those who have to read a cold transcript later.

18 I'd like to start with representatives of
19 the United States who are present and seated at
20 the first table, and I want you to remain seated
21 when you say who you are, because that will make
22 for better amplification, but after each of you
23 has identified yourself, I'd like all four of you
24 to stand and turn around so people can see who
25 you are.

1 Ms. Deskins, would you begin, please.

2 MS. DESKINS: Yes. My name is Sharlene
3 Deskins. The first name is spelled
4 S-h-a-r-l-e-n-e, last name is spelled
5 D-e-s-k-i-n-s. I'm an attorney with the United
6 States Department of Agriculture, Office of
7 General Counsel, and I'm representing the
8 Agriculture Marketing Service.

9 MS. CARTER: My name is Antoinette Carter.
10 Antoinette spelled A-n-t-o-i-n-e-t-t-e, Carter
11 spelled C-a-r-t-e-r. I'm a marketing specialist
12 with the USDA Agriculture Marketing Service Dairy
13 Programs in Washington, D.C.

14 MR. ROWER: And I'm Jack Rower, J-a-c-k
15 R-o-w-e-r, and I'm a marketing specialist with
16 AMS Dairy Programs.

17 MR. CHERRY: Good morning. My name is
18 Richard Cherry, spelled R-i-c-h-a-r-d, last name
19 C-h-e-r-r-y, and I'm a marketing specialist with
20 the Agriculture Department, U.S. -- excuse me,
21 U.S. Department of Agriculture, Order Formation
22 Branch.

23 JUDGE CLIFTON: All right. And just so I
24 can help keep track, those of you who are with
25 your branch, Mr. Cherry, we start out with USDA,

1 then we go Agriculture Marketing Service, then we
2 go Dairy Programs, then what comes next?

3 MR. CHERRY: Order formulations and
4 enforcement branch?

5 JUDGE CLIFTON: Order formulation and
6 enforcement branch.

7 MR. CHERRY: Yes.

8 JUDGE CLIFTON: Okay. All right.

9 Could -- would all four of you please stand
10 and then turn around just so people can recognize
11 you.

12 (Complies.)

13 JUDGE CLIFTON: Ms. Deskins, is there anyone
14 else in the room for whom the prohibition against
15 talking with you ex parte would apply?

16 MS. DESKINS: Yes. There are people here
17 from the Milk Market Administrators Offices, from
18 the Appalachian and Florida and Southeast, and
19 also there's a person who's going to testify,
20 Mr. Alan Wagner, who's with Agriculture Marketing
21 Services but doing, it says, Marketing News
22 Division.

23 JUDGE CLIFTON: All right.

24 Would you explain for people present what
25 the rule against ex parte communication amounts

1 to.

2 MS. DESKINS: Okay, yes.

3 As part of formal rule making, once a notice
4 of hearing has been published, people who are in
5 the decision-making area can't discuss any of the
6 issues in the notice with proponents or anyone.
7 So during this hearing, they can't discuss
8 anything, anything that's been testified to or
9 anything that would relate to what's in the
10 notice for hearing.

11 JUDGE CLIFTON: So, for example, would it be
12 prohibited to come up to one of you and say: You
13 know, that witness's idea was great?

14 MS. DESKINS: They should not -- should not
15 be discussing that with us, and we can't discuss
16 it with them.

17 JUDGE CLIFTON: All right. And so
18 communications with you all during the hearing
19 has to be limited to such things like, how long
20 is our break?

21 MS. DESKINS: Yeah. Things -- things of
22 that issue.

23 JUDGE CLIFTON: Okay. Very good.

24 MS. DESKINS: Or if they do want to
25 communicate with us, the best thing to do is to

1 testify.

2 JUDGE CLIFTON: Absolutely. Absolutely.
3 That's why we're here, so that everything that
4 needs to be communicated is a public record and
5 available for other witnesses here to comment on
6 before we leave.

7 All right. Then all of you who are here who
8 do participate in the administration of the
9 marketing orders, or for any other reason,
10 ex parte contact with you is also prohibited.

11 Would you please stand and come to the
12 podium and identify yourselves.

13 MR. DUPREY: My name is Steven Duprey, I'm
14 an economist with the Market Administrators
15 Office, representing the Southeast and Florida
16 markets.

17 JUDGE CLIFTON: All right. I'm so glad that
18 when you testify, you'll be seated.

19 (Laughter)

20 JUDGE CLIFTON: Now, if any of you did not
21 give a card to the court reporter, I need you to
22 spell your name when you're at the podium.

23 MS. MOSELEY: My name is Sue Mosely. I'm a
24 Milk Market Administrator for the Southeast and
25 the Florida Federal Orders, located here in

1 Atlanta, Georgia. My last name is spelled
2 M-o-s-l-e-y.

3 MS. ELY: My name is Gayle Ely, G-a-y-l-e,
4 last name Ely, E-l-y. I'm the Assistant Market
5 Administrator for the Southeast and Florida
6 marketing areas, located in Atlanta, Georgia.

7 MR. WAGNER: Good morning. My name is Alan
8 Wagner. That's A-l-a-n W-a-g-n-e-r. I'm with
9 the USDA Ag Marketing Service "Dairy Market News"
10 located in Madison, Wisconsin.

11 MR. NIERMAN: I'm Jason Nierman. I'm the
12 economist for Federal Order 5, the Appalachian
13 Federal Order.

14 MR. GOOCH: My name is Jeff Gooch, J-e-f-f
15 G-o-o-c-h. I'm an assistant to the Market
16 Administrator for Federal Order 5, Appalachian
17 marketing area.

18 MS. HOOVER: My name is Jill Hoover. I'm
19 with the Department of Agriculture, AMS Dairy,
20 Order Enforcement Branch. That's J-i-l-l
21 H-o-o-v-e-r.

22 MR. FRIEDLY: My name is Harold Friedly.
23 I'm the Market Administrator for the Appalachian
24 marketing area, Federal Order 5.

25 JUDGE CLIFTON: All right. And had you

1 given a card to the court reporter?

2 MR. FRIEDLY: I will.

3 JUDGE CLIFTON: Okay, good.

4 All right, good. Now, I'd like at this time
5 to have other people who anticipate presenting
6 witnesses, questioning witnesses, or appearing as
7 witnesses also to appear. And I guess we should
8 begin with proponents for the first proposal.

9 Mr. Beshore.

10 MR. BESHORE: My name is Marvin Beshore,
11 M-a-r-v-i-n, Beshore, B-e-s-h-o-r-e. I'm an
12 attorney, 130 State Street, Harrisburg,
13 Pennsylvania. I'm representing the proponents of
14 the Proposal Number 1 today, Dairy Farmers of
15 America, Inc.; Lone Star Milk Producers, Inc.;
16 Maryland and Virginia Milk Producers Cooperative
17 Association, Inc.; and Southeast Milk, Inc.

18 And we have five witnesses, and I will ask
19 each of them to identify themselves at this time,
20 starting with Mr. Sims.

21 MR. SIMS: Jeffrey Sims, J-e-f-f-r-e-y
22 S-i-m-s. I'm with Dairy Cooperative Marketing
23 Association, P.O. Box 248, Goshen, Kentucky,
24 40026.

25 MR. COVINGTON: My name is Calvin Covington

1 representing Southeast Milk, Incorporated,
2 Bellevue, Florida.

3 MR. JOHNS: My name is Frank Johns
4 representing Dairy Farmers of America,
5 Knoxville -- Knoxville, Tennessee.

6 MR. BAIRD: My name is Jason Baird, I'm
7 representing Lone Star Milk Producers,
8 Windthorst, Texas.

9 MR. ASBURY: My name is Mike Asbury,
10 representing Maryland and Virginia Milk
11 Producers, Reston, Virginia.

12 JUDGE CLIFTON: Mr. Asbury, just so the
13 record was clear, that's Reston, R-e-s-t-o-n?

14 MR. ASBURY: That's correct.

15 JUDGE CLIFTON: Thank you.

16 MR. CRISHI: My name is Greg Crishi, I'm
17 representing National Dairy Holdings.

18 JUDGE CLIFTON: And would you spell your
19 last name, sir?

20 MR. CRISHI: C-r-i-s-h-i.

21 JUDGE CLIFTON: I counted six, Mr. Beshore.

22 MR. BESHORE: Yes. Mr. Crishi is -- Crishi
23 is actually with National Dairy Holdings, who was
24 not a proponent, and he's here to testify, as we
25 understand it, but not strictly as a proponent.

1 JUDGE CLIFTON: Ah, thank you. Good.

2 All right. Now, other people who have not
3 yet identified themselves who anticipate either
4 questioning witnesses, even if you don't intend
5 to testify but you do expect to ask some
6 questions, I'd like you to identify yourself at
7 this point.

8 So, are there others?

9 MR. HITCHELL: My name is John Hitchell,
10 spelled J-o-h-n, last name is spelled
11 H-i-t-c-h-e-l-l. I'm with Kroger Company,
12 Cincinnati, Ohio.

13 MS. REED: Good morning. Kristine Reed, I'm
14 an attorney with Yale Law Office, Waynesfield,
15 Ohio. I'm here on behalf of Select Milk
16 Producers and Continental Dairy Products.
17 It was Kristine, K-r-i-s-t-i-n-e, Reed, R-e-e-d.

18 JUDGE CLIFTON: Thank you.

19 MR. MILTNER: My name is Ryan Miltner,
20 R-y-a-n, last name is M-i-l-t-n-e-r, with Yale
21 Law Office of Waynesfield, Ohio, on behalf of
22 Select Milk Producers, Inc. and Continental Dairy
23 Products, Inc.

24 JUDGE CLIFTON: Thank you.

25 Anyone else who knows now that you intend to

1 be heard in one way or another while we're here?

2 (No response)

3 JUDGE CLIFTON: And that's not to prohibit
4 you from speaking at a later time, but I just
5 wanted to get as many of these names forward at
6 the beginning as possible.

7 All right, good. Now, the next thing I'd
8 like to talk about is the availability of the
9 transcript and the exhibits once the hearing here
10 has concluded. And, Mr. Rower, what are the
11 arrangements with the court reporting service
12 with regard to availability of the transcript and
13 will there be an online availability to see
14 exhibits and the transcript?

15 MR. ROWER: The transcript, after it's
16 received, will be posted to the Internet as
17 quickly as we technically --

18 JUDGE CLIFTON: A little closer to the mic,
19 please.

20 MR. ROWER: Sure. Thank you.

21 The transcript that we receive will be
22 posted to the Internet as quickly as we
23 technically can, upon receipt from the court
24 reporting company.

25 JUDGE CLIFTON: All right. And are -- do

1 you intend also to try to reproduce exhibits on
2 the website?

3 MR. ROWER: Yes, we will, Your Honor.

4 JUDGE CLIFTON: All right. And will that be
5 the USDA Agriculture Marketing Service Marketing
6 Orders website?

7 MR. ROWER: It will be the AMS Dairy website
8 under rule making, and people should be able to
9 find it fairly simply by going to that website.

10 JUDGE CLIFTON: Very good. All right, thank
11 you.

12 All right, now, other preliminary matters.
13 Ms. Deskins, are there any other preliminary
14 matters that you would like to address at this
15 time?

16 MS. DESKINS: There have -- there was a
17 typographical error in the notice for this
18 hearing, and just to correct it on the record, if
19 you look at 1005.60(g)(5). In the second to last
20 sentence, it has .09 per hundredweight. That
21 should be .04.

22 It's at the second column, oh, about
23 two-thirds down.

24 JUDGE CLIFTON: Oh. That should be, where
25 it says .09 dollars per hundredweight?

1 MS. DESKINS: Right.

2 JUDGE CLIFTON: It should be .04 dollars per
3 hundredweight?

4 MS. DESKINS: Yes.

5 JUDGE CLIFTON: Oh, that's a rather
6 significant change.

7 MS. DESKINS: Yes. And if you look on the
8 next column under 1006.60(a), where it has, oh, I
9 guess like in the -- toward the top of that
10 paragraph, it has .04 per hundredweight, that
11 should be .09.

12 JUDGE CLIFTON: All right. Does everyone
13 have in front of you a copy of what was published
14 in the Federal Register that's entitled "Proposed
15 Rules"? Does everybody have one of those?

16 I would assume we have -- we have them on
17 the back tables.

18 MS. DESKINS: Yes.

19 JUDGE CLIFTON: Okay. If you don't have
20 one, get one. And if you need again to be told
21 where those changes are, we'll have Ms. Deskins
22 repeat that.

23 Did everybody catch where those are?

24 MR. BESHORE: (Indicating)

25 JUDGE CLIFTON: Mr. Beshore?

1 MR. BESHORE: Yes. Just by way of
2 amplification or clarification, it's my
3 understanding, and I'd like the representatives
4 of USD -- USDA to confirm this, that the -- the
5 correct numbers were -- were in the proposal and
6 were in the requested notice as transmitted from
7 AMS to the Federal Register, and the changes or
8 the typographical errors occurred at the Federal
9 Register and it's, the corrected numbers are what
10 are intended to be the proposed rules today?

11 MS. DESKINS: That's what the proponent
12 submitted was the corrected numbers.

13 JUDGE CLIFTON: Ms. Deskins.

14 MS. DESKINS: When the original proposal was
15 sent to the Federal Register, it had the numbers
16 I just read off. Somehow when it got published,
17 there was a change that was made, but that was
18 the proponents' intent is what I've said on the
19 record.

20 JUDGE CLIFTON: All right. Good.

21 MS. DESKINS: There -- there was one other
22 typo error which was on the first page.

23 JUDGE CLIFTON: Ms. Deskins, closer to the
24 mic, please.

25 MS. DESKINS: Okay.

1 There was one other typo which was on the
2 first page, which was disbursed was spelled
3 wrong.

4 JUDGE CLIFTON: And can you find that for
5 me?

6 MS. DESKINS: Yeah. If you look on the
7 third column, it's -- it's toward the end of the
8 paragraph. It has "the payments would be," if
9 you look, "payments would be," it should be
10 disbursed.

11 JUDGE CLIFTON: How far down that third
12 column?

13 MS. DESKINS: Third column it's, I'd say,
14 like a quarter way from the bottom. It's right
15 under United States.

16 JUDGE CLIFTON: Oh, I see. Yes.

17 So the "P" in dispursed needs to be a "B"?

18 MS. DESKINS: Right.

19 JUDGE CLIFTON: Okay.

20 All right, Ms. Deskins, are there any other
21 preliminary matters that you would like to raise
22 at this time?

23 MS. DESKINS: No.

24 JUDGE CLIFTON: All right.

25 Mr. Beshore, are there any other preliminary

1 matters that you'd like to address at this time?

2 MR. BESHORE: No, Your Honor.

3 JUDGE CLIFTON: All right.

4 Does anyone else have any preliminary
5 matters that you would like to raise at this
6 time?

7 (No response)

8 JUDGE CLIFTON: All right. I'm going to ask
9 that we go off the record for just about three
10 minutes, a three-minute stretch, talk with people
11 if you need to about whether there's anything
12 else that should be raised preliminarily before I
13 ask the government to begin the evidence in the
14 hearing by providing the record documents that
15 begin each of these rule-making types of hearings
16 and proceeding as they wish.

17 All right. We'll -- it's now -- what time
18 is it? It's now 9:31. Why don't we be ready to
19 go at 9:35.

20 MS. DESKINS: Okay.

21 MS. CARTER: Okay.

22 (Whereupon, a brief recess was taken.)

23 JUDGE CLIFTON: All right, let's go back on
24 record.

25 We're back on record now. It's

1 approximately 9:05 [sic]. Are there any other
2 preliminary matters?

3 MR. BESHORE: (Indicating)

4 JUDGE CLIFTON: Mr. Beshore?

5 MR. BESHORE: Your Honor, there are
6 representatives of Dean Foods Company who have
7 now joined us in the hearing, and I thought they
8 might make their -- you might ask them to have
9 their appearances noted.

10 JUDGE CLIFTON: Yes, please.

11 We've previously had those who would either
12 testify or question witnesses identify themselves
13 just so that we'd have that on the record. And
14 if you have not yet given a business card to the
15 court reporter, I would encourage you to do that.
16 Until then, please spell your name as well as
17 announcing it for us.

18 MR. KINSER: Evan Kinser, E-v-a-n
19 K-i-n-s-e-r, with Dean Foods. And Bill Curley,
20 B-i-l-l C-u-r-l-e-y, will be testifying.

21 JUDGE CLIFTON: All right. Would Mr. Curley
22 come forward and identify himself?

23 MR. CURLEY: Yes.

24 I'm Bill Curley with Dean Foods. I'll be
25 testifying today. I have a business card.

1 JUDGE CLIFTON: Please approach the court
2 reporter.

3 MR. CURLEY: All right. Thank you.

4 JUDGE CLIFTON: Thank you.

5 Are there any other preliminary matters
6 before we begin with the evidence?

7 (No response)

8 JUDGE CLIFTON: All right.

9 You're also welcome to approach the court
10 reporter if you wish to order a transcript
11 directly from the court reporter. Some of you
12 may wish to do that.

13 The court reporter is Karla Pittman,
14 K-a-r-l-a, Pittman, P-i-t-t-m-a-n. She
15 represents West Court Reporting, and the home
16 office is in Lawrenceville, Georgia.

17 So feel free to approach her if you'd like
18 to order a transcript directly.

19 All right, Ms. Deskins, you -- again, please
20 identify yourself, and you may proceed.

21 MS. DESKINS: Sharlene Deskins, Office of
22 General Counsel, USDA.

23 Judge Clifton, I have some documents that
24 should go into the record to show that proper
25 notice was given of this hearing under the 900

1 rules. But first, let me read what the documents
2 are. The first one is the notice that was
3 published in the Federal Register with the
4 corrections that I said on the record earlier;
5 the next one would be, it's a certificate of the
6 officials notified about this hearing; the third
7 one is going to be determination of mailing that
8 was sent by the Market Administrator for Florida
9 and the Southeast, which is Sue L. Mosely; the
10 next one is, it's the notice of mailing to
11 interested persons for the Appalachian marketing
12 area by Harold H. Friedly; and then the last one
13 would be the press release that was issued on
14 this hearing.

15 JUDGE CLIFTON: Now, are there copies of
16 each of those documents available at the back
17 table?

18 MS. DESKINS: Yes.

19 JUDGE CLIFTON: All right. Very fine.

20 Now, let's have the court reporter mark each
21 of these with a different number. She has
22 exhibit stickers. And we'll just number those in
23 the order that you indicated.

24 (Whereupon, Exhibit Nos. 1 through 5 were
25 marked for identification.)

1 JUDGE CLIFTON: Okay. I think, Ms. Deskins,
2 in order to make our record complete on this, I
3 would like you to get the marked ones from the
4 court reporter and just tell us what number each
5 one has.

6 MS. DESKINS: The notice in the Federal
7 Register has been marked as Exhibit 1; the
8 certificate of officials notified is marked as
9 Exhibit 2; the determination of notice of mailing
10 that was issued by Sue L. Mosely is No. 3; the
11 determination of mailing to interested persons
12 for -- that was issued by Harold H. Friedly is
13 No. 4; and the press release on this hearing is
14 Exhibit No. 5.

15 JUDGE CLIFTON: All right. Now, there will
16 be one record copy of these documents, and,
17 Mr. Rower, when we have completed this hearing,
18 shall I take the custody of the record copy and
19 deliver that to the hearing clerk?

20 There are two alternatives; one is that I
21 take custody of it, the other is that we leave
22 them with the court reporter to submit with the
23 transcript. But since I office across the hall
24 from the hearing clerk, I will be happy to
25 deliver those to the hearing clerk.

1 MR. ROWER: If you --

2 MS. DESKINS: Your Honor, we'd prefer that
3 you take custody of it for this hearing because
4 we are going to be on a very tight schedule, it
5 is important that they get to the hearing clerk's
6 office very quickly.

7 JUDGE CLIFTON: Very good.

8 MR. ROWER: Thank you, Your Honor.

9 JUDGE CLIFTON: And it will be the hearing
10 clerk's copy that needs to go on your website, so
11 we can coordinate that.

12 Now, I want these record copies to have the
13 changes, Ms. Deskins, that you read into the
14 record with regard to --

15 MS. DESKINS: Okay, I will do that right
16 now, then.

17 JUDGE CLIFTON: All right, very good. And
18 let's go off record while you do that.

19 (Off record.)

20 JUDGE CLIFTON: All right, let's go back on
21 record.

22 I am now holding the record copy of
23 Exhibit 1. It has the exhibit sticker at the
24 top. The first change is that on page 1, and
25 this is what was -- this is a copy of what was be

1 printed in the Federal Register, Volume 69,
2 Number 189, Thursday, September 30, 2004. It is
3 the notice of this hearing.

4 In the -- on the first page of that
5 document, in the third column, up from the bottom
6 approximately two inches, there is the word
7 "dispursed," right under the words United States.
8 One letter has been corrected, and that is the
9 "P" has been changed to a "B," disbursed.

10 Now, I'm turning to the next page, this
11 would be Page 58369 in the Federal Register. In
12 column two, approximately three-and-a-half inches
13 up from the bottom, Subsection (g)(5) -- that's
14 (g)(5), an Arabic five, close parentheses.

15 There is in that paragraph, next to the last
16 line, a change to the amount of money involved.
17 Previously, the amount of money read nine cents
18 per hundredweight; the correction makes it read
19 four cents per hundredweight.

20 The next correction is with regard to the
21 third column on that page, approximately four
22 inches from the top. So now I'm in
23 Subsection (a) of Section 1006.60. The change is
24 that the old print said four cents per
25 hundredweight, and corrected it says nine cents

1 per hundredweight.

2 Ms. Deskins, thank you. If you would now
3 retrieve this record copy and return it to the
4 court reporter.

5 MS. DESKINS: (Complies)

6 JUDGE CLIFTON: Thank you.

7 All right, Ms. Deskins, you may proceed.

8 MS. DESKINS: Yes.

9 Your Honor, at this time I'd like to call
10 Steven Duprey to the stand.

11 JUDGE CLIFTON: All right.

12 If you'll come forward and be seated, I will
13 then swear you in.

14 Would you raise your right hand, please.

15 STEVEN DUPREY,

16 being first duly sworn, was examined and testified
17 as follows:

18 JUDGE CLIFTON: Please free, feel free to
19 get water and get comfortable before you begin.

20

21 DIRECT EXAMINATION

22 BY MS. DESKINS:

23 Q. Are you ready to begin?

24 A. I am.

25 Q. For the record, could you please spell your

1 name?

2 A. My name is Steven Duprey, S-t-e-v-e-n
3 D-u-p-r-e-y.

4 Q. And can you tell us where you work.

5 A. I work for the Market Administrators Office
6 in Atlanta, Georgia, as the Florida marketing area and
7 the Southeast marketing area.

8 Q. And can you just tell us, briefly tell us
9 what your job duties are.

10 A. My official title is economist. I prepare
11 market statistics, special analysis, those types of
12 things.

13 Q. For this hearing did you prepare any
14 exhibits?

15 A. I did.

16 Q. Okay. Could you please tell us about them.

17 A. Two of the exhibits were prepared at a
18 special request of the proponents, and two are prepared
19 in the normal course of business.

20 Q. Okay. Why don't you start with the ones
21 that -- that you prepared in -- during the normal
22 course of business.

23 A. The first would be Federal Order 6, Florida
24 marketing area, 2003 annual statistics.

25 Q. It has the blue cover?

1 A. Yes.

2 Q. Okay.

3 MS. DESKINS: Your Honor, I'd like to have
4 that marked as Exhibit 6.

5 JUDGE CLIFTON: Yes. I'd ask now that the
6 court reporter mark the record copy as Exhibit 6.

7 (Whereupon, Exhibit No. 6 was marked for
8 identification.)

9 BY MS. DESKINS:

10 Q. If you could please proceed -- proceed and
11 just describe to us what's in Exhibit 6.

12 A. It's a compilation of essentially every
13 statistic for 2003 that the Market Administrator
14 collects and prepares.

15 Q. Okay. Now, you've had a chance to review
16 Exhibit 6?

17 A. Yes.

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

19 A. Yes.

20 Q. Is there anything else you want to add about
21 this exhibit for us?

22 A. No.

23 Q. Okay.

24 Did you prepare any other exhibits for this
25 hearing?

1 A. Yes, I did. The 2003 annual statistics for
2 Federal Order 7, the Southeast marketing area.

3 Q. Okay. Now, does that have kind of a
4 butterscotch color?

5 A. Yes, it does.

6 Q. Okay.

7 MS. DESKINS: Your Honor, at this time I'd
8 like to have that marked as Exhibit 7.

9 JUDGE CLIFTON: Yes. I'd ask that the court
10 reporter so mark the record copy.

11 BY MS. DESKINS:

12 Q. And if you could please describe for us
13 what's in Exhibit 7.

14 JUDGE CLIFTON: Wait just a minute,
15 Ms. Deskins.

16 MS. DESKINS: Oh.

17 JUDGE CLIFTON: She can't do both.

18 (Whereupon, Exhibit No. 7 was marked for
19 identification.)

20 BY MS. DESKINS:

21 Q. Can you describe Exhibit 7 for us.

22 A. Exhibit 7 is a compilation of statistical
23 material for the Southeast marketing area for 2003.

24 Q. All right.

25 A. It's essentially the same exhibit as

1 Exhibit 6 but for a different marketing area.

2 Q. Okay. And did -- did you prepare Exhibit 7?

3 A. Yes.

4 Q. Have you had a chance to review it?

5 A. Yes.

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

7 A. It is.

8 Q. Okay.

9 Did you prepare any other exhibits for this
10 hearing?

11 A. Yes. At the request of proponents, we
12 prepared essentially annual statistics year to date for
13 2004. So for January through August of 2004, we
14 prepared a partial -- partial year annual statistics
15 for the Florida marketing area.

16 Q. Okay.

17 Now, that -- that has a white cover,
18 correct?

19 A. Correct.

20 Q. Okay.

21 MS. DESKINS: I'd like to have that marked
22 as Exhibit No. 8.

23 (Whereupon, Exhibit No. 8 was marked for
24 identification.)

25 JUDGE CLIFTON: All right. That has been so

1 marked by the court reporter.

2 You may proceed.

3 MS. DESKINS: Okay.

4 BY MS. DESKINS:

5 Q. And did you prepare another one of these for
6 the Southeast marketing area?

7 A. Correct.

8 Q. And that also has a white cover?

9 A. It does.

10 Q. Okay.

11 MS. DESKINS: At this time, I'd like to have
12 that one marked as Exhibit 9.

13 (Whereupon, Exhibit No. 9 was marked for
14 identification.)

15 JUDGE CLIFTON: Now, I just want to confirm
16 with the court reporter, is the one that is now
17 marked Exhibit 8 the one that says "Florida
18 Marketing Area, Federal Order No. 6"?

19 THE COURT REPORTER: Yes.

20 JUDGE CLIFTON: And the one that is marked 9
21 is "Southeast Marketing Area Federal Order
22 No. 7"?

23 THE COURT REPORTER: Yes.

24 JUDGE CLIFTON: Okay.

25 BY MS. DESKINS:

1 Q. And these would just be the annual
2 statistics to date for those two marketing areas?

3 A. That's correct.

4 Q. Now, for both Exhibit 8 and 9, were they
5 prepared -- did you prepare them?

6 A. Yes.

7 Q. Okay. And have you had a chance to review
8 them?

9 A. Yes.

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

12 A. They are.

13 MS. DESKINS: Your Honor, at this time I'd
14 move for the admissions of Exhibits 6, 7, 8, and
15 9.

16 JUDGE CLIFTON: Is there any objection to
17 the admission into evidence of Exhibits 6, 7, 8,
18 or 9? And as part of that question, is there
19 anyone who wishes to voir dire the witness with
20 regard to those exhibits before I decide whether
21 to admit them?

22 (No response)

23 JUDGE CLIFTON: All right. I see no
24 objections and I see no request to voir dire the
25 witness; consequently, I admit into evidence

1 Exhibit 6, Exhibit 7, Exhibit 8, and Exhibit 9.

2 MS. DESKINS: I have no further questions
3 for the witness.

4 JUDGE CLIFTON: All right. You may step
5 down, Mr. Duprey. Thank you.

6 Ms. Deskins, do you want the first five
7 exhibits admitted into evidence at this time as
8 well?

9 MS. DESKINS: Yes.

10 JUDGE CLIFTON: Is there any objection to
11 the admission into evidence of Exhibit 1,
12 Exhibit 2, Exhibit 3, Exhibit 4, or Exhibit 5?

13 (No response)

14 JUDGE CLIFTON: There is none. Those
15 exhibits are hereby admitted into evidence.

16 Ms. Deskins?

17 MS. DESKINS: My next witness is Jason
18 Nierman.

19 JUDGE CLIFTON: All right, sir. Would you
20 state and spell your name, please.

21 MR. NIERMAN: My name is Jason Nierman,
22 J-a-s-o-n N-i-e-r-m-a-n.

23 JUDGE CLIFTON: Would you raise your right
24 hand, please.

25 JASON T. NIERMAN,

1 being first duly sworn, was examined and testified
2 as follows:

3 JUDGE CLIFTON: Thank you.

4 DIRECT EXAMINATION

5 BY MS. DESKINS:

6 Q. Mr. Nierman, can you please tell us where
7 you work.

8 A. I work at the Market Administrator Office in
9 Louisville, Kentucky, Appalachian Marketing Area,
10 Federal Order 5.

11 Q. And can you tell us briefly what your job
12 duties are at that office.

13 A. My title is economist. I provide or oversee
14 statistical information and data that's released from
15 our office. I provide economic analysis and market
16 outlook for Federal Order 5 also.

17 Q. And for this hearing did you prepare any
18 exhibits?

19 A. Yes, I did.

20 Q. Can you tell us what you prepared.

21 A. Provided the 2003 annual summary of
22 statistics, and also the 2004 January through August
23 2004 statistics.

24 Q. Okay. Let's start with the statistics for
25 2003.

1 MS. DESKINS: At this time, I'd like to have
2 that marked as Exhibit No. 10.

3 (Whereupon, Exhibit No. 10 was marked for
4 identification.)

5 MS. DESKINS: And I'd like to have the other
6 statistics, which are for January through August
7 2004, marked as Exhibit No. 11.

8 (Whereupon, Exhibit No. 11 was marked for
9 identification.)

10 BY MS. DESKINS:

11 Q. Okay, Mr. Nierman, when you said you
12 prepared some information, you were referring to
13 Exhibits 10 and 11?

14 A. Yes.

15 Q. Okay. Let's look at Exhibit No. 10. Have
16 you had a chance to review Exhibit No. 10?

17 A. Yes.

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

20 A. Yes.

21 Q. Okay. Is there anything about Exhibit
22 No. 10 you want to add for us or describe anything?

23 A. No.

24 Q. Okay. Let's look at Exhibit No. 11.

25 Okay, you said you prepared Exhibit No. 11?

1 A. Yes.

2 Q. Have you had a chance to review it?

3 A. Yes.

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

5 A. Yes.

6 Q. Okay. Is there anything you want to add
7 about Exhibit No. 11?

8 A. No.

9 Q. Okay.

10 Just for the record, Exhibit No. 11 is
11 January through August of 2004, correct?

12 A. Yes.

13 Q. Okay. Other than that, it would be -- is
14 it -- is there any big difference between, you know,
15 Exhibit 10 and 11 in terms of information in it?

16 A. In Exhibit 11, since a full year of data is
17 not available, the annual average statistics in Table 1
18 is not available, and also the state and county
19 producer data for Table 18, December 2004, is not
20 available at this time.

21 Q. Okay.

22 MS. DESKINS: Your Honor, at this time I'd
23 move for the admissions of Exhibit 10 and 11.

24 JUDGE CLIFTON: Is there any objection or
25 does anyone wish to voir dire the witness with

1 regard to the admission of Exhibit No. 10 or
2 Exhibit 11?

3 (No response)

4 JUDGE CLIFTON: All right. No one has
5 indicated any objection, no one has indicated any
6 wish to voir dire; consequently, Exhibits 10
7 and 11 are hereby admitted into evidence.

8 MS. DESKINS: I have no further questions.

9 JUDGE CLIFTON: All right.

10 Before you step down, is there anyone that
11 would like to cross-examine either of these
12 economists at this time with regard to their
13 testimony thus far?

14 And by either, I mean either this one who's
15 on the stand or the one that I've already allowed
16 to step down.

17 (No response)

18 JUDGE CLIFTON: All right.

19 You may step down. Thank you.

20 MS. DESKINS: Thank you.

21 My next witness is Mr. Alan Wagner.

22 JUDGE CLIFTON: Mr. Wagner, would you state
23 and spell your full name for us.

24 MR. WAGNER: My name is Alan Wagner, A-l-a-n
25 W-a-g-n-e-r.

1 JUDGE CLIFTON: Would you raise your right
2 hand, please.

3 ALAN WAGNER,
4 being first duly sworn, was examined and testified
5 as follows:

6 MR. WAGNER: I do.

7 JUDGE CLIFTON: Thank you.

8 DIRECT EXAMINATION

9 BY MS. DESKINS:

10 Q. Mr. Wagner, could you please tell us where
11 you work.

12 A. I work with USDA Dairy Market News located
13 in Madison, Wisconsin.

14 Q. And can you just briefly tell us what your
15 job duties are.

16 A. Essentially a Dairy Market reporter, but I
17 am also officer in charge of the eastern area of
18 reporting.

19 Q. And I understand for this hearing you have a
20 prepared statement?

21 A. Yes, I do.

22 Q. Would you like to read that to us?

23 A. Yes.

24 JUDGE CLIFTON: Now, Ms. Deskins, are you
25 also going to want it to be one of the exhibits?

1 MS. DESKINS: I don't think so because he
2 needs to change a couple of words in there, so I
3 was just going to have him read it. And we
4 passed it out so people can follow along, but
5 there's -- he's going -- there's going to be a
6 couple of changes.

