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GRIEVANCE BOARD

UNITED STATES DEPARTMENT OF AGRICULTURE

IN RE:

UPPER MIDWEST

Docket No. AO-361-A35

MILK MARKETING ORDER

DA-01-03

Hearing held on the 27th day of June 2001

at Radisson Hotel South & Plaza Tower

7800 Normandale Boulevard

Bloomington, MN

TRANSCRIPT OF PROCEEDINGS

BEFORE: THE HONORABLE JILL CLIFTON

APPEARANCES:

GREGORY COOPER, ESQUIRE, GINO TOSI, CHARLES ENGLISH,
ESQUIRE, MARVIN BESHORE, ESQUIRE, JOHN VETNE, ESQUIRE,
SYDNEY BERDE, RICHARD LAMERS, JOHN JETER, ROBERT BROOKS,
ELVIN HOLLON, DENNIS TONAK, MIKE REINKE, NEIL GULDEN,
WILLIAM VAN DAM, JOHN UMHOEFER, VICTOR HALVERSON

York Stenographic Services, Inc.

34 North George St., York, PA 17401 - (717) 854-0077

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P R O C E E D I N G S

June 27, 2001

1
2
3 ADMINISTRATIVE LAW JUDGE: Let's go on record.
4 Is mic loud enough this morning? It sounds a little
5 different from yesterday. Can you hear me in the back?

6 UNIDENTIFIED SPEAKER: Yes.

7 ADMINISTRATIVE LAW JUDGE: Good.

8 UNIDENTIFIED SPEAKER: Yes.

9 ADMINISTRATIVE LAW JUDGE: Okay. -- All right.
10 -- this record is being made in Bloomington, Minnesota.
11 This is the second day of our Hearing. It's June 27,
12 2001. We're beginning at 9:13 this morning. I
13 apologize for starting us a little late, I know we have
14 lots of ground to cover today. Mr. English, I'm told
15 that there are witnesses available that you would like
16 to call at this time. Is that correct?

17 MR. ENGLISH: As I indicated yesterday, Your
18 Honor, there are two witnesses that would like to
19 testify this morning. One has come in from California
20 last evening and it would be terribly convenient if he
21 could testify first this morning. And I've consulted
22 with Mr. Beshore who would be the next person upon on
23 Proposal 4. It seems to me to make sense because they
24 address all the proposals, but especially Proposal 1.

25 ADMINISTRATIVE LAW JUDGE: And...

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1 MR. ENGLISH: So I would like to call Mr....

2 ADMINISTRATIVE LAW JUDGE: ...Mr. Beshore,
3 that's fine with you?

4 MR. BESHORE: Yes, yes, we agree with the
5 procedure.

6 ADMINISTRATIVE LAW JUDGE: Very fine. Thank
7 you. Mr. English, you may call.

8 MR. ENGLISH: Actually Mr. Jeter is here on
9 his own behalf but I thank him for coming and Mr. Jeter
10 from Hilmar Cheese would be the next witness.

11 ADMINISTRATIVE LAW JUDGE: Thank you. Mr.
12 Jeter, if you would sit in the witness chair in order to
13 identify yourself into the microphone and then I'll
14 swear you in. Please not only state your names but
15 spell them and then identify either the party whom you
16 represent, or where you work, or some other identifying
17 information and then I'll swear you in.

18 MR. JETER: My name is John Jeter and I'm
19 Chief Executive Officer and President of Hilmar Cheese
20 Company and my name is spelled J-e-t-e-r.

21 ADMINISTRATIVE LAW JUDGE: Thank you. Would
22 you stand and raise your right hand please?

23 ***

24 [Witness sworn]

25 ***

1 ADMINISTRATIVE LAW JUDGE: Thank you. You may
2 be seated.

3 MR. ENGLISH: Your Honor?

4 ADMINISTRATIVE LAW JUDGE: Mr. English.

5 MR. ENGLISH: Attached to Mr. Jeter's
6 statement and already to the Court with three copies to
7 the Court Reporter and as many copies have been
8 distributed, are two attachments. I'd ask that they be
9 marked as the next exhibit. They're Attachments A and B
10 to his testimony.

11 ADMINISTRATIVE LAW JUDGE: I'd ask the Court
12 Reporter to tell me what number that will be.

13 COURT REPORTER: Number 35.

14 ADMINISTRATIVE LAW JUDGE: All right. That
15 will be Exhibit 35 and it is so marked. Those two
16 attachments are so marked.

17 MR. ENGLISH: Mr. Jeter?

18 ***

19 JOHN JETER,
20 having first been duly sworn, according to the law,
21 testified as follows:

22 MR. JETER: My name is John Jeter and I'm
23 Chief Executive Officer and President of Hilmar Cheese
24 Company whom I represent today at this Hearing. Hilmar
25 Cheese Company operates a cheese and whey products

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1 facility in Hilmar, California. The majority of Hilmar
2 Cheese Company's production is American natural cheeses
3 including Cheddar, Monterey Jack, Colby, and Pepper
4 Jack. We market cheese throughout the United States. I
5 am testifying today in support of the proposals to limit
6 the ability of handlers to pool milk under the Upper
7 Midwest Order that is already pooled on a State Order.
8 Federal Orders prohibit double dipping between Orders,
9 they should also prohibit the practice between Federal
10 and State Orders. Dairymen in California already
11 participate in a market pool. California dairy
12 producers by their own choice have a regulated milk
13 pricing and pooling system that includes quota. That
14 does not mean however that non-quota dairymen do not
15 share in all markets. Let me explain how the California
16 Milk Pooling System works. All dairymen producer Grade
17 A milk for sale to a pool plant are associated with the
18 pool and share in revenues generated from sales of milk
19 in all classes. Pool plants are those plants with
20 either direct or derive usage in Class I fluid products
21 and two, cultured products. Plants that manufacture
22 products in Class III, frozen products, and Class 4-A,
23 butter and milk powder, or Class 4-B, cheese, are not
24 required to be pooled. However, most of the plants
25 elect to participate in the pool so that their dairymen

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1 can participate in pool proceeds coming to them through
2 the overbase and quota prices. These plants become part
3 of the pool by diverting some of their plant milk
4 receipts to Class I or Class II uses. Producers are
5 paid on the basis of the milk components they ship and
6 on the proportion of their milk sales that are covered
7 by their holdings of pool quota. Separate pool prices
8 are established for fat and solids not fat. The
9 calculation of pool fat prices is quite straightforward.
10 The total butterfat revenue from all milk classes is
11 adjusted for transportation credits which apply to
12 certain plant to plant milk shipments. The revenue that
13 remains after the adjustment is then divided by the
14 total butterfat pounds in the pool. The resulting price
15 becomes the quota base and overbase fat price for the
16 month. Thus all producers share equally in the milkfat
17 revenues generated by sales in the various milk classes.
18 The calculation of prices for nonfat solids is slightly
19 more complicated. The total revenue generated from
20 solids not fat sales in all classes, including revenue
21 from Class I fluid carrier, is first adjusted to pay for
22 transportation allowances and credits. The remaining
23 revenue is reduced by the total value of the quota
24 premium pool. The quota premium pool value is
25 determined primarily by the pounds of solids not fat

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1 quota shipped multiplied by a quota premium of 19-and-a-
2 half cents per pound of non fat solids, and that's an
3 amount equal to \$1.70 per hundredweight of milk. After
4 deducting the value of the quota premium pool from the
5 adjusted solids not fat pool revenue, the remaining
6 revenue is divided by total pounds of solids not fat to
7 obtain the overbase and base solids not fat price. The
8 quota solids not fat price is equal to the overbase
9 price plus 19-and-a-half cents per pound. Under the
10 California Milk Pooling System all dairymen in the pool
11 receive a portion of the revenue from milk sales in all
12 classes. While dairymen who hold significant quantities
13 of quota receive more dollars than those who hold little
14 quota, all dairymen share to some degree in the revenues
15 generated by milk sales in higher classes. Those
16 dairymen should not then also have the opportunity to
17 share in pool dollars from a Federal Order. If some
18 California dairymen or their cooperatives feel that they
19 are mistreated by the California Pooling System, we
20 point out that our system was put in place with the
21 consent of the dairymen and the State. Our system is
22 not new. California's pooling laws have been effective
23 since 1969. The current method by which revenues from
24 the various milk classes are shared has been in place
25 since 1993. Our pooling system is part of the dairy

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1 industry landscape that we all deal with, so it seems
2 odd to us that some would seek to capture milk pool
3 revenues from another part of the country, while at the
4 same time collecting pool revenues in California. We
5 have attached two tables to this testimony to further
6 illustrate our reasons for opposing double dipping.
7 Appendix A compares the California overbase price to the
8 California 4-B or cheese price. It also compares the
9 Upper Midwest blend price for Hennepin County, Minnesota
10 with the Federal Order Class III or cheese milk price.
11 For the 17-month period starting with the new reformed
12 Orders, the overbase price has averaged \$11.21, \$1.03
13 over the California 4-B milk price. However, the Upper
14 Midwest price for Hennepin County is only 73 cents
15 higher than the Federal Order Class III price at
16 reference test. Note that the California overbase price
17 has averaged nearly 22 cents above the Upper Midwest
18 Statistical Blend Price despite the use of a quota
19 system in California. As you can see, California
20 overbase producers already benefit significantly from a
21 diverse product pool. For quota milk the California
22 price advantage is an additional \$1.70 higher per
23 hundredweight. The inequity to Upper Midwest producers
24 resulting from the pooling of California milk in both
25 the California State Order and the Upper Midwest Federal

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1 Order is further demonstrated in the Attachment B to
2 this testimony. This table shows the dramatic advantage
3 that California overbase milk has when pooled both in
4 California and the Upper Midwest. The first section
5 compares the Upper Midwest Federal Order Producer Price
6 Differential for Cook County, Illinois, Hennepin County,
7 Minnesota, and Glenn County, California. Glenn County
8 is 90 minutes North of Sacramento and happens to be the
9 location for a dairy plant that has pooled on the Upper
10 Midwest Federal Order. Both Hennepin County and Glenn
11 County have had the same Producer Price Differentials
12 because their Class I differential of \$1.70 is the same
13 in both markets and a dime lower than the Chicago
14 differential of \$1.80. Under Federal Order rules the
15 Producer Price Differential is adjusted by the
16 difference in Class I differential between the two
17 counties being compared. In the case of both Hennepin
18 and Glenn Counties that equals ten cents less than
19 Chicago, the base point the Upper Midwest Federal Milk
20 Marketing Order. The fourth and fifth columns on this
21 table list the California overbase price and the double
22 pooled milk price for Glenn County. The final three
23 columns show the Upper Midwest blend price for Hennepin
24 County, and the comparisons to the overbase, and double
25 pooled milk price for Glenn County. The final three

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1 columns show the Upper Midwest blend price for Hennepin
2 County and the comparisons to the overbase and double
3 pool milk price. The collection of both the California
4 overbase price and the Federal Order Producer Price
5 Differential on this California milk that is pooled but
6 not delivered on the Upper Midwest Federal Milk
7 Marketing Order results in a net price on this
8 California milk that is 95 cents higher than the Upper
9 Midwest blend price. The second pooling of this already
10 pooled milk has only further augmented the already
11 higher average price of the California overbase -- of
12 California overbase milk by drawing money from a market
13 with already lower milk prices and at the expense of
14 these Upper Midwest producers. Hilmar Cheese Company is
15 an innovative company. We have developed a reputation
16 for challenging the system, creating competition, and
17 ultimately adding value to the benefit of everyone
18 involved. Double dipping is not the type of innovation
19 that creates real value. It moves money, distorts,
20 discourages, and ultimately damages the industry. We at
21 Hilmar Cheese Company have had the opportunity to double
22 dip in Federal Order pools. We have the largest private
23 supply of milk in the western United States. Although
24 it could have meant millions of dollars of additional
25 revenue, we have chosen not to double dip because our

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1 Board of Directors feels that is not logical and is not
2 fair. Therefore, we support eliminating the ability of
3 handlers to pool milk that is already being pooled in a
4 State Order from pooling it in a Federal Order. Thank
5 you very much.

6 ADMINISTRATIVE LAW JUDGE: Thank you, Mr.
7 Jeter. Those who would like to question Mr. Jeter. Mr.
8 English, you may begin.

9 ***

10 BY MR. ENGLISH:

11 Q. Thank you, Mr. Jeter, for your testimony.
12 A couple of questions. First if you could, describe
13 briefly your experience in the dairy industry.

14 A. Mine personally?

15 Q. Personally, yes.

16 A. I've worked for Hilmar Cheese Company 17
17 years in starting the company and been primarily in the
18 position I'm in now. Prior to that I was in the
19 specialty dairy business for about a half dozen years.

20 Q. And was that specialty dairy business
21 also in California or...

22 A. Yes, it was.

23 Q. Have you in those years of experience
24 become especially familiar with the California
25 Stabilization Plans and Pooling Plan?

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1 A. Yes, I think so.