7 JUDGE CLIFTON: You may proceed, Mr. Wagner.

8 MR. WAGNER: Thank you.

9 "Dairy Market News is a service provided by
10 the U.S. Department of Agriculture under the
11 authority of the Agricultural Marketing Act of
12 1946. The Act describes the purpose of Market
13 News, in part, to -- as -- as follows: 'To
14 collect and disseminate marketing information on
15 a market-area basis, for the purpose of
16 anticipating and meeting consumer requirements,
17 aiding in the maintenance of farm income, and
18 bringing about a balance between production and
19 utilization of agricultural products.'"

20 This first, next first sentence is the one
21 I'm amending part of. "Dairy Market News
22 collects timely information and reports in an
23 unbiased manner the information on market
24 conditions and prices for dairy product markets
25 of commercial significance. The kinds of market

1 data gathered are determined by industry needs
2 and by the willingness of industry members to
3 voluntarily provide the necessary information.
4 Market News reporters collect information from
5 contacts mainly by telephone interview. The
6 reporters then analyze and summarize the data,
7 prepare individual market reports, and
8 disseminate these reports via a subscription mail
9 list, the Internet, and voice recordings. All
10 information that is collected and -- is kept
11 confidential and industry contacts are not
12 revealed.

13 "Dairy Market News is concerned with what is
14 going on in the dairy product markets for the
15 current week. Dairy Product Market discovers
16 market conditions; it does not make or" --

17 JUDGE CLIFTON: Would you start that
18 sentence again, please.

19 MR. WAGNER: "Dairy Market News discovers
20 market conditions; it does not make market
21 conditions. Market news relies on the industry
22 contacts to provide accurate information. If the
23 reporter -- or excuse me, if the market news
24 reporter feels that information is inaccurate, he
25 or she can attempt to verify it with other

1 contacts or disregard it entirely.

2 "The East Fluid Milk and Cream Review is
3 best -- is designed to provide information on the
4 supply and demand conditions for fluid milk and
5 cream in the Market News' -- in the Market News'
6 Eastern Region. The Eastern Region, for the
7 purpose of this report, includes the following
8 states: Maine, New Hampshire, Vermont,
9 Massachusetts, Rhode Island, Connecticut, New
10 York, New Jersey, Pennsylvania, Virginia, West
11 Virginia, Maryland, Delaware, North and South
12 Carolina, Tennessee, Kentucky, Georgia, Alabama,
13 Mississippi, Louisiana and Florida. Occasionally
14 some Texas information will be included. The
15 survey of contacts include cooperatives,
16 proprietary companies, traders and take --
17 traders and brokers, and buyers. These contacts
18 work directly with buying and selling of milk and
19 other fluid products. The Review is released
20 weekly on Wednesdays at 1:00 p.m. Central Time,
21 and covers what has occurred since the last
22 report. The Review consists of a market comment,
23 prices for fluid milk -- excuse me, prices for
24 fluid cream, condensed skim, and information on
25 spot shipments of milk both into and out of the

1 Southeast. With regard to prices, it is
2 important to note that Dairy Market News uses the
3 first-sale, unless otherwise defined, F.O.B. at
4 the producing plant.

5 "As stated above, the spot milk shipments
6 report is part of the East Fluid Milk and Cream
7 Review. Spot shipments are defined as any
8 shipments not already covered by contracts or
9 supply agreements. Most often these spot
10 shipments are shipped from other plants, but some
11 are farm-direct loads. Both are treated the same
12 when it comes to their inclusion in the report.
13 The spot shipments report gives industry
14 representatives important information about the
15 milk supply in the Southeast, Northeast, Upper
16 Midwest, and Southwest. Sellers -- sellers and
17 buyers often use historic spot shipment data to
18 assist in estimating -- estimating needs for the
19 coming year. This report provides an estimate
20 for the week of the truckloads of milk moving
21 into Florida or other Southeastern States during
22 periods of short supply and demand relationships,
23 and out of Florida during periods of long supply
24 and demand conditions."

25 JUDGE CLIFTON: Let me stop you there.

1 You mentioned milk moving into Florida, or
2 other Southeast states?

3 MR. WAGNER: Southeast states.

4 JUDGE CLIFTON: And I notice that in the
5 written statement, Southeast is capitalized. So
6 were you referring to specifically the Southeast
7 marketing area states, or in general states in
8 the Southeast?

9 MR. WAGNER: General, in general states of
10 the Southeast region.

11 JUDGE CLIFTON: Okay. Thank you.

12 MR. WAGNER: Okay.

13 "Dairy Market News does not monitor pricing
14 on these purchases or sales of spot milk.
15 Information for the will" -- excuse me.
16 "Information for the week may be revised the
17 following week.

18 "In April of 2003, there was a change in the
19 organizations marketing milk in the Southeastern
20 states, including Florida. This change affected
21 the year-to-year comparability of the spot milk
22 shipments report. Milk shipments, which
23 previously were intra-company and/or contract
24 loads, and thus not counted in this report,
25 became spot purchases. Conversely, some

1 shipments that had been reported became contract
2 loads and, thus were not counted. We now have
3 over a year of comparable data, which gives a
4 good picture of the changes in the year-to-year
5 needs."

6 BY MS. DESKINS:

7 Q. Mr. Wagner, in terms of the East Fluid Milk
8 and Cream Review, is that available on the AMS web
9 page?

10 A. Yes, it is.

11 Q. Okay. And then also in regards to, say,
12 weather conditions, such as hurricanes, how would that
13 be noted in the East Fluid Milk and Cream Review?

14 A. I usually will comment, since I'm the one
15 that usually does the report, I usually comment in my
16 narrative regarding that report.

17 Q. Okay.

18 MS. DESKINS: I have no further questions.

19 JUDGE CLIFTON: Any cross-examination of
20 this witness?

21 MR. BESHORE: (Indicating)

22 JUDGE CLIFTON: Mr. Beshore.

23 CROSS EXAMINATION

24 BY MR. BESHORE:

25 Q. Good morning, Mr. Wagner. Thank you --

1 A. Morning.

2 Q. -- for coming to the hearing today.

3 Does -- do your reports, the Eastern Fluid
4 Milk and Cream Reports, report and discuss the effects
5 of such things as weather conditions on milk movements
6 in the region?

7 A. I will mention it, yes. Whether the --

8 JUDGE CLIFTON: Mr. Wagner, would you get
9 closer to that mic.

10 MR. WAGNER: Yes, I do that because it, at
11 times, does have impact, whether it be hurricanes
12 or ice storms in the Northeast area.

13 MR. BESHORE: Okay.

14 JUDGE CLIFTON: Mr. Wagner, would you put
15 that mic in front of you rather than to the side.

16 MR. WAGNER: Okay.

17 JUDGE CLIFTON: Thank you.

18 BY MR. BESHORE:

19 Q. And I take it you -- you include those
20 things in your reports because they affect the industry
21 and the region that you're --

22 A. They are noteworthy during the week, yes,
23 sir.

24 Q. Okay.

25 In the report for the week of August 16th

1 through 20th, 2004, Volume 71, Report 33, I just want
2 to read you a couple of sentences in the East Fluid
3 Milk and -- and Cream Report for that week. It said:
4 "Hurricane Charlie cut a wide swath of property damage
5 and power outages across Florida last Friday and
6 Saturday. Many towns and cities in the central and
7 southern parts of the state are still without power.
8 Milk transportation schedules are in chaos." Was that,
9 you know, to the best of your ability and your
10 reporter's ability, at -- you know, a correct report of
11 the conditions in -- in Florida at that time?

12 A. At that time I believe so. I may -- chaos
13 may have been a strong word for me, but. . .

14 Q. Okay. But it -- but it would -- it
15 described what -- what was reported to you at the time?

16 A. (Nods head in the affirmative.)

17 JUDGE CLIFTON: Mr. Wagner, I'm still not
18 picking up your voice very well. Can you -- can
19 you pull that mic closer.

20 MR. WAGNER: Yeah. I'm sorry.

21 JUDGE CLIFTON: Yeah, it's on a short leash,
22 I realize, but there we go.

23 MR. WAGNER: Okay.

24 JUDGE CLIFTON: All right, thank you.

25 BY MR. BESHORE:

1 Q. Okay. I don't want to hold you to any
2 particular word, but throughout -- is it fair to say
3 that your reporters in your report noted that
4 throughout August and September of this past year, when
5 there were four hurricanes that came through Florida
6 and the -- and the Southeast, that milk transportation
7 was -- was affected in -- in substantial ways by those
8 weather conditions?

9 A. It was a major topic of conversation.

10 Q. Okay. And -- and you reported that, I'm not
11 going to go through any other reports, but you reported
12 some of those observations and conditions in your
13 report?

14 A. Yes, I did.

15 JUDGE CLIFTON: Okay. I just want to make
16 sure the record is clear. Mr. Beshore, you said
17 "of this past year," you mean of 2004; is that
18 correct?

19 MR. BESHORE: 2004, yes.

20 JUDGE CLIFTON: And was that what you were
21 answering, Mr. Wagner?

22 MR. WAGNER: Yes. Yes.

23 MR. BESHORE: Thank you, Your Honor.

24 That's all the questions I have. Thank you.

25 JUDGE CLIFTON: Any other questions for

1 Mr. Wagner?

2 (No response)

3 JUDGE CLIFTON: Ms. Deskins, do you have any
4 questions for Mr. Wagner?

5 MS. DESKINS: No, but I just wanted to thank
6 him for coming to testify.

7 MR. WAGNER: You're welcome.

8 JUDGE CLIFTON: All right. Is there
9 anything further you'd like to add, Mr. Wagner?

10 MR. WAGNER: I don't believe so.

11 JUDGE CLIFTON: All right, thank you. You
12 may step down.

13 Ms. Deskins?

14 MS. DESKINS: Nothing else. I just wanted
15 to thank all the witnesses who testified,
16 Mr. Duprey, Mr. Nierman, and, of course,
17 Mr. Wagner.

18 JUDGE CLIFTON: All right. Now, I need some
19 guidance as to how we should proceed from here.

20 Mr. Beshore, what would you propose?

21 MR. BESHORE: The proponents are -- are
22 ready to proceed with witnesses in support of
23 Proposal Number 1, and I'd suggest we go ahead.

24 JUDGE CLIFTON: All right.

25 Mr. Beshore, do you see any -- any

1 additional action that we can take here with
2 regard to the flaws in the publication of the
3 notice that we have -- we have corrected here,
4 but do you see, do you foresee anything further
5 that we could do to deal with the fact that there
6 was a -- an error with regard to the notice, the
7 published notice in the Federal Register?

8 MR. BESHORE: I -- I don't see anything
9 further we can do, other than perhaps with the
10 witnesses who testify, both proponents and other
11 interested parties, just have them confirm that
12 they were aware of the correct proposal.

13 JUDGE CLIFTON: Ah, good. That would be
14 very helpful if we could have that touched on by
15 every witness who was aware that the
16 now-corrected figures were the ones being
17 considered. That would be very helpful.

18 MR. BESHORE: There -- there are some other
19 points that could be made which I was -- that we
20 can make on the record here. I could make them
21 in a -- in a brief as well, but there are other
22 aspects of the proposed notice where the correct
23 figures are stated in context such that a person
24 reading the notice would be made aware of the
25 fact that there may have been a typographical

1 error.

2 JUDGE CLIFTON: That would be excellent as
3 well. I'd like you to point it out while we're
4 here.

5 MR. BESHORE: Okay. We can do that.

6 JUDGE CLIFTON: Even if it's just your own
7 statement, even though you might also include it
8 in a brief.

9 MR. BESHORE: Okay. We can do that, and we
10 will.

11 JUDGE CLIFTON: Very good.

12 All right, Mr. Beshore, you may call your
13 next -- your first witness.

14 MR. BESHORE: Okay. Our first witness is
15 Jeffrey Sims.

16 And, Your Honor, we would ask that, to have
17 marked both the written statement which Mr. Sims
18 will present, and a set of exhibits which are
19 under one cover. I'd like to have those
20 documents marked as the next sequential numbered
21 set of exhibits. And I have the requisite number
22 for the -- of documents for the record.

23 JUDGE CLIFTON: All right. Now, they're
24 will be one record copy. If you will give the
25 one record copy to the court reporter, and I'm

1 going to ask that the court reporter mark
2 Mr. Sims' written statement as Exhibit 12, and
3 the exhibits as Exhibit 13.

4 (Whereupon, Exhibit Nos. 12 and 13 were
5 marked for identification.)

6 MR. BESHORE: Do we need any additional
7 copies for the -- for the record or is the one
8 sufficient?

9 JUDGE CLIFTON: The one record copy is
10 adequate. Our rules require four to be brought
11 to the hearing. At this kind of hearing, we
12 obviously need many more than four so that
13 everyone participating gets a copy, but there's
14 one record copy only. So only one needs to be
15 left with the court reporter. And there's one
16 for me just as -- so I can keep up, and the
17 others are really for fellow participants in the
18 hearing.

19 MR. BESHORE: Okay.

20 JUDGE CLIFTON: Mr. Sims, would you state
21 and spell your names, please.

22 MR. SIMS: Jeffrey Sims, J-e-f-f-r-e-y
23 S-i-m-s.

24 JUDGE CLIFTON: Would you raise your right
25 hand, please.

1 JEFFREY SIMS,
2 being first duly sworn, was examined and testified
3 as follows:

4 MR. SIMS: I do.

5 JUDGE CLIFTON: Thank you.

6 DIRECT EXAMINATION

7 BY MR. BESHORE:

8 Q. Okay. Mr. Sims, before you proceed with
9 your prepared testimony, could you give us your
10 business address, please.

11 A. My business address is 13400 U.S. Highway
12 42, Suite 162, Prospect, P-r-o-s-p-e-c-t, Kentucky,
13 40059.

14 Q. Okay. And could you just briefly describe
15 for the record, or really for the record, your
16 background in -- in the dairy industry professionally
17 and your current role.

18 A. Yes. I have bachelor's and master's degrees
19 in agriculture economics from Auburn University. My
20 master's degree thesis work was in dairy economics and
21 dairy production economics and dairy marketing. I
22 served -- served for 13 years in the Federal Milk
23 Marketing Order Administration, serving last as
24 Assistant Market Administrator in the Louisville,
25 Kentucky Market Administrators Office.

1 In 1996, I left the Market Administrators
2 Office, began working with Dairy Cooperative Marketing
3 Association, which is a marketing agency in common of
4 cooperatives in the Southeast, and then in -- in 2002,
5 I took on additional responsibilities working with
6 Southern Marketing Agency, a -- another marketing
7 agency in common in the Southeast.

8 Q. Okay. And you continue in that -- in those
9 capacities today --

10 A. Those both capacities is correct.

11 Q. Okay. Would you then proceed with your
12 statement which is Exhibit 12. By the way, let's --
13 let's -- before you go into that, is Exhibit 13 a set
14 of documents, exhibits which you have prepared to
15 present with your testimony today?

16 A. Yes.

17 Q. Okay. And there are seven pages which
18 are --

19 A. Correct.

20 Q. -- which are marked --

21 A. Pages --

22 Q. -- under cover of Exhibit 13?

23 A. Yes. Pages one through four -- four are not
24 numbered per se, but the -- the numbering starts
25 sequentially with number five, in the right spot.

1 Q. Now --

2 JUDGE CLIFTON: Mr. -- Mr. Sims, allow
3 Mr. Beshore's voice to die away before you begin
4 to answer him. You're speaking to him as a
5 person would in normal conversation, but it's too
6 hard to type.

7 MR. SIMS: Okay.

8 The first four --

9 BY MR. BESHORE:

10 Q. Now, the first four pages are I think
11 self-explanatory, and they are letters of authorization
12 from the organizations on whose behalf you are speaking
13 today; is that correct?

14 A. That is.

15 Q. Okay. Now, would you describe Page 5 of
16 Exhibit 13 --

17 A. Yes.

18 Q. -- briefly, please?

19 A. Yes. Page 5 provides the 2004 Class I
20 pricing plan followed by Dairy Cooperative Market --
21 Cooperative Marketing Association for the example city
22 of Atlanta, Georgia, basically providing a -- a
23 systematic schedule of Class I over order prices based
24 on various prices of the Federal Order Class I base
25 price; also known commonly as the Class I mover.

1 In general, the over order price decreases
2 as the -- as the Federal Order Class I base price
3 increases, and the over order price increases as the
4 Class I over order price -- Class I base price, excuse
5 me, decreases. An inverse relationship between over
6 order prices and Federal Order Class I base prices
7 through a range of Federal Order Class I base prices.

8 Q. Okay. Move, then, to page 6 of Exhibit 13.
9 What is that -- that chart of --

10 A. Page --

11 Q. -- prices?

12 A. -- page 6 provides monthly for 2004 the --
13 the Federal Order Class I base price and the
14 correspond -- corresponding over order price which was
15 in effect for Atlanta, Georgia. And that just confirms
16 that the over order price announced in Atlanta was
17 based right off the -- the schedule, previous schedule
18 provided in -- on page 5.

19 Q. Okay.

20 Page 7 of Exhibit 13 is a document titled at
21 the top, "Summary of Loads of Milk, Distances and
22 Hauling Costs." Could you -- could you describe that
23 briefly then, recognizing that it's discussed in more
24 detail in your testimony.

25 A. Yes. The -- this document is a summary of

1 the -- of -- of information which will be provided in
2 exhibits presented by the individual proponents.
3 Specifically this -- this table summarizes the number
4 of loads of milk moved, extraordinarily milk movements
5 as a result of the -- the hurricanes in the
6 Appalachian, Florida, and Southeast Order areas for
7 during August and September, and then totals for the
8 amount of the three Orders, also provides the number of
9 miles that it was estimated that those extraordinary
10 milk movements moved.

11 It's our estimate at this point that, to
12 date, we have identified or estimated in excess of a
13 half a million road miles of -- of additional hauling
14 as a result to -- of the hurricanes. And then the last
15 section, again divided by each of the three Order
16 areas, provides the -- the dollar cost or the estimated
17 dollar cost that -- that we have identified to date
18 that are based on best -- best estimates for the cost
19 of this extraordinary hauling for the three Order
20 areas, approximately 1.6 million dollars in -- in extra
21 hauling.

22 Q. Okay. And with that introduction to the
23 exhibits --

24 JUDGE CLIFTON: (Indicating)

25 MR. BESHORE: Yes, Your Honor?

1 JUDGE CLIFTON: Mr. Beshore, I want the
2 court reporter to open Exhibit 13, and start with
3 page 5 and just fill in 13 in the blank for each
4 of the subsequent pages.

5 (Whereupon, the requested changes were made
6 by the court reporter.)

7 JUDGE CLIFTON: You may proceed.

8 MR. BESHORE: Okay, thank you.

9 Mr. Sims, you may proceed with your
10 statement.

11 MR. SIMS: Thank you.

12 "I'm Jeffrey Sims; I serve as Assistant
13 Secretary of Dairy Cooperative Marketing
14 Association, Incorporated, a Capper Volstead
15 marketing agency in common operating in the
16 southeast United States. My business address is
17 13400 U.S. Highway 42, Suite 162, Prospect,
18 Kentucky, 40059. I testify today on behalf of
19 Dairy Farmers of America, Incorporated
20 headquartered in Kansas City, Missouri; Lone Star
21 Milk Producers, Incorporated headquartered in
22 Windthorst, Texas; Maryland and Virginia Milk
23 Producers Cooperative Association, Incorporated
24 headquartered in Reston, Virginia; and Southeast
25 Milk, Incorporated headquartered in Belleview,

1 Florida. Together these cooperatives will be
2 here -- hereafter collectively referred to as the
3 proponents. Exhibit 13, pages 1 through 4" --

4 JUDGE CLIFTON: Let me --

5 MR. SIMS: -- "are letters" --

6 JUDGE CLIFTON: -- let me stop you,
7 Mr. Sims.

8 I'd ask the court reporter now to take
9 Exhibit 12, and find the blank that is near the
10 end of the last paragraph, and put in that blank
11 13.

12 (Whereupon, the requested changes were made
13 by the court reporter.)

14 JUDGE CLIFTON: Mr. Sims, would you start
15 that sentence again, please?

16 MR. SIMS: Yes.

17 "Exhibit 13, pages 1 through 4 are letters
18 from each of the proponent cooperatives
19 authorizing me to speak on their behalf in this
20 matter.

21 "Dairy Farmers of America, Incorporated;
22 Lone Star Milk Producers, Incorporated; and
23 Maryland and Virginia Milk Producers Cooperative
24 Association, Incorporated all market milk on the
25 Appalachian, Florida, and Southeast Federal

1 Orders. Southeast Milk" --

2 JUDGE CLIFTON: Mr. -- Mr. Sims, your --
3 your sentence says "all market member milk," is
4 that significant?

5 MR. SIMS: It is. That -- that's correct,
6 "member milk."

7 JUDGE CLIFTON: Go ahead and finish that
8 sentence.

9 MR. SIMS: "All market member milk in the
10 Appalachian, Florida, and Southeast Federal
11 Orders. Southeast Milk, Incorporated currently
12 markets member milk in the Florida and Southeast
13 Federal Orders, and in the past, has marketed
14 member milk on the Appalachian Federal Order.
15 Together these cooperatives market in excess of
16 75 percent of the producer milk pooled on the
17 Appalachian and Southeast Orders, and market in
18 excess of 90 percent of the producer milk pooled
19 on the Florida Order.

20 "The proponents of these temporary emergency
21 amendments wish to thank the Secretary for
22 hearing this proposal on an expedited basis --
23 schedule and for considering emergency action and
24 the omission of a recommended decision under the
25 rules of practice and procedure.

1 "The proponents offer the follow testimony
2 in support of Proposal Number 1 as listed in the
3 notice of hearing.

4 "During August and September 2004 four
5 hurricanes have ravaged the southeast. According
6 to published news reports insured losses from the
7 four hurricanes have been estimated at 18 billion
8 dollars. On August 13, Hurricane Charley made
9 landfall at Cayo Costa, Florida; on September 5,
10 Hurricane Frances made landfall at St. Marks,
11 Florida; on September 16, Hurricane Ivan made
12 landfall at Mobile, Alabama; and on September 25,
13 Hurricane Jeanne made landfall at Stuart,
14 Florida. According to published news reports it
15 has been over 100 years since a single state was
16 struck by four hurricanes in one season.

17 "As a result of these storms, bulk milk
18 deliveries in the southeast have been in shambles
19 for more than seven weeks. Only now, a week and
20 a half after the latest hurricane has been
21 through, have delivery schedules and routes began
22 to truly normalize. Every week since the August
23 2 through 4 -- excuse me, 2 through 6, 2004
24 issue, Dairy Market News has reported on milk
25 transport disruptions and milk losses resulting

1 from the four hurricanes, as well as Tropical
2 Storms Bonnie and Gaston. At this time, we would
3 ask that official notice of Dairy Market News --
4 be taken of Dairy Market News, issues number 31
5 through 39."

6 BY MR. BESHORE:

7 Q. And those are the issues for the August and
8 September 2004 reporting weeks?

9 A. Correct.

10 JUDGE CLIFTON: Mr. Sims, where can those be
11 found?

12 MR. SIMS: They are available on the
13 Agriculture Marketing Service at USDA website.
14 There's a link to the Dairy Market News.

15 JUDGE CLIFTON: We do take official notice
16 of those reports as requested.

17 MR. BESHORE: Thank you, Your Honor.

18 MR. SIMS: "Cooperative associations in the
19 south -- the southeast have borne the vast
20 majority of the costs associated with replacing
21 lost milk, re-routing tankers and re-establishing
22 any semblance of a normal bulk milk delivery
23 schedule. As of this date, we estimate that the
24 additional charges for added bulk milk
25 transportation resulting from Hurricanes Charley,

1 Frances, Ivan and Jeanne have cost cooperative
2 associations in excess of one and one half
3 million dollars. These hauling costs are over
4 and above the costs incurred on procuring extra
5 milk at a time of seasonal shortage, and the
6 losses at the farm of milk and cows. Procuring
7 milk during the late summer and fall months is
8 especially costly for the southeast, and has been
9 even more so this year as a result of these
10 unusual climatic conditions.

11 "The proponents come before the Secretary
12 today asking for emergency relief under the
13 Federal Milk Marketing Order to help compensate
14 marketers of milk for the extraordinary costs of
15 moving bulk milk in the southeast during --
16 resulting from Hurricanes Charley, Frances, Ivan
17 and Jeanne.

18 "Representatives for the individual
19 cooperative proponents of this action will
20 testify as to the costs they incurred in moving
21 this milk, the kinds of extraordinary milk
22 movements that occurred, dates of these
23 movements, and the impact on milk supplies and
24 market delivery disruptions. I will testify as
25 to need for these temporary emergency amendments,

1 the need for emergency action, the technical
2 nature of the Order proposal, and how we envision
3 the amendment -- the amended provisions
4 functioning.

5 "Need for the temporary emergency
6 amendments. As the proponents will demonstrate
7 through testimony and exhibits to follow, the
8 cost of moving bulk milk in the southeast as a
9 result of the four named hurricanes has been
10 substantial. We have identified in excess of one
11 and one half million dollars in extra bulk milk
12 hauling to date."

13 JUDGE CLIFTON: Would you read that sentence
14 one more time, Mr. Sims.

15 MR. SIMS: "We have identified in excess of
16 one and one half million dollars in extra bulk
17 milk hauling to date. Unfortunately, there is
18 little opportunity to recoup these losses through
19 revenue streams outside of the Federal Milk
20 Marketing Order program. For that reason, we
21 seek recovery of these costs through the
22 Marketwide Service Payment provisions available
23 under the Federal Milk Marketing Order program.

24 "Without these temporary emergency
25 amendments, marketers of milk, principally --

1 principally cooperative associations, and thereby
2 the member producers of these cooperative
3 associations, will bear the cost of these
4 extraordinary milk movements, while in reality it
5 is the consumers of Class I milk who should
6 shoulder these losses.

7 "Dairy Cooperative Marketing Association,
8 Incorporated, hereafter abbreviated DCMA, is a
9 Capper Volstead marketing agency in common, of
10 whom all the proponent cooperatives are members.
11 DCMA operates as the over order pricing agency
12 for the southeast United States, through which
13 Capper Volstead cooperatives coordinate over
14 order prices to distributing plant customers
15 located predominantly in the Appalachian, Florida
16 and Southeast Federal Milk Marketing Orders --
17 Order areas.

18 "Over order prices are the -- are the -- are
19 a product of many factors, including levels of
20 over order prices in neighboring areas; costs and
21 availability of bulk and packaged alternative
22 supplies; general price level; regional supply
23 and demand relationships; national supply and
24 demand relationships; as well as other factors.
25 All these issues come into play in various ways

1 and in various amounts at different times. The
2 competitive nature of supplying raw milk puts
3 practical limits on how high, and how low, over
4 order prices will be.

5 "For the last few years cooperative
6 associations in the southeast, through their
7 marketing agency in common DCMA, have utilized a
8 structured system of over order prices.
9 Specifically, over order prices increase when
10 Federal Order Class I prices are at low levels,
11 and conversely, over order prices decrease when
12 Federal Order Class I prices are at higher
13 levels. Handlers of milk are well aware of this
14 pricing system, and have come to understand and
15 expect cooperatives to adjust over order prices
16 accordingly as Federal Order prices rise and
17 fall. Over the history of this plan over order
18 prices have on occasion varied off the
19 established schedules, but only rarely, and at
20 times of disastrously low Federal Order Class I
21 prices. Both handlers and producers have
22 benefited from this pricing plan through
23 decreased Class I price volatility, as well as
24 some limiting of upside and downside price peaks.
25 In addition, the retail customers of fluid milk

1 processors are likewise sophisticated buyers, and
2 have come to understand the nature of Federal
3 Order and over order pricing.

4 "Changing over order prices versus the
5 established price schedule has not occurred in
6 the vast majority of the southeast in any month
7 in 2004. Over order prices were adjusted from
8 the 2003 established price schedule in a small
9 portion of the southeast in April of this year,
10 but since that time each month of the -- of 2004
11 over order prices have followed the pricing plan.

12 "In Atlanta, Georgia -- considered by many
13 to be the benchmark city for over order prices
14 for the southeast -- the range of over order
15 prices for 2004 varies from 95 cents to \$1.95 per
16 hundredweight, prior to the addition of a fuel
17 cost surcharge. Exhibit 13" --

18 JUDGE CLIFTON: And let me stop you. Thank
19 you, Mr. Sims, for pausing.

20 I'm going to ask the court reporter to take
21 Exhibit 12, and turn to page 5 of that exhibit,
22 please. And I'm going to ask the court reporter
23 to insert a 13 in the last paragraph where there
24 is a blank.

25 (Whereupon, the requested changes were made

1 by the court reporter.)

2 JUDGE CLIFTON: You have done so?

3 THE COURT REPORTER: I'm done.

4 MR. SIMS: "Exhibit 13, page 5 describes and
5 shows the 2004 Class I over order price schedule
6 for Atlanta, and page 6 of the exhibit shows the
7 Class I over order prices announced each month
8 for Atlanta. In each month of 2004 the Class I
9 over order price was announced as according to
10 the established schedule. Such was the case in
11 August 2004 when 95 cents per hundredweight was
12 announced; in September 2004 when \$1.45 per
13 hundredweight was announced; and October 2004
14 when 95 cents per hundredweight was -- was
15 announced. Changes, both up and down, in the
16 Class I over order prices which have occurred in
17 the late summer and early fall months of 2004
18 have been reflective of the established pricing
19 system.

20 "As mentioned earlier, one of the goals of
21 the DCMA over order pricing system is to reduce
22 Class I price volatility. This is well
23 demonstrated by the Atlanta total Class I price
24 for August, September and October 2004. I define
25 total Class I price for this purpose as Federal

1 Order Class I price plus announced cooperative
2 Class I price. In August 2004 the Federal Order
3 Class I price at 3.5 percent butterfat was \$17.72
4 per hundredweight, and the announced cooperative
5 Class I price was 95 cents per hundredweight, for
6 a total Class I price of \$18.67 per
7 hundredweight. In September 2004 the Federal
8 Order Class I price at 3.5 percent butterfat was
9 \$17.04 per hundredweight, and the announced
10 cooperative Class I price was \$1.45, for a total
11 Class I price of \$18.49. In October 2004 the
12 Federal Order Class I price at 3.5 percent
13 butterfat was \$17.88, and the announced
14 cooperative Class I price was 95 cents, for a
15 total Class I price of \$18.83. Changes in the
16 total Class I price for Atlanta were buffered by
17 50 cents per hundredweight less than the
18 volatility of the Federal Order Class I price as
19 a result of the cooperative Class I pricing
20 system.

21 "Marketers of bulk milk must be aware of
22 Class I over prices in areas adjoining their
23 customers. Rigorous competition for Class I
24 packaged sales makes even seemingly small
25 differences in price significant. Handlers often

1 report that a fraction of a cent per gallon can
2 sway customers from one packaged milk supplier to
3 another. This means that Class I price
4 differences of well less than 10 cents per
5 hundredweight may cause a competitive influence.
6 Just like the seller of any product -- any other
7 product, dairy farmers desire a reasonable price
8 for their product, and their product is raw milk.
9 Cooperative associations, working through
10 marketing agencies in common like DCMA, seek to
11 achieve reasonable prices for their dairy farmer
12 members. Sometimes this is through improved
13 Federal Order prices and provisions; sometimes
14 it's through participation in national dairy
15 policy processes; sometimes it is through over
16 order prices. The desire to increase short term
17 prices must be weighed against pricing
18 commitments to customers and evaluated in light
19 of many other economic and marketing factors,
20 many of which have been stated already. In
21 southeast -- in the southeast, at least in the
22 most recent months, maintaining price
23 relationships with neighboring areas and
24 respecting pricing commitments have not allowed
25 alterations in the over order prices versus the

1 established price schedule.

2 "Based on the DCMA members' experience in
3 Class I over order pricing, DCMA members feel
4 that increases in the Class I over order prices
5 in the southeast to help cover the costs of milk
6 movements resulting from the hurricanes would be
7 highly unlikely. For that reason the proponents
8 seek these revenues and cost reimbursements
9 through the Federal Milk Marketing Order program.

10 "Handler equity in Class I costs also
11 suggests that the revenues necessary to cover
12 these extraordinary hauling costs be generated
13 through the Federal Order program. Placing the
14 generation of revenue and disbursement of the
15 allowable extraordinary hauling costs under the
16 Federal Order program will insure all market
17 participants that the rate of payment is equal
18 for all Class I pool handlers and the costs paid
19 for are accurately associated with the hurricane
20 emergency.

21 "Need for emergency action. The
22 extraordinary cost of moving bulk milk supplies
23 across the southeast as a result of the
24 hurricanes has been concentrated over a very
25 short time. From the time Hurricane Charley hit

1 in mid August, through Hurricane Jeanne in late
2 September, only six to seven weeks passed. Just
3 when milk delivery schedules seemed to begin to
4 normalize, another hurricane or tropical storm
5 hit the regions. As the occurrence of these milk
6 delivery disruptions have occurred over a
7 relatively short time, payment for these
8 extraordinary costs will be paid to haulers over
9 an equally short time. The resulting impact on
10 cooperative member pay prices will be substantial
11 when applied in only a month or two's milk
12 checks. Prolonging this amendment" --

13 JUDGE CLIFTON: May I stop you, Mr. Sims?

14 MR. SIMS: Yes.

15 JUDGE CLIFTON: I want to go back to the
16 phrase in the third line of the paragraph you
17 just read that says "only six to seven weeks
18 past."