2 Q. Would it be fair to say that you've
3 testified at a number of California Department of Food
4 and Agriculture Hearings...

5 A. Yes, I have.

6 Q. ...regarding those plans?

7 A. Yes.

8 Q. Yesterday we heard testimony that
9 California -- or from a witness for Land O'Lakes,
10 "California does not have a marketwide pool." Could you
11 comment on that testimony?

12 A. My first thought is I disagree that. I
13 think we have a marketwide pool as I testified in my
14 testimony, yes.

15 Q. Another statement made by the Land
16 O'Lakes witness was that proceeds from fluids and soft
17 use are paid to producers on the basis of quota equity
18 and are not distributed marketwide.

19 A. That's not accurate.

20 Q. A third statement from the Land O'Lakes
21 witness was that overbase (non-quota milk) is priced
22 based on manufacturing values. Could you comment on
23 that?

24 A. It probably would be accurate to say it's
25 primarily based on that, but you can just by looking at

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1 those prices, the overbase price is not just from
2 proceeds out of manufactured products. It's blended
3 proceeds and typically it's higher than the average or
4 the proceeds from those two pools, so it demonstrates
5 that it also receives proceeds from Class I and II
6 products as well. And that was probably further in 1993
7 when we went to a fixed differential of \$1.70 between
8 the quota and the overbase prices.

9 Q. There was also testimony that -- at least
10 as to Land O'Lakes, that money received through the
11 pooling of milk on the California and Federal Order 30
12 are not being distributed to members in California --
13 Land O'Lakes members in California. Do you have any
14 knowledge with what may be happening with respect to
15 whether it's Land O'Lakes or any other entities who may
16 be practicing this in California?

17 A. In other words is that money coming out
18 of the Midwest going into California?

19 Q. Yes.

20 A. You know, we have seen monies coming to
21 some producers and I haven't really seen it happen with
22 Land O'Lakes but I've seen it with other cooperatives.
23 What we believe to be monies coming in from out of
24 state. In other words a separate check coming in to
25 those producers. And so, you know, it's our belief that

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1 that's what it is. It's hard to determine that
2 accurately.

3 Q. Thank you, sir.

4 ***

5 ADMINISTRATIVE LAW JUDGE: Thank you, Mr.
6 English. Further questions? Yes, Mr. Lamers?

7 ***

8 BY MR. LAMERS:

9 Q. Just out of curiosity, sir. I know you
10 didn't testify to this, but in California are the Class
11 II and Class I wholesale prices regulated?

12 A. Now by wholesale...

13 Q. Prices for finished product to...

14 A. No, they aren't.

15 Q. ...the stores?

16 A. Only they're subject to what we call the
17 Unlawful Practices Act, which means they cannot be sold
18 below cost. So there are regulations that deal with
19 that but they are not regulated prices...

20 Q. Not as there is...

21 A. ...wholesale level.

22 Q. Yes, not as there is for example in the
23 State of Pennsylvania?

24 A. Well, I'm not familiar with that state.

25 Q. Yes. -- Okay. -- thank you.

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ADMINISTRATIVE LAW JUDGE: Thank you, Mr. Lamers. Additional questions? Yes, Mr. Beshore?

BY MR. BESHORE:

Q. Mr. Jeter, just so the record's clear, you do not have -- you made some comments, which I think you identified as conjecture, and I want to make sure we're clear about that. You made some comments about the sources of -- about other cooperatives, producer payments and paychecks in California. You do not have any personal knowledge of the sources of those funds do you?

A. No.

Q. Okay. Now is your position -- your experience has been, if I understood correctly, in the California system. Correct?

A. Yes.

Q. Okay. And you've testified in California Hearings, but you've not been involved to a great extent in Federal Market Order proceedings. Correct?

A. That's right.

Q. Okay. Now in the California system you have to participate in the pool in California you have performance requirements as I heard them described. Is

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1 that correct?

2 A. Yes.

3 Q. And your cheese plant is required to
4 deliver a given portion of its receipts to fluid
5 distributing plants in order to participate in the pool.
6 Correct?

7 A. That's right.

8 Q. Okay. So you earn your distributions,
9 whatever they may be, from the pool in California by
10 performance. Correct?

11 A. We qualify.

12 Q. By qualifying.

13 A. Yes.

14 Q. Okay. Now with respect to the interplay
15 between milk in California and milk in the Federal
16 system, is it your position that if California milk
17 performs pursuant to whatever the requirements may be in
18 Federal Order pools that it should be disqualified and
19 prohibited from participating in the revenues of those
20 pools?

21 A. Those pools meaning what?

22 Q. Federal Order pools.

23 A. If it qualifies if it...

24 Q. If it performs as the requirements --
25 let's just assume a Federal...

1 A. For the State of California or in Federal
2 Orders?

3 Q. For the Federal Order.

4 A. Okay.

5 Q. If milk in California meets the
6 performance requirements of a Federal Order pool is it
7 your position that that California milk should be
8 disqualified and prohibited from participating in the
9 revenues of those pools?

10 A. I think our concern is that if it's
11 participating in a California pool that that same milk
12 not be able to participate in a Federal Order pool.

13 Q. We cannot in this proceeding do anything
14 about the California regulations. You understand that?

15 A. I understand that.

16 Q. Okay. I mean, that's been a theme for a
17 number of years...

18 A. Sure.

19 Q. ...in Federal Order proceedings that the
20 State of California has a mind of its own. -- Okay.

21 A. Right.

22 Q. But the Secretary of Agriculture can
23 determine and does determine the regulations and the
24 requirements for participating in Federal Order pools.
25 So let me ask my question again. Is it your position

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1 that the Secretary of Agriculture should write a
2 regulation, which says that California milk producers
3 may not participate in Federal Order pools even if they
4 perform according to the requirements for participation
5 in those pools?

6 A. It's our position that if they're
7 participating in California pool they should not then be
8 able to also participate in a Federal Order pool.

9 Q. Okay. And, therefore, you are asking the
10 Secretary of Agriculture to disqualify California milk
11 from participating in Federal Order pools if the State
12 of California has determined that it must participate in
13 California pools?

14 A. The must participate in California pools
15 confuses me, your last comment. That, I'm not...

16 Q. Well...

17 A. I'm not trying to dodge your question, I
18 just...

19 Q. Okay.

20 A. California milk does not have to
21 participate in a California pool it chooses to.

22 Q. Okay. So it can voluntarily disassociate
23 itself?

24 A. That's right.

25 Q. Under what conditions? I mean, if you

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1 wanted to take your cheese plant out of the California
2 Order, what would you have to do to do that?

3 A. We actually can do it month by month by
4 not qualifying -- Okay. -- and by default then we would
5 not have pool proceeds and be able to take pool proceeds
6 out. We can also -- I think individual dairymen can
7 make elections to drop out of the pool even though
8 they're Grade A milk, they can be a non-pool Grade A
9 producer and they can make a choice, and they can do it
10 one time each year. It's January 1 of each year.

11 Q. Okay. So each year any dairy farmer has
12 got to make a choice by January 1 whether he's going to
13 be in or out for the whole year?

14 A. Yes. That's right. And they did that to
15 stop dairymen from going in and out on a month by month
16 basis depending on what was higher. They felt that was
17 inappropriate.

18 Q. Okay. So it's your position in this
19 Hearing that if a dairymen in California elects to
20 participate in the California pool for the year, that
21 even if then performs under a Federal Order, that is
22 meets the producer qualifications under a Federal Order
23 pool, that he should be prohibited from sharing in the
24 blend proceeds of that Federal Milk Order pool?

25 A. If they are in fact participating in the
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1 California State Order, that milk should not then be
2 allowed to participate in a Federal Order pool.

3 Q. Okay. And again even if it qualifies by
4 making whatever the qualifying deliveries are to that
5 Federal Order pool?

6 A. I think, yes.

7 Q. Okay.

8 A. Right.

9 ***

10 ADMINISTRATIVE LAW JUDGE: Thank you, Mr.
11 Beshore. Yes, Mr. Vetne?

12 MR. VETNE: John Vetne representing Kraft
13 Foods. Good morning, Mr. Jeter.

14 ADMINISTRATIVE LAW JUDGE: I think you will
15 need to raise it a bit.

16 MR. VETNE: Yes. -- Okay. -- is that better?

17 ADMINISTRATIVE LAW JUDGE: Yes. Thank you.

18 ***

19 BY MR. VETNE:

20 Q. Mr. Jeter, does your plant, you know, you
21 talked about private milk supply, that means independent
22 producers, non-cooperative milk?

23 A. Non-cooperative, yes.

24 Q. Does your plant also receive milk from a
25 cooperative?

1 A. Yes, we do.

2 Q. Is that cooperative milk supply qualified
3 by the cooperative in the pool through their own plants
4 or performance?

5 A. I believe so.

6 Q. Okay.

7 A. Right.

8 Q. You discussed but did not describe
9 California performance or association. Is your plant
10 pooled because of an expressed declared willingness to
11 supply the Class I market. Is that the way it works?

12 A. So we have to supply it.

13 Q. And sometimes you are called upon to
14 supply?

15 A. There are call provisions in the Order.
16 In my 16 years I think we've been called on once usually
17 with those call provisions they're there almost like a
18 stick and, you know, you need to do it before you're
19 called. And so generally that just takes place through
20 the market place, yes.

21 Q. Is your system of qualification in
22 California a handler aggregate supply qualification or
23 is it does an individual producer have to ship to Class
24 I outlets.

25 A. It's a handler qualification.

1 Q. Okay. So you choose when that happens
2 Hilmar must market the milk to a Class I outlet and you
3 choose the producers that you want to supply that Class
4 I outlet?

5 A. Yes, we do business with Class I or II
6 outlets and then actually the proceeds come back to all
7 of our producers based on our qualification in
8 aggregate. And proceeds come back from the State Pool
9 literally with names and dollars on them. So it's not
10 like we then have a choice what to do with those
11 proceeds. We're told what to do with those proceeds and
12 then we're to do it and then we're checked that we do
13 it.

14 Q. By proceeds when Hilmar makes a sale to a
15 Class I plant, does the Class I utilization from that
16 sale or Class II utilization come back to Hilmar to
17 account to the State Pool?

18 A. Yes.

19 Q. Okay. And that then in turn is factored
20 in what you may draw from the pool or what you may have
21 to pay into the pool in order that your producers may
22 get individually quota or overbase on their quota and
23 overbase holdings. Is that correct?

24 A. Yes.

25 Q. You discussed in response to one question

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1 a sale below cost provision, that's essentially a
2 mandatory mark-up of some kind although the price isn't
3 defined. There must be a mark-up so that the processor
4 recovers costs as defined in certain regulations.

5 A. That law goes way back -- Okay. -- it's
6 just designed -- I'm not sure why it's there actually.
7 I don't want to explain why, but there's a prohibition
8 against selling below cost, although there are
9 allowances to meet the competition. So it's subject to
10 that.

11 Q. Okay. Bear with me for one minute. We
12 talked about this before the Hearing began. I had
13 something and it went away.

14 A. You forget.

15 Q. Does Hilmar supply the same quantity of
16 milk to a Class I or II outlet on a monthly basis?

17 A. No, it changes from month to month.

18 Q. And what makes it change?

19 A. The bottler requirements.

20 Q. Okay. Are you committed to certain
21 customers?

22 A. Do you mean cheese customers or fluid...

23 Q. No, to fluid and Class II customers.

24 A. We have relationships with various
25 customers, bottlers, and...

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1 Q. Do you market...

2 A. ...to various things.

3 Q. Do you market that milk independently or
4 through any other association?

5 A. Independently.

6 Q. Okay. When you make -- when Hilmar makes
7 a sale to a Class I customer of milk that would
8 ordinarily go into your cheese plant, do you make an
9 attempt to offset that volume by receipt of milk from
10 any other source into your cheese plant?

11 A. We run our business. I don't, I mean...

12 Q. Is that a yes? I mean...

13 A. We have cheese markets and we have fluid
14 markets and so we balance all that to make it work. One
15 of the things having a cheese plant is we have the
16 ability to make more one day and less the next and we
17 have a commitment to supply fluid markets.

18 Q. Let me refine the question. When you
19 supply the fluid markets, on occasion do you displace
20 milk that otherwise might go in there which in turn
21 finds a home in your cheese plant or somebody else's
22 manufacturing plant?

23 A. You know, I don't know.

24 Q. You don't know.

25 A. I don't know what that fluid bottler

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1 does, you know, I don't know what they do.

2 Q. Okay. The Class I and Class II
3 outlets...

4 ***

5 [Off the record]

6 [On the record]

7 ***

8 BY MR. VETNE:

9 Q. Does Hilmar sell or buy bulk milk
10 products and cream products from out of state sources or
11 to out of state sources? Do you sell bulk cream for
12 example or buy bulk cream from across the California
13 border?

14 A. Yes, in a cheese operation for instance
15 we generate a lot of whey cream and we generate a lot of
16 whey cream. So we sell that various places.

17 Q. Okay. And sweet cream, do you sell or
18 buy?

19 A. Yes, but very little really and -- very
20 little.

21 Q. Does Hilmar purchase bulk condensed milk
22 to standardize its tanks before introducing milk into
23 the vat?

24 A. Yes, we do.

25 Q. Okay.

1 A. Condensed skim.

2 Q. Okay. And...

3 A. And condensed, yes.

4 Q. Condensed skim is what I meant but and
5 condensed whole milk?

6 A. Uh-hum.

7 Q. Okay.

8 ***

9 ADMINISTRATIVE LAW JUDGE: That was a yes?

10 MR. JETER: Yes.

11 ***

12 BY MR. VETNE:

13 Q. Okay. Is that exclusively from
14 California condensed suppliers or does that also come
15 some from out of state?

16 A. I think it's exclusively from California
17 suppliers.

18 Q. Okay.

19 A. And to my knowledge I'm not sure we've
20 ever brought cream in from out of state, I don't think
21 we've done that.

22 Q. And that condensed milk or condensed skim
23 is also subject to pricing and pooling under the
24 California system...

25 A. Yes, it is.

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1 Q. ...with the allocation of use going back
2 to the supplier of the condensed skim or condensed milk?

3 A. Yes, it's priced based on its ultimate
4 use, the product it goes into, yes.

5 Q. Okay. Thank you. That's all I have.

6 ***

7 ADMINISTRATIVE LAW JUDGE: Thank you, Mr.
8 Vetne. Mr. English?

9 ***

10 RECROSS EXAMINATION

11 BY MR. ENGLISH:

12 Q. One follow-up question from questions
13 from Mr. Beshore. He discussed with you milk that would
14 perhaps perform under Federal Order provisions. And
15 ignoring what that means for a moment, I think perhaps
16 because you don't do it another option might have been
17 left out about California milk that ends up not being
18 pooled. Regardless of what a producer has elected to
19 do, if a producer or a cooperative on that producer's
20 behalf acting as a handler on that milk, directly ships
21 that milk from the California dairy ranch out of state,
22 that milk also is not pooled on the California system.
23 Correct, sir?

24 A. You know, I don't really know the answer
25 to that, we've just never done that.

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1 Q. Okay.

2 A. So I...

3 Q. But if CDFA testified about that that
4 could contentiously be another option of how that could
5 happen. Correct?

6 A. I would trust their -- yes, I think I'm
7 sure they're accurate.

8 Q. Thank you, sir.

9 ***

10 ADMINISTRATIVE LAW JUDGE: Mr. Beshore?

11 ***

12 BY MR. BESHORE:

13 Q. One other question, Mr. Jeter. Have you
14 proposed in California that the State regulations be
15 changed to prohibit the pooling in California of milk
16 which is also pooled on a Federal Order?

17 A. Not to my knowledge, no.

18 Q. Why not? If it's creating a problem in
19 California why would you not propose to solve it in
20 California?

21 A. You know, believe it or not our primarily
22 problem with this is taking money from other producers
23 in other areas that is generated in their area. So to
24 say it's a problem, I mean, we just basically have a
25 problem with this. I think that could be an avenue but

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1 generally the California State system has very little to
2 do with what goes on outside of their system. In other
3 words...

4 Q. Well, wouldn't -- so your concern is
5 primarily out of the goodness of your heart for the
6 producers in the Upper Midwest. Is that so?

7 A. You know, while I get the tone of your
8 question, I mean, we're dead serious about that. We
9 think that...

10 Q. When did you come...

11 A. ...our owners...

12 Q. When did you come to that concern in
13 California?

14 A. I know you probably look at us as a --
15 yes, we just have a concern for dairymen. Our company
16 was founded to pay dairymen more and we're very serious
17 about that. We've various times gone out of our way to
18 facilitate good competition that adds value to dairymen
19 in other parts of the country and I can give you
20 specific examples.

21 Q. Okay. But back to my point of departure,
22 you have not proposed to change the California
23 regulations to solve the...

24 A. No.

25 Q. ...solve the problem there?

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1 A. No.

2 Q. But that, you know, you could do that and
3 that would address the problem in California.

4 A. I think...

5 Q. Would it not?

6 A. I think it can be addressed right here.

7 Q. But it could be addressed in California
8 could it not?

9 A. I don't know that, I really don't. I
10 don't know that it could be done in California. I think
11 this is the avenue that should be used to address this
12 issue.

13 Q. Thank you.

14 ***

15 ADMINISTRATIVE LAW JUDGE: Thank you, Mr.
16 Beshore. Other questions for Mr. Jeter? Yes.

17 MR. VETNE: I remember.

18 ADMINISTRATIVE LAW JUDGE: Mr. Vetne.

19 ***

20 BY MR. VETNE:

21 Q. I remember. I was playing for time there
22 for a minute. On occasion in the past, well, let me
23 start it this way. The Class I and II prices in
24 California have traditionally been fixed for a couple
25 months into the future. Is that correct?

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1 A. I think so.

2 Q. Okay. Yes. Class 4-B prices as well as
3 Class 4-A prices, moving on the basis of the market,
4 have on occasion been at or greater than a Class I
5 price, which...

6 A. That's correct.

7 Q. Okay. And on those occasions if you
8 could it would have benefited your company to opt your
9 plant out of the pool. Correct?

10 A. Actually it would have benefited our
11 producers.

12 Q. Your producers. Did you do so?

13 A. No.

14 Q. Okay. And on those cases you, instead of
15 having a pool draw, you made a pool contribution?

16 A. Yes, but back to -- the law says you can
17 only do it once a year so we really can't go month to
18 month and move in and out of the pool.

19 Q. The once a year applies both to plants as
20 well as to producers?

21 A. Yes, I believe so and it used to be that
22 producers could move in and out month to month, and they
23 would do it by just dropping their Grade A permits and
24 going Grade B.

25 Q. Okay. In response to an earlier question

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1 you opined that the overbase price is derived primarily
2 from manufacturing revenues. Do you recall?

3 A. Yes.

4 Q. Okay. Would it be fair to say that a
5 relationship between the overbase price and
6 manufacturing revenues comes in large part because
7 manufacturing milk plays such a large percentage of the
8 California pool, it's something like 70 percent or so
9 isn't it?

10 A. Yes.

11 Q. Okay.

12 A. But in a time when there's a precipitous
13 drop in manufactured product prices, and the Class I
14 price has been priced high on previous months,
15 manufacturer prices, you get a big spread between Class
16 I and IV.

17 Q. True.

18 A. Class IV.

19 Q. But you don't get any additional spread
20 between quota and overbase?

21 A. No, and so that means that the overbase
22 price in those times gets a significant proceeds out of
23 -- the overbase price gets significant proceeds out of
24 the Class I and II markets.

25 Q. Okay. And the quota price is in effect

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1 funded by Class IV?

2 A. You mean at that point?

3 Q. Yes.

4 A. In part, yes.

5 Q. Yes. Thanks.

6 ***

7 ADMINISTRATIVE LAW JUDGE: Thank you, Mr.

8 Vetne. Mr. Berde?

9 ***

10 BY MR. BERDE:

11 Q. Mr. Jeter, you testified in response to a
12 question of Mr. English that you thought that the Land
13 O'Lakes witness statement that California does not have
14 a marketwide pool was incorrect.

15 A. Right.

16 Q. Do you recall that?

17 A. That's right.

18 Q. You also testified as I recall that when
19 you receive funds from the California pool for
20 distribution to producers that the amount and the name
21 of each producer is specified. Is that correct?

22 A. To us, yes.

23 Q. Yes. And the distribution, the form of
24 the distribution to the producers, varies, does it not,
25 based upon the amount of quota in relation to production

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1 held by each individual producer?

2 A. Yes.

3 Q. So a producer with 100 percent of his
4 production and quota would receive a higher price than a
5 producer with no quota?

6 A. That's right.

7 Q. Is that correct?

8 A. Yes.

9 Q. And it is that arrangement that in your
10 term you would describe as marketwide pooling?

11 A. Boy, I'm -- it's, I mean, it's not that
12 simple, I mean, that's one of the mechanisms that I
13 would describe as marketwide pooling, yes.

14 Q. But you call that marketwide pooling even
15 though the blended value of the classified value blended
16 is not uniformly distributed to all producers.
17 Nonetheless you would refer to that as marketwide
18 pooling.

19 A. Yes, and I think if you just look at the
20 pool calculation, I don't know if the State individuals
21 that were here demonstrated that, but literally there,
22 you know, there is one pool and then there's an amount
23 that's aggregated out that represents quota and there is
24 one pool that's spread across the entire market. And...

25 Q. You would agree would you not that your

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1 concept...

2 ***

3 ADMINISTRATIVE LAW JUDGE: Just a moment, Mr.
4 Berde. I don't think he was quite finished.

5 MR. BERDE: I'm sorry.

6 MR. JETER: I was finished. That's okay.

7 ADMINISTRATIVE LAW JUDGE: All right.

8 ***

9 BY MR. BERDE:

10 Q. You would agree would you not that your
11 concept of marketwide pooling is vastly different from
12 the Federal Order concept of marketwide pooling?

13 A. I'm not familiar with Federal Order...

14 Q. No.

15 A. ...marketwide pooling.

16 Q. Thank you.

17 ***

18 ADMINISTRATIVE LAW JUDGE: Thank you, Mr.
19 Berde. Are there any other questions? Mr. Jeter, is
20 there anything else you'd like to add that you haven't
21 had the opportunity to express?

22 MR. JETER: No.

23 ADMINISTRATIVE LAW JUDGE: All right. No
24 further questions? Mr. Jeter, I thank you.

25 MR. JETER: Thank you.

1 ADMINISTRATIVE LAW JUDGE: You may step down.
2 Let's take about a five-minute break please.

3 ***

4 [Off the record]

5 [On the record]

6 ***

7 ADMINISTRATIVE LAW JUDGE: Mr. English, you
8 may call your next witness.

9 MR. ENGLISH: Robert Brooks from Marigold
10 Foods.

11 ADMINISTRATIVE LAW JUDGE: Mr. Brooks, would
12 you state and spell both your names please?

13 MR. BROOKS: Robert, R-o-b-e-r-t, Brooks,
14 B-r-o-o-k-s.

15 ADMINISTRATIVE LAW JUDGE: And would you
16 identify your representation here or your employment?

17 MR. BROOKS: I'm employed with Marigold Foods,
18 2929 University Avenue, Southeast, Minneapolis,
19 Minnesota.

20 ADMINISTRATIVE LAW JUDGE: All right. Would
21 you stand and raise your right hand please?

22 ***

23 [Witness sworn]

24 ***

25 ADMINISTRATIVE LAW JUDGE: Thank you. You may
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1 be seated. Mr. English?

2 MR. ENGLISH: Mr. Brooks has a statement but
3 no exhibits.

4 ADMINISTRATIVE LAW JUDGE: Thank you.

5 ***

6 ROBERT BROOKS,
7 having first been duly sworn, according to the law,
8 testified as follows:

9 MR. BROOKS: My name is Robert Brooks, I'm the
10 Director of Operations and the person in charge of raw
11 milk procurement for Marigold Foods, Incorporated, a
12 subsidiary of Wissaunen USA. Marigold operates five
13 fluid distributing plants regulated on Order 30, three
14 of which are under the name Marigold in Cedarburg,
15 Wisconsin, and Minneapolis and Rochester, Minnesota.
16 Oak Grove Dairy in Norwood Young America, Minnesota, and
17 Franklin Foods in Duluth, Minnesota. The future success
18 of Marigold Foods is inextricably linked to the welfare
19 of the dairy farmer in the Upper Midwest. We are
20 especially concerned because the California Order milk
21 is reducing dollars paid to those dairy farmers in this
22 market who serve the fluid milk plants. However, this
23 State Order milk is not even leaving the distant state
24 and is not available to serve local fluid milk needs.
25 We pay \$1.70 Class I differential on the overwhelming

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1 majority of our milk, on top of this we pay over order
2 premiums in order to assure ourselves of a supply of
3 milk. However the competitive the over order premiums
4 we are paying is not now enough to assure us of a milk
5 supply. Several of our suppliers have indicated a
6 financial need on their part to reduce shipments to our
7 fluid plants notwithstanding our already paying the
8 Class I differential and significant over order
9 premiums. One obvious reason for this problem is the
10 fact that was shown by prior testimony. The Order 30
11 Producer Price Differential is being reduced by ten to
12 15 cents per hundredweight as a result of milk being
13 pooled both on this Federal Order and on California's
14 State Order. With all due respect that ten to 15 cents
15 is funded by the Class I fluid milk operations such as
16 Marigold. Those funds are supposed to go to the dairy
17 farmers who serve or are available as needed to serve
18 the fluid milk market. We compete for a milk supply
19 with procurers of milk who are regulated by another
20 Order and with entities who are obtaining these funds
21 obtained out of pooling the California milk on this
22 Federal Order. This is inequitable and leaves us at a
23 disadvantage. To permit farmers not serving the fluid
24 milk market and who simultaneously are able through a
25 regulatory loophole to receive funds from the Order 30

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1 pool and benefit from a statewide equalization pool is
2 unjust and contrary to the purposes of the Agricultural
3 Marketing Agreement Act to bring forth an adequate
4 supply of milk to meet fluid needs. USDA should move
5 promptly to close this regulatory loophole, we support
6 these efforts to restore equity to the Upper Midwest
7 farmers, and ensure that the money we pay for milk is
8 shared among farmers who serve or are available to serve
9 the fluid market in the Upper Midwest. Our dairy
10 farmers deserve to know that the money Marigold pays for
11 the milk is actually being received by them. This
12 completes my statement.