19 MR. SIMS: Has passed probably should be in
20 place of that.

21 JUDGE CLIFTON: Do we just want p-a-s-s-e-d
22 there?

23 MR. SIMS: Probably. That works. Yes,
24 ma'am, that's fine.

25 JUDGE CLIFTON: Okay.

1 I'd ask the court reporter, please, to turn
2 to page 8 of Exhibit 12. Find the word "past,"
3 p-a-s-t, just strike through that and then put in
4 the word passed, p-a-s-s-e-d.

5 MR. SIMS: Thank you, Your Honor.

6 (Whereupon, the requested changes were made
7 by the court reporter.)

8 JUDGE CLIFTON: You may resume, Mr. Sims.

9 MR. SIMS: "Prolonging this amendment
10 process by requiring a recommended decision is
11 not warranted by the very nature of the problem.
12 The costs were and are being incurred over a
13 short time window, and should be returned to the
14 dairy farmers and other handlers who are paying
15 these costs as soon as possible. Prolonging the
16 process will not change the result or the amount
17 of costs, because the costs are what they are.
18 Whatever it has cost to move the milk is what is
19 sought, nothing more. The temporary nature of
20 the problem and the temporary nature of the
21 proposed solution both require immediate action.
22 If four hurricanes in six weeks do not create an
23 emergency situation, the proponents are at a loss
24 to understand what will.

25 "Proponents recognize some time is necessary

1 to hold this hearing and implement the amended
2 procedures. As a result of this recognition,
3 proponents have proposed January through
4 March 2005 as months upon which the Class I milk
5 value adjustment will apply with reimbursement
6 from the market administrators for the Orders to
7 be made along with normal pool settlements in the
8 middle part of the subsequent month. In
9 practical terms, that will resort -- result in
10 reimbursements for the extraordinary hauling
11 costs really occurring in February through April
12 of 2005, which will be some six to eight months
13 after the August 2004 extraordinary hauling costs
14 were incurred, and five to seven months after the
15 September 2004 extraordinary hauling costs were
16 incurred. Producer members of the cooperative
17 associations providing these services of
18 marketwide benefit had their August 2004 final
19 settlement check already reduced as a result of
20 these extraordinary costs, and will have their
21 milk checks further reduced for September 2004
22 milk. It is imperative that any costs for which
23 reimbursement is due under this process not be
24 delayed any longer than absolutely necessary. It
25 is as a result of this need for this -- for the

1 timely reimbursement of these costs and the
2 economic impact already borne by cooperative
3 association members, as well as other handlers,
4 that we request emergency action for this
5 proceeding. Cooperative associations and other
6 handlers of milk will carry some financing costs
7 on the losses as the date for reimbursement of
8 the requested costs is well into the future.

9 "Technical nature of the Order proposal.
10 The four proponent cooperatives propose
11 temporarily amending section .60, Handler's Value
12 of Milk, by adding new language in paragraph (a),
13 and adding a new paragraph (g), with new
14 subparagraphs (1) through (8), in each of the
15 three Orders noticed for this hearing. After
16 reviewing the particulars of the milk movements
17 which occurred as a result of the hurricanes, the
18 proponents wish to modify their proposal
19 slightly. We ask that a new subparagraph
20 .60(g)(5) be added which reads: "(5) The cost of
21 transportation on loads of bulk milk transferred
22 or diverted to a plant regulated under another
23 Federal Order or to other nonpool plants, which
24 were delivered as a result of Hurricanes Charlie,
25 Frances, Ivan and Jeanne." A number of

1 extraordinary milk movements fall into this
2 category, and represent the reimbursement of the
3 same kinds of costs which moving milk to and
4 between pool plants is meant to cover. We ask
5 that the remaining subparagraphs of section
6 .60(g) be renumbered (5) to (6); (6) to (7); and
7 (7) to (8).

8 "To generate the revenue necessary to pay
9 for the extraordinary hauling costs associated
10 with moving milk incident to the hurricanes, an
11 adjustment to the handler's value of milk would
12 be made by adding a temporary amount per
13 hundredweight to the handler's Class I milk
14 value. Language to accomplish this is the new
15 portion of paragraph (a) of section .60, as
16 announced in the notice of hearing. Proponents
17 propose that this temporary increase be for three
18 consecutive months, beginning January 2005, and
19 would be four cents per hundredweight in the
20 Appalachian and Southeast Orders, and nine cents
21 per hundredweight in the Florida Order, or such
22 lesser amount necessary to pay the defined
23 extraordinary hauling costs, as determined by the
24 market administrator. This provision sets an
25 effective cap on the amount of new Class I

1 revenue which can be generated under the
2 temporary amendments, as well as sets the
3 effective amount of new Class I revenue at not
4 more than the demonstrated costs of moving the
5 milk. In this way, consumers of Class I products
6 are protected from a blank check approach to
7 raising revenue and accounting for and claiming
8 reimbursement for the extraordinary hauling
9 costs. Total revenues generated under this
10 system will be limited to the costs incurred so
11 no marketer of milk will profit from the payment
12 of these defined extraordinary hauling costs, but
13 rather will simply be reimbursed for incurring
14 the costs. Likewise, the blend price to
15 producers under the Orders will not increase
16 since the money collected cannot exceed the money
17 spent.

18 "In order to have transparency in the
19 revenues generated from this proposal, proponents
20 ask that the temporary adjustments in the Class I
21 milk value be shown on the Market Administrator's
22 Class price announcements issued pursuant to
23 section .53 of the three Orders.

24 "The variation in the amount of Class I milk
25 value adjustment proposed for the three Orders is

1 borne of expected differences in the defined
2 extraordinary hauling costs incurred in supplying
3 the three Orders. Not surprisingly, Florida was
4 hardest hit by the hurricanes, and marketers of
5 milk in the Florida Order have experienced the
6 greatest losses -- costs. That, coupled with the
7 fact that the Florida Order generally has less
8 Class I producer milk in terms of monthly volume
9 than either the Appalachian and Southeast Orders,
10 results in a higher required per hundredweight
11 Class I adjustment than has been proposed for the
12 Appalachian and Southeast Orders.

13 "While the maximum rate of Class I milk
14 value adjustment is proposed to be the same for
15 the Appalachian and Southeast Orders, proponents
16 fully recognize that the final effective rate of
17 adjustment to the Class I milk value between the
18 Appalachian and Southeast Orders will be
19 different. Differing amounts of extraordinary
20 hauling costs associated with supplying the two
21 Order areas, together with differing volumes of
22 Class I producer milk under the two Orders, will
23 result in differences in the final effective rate
24 of the Class I value adjustment.

25 "Exhibits and testimony from the proponent

1 witnesses to follow will describe the nature of
2 collecting and assembling the extraordinary
3 hauling costs for which the proponents propose
4 reimbursement. I will describe the methodology
5 used to determine the rate of Class I milk value
6 adjustment proposed for each Order.

7 "Of the total of 1.6 million dollars in
8 extraordinary hauling costs which will -- which
9 will be demonstrated by the witnesses to follow,
10 \$102,206 is identified as being associated with
11 serving the Appalachian Order; \$1,134,469 is
12 identified as being associated with serving the
13 Florida Order; and \$370,085 is identified as
14 being associated with serving the Southeast
15 Order. Exhibit 13" --

16 JUDGE CLIFTON: And I'd ask the court
17 reporter to turn to page 12 of Exhibit 12 and
18 write 13 in the blank.

19 (Whereupon, the requested changes were made
20 by the court reporter.)

21 THE COURT REPORTER: Okay.

22 JUDGE CLIFTON: Done.

23 Thank you, Mr. Sims.

24 MR. SIMS: "Exhibit 13, page 7 provides a
25 summary of data pertaining to the number of

1 loads, miles of extraordinary milk movements and
2 cost of hauling for the extraordinary milk
3 movements. These summary data are taken from
4 exhibits which will be presented by proponent
5 witnesses to follow. Proponents used the
6 following estimates of Class -- of monthly
7 Class I producer milk for each of the three
8 Orders: Appalachian, 373 million pounds;
9 Florida, 218 million pounds; and Southeast, 292
10 million pounds."

11 JUDGE CLIFTON: Would you read that again.
12 Southeast?

13 MR. SIMS: "Two -- 392 million pounds."

14 JUDGE CLIFTON: So 292 was an error?

15 MR. SIMS: If I said 292, that was an error.
16 392 is the correct amount.

17 JUDGE CLIFTON: Thank you.

18 MR. SIMS: "Dividing the amount of cost
19 identified for each of the three Orders by three,
20 which is the number of months of payout of the
21 costs, and then dividing by the estimated pounds
22 of Class I, provides a result of approximately
23 \$0.0091 per hundredweight per month for the
24 Appalachian Order; approximately \$0.1735 per
25 hundredweight per month for the Florida Order;

1 and approximately 0.0315 per hundredweight per
2 month for the Southeast Order. The original
3 estimates of extraordinary milk -- of
4 extraordinary cost used when this hearing was
5 requested included costs of other losses in
6 addition to the hauling costs for which
7 reimbursement -- for which this request asks
8 reimbursement. The result was that certain
9 estimated costs were overstated, and this was --
10 was -- is particularly true of the costs
11 associated with extraordinary milk movements in
12 the Appalachian Order. At that time,
13 extraordinary costs of hauling as a result of the
14 hurricanes was underestimated in the Southeast
15 Order. Certain milk movements which were
16 initially identified as Order 5 movements have
17 since been more rightly determined to be Order 7
18 movements. As such, the rate of Class I value
19 adjustment for the Appalachian Order requested
20 when this hearing was requested is now known to
21 be overstated. The proposed provisions contain
22 rates for the adjustment of Class I milk value
23 which were thought to be somewhat greater than
24 necessary in order to cover the extraordinary
25 costs identified by the proponent cooperatives,

1 plus any hurricane related extraordinary milk
2 movements by marketers of milk other than the
3 proponent cooperatives which would qualify for
4 reimbursement under these proposed provisions.
5 In addition, there may be additional costs
6 discovered in the future by proponents or other
7 marketers which have heretofore not been
8 identified. The allowance for the higher rate of
9 adjustment to the Class I handler's value offers
10 the opportunity for additional costs now -- not
11 now identified to be paid.

12 "The enormity of the costs of moving milk in
13 and out of Florida was not fully known when the
14 proposals were submitted, and is not fully known
15 even today, as will be demonstrated by the
16 proponent witnesses to follow. Thus, for the
17 Florida Order, the requested maximum rate of
18 Class I milk value adjustment will be sufficient
19 to fund only about half of the currently
20 identified extraordinary hauling costs.

21 "There were many costs incurred in excess of
22 transport costs. Milk was routed and re-routed
23 into manufacturing plants where the resulting
24 products brought lower returns. Additional
25 packaged milk was brought into the area at higher

1 costs to fill retailer orders that we are not
2 claiming any cost reimbursement for. There were
3 costs for milk 'being staged' at locations
4 before, after and during the storm that was later
5 routed back into the affected areas that incurred
6 costs that are not included in our estimates. On
7 farm cow losses will be heavy in some areas that
8 can be calculated but not -- but are not claimed.
9 Finally milk was dumped on the farm that is not
10 included in any of our claim calculations. For
11 several of these items, we considered early on to
12 include in our estimates but have now removed
13 them because of the difficult nature of meeting a
14 proof standard. We have chosen to focus our
15 efforts on 'transaction' costs for which we can
16 produce 'bills' to document our costs.

17 "The four cents per hundredweight maximum
18 increase in Class I milk value requested for the
19 Southeast Order likely will still be sufficient
20 to cover the extraordinary costs which may be
21 claimed. The four cents per hundredweight
22 maximum increase in Class I milk value requested
23 for the Appalachian Order will circle -- will
24 certainly be sufficient to cover the
25 extraordinary costs which may be claimed. In

1 fact, the extraordinary hauling costs for the
2 Appalachian Order may only require a Class I
3 value increase in Order 5 for one month with a
4 Class I value increase of four cents per
5 hundredweight. In this case, we would ask that
6 the market administrator set the rate of Class I
7 value increase for Order 5 such that the funds
8 will be collected over the fewest number of
9 months. This will hasten the recovery of these
10 extraordinary costs by handlers, at least as they
11 apply to Order 5 movements.

12 "Proponents have provided language to
13 temporarily amend section .60 of each of the
14 three Orders to add a new paragraph (g), which
15 defines which extraordinary hauling costs would
16 be eligible for reimbursement, the manner of
17 payout of these costs, limits to these costs, and
18 market administrator discretion in determining
19 which costs meet the criteria for reimbursement.

20 "The payment for extraordinary hauling costs
21 for which reimbursement is sought under the
22 proponents' proposal is authorized as a service
23 of marketwide benefit under the Agricultural
24 Marketing Agreement Act, section 8(c)(5)(J). The
25 relief asked for here falls squarely within the

1 marketwide services language of the Act,
2 particularly: subsection (J)(ii), quote,
3 handling on specific days quantities of milk that
4 exceed the quantities needed by handlers, close
5 quote, and sub -- subsection (J)(iii), quote,
6 transporting milk from one location to another
7 for the purpose of fulfilling requirements for
8 milk of a higher use classification or for
9 providing a market outlet for milk of any use
10 classification, close quote.

11 "The proponents' originally submitted Order
12 language -- that would be, proponents' originally
13 submitted Order language specified four specific
14 bulk milk hauling transactions which would be
15 eligible for hauling cost reimbursement under
16 this temporary amendment. These are the costs of
17 transportation on loads of: (1) producer milk
18 delivered or re-routed to a pool -- to pool
19 distribute -- pool distributing plant" -- let's
20 make that singular.

21 JUDGE CLIFTON: All right, let's make that
22 change to page five of the Exhibit 12.

23 MR. HELLON: Page 15.

24 JUDGE CLIFTON: Excuse me, page 15 of the
25 Exhibit 12. About the middle of the page,

1 Mr. Sims, how should that wording --

2 MR. SIMS: Let's make plant singular in
3 that. Item number one there should read now
4 "producer milk delivered or re-routed to a pool
5 distributing plant."

6 (Whereupon, the requested changes were made
7 by the court reporter.)

8 JUDGE CLIFTON: Thank you. The court
9 reporter has made that change.

10 You may proceed, Mr. Sims.

11 MR. SIMS: "Number (2) producer milk
12 delivered or re-routed to a pool supply plant
13 which was then transferred to a pool distributing
14 plant, (3) loads of bulk milk delivered or
15 re-routed to a pool distributing plant from a
16 pool supply plant, and (4) loads of bulk milk
17 delivered or re-routed to a pool distributing
18 plant from another order plant, each of these
19 type transactions have -- having occurred as a
20 result of Hurricanes Charley, Frances, Ivan and
21 Jeanne. As was mentioned earlier, proponents
22 offer a modification which also allows
23 reimbursement for costs of transportation on
24 loads of bulk milk transferred or diverted to a
25 plant regulated under another Federal Order or to

1 other nonpool plants. Many other extraordinary
2 milk movements occurred during this emergency,
3 like milk moving along indirect routes from
4 origin to destination to avoid severe weather,
5 milk moving along indirect routes from origin to
6 destination to avoid closed roads, milk moving to
7 a plant and not being unloaded, but rather held
8 on a lot until it could move, as well as other
9 extraordinary types of movements. Proponents
10 believe that certain latitude must be afforded
11 the Market Administrators in accessing the type
12 movements and the costs associated with them,
13 even though the extraordinary milk movements may
14 not have been to or through a plant. The
15 proponent witnesses to follow will provide direct
16 testimony citing examples and volumes of the
17 various kinds of hauling transactions. As will
18 be demonstrated, each of these types of milk
19 movements occurred in various amounts during the
20 hurricane emergencies.

21 "The proposed Order language provides
22 substantial Market Administrator discretion in
23 determining which actual milk movements would
24 qualify for reimbursement of the costs of these
25 movements. The market administrators of the

1 Orders are in the unique position to evaluate
2 discrete movements of milk and determine if those
3 movements were a result of hurricanes.
4 Proponents understand and freely admit that there
5 are substantial volumes of milk which normally
6 move into the southeast during the late summer
7 and early fall from other regions, and as such,
8 marketers of milk will have to be diligent and
9 thorough in providing data and information to the
10 market administrators in order that they might
11 determine which movements qualify for
12 reimbursement. In addition, the audit function
13 already operated by the market administrators can
14 contribute significant data, expertise, and
15 information for the objective determination of
16 which movements of milk qualify for
17 reimbursement. It is our intent that all these
18 functions and special abilities of the Market
19 Administrator be fully available for use in
20 determining and evaluate -- evaluating the claims
21 that may be submitted by the handler requesting
22 reimbursement.

23 "In addition to the requirement for
24 marketers to prove that -- to the satisfaction of
25 the market administrator that milk movements were

1 indeed extraordinary and a result of the
2 hurricane emergencies, two additional limits are
3 placed on the reimbursement of these
4 extraordinary costs. First, the total amount of
5 reimbursement of extraordinary transportation
6 costs is limited to the amount of funds collected
7 under the adjustment to Class I milk value. If
8 the demonstrated extraordinary transportation
9 costs exceed the amount of funds generated from
10 increase in the Class I handler value, then the
11 remaining demonstrated extraordinary
12 transportation costs will go unpaid. Second, the
13 rate per mile of transportation is limited to
14 \$2.25 per loaded mile. This limit, which is
15 based on actual prices being paid to third party
16 haulers, insures that marketers of milk cannot
17 garner excessive profits by the inflation of
18 hauling costs. The proponent witnesses to follow
19 will provide direct testimony and evidence
20 showing actual invoices for milk hauling from
21 third party over-the-road milk haulers to
22 substantiate the \$2.25 per loaded mile, which is
23 equivalent to \$1.125 per running mile, is a
24 reasonable rate for over-the-road hauling given
25 today's diesel fuel prices.

1 "The proposed temporary amendments provides
2 a systematic process for the reimbursement of the
3 demonstrated extraordinary transportation costs.
4 Following is how -- is how the proponents
5 envision this process working. The market
6 administrator will review all data, documents,
7 transaction records and the like which marketers
8 of milk provide in support of their request for
9 reimbursement of the extraordinary transportation
10 costs. These data must by necessity be related
11 to milk movements within one of the three Orders.
12 Upon determination by the market administrator
13 that a submitted milk movement and its associated
14 cost qualify for reimbursement, the market
15 administrator will total all of the costs
16 qualified for reimbursement for that Order. The
17 market administrator will then establish the
18 total amount of Class I milk expected to be
19 pooled on the subject Order for the months of
20 January through March 2005, and divide the costs
21 qualified for reimbursement by the expected
22 hundredweight to Class I producer milk for those
23 three months."

24 JUDGE CLIFTON: Let me stop you, Mr. Sims.

25 MR. SIMS: Yes, ma'am.

1 JUDGE CLIFTON: Go back to the bottom of
2 page 17, if you will.

3 MR. SIMS: Yes.

4 JUDGE CLIFTON: The word estimate is there,
5 and your testimony included a word other than
6 estimate. I think you said "established."

7 MR. SIMS: Estimate is the word I meant to
8 say.

9 JUDGE CLIFTON: Okay. So -- so you're
10 saying that as you envision how this would work,
11 if you'll read that sentence again.

12 MR. SIMS: "The market administrator will
13 then estimate the total amount of Class I milk
14 expected to be pooled on the subject Order for
15 the months of January through March 2005, and
16 divide the costs qualified for reimbursement by
17 the expected hundredweights of Class I producer
18 milk for those three months. If the resulting
19 per hundredweight rate exceeds the maximum
20 specified for the adjustment to Class I milk
21 value, meaning the extraordinary hauling costs
22 per hundredweight of Class I exceed the new
23 revenue, then the market administrator will
24 announce the adjustment to Class I milk value
25 at -- on the announcement of Class prices at the

1 stated maximum rate for each of the three months.
2 If the resulting per hundredweight rate is less
3 than the maximum specified for the adjustment to
4 Class I milk value, meaning the extraordinary
5 hauling costs per hundredweight of Class I are
6 less than the stated maximum, then the market
7 administrator will announce the adjustment to
8 Class I milk value on the announcement of Class
9 prices at some amount less than the maximum rate,
10 with this lower-than-maximum rate to be
11 established such that the expected revenues from
12 the adjustment to Class I milk value are less
13 than or equal to the total extraordinary hauling
14 costs submitted by all marketers of milk and
15 approved by the market administrator for
16 reimbursement. The amount by which the Market
17 Administrator lowers the Class I milk value
18 adjustment below the maximum rate can be reduced
19 more or less equally for the three month
20 collection and payout period, or can be variable
21 based on market administrator determinations of
22 allowable -- allowable reimbursable -- allowable
23 reimbursable costs and estimations of Class I
24 producer milk.

25 "It is the desire on the part of the

1 proponents that the revenues generated from the
2 adjustment to Class I milk value in each of the
3 three Orders be less than or equal to the total
4 reimbursed costs in each Order, thus preventing
5 any blend price enhancement. The marketers of
6 milk simply seek to be reimbursed the costs
7 incurred in moving milk during a time of extreme
8 hardship, but seek no more than to be reimbursed
9 for providing these services of marketwide
10 benefit.

11 "In reviewing the specific load data which
12 proponent witnesses will provide, it appears some
13 milk movements for which reimbursement might be
14 claimed under this proposal and delivered to
15 Appalachian and Southeast Order plants may be
16 eligible for payments from the transportation
17 credits balancing fund pursuant to Section .82 of
18 the two Orders. Proponents do not desire to
19 double dip in claiming any transportation
20 reimbursement on these loads, so proponents offer
21 a modification to the noticed provisions for the
22 Appalachian and Southeast Orders such that any
23 amount of Transportation Credit due under section
24 .82 be reduced by the amount of any emergency
25 hauling cost reimbursement due under this

1 temporary amendment.

2 "There are administrative benefits from
3 utilizing a money-in equals money-out approach to
4 the collection of funds and disbursement for the
5 extraordinary hauling costs. First, the amount
6 of re-programming -- re-programming of market
7 administrator computer systems to accommodate
8 this amendment should be minimal. Second,
9 accounting for these revenues and costs will be
10 very straightforward. The method employed by the
11 market administrator for each of the Orders in
12 accounting for, applying, making payment for, and
13 general reporting of these temporary revenues and
14 payments is best left to the prudence of the
15 market administrator. Proponents would expect
16 that payment for the demonstrated extraordinary
17 costs would be made on or about the time the
18 market administrator makes typical -- typical
19 monthly payments from the producer-settlement
20 fund, that is on or about the 13th of the
21 month -- month following the month for which
22 payments are to be made.

23 "It is certainly anticipated that the
24 reimbursed costs for these extraordinary milk
25 movements will exceed the amount of Class I

1 revenue which could be generated at the maximum
2 rate in any single month in the Florida and
3 Southeast Orders. The proposed amendments
4 provide a proration procedure for paying out
5 reimbursable hauling costs if those reimbursable
6 costs exceed the monthly funds generated from the
7 adjustment to Class I milk value, and rolling any
8 amounts unpaid from the first to second month,
9 and then any unpaid amounts remaining after the
10 second month to the third. If any reimbursable
11 costs remain unpaid after the third month, these
12 unpaid costs will remain unpaid. Likewise, if
13 the total reimbursed costs for the extraordinary
14 milk movements are anticipated to exceed the
15 total Class I revenue which would be generated
16 over the three-month period, reimbursement of the
17 extraordinary hauling costs would be prorated to
18 marketers claiming the allowable reimbursements.
19 Proration under this procedure would be based on
20 each handlers' share of the total reimbursable
21 extraordinary costs. If the -- in the
22 Appalachian Order it appears that from the data
23 available at this time, that all costs identified
24 to date would be paid -- could be paid in a
25 single month at a Class I milk value adjustment

1 rate less than the maximum four cents per
2 hundredweight allowed.

3 "As the proponents have previously stated,
4 the market administrators for the Orders are
5 uniquely qualified and capable of ascertaining
6 which movements of milk would qualify for
7 reimbursement under these temporary amendments.
8 In fact, much of the information which may be
9 required to make these determinations is
10 available to the Market Administrator, and in
11 practical terms, nowhere else publicly. A number
12 of the extraordinary milk movements were to pool
13 distributing plants on the Orders which then
14 bottled Class I products for shipment to the
15 areas where plants were closed and not processing
16 milk as a result of the hurricanes. The market
17 administrators have historic data on Class I
18 route disposition -- distribution," excuse me,
19 "from pool" --

20 JUDGE CLIFTON: That's "Class I milk route
21 distribution"?

22 MR. SIMS: "Class I milk route distribution
23 from pool distributing plants and can thus
24 evaluate any unusual distribution patterns and
25 shipments from these plants in tandem with

1 reported extraordinary bulk milk deliveries.

2 "Proponent witnesses to follow will testify
3 that milk was moved to supply plants and held
4 until the severe -- severe weather passed, and
5 then was transferred to reopened plants. The
6 dates, times and volumes of milk received at
7 plants and then transferred will give support to
8 the requests marketers of milk will make for
9 reimbursement of these hauling costs. Market
10 administrators have access to receiving records,
11 bulk milk manifests and hauler billings to
12 support these type requests. Witnesses from the
13 proponents will -- to follow will testify that
14 milk has been dumped because roads were
15 impassable, farms were without electricity, and
16 because trucks and trailers were not available.
17 This dumped milk had to be replaced from often
18 unusual and particularly distant sources. Farm
19 production histories, milk purchase documents,
20 bulk milk manifests and hauler billings will
21 support these type requests. The records
22 routinely examined in the course of a market
23 administrator audit of handler obligations will
24 provide substantial evidence of the extraordinary
25 milk movements for which marketers will apply for

1 reimbursement.

2 "Summary. Cooperative associations and
3 perhaps other marketers of milk have experienced
4 unprecedented costs and disruptions in supplying
5 bulk milk to the southeast as a result of four
6 hurricanes. These extraordinary costs of moving
7 milk have occurred at a time of seasonal milk
8 shortage, and high and rising fuel prices.
9 Severe weather has caused losses of milk,
10 shortage of haulers, temporary plant closures,
11 and impassable roads. Shortages of milk
12 nationally have exacerbated the problems caused
13 by the severe weather.

14 "The proponent cooperatives will
15 demonstrate, through the witnesses to follow,
16 real life examples of extraordinary milk
17 movements and the costs of moving those supplies.
18 The amount of costs identified to date from these
19 extraordinary movements totals in excess of 1.5
20 million dollars. Without intervention through
21 the Federal Milk Marketing Order program, these
22 costs will be borne by a portion of the marketers
23 of milk, and then the majority of the costs will
24 eventually be shouldered by cooperative member
25 producers. Congress foresaw the need for the

1 equitable distribution of providing services of
2 marketwide benefit, of which the hauling costs
3 described here certainly qualify. The proposals
4 also provide an equitable system for generating
5 the revenue and -- to reimburse these costs.

6 "Proponents have offered testimony on the
7 emergency nature of this action, and the
8 emergency conditions which have and do exist, and
9 ask that a recommended decision be omitted under
10 the rules of practice and procedure 7 CFR
11 900.12(d).

12 "Finally, the proposal -- the proponents
13 support Proposal Number 2 as included in the
14 notice of hearing."

15 Your Honor, that concludes my statement.

16 JUDGE CLIFTON: Thank you, Mr. Sims.

17 MR. BESHORE: Your Honor --

18 JUDGE CLIFTON: Mr. Beshore, do you want to
19 take a brief stretch break before you go on?

20 MR. BESHORE: I would.

21 JUDGE CLIFTON: All right. How long would
22 you like? Is this -- is this a good time for a
23 15-minute break?

24 MS. DESKINS: Yes.

25 MR. BESHORE: I think so.

1 JUDGE CLIFTON: Okay. Let's see. What time
2 is it now?

3 It's just after 11:05, 11:06. So be back
4 and ready to go at 11:20, please.

5 (Whereupon, a brief recess was held.)

6 JUDGE CLIFTON: All right. Let's go back on
7 record.

8 We're back on record now at 11:25.

9 Mr. Beshore.

10 MR. BESHORE: Yes. Thank you, Your Honor.

11 I have a few additional questions for
12 Mr. Sims on direct examination.

13 BY MR. BESHORE:

14 Q. First of all, Mr. Sims, did you prepare
15 and -- and submit the proposal which led to this
16 hearing?

17 A. I was a part of a team that -- that prepared
18 and submitted that proposal, yes.

19 Q. And did the proposal, as submitted, request
20 the maximum rates of four cents per hundredweight in
21 Orders 5 and 7, and nine cents per hundredweight in
22 Order 6?

23 A. That's correct.

24 Q. Now, in the -- in the language of the
25 proposal for each Order, would it be -- and there are,

1 since there are three Orders, there's three sets of
2 language in the hearing notice, correct?

3 A. Yes.

4 Q. Okay. And in each -- in the language for
5 each Order, would it be correct that the rate is stated
6 at three different times in each set of language?

7 A. That's correct.

8 Q. Okay. And so for Order 5, the maximum rate
9 of four cents per hundredweight was stated correctly
10 two of those three times, and it was -- there was a
11 typographical error on the third; is that correct?

12 A. Correct.

13 Q. And the same thing occurred with respect to
14 Order 6, the rate was published at three different
15 points in the proposed language of the amendment, and
16 it was correct at two of those points and
17 typographically incorrect at a third point?

18 A. That is correct.

19 Q. And, of course, for item -- for Order 7, the
20 rate was correct on all three, at all three points --

21 A. Yes.

22 Q. -- in the hearing notice, correct?

23 A. Yes.

24 Q. Okay. So would it be your -- your view,
25 Mr. Sims, as a veteran participant in the industry,

1 that an affected party, that an interested party
2 viewing the hearing notice would have noted that there
3 must be a typographical error in those rates?

4 A. Anyone who's familiar with milk pricing and
5 skim milk and butterfat pricing, having seen a
6 discrepancy in those numbers should have realized that
7 there was some typographical error.

8 Q. Okay. And in -- in all cases, the -- the
9 majority of the -- of the times it was correct and the
10 minority, in one case it was incorrect in two of the
11 Orders?

12 A. Correct.

13 Q. Okay. Now, you have provided in your
14 testimony, in your exhibit, a summary of some estimates
15 of costs incurred by the proponents. Are those final
16 numbers?

17 A. They are not. These represent the best
18 estimates to date of the extraordinary milk movements.
19 I -- the best process and use of -- of knowledge to
20 determine which -- which loads were -- were
21 extraordinary, some of the -- the mileages between
22 origin and destination are partially estimated.
23 They're probably fairly close, but may yet be subject
24 to some revision, and some of the rates per mile that
25 were used in those estimations that the proponents

1 will -- will demonstrate later may represent estimates
2 also.

3 Q. Okay. In fact, some of the bills for all of
4 you haven't even come in yet?

5 A. That's correct.

6 Q. Okay. So that -- so there's no
7 misunderstanding, the information provided for this
8 hearing record was not intended to be final with
9 respect to any claims that would be submitted
10 subsequently were the proposals to be adopted?

11 A. We -- we -- it is our desire that this be
12 the representative of the kinds of numbers that are
13 looking -- that we are looking at, but by no means
14 are -- are held out to be final.

15 Q. Okay. Now, you commented in your prepared
16 statement that it's the view of the proponents that
17 these costs can be recovered most fairly and
18 appropriately through the Federal Order amendments as
19 posted through a -- a privately negotiated administered
20 over order pricing program. And I wonder if you could
21 just summarize and -- and indicate, as succinctly as
22 you can, why this is a better way to handle these
23 costs.

24 A. There are a number -- I believe there are a
25 number of benefits of providing this relief under

1 Federal Order pricing as -- opposed to, as you say,
2 some sort of negotiated pricing or -- or over order
3 pricing, some -- some might refer to it. Certainly
4 handler equity has some -- some bearing on it. Since
5 the -- particularly in Orders 5 and 7, the
6 cooperatives, proponents don't provide a hundred --
7 don't market a hundred percent of the Class I milk in
8 the Order, they -- there would -- there could be a
9 difference between the -- the price charged to
10 customers of the co-ops that are proponents or did
11 incur these losses as opposed to processors that are
12 handlers of Class I milk that -- that receive milk from
13 proponent people who are handlers who were not affected
14 by the hurricanes.

15 There is a certain transparency that comes
16 from the -- the Class I value adjustment being made and
17 announced on a Market Administrators price
18 announcement. There's the assurance of audited costs
19 under the Federal Order program that handlers would
20 indeed get exactly what they paid for, that the costs
21 were legitimate, and were appropriately accounted for
22 and properly documented, that audit provides a -- some
23 insurance that those -- again, the handlers are getting
24 what they paid for.

25 And lastly, the -- the -- I guess what we

1 would call certainty, over order prices aren't --
2 aren't a given. They -- they come and go, they rise
3 and fall, and having some certainty of those prices
4 charged to handlers and then the costs reimbursed back
5 to the -- the market participants, the handlers,
6 co-ops, and others, that we don't limit this just to
7 cooperatives but other handlers also that provide
8 some -- some certainty that those funds, whatever
9 they're generating, would -- would work their way back
10 to those handlers that incurred the costs.

11 Q. Okay. So one of the elements is by having
12 it in the Order, it will allow any handler who incurred
13 these costs, not just proponents who may have an over
14 order pricing program, but any handler who incurred
15 these costs to recover them?

16 A. Absolutely.

17 Q. Okay. Now, are there situations where
18 proponents provide only a portion of the supply to
19 distributing plants in some of these Orders?

20 A. There are.

21 Q. And in those cases, is it frequently the
22 case that when a handler is partially supplied by a
23 cooperative and -- and has extraordinary needs for
24 supplemental milk supplies, that they turn to the
25 cooperative as opposed to their other suppliers to

1 provide those supplemental needs?