13 ADMINISTRATIVE LAW JUDGE: Thank you, Mr.
14 Brooks. Mr. English?

15 ***

16 BY MR. ENGLISH:

17 Q. Mr. Brooks, in your statement you
18 indicated that several of your suppliers are indicating
19 a need, a financial need, to reduce shipments to your
20 fluid plants. Is that a reduction that is going to take
21 place in the near term?

22 A. Yes.

23 Q. In July and August?

24 A. Yes.

25 Q. Is that from your perspective a situation

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1 that needs to be addressed immediately?

2 A. Yes.

3 Q. And so that would be a reason why you
4 believe the Secretary should address this matter on an
5 emergency basis?

6 A. That would be correct.

7 ***

8 MR. ENGLISH: I have no further questions of
9 this witness.

10 ADMINISTRATIVE LAW JUDGE: Thank you, Mr.
11 English. Mr. Beshore? Mr. Brooks, would you position
12 yourself a little closer to that microphone.

13 MR. BROOKS: Sure.

14 ADMINISTRATIVE LAW JUDGE: Thank you. Mr.
15 Beshore?

16 ***

17 BY MR. BESHORE:

18 Q. Mr. Brooks, you're aware I gather that
19 any milk pooled on Order 30 from distant locations
20 that's not available to supply your plant or other fluid
21 plants reduces the Producer Price Differential on Order
22 30 to your producers?

23 A. Yes.

24 Q. Not just California milk?

25 A. Yes.

1 Q. Okay. For instance, the milk in Idaho
2 that's being pooled on Order 30 has the affect on
3 reducing the Producer Price Differential the same on a
4 per hundredweight basis as the milk in California. You
5 understand that?

6 A. I agree.

7 Q. Okay. Do you know whether any of the
8 milk that's from Idaho available to make up the
9 shortfall you're going to have in supplying your plant
10 in July and August?

11 A. I do not.

12 Q. Would you be interested in procuring milk
13 from Idaho to Minneapolis, or Duluth, or Rochester?

14 A. To fill the fluid needs? It would be
15 nice to be able to procure it here in the Upper Midwest.

16 Q. Okay. And you'd prefer milk that's
17 closer to the -- in your natural milk shed?

18 A. Yes.

19 Q. Okay. Have you ever been supplied with
20 the milk from any of your plants with milk from Idaho?

21 A. Not to the best of my knowledge.

22 Q. Now with respect to the pending reduction
23 in supplies to your plant that some of your suppliers
24 have indicated if I understood your testimony correctly,
25 have you made any requests of the Market Administrator

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1 to increase the shipping requirements under the Order?

2 A. We've had discussions.

3 Q. Okay. So you're aware that there is
4 language in the Order that would allow the shipping
5 requirements to be increased if you're short of milk at
6 the fluid plants?

7 A. Yes.

8 Q. Thank you.

9 ***

10 ADMINISTRATIVE LAW JUDGE: Thank you, Mr.
11 Beshore. Other questions for Mr. Brooks? There appear
12 to be none. Mr. Brooks, you may step down. Thank you.
13 Mr. English?

14 MR. ENGLISH: I thank you, Your Honor. With
15 one procedural exception that closes I think Proposal 1.
16 It's totally up to the government. I understand that
17 Mr. Halverson, who said he would be available later in
18 the Hearing, has developed some evidence. I am content
19 to have that at any time in the Hearing and I'll leave
20 that up to the government as to when they would like to
21 put it in to the extent it is available.

22 MR. COOPER: And Mr. Halverson should be here
23 all day so we'll put him on later.

24 MR. ENGLISH: That's fine by me.

25 ADMINISTRATIVE LAW JUDGE: All right. For
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1 those of you who could not hear, Mr. Cooper said that
2 Mr. Halverson would be here all day so we could put in
3 on later. -- All right. -- Mr. Beshore, would you like
4 to proceed at this time?

5 MR. BESHORE: We would. Thank you, Your
6 Honor. I'd like to call Mr. Elvin Hollon as a witness.
7 And before Mr. Hollon actually testifies -- first of all
8 for everybody in the room, his statements we have as
9 many copies as we need of Mr. Hollon's statements and
10 the exhibits available in the back of the room if anyone
11 does not have them. We have a statement regarding
12 Proposals 1 through 4, which we would like to have
13 marked as an exhibit for the record and we have supplied
14 three copies to the Reporter for that purpose. In this
15 case we'd like to have Mr. Hollon's written statement
16 identified because for the sake of time he would propose
17 not to read all of it verbatim but to read much of it
18 for the record, but have the portions that he's not
19 going to read, many of which are extended excerpts from
20 the Final Decision of the Secretary in prior proceedings
21 in the so called Federal Order Reform proceeding. He's
22 not going to read all of those but we want to have them
23 in the record as part of the exhibit so that they are
24 with the record as if he had read them now. For that
25 purpose we would like to have the exhibit marked and be

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1 received into evidence along with his testimony.

2 ADMINISTRATIVE LAW JUDGE: Mr. Beshore,
3 everything you said sounded good to me until you said he
4 would read extensively from it. Does he need to do
5 that?

6 MR. BESHORE: Yes, he does.

7 ADMINISTRATIVE LAW JUDGE: Why? If it becomes
8 evidence then why is that? And there are copies for
9 everyone...

10 MR. BESHORE: Well...

11 ADMINISTRATIVE LAW JUDGE: ...then why is it
12 necessary for him to do that?

13 MR. BESHORE: So that we have the benefit,
14 that everyone participating has the benefit as we have
15 of all the other witnesses of them presenting the, you
16 know, the evidence in support of their position here
17 live from the witness stand and able to discuss it.
18 There are also a few particular technical corrections or
19 minor corrections to the text that need to be made and
20 would be made in the course of reading the statement.
21 He's going to cut down what he reads, but we would like
22 to have the same opportunity that all other participants
23 have had to present even pre-prepared testimonies,
24 everybody else has, to present it from the witness
25 stand. We're going to cut it down but we want to

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1 present the guts of it if you will.

2 ADMINISTRATIVE LAW JUDGE: Mr. Beshore, if you
3 were treated as all the others have been so far this
4 would be read but not be made an exhibit. Now I
5 actually...

6 MR. BESHORE: Well...

7 ADMINISTRATIVE LAW JUDGE: ...like your
8 proposal better. I actually like the proposal that the
9 statement be an exhibit and come into evidence that way
10 and not be read. That's actually a better way but I
11 really don't want extensive reading from this if it is
12 to be an exhibit.

13 MR. BESHORE: Well, I'll yield to Mr. English.

14 MR. ENGLISH: We actually have no objection to
15 Mr. Beshore's proposal. I think what he's actually
16 allowing us to do is to shorten some. I mean, actually
17 we'd like to have it shortened as much as possible just
18 in terms of the length. But having said that the
19 alternative is for him to not make it an exhibit and
20 read it all in and I think that we would benefit
21 greatly. I think this is a compromise, you know, that I
22 at least can live with. And I understand that it's
23 different from what's gone on before, obviously I'd
24 prefer we don't have 22 pages but we have what we have.
25 I do note that a lot of it is from the Final Rule, which

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1 has been officially noticed. And, therefore, is part of
2 the record already. But, you know, Mr. Hollon is
3 entitled to give his statement. So I at least think
4 that, you know, while I certainly prefer not to hear the
5 word extensively I'm hoping that he will, you know, kind
6 of shorten it dramatically. But I'm willing to except
7 the compromise, Your Honor.

8 ADMINISTRATIVE LAW JUDGE: All right. Thank
9 you, Mr. English. Mr. Vetne?

10 MR. VETNE: And I would agree. I think Marvin
11 used the word major portions and that doesn't
12 necessarily mean the majority to me and I would hope
13 that the summary emphasizes the high points and the rest
14 of it's in there. Thank you.

15 MR. BESHORE: Well, Mr. Hollon has a very
16 sharp editorial pen, which he has utilized in marking up
17 the text that he proposes to proceed from. And I
18 really, you know, we insist on him having the
19 opportunity to present whatever he needs to of his
20 direct testimony from the stand live as the other
21 witnesses have.

22 ADMINISTRATIVE LAW JUDGE: All right. Thank
23 you, Mr. Beshore. Any further comments? -- All right. -
24 - I yield in light of the professional courtesy shown
25 you, Mr. Beshore. Exhibit 35, which is the statement

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1 regarding Proposals 1 through 4.

2 MR. ENGLISH: Yes.

3 COURT REPORTER: Exhibit 36.

4 ADMINISTRATIVE LAW JUDGE: Is that thirty-six?

5 -- I'm sorry. -- thank you. Yes, Exhibit 36.

6 MR. ENGLISH: Your Honor, that may mean I
7 missed something. Could we ask...

8 ADMINISTRATIVE LAW JUDGE: Mr. Jeter's
9 attachment.

10 MR. ENGLISH: Yes, I move their admission.

11 ADMINISTRATIVE LAW JUDGE: Thank you. Are
12 there any objections to admission into evidence of
13 Exhibit 35, which were Mr. Jeter's attachments? There
14 being none, Exhibit 35 is hereby admitted into evidence.

15 MR. ENGLISH: Thank you, Your Honor.

16 ADMINISTRATIVE LAW JUDGE: Thank you, Mr.
17 English.

18 MR. ENGLISH: I would also like to have marked
19 preliminary to Mr. Hollon testifying as Exhibit 37 a
20 document, the cover page of which is titled exhibits for
21 Elvin Hollon, which is under one cover, a set of 11 maps
22 and tables, which Mr. Hollon will refer to in his
23 statement with respect to Proposals 1 and 4, and some of
24 which will be utilized in a later statement regarding
25 Proposal 5. And we have provided the Court Reporter

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1 with copies of the proposed Exhibit 37.

2 ADMINISTRATIVE LAW JUDGE: All right. And I'd
3 ask the Court Reporter, you've identified the maps as
4 Exhibit 37? -- All right.

5 MR. ENGLISH: And with that I would ask Mr.
6 Hollon to take the witness stand.

7 ADMINISTRATIVE LAW JUDGE: Mr. Hollon, if
8 you'd be seated while you state your name and so forth
9 so that that's clearly into the microphone and then I'll
10 ask you to stand again please.

11 MR. HOLLON: My name is Elvin Hollon.

12 ADMINISTRATIVE LAW JUDGE: And how do you
13 spell it?

14 MR. HOLLON: H-o-l-l-o-n....

15 ADMINISTRATIVE LAW JUDGE: And you...

16 MR. HOLLON: The first name, E-l-v-i-n.

17 ADMINISTRATIVE LAW JUDGE: All right. And
18 what is your representation here or your employment?

19 MR. HOLLON: I'm here representing Dairy
20 Farmers of America.

21 ADMINISTRATIVE LAW JUDGE: All right. Would
22 you stand and raise your right hand please?

23 ***

24 [Witness sworn]

25 ***

1 ADMINISTRATIVE LAW JUDGE: Thank you. You may
2 be seated.

3 MR. BESHORE: Okay.

4 ADMINISTRATIVE LAW JUDGE: Mr. Beshore?

5 ***

6 ELVIN HOLLON,
7 having first been duly sworn, according to the law,
8 testified as follows:

9 ***

10 BY MR. BESHORE:

11 Q. Okay. Mr. Hollon, before you proceed
12 with your truncated statement, could you just provide us
13 with a little -- with your professional background and
14 experience for the record please.

15 A. I've been employed by Dairy Farmers of
16 America or its predecessor since 1979. Over that time
17 period I've done economic analysis work, I've worked on
18 National Agriculture Policy through bought and sold milk
19 on a daily basis from East of the Rockies into the
20 Southeast and Southwest, dealt quite a bit with Federal
21 Milk Marketing Orders. I have participated in several
22 Hearings both in terms of writing, preparing, and
23 evaluating testimony and presenting testimony.

24 Q. Do you have degrees in higher education?

25 A. I have a degree in Dairy Products

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1 Manufacturing from Louisiana State University and a
2 Masters Degree in Agricultural Economics from Louisiana
3 State University.

4 Q. Okay. Your Honor, I would request that
5 Mr. Hollon be recognized as an expert in dairy marketing
6 qualified to provide his opinion and his testimony for
7 this Hearing record.

8 ***

9 ADMINISTRATIVE LAW JUDGE: Would anyone like
10 to voir dire the witness with regard to his expert
11 qualifications? Does anyone have any comment with
12 regard to whether he should be accepted as an expert for
13 this proceeding? Mr. Hollon, I do accept you as an
14 expert in the field of dairy marketing. Mr. Beshore?

15 MR. BESHORE: Would you proceed with your
16 statement, Mr. Hollon?

17 MR. HOLLON: Dairy Farmers of America, DFA, is
18 a member owned Capper-Volsted cooperative of 16,905
19 farms that produce milk in 45 states. DFA pools milk on
20 ten of the eleven Federal Milk Marketing Orders,
21 including the Upper Midwest Federal Order. DFA is an
22 ardent supporter of Federal Milk Marketing Orders and we
23 believe that without them dairy farmer's economic
24 livelihood would be much worse. Federal Orders are
25 economically proven marketing tools for dairy farmers.

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1 The central issue of this Hearing and at the very corps
2 of the purpose for Orders, that of providing for orderly
3 marketing, and economically justifying the appropriate
4 performance qualifications for sharing the marketwide
5 pool proceeds. If these issues are not addressed
6 properly system wide Orders could be jeopardize. That
7 would be detrimental to DFA members both in their day to
8 day dairy farm enterprises, and the fluid milk
9 processing investments that they have made. Summary of
10 Proposals for this Hearing. Dairy Farmers of America
11 has an interest in the proposals being heard at this
12 Hearing. These arguments have...

13 ***

14 [Off the record]

15 [On the record]

16 ***

17 MR. HOLLON: ...in any capacity. We share the
18 same interests with the proponents to Proposals 1, 2,
19 and 3 that the distant milk needs to have some limit and
20 definition that is workable and consistent system wide
21 with Federal Order policy. We do however have a
22 different concept of how best to achieve that end
23 result. Secondly we see the need to provide language
24 that would protect the pool from association of volumes
25 of milk with the Order through a silent loophole in the

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1 diversion language. Finally we feel that the level of
2 advanced payment at lowest prior months class price is
3 no longer a fair mechanism for setting the advanced
4 price.

5 ADMINISTRATIVE LAW JUDGE: Mr. Hollon, may I
6 interrupt you just a moment?

7 MR. HOLLON: Yes, ma'am.

8 ADMINISTRATIVE LAW JUDGE: If you'd look at
9 the first page of Exhibit 36 that you're reading from
10 and in the second line of the second paragraph it says,
11 "These amendments are being requested."

12 MR. HOLLON: Yes, ma'am.

13 ADMINISTRATIVE LAW JUDGE: And you testified,
14 "These arguments are being requested." Did you mean
15 amendments?

16 MR. HOLLON: Amendments. Yes, ma'am.

17 ADMINISTRATIVE LAW JUDGE: All right.

18 MR. HOLLON: Sorry.

19 ADMINISTRATIVE LAW JUDGE: Thank you.

20 MR. HOLLON: Please feel free to catch as many
21 of those as I make. With regard to Proposal 4, we note
22 that the underlying issue is not just a Local Order 30
23 issue. We have concerns identical to those expressed by
24 the other proponents here and by DFA members in the
25 Pacific Northwest, Western, Central, and Mideast Federal

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1 Orders. That milk from distant areas is pooling on the
2 Order and drawing down the blend price but not serving
3 the market in any regular form. We found this practice
4 detrimental to DFA members, DFA customers, and the
5 entire Federal Order system. We plan to express that
6 concern in other Federal Order Hearings and seek a
7 solution that is consistent and in line with Federal
8 Order principals. The central issue in each case is the
9 interface between the pricing surface altered by Federal
10 Order Reform and the pooling provisions found in each
11 Order. These relationships were changed by reform. The
12 link between performance and pooling was altered and
13 needs reviewed. Organizations including DFA and several
14 if not all of the remaining proponents of these
15 proposals here have moved quickly to take advantage of
16 these changes in Order rules. Indeed in the competitive
17 dairy economy if a competitor makes a pooling decision
18 that results in increased funds you must attempt to do
19 the same thing or face a more difficult competitive
20 position. Individual organizations cannot unilaterally
21 disarm. We think this process of extensive distant
22 market open pooling is inconsistent with Federal Order
23 policy and was disparaged in the reform record. We are
24 offering proposals and will be offering proposals in
25 other Order Hearings to reflecting that philosophy.

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1 Federal Order Reform. The Final Rule published on
2 September 1, 1999 in the Federal Register culminated the
3 Federal Order Reform process. It was a lengthy process
4 but produced needed beneficial results for the industry,
5 which could not have been accomplished without the
6 Informal Rule process. Through it the number of Federal
7 Orders was reduced from 31 Orders or marketing areas
8 down to eleven. It provided clear rules for what
9 constitutes a market. The pricing provisions were
10 improved, modernized, and made more uniform and
11 transparent across the Federal Order system. A more
12 common classification system and standardization of the
13 provisions common to all Orders was instituted. The
14 Option 1-A Differential surfaced a superior Class I
15 advanced price mechanism, the higher up mechanism in
16 common multiple component pricing provisions using
17 component pricing were valuable improvements to the
18 Federal Order program. Even though the process was
19 lengthy and thorough, the dairy industry is dynamic and
20 changing and we currently find that provisions to the
21 Order system need review and alteration. Areas that
22 need review include the pricing provisions that were
23 addressed in the Class III and IV Hearings held last
24 spring, Docket Number A-014 and A-069, et cetera. The
25 combination of an absolute versus relative price surface

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1 that we now have and is interfaced with the prevailing
2 pooling provisions is an issue that's now plaguing the
3 industry, it's being addressed at this Hearing. Federal
4 Order Benefits and Principles. Federal Orders offer
5 benefits to both the producers and handlers and have
6 always operated in a deliberate and organized manner
7 guided by basic economic principles. Two primary
8 benefits of Orders are to allow producers to gain from
9 the orderly marketing of milk and to share in the
10 proceeds of marketwide pooling. Orderly marketing
11 embodies principles of common terms and pricing that
12 attracts milk to move to the highest value to market
13 when needed and clears the market when not needed.
14 Marketwide pooling allowed qualified producers to share
15 in the return from the market equitably and in a manner
16 that provides incentives to supply the market in the
17 most efficient manner. The Concept of a Market.
18 Fundamental to Federal Order principles are the concepts
19 of a marketing area, or market, and the concept of
20 performance to the market in order to be qualified to
21 share in the returns from that market. The Federal
22 Order market statistics annual summary defines a
23 marketing area as, "A designated trading area within
24 which the handling of milk is regulated by the Federal
25 Order." In every set of Federal Order regulations,

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1 Subsection 2 defines the geographic area of the
2 Marketing Order. Federal Order Reform sought out
3 industry comment on marketing areas, it established
4 seven criteria for their establishment, and then used
5 these criteria to divide much of the lower 48 states
6 into eleven Federal Order markets. The criteria and the
7 Department's explanation of them taken directly from the
8 Final Rule are as follows: "The same seven primary
9 criteria as were used in the two preliminary reports and
10 the Proposed Rule were used to determine which markets
11 exhibit a sufficient degree of association in terms of
12 sales, procurement, and structural relationships to
13 warrant consolidation. The Final Rule explained the
14 criteria as follows: Overlapping Route Distribution.
15 The movement of packaged milk between Federal Orders
16 indicates that plants with more than one Federal Order
17 are in competition with each other for Class I sales.
18 In addition a degree of overlap that results in the
19 regulatory status of plants shifting between Orders
20 creates disorderly conditions in changing price
21 relationships between competing handlers and neighboring
22 producers. This criteria is considered to be the most
23 important. Point 2, Overlapping Areas of Milk Supply.
24 This criteria applies principally to areas in which
25 major portions of the milk supply are shared between

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1 more than one Order. The competitive factors affecting
2 the cost of a handler's milk supply are influenced by
3 the location of the supply. The pooling of milk
4 produced within -- Excuse me. -- produced within the
5 same procurement area under the same Order facilitates
6 the uniform pricing of producer milk." Emphasis added
7 at this point and I would note in the footnote that milk
8 procurement areas were considered as the criteria for
9 Order 30 boundaries and the distant areas in question in
10 this Hearing were not found to be a part of the Orders
11 marketing area. "Consideration of the criterion of
12 overlapping procurement areas does not mean that all
13 areas having overlapping areas of milk procurement should
14 be consolidated." Skipping down to the next bold print.
15 "Some analysis was also done to determine whether milk
16 pooled on adjacent markets reflects the actual movements
17 of milk between markets or whether the variations in
18 amounts pooled under a given Order may indicate that
19 some of the milk is pooled to take advantage of price
20 differences rather than because it is needed for Class I
21 use in the other market." Again here emphasis added and
22 noting down in the footnote, additional analysis was
23 done to make sure whether or not milk supplies that were
24 associated with an Order ("paper poolings") really
25 should be a factor in determining the marketing area.

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1 In the case of Order 30, this distant milk in question
2 here was not included in the marketing area. Turning to
3 Page 6, starting with the notation of the citation after
4 Point 7. This information comes from 64 Fed. Reg., Page
5 16045, published April 2, 1999. "The Final Rule went
6 onto described Federal Order 30 geographically and how
7 the seven criteria were applied to form the boundaries
8 for the marketing area. Upper Midwest. Current
9 marketing areas of the Chicago Regional, Upper Midwest,
10 Zones 1 and 1-A of the Michigan Upper Peninsula Federal
11 Milk Orders, and unregulated portions of Wisconsin. The
12 Iowa Federal Order Marketing Area portion of one
13 Illinois county, in which Chicago Regional handlers have
14 the preponderance of sales, is added to the consolidated
15 Upper Midwest Marketing Area and the Chicago Regional
16 portion of another Illinois county in which Iowa Order
17 handlers have the preponderance of sales is removed and
18 added to the consolidated Central area. These changes
19 will reduce the overlapping route disposition between
20 the two Consolidated Orders and reduce the influence of
21 partial counties marketing areas.

22 ADMINISTRATIVE LAW JUDGE: The last line there
23 you read says what?

24 MR. HOLLON: "These changes will reduce
25 overlapping route disposition between the two

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1 Consolidated Orders and reduce the incidence of partial
2 counties in marketing areas."

3 ADMINISTRATIVE LAW JUDGE: Thank you.

4 MR. HOLLON: Major consolidation criteria
5 include an overlapping procurement area between the
6 Chicago Regional and Upper Midwest Orders and the
7 overlapping procurement and route distribution area
8 between the western end of the Michigan Upper Peninsula
9 Order and the Chicago Regional Order. A number of the
10 same cooperative associations market member milk
11 throughout the consolidated area. 64 Fed. Reg., Page
12 16050, April 2, 1999. The Final Rule went into great
13 detail about the characteristics of the marketing area
14 from the standpoint of geography, population, per capita
15 consumption, milk production in distributing plants,
16 utilization of the milk supply in other plants,
17 cooperative associations, criteria for consolidation,
18 and a discussion of alternatives to the selected
19 combination for the marketing area. The details of
20 those criteria are as follows: "Descriptions of
21 consolidated marketing areas. Each of the Consolidated
22 Order areas is described in the text following this
23 introduction. The criteria which were used to determine
24 which area should be consolidated are explained. For
25 each consolidated area the following information is

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1 included." At this point skipping over to Page 8
2 picking up with the section labeled production. "A
3 description of the market of the amount and sources of
4 milk production for the market is included for the
5 purpose of identifying the supply area for each
6 consolidated marketing area." Emphasis added. The
7 source is in the footnote. "The sources of milk
8 production were subjected to a detailed analysis to
9 determine whether or not they should be included as part
10 of the Order 30 marketing area. The sources of milk
11 production in question here were not included in the
12 marketing area for Federal Order 30. Production data by
13 State and County for each Federal Milk Order was
14 compiled from information collected by the offices
15 administering the current Federal Milk Orders, the
16 Market Administrator Offices. For most of the
17 consolidated marketing areas production data has been
18 updated to October of 1997. For several of the
19 consolidated areas, however, October 1997 data is
20 difficult to compile and when compared with previously
21 published statistics may yield confidential information.
22 For these areas the data cited in the proposed rule has
23 been used to describe the sources of milk with the
24 consolidated market." Skipping down to the section
25 labeled utilization. "The utilization percentages of

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1 the current individual Orders and the effective
2 consolidation on the Consolidated Orders are described
3 for each marketing area with an estimate of the effect
4 of consolidation on each current individual Orders blend
5 price. The current utilization data is published each
6 month for each Federal Milk Order market. Pool data was
7 used to calculate the effects of consolidation on
8 utilization." Emphasis added. Moving down the Footnote
9 4. "The utilization of milk was also subjected to
10 detailed analysis and the production from the distant
11 areas in question here were not factored in the
12 utilization analysis and were excluded from the Federal
13 Order 30 marketing area." Skipping down or moving to
14 Page 9, skipping down to the section in bold, Criteria
15 for Consolidation. "The extent to which the criteria
16 used in identifying markets to be consolidated are
17 supported by the marketing conditions present in each
18 area of the consolidated areas as discussed." Moving
19 down to Footnote 5. "In all of the combined criteria
20 none of the distant areas in question here were
21 considered to be a part of the Order 30 marketing area."
22 Discussion of Comments and Alternatives. "Comments
23 filed in response to the consolidation section of the
24 proposed rule and the alternatives considered are
25 summarized and discussed for each consolidated area. 64

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1 Fed. Reg., Page 16052, April 2, 1999. The detail about
2 the Upper Midwest Marketing Area as outlined in the
3 Final Rule is as follows: Upper Midwest. "The
4 consolidated marketing area is comprised of the current
5 Upper Midwest Order 68 and the -- and Chicago Regional
6 Order 30 marketing areas with the addition of the
7 Western portion of the Michigan Upper Peninsula Order 44
8 marketing area. There are 244 counties in the
9 consolidated area. One partial Illinois county proposed
10 to be part of the Central Order area has been added to
11 this area and another partial Illinois county proposed
12 to be part of this area has been changed to the Central
13 Order area."