2 A. That is very often true, that the -- the
3 cooperative supplier to those partial supply customers,
4 when those partial supply customers have unusual needs,
5 they rely on the cooperative supplier to -- to increase
6 those deliveries or -- and balance the -- provide the
7 additional supplies.

8 Q. Okay. And when those additional supplies
9 are provided by the cooperative, of course that -- the
10 benefit of that supply coming to that plant is a
11 marketwide benefit, a benefit to all suppliers of that
12 plant?

13 A. It's true.

14 Q. Okay. And only through an Order amendment
15 can the sharing of the costs be commensurate with the
16 benefit of those supplies?

17 A. True.

18 Q. Now, there's reference in your testimony
19 at -- at page 17 to, I guess, two different ways in
20 which hauling costs may sometimes be --

21 A. Billed?

22 Q. -- be billed by -- by milk transporters,
23 loaded miles and running miles. I'd like you to just
24 explain or reiterate the difference there in how you
25 intend the amendments to apply.

1 A. Yes. Our -- the technical order language
2 provides that the limit on reimbursable costs would be
3 computed at \$2.25 per loaded mile, or such lesser
4 amount as may be the actual.

5 When haulers bill handlers of milk,
6 cooperatives and others, obviously, there's generally
7 two ways that they price out the price per mile, and
8 that -- well, the first is by loaded mile, and that's
9 strictly one way distance from origin to destination.
10 And that -- we would limit you -- that our order
11 language provides that that be limited to 2.25 per --
12 per loaded mile.

13 Sometimes, also, haulers will bill their
14 customers based on what's known as a running mile. And
15 you can think of that as a roundtrip distance, origin
16 to destination, back to origin. And generally, those
17 rates, because the mileage is twice as far, the mileage
18 is listed as twice as far, the roundtrip mileage,
19 origin to destination and back, the -- the rate often
20 is quoted at something like half the -- the -- the
21 loaded mile rate.

22 It would be our intention that, you know, on
23 any -- when the Market Administrator determines and
24 reviews the -- the bills from haulers to -- to handlers
25 claim -- asking for reimbursement, that they would

1 adjust those -- those bills, any of those bills that
2 are priced out on a running mile basis, or the
3 roundtrip mileage, that that be adjusted back by a
4 factor of two to -- to get back to the -- the loaded
5 mile rate.

6 Q. Okay. Now, you've noted two proposed
7 modifications to the proposals in your -- in your
8 testimony. The first one at page 9 of -- of
9 Exhibit 12. I wonder if -- if you could go, if we
10 could go to that proposed modification and you could
11 elaborate upon it just a bit.

12 A. Yes, sir.

13 Q. Well, what does it -- what does it
14 accomplish, Mr. Sims?

15 A. It -- the -- the purpose of this
16 modification is to include one other or currently maybe
17 two other subsets of milk movements which would be --
18 which would qualify for reimbursement.

19 After we've reviewed the data, the -- the
20 actual load movements, we realized that our original
21 submitted order language failed to cover these kinds of
22 movements and that these did happen. Basically this
23 covers milk which was transferred or diverted to a
24 nonpool plant or another Order plant basically moving
25 it out of an area to get it out of the -- out of an

1 area that's going -- that is being or going to be
2 struck by a hurricane.

3 That basically provides for the milk, the
4 movement of milk out of a market to get it out of
5 harm's way, if that's the right way to say it. And
6 as -- and then the other transactions are pooled milk
7 will begin, and we did have some of both of that.

8 Q. Okay. Now, you had a second proposed
9 modification which you referred to at page 19, or
10 described at page 19 of Exhibit 12.

11 A. Yes.

12 Q. And that related to the interaction of the
13 existing Transportation Credit Fund which is only in
14 two of the three Orders, correct?

15 A. Yes. The -- there's a transportation credit
16 balancing fund provision in the Appalachian and
17 Southeast Orders, not in the Florida Order.

18 Q. Okay. So this proposed modification doesn't
19 relate to Order 6 at all?

20 A. Does not apply to Order 6 at all.

21 Q. And is one of the intentions of this
22 proposed modification to make certain that we're not
23 proposing to authorize any double dipping with respect
24 to transportation costs?

25 A. That is our desire. We have no desire to

1 double dip or be doublely reimbursed in this. Our
2 modification provides that if, you know, on any load or
3 loads which moved as a result of the hurricanes, which
4 also might be eligible for a transportation credit on
5 Orders 5 and 7, under the existing transportation
6 credit provisions, if they -- if they qualified under
7 both provisions, then the payment from the
8 transportation -- the existing transportation credit
9 balancing fund would be reduced by whatever amount
10 was -- was paid under the -- the emergency situation.

11 So in essence, you would get back the -- you
12 would -- you would receive no money from the
13 transportation credit balancing fund if -- if the
14 money -- if the load qualified under the hurricane
15 emergency.

16 And that's in simple terms.

17 Q. One final question relating to -- which goes
18 back to the subject of over order premiums versus order
19 prices.

20 Is it your understanding that many contracts
21 for purchases of fluid milk products by end users,
22 retailers or supermarkets, rely upon order prices as a
23 base for their -- the movement of price -- for -- as
24 the base for packaged milk prices as opposed to order,
25 over order prices?

1 A. It is my understanding that some number, a
2 significant amount of the -- of the -- of those kinds
3 of transactions are based on, there's some -- there's a
4 formula based adjustment to those prices based on
5 movements of the Federal Order Class I prices, but do
6 not recognize specifically changes in over order
7 prices.

8 Q. So your handling these extraordinary costs
9 through the order would allow the -- the pass through
10 of those prices in a more efficient manner, of those
11 costs in a more efficient manner?

12 A. To the extent that they would be included in
13 whatever those contractual rates -- relationships, yes.

14 Q. Okay.

15 MR. BESHORE: Your Honor, I have no further
16 questions for Mr. Sims on direct.

17 We do move the admission of Exhibits 12 and
18 13.

19 JUDGE CLIFTON: Is there any objection to
20 the admission into evidence of Exhibit 12 or is
21 there anyone that wants to voir dire the witness
22 with regard to Exhibit 12 before determining
23 whether you have any objections?

24 (No response)

25 JUDGE CLIFTON: No response; therefore, I

1 admit into evidence Exhibit 12.

2 With regard to Exhibit 13. First, does
3 anyone wish to voir dire the witness with regard
4 to Exhibit 13?

5 (No response)

6 JUDGE CLIFTON: Is there any objection to
7 the admission into evidence of Exhibit 13?

8 (No response)

9 JUDGE CLIFTON: There is none. Exhibit 13
10 is hereby admitted into evidence.

11 Now, further questions for Mr. Sims. I'd --
12 I'd like to, first of all, invite questions from
13 anyone else who also supports the proponents'
14 proposal.

15 Are there any -- any other questions from
16 proponents of what Mr. Sims has offered?

17 (No response)

18 JUDGE CLIFTON: Okay.

19 Now, anyone else. Are there any further
20 questions, other than those from government
21 people? I'm going to give them the chance to go
22 last.

23 Are there any other questions from those who
24 are here, for Mr. Sims?

25 (No response)

1 JUDGE CLIFTON: I see none. Then I would
2 like to invite officials from the U.S. Department
3 of Agriculture to ask any questions that you have
4 of Mr. Sims.

5 MS. CARTER: (Indicating)

6 JUDGE CLIFTON: Ms. Carter.

7 CROSS EXAMINATION

8 BY MS. CARTER:

9 Q. Antoinette Carter with USDA.

10 Good morning, Mr. Sims.

11 A. Good morning.

12 Q. Could you explain -- and I know you did go
13 through your -- your testimony to some degree talking
14 about the intent and purpose of your proposal. Would
15 you further explain what your intent and purpose is.

16 A. The intent?

17 Q. Uh-huh.

18 A. Obviously, we have demonstrated substantial
19 costs which have -- have been incurred by the
20 proponents, and there may be others that we -- you
21 know, other handlers of milk who have costs which
22 obviously we have not identified. They've -- extreme
23 costs of moving milk in ways that normally wouldn't
24 have occurred as a result of the hurricanes.

25 It's -- it's the purpose and desire of our

1 proposal to -- to offer a -- a temporary increase in
2 the Class I handler's value of milk to -- to generate
3 funds which then would be used to reimburse any handler
4 of milk who -- who properly demonstrates that they had
5 extraordinary movements of milk as a result of the
6 hurricanes.

7 Q. Okay. And transportation costs which would
8 be eligible for reimbursement under this hurricane
9 relief, would it be specifically those that were
10 incurred during the four hurricanes that you mentioned
11 during your statement?

12 A. That -- that -- our -- our proposal does
13 limit it to -- to the four hurricanes, Charley,
14 Frances, Ivan and Jeanne. Understanding, of course,
15 that certain milk movements occurred preceding landfall
16 of -- of a hurricane. You know, milk is moved out of
17 the way, and then -- and then after the hurricane comes
18 through, plants -- you know, plants close and -- in --
19 in the anticipation of the landfall of the hurricane,
20 milk is moved out of the way. And then after the
21 hurricane pushes through, there's -- that milk has to
22 be replaced, those -- those plants have to be refilled,
23 so -- so there has to be a window on either side of
24 the -- the actual, you know, landfall and pushing
25 through of the -- of the bad weather. But it would be

1 limited to those -- to identifiable movements as a --
2 directly related to those hurricanes.

3 Q. Okay.

4 And during your testimony you noted the
5 dates in which those hurricanes initially hit.

6 A. Yes.

7 Q. What is the -- what is the proposed time
8 period in which these additional transportation costs
9 that were incurred as a result of the hurricane should
10 be eligible for reimbursements under each of those --
11 each of the orders, Orders 5, 6, and 7?

12 A. I believe we noted that Hurricane Charley
13 made landfall on August the 13th, according to
14 published news reports. I believe our data will --
15 will -- we started on approximately August the 10th in
16 terms of -- of enumerating and listing the -- the
17 extraordinary milk movements which -- which started as
18 a result of the -- the anticipation of that -- of that
19 hurricane, and went through basically the last week
20 of -- of September. So some few days after the -- the
21 landfall of -- of Jeanne.

22 Q. So just to clarify: A proposed time period
23 would be August 10th through September 28th or. . .

24 A. We wouldn't have a -- I would suspect that
25 that -- that represents the -- the bulk of the -- of

1 the movements. There may be some small number that
2 fall outside that window, but that probably represents
3 the bulk of them, and -- and maybe even a day or two
4 after that.

5 It -- it's not an instantaneous process.
6 They -- this -- it kind of -- you know, and recall that
7 just because the hurricane hit Florida on -- on
8 September 25, it may move up through the Carolinas and
9 impact other areas on days well past the 25th.

10 Q. And that goes to my next question. In terms
11 of should there be a different time period in which the
12 transportation costs that were incurred as a result of
13 the hurricanes, should the time period be different for
14 each of the Orders?

15 A. The -- the supply situation in the Southeast
16 is -- is in large part an integrated supply situation,
17 and what impacts -- I think the data will suggest that
18 there were a number of movements in one order which
19 really are as a result of a dominoing impact someplace
20 else. So I would think that from practical -- a
21 practical standpoint, it would be difficult to -- to
22 identify specifically which days and in which place
23 there was a -- was a -- was -- you know, to at this
24 point identify strictly that on August the whatever,
25 this was a -- you know, this is allowable for this

1 hurricane. But I think the data will suggest that
2 there are -- there are peaks and valleys in those
3 movements that -- that correspond quite well to the --
4 to the -- the hurricanes moving through the various
5 areas.

6 Q. Okay. You've made -- proponents have made
7 or have modified their -- their proposal at this
8 hearing to also include movements to nonpool plants.

9 A. Yes, ma'am.

10 Q. Would you explain why -- why those movements
11 should be included or why, I guess, in distinguishing
12 why it should not be limited to move -- bulk milk
13 movements that were being made to -- in an -- in an
14 effort to -- I'm sorry. I'll restate the question, if
15 that's okay.

16 Why should the eligible transportation
17 reimbursement not apply only to those movements that
18 are associated with supplying the Class I market?

19 A. Okay. I can answer that. Some of the
20 actual movements were, in essence, to get milk out of
21 harm's way. That there was milk that -- you know, you
22 don't want to dump it. You -- you need to get it out
23 of the way, and it had to be taken someplace and -- and
24 processed. And so that -- those movements were to move
25 milk out of the -- out of an area that was about to be

1 struck, and then of course, that milk had to be -- you
2 know, other milk had to replace that milk. And the
3 movement of milk away from a market when there is no
4 demand for it is an integral function of supplying a
5 Class I market.

6 Q. Okay. The costs that you've -- you've noted
7 in Exhibit No. 13, page 7 for each of the Orders,
8 exactly what types of costs are involved? Is that only
9 freight costs or are there various different types of
10 costs involved in --

11 A. The -- the --

12 Q. -- included in these numbers?

13 A. Excuse me.

14 Q. I'm sorry.

15 A. The proponent witnesses to follow will --
16 will provide the -- the supporting detail which goes
17 into this summary, but we can say absolutely that the
18 only costs that have been estimated or that this table
19 represent and that which they will provide supporting
20 documents for are indeed freight costs. There is no --
21 there's no costs on losses of -- of, you know, milk
22 moving to a lower price class, there's no location
23 adjustment loss when milk moves north out of its way.
24 There's no loss on the value of cows and farms and
25 animals -- animals and buildings. This is strictly

1 farm -- you know, moving loads of milk and the
2 transport costs associated with that.

3 Q. Okay. Could you explain how the proposed
4 transportation increases on Class I -- on the Class I
5 price, the max of four cents per hundredweight for the
6 Appalachian Order, four cents for the Southeast, and
7 nine cents for the Florida Order to fund the temporary
8 transportation relief payments were derived --

9 A. Yes.

10 Q. -- and selected as the appropriate values?

11 A. Correct, yes.

12 When -- back, what now, two and a half weeks
13 ago when we originally -- initially began
14 contemplating, three weeks ago contemplating these --
15 these proposals, we made some -- some preliminary
16 estimates of the -- of the amount of costs that was
17 identified at that time.

18 The amount of costs on Order -- on Orders 5
19 and 7, I recall were in the neighborhood of 350- to
20 400,000 dollars per -- for those two Orders, and then
21 some -- you know, some well over a half a million
22 dollars for -- for Order 6. We divided those -- those
23 dollars at that -- that we had identified in an
24 estimated form at that time by the kind of Class I
25 we -- milk we thought would be in the Orders of over a

1 three-month period, and then just simply, quite
2 frankly, rounded up a little bit, because obviously our
3 data were -- were incomplete, and we have proposed that
4 any handler who -- who experienced these losses could
5 be reimbursed, and so we don't have access to --
6 although to a hundred percent of the information, there
7 may be other costs that other handlers have incurred,
8 so we rounded it up, but also made -- made sure that
9 that didn't cause a problem by establishing that that
10 rate could be lowered if the substantiated costs
11 didn't -- didn't equal that. And that's -- and so --
12 and at that time, the -- some of the costs were
13 overestimated and some were under -- underestimated,
14 and -- and that's how we arrived at those numbers.

15 Q. Okay. How did you derive the transportation
16 rate of \$2.25 per loaded mile?

17 A. That -- that's -- that is a -- a fairly
18 common number around which transportation costs are --
19 are being paid currently. The proponent witnesses to
20 follow are going to provide actual copies of actual
21 bills from haulers to -- that will demonstrate that
22 that two and a quarter represents a -- a fairly
23 reasonable rate for -- for capping the -- the hauling.
24 Under the current conditions, diesel prices are quite
25 high right now, and two and a quarter represents a -- a

1 fairly common kind of range around which hauling prices
2 fall.

3 Q. Okay. During your statement, you noted the
4 inverse relationship between the announced Federal
5 Order Class I price and the over order premiums. If
6 your proposal is adopted, will that practice continue
7 during the -- the period in which these relief payments
8 would be implemented?

9 A. I don't know how to answer that exactly. We
10 have used this system, or the southeast has used this
11 system for several years. It's -- always over order
12 prices are under some -- under constant review. As to
13 whether or not we will continue having the -- exactly
14 the same kind of inverse price relationship, over order
15 prices to order prices, I can't say, but it would -- I
16 wouldn't think it would vary substantially.

17 There may be some difference, but I -- I --
18 it's impossible for me to predict -- predict exactly
19 what kind of over order prices we would have in the
20 first three months of 2005.

21 Q. Okay.

22 If your proposal is adopted, what would be
23 the potential impact of your proposal on market
24 participants, specifically cooperative members as well
25 as nonmembers and handlers associated with Order 5,

1 Order 6, and Order 7?

2 A. If -- if adopted?

3 Q. If adopted.

4 A. If adopted, obviously the -- the value of
5 Class I milk, or the -- the cost of Class I milk, raw
6 milk, would go up to those handlers of Class I milk by
7 whatever the -- the rate established by the Market
8 Administrator necessary to cover those costs, there
9 would be an impact there.

10 Those -- and those values would be returned
11 to -- to the handlers of milk who incurred these
12 extraordinary costs, reimbursing them for costs which
13 they've already out -- laid out. So there would be
14 simply a reimbursement of the costs on that -- on the
15 handlers' side. Is that sufficient to answer your
16 question or do I need to go forward?

17 Q. No. I think that's --

18 A. Okay.

19 Q. -- that's sufficient.

20 Should the relief payments, if adopted
21 again, provide reimbursement for all transportation
22 costs incurred during the hurricanes that you've stated
23 or a portion of that cost incurred?

24 Obviously milk would have had to move to --
25 to a plant, there would have been some cost incurred in

1 moving the milk, so my question is: Should all of
2 those costs associated with transporting those loads of
3 milk be reimbursable or should a portion of that be
4 covered under the relief fund?

5 A. I'm -- I don't know that I understand the
6 question exactly. What other costs might you be
7 referring to?

8 Q. I'll restate the question then. Should the
9 relief payments or costs that are eligible for
10 reimbursement, should all of the costs be eligible for
11 reimbursement? Say if you, you know, transported milk
12 from New Mexico to Florida, should all of that cost be
13 reimbursable or a portion of that cost?

14 A. Our proposal provides that it would all be
15 reimbursable, but not-to-exceed \$2.25 per loaded mile,
16 which I think you'll -- you'll see is -- is not overly
17 generous. There are a lot of haul rates that are paid
18 even above -- above that.

19 Q. Okay.

20 A. So to that -- to that end, to that extent,
21 to the extent that some hauling is priced at prices per
22 loaded mile higher than 2.25, that provides that it
23 wouldn't be reimbursed at a hundred percent.

24 Q. Okay.

25 Could you explain what would constitute or

1 be considered an additional cost? I think you went
2 through some of that, and if you could -- in your
3 statement, but if you could recite what would be --
4 what would constitute an additional cost, those costs
5 over and beyond or that are not customary and usual in
6 the movement of milk.

7 A. Well, we've -- we've gone about it in the --
8 in the process of identifying which discrete milk
9 movements were as a result of the hurricanes. There's
10 a lot -- milk moves every day to many, many places, and
11 what we have attempted to do is to identify which ones
12 of those movements are over and above the normal or
13 typical kinds of movements.

14 Plants received extra milk, outside the --
15 you know, the hurricane zone because they were
16 packaging it for their -- for a sister plant, plants
17 closed down, and that milk had to be moved to a -- to
18 an alternate location, milk was moved to -- to places
19 and it set and waited for the hurricane to pass
20 through, then was moved back in, so that milk kind of
21 traveled back and forth. Those are extraordinary
22 movements.

23 When the milk would have moved one -- you
24 know, from -- from an origin to a destination, it may
25 have moved to origins and destination and moved back

1 out and had to come back in. Milk was moved to and --
2 and, for example, milk was moved to a supply plant, was
3 unloaded, filled the silos at a supply plant, sat there
4 until the hurricane moved through, till plants
5 reopened, and was reloaded and moved out. We haven't
6 asked for any -- any costs on receiving or -- or -- or
7 loading out of -- of those loads in a supply plant,
8 simply the -- the actual miles of -- of extraordinary
9 milk movements and identifying -- and in some cases
10 we've even identified where the milk moved a shorter
11 distance, and we have identified that we've -- we would
12 admit that that saved a little money.

13 So though some of the exhibits may show
14 that -- in fact, they will show that there was an
15 actual savings. So to the extent that that would
16 exist, we would consider that.

17 Q. Okay. You also noted in your statement a
18 number of documents and types of forms that could be
19 used by a Market Administrator to verify costs in -- in
20 making their determination for eligible reimbursable
21 costs. Would contract agreements also, in your
22 opinion, should those -- should those be considered or
23 made available to Market Administrators in making their
24 determination?

25 A. The Market Administrator's going to have to

1 determine which movements are done in the normal course
2 of business and which ones would be attributable to the
3 hurricanes. So some sort of -- of baseline association
4 of milk to a plant or milk to a market is going to be
5 a -- a necessary statistic in determining what's over
6 and above that.

7 Q. Okay. One moment.

8 During -- in your statement, you listed a
9 number of those types of documents. I'm -- I'm trying
10 to find what page that's on. I was wondering if you
11 could maybe walk through what types of information is
12 included on those forms or documents.

13 A. Okay.

14 MR. BESHORE: Do you have that?

15 MS. DESKINS: 12.

16 MS. CARTER: I think it's on page 12 of your
17 statement.

18 Yeah, I'm sorry, page 21.

19 MR. SIMS: Yes.

20 When -- when milk is picked up at a farm,
21 it -- it generates a record, when it's delivered
22 to a plant, a -- a record is generated when
23 it's -- when it's unloaded, the time of
24 unloading, the volume of milk, the -- the source
25 of the milk. When plants are shut down, there's

1 going to be a -- a record that -- of no
2 production in that plant during -- during those
3 days. So all these records are going to be --
4 you know, there's -- there's some -- plenty of
5 documentation of where milk came from and where
6 it went, the day and date it was -- it was
7 delivered, it was picked up, the time it was --
8 was delivered, the cost -- the -- there's plenty
9 of documentation that supports the cost of moving
10 milk across -- from an origin to a destination.

11 When milk production declines or as milk
12 production has been lost in -- in parts of the --
13 particularly Florida, I think we'll hear
14 testimony on, that milk has to be replaced from
15 milk from someplace else, that those production
16 history, farms, you know, there's absolute
17 knowledge as to how -- what farm -- what farms
18 produced historically. So there's going to be
19 a -- a fair, I think a substantial amount of data
20 which provides those baseline numbers. But every
21 milk transaction, every -- every -- every stop
22 along the way there's a -- there's a record
23 generated which supports those transactions.

24 MS. CARTER: Okay.

25 BY MS. CARTER:

1 Q. Could you please explain or give specific
2 examples of what would constitute a re-route under your
3 proposal.

4 A. We had some milk that moved to -- or secured
5 this route from farm to plant, or it was -- for
6 example, there was some milk that was in Florida,
7 was -- was on tankers, was -- was destined for plants,
8 was moved back out of Florida, was parked on a plant
9 lot outside of Florida, left on the tankers. When the
10 storm passed through, that milk then turned around and
11 went back to Florida.

12 Also, there were situations where milk was
13 moved from one -- was on a lot at, say, a plant, say,
14 in Arkansas, and then moved -- and was -- and was
15 supposed to be unloaded in Arkansas, that need, was
16 needed in Birmingham or someplace in Alabama or
17 Georgia, and that milk was, I think -- the driver was
18 contacted by cell phone and said, start your engine and
19 take this load to X position, X place. There's a
20 number of those kinds of -- of transactions.

21 Q. Okay. And why should these re-routes be
22 eligible for reimbursement, these costs associated with
23 these re-routes?

24 A. Because those are costs that would not have
25 been incurred otherwise.

1 Q. In the items that you've listed in your
2 statement on page 21, would those be items that would
3 be used by -- or should be used by the Market
4 Administrators to -- in determining if these re-routes
5 should be eligible for reimbursements?

6 A. These and whatever other -- other resources
7 are at their disposal.

8 Q. Okay.

9 A. This probably doesn't represent the entirety
10 of -- of records which could be analyzed, and we
11 would -- we would propose that the market administrator
12 use all resources, documents, and evidence at their
13 disposal to make those determinations.

14 Q. Okay.

15 MS. CARTER: That's all I have for now.

16 MR. ROWER: Sure.

17 JUDGE CLIFTON: Mr. Rower, would you
18 identify yourself.

19 MR. ROWER: Yes. Thank you.

20 Jack Rower, Mr. Sims, AMS Dairy Programs. I
21 only have a couple of questions.

22 CROSS EXAMINATION

23 BY MR. ROWER:

24 Q. Can you hear me all right?

25 A. Yes, sir.

1 Q. Thank you.

2 If this relief proposal is adopted, would
3 the proponents be willing to certify to the Market
4 Administrators of the three affected Orders that their
5 transportation claims haven't been reimbursed through
6 any other fund recoveries, State relief programs, for
7 example, insurance possibly?

8 A. We -- I don't know that we discussed that
9 specifically, but I suspect that that would be -- could
10 be -- that kind of certification would be -- could be
11 forthcoming.

12 Q. So that would be reasonable?

13 A. Yes.

14 Q. Okay. Thank you.

15 Mr. Sims, in your opinion, should there
16 be -- be any limitations on the -- the distance that
17 this extraordinary additional milk and the costs
18 associated with moving it, any -- being eligible to
19 receive this transportation relief?

20 A. We have not proposed any mileage limit or
21 percentage of actual miles. When -- when milk is short
22 in the fall, in this time of year in the southeast,
23 milk moves from -- from many places, all of which is --
24 seems very distant. And -- and since there's no milk
25 any closer, milk has to move from where it has to move

1 from.

2 So whatever the distance is, we would
3 propose that be the distance.

4 Q. And you're also saying, I think, if I
5 understand correctly, that very shortfalls which
6 require -- or short hauls which may have been
7 lengthened by circumstances related to the weather,
8 should also be compensated? I mean, there shouldn't be
9 any --

10 A. Yes. Yes. Yes, sir, we would -- we would
11 agree with that. And it would be our proposal that
12 only the additional distance be the -- the amount which
13 would be reimbursed. The -- the initial distance, if
14 milk was coming from northern Indiana, regularly
15 scheduled to -- to stop at Louisville, Kentucky, was
16 then re-routed to -- to Atlanta, Georgia, it would be
17 our proposal that only the Louisville to Atlanta
18 distance be reimbursed, not the initial distance.

19 The Market Administrator would determine
20 what the -- that initial distance should be and not
21 reimburse that, only the additional.

22 Q. So only the -- if I understand again, what
23 you're saying is only the extraordinary portion of any
24 routing of milk --

25 A. Correct.

1 Q. -- should be eligible for this relief
2 program --

3 A. Yes.

4 Q. -- if adopted?

5 A. Yes.

6 Q. Okay.

7 MR. ROWER: Thank you. That's all I have.

8 MR. CHERRY: Richard Cherry.

9 CROSS EXAMINATION

10 BY MR. CHERRY:

11 Q. Good morning, Mr. Sims. Thank you for
12 appearing today.

13 A. Thank you.

14 Q. If Proposal 1 was to be adopted, at the end
15 of the three-month period if any funds collected in the
16 marketing area are not disbursed, how should the
17 remaining dollars be disbursed?

18 A. It is our proposal that the rate of Class I
19 milk value adjustment be set such that there's a high,
20 high degree of certainty that there won't be any money
21 left. That the -- the Market Administrator would set
22 the rate such that if anything -- put it this way, we
23 would rather see there be a little bit of cost left
24 unpaid than extra money generated.

25 Q. Okay.

1 How many procedures does Dairy Cooperative
2 Marketing Association have?

3 A. Dairy Cooperative Marketing Association has
4 no procedures. Its members are other cooperatives.

5 Q. Okay.

6 MR. CHERRY: Thank you.

7 JUDGE CLIFTON: Let me go back to Mr. Sims'
8 first question.

9 What if in spite of all effort there is some
10 money left over?

11 MR. SIMS: That there -- if there's -- if
12 it's an appreciable amount, I suppose it could be
13 refunded to Class I handlers in proportion to
14 their contribution, but it would be our proposal
15 that -- that we do everything in our power not
16 to -- to have anything left over. That the --
17 the costs -- we would, quite frankly, prefer to
18 see costs unpaid than -- than revenue generated
19 in addition to cost.

20 MS. DESKINS: (Indicating)

21 JUDGE CLIFTON: Ms. Deskins.

22 MS. DESKINS: Sharlene Deskins, USDA OGC.

23 CROSS EXAMINATION

24 BY MS. DESKINS:

25 Q. Mr. Sims, just to clarify. With this

1 proposal you're not trying to get -- you're not trying
2 to create any new forms that they have to fill out in
3 order to -- to show proof of -- of the extraordinary
4 expenses?

5 A. It -- I don't believe that any substantial
6 new -- that the -- the documents which exist currently
7 and that Market Administrators typically review in the
8 course of their day-to-day business and their audits
9 should be sufficient to -- to document the kind of
10 things we're talking about.

11 Q. Okay. And also in terms to the Milk Market
12 Administrator, it would be up to the people who want
13 this benefit to provide the information to the Market
14 Administrators?

15 A. Absolutely.

16 Q. Okay. And if they don't do it, the Market
17 Administrator can simply not give them any credit?

18 A. If they -- if the documents and supporting
19 evidence provided by the requester are insufficient
20 to -- to -- for the Market Administrator to determine
21 that is a --an extraordinary cost, the Market
22 Administrator would be under no obligation to make any
23 payment.

24 Q. Okay.

25 MS. DESKINS: Thank you.

1 MS. CARTER: Just a couple of follow-up
2 questions, Jeff.

3 RECROSS EXAMINATION

4 BY MS. CARTER:

5 Q. And one of which goes back to, for whatever
6 reason if your proposal was adopted and there was
7 indeed funds remaining, would another acceptable option
8 for disbursing those funds be that it be disbursed to
9 producers on that market, put in the producer
10 settlement fund? Is that an acceptable option?

11 A. I -- I propose I -- I guess it would be
12 acceptable, but, again, we have -- we have no desire to
13 see the blend price enhanced as a result of these
14 provisions, so we would -- we would prefer that those
15 funds either not exist or -- or but not -- it's not our
16 desire to see the blend price enhanced.

17 Q. Okay. With regards -- and on page 19, you
18 discuss that it is not the intent of your proposal to
19 provide for any dual reimbursement of transportation
20 costs. Could you clarify what procedure could be used
21 by market administrators to provide any, I guess,
22 adjustment back to handlers that have already received
23 payments under the transportation credits?

24 A. Certainly.

25 Q. Okay.

1 A. Transportation credits are, quite frankly,
2 an -- an item in -- in Federal Order administration
3 that are routinely prone to audit adjustment and to
4 payment and -- payment after the fact and collection of
5 those funds back. Oftentimes, because of various
6 things, handlers who receive transportation credits
7 receive an audit adjustment and have to -- and are
8 billed back for -- for some of those costs sometime in
9 the future. If it -- since the month of August has
10 already passed --

11 Q. Uh-huh.

12 A. -- and -- and the -- and the documents and
13 the -- and the pools are being computed for the month
14 of September even as we speak, obviously some of
15 those -- some of those transactions, some of those
16 hauls which might qualify under the hurricane
17 emergency, may have already received funds from a
18 transportation credit balancing fund, and we would
19 admit that completely. It would be our proposal at
20 that point that if -- if a particular load qualified
21 for both payment -- under both provisions, that an
22 audit adjustment be issued such that the amount that
23 was received from the transportation credit balancing
24 fund on that load be recouped and then the -- the load
25 would be paid for, the transport would be paid for

1 under the hurricane provisions.

2 Q. Okay.

3 MS. CARTER: Thank you. That's all I have.

4 JUDGE CLIFTON: Are there any other
5 questions for Mr. Sims from representatives of
6 USDA sitting at this first table?

7 MR. ROWER: No, thank you.

8 JUDGE CLIFTON: None. Any other questions
9 for Mr. Sims?

10 MR. BESHORE: (Indicating)

11 JUDGE CLIFTON: Let's see. Before I allow
12 you, Mr. Beshore, yes, would you come to the
13 podium, please.

14 MR. KINSER: Evan Kinser with Dean Foods.

15 CROSS EXAMINATION

16 BY MR. KINSER:

17 Q. Mr. Sims, just a clarification following up
18 some questions from Antoinette Carter.

19 On page 15, I think -- excuse me, page 10 of
20 your testimony, you offer a modification to the
21 proposal noticed. Ms. Carter was questioning that if
22 one of the potential qualified shipments was that if
23 milk was moved out of the way, out of the path of a
24 hurricane so it had been received at a distributing --
25 or was sitting at a distributing plant, was shipped to

1 another plant, that that would be reimbursable; is that
2 correct?

3 A. If it's bulk.

4 Q. If it's bulk?

5 A. Yes.

6 Q. Would a -- would the same type of situation
7 qualify if milk had already been received, had sort of
8 survived the storm but was unfit for continuing through
9 the plant afterwards and was loaded back up and shipped
10 out; would that also qualify?

11 A. To -- to the extent that that milk would
12 qualify as a -- a transfer under the order, yes, it
13 would.

14 Q. Okay.

15 Also relating to that, if there were plants
16 outside of the Orders that produced packaged milk that
17 were shipped back in, would milk, any milk being
18 shipped to those plants qualify for reimbursement?

19 A. Plants outside of Orders not regulated under
20 Orders 5, 6, and 7?

21 Q. Yes, that is correct. Outside of Orders 5,
22 6, and 7 that received milk to package to ship back
23 into 5, 6 or 7?

24 A. I don't believe our proposal covers that.

25 Q. Okay.

1 MR. KINSER: Thank you.

2 JUDGE CLIFTON: Other questions for Mr.
3 Sims?

4 (No response)

5 JUDGE CLIFTON: I see none another.
6 Mr. Beshore.

7 MR. BESHORE: Just very, very briefly on
8 redirect, Jeff.

9 REDIRECT EXAMINATION

10 BY MR. BESHORE:

11 Q. With respect to what the -- the subject of
12 what types of information would be provided to the
13 market administrator and -- and how it would be
14 provided, let me see if I can summarize that and wrap
15 it up. You're not devising or proposal any new forms
16 to be filed?

17 A. That's correct.

18 Q. Okay. But your proposed hearing language,
19 as Ms. Deskins clarified, I think, requires that the
20 handlers who would receive these payments must submit
21 proof satisfactory to the Market Administrator to
22 determine their eligibility, correct?

23 A. Correct.

24 Q. And if that -- if it was -- if that proof
25 involved contracts, as I think Ms. Carter asked you, or

1 Mr. Rower, that would be part of the proof they'd have
2 to provide?

3 A. Correct.

4 Q. And if it involved bills from handlers, that
5 would be part of the proof they'd have to provide?

6 A. Correct.

7 Q. Okay. And, in fact, it would have to be
8 whatever was necessary to satisfy the Market
9 Administrator that the cost was incurred and that it
10 was incurred because of for extraordinary movements
11 solely because of the hurricane conditions?

12 A. Correct.

13 Q. Okay.

14 MR. BESHORE: Thank you.

15 JUDGE CLIFTON: All right, Mr. Sims, you
16 were reluctant to specify the dates involved,
17 and I understand why, but do you believe, from
18 the evidence you've seen so far, that it would be
19 safe, for example, to indicate that these
20 extraordinary costs for extraordinary movement of
21 milk solely because of the hurricanes, that those
22 costs could have been incurred, for example, only
23 during the months of August and September of
24 2004?

25 MR. SIMS: I am unaware of any substantial

1 lingering impacts well into October. There might
2 be a day or two in October, but it would --
3 August and September would cover substantially
4 the -- the cost, as I understand it.

5 JUDGE CLIFTON: All right. But -- but are
6 you aware of any costs in October?

7 MR. SIMS: I am unaware of any.

8 JUDGE CLIFTON: All right. Thank you.

9 MR. SIMS: At this time.

10 JUDGE CLIFTON: All right.

11 Any other questions for Mr. Sims?

12 (No response)

13 JUDGE CLIFTON: Thank you, Mr. Sims, you may
14 step down.

15 Mr. Beshore?

16 MR. BESHORE: Yes. Our next witness is
17 Mr. Calvin Covington from Southeast Milk. And I
18 don't know what Your Honor's pleasure is with
19 respect to the luncheon break. We're prepared to
20 proceed, or perhaps it's the right time?

21 JUDGE CLIFTON: All right, let's take a show
22 of hands.

23 Do you have an estimate, Mr. Beshore, for
24 how long you might question Mr. Covington?

25 MR. BESHORE: Mr. Covington has a statement

1 of four or five pages, he has some exhibits that
2 we'll discuss a bit. I'm a poor estimator about
3 that.

4 JUDGE CLIFTON: I know. It's so hard to
5 tell. Have --

6 MR. BESHORE: But perhaps a half hour.

7 JUDGE CLIFTON: Have his statement and
8 exhibits been distributed yet?

9 MR. BESHORE: No, they have not.

10 JUDGE CLIFTON: Okay. Well, for sure we
11 would want to distribute them, even if we now
12 break for lunch.

13 MR. BESHORE: We will -- we will make them
14 available.

15 JUDGE CLIFTON: All right.

16 Where are those right now physically in the
17 room?

18 MR. BESHORE: In Mr. Covington's hands.

19 MR. COVINGTON: I have four copies for the
20 hearing judge.

21 JUDGE CLIFTON: You know, actually, if --
22 the court reporter needs one and I need one.

23 MR. COVINGTON: Okay.

24 JUDGE CLIFTON: And that really takes care
25 of the --

1 MR. COVINGTON: There's the written one.

2 JUDGE CLIFTON: Okay.

3 MR. COVINGTON: And there's the exhibits.

4 There's the written, there's the exhibits.

5 MR. BESHORE: She can have the rest.

6 JUDGE CLIFTON: Mr. Beshore, at this point

7 let's get these marked. Do you want his

8 statement to be --

9 MR. BESHORE: The next --

10 JUDGE CLIFTON: -- the next one?

11 MR. BESHORE: -- number in sequence.

12 JUDGE CLIFTON: All right. Then I'm going

13 to ask the court reporter to mark the statement

14 as Exhibit 14, and the thicker exhibit to be

15 Exhibit 15.

16 (Whereupon, Exhibit Nos. 14 and 15 were

17 marked for identification.)

18 THE COURT REPORTER: Okay.

19 JUDGE CLIFTON: Thank you.

20 Now, I'm going to ask for a show of hands as

21 to those that would like to break for lunch now

22 as opposed to later.

23 It's now 12:21, I'd like for you to raise

24 your hand if you would like to break for lunch

25 now. Please raise your hand.

1 (No response)

2 JUDGE CLIFTON: All right. I'd like for you
3 to raise your hand if you'd like to go ahead with
4 this witness and we'll make some more progress
5 before we break for lunch. If so, raise your
6 hand.

7 (Indicating)

8 JUDGE CLIFTON: Okay, we have a few hands.
9 We'll go forward.

10 Sir, would you please state and spell your
11 full name for me.

12 MR. COVINGTON: My name is Calvin,
13 C-a-l-v-i-n, Covington, C-o-v-i-n-g-t-o-n.

14 JUDGE CLIFTON: All right. Thank you.
15 If you would now raise your hand.

16 CALVIN COVINGTON,
17 being first duly sworn, was examined and testified as
18 follows:

19 MR. COVINGTON: Yes, I do.

20 JUDGE CLIFTON: Thank you.

21 Mr. Beshore.

22 MR. BESHORE: Okay, thank you.

23 DIRECT EXAMINATION

24 BY MR. BESHORE:

25 Q. Mr. Covington, what is your business address

1 currently?

2 A. My business address is Post Office Box 3790,
3 Belleview, Florida, ZIP Code 34421.

4 Q. And how are you presently employed?

5 A. I'm employed by Southeast Milk, Incorporated
6 at that location.

7 Q. In what capacity?

8 A. As their chief executive officer.

9 Q. Okay. And have you -- how long have you
10 been in that position?

11 A. I've been in that position since June
12 of 2000.

13 Q. Okay. And did you have employment in the
14 dairy industry in other capacities prior to that time?

15 A. Yes. I was employed with another national
16 dairy farm organization about 23 years prior to that.

17 Q. Okay. Now, your prepared testimony, your
18 statement has been marked as Exhibit 14, and some
19 exhibits have been marked as Exhibit 15. Let's discuss
20 or identify briefly your exhibits, and then we'll ask
21 you to present your prepared statement.

22 Exhibit 15 is composed of seven tables,
23 numbered 1 through 7, one graph and three documents
24 numbers, numbered 1, 2, and 3. Is that correct?

25 A. That is correct.

1 Q. Okay. Could you just, beginning with
2 Table 1 of Exhibit 15, briefly describe, then, the --
3 the contents in turn of Exhibit 15.

4 A. Table 1 lists all the counties in the state
5 of Florida in which Southeast Milk has dairy farms
6 located. They're shown in the second column there next
7 to the counties.

8 In the third column is the estimated number
9 of cows that those total dairy farms have in each of
10 those counties. Then, the next four columns list each
11 of the four hurricanes that took place between August
12 and September of this year; Hurricanes Charley,
13 Frances, Ivan and Jeanne.

14 If FEMA declared that particular county a
15 disaster area, and individual operations were eligible
16 for disaster assistance, then those cow numbers -- cow
17 numbers were listed by that respective county under
18 that respective hurricane. And the purpose of this
19 table is to show the widespread impact that those four
20 hurricanes had on dairy farms and dairy cow population
21 in the state of Florida.

22 Q. Okay. Then the next page is Table 2.

23 A. Table 2 shows for the periods, from August
24 the 29th through September 18th, for the years 2004,
25 2003, and 2002. And the far right-hand side where it

1 has date, that should be 2002. You can see it
2 corresponds with the dates found down below -- below
3 there.

4 This shows the milk receipts by Federal
5 Order 6 pool handlers invoiced by Southeast Milk during
6 that period of time. And the purpose of this table is
7 to show how milk receipts went down because plants
8 could not receive milk during a particular one
9 hurricane there, which I'll elaborate more on in the --
10 my written testimony.

11 Q. Okay. The title of Table 2 indicates August
12 29th through September 11th, and --

13 A. It should be 18th.

14 Q. -- it should be the 18th?

15 A. Yes. We had another week, my apologies.

16 Q. Good.

17 JUDGE CLIFTON: All right, let's stop.

18 I'm going to ask the court reporter to turn
19 to that Table 2 of Exhibit 15, under the heading
20 there is a -- a date toward the end of the
21 heading that says August 29-September 11. And
22 the 11 should become an 18.

23 (Whereupon, the requested changes were made
24 by the court reporter.)

25 JUDGE CLIFTON: Done. Thank you.

1 MR. BESHORE: Thank you.

2 BY MR. BESHORE:

3 Q. And then just to be absolutely clear on the
4 date clarifications on Table 2, there are three columns
5 of dates and receipts. The left column is for 2004,
6 the center column is for dates in 2003, and the
7 right-hand column is for dates in 2002; is that
8 correct?

9 A. That is correct.

10 Q. So that when we go down on each line in
11 those particular columns, the middle column, which is
12 for 2003, there are a few dates from September 12th and
13 after that indicate 2004. And that would be incorrect?

14 A. Yeah. Someone wasn't a very good typist.
15 It's probably me.

16 Q. Okay. This was a hands's on project, Cal?

17 A. Yes, sir.

18 Q. Thank you.

19 The same thing for the --

20 A. Yeah.

21 Q. -- for the right-hand column for 2002,
22 several of the dates from September 12th down indicate
23 2004. It should indicate all -- all those dates are
24 for 2002, correct?

25 A. Right.

1 Q. Okay.

2 A. We just want to make sure you're on your
3 toes.

4 JUDGE CLIFTON: Okay. All right, I'm going
5 to ask the court reporter to do quite a few
6 changes here.

7 I'm going to ask the court reporter, still
8 on this page, Table 2, to change every 2004 that
9 appears in the middle column under the heading
10 date -2003. So what will be changed is September
11 12, September 13, September 14, September 15,
12 September 16, September 17, and September 18.

13 (Whereupon, the requested changes were made
14 by the court reporter.)

15 JUDGE CLIFTON: Then I'm going to ask the
16 court reporter to do likewise in the third
17 column. At the -- at the top where it says date,
18 I'm going to ask the court reporter to put -2002.

19 (Whereupon, the requested changes were made
20 by the court reporter.)

21 JUDGE CLIFTON: And then I'm going to ask
22 her to change the 2004 dates that appear in that
23 column three to 2002, and that would include the
24 dates September 12 through 18.

25 (Whereupon, the requested changes were made

1 by the court reporter.)

2 THE COURT REPORTER: Okay.

3 JUDGE CLIFTON: Thank you.

4 You may proceed.

5 MR. BESHORE: Okay.

6 BY MR. BESHORE:

7 Q. Let's turn to Graph 1, the next page in --
8 in Exhibit 15, then, Mr. Covington. Is this a graphic
9 depiction of the information on Table 2?

10 A. Yes, it is. Again, for period August 29th
11 through September 18th, 2002 through 2004. And, again,
12 it shows the -- the wide swings in milk receipts.

13 Q. Very good.

14 Moving on, then, to Table 3 of Exhibit 15.
15 This is a four-page table, I believe. Could you
16 describe it, please.

17 A. Yes. On Table -- Table 3, this is the milk
18 movement due to Hurricane Frances where milk had to be
19 shipped to other locations out of the state of Florida
20 doing to -- due to plants located in the state of
21 Florida closed there during Hurricane Frances.

22 And so we show each of the -- the plants
23 where this milk went to, their location, the pounds of
24 milk, miles traveled, hauling costs -- costs. And,
25 again, they're listed on these pages.

1 Q. Very good.

2 Now, this -- this is an example, if I might,
3 or -- or multiple examples of movements that caused --
4 were extraordinary milk movements that were caused by
5 the hurricane but which were not to Class I plants but
6 out of the area?

7 A. Right. This is milk moved out of the state
8 of Florida just to find a home for it, because the
9 plants in the state of Florida were closed.

10 Q. Okay. Thank you.

11 Move, then, to Table 4 of Exhibit 15. And
12 describe that, please.

13 A. Okay, that -- that milk on Table 3, the
14 approximately 6.5 million pounds of milk, if that milk
15 had stayed into the Florida market, it would have gone
16 into pool distributing plants, almost all of it, in the
17 state of Florida. But since that milk went out, what
18 we've done here, we've compared our estimate of dollars
19 received for that milk by shipping it out versus the
20 dollars we would -- we have estimated we would have
21 received if that milk had stayed in the Florida market.

22 Q. Okay. Now, those are loses that are not
23 being claimed --

24 A. No.

25 Q. -- for reimbursement here?

1 A. But you'll find out when you get to my
2 written testimony, I'm -- I'm using, I've given you
3 some numbers to show that the cost of what the four
4 hurricanes did to the dairy industry in the state of
5 Florida is much greater than what we are asking for in
6 these proposals.

7 Q. Okay, thank you.

8 Could you describe, then, Table 5, the next
9 page of Exhibit 15.

10 A. Also because of Hurricane Frances, for
11 various reasons that I'll explain later, a lot of milk
12 had to be dumped on farms, also milk that was already
13 on trailers was -- was lost due to age. And so we --
14 we list the pounds of milk, the county where that milk
15 was -- where it was dumped at. And the total pounds,
16 you can see down at the bottom approximately 2.8
17 million was dumped, and 260,000 lost. And to add your
18 totals, a little over three million pounds.

19 Q. The next table is Table 6, Exhibit 15.

20 A. Yes. For the four weeks in September, for
21 the year 2004 we're showing the number of actual loads
22 of milk imported by Southeast Milk into the Florida
23 market in the comparable week in the year 2003.

24 Q. Okay. Move, then, to -- turn, then, to
25 Table 7 of Exhibit 15, which is a four-page table, I

1 believe. And tell us what that is.

2 A. Table 7 -- 7 is our -- our best current
3 estimate of additional supplemental milk transportation
4 costs resulting from the four hurricanes. This would
5 be milk delivered into Federal Order 6, we show the
6 delivery date, the county where that milk originated
7 from and the state, the cooperative, the plant
8 organization that milk was obtained from, the plant it
9 went to, the number of loads, the mileage. If we know
10 the actual mile, the cost of transportation per loaded
11 mile, that number is in there; if we don't know that,
12 we used the \$2.25.

13 Q. Okay. Now, after the seven tables in
14 Exhibit 15, you have several other portions of the
15 exhibit that have been identified as documents. And
16 let's begin with Document 1.

17 A. Document 1, this was the letter that was --
18 that I sent out to all the milk plants served by
19 Southeast Milk, dated September 14th, to put in writing
20 to the plants that we were serving, the current milk
21 marketing conditions, the strain that it put on
22 Southeast Milk in supplying milk to the market, and
23 some things that we're trying to do to -- to meet their
24 milk needs.

25 Q. Okay. And that's a two-page letter?

1 A. That is correct.

2 Q. Okay. Now, the next document is in five
3 parts, I think Document 2-A through 2-E. Can you tell
4 us what that document is as part of Exhibit 15.

5 A. These -- these are copies of news releases
6 that came from the Florida Attorney General's office
7 talking about price gouging that was to that -- that
8 the Attorney General is making people aware of, and
9 also some examples of where they were charging, making
10 charges against people who were price gouging in the
11 Florida market as a result of the hurricanes.

12 Q. Okay. The final document, then, in -- in
13 Exhibit 15 is Document 3. And could you tell us what
14 that is, please.

15 A. Document 3 are actual copies of three
16 invoices from milk haulers who hauled milk for
17 Southeast Milk, to actually show what the actual
18 hauling cost was of some of this additional milk coming
19 into the Florida market as a result of the hurricanes.

20 And, again, these are just put in here as
21 examples. We can furnish documentation for -- for all
22 the loads that if this proposal would be accepted, that
23 we would put in for.

24 Q. Okay. Let's look at the first hauling
25 invoice, which is from Indian River Transport Service,

1 or Indian River Transport Co. Does that have a rate?

2 How -- how is the charge from this hauling
3 company made to Southeast Milk, is it on a rate per
4 loaded mile, running mile, flat rate or can you break
5 down the invoice for us just a little bit?

6 A. Yeah. On the invoices we -- we receive from
7 almost all of our haulers, that the numbers come in
8 there on a flat rate. For example, on the Indian River
9 invoice here, the low -- looking up there at the top,
10 you see the flat rate was \$1,735, they add on a fuel
11 surcharge, so the total charge for that load of milk
12 moving from that origination point to the market in
13 Florida was \$1,977.90.

14 If we want to convert that to a loaded mile,
15 we could go and use one of the software programs to
16 estimate the miles from the origination to destination,
17 and divide it out.

18 Q. Okay. So the origination on that load,
19 mileage -- the origination point was Carlisle,
20 Pennsylvania?

21 A. That is correct, and the destination is
22 Deerfield Beach, Florida.

23 Q. And the quantity on the load was 47,620
24 miles -- or pounds?

25 A. Pounds, that is correct, yes.

1 Q. So the -- the cost per loaded mile would --
2 when you add the mileage from Carlisle to Deerfield
3 Beach, it would be --

4 A. Division there with the total -- total
5 dollars paid for that load of milk.

6 Q. Okay. Let's look at the second invoice,
7 then, from Becker's Trucking.

8 A. Again, this was two loads of milk coming
9 from Waupun, Wisconsin to Lakeland, Florida. Again,
10 they charged a flat \$3,000 for each of those loads of
11 milk.

12 JUDGE CLIFTON: Would you spell Waupun for
13 the court reporter?

14 MR. COVINGTON: Yes. It's an Indian name,
15 W-a-u-p-u-n.

16 BY MR. BESHORE:

17 Q. Okay. Do you know what the cost per loaded
18 mile for that delivery would be?

19 A. I'd have to get the miles and divide it out,
20 but it's probably going to be somewhere just around the
21 2.10, 2.15, 2.20 range, if you do the math.

22 Q. Okay. The third hauling invoice, then?

23 A. This is one from, going from Martins Ferry,
24 Ohio to Lakeland, Florida, and the amount charged was
25 \$2,115.36.

1 Q. Okay. Very good.

2 JUDGE CLIFTON: Just for the record, Martins
3 is one word and Ferry is the second word?

4 MR. COVINGTON: That is correct, yes, ma'am.

5 JUDGE CLIFTON: All right.

6 BY MR. BESHORE:

7 Q. Okay. With -- with that introduction to
8 your exhibits, could you then proceed with your
9 prepared testimony, please.

10 A. Yes, I can.

11 "My name is Calvin Covington. I serve as
12 the Chief Executive Officer of Southeast Milk,
13 Incorporated, P.O. Box 3790, Belleview, Florida, 34421.

14 "Southeast Milk, Incorporated, (SMI), is a
15 dairy marketing cooperative with approximately 300
16 dairy farmer members. Approximately 74 percent of
17 SMI's milk production is in Florida, 24 percent in
18 Georgia, and the remaining two percent in Alabama and
19 Tennessee. SMI has producer milk pooled in both
20 Federal Orders 6 and 7. During the month of August
21 2004, SMI delivered 192.4 million pounds of milk to
22 Federal Order 6 pool plants. SMI member milk accounted
23 for approximately 87.5 percent of all producer milk
24 pooled on Federal Order 6 in August 2004. On a regular
25 basis, SMI delivers milk to all Federal Order 6

1 regulated pool distributing plants. For Federal Order
2 7, SMI delivered 17.8 million pounds of producer milk
3 in August 2004. SMI delivers milk to one Federal
4 Order 7 regulated pool distributing plant.

5 "SMI supports Proposal Number 1 and Number
6 2. These proposals will reimburse handlers for the
7 cost of transportation expenses incurred through
8 supplemental milk purchases and displaced milk
9 resulting from recent hurricanes. Further, these
10 proposals should include not only the cost of
11 transportation occurred as a result of Hurricanes
12 Charley, Frances, Ivan and Jeanne to pool plants, but
13 nonpool plants as well. This testimony is offered in
14 support of both proposals.

15 "Hurricanes. From August the 12th, 2004
16 through September 26, 2004, four major hurricanes hit
17 the state of Florida; Hurricanes Charley, Frances, Ivan
18 and Jeanne. The Florida Department of Agriculture
19 estimates agriculture losses from Hurricanes Charley
20 and Frances will exceed 2.1 billion dollars. This is
21 30 percent of the state's agriculture industry and does
22 not include Ivan and Jeanne. Almost every SMI Florida
23 dairy producer was directly or indirectly impacted by
24 at least one of these hurricanes. Some dairy farms
25 were impacted by two, and unfortunately some by three

1 of the four hurricanes.

2 "Exhibit," and I'll stop here and I assume
3 we could write in Exhibit 15 there?

4 JUDGE CLIFTON: Yes, please.

5 I'd ask the court reporter to do that at the
6 top of page 2 of Exhibit 14, write in Exhibit 15.

7 (Whereupon, the requested changes were made
8 by the court reporter.)

9 MR. COVINGTON: Exhibit 15, Table 1 shows
10 the counties with SMI milk production along with
11 their estimated number of cows. Each hurricane
12 is listed. If FEMA declared the county eligible
13 for individual assistance, then the cow numbers
14 are listed again. This table shows the
15 widespread impact of these four hurricanes on
16 Florida's dairy industry, such as: 34 of the 36
17 Florida counties with dairy farms were declared
18 by FEMA to be eligible for individual assistance.
19 Of the Florida counties with dairy farms, 16 were
20 declared disaster areas once; 11 twice; and seven
21 counties three times. Of the 170 SMI Florida
22 dairy farms, 144, or almost 85 percent of all SMI
23 dairy farms are located in counties declared
24 disaster areas. These 144 farms produce almost
25 88 percent of all SMI Florida milk production.

1 Florida and the southeast's larger milk producing
2 county, Okeechobee, was declared a disaster area
3 during three of the four hurricanes.

4 "Structural damage to dairy farms is
5 estimated to be at least 50 million dollars -
6 barns destroyed, commodity sheds blown away, free
7 stall barns collapsing on cows, roofs blown off,
8 fences torn down, and crop land flooded. Two
9 large dairy farms lost their milking facilities
10 and had to move their cows to other operations.

11 "We estimate at least 700 head of dairy
12 cows, heifers, and calves killed, and the number
13 increases every day. Many dairy farms missed one
14 and two milkings, and some up to four due to
15 power outages, winds too strong, and generators
16 malfunctioning. Some dairy farms milked two
17 weeks or more by generator at one stretch. We
18 know of at least one dairy farm that only had the
19 luxury of not milking by generator about four
20 days between hurricanes. We estimate the decline
21 in milk production per cow due to additional cow
22 stress to be at least 15 million dollars. For
23 those cows that survive, it will take a new
24 lactation before they come back to normal milk
25 production.

1 "Milk disruption. Normal milk marketing
2 activities were disrupted by all four hurricanes
3 with the most disruption caused by Hurricane
4 Frances. Frances caused the most disruption due
5 to its enormous size, slow moving, and extra
6 precautions given and warnings given as a result
7 of Hurricane Charley, which had just passed
8 through the state.

9 "Hurricane Frances caused all fluid milk
10 processing plants located in Florida to close
11 from one to three days. Three plants received no
12 milk for three days, three other plants for two
13 days, and one plant received no milk one day.
14 Even on Christmas there are only one or two
15 plants that actually close, and then they plan to
16 take additional milk prior to closing.

17 "What made Frances more disruptive than past
18 hurricanes is that past hurricanes affected only
19 one part of the state. If a hurricane hit south
20 Florida, the central Florida plants would
21 continue to operate, or vice-versa. Hurricane
22 Frances disrupted the entire state. This is the
23 only time the same hurricane caused all Florida
24 milk plants to close.

25 "Exhibit," and I'll stop here, number 15

1 would go in there.

2 (Whereupon, the requested changes were made
3 by the court reporter.)

4 MR. COVINGTON: "Exhibit 15, Table 2, shows
5 milk receipts by Federal Order 6 pool handlers
6 invoiced by SMI from August 29th through
7 September 18th, 2002, 2003, and 2004. On
8 Wednesday, September 1, 2004, milk receipts were
9 8.3 million pounds. Receipts declined to 6.7
10 million pounds on Thursday, five million pounds
11 on Friday, and less than a million pounds on
12 Saturday. Then back up to 1.3 million pounds on
13 Monday, and 8.8 million pounds on Tuesday. By
14 September 10, receipts approached almost ten
15 million pounds. Note the significant difference
16 from the same time period in 2002 and 2003.
17 Exhibit," and I'll stop here to put in 15.

18 (Whereupon, the requested changes were made
19 by the court reporter.)

20 MR. COVINGTON: "Exhibit 15, Graph 1 depicts
21 this graphically as well.

22 "SMI's average daily receipts during this
23 time period are about 6.3 million pounds of milk.
24 In other words, during the time of the year when
25 significant volumes of milk are being imported

1 into Florida, the Florida market turned from a
2 deficit milk market to a surplus milk market
3 overnight. A portion of this temporary surplus
4 milk was shipped out of the Florida market.
5 SMI's Ultrafiltration plant, used during the
6 normal surplus season, was re-opened and utilized
7 some of the surplus. Exhibit," and I'll stop
8 here for 15 to go in there again.

9 (Whereupon, the requested changes were made
10 by the court reporter.)

11 MR. COVINGTON: "Exhibit 15, Table 3 shows
12 the volumes of milk and additional transportation
13 expenses incurred from handling this surplus
14 milk. Almost 6.5 million pounds was shipped out
15 as surplus. Please note that under normal
16 conditions, almost all this milk would have been
17 marketed in the Florida market at the Class I
18 price. The loss by not marketing this milk as
19 Class I in the Florida market is at least
20 \$400,000" -- and I'll stop again here to put
21 Exhibit 15 number in there.

22 (Whereupon, the requested changes were made
23 by the court reporter.)

24 MR. COVINGTON: -- "in Exhibit 15, Table 4.
25 "Most unfortunately, approximately three

1 million pounds of milk was dumped at the farm or
2 from trailers due to age during Hurricane
3 Frances. The estimated value of this loss is
4 about \$540,000." Again, I'll stop for
5 Exhibit 15.

6 (Whereupon, the requested changes were made
7 by the court reporter.)

8 MR. COVINGTON: "Exhibit 15, Table 5. Milk
9 was dumped due to several reasons: milk trucks
10 not able to get to farms due to high winds;
11 downed power lines and trees blocking roads and
12 farm lanes; law enforcement officials limiting
13 traffic to only emergency vehicles; Florida-based
14 milk haulers not wanting to leave their homes and
15 families; outside milk haulers not wanting to
16 come into a hurricane zone or due to traffic and
17 some roads were only open northbound; and all of
18 SMI's milk tankers filled. SMI had no empty
19 trailers to store additional milk.

20 "Fill in the pipeline. Referring back
21 to" --again I'll stop here for Exhibit 15.

22 (Whereupon, the requested changes were made
23 by the court reporter.)

24 THE COURT REPORTER: Okay.

25 MR. COVINGTON: -- "Exhibit 15, Table 2.

1 One can see the significant increase in milk
2 demand following Hurricane Frances. This
3 increased demand came from the plants being
4 closed from two to three days, many retail
5 outlets out of power, thus losing all perishables
6 (a major Florida grocer -- grocery retailer told
7 me over 200 of their stores lost power and were
8 operating on generators. The generators only ran
9 the lights, not refrigeration) and thousands of
10 homes losing all perishable food products. This
11 created a significant challenge in filling the
12 pipeline with dairy products once power was
13 restored. With the hurricane hitting on Labor
14 Day weekend, it created an even greater challenge
15 in locating supplemental milk due to many schools
16 throughout the U.S. opening after Labor Day, thus
17 creating increased milk demand in other parts of
18 the country.

19 "Making the matter worse is decreasing milk
20 production as a result of the hurricanes. In the
21 hardest hit area, Okeechobee County, September
22 milk production is 10 percent or three million
23 pounds less than September a year ago. This
24 decrease is after showing several months of
25 increased production. We anticipate further

1 declines in milk production as more cows are
2 culled due to hurricane-related injuries and
3 stress. Cows are being dried off early, two
4 farms report drying off 300 to 350 cows early.
5 Dairy farmers are unable to add cows as normally
6 happens in the Florida market this time of the
7 year. This due to barns and feed damaged, and
8 drain on cash flow.

9 "As seen in" -- again, I'll stop there to
10 put in Exhibit 15.

11 (Whereupon, the requested changes were made
12 by the court reporter.)

13 MR. COVINGTON: -- "as seen in Exhibit 15,
14 Table 6, SMI milk imports were significantly
15 higher the week following Hurricane Frances. For
16 the week ending September 11th, 2004, imports
17 totaled 131 loads. This increased to 302 loads
18 the following week. The comparable weeks in 2003
19 were 159 and 192 loads, respectively."

20 Again, I'll stop again for Exhibit 15.

21 (Whereupon, the requested changes were made
22 by the court reporter.)

23 MR. COVINGTON: "Exhibit 15, Table 7 shows
24 the additional milk imported as a result of the
25 increased demand after Hurricane Frances. The

1 additional milk volume is 6.3 million pounds with
2 a transportation cost of \$326,164.

3 "In addition to raw milk moving into the
4 Florida market, plants outside of Florida
5 packaged additional milk for the Florida market.
6 We do not know the total volume, but one of SMI's
7 customers reported shipping 41 trailer loads of
8 packaged milk to the Florida market.

9 "SMI was -- was not able to meet all of the
10 milk needs from its customers the week following
11 Hurricane Frances. SMI reduced its customers'
12 deliveries about ten percent from their normal
13 order following Hurricane Frances. SMI could not
14 fill additional milk requested by handlers."
15 Again, I'll stop again for Exhibit 15.

16 (Whereupon, the requested changes were made
17 by the court reporter.)

18 MR. COVINGTON: "Exhibit 15, Document 1 is a
19 letter dated September 14, 2004 sent to milk
20 plants served by SMI advising them of the milk
21 situation.

22 "Customer relations. Following Hurricane
23 Frances some stores had signs on their milk
24 shelves stating the reason for no or little milk
25 was due to a shortage in milk from their

1 supplier. Florida's Attorney General frequently
2 discussed price gouging and even set up a price
3 gouging hot line. The Attorney General urged
4 people to report those who take advantage of
5 another's misfortunes by selling products and
6 services for more than they normally do. Copies
7 of articles related to price gouging are attached
8 as Exhibit 15" -- and I'll stop there for 15 to
9 be filled in.

10 (Whereupon, the requested changes were made
11 by the court reporter.)

12 MR. COVINGTON: -- "Exhibit 15, Document 2.
13 "Discussion was held to consider increasing
14 the October Class I over order premium in the
15 Florida market from what would normally occur to
16 help cover additional hurricane-related expenses.
17 However, based upon the potential negative
18 reaction from customers, consumers, and
19 government officials that dairy farmers may be
20 trying to take advantage of another's
21 misfortunes, plus the realization that many were
22 suffering losses from the hurricanes, not only
23 dairy farmers, it was decided not to increase
24 over order premiums.

25 "Summary. A major purpose of Federal Milk

1 Marketing Orders is to ensure an adequate supply
2 of pure and wholesome fluid milk to consumers at
3 all times. With utilizations of 70 percent, 85
4 percent, and 65 percent respectively, Federal
5 Orders 5, 6, and 7 are fluid milk markets. Empty
6 grocery store milk cases showed the importance of
7 having a local milk supply. A local milk supply
8 can fill the milk pipeline much quicker and more
9 efficiently than a distant supply. The
10 implementation of these proposals will help
11 support local production by not placing all the
12 cost on bringing in distance milk on local dairy
13 producers.

14 "SMI's 300 dairy farm members strongly
15 encourage the Secretary of Agriculture to issue
16 an expedited decision for Federal Orders 5, 6,
17 and 7 which includes Proposals 1 and 2.
18 Emergency marketing conditions exist that warrant
19 omission of a recommended decision under the
20 rules of practice and procedure."

21 MR. BESHORE: Thank you, Mr. Covington. I
22 have just a few additional questions.

23 BY MR. BESHORE:

24 Q. Were any of SMI's extraordinary milk hauling
25 expenses covered by insurance?

1 A. No, sir. And in going through four, as you
2 can imagine, we looked into insurance to see, you know,
3 what might could help. And you can insure -- you can
4 insure for it, but the deductibles and premiums make it
5 cost prohibitive.

6 Q. Okay. And so there was a question asked
7 earlier with respect to assuring the Secretary that
8 there were not -- that costs would not be claimed here
9 which had been reimbursed by other -- other means. In
10 SMI's circumstances, you wouldn't have any problem
11 certifying that?

12 A. No -- no, sir. And I guess I would add to
13 that, I think as most people know, there's the -- the
14 president and Congressional leaders are looking at some
15 type of assistance to the state of Florida, and if any
16 of that were to happen to -- to cover some of this,
17 we're not looking to double dip.

18 Q. Now, in your view, is recovery of these
19 extraordinary transportation expenses through the
20 Federal Order programs proposed in these amendments a
21 superior alternative to attempting to recover them
22 through over order charges to your customers?

23 A. Yes, it is. Like I mentioned in our -- in
24 the -- the written testimony, we did consider that when
25 it came to setting the Class I over order premium for

1 October, but what's being proposed here by doing it
2 through the Federal Order system, we consider it to be
3 more fair. It helps maintain equal raw product costs
4 among -- among handlers. Plus, by using this system,
5 everything is transparent.