14 ADMINISTRATIVE LAW JUDGE: Mr. Hollon, tell
15 me...

16 MR. HOLLON: Yes, ma'am.

17 ADMINISTRATIVE LAW JUDGE: ...again how many
18 counties are in the consolidated here?

19 MR. HOLLON: There are 204 counties in this
20 consolidated area.

21 ADMINISTRATIVE LAW JUDGE: Thank you.

22 MR. HOLLON: Geography. The consolidated
23 Upper Midwest marketing area is described geographically
24 as follows: 15 counties in Illinois, all currently in
25 Order 30, six counties in Iowa, all currently in Order

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1 68, six counties in Michigan, all currently Zones 1 and
2 1-A of Order 44, 83 counties in Minnesota, all currently
3 in Order 68, 16 counties in North Dakota, all currently
4 in Order 68, eight counties in South Dakota, all
5 currently in Order 68, and 70 counties in Wisconsin, 43
6 currently in Order 30, twenty currently in Order 68, and
7 seven currently unregulated. This market is about 600
8 miles East to West and about the same distance North to
9 South." Moving over to Page 11 and beginning with the
10 section Milk Production. "In October of 1997, 2.4
11 billion pounds of milk were associated the Chicago
12 Regional and Upper Midwest markets, but only 1.6 billion
13 pounds of milk were pooled because of class price
14 relationships. The 2.4 billion pounds were produced by
15 27,250 producers located in 13 states from Tennessee to
16 Minnesota and from New Mexico to Michigan. However,
17 over 93 percent of the producer milk was produced within
18 the consolidated marketing area and 91.4 percent was
19 produced within the states of Wisconsin and Minnesota."
20 Dropping down to Footnote 6. "After analysis of the
21 milk supply, none of the distant milk in question here
22 was included in the Order 30 marketing area. As with
23 population density and milk plant density, most milk
24 production in Minnesota and Wisconsin occurs in the
25 southern parts of these states. Over 85 percent of the

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1 Wisconsin milk associated with the combined Chicago
2 Regional - Upper Midwest Orders in October of 1997 was
3 produced in the southern two-thirds of the state, while
4 84 percent of the Minnesota milk associated with the two
5 Orders was produced in the southern half of Minnesota."
6 Skipping down to the bottom of the page, Utilization.
7 "According to October 1997 pool statistics for handlers
8 who would be fully regulated under this Upper Midwest
9 Order, the Class I utilization percentages for the
10 Chicago Regional and Upper Midwest were 29 and 19
11 percent respectively. Based on calculated weighted
12 average used values for (1) the current order with
13 current use of milk, and (2) the current order with
14 projected use of milk in the consolidated Upper Midwest
15 Order, the potential impact of this consolidation on
16 producers who supply the three market areas is estimated
17 to be, Chicago Regional, a 3-cent decrease from 12.98 to
18 12.95. And in the Upper Midwest a 2-cent per
19 hundredweight increase from 12.89 to 12.91. The
20 weighted average use value for the consolidated Upper
21 Midwest market based on October 1997 is estimated to be
22 \$12.94 per hundredweight. However, a substantial amount
23 of milk was omitted from both pools for October 1997
24 because of unusual Class I relationships. Annual Class
25 I utilization percentages may be considered more

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1 representative for these markets for the year 1997. The
2 annual Class I utilization percentage for the Chicago
3 Regional market was 21.5 with 18.7 for the Upper
4 Midwest. The Class I use percentage for the entire
5 Michigan Upper Peninsula market, which has an individual
6 handler pool and represents a very small portion of the
7 producer milk that would be expected to be pooled under
8 the consolidated Upper Midwest Order, was 89 percent.
9 It is estimated that Class I use percentage for the
10 Consolidated Order would be in the neighborhood of 20
11 percent." Dropping down to Footnote 7. "In the
12 analysis of utilization, no current nor projected
13 calculations considered the distant milk in question
14 here as a part of the Order 30 marketing area."
15 Skipping over to Page 14, beginning in the middle of the
16 page with Criteria for Consolidation. "As in the
17 proposed rule for the Chicago Regional, Upper Midwest,
18 and the western end of the Michigan Upper Peninsula
19 marketing areas should be combined into a consolidate
20 Upper Midwest Federal Order marketing area. Although
21 these areas do not have a considerable degree of
22 overlapping fluid milk disposition, they do have an
23 extensive overlapping procurement area." Dropping down
24 to Footnote 8. "The detailed review of the Order 30
25 procurement area did not include the distant milk in

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1 question here as a part of the Order 30 marketing area.
2 Handlers regulated under the Chicago Regional and Upper
3 Midwest markets, the predominant markets in this
4 consolidation, distribute milk into markets further
5 South and approximately 10 percent of the fluid milk
6 distributed within the consolidated area is distributed
7 by handlers regulated under other Orders. However,
8 these other Orders are more closely to markets to the
9 South end of the consolidated Upper Midwest Order area.
10 On that basis, it is more appropriate to include them in
11 other consolidated marketing areas. Other aspects of
12 the consolidation also fit the criteria set forth. The
13 consolidated Upper Midwest area is bounded on three
14 sides by Lakes Michigan and Superior, the international
15 border with Canada, and a large unregulated area. A
16 significant portion of both the Chicago Regional and
17 Upper Midwest markets is supplied by the same
18 cooperative associations. The two predominant markets
19 have identical multiple component pricing plans and both
20 have large reserves of milk that is normally used in
21 manufacturing products, primarily cheese." Skipping
22 down to the second paragraph beginning Discussion of
23 Comments and Alternatives. "Prior to the issuance of
24 the proposed rule, alternatives to the consolidation of
25 the Order areas included in the Upper Midwest marketing

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1 area that were considered including combining Iowa,
2 Nebraska, Western Iowa, and Eastern South Dakota. Order
3 areas with those of the Chicago Regional and Upper
4 Midwest areas in a consolidated Upper Midwest Order.
5 Also consideration was given for a consolidation of even
6 more marketing areas, up to ten including Indiana,
7 Illinois, parts of Kentucky, Missouri, and Kansas that
8 would increase the population and Class I use of the
9 consolidated Upper Midwest area. Over 160 comments
10 received in response to the proposed rule concerned the
11 proposed consolidation of the Upper Midwest marketing
12 area. Nearly 140 of these comments, including
13 approximately 120 form letters supported the
14 consolidation of ten marketing areas for the purpose of
15 increasing the Class I utilization of consolidated Upper
16 Midwest Order area to a level closer to the U.S.
17 national average, or at the very least including the
18 Iowa, Eastern South Dakota, and Nebraska/Western Iowa
19 areas in the consolidated Upper Midwest area. No
20 justification on the basis of the criteria of
21 overlapping sales and procurement areas could be found
22 for any increase in a consolidated marketing area that
23 would be comprised of the Chicago Regional and Upper
24 Midwest Order areas beyond the addition of the Iowa,
25 Eastern South Dakota, and Nebraska/Western Iowa

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1 marketing areas." Dropping down to Footnote 9. "Using
2 the criteria established, no justification could be
3 found for including any of the distant milk in question
4 here as to part of the Order 30 marketing area. The
5 collections of more detailed data concerning the
6 overlapping route disposition and milk procurement
7 showed clearly that these three areas are more closely
8 related to markets to the South than to the North, with
9 approximately 85 percent of the total fluid milk
10 distributed by handlers regulated under these three
11 Orders disposed of in the Central market. The numerous
12 markets recommended by Upper Midwest producer groups to
13 be consolidated with the Chicago Regional and Upper
14 Midwest Order areas have very little distribution or
15 procurement overlap with those areas aside from
16 occasional need for reserve milk supplies. When reserve
17 milk supplies are needed by the other markets Upper
18 Midwest milk can be and is pooled on more southern
19 markets and shares in their pools. The potential gain
20 of adding areas recommended by Upper Midwest producer
21 groups would be much less than the loss to producers
22 whose milk is pooled under Orders to be consolidated
23 with the Central, Mideast, and Appalachian marketing
24 areas." Dropping down to Footnote 10. "The Final Rule
25 even considered the case of how supplemental milk

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1 supplies might be used in deciding the boundaries of the
2 Order 30 marketing area and did not include the distant
3 milk in question here as a part of the marketing area.
4 The primary reason for exclusion was due to the negative
5 affect on the blend prices of the particular Order in
6 question. The Final Rule left those issues to be solved
7 outside of Order regulation. Approximately ten
8 comments, including some from cooperative associations
9 representing large numbers of producers, advocated the
10 addition of the Northeast portion of the Iowa marketing
11 area to the consolidated marketing area based on the
12 extensive overlap of producers, Class I sales, and
13 geographic similarities between that area and the
14 adjoining consolidated Upper Midwest area. An
15 equivalent number of comments, mostly from Iowa
16 interest, argue that the consolidated Upper Midwest
17 Order should remain as proposed. This issue is more
18 fully discussed in the Comments and Alternatives section
19 of the description of the Central Order area as is the
20 assignment to consolidated areas of three counties, each
21 of which in an entirety that currently are split between
22 Orders. One comment advocated the addition of the Gary,
23 Indiana area to the consolidated Upper Midwest area
24 instead of the Mideast area on the basis that Gary,
25 Indiana is part of the great Chicago market. This

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1 portion of the current Indiana Order historically has
2 been part of the Indiana marketing area and there is no
3 data supporting its separation from that area. The
4 single pool distributing plant located in Gary has
5 ceased to process milk. Any distribution in the Gary
6 area acquired by Chicago handlers as a result will be
7 pooled as Class I use under the consolidated Upper
8 Midwest Order. Based on the considerations of the most
9 recent data available, comments received and the stated
10 consolidation criteria, limiting the extent of the
11 consolidated Upper Midwest marketing areas to the
12 current Chicago Regional and the Upper Midwest marketing
13 areas, with the addition of the western part of the
14 Michigan Upper Peninsula marketing area, represents the
15 most appropriate marketing area configuration for the
16 North Central area of the U.S." Dropping to Footnote
17 11. "After a complete review of the many alternatives,
18 the Final Rule used in establishing criteria and using
19 the established criteria, did not include any of the
20 distant milk in question here in the Order 30 marketing
21 area. 64 Fed. Reg. 16070, April 2, 1999. Early in the
22 reform process, there was an extensive discussion of
23 having a single national Federal Order with the premise
24 of a flat blend price across the entire country. There
25 were several proposals, several economic studies, and

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1 some debate within Congress over this issue. A single
2 Order option was rejected by Congress and thus the
3 premise of the flat blend price with it. The very first
4 sentence of the Final Rule in Section 1, the
5 Consolidation of Markets, reads Subtitle D, Chapter 1 of
6 the 1996 Farm Bill entitled Consolidation and Reform of
7 Federal Milk Marketing Orders requires, among other
8 things, that the Federal Milk Marketing Orders be
9 limited to not less than ten nor more than 14. 64 Fed.
10 Reg. 16044, April 2, 1999. So the rationale offered by
11 some that open pooling allows for blends to be equalized
12 across a large territory runs counter to the intent of
13 Congress and the direct instructions given to the
14 Secretary. The debate over marketing area was very
15 deliberate. Each of the published records leading up to
16 the Final Rule published a map of marketing areas with
17 some guidelines and invited comments. Those maps
18 showing the process are in the DFA exhibits."

19 MR. BESHORE: Is that DFA Exhibit 37, Mr.
20 Hollon?

21 MR. HOLLON: It's...

22 MR. BESHORE: Okay.

23 MR. HOLLON: Yes.

24 MR. BESHORE: Okay. And could you go on then
25 and describe your references to Tables 1 through 3?

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1 MR. HOLLON: Okay. In the exhibit section...