6 Again, as you can tell from my testimony,
7 we're concerned about customer relations, public
8 relations, price gouging, getting bad press. By going
9 this method where we're putting everything on the
10 table, you've got the Market Administrator could help
11 audit, everything will be right upfront, on board, any
12 additional cost that we're claiming. So we think it's
13 the best way to do it.

14 MR. BESHORE: Thank you. I have no further
15 questions for Mr. Covington.

16 I would move, when it's appropriate, the
17 admission of Exhibits 14 and 15.

18 JUDGE CLIFTON: All right. Thank you, Mr.
19 Beshore.

20 Let's start with the exhibits. Does anyone
21 wish to voir dire the witness with regard to
22 Exhibit 14 or 15?

23 (No response)

24 JUDGE CLIFTON: There is no one.

25 Is there any objection to the admission into

1 evidence of either Exhibit 14 or Exhibit 15?

2 (No response)

3 JUDGE CLIFTON: There is none. Exhibit 14
4 is hereby admitted into evidence, and Exhibit 15
5 is hereby admitted into evidence.

6 I would now invite questions for
7 Mr. Covington starting first with anyone who
8 supports Proposal 1.

9 (No response)

10 JUDGE CLIFTON: All right, I see no one with
11 questions in that category. I'd now ask for
12 anyone who would like to question Mr. Covington,
13 other than the government representatives seated
14 at the table closest to me.

15 (No response)

16 JUDGE CLIFTON: All right, I see no
17 questions. Then I would invite questions for the
18 USDA, or from the USDA representatives for
19 Mr. Covington.

20 CROSS EXAMINATION

21 BY MR. CHERRY:

22 Q. Good afternoon, Mr. Covington -- sorry.

23 I'm Richard Cherry. Good afternoon,

24 Mr. Covington. Thank you for coming.

25 A. Good afternoon, Mr. Cherry.

1 Q. Of South -- of Southeast Milk's 300
2 producers, how many would you consider small
3 businesses?

4 A. I guess I'd -- I'm -- I'm trying to remember
5 what the definition of what the cap is as far as gross
6 revenue that the government considers small.

7 Q. 750,000.

8 A. 750,000?

9 Q. Yes, sir.

10 A. Let me do a little bit of math here in my --
11 in my mind, because I don't have those numbers with me.

12 Of the 300, at least 50 percent of them
13 would have gross revenues below that number. And
14 I'm -- I'm giving you my best estimate off the top of
15 my mind. I -- I've got that data, I just don't have it
16 with me.

17 Q. Okay. How many employees does -- does
18 Southeast Milk have?

19 A. Southeast Milk has approximately 550
20 employees.

21 Q. Okay. And, sir, if Proposal 1 was
22 implemented, what type of impact would it have on -- on
23 those small businesses?

24 A. Well, it would help increase -- it would
25 help increase their -- their revenue, their income,

1 because if we don't -- this -- this cost, these numbers
2 we have is going to have to be paid and it's going to
3 have to be paid by Southeast Milk dairy farmers.
4 All -- you know, all -- all of them, including the ones
5 that are classified as small -- small business. And so
6 that's going -- if Proposal 1 and 2 are not accepted,
7 that's going to lower their -- their milk price.

8 But if Proposal 1 and 2 is accepted, that
9 would help maintain some level of their milk price that
10 would be without having these deductions for these
11 costs.

12 Q. Okay. And I also pose this question to you
13 also: If Proposal 1 was to be adopted, at the end of
14 the three-month period if any funds collected in the
15 marketing area are not disbursed, how should the
16 remaining dollars be disbursed?

17 A. Well, my -- my suggestion would be for
18 Federal Order 6, if there are additional dollars there,
19 they be paid back to the people who paid those dollars
20 in.

21 Q. All right.

22 MR. CHERRY: Thank you.

23 CROSS EXAMINATION

24 BY MS. CARTER:

25 Q. Good afternoon, Mr. Covington. Antoinette

1 Carter with USDA.

2 A. Good afternoon.

3 Q. Are producers in Florida covered under the
4 price -- price gouging laws in the state of Florida?

5 A. As -- as we understand -- as we
6 understand -- again, we -- we don't have a legal
7 opinion on this -- but the price gouging law, as I
8 understand it, is in 30 -- if -- if we have an
9 emergency like a hurricane and the price is charged for
10 a particular product or service that is greater than
11 what that normal price was during the previous 30 days,
12 there is a potential for price -- price gouging. And
13 that -- that includes -- that includes milk.

14 And even though -- now, the dairy farmers
15 themselves, if they -- if we had increased the over
16 order premium and it got charged on the processors, I'm
17 sure the processors would -- would charge it on to
18 their -- their suppliers, and it could have got
19 increased at the store level.

20 Q. Okay. In your opinion, why should movements
21 to nonpool plants be covered under this proposal, if
22 adopted?

23 A. Well, a lot -- a lot of the additional milk
24 that we had there, that we had no place to take it in
25 the Florida market, the -- you know, the Class I plants

1 were closed, that was the only -- all we could find for
2 that milk. That was the only place we could take it,
3 other than -- and it's better taking it there than
4 dumping it. So -- and that -- that goes back to the
5 cost of balancing the market, and so that's the reason
6 why we think it should be covered.

7 Q. Okay. And to date, the total estimate --
8 estimated number of loads that were -- that were
9 removed and incurred extraordinary costs as a result of
10 the hurricanes, that total number of loads to date is
11 what number?

12 A. As far -- as far as shipping milk out?

13 Q. Correct.

14 A. Or shipping milk out?

15 I -- I think the number I had was about 6.5
16 million pounds, was the number I had. I think that's
17 right in my testimony, milk actually shipped out. And
18 I don't know without going back here and adding it up
19 how many loads that would be. You could probably just
20 divide it by 50,000 and come pretty close.

21 Q. And what is that percentage of the total
22 amount of milk that would have been -- would have
23 incurred extra costs as -- as a result of the -- the
24 hurricanes?

25 A. Well, if -- if I'm understanding correctly,

1 that milk, almost every drop of that milk, if we hadn't
2 had the hurricanes, would have stayed in and been
3 delivered to a -- a pool plant, pool distributing plant
4 in the state of Florida.

5 Q. Okay. Milk that moved to nonpool plants,
6 that you have record of that moved to non -- nonpool
7 plants --

8 A. Yes, ma'am.

9 Q. -- what percentage of that, of the total
10 amount of milk that was actually -- that incurred in
11 terms of pounds --

12 A. Okay.

13 Q. -- what would that percent be?

14 A. Well, let's -- let's go back to table --
15 okay, the easiest way to do it probably is going to
16 Table -- Table 4. Table 4 in Exhibit 15 -- Table 4 in
17 Exhibit 15.

18 And we can do -- do some math here. We --
19 we -- down at the bottom there, we have -- one, two,
20 three, four, five, six, seven, eight, nine. That would
21 be nine places that milk was sent to. And you see the
22 first -- the first one there would have been -- would
23 have been a bottling plant; the second one a bottling
24 plant; the third one, a manufacturing facility, and I
25 don't know if they would have been pooled or nonpooled

1 during that particular month. They sort of -- they go
2 in and out.

3 The next one, I think, is -- is nonpool; the
4 next one would be a pool plant; the Publix there would
5 be a pool plant; Barber would be a pool plant; the
6 Ultrafiltration is a nonpool plant; and then Blue Grass
7 in Glasgow would be a nonpool plant.

8 So if we add up just the bottom two, that's
9 probably 50 -- 50, 55 percent probably went to nonpool
10 plants.

11 Q. Okay.

12 A. Just roughly adding it up there in my head.

13 Q. Okay.

14 With regards to the -- the transportation
15 costs, the amounts or the estimated amounts, what types
16 of items are included in those costs?

17 A. In the transportation costs?

18 Q. Uh-huh.

19 A. To the best of my knowledge, it's only the
20 costs, what that particular hauler charges to move that
21 milk, plus what any fuel surcharge he may have on --
22 on -- added onto that. Some of them charge fuel
23 surcharge and some of them don't.

24 Q. Okay.

25 With regards to re-routes and the movement

1 of -- of milk, what specific documents would you
2 provide to the Market Administrator to substantiate,
3 to -- the difference between the initial milk movement
4 and that movement above and beyond what would have
5 occurred?

6 A. Okay. If -- if we had -- we had -- we had
7 some re-routes -- and, again, we didn't have many in
8 our particular market. We're sort of the end of the
9 line. But if we did, we could furnish the invoices
10 from the hauler showing that milk was picked up here,
11 taken to here, then taken back to here, and taken
12 over -- over here. So we could show the invoices from
13 the haulers; we have those.

14 Q. Okay. And I -- I think you alluded to this
15 during your -- your testimony, but what -- in your
16 opinion, what specific time period should the temporary
17 relief cover in terms of reimbursable costs if your
18 proposal is adopted?

19 A. Well, for -- for Federal Order 6, we're
20 comfortable with those dates of -- that I had mentioned
21 from August the 12th, 2004, through September 26, 2004.

22 MS. CARTER: I think that's all I have.

23 Thank you.

24 MR. COVINGTON: Thank you.

25 CROSS EXAMINATION

1 BY MS. DESKINS:

2 Q. Mr. Covington, I'm Sharlene Deskins, USDA
3 Office of General Counsel.

4 If you could look at your Exhibit 15, Table
5 3.

6 A. Okay.

7 Q. Okay. You have listed on here "no claim -
8 farm to market covers inbound."

9 A. Yes, because the milk that we put there in
10 Ultrafiltration plant, the distance to go from the farm
11 to that plant was actually closer than where that milk
12 would have moved normally to a market in Florida. So
13 we're not -- we didn't put any claim down for it.

14 Q. Okay. That -- that would be the type of
15 expense you wouldn't want this proposal to cover?

16 A. Well, because we actually had less
17 transportation expense on that. Now, we had additional
18 expense when that milk was processed, and then went
19 out, further to find a home for the finished product.

20 Q. Okay. So, now, would that cost, the cost of
21 processing, is that the sort of thing you think
22 should --

23 A. No, we're -- we're -- no, we're not asking
24 for cost of processing.

25 Q. Okay.

1 MS. DESKINS: All right. Thank you. I just
2 wanted to clarify that.

3 JUDGE CLIFTON: Before I see if Mr. Beshore
4 has any more questions for Mr. Covington, does
5 anyone else?

6 (No response)

7 JUDGE CLIFTON: Mr. Beshore?

8 MR. BESHORE: Just one or two additional
9 questions, Calvin.

10 REDIRECT EXAMINATION

11 BY MR. BESHORE:

12 Q. Is, in -- in your experience with
13 contracting milk haulers, is the rate of \$2.25 per
14 loaded mile a reasonable ceiling for reimbursement
15 under this proposal?

16 A. It -- it's a reason -- reasonable cap.

17 Q. Okay. And you may have some understanding
18 that the limit of reimbursement is the actual expense?

19 A. That's correct.

20 Q. Okay.

21 A. We could have some less than that, and we
22 would only turn in actual, what the actual cost is.

23 Q. Can I ask you, if you look at Exhibit 15,
24 Table 3, which is extraordinary milk movements to other
25 locations from Florida, because -- due to Florida

1 plants being closed. The outbound -- on the second
2 page of the exhibit, the outbound shipments from the UF
3 plant, can you just tell us a little bit about those
4 and the -- the expense incurred there?

5 A. Well, the -- just to give you an example of
6 that, turn back to the first page there under Table
7 3 -- or, excuse me, it's right above -- above it. We
8 had a little over two million pounds of raw milk
9 actually went into the plant, and after it went through
10 the Ultrafiltration process, we ended up with 684,000
11 pounds of -- of finished product. Then that product
12 had to be marketed and the outbound shows the number of
13 loads we had and where that milk went to to find a
14 market for it.

15 Q. Okay. And it would be your -- your
16 testimony that those are outbound hauling expenses that
17 you would not have otherwise incurred?

18 A. Right. Yes. And actually, we would have
19 had more if we hadn't been able to take some water out
20 of that milk.

21 Q. Right. And you're not -- so you processed
22 that at the plant?

23 A. Yes.

24 Q. You're not asking for any reimbursement for
25 those --

1 A. No.

2 Q. -- expenses?

3 But the additional hauling outbound for
4 disposal is a cost of the hurricane --

5 A. Yes.

6 Q. -- circumstances?

7 A. Yes. We -- we wouldn't have ran that plant
8 if it hadn't been for the hurricane, and we -- plus
9 we're not even claiming the additional money we
10 received for that milk if we had kept it in the Florida
11 market.

12 Q. Okay.

13 MR. BESHORE: Thank you very much for your
14 testimony, Calvin.

15 JUDGE CLIFTON: Thank you, Mr. Beshore.

16 Mr. Covington, you may step down.

17 MR. COVINGTON: Thank you.

18 JUDGE CLIFTON: All right. Let's see what
19 time it is now and see if people have gotten
20 hungry.

21 It's 1:12. I suppose if we are going to
22 break for lunch, we ought to do it, but let me
23 find out, Mr. Beshore, if your next witness would
24 be having exhibits that we could distribute
25 before we break?

1 MR. BESHORE: The next exhibit is Mr. Johns,
2 and we do have exhibits that -- that can be made
3 available.

4 JUDGE CLIFTON: That would be good. Why
5 don't we distribute those. If -- if you'll bring
6 the exhibits that Mr. Johns will be using, both
7 to the court reporter and to me, and distribute
8 to everyone else.

9 I'm going to ask the court reporter to mark
10 this as Exhibit 16, one-six.

11 (Whereupon, Exhibit No. 16 was marked for
12 identification.)

13 JUDGE CLIFTON: All right. Now, one of the
14 things I'd like to mention: For those of you
15 that have testimony prepared in a -- in a written
16 form that became an exhibit here and that you
17 read from, if you can get that to the court
18 reporter in electronic form, that will facilitate
19 the work of preparing the transcript.

20 So if -- if you read anything into the
21 record-- even if it doesn't become a marked
22 exhibit, if you read anything into the record
23 that you have an electronic version of, and you
24 can provide the court reporter with a disk while
25 you're here or get from her her e-mail address so

1 that you could e-mail it later, then that will be
2 a useful tool, in addition to everything else
3 that she's doing here at the hearing.

4 All right. Let's talk about how long we
5 want lunch to be. I presume everyone will just
6 eat here at the hotel, and it's 1:15 now, just
7 about now, it's 1:14. So should we come back,
8 what, 2:15 or do you want to do it less?

9 MR. BESHORE: I don't know what the -- what
10 the availability of service here is.

11 JUDGE CLIFTON: Nor do I.

12 Maybe we better not try to do it less.

13 2:15.

14 All right, please be back and ready to go at
15 2:15.

16 MR. BESHORE: 2:15.

17 (Whereupon, a lunch recess was held.)

18 JUDGE CLIFTON: All right, we're back on
19 record now. It's approximately 2:21 p.m.

20 Mr. Johns, would you state and spell your
21 names for us, please.

22 MR. JOHNS: My name is Frank H. Johns, Jr.;
23 F-r-a-n-k J-o-h-n-s.

24 JUDGE CLIFTON: Would you raise your right
25 hand, please.

1 FRANK H. JOHNS, JR.,
2 being first duly sworn, was examined and testified
3 as follows:

4 MR. JOHNS: I do.

5 JUDGE CLIFTON: Thank you.

6 DIRECT EXAMINATION

7 BY MR. BESHORE:

8 Q. Mr. Johns, would you please state your --
9 your business address.

10 A. 10411 Cogdill Road, Knoxville, Tennessee.
11 That's C-o-g-d-i-l-l.

12 Q. Okay. And by whom are you employed and in
13 what capacity?

14 A. My title is Director - Customer Relations,
15 Dairy Farmers of America Southeast area.

16 Q. Okay. What are your responsibilities in
17 that capacity, Mr. Johns?

18 A. Processing customer relationships with
19 responsibilities in all or part of 13 states, mostly in
20 the southeast. Also one my responsibilities is
21 supervision of the raw milk dispatching department
22 within the southeast area of Dairy Farmers of America.

23 Q. Okay. How long have you been employed in
24 the dairy industry?

25 A. For 25 years.

1 Q. What -- with what organizations or in what
2 capacity prior to your current employment?

3 A. Prior to Dairy Farmers of America, I was
4 employed by Mid-America Dairymen; prior to that was
5 Carolina Virginia Milk Producers Association; prior to
6 that was Maryland and Virginia Milk Producers
7 Association.

8 Q. Okay. And has your -- your employment
9 activities in those -- with those organizations been
10 with respect to milk marketing in the southeastern
11 United States?

12 A. Yes, sir, except for one brief stint in the
13 Midwest with Mid-America Dairy.

14 Q. Okay. The -- the 13 states for which you
15 have some responsibilities, what -- what states are
16 those?

17 A. The Commonwealth of Virginia, North
18 Carolina, South Carolina, Georgia, Florida, Kentucky,
19 Tennessee, Alabama, Mississippi, Louisiana, Arkansas,
20 eastern Texas, and southern Missouri.

21 Q. Okay. In your -- in the -- in your
22 responsibilities for customer relations and with
23 respect to milk dispatch, does that include operations
24 in Federal Orders 5, 7, and 6?

25 A. Yes, it does.

1 Q. Okay. Now, have you -- do you have Exhibit
2 16, the document that has been marked as Exhibit 16 for
3 this hearing with you?

4 A. Yes, sir.

5 Q. And are you familiar with that document?

6 A. Yes, sir.

7 Q. Were you involved in its preparation?

8 A. I was.

9 Q. Okay. I'd like to just go through Exhibit
10 16 with you and have you elaborate upon its contents.

11 The first numbered page in the exhibit, the
12 third page of the document itself, is titled "Estimated
13 Additional Supplemental Milk Transportation Costs
14 Resulting From Hurricanes Charley, Frances, Ivan and
15 Jeanne, Federal Order No. 5." Could you describe that.
16 That's a -- a one-page document, correct?

17 A. That's correct, yes, sir.

18 Q. Okay. Could you describe the information on
19 page 1, then, of Exhibit 16?

20 A. This is an attempt to summarize the
21 extraordinary cost of -- of moving milk into the
22 southeast as a result of the hurricanes.

23 Q. Now, and this relates to the operations of
24 Dairy Farmers of America, I take it?

25 A. That -- that is correct, yes, sir, and our

1 customer base.

2 Q. Okay. Now, just take -- just take the first
3 entry, the first line under the -- under the labels,
4 the first data line of the exhibit, and run across that
5 and just indicate for the record what it shows.

6 A. That first line would indicate that on the
7 10th day of September, we had the plant in Dean's, the
8 Dean's plant in Louisville, Kentucky order additional
9 milk from us in the amount of five loads, for sales to
10 address the Florida situation.

11 If you'll notice the comment says "bottled
12 for sales into Florida." We do not know firsthand as
13 to whether that was bottled directly for sales into
14 Florida or to accommodate the situation, milk moved to
15 that direction, but the -- the request came from the
16 plant indicating that it was to address that situation.

17 Q. That was the stated purpose of those
18 additional orders?

19 A. That is -- that is correct.

20 Q. Okay.

21 A. We sourced that milk out of the DFA Goshen
22 Indiana plant, and delivered it to that plant. And you
23 can see the mileages and the estimated haul rate.

24 Q. How did you derive the estimated -- well,
25 how did you derive the mileages?

1 A. The mileages were derived using a Microsoft
2 program called Streets and Trips, and basically putting
3 in the origin and the destination, and it calculates
4 the miles for you.

5 Q. Okay. And the haul rate that was used here,
6 the estimated haul rate --

7 A. The estimated haul rates you'll -- you'll
8 notice are all at the 2.25 rate that's in the proposal.
9 The actual haul rate at this point is unknown as of the
10 7th day of October. It will be reflected on the actual
11 invoices that are received on this particular milk.

12 Q. Okay. Was that milk delivered by a contract
13 hauler?

14 A. Yes, it was.

15 Q. Okay. And you haven't yet been billed by
16 the hauler, so you don't know yet the exact cost?

17 A. As of the time I left the office, those
18 invoices were not available.

19 Q. Now, is -- is the 2.25, in your experience,
20 Mr. Johns, is the 2.25 a -- you know, a reasonable rate
21 to use for this estimating purpose?

22 A. Yes, sir, for the estimated purposes. We'll
23 have some probably exhibits that will talk about actual
24 billings, but as far as an estimated cap, that's a --
25 that's a reasonable rate.

1 Q. Okay. Now, how did you segregate or
2 identify the loads or the -- the transactions that are
3 shown on -- on page 1 of Exhibit 16?

4 How did you come up with this list as
5 opposed to any other list of --

6 A. It was basically done through survey of the
7 folks within our dispatch department as they were
8 dealing with this issue, going back and -- and talking
9 about what was above normal, how many loads were
10 ordered by particular plants to address the, quote,
11 unquote, situation resulting from the hurricanes.

12 Q. Okay. And these were inquiries that you
13 made or were made on your -- on your behalf with
14 persons in DFA under your supervision?

15 A. Yes, sir.

16 Q. Okay. Now, can you just go down across the
17 transactions that are shown here on page 1 and, you
18 know, indicate, particularly with respect to the
19 comments column, what -- what sorts of situations are
20 shown here?

21 A. Well, as -- as you come down the column and
22 you will notice in the originating county, Rockingham,
23 Virginia on 9/11, you can see that there were several
24 loads there over the next three days that were ordered
25 by a plant in North Charleston, South Carolina, that

1 was re-routed from a plant in Charles -- Spartanburg,
2 South Carolina.

3 In those cases, you can see we charged only
4 the extra miles as a result of the re-route. The
5 re-route actually occurred before the milk was leaving
6 the originating place, and so we re-adjusted it, so you
7 look -- it was originally designated for Spartanburg,
8 and re-routed to North Charleston. You can see we did
9 the extra miles only. And, again, that was calculated
10 using Streets and Trips, one origin, two different
11 destinations.

12 Q. When you say "extra miles," it was just the
13 miles, what, from the additional miles that would --
14 that were required to re-route those sales from
15 Spartanburg to North Charleston?

16 A. In this case, it would be Rockingham,
17 Virginia to North Charleston versus Rockingham,
18 Virginia to Spartanburg, South Carolina.

19 Q. Okay. Now, the -- the entries on this page
20 above those that indicate they were re-routed, all --
21 all the entries under the comment column show bottled
22 for sales into Florida per plant. Were those all
23 orders that were additional orders not scheduled at the
24 time, additional orders that those destination plants
25 requested for re-delivery into Florida?

1 A. Yes, sir, that is the case. We -- we
2 normally get our normal orders in, and in this
3 particular case, as a result of the -- the hurricanes,
4 there were additional extraordinary orders as -- as
5 indicated for this particular situation.

6 Q. Okay. The final six entries on that page
7 have a comment, "Replacement for re-routes." Could you
8 explain those movements?

9 A. If you look at starting on the 11th of
10 September and going for several days after that, you
11 can see that we moved milk that was destined for
12 Spartanburg, South Carolina to North Charleston, South
13 Carolina. That milk had to be replaced, although it
14 might be on exactly the same day, but subsequently
15 sometime in the month -- in that week, that milk was
16 replaced, and that's what those replacement for the
17 re-routes comment would indicate.

18 Q. Okay. So in order to replace the milk that
19 was re-routed, you had to go to Cumberland County,
20 Pennsylvania and obtain the supplies to be delivered to
21 Spartanburg, I think that should be South Carolina as
22 opposed to Spartanburg, PA?

23 A. That would be correct, yes, sir.

24 Q. Okay. So we should correct the entries
25 under destination plant, the six --

1 A. From 9/13 through 9/17, those Spartanburgs
2 should be Spartanburg, South Carolina.

3 Q. Should be Spartanburg, SC rather than PA?

4 A. That's correct.

5 JUDGE CLIFTON: Okay. Everybody stop and
6 we'll allow the court reporter to do that. I'm
7 going to direct her to change PA where it occurs
8 on six occasions at the bottom of this page 1,
9 change that to -- tell me again, was it North
10 Carolina?

11 MR. BESHORE: South Carolina. South
12 Carolina, SC

13 JUDGE CLIFTON: To SC.

14 (Whereupon, the requested changes were made
15 by the court reporter.)

16 JUDGE CLIFTON: You may resume.

17 MR. BESHORE: Okay.

18 BY MR. BESHORE:

19 Q. Now, does the -- do you have a total
20 estimated additional expense for DFA in Order 5 which
21 shows on the page 1 of Exhibit 16?

22 A. For the period that these estimated -- that
23 this is shown, you can see it's \$92,889. As far as the
24 actual period that expenses are involved, you can see
25 we do not go beyond the 17th of September. However,

1 there are additional expenses that are not reflected
2 here.

3 Q. Okay. And if the proposals were adopted,
4 you would expect to provide information to the Market
5 Administrator which may reflect some additional
6 transactions?

7 A. That is correct.

8 Q. Okay. Let's go to page 2 of Exhibit 16.
9 Does this reflect Dairy Farmers of America's Federal
10 Order No. 6 estimated additional supplemental milk
11 transportation costs resulting from the hurricanes?

12 A. Yes, sir, it does.

13 Q. Okay. Now, could you just describe those
14 milk movements and how they were identified and what
15 was involved.

16 A. As you can see, they all occur on the 9th
17 day of September. The McArthur plant in Miami, Florida
18 is not a direct customer of Dairy Farmers of America.
19 This was one of those situations in which everyone was
20 scrambling to get milk. We got the call from the folks
21 that are involved in the management and operations
22 plant asking us to help where we could, and we were
23 able to move some milk from -- from Jasper, Indiana
24 into the Miami, Florida area for this customer.

25 Q. Okay. And as indicated in the comments and

1 your testimony, it was an emergency delivery to a non
2 DFA customer?

3 A. That is correct.

4 Q. Okay. Going, then, to page 3 -- by the way,
5 the total cost of the hauls on those transactions was?

6 A. It's estimated to be \$44,516.

7 Q. Okay. And again, that -- that is estimated
8 because you don't have the invoices for those --

9 A. We don't have the invoices that would
10 reflect actual miles or actual rate per mile.

11 Q. Okay. Moving, then, to page 3 of Exhibit
12 16. Describe this, please, Mr. Johns.

13 A. This is the estimated additional
14 supplemental milk transportation cost resulting from
15 the hurricanes for Federal Order 7.

16 Q. And again, these are Dairy Farmers of
17 America transactions?

18 A. Yes, they are.

19 Q. Okay. Now, going to the comments column,
20 can you just go down that column and describe what
21 types of milk movements are reflected here in Federal
22 Order 7 for DFA.

23 A. The first few comments you can see are,
24 again, bottled for sales into Florida per the
25 instructions of the plant. Again, we do not know that

1 they were directly for sales into Florida or to replace
2 milk that some other sister plant may have been
3 bottling for Florida. And -- and that was -- basically
4 that particular situation is for the Florida situation,
5 help us out with some additional milk. That would be
6 the -- the top sale.

7 We did have a situation, and -- and that's
8 kind of described starting with the 11th, from
9 Jefferson, Kentucky, being the originating county, and
10 you will see that there were several loads of milk
11 re-routed. The description says, "re-routed from
12 Dean's Louisville to Heritage, which is located in
13 Murfreesboro, Tennessee, to replace, re-routed milk
14 from Heritage to Barber in Birmingham, Alabama.

15 What in fact happened in this case is Barber
16 in Birmingham had an extreme pool from -- from their
17 demands of their sister plants located and needed
18 additional milk to go in to and serve the hurricane
19 situation. We had milk sitting on the lot at Heritage
20 that we moved in to cover that emergency situation, and
21 then subsequently moved milk out of the Dean's
22 Louisville plant down to Heritage to replace that.

23 Q. Okay. Now, what did you mean when you said
24 "sitting on the lot at Heritage"?

25 A. Basically, all the milk will be staged

1 waiting to be unloaded. If we have opportunity, in
2 this particular case, to catch those drivers and say,
3 "Leave there and go to Birmingham," and -- and work it
4 out with the plant so the milk can be replaced before
5 the actual needs of the plant in Murfreesboro, that was
6 what happened in this case.

7 Q. Okay. So you had loads of milk that were
8 actually at the plant, the Kroger plant in
9 Murfreesboro, Tennessee?

10 A. Yes, sir.

11 Q. And you reached them before they were
12 unloaded there and redispached them to the Barber
13 plant in Birmingham, Alabama?

14 A. That's correct, yes, sir.

15 Q. Okay. Did that re-routing lead to other
16 re-routings?

17 A. Yes. And -- and, again, this does not
18 completely reflect everything, but of course at some
19 point the milk had to be replaced at the Dean
20 Louisville plant as well, because we had pulled it away
21 from -- from their supply.

22 Q. Okay. The -- the re-routings from Heritage
23 went to Barber, the re-routings from Dean's went to
24 Heritage. Okay, you've got other transactions after
25 those. Can you discuss those comments going on down?

1 A. Well, as -- as you can see, there were some
2 at the Barber Birmingham plant and the Dairy Fresh,
3 Cowarts, Alabama, or Pritchard -- or -- or Dothan,
4 Alabama, depending on it's -- both are suburbs of each
5 other, small towns in southeast Alabama that were
6 designated to us to be for additional sales beyond
7 their normal sales into the -- into the Florida
8 affected area.

9 Q. Now, where did you have to go to get milk
10 for those demands?

11 A. They came from several different sources.
12 Some of that came from as far away as Roosevelt County,
13 New Mexico, which is where Portales is -- is located.
14 That was milk we purchased from the Greater Southwest
15 Agency. Some of that came from the Continental Milk
16 supply out of northern Indiana.

17 Q. Okay. The next set of different comments
18 says "milk re-routed from Little Rock to LaFayette."
19 Can you tell us about those?

20 A. Yes. There's a plant in LaFayette,
21 Louisiana that is -- is part of a multi-plant operation
22 at one of the operators in the southeast that was
23 requested to ship additional milk toward the Florida
24 market. Again, we had trucks sitting on the lot at a
25 plant in Little Rock, Arkansas. In order to quickly

1 serve the needs of this plant in LaFayette, Louisiana,
2 we caught those trucks on the lot, redirected them to
3 LaFayette, Louisiana, and as you can see, at some point
4 down the line had to replace that milk at Little Rock.

5 Q. Okay. Now, on those re-routes, do these --
6 does your exhibit just show the additional mileage
7 incurred?

8 A. That is correct.

9 Q. Okay. And it's your understanding that's
10 what the proposal, the hearing proposals are just
11 asking reimbursement for the additional miles?

12 A. For the -- for the extraordinary costs, yes,
13 sir.

14 Q. Okay. Can you continue on down there and
15 the other transactions of it of a different nature.

16 A. Yes, sir. As you come down to the Publix
17 plant in Dacula, Georgia, you'll notice on the 15th and
18 the 16th, we shipped four and eight loads,
19 respectfully, into that plant. That is not normally
20 a -- a Dairy Farmers of America customer. Again, the
21 milk that was there to serve that customer who is
22 served by Southeast Milk, was pulled away. They
23 requested that we replace that milk at Dacula, and so
24 we were replacing milk to their customer at their
25 request so that they could pull the milk they had in

1 that plant toward -- toward Florida plants to -- to
2 serve the situation in Florida.

3 Q. Okay.

4 A. As we come down to the line where the origin
5 is showing Washington Parrish, Louisiana, you can see
6 that we had -- as -- as the storm hit the Gulf Coast,
7 there was closings, they weren't sure where it was
8 going to hit, but they were all prepared to close, and
9 then to shift business to sister plants, there's
10 several Dairy Fresh plants along the coast there. This
11 particular case, we had to go, it was originally
12 scheduled for Pritchard, which is a suburb of Mobile,
13 those sales were shifted to the -- to the Cowarts
14 plant. This again is the extra miles that we incurred
15 from the original schedule location to the final
16 reschedule location. And that would be reflected in
17 the next couple of lines there. You can see two loads
18 respectfully on the 18th -- or actually four loads on
19 the 18th to two different locations.

20 Q. Okay. How about the extra milk for catch
21 up?

22 A. Yeah. And -- we've got several situations
23 there. Once the plant in Pritchard -- again a suburb
24 of Mobile -- went down for several days, there was get
25 more milk in there above a normal order to -- to try to

1 catch up to -- to where we were as far as our original
2 sales. So these would represent loads above normal
3 to -- to catch them back up with the fact they were --
4 they had been closed for 16th, 17th, 18th, and 19th of
5 September.

6 Q. And finally, the -- the last line of the
7 first part of --

8 A. Yeah.

9 Q. -- page 3 here, milk diverted.

10 A. On the 15th and 16th, the plants in the
11 southern Louisiana area and the Pritchard, Alabama area
12 did close. We -- we redirected some of that milk to
13 the DFA supply plant at Franklinton, Louisiana, filled
14 their silos up there. This would indicate the
15 additional transportation cost of moving that milk out
16 of the DFA supply plant to its -- to its subsequent
17 home.

18 The -- the reason you see no charges for
19 moving it to the Franklinton plant is because the way
20 our hauling instructions in that area, there is no
21 additional charge to be delivered to several plants
22 within the radius of the marketing area there. So milk
23 can go to this plant, this plant or this plant for the
24 same rate. Franklinton and Brownsville and -- would be
25 plants that there was no additional charges to get it

1 in, but the charges for bringing it out of the plant
2 would be considered at above ordinary charges.

3 Q. Okay. Now, the Franklinton plant is a
4 manufacturing plant; is that correct?

5 A. Yes, sir. Certain times of the year it is
6 used to handle surplus volumes of milk. This
7 particular time of the year, there's -- there are no
8 surplus volumes of milk, so it was used strictly as
9 a -- a place to hold milk until the storm passed
10 through.

11 Q. So the dairies, when they close down, they
12 back the milk out or refuse it and you pump it into
13 your plant at Franklinton, into the silos there, held
14 it and then redispached it later when you were able
15 to?

16 A. That is correct, yes, sir.

17 Q. Okay. The total reflected, then, in Dairy
18 Farmers of America estimated supplemental
19 transportation costs for the hurricanes is what total
20 amount?

21 A. The total --

22 Q. For Order 7, I'm sorry.

23 A. -- estimated on this particular sheet is
24 showing \$341,127; however, I will say, as -- as I have
25 with the other sheets, we do not expect this to be

1 all-inclusive.

2 Q. Okay. Now, the final pages, 4 through 8, of
3 Exhibit 16 relates to documentation of hauling rates;
4 is that correct?

5 A. That's correct.

6 Q. Okay. Can you, first of all, the -- the
7 table on page 4 called summary of hauling invoices, can
8 you tell us about that?

9 A. The table on page 4, as you can see, it
10 lists three haulers in the far left-hand corner. They
11 are three particular invoices that follow this table
12 that have the -- the charges. This table is an attempt
13 to translate those charges back into a per mile, a per
14 loaded mile rate, for -- for illustration purposes.

15 For example, Bynum Transport from Fair Oaks,
16 Indiana to Spartanburg, South Carolina is reflected in
17 the page 5, and you can see they have total charges
18 there of \$1232, and \$77 in fuel surcharge. We used,
19 again, the Streets and Trips to calculate the 646 miles
20 as indicated on the summary sheet. The dollar, the
21 1.907, or \$1.907, does not include the \$77 fuel
22 surcharge. If that fuel surcharge was included, that
23 rate would have calculated at 2.026.

24 As it relates to the Moores Milk Hauling,
25 again, from Fremont, Indiana to Murfreesboro,

1 Tennessee, that is an actual invoice, and that
2 particular hauler does not break out additional fuel
3 surcharges.

4 Q. So his charge per loaded mile was 2.025?

5 A. That's correct.

6 Q. Okay. And how about the Aartman charge?

7 A. That's again coming out of Indiana to
8 Braselton, Georgia. His charge is reflected on the
9 invoice. As you can see, it's a flat rate. We divided
10 that again back by the Streets and Trip miles to -- to
11 calculate the rate of 1.67 per mile.

12 Q. Okay. Now, all of the rates per loaded mile
13 shown or calculated on page 4 of Exhibit 16 are -- are
14 less than \$2.25 per loaded mile, correct?

15 A. That is correct.

16 Q. And for those transactions, you would -- if
17 the proposal was adopted, you would just be requesting
18 reimbursement at the rate charged and not at the 2.25
19 rate?

20 A. That is correct.

21 Q. Now, pages 5, 6, and 7, then, are just the
22 invoices that back up the calculations on the summary
23 page 4, correct?

24 A. Yes, sir. Those first three lines on the
25 summary.

1 Q. Okay. Let's go to page 8 of Exhibit 16.

2 First of all, were there -- on the earlier,
3 several of the earlier exhibits, you -- the earlier
4 pages of this exhibit, such as page 3 showing Federal
5 Order 7 transactions, there were some shipments shown
6 from points in the southwestern United States to points
7 in -- in the southeast here, such as from Roosevelt,
8 New Mexico.

9 A. That's correct.

10 Q. Okay. Now, is page 8 a -- a cost, in
11 essence a -- a schedule of costs of milk coming from
12 areas in the southwest such as New Mexico?

13 A. Yes, sir. This -- this is an actual
14 schedule, or part of an actual schedule for the month
15 of August of 2004, which summarizes the charges that we
16 would expect from the Greater Southwest Agency on their
17 sales into the southeast. Actual invoices are not, as
18 you can see from the total volume of transactions here,
19 there's not an individual invoice, it's done by an
20 agreed rate and an agreed mileage, and then a fuel
21 surcharge that does float up and down with the actual
22 cost of fuel.

23 So the charges that you would see for each
24 of these mileages, which are previously agreed to,
25 would reflect the rate per loaded mile of \$1.95 at the

1 top, plus a fuel surcharge in this particular month of
2 26 cents, for a total of \$2.21 per loaded mile.

3 Q. Okay. So that 2.21 per loaded mile, which
4 is shown at the top of page 8 of Exhibit 16 here.

5 A. Yes, sir.

6 Q. The 1.95 plus 26 cents. 2.21, that's the
7 actual cost per loaded mile that DFA would incur to
8 acquire milk from the Greater Southwest Agency?

9 A. In this particular month, yes.

10 Q. In the month of August 2004?

11 A. That's correct, yes.

12 Q. Okay. Now, the table in the bottom part of
13 page 8, does the fourth column, the column that's
14 titled "Actual Freight Cost to Portales," should that
15 be from Portales, actually?

16 A. Yes, sir. That -- that should be from
17 Portales.

18 Q. And Portales is a shipping point in New
19 Mexico?

20 A. It's located in Roosevelt County, New
21 Mexico, yes, sir.

22 Q. Okay. So this actual freight cost, are
23 those per hundredweight amounts?

24 A. Those are per hundredweight amounts. This
25 particular document, that column is not necessarily

1 applicable to our request today. This document is used
2 for other management purposes within our -- within our
3 organization, and -- and we do use per hundredweight
4 cost of transportation in our -- as we manage our
5 situation. So that is just extra information that
6 happened to be available.

7 Q. Okay. But the document shows, for instance,
8 that if you look in the destination points there, if
9 you are delivering milk to Atlanta, Georgia from
10 Portales, you're going to be delivering it 1233 miles,
11 and at \$2.21 per loaded mile, the cost per
12 hundredweight of that load is going to be five dollars
13 and 74.6 cents? Looking at the -- if I'm reading --
14 no, I didn't read --

15 A. I think you read the wrong line.

16 Q. Five dollars and 67.69 cents?

17 A. Yes, sir. That's based assumption of a
18 48,000 pound load.

19 Q. Okay.

20 Okay, so, Mr. Johns, is it your testimony,
21 then, in describing Exhibit 16, and having had it
22 prepared under your direction, that at the present time
23 this represents the best estimates available to you for
24 the additional transportation costs that Dairy Farmers
25 of America incurred because of -- incurred because of

1 the hurricanes?

2 A. Yes. At the time of submission of this
3 document, recognizing that there are additional --

4 Q. Right.

5 A. -- costs that have not been documented here.

6 Q. Okay. And if the proposals would be -- were
7 to be adopted, you would have the obligation and
8 responsibility, if you wanted reimbursement, to
9 identify all those additional costs and document all of
10 the ones you have here, if they're all applicable, and
11 provide that proof to the Market Administrator?

12 A. That's correct, yes.

13 Q. Okay.

14 MR. BESHORE: Thank you. I have no other
15 questions.

16 I will move Exhibit 16 at the appropriate
17 sequence.

18 JUDGE CLIFTON: Thank you, Mr. Beshore.

19 I'd like the court reporter to turn to the
20 last page of Exhibit 16, and I'm going to direct
21 her to make a couple of changes. So Mr. Johns
22 and Mr. Beshore, make sure I do this right.

23 At the heading of the chart where the word
24 "Portales" is shown, I'd like, first of all, to
25 add "NM," so that it's clear that that's New

1 Mexico. And that's in two places.

2 (Whereupon, the requested changes were made
3 by the court reporter.)

4 JUDGE CLIFTON: Then just to the left of the
5 second place, I'd like to change that word "to"
6 to "from."

7 (Whereupon, the requested changes were made
8 by the court reporter.)

9 JUDGE CLIFTON: All right. Are there other
10 questions, then, for Mr. Johns, first from
11 proponents of Proposal 1?

12 (No response)

13 JUDGE CLIFTON: I see none.

14 Are there questions for Mr. Johns from
15 anyone other than the USDA representatives at the
16 table closest to me?

17 (No response)

18 JUDGE CLIFTON: There are none.

19 Is there any objection to the admission into
20 evidence of Exhibit 16?

21 (No response)

22 JUDGE CLIFTON: There are none. Exhibit 16
23 is hereby admitted into evidence.

24 Now, questions from USDA representatives?

25 MS. CARTER: (Indicating)

1 JUDGE CLIFTON: Ms. Carter.

2 CROSS EXAMINATION

3 BY MS. CARTER:

4 Q. Good afternoon, Antoinette Carter with the
5 USDA.

6 A. Good afternoon.

7 Q. With regards to the \$2.25 per loaded mile
8 rate, your proposed rate, how was that derived?

9 A. Basically through the accumulation and --
10 and looking at actual invoices and calculating back and
11 trying to figure out what a reasonable cap would be,
12 both from -- not only from our actual invoices but from
13 other proponent cooperatives' invoices as we tried to
14 come up with a reasonable cap on this situation.

15 Q. And what is or was the average mile -- per
16 loaded mile rate that DFA was charged by haulers in
17 moving milk that was related to the hurricanes?

18 A. We do not know the answer to that at this
19 particular point. That will be part of what we
20 actually submit, assuming adoption, to the Market
21 Administrators, will be actual rates.

22 Q. Okay.

23 A. And at this point, we do not know that
24 information.

25 Q. At this point do you have any idea of -- of

1 a range of what that mileage, per mileage rate would --
2 was?

3 A. I think that our exhibits that we have here
4 are a good indication of the -- of the expected range.
5 I also expect that there will be actual invoices that
6 fall outside of that range, both on the high and the
7 low side.

8 Q. I think you indicated that DFA had milk to
9 move to nonpool plants as a result of the hurricane and
10 which you would probably be applying for reimbursement
11 for those transportation costs associated with those
12 movements; is that correct, or --

13 A. There are none moved to nonpool plants that
14 are listed in these particular documents here. There
15 may very well be some of those charges as we try to
16 manage the Class I side of the business. In -- in
17 moving our milk away from marketplace, as of this point
18 I don't have any that I -- that I have documented.

19 Q. Okay.

20 A. But there very well may be as we come to the
21 final documentation.

22 Q. So are you stating that at this point to
23 date, you're unaware of any movements to nonpool
24 plants, then?

25 A. To my personal knowledge, I'm unaware of any

1 at this point, yes, ma'am.

2 Q. There was some testimony earlier today with
3 regards to the relationship between the announced
4 Federal Order Class I price and the over order premium
5 charged by cooperatives. If this proposal is adopted,
6 do you know if that practice will continue in terms of
7 there appears to be a lowering of the over order
8 premiums when the Federal Order announced Class I price
9 is -- is increased?

10 A. I do not know as of this particular point,
11 and I believe your earlier question was for the period
12 of January, February and March of 2005. I do not know
13 as of this point. My expectation would be that a plan
14 of that sort would be in effect at that time.

15 Q. Okay. With regards to re-routes, which
16 document -- what types of documents would you provide
17 to the Market Administrator to substantiate the cost
18 associated with the initial movement versus the
19 additional cost in re-routing that milk?

20 A. We would of course provide the actual
21 invoices for the transportation, which may or may not,
22 as we discussed, include fuel surcharges, plus any
23 other documentation that we could provide, depending on
24 the individual case. And that will vary from case to
25 case.

1 MS. CARTER: I believe that's all I have.

2 Thank you.

3 MR. JOHNS: Thank you.

4 CROSS EXAMINATION

5 BY MR. CHERRY:

6 Q. Good afternoon, Mr. Johns.

7 A. Good afternoon.

8 Q. Thank you for coming.

9 How many employees does DFA in the
10 southeastern area have?

11 A. Approximately 40.

12 Q. Forty?

13 A. Yes, sir.

14 Q. And how many producers?

15 A. Between 3,000 and 3,500.

16 Q. Okay. And of that number, how many would
17 you consider small businesses?

18 A. As far as the procedures are involved in the
19 southeast, I would say 80 percent would fall below the
20 threshold of a -- would be of a small, defined as a
21 small business.

22 Q. Okay. Let's see.

23 And if this proposal were to be adapt --
24 adopted, at the end of the three-month period, if any
25 funds collected in a marketing area are not disbursed,

1 how should the remaining dollars be disbursed, in your
2 opinion?

3 A. I would yield to the testimony of Mr. Sims
4 for the proponent cooperatives on that particular
5 issue.

6 Q. Okay. Excuse me one second, please.

7 A. All right.

8 MR. CHERRY: Thank you.

9 MR. JOHNS: Thank you.

10 MS. DESKINS: Okay.

11 CROSS EXAMINATION

12 BY MS. DESKINS:

13 Q. Sharlene Deskins, USDA.

14 Just wanted to clarify. You had said that
15 for some of the expenses you might not be aware of all
16 of them now related to the hurricanes?

17 A. Yes, ma'am, at this particular point.

18 Q. Okay. Would -- would all of the
19 hurricane-related expenses, what time period would you
20 expect that to run? Is it August through the end of
21 September?

22 A. Again, on that particular issue, I would
23 yield to the testimony of Mr. Sims concerning that. I
24 think he did an excellent job of describing the time
25 frame.

1 Q. Okay.

2 MS. DESKINS: I have no further questions.

3 MR. JOHNS: Okay, thank you.

4 MS. CARTER: Just a couple of other
5 questions.

6 RECROSS EXAMINATION

7 BY MS. CARTER:

8 Q. And it's related to questions Mr. Cherry
9 posed to you with regards to the number of producers or
10 DFA member producers on the Orders. Could you give us
11 a breakdown of what those numbers are by Order?

12 A. I do not know that information.

13 Q. Okay.

14 MS. CARTER: That's all I have. Thank you.

15 MR. JOHNS: Thank you.

16 JUDGE CLIFTON: Mr. Johns, would you look at
17 what's marked as page 1 of Exhibit 16.

18 MR. JOHNS: Yes, ma'am.

19 JUDGE CLIFTON: And you brought to our
20 attention a couple of entries where
21 transportation costs were saved because of the
22 re-routing of milk because of the hurricanes.

23 MR. JOHNS: Yes, ma'am.

24 JUDGE CLIFTON: And you showed us that on
25 that -- that document where the estimated total

1 haul cost is in parentheses, showing a savings.

2 MR. JOHNS: Yes, ma'am.

3 JUDGE CLIFTON: Did you anticipate that
4 anyone making a claim for reimbursement would be
5 required to identify cost savings as well?

6 MR. JOHNS: No, ma'am.

7 JUDGE CLIFTON: Are you aware of any other
8 cost savings other than the ones you've shown us?

9 MR. JOHNS: No, I am not.

10 JUDGE CLIFTON: All right. Any other
11 questions for Mr. Johns before Mr. Beshore asks
12 any redirect he may have?

13 (No response)

14 JUDGE CLIFTON: Mr. Beshore.

15 REDIRECT EXAMINATION

16 BY MR. BESHORE:

17 Q. Just one question, Frank, on documentation.
18 In a re-route situation, is it possible that there
19 would be -- that there might have been two sets of trip
20 tickets or bills of lading generated for a -- for a
21 load that is Indiana to Murfreesboro, where -- where it
22 was anticipated to be delivered, and then a second
23 ticket from Murfreesboro to Alabama, or from a re-route
24 from Indiana to Alabama?

25 A. That possibility certainly exists, yes, sir.

1 Q. And if it did occur, if there were two sets
2 of documents generated because of the re-route
3 situation, that's the kind of information that you
4 would anticipate making available to the Market
5 Administrator to document what occurred?

6 A. That is correct.

7 Q. Okay.

8 MR. BESHORE: Thank you.

9 JUDGE CLIFTON: Mr. Johns, was there
10 anything else that you wanted to add?

11 MR. JOHNS: No, ma'am.

12 JUDGE CLIFTON: All right, you may step
13 down. Thank you.

14 MR. JOHNS: Thank you.

15 MR. BESHORE: Proponents' next witness is
16 Jason Baird.

17 JUDGE CLIFTON: I'm going to ask the court
18 reporter to mark the exhibit as Exhibit 17.

19 (Whereupon, Exhibit No. 17 was marked for
20 identification.)

21 JUDGE CLIFTON: Would you state and spell
22 your full name for us.

23 MR. BAIRD: Jason Baird, J-a-s-o-n
24 B-a-i-r-d.

25 JUDGE CLIFTON: Thank you.

1 Would you raise your right hand, please.

2 JASON BAIRD,

3 being first duly sworn, was examined and testified

4 as follows:

5 MR. BAIRD: Yes.

6 JUDGE CLIFTON: Thank you.

7 CROSS EXAMINATION

8 BY MR. BESHORE:

9 Q. Mr. Baird, what is your business address?

10 A. 217 Baird Lane, Windthorst, Texas.

11 Q. How do you spell Windthorst?

12 A. W-i-n-d-t-h-o-r-s-t.

13 Q. Okay. And by whom are you employed?

14 A. Lone Star Milk Producers.

15 Q. And in what capacity?

16 A. I'm the operations manager.

17 Q. And what are your duties -- well, first of

18 all, what is Lone Star Milk Producers?

19 A. It's a milk producer cooperative that has

20 members in nine states.

21 Q. In nine states?

22 A. Yes.

23 Q. Okay. And what, as operations manager --

24 A. Yes, sir.

25 Q. -- what are your duties and

1 responsibilities?

2 A. I manage the dispatch and the pick up and
3 delivery of milk for Lone Star Milk Producers, and I
4 coordinate with other cooperatives in the southwest for
5 delivery for the milk in the southeast area.

6 Q. So your dispatch responsibilities include
7 the dispatching of milk from the nine states in which
8 Lone Star has members; is that correct?

9 A. Yes, sir.

10 Q. Okay. Can you tell us what those states
11 are?

12 A. Kansas, Oklahoma, Texas, Missouri, Arkansas,
13 Louisiana, Mississippi, Tennessee, and Kentucky.

14 Q. Okay. And to what areas do you dispatch the
15 Lone Star milk?

16 A. We deliver milk both within Texas and
17 Oklahoma; we also deliver milk in -- within the area
18 that we have producers, we deliver milk, and we also
19 deliver milk further east into Georgia, Alabama, North
20 and South Carolina, and we've occasionally and during
21 this hurricane period, we've gone to Florida.

22 Q. Okay. Now, your responsibilities of
23 coordinating dispatch and delivery with other
24 organizations in the southwest, where does that milk
25 come from and where does it go?

1 A. That milk comes from the same area that,
2 let's see, with the addition of New Mexico; Kansas,
3 Texas, Oklahoma, New Mexico, and we deliver that
4 milk -- basically our three -- over there there's
5 Select Milk Producers and there's DFA Southwest Area
6 Council, and our milk all overlays each other in
7 production in that southwestern area of New Mexico,
8 Texas, Kansas, and Oklahoma, and we deliver milk
9 towards the southeast, which is the deficit area, as a
10 collective group.

11 Q. Okay. Now, were -- during August and
12 September of 2004, were you involved in dispatching
13 milk to points in the southeast because of the
14 hurricane situations?

15 A. Yes, sir.

16 Q. Okay. And have you prepared -- were you
17 involved in the preparation of Exhibit 17, which is the
18 document that has been marked and on the cover page is
19 titled "Lone Star Milk Producers Hauling Data Prepared
20 for Federal Order Hearing, October 7, 2004"?

21 A. Yes, sir.

22 Q. Okay. There are eight pages in the
23 document; is that correct?

24 A. Yes.

25 Q. Okay. And on the -- the cover page, there's

1 a crossout of page 9, which is not part of the exhibit,
2 correct?

3 A. Yes, sir.

4 Q. Okay. Now, let's go into Exhibit 17. The
5 first pages 1 through 4 appears to be one consecutive
6 table; is that correct?

7 A. Yes, sir.

8 Q. Okay. Could you tell us what that table
9 shows?

10 A. Yes, sir. It shows the delivery date of the
11 milk that was picked up within -- in Chaves County, New
12 Mexico -- just taking the first line on 8/11.

13 Q. Take the first line on page 1.

14 A. On page 1. Picked up in Chaves County, New
15 Mexico at the Select Milk Producers, Incorporated mill,
16 delivered to Publix, Lakeland, Florida. It was two
17 loads. The transport mileage is on a loaded mile
18 basis, and that lists the total loaded miles. If you
19 divide that by two, it would be 1727 loaded miles per
20 load, at a loaded mile rate of \$2.04 a loaded mile,
21 which makes the total haul cost per load 3523.24, and
22 extended out cost of 7,046.47.

23 Q. Okay. And are these loads on Exhibit 1
24 [sic], the title of the table says "Estimated
25 Additional Supplemental Milk Transportation Costs

1 Resulting from Hurricanes Charley, Frances, Ivan and
2 Jeanne, Federal Order No. 6"?

3 A. Yes.

4 Q. Is that what they are?

5 A. Yes.

6 Q. Okay. And to the best of your ability, at
7 the time, did you identify loads that met that criteria
8 that were estimated additional supplemental loads
9 because of the hurricanes?

10 A. Yes, sir.

11 Q. And these were loads that came within your
12 broad responsibilities as dispatching from your area
13 into the southeast?

14 A. Yes, sir.

15 Q. Okay. Now, does the four pages, then --
16 what -- what date -- what date sequences did you -- or
17 date limits did you work with in assembling this table?

18 A. I believe the dates run from August 11th
19 through November -- September 25th.

20 Q. Okay.

21 A. '04.

22 Q. And were those basically the dates in which
23 you could identify any hurricane-related transactions?

24 A. Well, the -- the 25th is as far as we went
25 as our cutoff for the amount of estimated for this to

1 get ready for hearing. There may be some more that
2 comes in.

3 Q. Okay. That's just the day when you stopped
4 analyzing new data to prepare the exhibit for the
5 hearing?

6 A. Yes, sir.

7 Q. Okay. And there may be some hurricane
8 loads, if we can call them that, after that date, but
9 you didn't have the information available for this
10 hearing?

11 A. Yes, sir.

12 Q. Okay.

13 Just very generally, how did you determine
14 that you felt the loads were hurricane related?

15 A. They just, they fell out of the normal range
16 of plants that we normally deliver to.

17 Q. Okay. The mile rate shown, haul rate per
18 mile on -- on these exhibits, are they -- have they all
19 been billed so far or how did you come up with those
20 mile rates, even for the September --

21 A. Whenever we pulled the data together, each
22 of -- Select estimated what there's would be, and we,
23 Lone Star estimated what -- what we projected it to be
24 based on the September estimated fuel more than August.
25 And then we put the projected number on the table.

1 Q. Okay. So, again, for the rate of haul and
2 the cost per load, when the final bills come in, these
3 might be a little bit different than what you've
4 estimated here?

5 A. Yes, sir.

6 Q. Okay. Now, I do note that beginning on the
7 second, on page 2, there are quite a few haul rates at
8 2.27 per loaded -- that is per loaded mile, correct?

9 A. Yes, sir.

10 Q. Okay. And has it been your experience that
11 some hauling charges do exceed the \$2.25 per loaded
12 mile cap that is in the hearing proposal?

13 A. Yes. I believe we'll see, I have some
14 calculations that show higher than the -- those.

15 Q. Okay. Now, what are the total number of
16 loads and extra haul expense that you have estimated in
17 your table?

18 A. Our table shows 185 loads, \$652,591.21.

19 Q. Okay. Now, pages 5 through 8 of Exhibit 17
20 are copies of invoices, I take it, for hauling?

21 A. Yes, sir.

22 Q. Okay. Could you just start with page 5,
23 describe the information shown on the -- on these
24 invoices, starting with the Groendyke Transport
25 invoice, page 5.

1 A. On the Groendyke Transport invoice on
2 page 5, we -- we basically found if we -- this is a
3 load that's not actually hauled from -- from into the
4 southeast, but it's a load that caused us to hire
5 haulers that are not regularly within our
6 transportation group because all of the trucks that we
7 had were on the road a long distance during this
8 relevant period, and this shows that it's the most
9 we've ever actually -- during this time it shows the
10 stress levels. We've never actually dealt with these
11 folks, but we basically had run out of trucks to supply
12 milk to the market, and they billed, if you'll notice,
13 on a running mile basis, \$1.25 a running mile. And it
14 was earlier testimony about everybody discussed that
15 there was a running mile and a loaded mile. Loaded
16 mile is two times the running mile, and so they -- they
17 billed us \$2.50 a loaded mile, and then they added
18 the -- the fuel to it. And it was added up to \$134.11,
19 and if you work back on a loaded mile basis, it's \$2.79
20 a loaded mile, including fuel, to go 528 loaded miles.

21 Q. \$2.79 per loaded mile?

22 A. Yes, sir. And part of the reason we didn't
23 use them to come to Florida is because we wanted to use
24 them on the shorter mileage deals to -- it just seemed
25 to be better business to try to minimize the usage of

1 this, you know, as well as we could.

2 Q. But these were additional -- it does reflect
3 whether it's on a transaction into the southeast or
4 not, both hauling rates in excess of 2.25, and
5 extraordinary hauling expense incurred because of these
6 hurricane transactions?

7 A. Yes, sir.

8 Q. Okay. Let's turn to --

9 JUDGE CLIFTON: Mr. Baird, just because
10 Groendyke is an unusual name, would you spell it?

11 MR. BAIRD: G-r-o-e-n-d-y-k-e.

12 JUDGE CLIFTON: Thank you.

13 MR. BAIRD: Page No. 6 is just the actual
14 transport document that the drivers used, but
15 that particular invoice got to --

16 BY MR. BESHORE:

17 Q. Okay, so that --

18 A. -- Ulysses, Kansas to Bentonville, Arkansas.

19 Q. That just further documents the -- the bill
20 that was page 5?

21 A. Yes, sir.

22 Q. Okay. How about page 7, is that another
23 Groendyke Transport bill?

24 A. Yes, sir.

25 Q. Okay. And what, tell us about this bill.

1 A. This bill was picked up in east Texas and
2 hailed to Winn-Dixie Super Brand in Montgomery,
3 Alabama. They had the same basic charges that they'd
4 had before, they didn't -- they listed it as one lump
5 amount and they -- they tied it in the description
6 blank. But you'll notice the same \$1.25 rate on a
7 running mile basis, it would be \$2.50 on a loaded mile
8 basis, on 1726 loaded miles. When you add the \$181.50
9 of fuel to it, they charged us \$2.75 a loaded mile,
10 including fuel on that load.

11 Q. 2.75 per loaded mile?

12 A. Yes, sir.

13 Q. Now, that was a delivery on the 19th of
14 September to Winn-Dixie in Montgomery, Alabama. Is
15 that a transaction -- was that a normal -- normal
16 delivery that you -- that you would have?

17 A. We -- we would normally haul some from east
18 Texas to Montgomery. Got what you need in this.

19 Q. But usually you'd use somebody other than
20 Groendyke, I take it?

21 A. Yes, sir.

22 Q. Okay. Why did you use Groendyke at this
23 time?

24 A. Because all our normal guys were going
25 further east, and this was the limit, the least amount

1 of miles we could spend coming behind that, because
2 they would have had to gone -- anything further than
3 Montgomery would be on into Georgia or -- or beyond,
4 and it seemed -- we tried to minimize the cost of the
5 high rate miles.

6 Q. Okay. So if you look back at your table of
7 supplemental transactions, if you look on the 18th or
8 19th of September, you were sending quite a lot of milk
9 to Florida, from both Texas, New Mexico, and Oklahoma I
10 see, correct?

11 A. Yes, sir.

12 Q. So even though you were paying 2.27 a load
13 for a lot of those loads, that was better than the 2.75
14 that you used Groendyke for on the trip to Alabama?

15 A. Yeah. That's -- that's how we looked at it.

16 Q. Okay. And since you didn't identify, since
17 the run to Alabama is a regular run, the loss you
18 incurred in hiring Groendyke versus your regular guys
19 wouldn't be picked up here in any way, the --

20 A. We're not even asking for reimbursement on
21 that.

22 Q. Okay.

23 MR. BESHORE: Okay, I have no other
24 questions for Mr. Baird on direct.

25 We'd move the admission of Exhibit 17.

1 JUDGE CLIFTON: Does anyone wish to voir
2 dire Mr. Baird with regard to Exhibit 17?

3 (No response)

4 JUDGE CLIFTON: Is there any objection to
5 Exhibit 17 being admitted into evidence?

6 (No response)

7 JUDGE CLIFTON: There are none. Exhibit 17
8 is hereby admitted into evidence.

9 Are there any questions for Mr. Baird from
10 those who are appearing in support of Proposal 1?

11 (No response)

12 JUDGE CLIFTON: And other than the USDA
13 representatives seated at the table in front of
14 me, are there any questions from anyone else?

15 (No response)

16 JUDGE CLIFTON: Questions from the USDA
17 representatives?

18 MS. CARTER: (Indicating)

19 JUDGE CLIFTON: Ms. Carter.

20 CROSS EXAMINATION

21 BY MS. CARTER:

22 Q. Good afternoon. Antoinette Carter, USDA.

23 In your opinion, what would you suggest as
24 the recommended time period in which transportation
25 costs incurred as a -- that resulted from the

1 hurricanes be eligible for reimbursement?

2 A. I'd like to defer to Mr. Sims' testimony on
3 that.

4 Q. Okay. Did Lone Star move any milk to --
5 bulk milk to nonpool plants?

6 A. Not that I'm aware of at this time.

7 Q. And one last question: We talked about
8 earlier today that there was -- there's been questions
9 and answers with regards to the relationship between
10 the announced Class I price and the over order premium
11 and that it appears to be an inverse relationship. If
12 this proposal is adopted, would Lone Star's practice
13 continue with regards to the -- I guess the decreasing
14 of the over -- over order -- excuse me, over order
15 premium --

16 A. From what the --

17 Q. -- during these implementation periods?

18 A. I would assume our premium structure would
19 stay as it is, but I'd defer to Mr. Sims on that, too.

20 Q. Okay.

21 MS. CARTER: Thank you.

22 CROSS EXAMINATION

23 BY MR. CHERRY:

24 Q. Good afternoon, sir.

25 A. Yes, sir.

1 Q. How many producers does Lone Star have?

2 A. We have about 353 members.

3 Q. And would that be for all Orders 5, 6, and
4 7?

5 A. Yes, sir.

6 Q. Okay. And if this proposal were to be
7 implemented, what type of impact would it have on your
8 small businesses?

9 A. I would think it would help because it would
10 help recover costs, you know, from an emergency
11 situation.

12 Q. Okay. You might have heard this question
13 before, but I'd like to ask you, if adopted, at the end
14 of the three-month period if any funds collected in a
15 market -- excuse me, in a marketing area are not
16 disbursed, how should the remaining dollars be
17 disbursed?

18 A. I'd like to defer to Mr. Sims on that one,
19 too, if I could.

20 Q. All right.

21 MR. CHERRY: Thank you.

22 JUDGE CLIFTON: All right. Does anyone have
23 any questions before I see if Mr. Beshore has any
24 follow-up?

25 (No response)

1 JUDGE CLIFTON: There are no additional
2 ones. Mr. Beshore?

3 MR. BESHORE: I have no redirect.

4 JUDGE CLIFTON: All right, thank you.

5 Mr. Baird, you may step down.

6 MR. BAIRD: Okay.

7 MR. BESHORE: At this time proponents call
8 Mike Asbury.

9 JUDGE CLIFTON: I'll ask the court reporter
10 to mark this exhibit as Exhibit 18, one-eight,
11 please.

12 (Whereupon, Exhibit No. 18 was marked for
13 identification.)

14 JUDGE CLIFTON: Mr. Asbury, will you please
15 state and spell your full name for us.

16 MR. ASBURY: My name is Mike Asbury, that's
17 M-i-k-e A-s-b-u-r-y.

18 JUDGE CLIFTON: Would you raise your right
19 hand, please.

20 MIKE ASBURY,
21 being first duly sworn, was examined and testified
22 as follows:

23 MR. ASBURY: I do.

24 JUDGE CLIFTON: Thank you.

25 DIRECT EXAMINATION

1 BY MR. BESHORE:

2 Q. Mr. Asbury, could you state your business
3 address, please.

4 A. My business address is 1985 Isaac Newton
5 Swaure West, Reston, Virginia.

6 Q. And by whom are you employed?

7 A. I'm employed by Maryland and Virginia Milk
8 Producers.

9 Q. In what capacity?

10 A. I'm the director of milk accounting and
11 economic analysis.

12 Q. Okay. Tell us a little bit about Maryland
13 and Virginia Milk Producers Cooperative Association and
14 your responsibilities in that -- that position.

15 A. Maryland and Virginia is a milk co-op with
16 approximately 1450 members. We have members in 11
17 states, from Pennsylvania through Georgia and Alabama.
18 And we market milk in those -- in those states.

19 Q. Okay. You -- you market in Orders 5 and 7?

20 A. Five, 7 and 1. We're in three different
21 Orders.

22 Q. Okay. Now, what are your duties with
23 Maryland and Virginia?

24 A. I'm responsible for all the milk accounting,
25 make -- involved in anything with the Federal Orders,

1 also any economic analysis, and I -- I work with the
2 traffic department daily on movement of our milk.

3 Q. Okay. Are you familiar with -- well, were
4 there extraordinary milk movements experienced and
5 required of Maryland and Virginia in August and
6 September 2004?

7 A. We did, we did have some extra requests for
8 loads of milk in August and September.

9 Q. Okay. And were those loads related to the
10 hurricanes in the southeast?

11 A. Yes, they were.

12 Q. Have you --

13 JUDGE CLIFTON: Let me ask you, Mr. Asbury,
14 to -- TO let Mr. Beshore's voice trail away
15 before you answer him, just so that the typist
16 doesn't have two voices at the same time.

17 MR. ASBURY: Okay.

18 BY MR. BESHORE:

19 Q. Have you prepared a document that has been
20 marked Exhibit 18, or was it prepared under your
21 supervisions to reflect additional milk shipments for
22 package products moved to Florida resulting from
23 Hurricanes Charley, Frances, Ivan and Jeanne?