2 MR. BESHORE: I'm sorry. Maps. Maps 1
3 through 3.

4 MR. HOLLON: In the exhibit section the first
5 Map 1, the label at the top is the -- in the lower right
6 it says proposal, or it should say Proposed Rule
7 Marketing Areas. This was the first map that came out
8 of the reform process and it shows several marketing
9 areas that were all put together as a result of the
10 established criteria. It was released in November of
11 '96, it was published, you know, with that release, and
12 it does not show any of the milk that's in question here
13 to be part of the Upper Midwest marketing area. The
14 second map in the lower right, labeled Interim Final
15 Rule Marketing Area, is again the same type of
16 presentation. It was released in May of 1997, it came
17 out with that set of regulations, it details marketing
18 areas. There are some differences between this map and
19 the first, but it does not show in any way milk from the
20 areas in question here to be part of the Upper Midwest
21 marketing area. The third map is the final map, it is
22 noted in the lower right. It is noted as Final Rule
23 Marketing Area, it details 11 marketing areas all set up
24 under the criteria that we've discussed. And it does
25 also not detail in any way any of the milk from the

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1 areas in question here being part of the Upper Midwest
2 market.

3 ***

4 BY MR. BESHORE:

5 Q. Okay. In that statement you've referred
6 several times to the milk in question here. Could you
7 just clarify what milk you're referring to there?

8 A. The milk in question at this point would
9 milk from areas distant to the Upper Midwest and
10 specific milk from Idaho and milk from California...

11 Q. Okay.

12 A. ...in this proposal.

13 Q. Now with...

14 A. In this proceeding.

15 Q. Now with respect to the maps, the dates
16 that you have indicated on Map 1, the November '96 or
17 December 3, 1996 date is the date that that map was
18 issued by USDA. Is that correct?

19 A. Correct.

20 Q. Okay. And so when you identify it as a
21 proposed rule, if the USDA document didn't call it a
22 proposed rule at that time but a preliminary publication
23 for comment by the industry, that would control.
24 Correct?

25 A. Correct.

1 Q. And the May '97 map, that's the date when
2 it was published, and you took these maps from the
3 USDA...

4 A. Correct.

5 Q. ...materials did you not?

6 A. I did.

7 Q. Okay. So in that case, if that was not
8 identified as an interim Final Rule but as a proposed
9 rule you'd be satisfied to have it identified...

10 A. Correct.

11 Q. ...however the USDA publication...

12 A. Yes.

13 Q. Okay. And the Final Rule map is the
14 final map that went into effect with the Final Decision
15 from which you have read excerpts...

16 A. That is correct.

17 Q. ...and it was published in April 2 of
18 1999?

19 A. Correct.

20 Q. Okay. Could you go ahead and proceed
21 with your statement.

22 ***

23 MR. HOLLON: Back to Page 17. "In each case
24 markets were rigorously defined, thus the concept of a
25 marketing area as a limited area defined by specific

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1 criteria instituting specific terms of trade and a
2 specific reason for a singular existence as well defined
3 in the Final Rule. The criteria have been uniformly
4 defined and then uniquely applied to each Order
5 throughout the system by the Reform Decision. Even in
6 viewing the alternative proposals for Order boundaries
7 leading up to the Final Rule, no case can be made that
8 this distant milk in question here should be a part of
9 the Federal Order 30 marketing area and share in the
10 returns of the market. The Concept of Marketwide
11 Pooling. In addition to the concept of a market,
12 another of the foundations of the Federal Order system
13 is the principle of marketwide pooling. A reasonably
14 adequate history of milk marketing in the United States
15 exists back to the 1860s. It documents well the
16 problems of producers in their attempt to improve their
17 economic well being. The common fault through all of
18 the recordings is the inability of the milk supply to be
19 able to service the market in the manner that treated
20 all producers equitably. The superior negotiating
21 position of milk buyers, distance to the market, which
22 party would pay for balancing the market, and how would
23 the variations in supply and demand be handled, always
24 tripped up dairy farmers in their marketing efforts.
25 Furthermore, each attempt to improve on past efforts

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1 MR. HOLLON: ...in its individual handler pool
2 no longer exists. Marketwide sharing of the classified
3 use value of milk among all producers in a marketing
4 area is one of the most important features of a Federal
5 Milk Marketing Order. It ensures that all producers
6 supplying handlers in a marketing area receive the same
7 uniform price for their milk regardless of how their
8 milk is used. This method of pooling is widely
9 supported by the dairy industry and has been universally
10 adopted for the eleven Consolidated Orders. 64 Fed.
11 Reg., Page 16130, April 2, 1999. Additionally each
12 Order has precise terms that a supplier must follow in
13 order to share in the blend proceeds. These provisions
14 are known by the industry as "performance standards."
15 This concept is explained, defended, and endorsed in the
16 Final Rule as follows: There were a number of proposals
17 and public comments considered in determining how
18 Federal Milk Orders should pool milk and which producers
19 should be eligible to have their milk pooled in the
20 Consolidated Orders. Many of these comments advocated a
21 policy of liberal pooling, thereby allowing the greatest
22 number of dairy farmers to share in the economic
23 benefits that arise from the classified pricing of milk.
24 A number of comments supported identical pooling
25 provisions in all Orders, but others stated that pooling

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1 provisions should reflect the unique and prevailing
2 supply and demand conditions in each marketing area.
3 Fundamental to most pooling proposals and comments was
4 the notion that the pooling of producer milk should be
5 performance oriented in meeting the needs of the fluid
6 market. This of course is logical since the purposed of
7 the Federal Milk Order Program is to ensure an adequate
8 supply of milk for fluid use." Dropping down to
9 Footnote 13. "The concept of a performance standard is
10 fundamental to the Federal Order system. Citation 64
11 Fed. Reg. 16130, April 2, 1999. Performance standards
12 are universal in their intention to require a level of
13 association with the market marked by the ability and
14 willingness to supply that market. However, they are
15 individualized in their application. Each market
16 requires standards that work for the conditions that
17 apply to that market in that market. The reform record
18 develops and defends this concept. The pooling
19 provisions for the consolidated Marketing Orders -- I'm
20 sorry. -- the Consolidated Orders, provide a reasonable
21 balance between encouraging handlers to supply milk for
22 fluid use and ensuring orderly marketing by providing a
23 reasonable means for producers within a common marketing
24 area to establish an association with the fluid market.
25 Obviously matching these goals to the very disparate

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1 marketing conditions found in different parts of the
2 country requires customized provisions to meet the needs
3 of each market." Dropping down to Footnote 14. "The
4 norm is a customized standard within a market. For
5 example, in the Florida marketing area where close to 90
6 percent of the milk in the pool will be used for fluid
7 use, pooling standards require a high degree of
8 association with the fluid market and will permit a
9 relatively small amount of milk to be sent to
10 manufacturing plants for use in lower valued products.
11 In the Upper Midwest market on the other hand, a
12 relatively small percentage of milk would be needed for
13 fluid use. Accordingly under the pooling standards for
14 that Order, smaller amounts of milk will be required to
15 be delivered to fluid milk plants and larger amounts of
16 milk will be permitted to be sent to manufacturing
17 plants for use in storable products such as butter, non-
18 fat dry milk, and hard cheese. The specific pooling
19 provisions adopted for each Order are discussed in
20 detail in all the sections of this document pertaining
21 to each of the Consolidated Orders. Citation 64, Fed.
22 Reg., Page 16130, April 2, 1999. A review of the
23 various Federal Order performance standards shows the
24 diversity of standards, but the common requirement of
25 performance to the market in order to share in the blend

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1 price pool. Table 1 of DFA Exhibit...

2 MR. BESHORE:

3 Thirty-seven.

4 MR. HOLLON: ...37 is a comparison of Federal
5 Order Producer Milk Standards. The standards for
6 performance within the Upper Midwest marketing area
7 reflect the unique features of this Order Marketing
8 Area. Some of the unique standards are touch base rules
9 that are liberal and reflect the abundance of milk
10 supply relative to the needs of the fluid market. Table
11 2, DFA Exhibit 37 is a comparison of Federal Order
12 polling standards. The delivery standard that 10
13 percent of all milk pooled must be delivered to a
14 distributing plant defined at Section 1030.7(c)(1),
15 recognizes the quantity of milk needed for fluid sales,
16 the lack of an absolute need for a supply plant reload
17 network to supply the market, the existing plant and
18 manufacturing network within the market, and the fact
19 that the split plant provision is beneficial to this
20 market. These standards, while good and workable for
21 Federal Order 30, are not good and workable for other
22 Orders because they have different marketing conditions.
23 The Final Rule also rejected the notion of open pooling
24 outright. The record states a suggestion for open
25 pooling where milk can be pooled anywhere has not been

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1 adopted. Primipally because open pooling provides no
2 reasonable assurance that milk will be made available in
3 satisfying the fluid needs of a market. Proposals to
4 create and fund stand-by pools are summarily rejected
5 for the same reason." Going back in the exhibit to
6 Tables 1 and 2, these tables were pulled from each
7 individual Federal Order, the detail was copied out of
8 each Federal Order, it was, you know, done. I did these
9 and there is not an individual publication that
10 summarizes them all, but they come from each Order. "We
11 find no compelling..." -- Back to Page 21. -- "We find
12 no compelling reason to change this guideline. Open
13 pooling is a cause for concern from DFA members in
14 Federal Order 30. They are concerned when milk from
15 distant areas shares in the blend price pool but does
16 not perform, it does not deliver regularly, nor balance
17 the market on Thursday or Friday when extra milk is
18 needed by fluid processors. Because of the distance and
19 cost involved, the distant milk in question here does
20 not service the market when the extra milk is needed in
21 the fall to accommodating pre-school sales. These
22 supplies do not provide manufacturing capacity to handle
23 weekend milk, or holiday milk, or seasonal increases in
24 milk production. It is irrelevant that some of the milk
25 in question originates in California, which happens to

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1 have a State Milk Marketing Order and quota system.
2 This milk is no more burdensome than the milk that
3 originated in Idaho or any other distant area. In any
4 case, the cost of providing these services to the market
5 falls back on the local milk supply. So the local
6 supply is hit with service costs for a lesser return.
7 The resulting draw of blend price funds without
8 performance is not reasonable and Order regulations
9 should not permit or enable it. Exhibit...

10 MR. BESHORE: The reference is to Exhibit 7
11 previously marked and admitted into evidence.

12 MR. HOLLON: ...furnished by the Order 30
13 Market Administrator, illustrates the volume of distant
14 milk that is pooling on Order 30. Map 4, produced by
15 the Federal Order 30 to the Market Administrator,
16 graphically details the data provided by Exhibit 7."
17 Moving to Map 4. These maps were prepared by the Order
18 32 Market Administrator and Mr. Vanden Linden made some
19 comments about them yesterday pointing out that they
20 received the data from the other markets, it's audited
21 data at that point. And they get information on pounds
22 and counties and then simply put the data on a map, and
23 graphically this map points out the Federal Order areas.
24 Those boundaries are marked in dark black lines, within
25 each Order area the pounds of milk that's procured, and

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1 it points out on a whole scale U.S. map that there is
2 quite a bit of distant milk. I point out that this map
3 was done on data published in December of 2000. So the
4 fact that there are no colored areas in Idaho reflects
5 the fact that that milk was not a part of the Order pool
6 until May. So I suspect that the next time, you know,
7 these maps are put together there will be some color
8 areas there. It also points out the distance, you know,
9 scale wise that the milk is quite a bit away from the
10 Order 30 market. Moving back to Page 21. "Data
11 provided by handlers on the sources of pooled milk, as
12 required by each Federal Order as a source of data for
13 this map, it shows the Order Marketing Area and the
14 sources of milk pooled on the Order. Clearly some milk
15 is pooled on the Order that can rarely, if ever, serve
16 the market. The accompanying mileage tables outlines
17 the distances involved. Table 3, DFA Exhibit...

18 MR. BESHORE: Thirty-seven.

19 MR. HOLLON: Thank you. -- depicts mileages
20 from various points to the Federal Order 30 milk shed."
21 Moving to Table 3. It shows eight different points --
22 seven different points, six located in California, one
23 in Idaho, and the mileages using the Rand-McNally
24 program from a metropolitan area in a county to
25 Minneapolis, Minnesota.

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1 MR. BESHORE: Could you just identify which
2 state the towns the...

3 MR. HOLLON: Certainly.

4 MR. BESHORE: ...non-Minneapolis points are in
5 since the state's not identified on Table 3 of Exhibit
6 37.

7 MR. HOLLON: Every state in this case is
8 California with the exception of Jerome, and Jerome is
9 in Idaho. All of the other locations are towns in
10 California that represent some of the counties that
11 appeared either in the table or on the map. Moving back
12 to Page 22. "A quick review of the relationship between
13 the blend price return versus the delivery cost shows
14 how difficult it would be for this milk supply to
15 regularly serve the market. Indeed a daily delivery
16 would yield a net loss of \$71,647 a month from a
17 California source, or \$48,576 from Idaho in January of
18 2000. No rational supply decision would be made here.
19 This milk supply could never serve the market even as a
20 last resort spot milk supply, any milk buyer than I've
21 ever been associated with would not agree to pay the
22 premiums necessary to make this a break even
23 proposition. And it would difficult to argue that
24 Federal Order 30 needs spot shipments to augment local
25 milk supplies. Table 4, DFA Exhibit 37, is a comparison

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1 of return versus haul with no performance standard."
2 Moving back to Table 4. The assumptions that I've shown
3 in the upper left would be two supply locations, a
4 California location and an Idaho location. This example
5 is on the basis of a 100,000 pound producer and a touch
6 base requirement using a 30-and-a-half day...