24 A. Yes, I had it prepared.

25 Q. Okay. And there are, as the cover page

1 shows, four pages in the document, in Exhibit 18?

2 A. That's correct.

3 Q. Okay. Let's turn to page 1 which is titled
4 "Estimated Additional Supplemental Milk Transportation
5 Costs Resulting from Hurricanes Charley, Frances, Ivan
6 and Jeanne, Federal Order 5." Tell us what is -- what
7 that information reflects, Mr. Asbury.

8 A. Well, I'll -- I'll look at the first line on
9 September the 9th, we had a load of milk requested by
10 Super Brand in South Carolina. They wanted -- need
11 three bottles -- or bottles of milk to send to Florida.
12 We sent them a load of milk from Franklin,
13 Pennsylvania, and it was -- the mileage was 518 miles,
14 and we calculated it at \$2.25, for a cost of \$1,166.

15 Q. Did you have other additional orders also on
16 September 10th as reflected on the exhibit?

17 A. Yes, we had the additional orders on the --
18 the 10th. We could -- we had two going from Franklin,
19 three going from Fredlick -- Frederick, Maryland, and
20 two more going from Franklin, Pennsylvania.

21 Q. They were all -- the destination was the
22 Super Band -- Brand plant in Taylors, South Carolina?

23 A. That's correct.

24 Q. Okay. Do you -- have you been billed for
25 the hauling on that on those loads to date?

1 A. We have -- we have not been billed for the
2 hauling, or had not when I left the office, no.

3 Q. Okay. And so you used the estimated rate
4 per loaded mile of \$2.25 for this purpose?

5 A. That's correct.

6 Q. Okay. Is that, in your view, a -- a
7 reasonable --

8 A. Yes, sir.

9 Q. -- figure?

10 A. Yes, it is.

11 Q. Okay. Now, let's go, then, to page 2 of
12 Exhibit 18. And tell us what that shows, Mr. Asbury.

13 A. Well, page 2 are actually shipments that we
14 made into Federal Order 7. On line 1, for example on
15 9/8, we had some milk that was redirected from the
16 Southwest, the Greater Southwest Agency into Parmalat,
17 Atlanta. This milk was also to be rebottled to sent --
18 to be sent to Florida. We had two loads. We estimated
19 900 miles, we do not know exactly where that come from
20 at the present time. We calculated that at \$2 and a
21 quarter per mile, and come up with \$2,025 as the cost
22 of that load.

23 Q. Okay. And what other additional loads are
24 reflected on page 2 of Exhibit 18?

25 A. Well, we had eight other loads on -- on that

1 page. Three more of them went into Parmalat, Atlanta,
2 the rest of them went into Pack -- Pet Baxley in
3 Georgia. I did not put Georgia down, but that's a
4 Georgia location.

5 Q. Okay. So the location of the Baxley plant
6 should be GA for Georgia?

7 A. That's correct. Uh-huh.

8 MR. BESHORE: Perhaps, Your Honor, we could
9 have the GA entered on page 2 of Exhibit 18 after
10 the Pet Dairy Baxley destination plant to reflect
11 its location in the state of Georgia.

12 JUDGE CLIFTON: Yes, please.

13 (Whereupon, the requested changes were made
14 by the court reporter.)

15 MR. BESHORE: Okay, thank you.

16 BY MR. BESHORE:

17 Q. What were the total additional costs of
18 hauling that Maryland and Virginia occurred -- or
19 estimated in pages 1 and 2 of the Exhibit 18?

20 A. It's basically \$26,000.

21 Q. Okay. Now, the third page, third and fourth
22 page of Exhibit 18, could you tell us what those
23 documents are, Mr. Asbury?

24 A. They're an example of some extra hauling
25 costs that -- that we have if we have a load that we

1 move south that's out of the ordinary or it goes
2 somewhere that the hauler would charge us extra haul
3 charge on, to show what the rate is per hundredweight
4 class.

5 Q. I don't --

6 A. Rate a loaded mile, per loaded -- per loaded
7 mile.

8 Q. Okay. So on page 3, it's a -- an invoice
9 for September showing loads going from Shippensburg,
10 Pennsylvania to New Bern, North Carolina; is that
11 correct?

12 A. That's correct. Uh-huh.

13 Q. And the handwritten notations, does that
14 indicate that the rate per loaded mile was \$2.26?

15 A. That's correct.

16 Q. Okay. Now, and what's the invoice then at
17 page 4?

18 JUDGE CLIFTON: Excuse me. What -- what's
19 the number of miles there?

20 MR. ASBURY: It's 455 miles.

21 JUDGE CLIFTON: 455, okay. Thanks.

22 BY MR. BESHORE:

23 Q. Okay. How about the invoice that's page 4
24 of Exhibit 18?

25 A. That -- that is another example also showing

1 that it's \$2.26 per loaded mile.

2 Q. And that shows right on the face of the
3 exhibit?

4 A. That's correct.

5 Q. Of the invoice?

6 A. That's correct.

7 Q. Okay. In your opinion, then, Mr. Asbury, is
8 the \$2.25 maximum a reasonable cap for additional
9 hauling reimbursement under Proposal 1?

10 A. Yes, sir.

11 MR. BESHORE: Thank you. I have no further
12 questions, but I would move for the admission of
13 Exhibit 18.

14 JUDGE CLIFTON: Does anyone have any
15 questions for Mr. Asbury with regard to Exhibit
16 18 before I determine if there are objections?

17 (No response)

18 JUDGE CLIFTON: Are there any objections to
19 Exhibit 18 being admitted?

20 (No response)

21 JUDGE CLIFTON: There are none; Exhibit 18
22 is hereby admitted into evidence.

23 Are there any questions for Mr. Asbury
24 starting with persons who are here in favor of
25 Proposal 1?

1 (No response)

2 JUDGE CLIFTON: All right. Any other
3 questions with the exception of the USDA
4 representatives?

5 (No response)

6 JUDGE CLIFTON: All right. Any questions
7 from the USDA representatives?

8 CROSS EXAMINATION

9 BY MS. CARTER:

10 Q. Good afternoon. Antoinette Carter with
11 USDA.

12 A. Good afternoon.

13 Q. In your opinion, transportation costs
14 incurred during what time period should be eligible to
15 receive reimbursement?

16 A. I support Mr. Sims' testimony on that.

17 Q. Okay. With regards to your exhibit, Exhibit
18 18, the notation "to package for Florida," the loads
19 that are noted here, was this packaged milk that moved
20 or was this bulk milk?

21 A. It was bulk milk going from us to the plant,
22 the plant packaged it to move to Florida. That's --
23 that's what they told us they needed it for.

24 Q. Okay.

25 MS. CARTER: Thank you. That's all I have.

1 CROSS EXAMINATION

2 BY MR. CHERRY:

3 Q. Good afternoon, Mr. Asbury.

4 A. Good afternoon.

5 Q. How many producers does Maryland and
6 Virginia Milk Producers Corporation have -- cooperative
7 have? Excuse me.

8 A. In total, we have approximately 1450.

9 Q. Okay. And do you have a breakdown for
10 Orders 5, 6, and 7?

11 A. I -- I do not right -- right at this time.
12 I could get it but I do not have it.

13 Q. Okay. And if this -- excuse me. If this
14 proposal was to be implemented, what type of impact
15 would it have on your small businesses?

16 A. It would be more dollars to return to them
17 in their pay program.

18 Q. Okay.

19 MR. CHERRY: Thank you.

20 CROSS EXAMINATION

21 BY MS. DESKINS:

22 Q. Mr. Asbury, I'm Sharlene Deskins, USDA.

23 In regards to Exhibit -- Exhibit 18, you
24 have some invoices in here. They're on page 3 and 4.
25 Would this be the type of evidence that would be shown

1 to the Market Administrators to help them determine if
2 the shipments were extraordinary?

3 A. Yes, it would.

4 Q. Okay.

5 MS. DESKINS: I have no further questions.

6 JUDGE CLIFTON: Are there any other
7 questions from USDA representatives?

8 (No response)

9 JUDGE CLIFTON: All right.

10 Any other questions before I ask Mr. Beshore
11 if he has redirect?

12 (No response)

13 JUDGE CLIFTON: No.

14 Mr. Beshore?

15 MR. BESHORE: No redirect.

16 JUDGE CLIFTON: All right. Thank you,
17 Mr. Asbury. You may step down.

18 Mr. Beshore?

19 MR. BESHORE: Proponents have no further
20 witnesses. We -- we are aware that there are two
21 witnesses on behalf of handlers who are here and
22 present and wish to present testimony today.

23 Mr. Crishi who was here this morning, and

24 Mr. Kinser from Dean Foods.

25 JUDGE CLIFTON: All right. Now,

1 Mr. Beshore, one of the things that you indicated
2 we might hear some evidence about was that even
3 prior to publication in the Federal Register,
4 there was an understanding in the industry of
5 what the proposal was before the typographical
6 errors appeared.

7 We didn't actually elicit that testimony
8 from any of the witnesses yet, but we did get
9 testimony about the fact that the typographical
10 error -- errors did not occur throughout the --
11 the section, but only one out of three times.

12 MR. BESHORE: Your Honor, I think that I
13 misspoke when I -- earlier if I stated, and I
14 don't say that I didn't, that there was a -- some
15 prepublication to the industry of the proposals.
16 That because this was called on an emergency
17 basis, there was not what happens with respect to
18 many hearings, a request for additional proposals
19 which within it states what proposals have
20 been -- and indicates what has been requested for
21 hearing.

22 And I may have been, you know, thinking of
23 that, but I'm not aware that it was published to
24 the industry now. I've already --

25 JUDGE CLIFTON: Yes, I wasn't thinking of

1 published in that sense, but rather communicated
2 in -- in some circles somehow.

3 MR. BESHORE: Well, it was certainly
4 developed among the proponents, and -- and they
5 certainly had discussions, you know, with the
6 Market Administrators and with other -- with
7 other folks, not in any -- I can't say that it
8 was -- I can't represent it to have been in a
9 systematic manner in terms of notifying the --
10 the industry.

11 JUDGE CLIFTON: Can you -- can you offer any
12 evidence with regard to that issue concerning
13 people who may be adversely affected by what is
14 proposed and who might oppose the order based on
15 those typographical errors having appeared in the
16 notice?

17 MR. BESHORE: Well, I would -- what I would
18 think we should -- we should do here, what I
19 would request, suggest we do is, that we hear the
20 witnesses who are here to testify on the
21 proposals who include directly affected parties,
22 the handlers, and then we can perhaps determine
23 whether there's any further need for, or any
24 further information available on that point.

25 JUDGE CLIFTON: Good. Thank you. That's a

1 good suggestion.

2 Mr. Crishi, are you ready to testify?

3 MR. CRISHI: I am.

4 JUDGE CLIFTON: Would you come forward,
5 please.

6 If you would state for us your full name and
7 spell it.

8 MR. CRISHI: Greg Crishi, G-r-e-g
9 C-r-i-s-h-i.

10 JUDGE CLIFTON: All right.

11 Please identify yourself fully with regard
12 to your position in the industry.

13 MR. CRISHI: I'm the vice president of
14 operations for National Dairy Holdings, L.P.

15 JUDGE CLIFTON: And describe the
16 organization for me.

17 MR. CRISHI: We're a group of 20 processing
18 plants or distributing plants, I guess in this
19 terminology. We operate 20 mostly fluid milk
20 Class I plants across the United States.

21 JUDGE CLIFTON: All right. And please
22 identify for me your business address.

23 MR. CRISHI: It's 5327 South Lamar, it's
24 L-a-m-a-r, Street, Dallas, Texas, 75215.

25 JUDGE CLIFTON: All right, thank you.

1 Would you raise your right hand, please.

2 GREG CRISHI,

3 being first duly sworn, was examined and testified as
4 follows:

5 MR. CRISHI: I do.

6 JUDGE CLIFTON: Thank you. You may proceed.

7 MR. CRISHI: I am Greg Crishi, I'm vice
8 president of National Dairy Holdings.

9 As I said, National Dairy Holdings operates
10 20 fluid milk plants across the United States.

11 JUDGE CLIFTON: I need you to pull that
12 microphone more directly in front of you.

13 Thank you.

14 MR. CRISHI: Okay.

15 I'm here today to testify on behalf of my
16 company and in support of Proposal 1, as we
17 believe -- believed it to be published in the
18 notice of this hearing. Let me clarify: We're
19 clearly of the understanding that the proposal
20 discusses the -- the -- the -- a possibility of
21 increasing the milk price, the Federal Order milk
22 price, January, February, March of 2005, by four
23 cents a hundredweight in two of the Federal
24 Orders, the Appalachian and Southeast; and by
25 nine cents a hundredweight in the Florida

1 marketing area.

2 Now, of our 20 plants, we do operate five
3 fluid milk distributing plants pooled on the
4 Appalachian Federal Order. These plants are
5 located in London, Kentucky; in Madisonville,
6 Kentucky; Charleston, South Carolina;
7 Chattanooga, Tennessee; and Roanoke, Virginia.
8 In addition, we operate another five distributing
9 plants located in the Southeast Federal Order,
10 and these plants are located in Cowarts and
11 Pritchard, Alabama -- Cowarts, Alabama and
12 Pritchard, Alabama; in LaFayette, Louisiana and
13 Baker, Louisiana; and in Hattiesburg,
14 Mississippi.

15 We operate two additional plants in the
16 Florida Federal Order. They pool in Florida
17 Federal Order. They're located in Winter Haven,
18 Florida and in Miami, Florida.

19 My duties as vice president of operations
20 consist of a series of support functions to the
21 management teams in each of these locations. All
22 of these functions are aimed toward our ability
23 to provide continuous and steady flow of high
24 quality dairy products to our consumer.

25 It was with these duties in mind that I

1 witnessed the devastation and destruction of the
2 four hurricanes through the southeastern part of
3 our United States. I'm very aware of the impact
4 that these four storms caused on our day-to-day
5 operations of these production facilities. We
6 shut down our plants in response to evacuation
7 notices as these storms headed for landfall. We
8 stopped production, we shut down our
9 refrigeration systems, we shut down the
10 electrical supply, and we sent our employees home
11 to be part of that evacuation process, with the
12 idea that as the storms abated, and the winds
13 dropped to below 40 miles an hour, we would bring
14 back in qualified maintenance personnel to
15 restart these systems and bring our plants back
16 online.

17 What we were not aware of, what we could not
18 plan for, was the duration or the power outages
19 that we experienced. As an aftermath of
20 Hurricane Charley, our Winter Haven facility lost
21 power for three days, and the Miami plant was
22 down for one day. The 13th through the 15th of
23 August for Winter Haven, and the 14th of August
24 only for Miami.

25 After Hurricane Frances, our Winter Haven

1 facility again lost power from September 3rd
2 through September 6th, the four-day period; and
3 our Miami plant lost power for one day, September
4 4th only. We thought we were safe with Hurricane
5 Ivan, but no it hit our facility in Mobile,
6 Alabama, the facility we call Pritchard, a suburb
7 of Mobile. And that plant was done for a
8 four-day period, from the 16th through the 19th
9 of September.

10 And finally, Jeanne came through and took
11 Winter Haven's power out again for the third time
12 now, from September 26th through September 29th,
13 a period of four days. And -- and I'm sorry, and
14 then Miami did not have a power outage during
15 Hurricane Jeanne.

16 Now, during these power outages, we took the
17 milk, took our -- our processing of the milk for
18 these areas that were down with power outages to
19 other plants that were out of harm's way, if you
20 will. Of the 12 plants that I listed to you as
21 being in these three market Orders, 11 of these
22 plants participated in bringing milk into the --
23 the areas that the -- the power was out. And the
24 only reason the twelfth plant did not participate
25 was because the twelfth plant was at capacity and

1 could not help.

2 In addition, we had plants that were outside
3 these three marketing areas that also provided
4 some support. Our -- our basic strategy for who
5 provided what was threefold; who had time to
6 produce the product, who could get raw milk in
7 from any source available, and once we got that
8 milk into the facility and had time to package
9 it, how could we get it to Florida and to the
10 southeastern part of the United States and
11 Mobile.

12 Now, earlier today someone said that this
13 period was chaotic, and there were some question
14 if that was the proper word. I assert to you
15 that it is the proper word. The power outages
16 that occurred were not the type of things, the
17 plant shutdowns that are -- are predicted and are
18 planned for. We had no idea when the power was
19 coming back up.

20 The initial estimates were from one week to
21 three week -- three weeks. We didn't really
22 expect it to be three weeks, but we really had no
23 idea on an hour-by-hour basis, day-by-day basis
24 as to when that power would come back up again.
25 So in deed, the milk supply was chaotic;

1 everything was chaotic. The -- the areas that
2 had no power had very little communications
3 through normal means, power lines down, telephone
4 lines down. We relied on cell phones to get to
5 the people, to our management teams in these
6 areas. Communication was -- was minimal at best.

7 And so very early on in these processes, we
8 relied on our people in other areas, my office in
9 Dallas, to start coordinating efforts to bring
10 milk into these areas, into the troubled areas.
11 And so we made those phone calls and got started
12 with the process, not knowing which of our
13 customers were actually up and -- and open for
14 business, and which of them were down, which of
15 our branches, in some cases, our distribution
16 centers had power and -- and did not have power.
17 It was a very chaotic, is the proper word, time
18 for all of us.

19 And I'd like to thank the cooperatives for
20 their efforts in getting us the milk that we
21 needed during this troubled time. They really,
22 really put forth an outstanding amount of effort
23 to get us the milk that we needed in -- in
24 various plants across the country, and our people
25 did a good job, too. I mean at -- in getting

1 milk to -- to the people in troubled areas.

2 In my 25 years' of experience in their
3 industry, I have never been involved in a more
4 extensive movement of fluid milk, both raw milk
5 and finished goods, packaged goods, and for a
6 longer duration of time, that covered a larger
7 geographical area, under more stressful
8 conditions.

9 National Dairy Holdings supports Proposal 1
10 as included in the notice to this hearing with
11 the amendments as we have all learned today for
12 several reasons. First of all, we simply don't
13 believe that the dairy farmers should be burdened
14 with the entire cost of this extra hauling.
15 Secondly, we believe that these costs are going
16 to be reimbursed. We have utmost confidence in
17 the Federal Market Order System in reimbursing
18 those costs in a fair and -- and true manner for
19 costs incurred from the hurricanes.

20 And, finally, raising the revenues for
21 reimbursing these costs under the Federal Market
22 Order will ensure equitable treatment for all
23 handlers of Class I milk regulated under these
24 three Orders.

25 We also support quick action on Proposal 1.

1 A. Prior to the hurricanes making landfall,
2 typically in any bad weather situation, there's a surge
3 of milk sales in the marketplace. So two to three days
4 before the storms made landfall, our milk production
5 started to go up. And we filled the stores as best we
6 could, and then people were buying milk as fast as it
7 would go on the shelves.

8 Then as the hurricane hit and our plants
9 went down, obviously we had no production in these
10 facilities at all during the period of time when the
11 power was out, and we moved that milk supply or our
12 production to other facilities, and brought back as
13 much milk as we could get our hands on, extra milk we
14 could get our hands on, into the area.

15 And after the power came back up, typically
16 a period of about five to seven days before that
17 pipeline is actually filled up and we get back into
18 normal production, so in the last hurricane, Jeanne,
19 when the Winter Haven facility was down from the 26th
20 through the 29th of September, we actually didn't get
21 power until somewhere in the early evening on the 29th,
22 so I would guess that our -- our production would have,
23 our need for increased milk or extra milk would have
24 gone past the end of September and somewhat into the
25 first couple of days, at least, of October.

1 Q. Were your milk movements related to the
2 hurricane, were they limited to bulk movements to pool
3 plants and other Order plants or did you have any
4 movements to nonpool plants?

5 A. We -- we typically don't move raw milk as
6 part of our business.

7 Q. Okay.

8 A. What we do is purchase milk from the
9 cooperatives, and package that milk in our facilities
10 and then distribute the milk to the marketplace.

11 Most of what we did involved packaging milk
12 and sending it to the troubled areas. Now, I don't
13 know where that milk came from exactly, but that milk
14 came from somewhere. So to answer your question, yes,
15 that milk was -- I think your question, the milk was
16 extra milk that was brought into our facilities to
17 allow us to package extra milk to send into the
18 troubled areas. And we maintained our business in the
19 areas that were not affected by the storms, and in
20 addition, packaged extra milk to send to the troubled
21 areas.

22 There was one incident, though, that I --
23 that I know of where we did get involved in hauling raw
24 milk. And the situation occurred during one of the
25 hurricanes -- I'm not sure which one. I -- I think

1 Frances, but I'm not certain. -- where we had
2 apparently exhausted the resources of the cooperatives
3 to provide us with -- with drivers and trucks that
4 could haul milk, and we -- we were made aware that
5 there were loads of milk sitting in Belleview -- I
6 think it's Belleview. Belleview or Bellville, I'm not
7 sure which, Florida. And we -- we hired our own
8 drivers or outside drives, outside haulers, to go get
9 that milk and bring that milk to us. So I guess you
10 could say we were involved in the hauling of raw milk
11 during that period of time.

12 By the way, that bill will be submitted to
13 the appropriate --

14 Q. For consideration, if the proposal is
15 adopted.

16 In your opinion, what would be the potential
17 impact on market participants should this proposal be
18 adopted?

19 A. I'm not sure I understand that question.

20 Q. How do you -- if this proposal is adopted --

21 A. Yes.

22 Q. -- are there benefits to market
23 participants, or what -- what would the impact be?

24 A. Okay. We're well aware of the diminishing
25 milk supply in the southeastern part of the United

1 States, and we feel that to burden the farmer with
2 these additional costs would -- would only hurt that
3 situation.

4 Now, we don't own dairy farms and we -- we
5 are processors and distributors of finished product.
6 Without a supply of raw milk, we're out of business.

7 To answer your question directly: If this
8 proposal is adopted, we hope that the -- alleviating
9 the cost to the dairy farmer, at least to a small
10 extent, will help them stay in business, and,
11 therefore, help us stay in business.

12 Q. Okay.

13 MS. CARTER: Thank you. That's all I have.

14 JUDGE CLIFTON: Does anyone have any further
15 questions for Mr. Crishi?

16 (No response)

17 JUDGE CLIFTON: Mr. Crishi, was there
18 anything you wanted to add before you step down?

19 MR. CRISHI: No, ma'am.

20 JUDGE CLIFTON: Thank you very much. You're
21 a powerful speaker. Powerful subject.

22 MR. CRISHI: Thank you.

23 JUDGE CLIFTON: Mr. Kinser, did you wish to
24 testify?

25 MR. KINSER: (Indicating)

1 JUDGE CLIFTON: Mr. Kinser, the statements
2 being distributed, would you like that marked as
3 an exhibit?

4 MR. KINSER: Yes, please.

5 JUDGE CLIFTON: All right. I'm going to ask
6 the court reporter to call that Exhibit 19,
7 one-nine.

8 (Whereupon, Exhibit No. 19 was marked for
9 identification.)

10 MR. KINSER: For clarification, the official
11 copy, Your Honor, that you have and that the
12 court reporter has, the first paragraph has been
13 struck out. The copy being distributed has not
14 had that first paragraph struck. The reason for
15 that is that Bill Curley was supposedly going to
16 testify today, but because of the schedule of
17 other witnesses, he had to catch a plane and is
18 not available, so I will be providing the
19 statement.

20 JUDGE CLIFTON: All right. Mr. Curley is
21 your co-worker?

22 MR. KINSER: That is correct.

23 JUDGE CLIFTON: All right.

24 All right, would you state and spell your
25 full name for us.

1 MR. KINSER: Evan Kinser, E-v-a-n
2 K-i-n-s-e-r.

3 JUDGE CLIFTON: Would you raise your right
4 hand, please.

5 EVAN KINSER,
6 being first duly sworn, was examined and testified
7 as follows:

8 MR. KINSER: I do.

9 JUDGE CLIFTON: Thank you.

10 You may proceed.

11 MR. KINSER: My name is Evan Kinser. I'm
12 employed by Deans Food Company as the manager of
13 dairy risk management and commodity procurement.
14 My business address is 2515 McKinney Avenue,
15 Suite 1200, Dallas, Texas, with a ZIP of 75201.
16 I've been employed with Dean Foods since June of
17 this year.

18 Prior to joining Dean Foods, I worked for a
19 cooperative in the upper Midwest. I have
20 received a bachelor of science in education --
21 excuse me, in ag economics and animal science,
22 from the University of Missouri, and an M.B.A. in
23 agra business from the University of Wisconsin.

24 Dean Foods owns and operates distributing
25 plants regulated by Federal Milk Marketing Orders

1 No. 6 -- 5, No. 6, and No. 7. I'm appearing
2 today to provide supportive testimony on Proposal
3 Number 1.

4 We know firsthand the extreme chaos that has
5 resulted from the Hurricanes Charley, Frances,
6 Ivan and Jeanne. Beyond our experiences, our raw
7 milk suppliers have shared with us their
8 experiences dealing with the hurricanes. We
9 believe that Proposal Number 1 is a reasonable
10 solution to the problems created by the
11 hurricanes described by our suppliers.

12 We acknowledge that proposal number -- that
13 the proposal calls for a temporary increase in
14 the Class I differentials, something we would
15 normally oppose. This will increase our cost of
16 milk, and it is our current belief that we will
17 not be eligible for any reimbursement provided
18 for within the proposal.

19 With this expected outcome, our position of
20 support only comes after careful consideration of
21 the specific details, including the unique
22 situation, level of increase, and disbursal
23 process. We believe Proposal Number 1 seems to
24 be a reasonable solution.

25 We understand the rareness of this request

1 to the Secretary, we believe the Secretary has a
2 clear grasp of the exceptional situation this
3 region finds itself in with the only similar
4 situation dating back to the 1800s.

5 This is clear by her decision to hold this
6 hearing on such quick notice. We believe the
7 Secretary and her staff should continue to keep
8 this priority status and handle this according to
9 emergency status.

10 Any delay could only serve as confusion to
11 the marketplace. I would like to thank the
12 Secretary for expediting the process, and urge
13 her to continue to do such using emergency
14 procedures in adopting the reasonable Proposal
15 Number 1.

16 I would add further, that it is -- was our
17 understanding, the changes made were the intent
18 of the proponents, and so we would support the
19 proposal as corrected and amended in earlier
20 testimony.

21 JUDGE CLIFTON: Okay.

22 Questions for Mr. Kinser, first of all, from
23 anyone who is here as a proponent?

24 MR. BESHORE: (Indicating)

25 JUDGE CLIFTON: Mr. Beshore.

1 CROSS EXAMINATION

2 BY MR. BESHORE:

3 Q. Mr. Kinser, thank you for coming and
4 testifying.

5 Just so there's no question about your final
6 comment, did you understand and did Dean Foods
7 understand that the proposal requested increases --
8 possible increases of four cents per hundredweight in
9 Orders 5 and 7, and nine cents per hundredweight in
10 Order 6?

11 A. That was our understanding of what the
12 proposal was, yes.

13 Q. Okay.

14 MR. BESHORE: Thank you.

15 JUDGE CLIFTON: Any other questions for
16 Mr. Kinser?

17 (No response)

18 JUDGE CLIFTON: Questions from the USDA
19 employees seated closest to me?

20 MS. DESKINS: (Shakes head in the negative.)

21 MS. CARTER: (Shakes head in the negative.)

22 JUDGE CLIFTON: All right. Thank you very
23 much, Mr. Kinser. You may step down.

24 Who else would like to testify or present
25 exhibits today?

1 (No response)

2 JUDGE CLIFTON: There is no one.

3 Mr. Beshore, do you have any follow-up or
4 rebuttal type evidence of any kind?

5 MR. BESHORE: No, we do not. I would only
6 say with respect to the notice issue, I think
7 the -- the testimony of the handlers that we have
8 heard certainly supports the fact that the
9 industry had notice of the proposed increases in
10 Class I prices, and that was -- that was
11 adequate.

12 JUDGE CLIFTON: I agree with you. Thank
13 you.

14 All right. Now, let's talk about what
15 happens after we leave here today.

16 MS. DESKINS: Ah --

17 JUDGE CLIFTON: Ms. Deskins.

18 MS. DESKINS: Yes. There is Proposal Number
19 2, which is the Department's proposal.

20 JUDGE CLIFTON: I'm sorry. Yes, of course.
21 Let's address that.

22 MS. DESKINS: Okay. I'd like to put on the
23 record that Proposal Number 2 as put in by Dairy
24 Programs Agriculture Marketing Service, and that
25 is to make for any necessary conforming changes

1 if this proposal should go through to make sure
2 that the Orders affected change anything so that
3 they -- they are consistent.

4 JUDGE CLIFTON: Yes. And -- and many of the
5 witnesses who testified in favor of Proposal 1
6 voiced their support for -- for Proposal 2 as
7 well.

8 Do you want to present any more evidence in
9 support of Proposal 2?

10 MS. DESKINS: No.

11 JUDGE CLIFTON: All right, thank you.

12 Do we know how long it will take for the
13 transcript to be delivered to the hearing clerk?

14 Ms. Carter?

15 MS. CARTER: Your Honor, we requested a
16 five-day delivery time.

17 JUDGE CLIFTON: All right.

18 Let's assume, then, that it becomes
19 available to those who might be wanting to write
20 a brief by about the third week of October.
21 Maybe sooner.

22 MR. ROWER: Sooner.

23 JUDGE CLIFTON: Sooner. I know this is an
24 emergency.

25 MR. ROWER: Right.

1 JUDGE CLIFTON: I know you need to get after
2 it.

3 So do you think you could say by October
4 12th people might be able to read the brief --
5 the transcript who might want to submit a brief?

6 MS. DESKINS: You mean submit their briefs
7 by October 12 or --

8 JUDGE CLIFTON: No. Just -- just have the
9 transcript available.

10 MR. BESHORE: Is it five business days?

11 MS. CARTER: Five business days.

12 MR. ROWER: Yeah.

13 MR. BESHORE: So it may be available next
14 Thursday.

15 JUDGE CLIFTON: So that would be a week from
16 today. That would be about the 14th of October.

17 What -- I don't know how much briefing is
18 necessary given the way the testimony flowed.

19 MS. DESKINS: We would like a very short
20 briefing schedule in order to get this out very
21 quickly.

22 JUDGE CLIFTON: All right. Could all briefs
23 be in by the end of October?

24 MS. DESKINS: Your Honor, we were thinking
25 even quicker than that.

1 JUDGE CLIFTON: All right. What date, Ms.
2 Deskins, would you think?

3 MS. DESKINS: We would think, at the latest,
4 the 18th?

5 MR. ROWER: Yeah.

6 MS. DESKINS: The 18th of October at the
7 latest.

8 JUDGE CLIFTON: Oh. If you don't even get
9 the transcript until the 14th --

10 MS. DESKINS: I would point out that people
11 would have copies of the exhibits to work with,
12 and, you know, the transcript could just be used
13 to supplement that, because a lot of the
14 information would be in the exhibits.

15 JUDGE CLIFTON: All right.

16 Mr. Beshore, what date is workable for the
17 proponents?

18 MR. BESHORE: We will work with the 18th.

19 JUDGE CLIFTON: All right, that's great.

20 Now, when you are ready to communicate it
21 one to another, I would imagine you all have one
22 another's e-mail addresses, so that in addition
23 to filing the official copy with the hearing
24 clerk, you'll get the -- the documents to one
25 another even more quickly and -- and more usably.

1 MR. ROWER: (Nods head in the affirmative.)

2 JUDGE CLIFTON: Filing with the hearing
3 clerk does nothing but serve the formal
4 requirement, but getting it to each other is
5 extremely valuable, so be sure you e-mail to one
6 another.

7 Your filing with the hearing clerk can be
8 done by fax. You may fax it to the hearing
9 clerk. That's not the hearing clerk's favorite
10 way to get it, but in an emergency like this, I
11 think we can use that technology.

12 So if -- if we require briefs to be filed
13 and exchanged by October the 18th, what day of
14 the week is that?

15 MS. DESKINS: That's a Monday.

16 JUDGE CLIFTON: Monday, October 18th.

17 If there are any glaring transcript
18 corrections that you want made, please make those
19 proposals also by October 18th, but don't concern
20 yourselves with inconsequential changes. We
21 won't -- we won't fool with them.

22 What other ideas or suggestions need to be
23 expressed before we adjourn here?

24 MR. ROWER: I don't have anything.

25 MS. DESKINS: (Shakes head in the negative.)

1 MR. ROWER: We're okay.

2 JUDGE CLIFTON: All right. Anything
3 further, Mr. Beshore?

4 MR. BESHORE: We have nothing.

5 Thank you for your conduct of the hearing,
6 Your Honor.

7 JUDGE CLIFTON: This has been a remarkable
8 hearing. I am amazed at the amount of
9 information that was brought together so quickly.
10 I'm also amazed at the workload of the Market
11 Administrators. I'm glad I'm not one.

12 (Laughter)

13 JUDGE CLIFTON: I thank you all.

14 MS. DESKINS: Thank you, Judge Clifton.

15 JUDGE CLIFTON: You're welcome.

16 We'll adjourn now at 4:10.

17 (Whereupon, the hearing was adjourned at
18 4:10 p.m.)

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C E R T I F I C A T E

G E O R G I A:
GWINNETT COUNTY:

I hereby certify that the foregoing proceeding was taken down, as stated in the caption, and the testimony thereto were reduced to print under my direction; that the foregoing pages 1 through 268 represent a true, correct, and complete transcript of the evidence given upon said hearing.

This the 13th day of October, 2004.

Karla T. Pittman, RPR, CCR B-1987