7 MR. BESHORE: Do you mean a one million
8 pound...

9 MR. HOLLON: I'm sorry.

10 MR. BESHORE: ...producer?

11 MR. HOLLON: A one million pound producer.

12 MR. BESHORE: Thank you.

13 MR. HOLLON: 30-and-a-half days in a month of
14 one day's delivery of 32,787 pounds, a transferred
15 volume of 47,500 pounds. In discussing with our own
16 people about making some of these transactions, they
17 indicated that because of the wide variety and state
18 highway requirements that a 47,500 pound load, while
19 somewhat small by transport standards, it turned out to
20 be an actual pretty good average to use. The rate per
21 mile of \$1.95 was derived from invoice data billed by
22 transport carriers. The mileages that I've chosen
23 represent a reasonable approximation of the mileages
24 from the several points I listed on the table. And the
25 rate per hundredweight of \$7.59 and \$5.29 is the result

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1 of that calculation. Moving down to the bottom of the
2 table, the first column, Federal Order 30 Monthly
3 Producer Price Differential. It's outlined for a number
4 of months, those were the actual monthly Producer Price
5 Differentials. Column 1 would be the return after the -
6 - the per hundredweight return after the daily delivery
7 of that million pound producer from California or Idaho.
8 Column 2 would be the monthly return after that
9 delivery. And again, then those numbers are all
10 negative resulting or reflecting the fact that the
11 Producer Price Differential would not outweigh the cost
12 of bringing the milk to market. And the numbers are so
13 negative that on a regular basis this milk would never
14 regularly come to the market. Holding this spot for a
15 moment and moving back to Page 22. Table 4, DFA Exhibit
16 37, reading again from the second paragraph, it is a
17 comparison of return versus haul with no performance
18 standard. However, once the returns are examined for
19 the case of a single delivery touch base, the economic
20 evaluation changes drastically. After absorbing the
21 one-time haul cost, both the California and the Idaho
22 supply generated a return in the first month and the
23 return grows substantially in the second month. So long
24 as there is a positive PPD the return is always there so
25 there is no calculation penalty for estimating wrong

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1 about the amount of the Producer Price Differential.
2 Also once the initial haul is "earned back" it is never
3 a factor again. And once the arrangements are made the
4 open pooling would seem to have a long life of no
5 performance with good collections. The arrangements to
6 make this work are a source supply that always delivers
7 to a manufacturing home, it must be a non-pool plant in
8 any Federal Order market, and a destination point that
9 can qualify producer milk in Order 30. In this case,
10 the destination point is the deal initiator. These
11 minimal requirements can be met by each proponent at
12 this Hearing, so foreclosure to the opportunity is not a
13 valid argument for stopping the practice. Every
14 shipment must meet quality standards and any rejection
15 of delivery carries a stiff penalty. Each producer
16 delivery must meet the minimum shipment volume or it
17 will be disallowed on audit. And returning the blender
18 off several months in arrears is painful especially when
19 multiplied in million pounds increments. So while there
20 are some deterrents to this practice, they can be easily
21 overcome." Moving back to Table 4 and investigating
22 Column 3, these calculations were made by taking the
23 one-time touch base volume of 32,786 pounds, multiplying
24 by the haul rate, and netting that against the Producer
25 Price Differential return. So even after the first

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1 month and the numbers in that case delivering one time
2 on a million pound producer would have netted a positive
3 return, and the second month that return obviously grows
4 substantially and over the course of the entire time
5 period, the return is lucrative. Moving back to Page
6 22, beginning with the second paragraph up from the
7 bottom of the page. "So why is this milk becoming
8 associated with the market? The pooling requirements
9 for Order 30, which work well for milk produced in the
10 marketing area, do not work well for milk produced out
11 of the area. This, coupled with the change in the
12 pricing service, makes open pooling very lucrative.
13 Because the Order 30 standards have touch base once for
14 life and the fact that a producer does not lose
15 association with another market, so long as he is not
16 delivered to another Federal Order plant, it makes it
17 easy to get associated with Federal Order 30. Once
18 associated it becomes even easier to stay associated
19 with the Order. Milk in California will not be
20 delivered to other Federal Order plants because there
21 are none to deliver to. The Idaho deliveries do not
22 deliver to any Federal Order plant "at home" and thus
23 maintain their association Federal Order 30. Those
24 plants are not willing to release milk supply to the
25 local fluid market in their local -- I'm sorry. -- to

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1 the fluid market in their local Order. So the ability
2 to take advantage of open pooling in Order 30 allows
3 them to share in a blend return somewhere else but not
4 perform at home, a doubly unreasonable scenario. Since
5 it is so easy to get and retain association with the
6 market, the milk can be perpetually pooled without ever
7 having to deliver a second time. The fact that distant
8 milk can be associated with local deliveries to pyramid
9 the volume pool makes even more milk pool under the open
10 pooling concept. The economic burden of the delivery
11 costs becomes a one-time event. The local milk stays
12 home, never performs, and draws down the local blend
13 pool. Local producers continue to serve the local
14 market and balance weekly and seasonally for a
15 decreasing return. Indeed under this scheme the only
16 way milk would cease attachment is with a negative PPD.
17 But so long as the milk supply did not touch another
18 Federal Order plant, it would reappear as soon as the
19 supplier estimated the Producer Price Differential to be
20 positive. The Order 30 Market Administrator can exact
21 some geographic requirements on the shipping percentage
22 standards in Federal Order 30. Those are noted in
23 Section 1030.7(g). Ironically if he were to do so the
24 milk would simply disappear off the pool until the
25 standards were relaxed because it would be uneconomical

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1 to pool if performance were required. And since the
2 touch base rules would not be violated, the distant milk
3 could return by simply filling a pool report. While the
4 economic required of the Market Administrator to justify
5 a decision to force the least economic milk to perform
6 might be difficult, the mechanical workings that I've
7 described would be real. So what provisions should be
8 changed and/or added to Order 30 so that this situation
9 can be remedied. Interestingly enough none of the
10 proponents suggested changing any of the performance
11 standards specific to Order 30. There were no proposals
12 to increase the touch base requirements or increase the
13 shipping percentage standards. There have not been any
14 requests to our knowledge for the mar to apply
15 geographic standards to the shipping requirement.
16 Rightly so because they would pose undo hardship on the
17 local milk supply. Indeed the lack of such proposals
18 here is a good testimony that the unique marketing area
19 and performance criteria that are set for Order 30 are
20 correct for Order 30. While we share the same view with
21 proponents to Proposals 1 and 2 that there is an issue
22 of concern due to the open pooling provisions allowing
23 milk distanced from the market to pool without
24 performing, we differ in how to correct the problem.
25 The solutions they propose are insufficient in several

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1 areas. Proposal 1 does not recognize the primacy of a
2 marketing area, nor does it address the concerns of a
3 performance standard. We feel that any proposal must
4 incorporate these fundamentals. The setting of an
5 arbitrary standard that cannot be measured with an
6 economic ruler is not the right way to go and may suffer
7 from future legal challenge. Proposal 1 does not
8 address the total universe of potential supply that can
9 attach itself to the market but would never serve the
10 market. In specific case, milk from Idaho would not be
11 affected in any way by the proposed relief but would
12 still pool and ship.

13 ADMINISTRATIVE LAW JUDGE: Excuse me. Would
14 you read that last sentence again?

15 MR. HOLLON: Okay. "In this specific case
16 milk from Idaho would not be affected in any way by the
17 proposed relief but would still pool and not ship."
18 Sorry. Thanks. "3). Proposal 1 may result in
19 unforeseen negative consequences between milk pooled in
20 Federal Orders and milk pooled in State Orders. There
21 are State Milk Marketing Orders in California, Nevada,
22 North Dakota, Montana, Virginia, Pennsylvania, New York,
23 and Maine. There have been proposals in recent years in
24 Texas, Kansas, Nebraska, and even occasionally in
25 Wisconsin for State Orders to be promulgated. The

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1 interface between Federal Orders and the existing State
2 Orders is difficult to determine and impossible with
3 potential future State Orders. We see no reason to seek
4 a solution that may incur future trouble when better
5 solutions are available. Proposal 1 may result in
6 unforeseen negative consequences between milk pooled in
7 Federal Orders and milk in compacts. While there
8 presently is only a single compact, there may be more in
9 the future. There is even talk of a national compact
10 that would include the Upper Midwest. We see no reason
11 to seek a solution that my incur future trouble when
12 better solutions are available. Proposal 1 requires
13 that additional audit burden and the authority to
14 collect that information may not be available. To our
15 knowledge, the California State officials are under no
16 requirements to furnish data for audit to the Federal
17 Order system. 6) Enactment of Proposal 1 would only
18 migrate the problem to other Order areas. A more
19 uniform application to all Orders that would solve or
20 alleviate greatly this concern is a superior choice.
21 With regard to our Proposal 4, we note the concept is
22 already in place Federal Order 1, the Northeast Order,
23 and was in place in Federal Order 2 prior to reform. So
24 it has already stood the test of time. It recognizes
25 the principle of both the marketing area and the

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1 performance aspect of marketwide pooling. It carries
2 little additional record keeping or audit burden. It
3 has a measurable economic consequence that is in line
4 with the existing Order principles that if the economics
5 are positive, regulation does not prohibit pooling. Yet
6 it provides a reasonable and defensible hurdle for
7 distant milk to overcome. As shown in Table 9, and this
8 would DFA's Exhibit 37, the provision that each state
9 must be treated individually and perform as a stand
10 alone entity and to the same 10 percent performance as
11 any other end area milk supply, provides a reasonable
12 economic test of whether or not the market needs the
13 local milk supply for local Class I use. The economic
14 return must be earned in the market place and not in on
15 the pooling report. At the 10 percent shipping level
16 the same PPD, delivery, and delivery costs, there are
17 months of negative return and some months of positive
18 ones thus raising the hurdle of economic risk. By
19 requiring performance like other local milk supplies the
20 intangibles of rejected loads, bad weather, and a
21 variable demand from bottlers makes the return less
22 dependable and the risk greater, but more like the
23 decision making that local milk must pass under every
24 day." Turning back to the exhibits, Table 5. All of
25 the assumptions are the same for this table with the

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1 exception that there is now a delivery requirement of 10
2 percent on this particular milk supply. So Columns 1
3 and Columns 2 were calculated the same, but in Column 3,
4 each month the added freight cost of the 10 percent
5 delivery requirement was added to the return and the
6 values can be seen in Column 3.

7 MR. BESHORE: Now is Table 5 of the DFA
8 Exhibit 37 the table that you were referring to in the
9 last several sentences...

10 MR. HOLLON: Yes.

11 MR. BESHORE: ...of text you read?

12 MR. HOLLON: Yes.

13 MR. BESHORE: And if you said Table 9 or the
14 printed testimony says Table 9...

15 MR. HOLLON: Yes.

16 MR. BESHORE: ...that actually should be Table
17 5. Correct?

18 MR. HOLLON: That is correct.

19 MR. BESHORE: Thank you, Mr. Hollon.

20 MR. HOLLON: Moving back to Page 25, beginning
21 with the paragraph that says Table 9 and replacing that
22 to say Table 5. "Table 5, DFA Exhibit 37, is a
23 comparison of the return versus haul with the
24 performance standard. For the California milk supply,
25 the calendar year 2000 annual PPD of 83 cents per

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1 hundredweight was near break even. For the Idaho supply
2 the return was reduced from 82 cents a hundredweight for
3 the whole period to 31 cents. We understand that there
4 may be a request made to the Order 30 Market
5 Administrator to increase the shipping percentage
6 pursuant to Sections 1030.7(g). An increase in the
7 shipping requirement to 15 percent makes the Idaho
8 return negative at the 83-cents PPD level. Plus both
9 calculations ignore the affect of the Class I
10 differential. Idaho counties have a lower differential
11 than Minnesota counties. Thus the resulting calculation
12 would be even more detrimental. The individual state
13 unit concept is an adequate, reasonable safeguard for a
14 lower utilization Order in which tighter diversion
15 limits or supply plant restrictions might otherwise
16 cause hardship. Furthermore, the no unit provision
17 prevents an area milk from qualifying distant milk. It
18 also discourages distant milk from seeking a large
19 volume supply from a nearby state and forming a unit to
20 ease the performance requirement. We find schemes
21 similar to this occurring in other Federal Orders and
22 they disrupt orderly marketing practices there. We wish
23 to avoid their spread. The states included in the non-
24 unit marketing area include those present in the Order
25 currently. We like, the Final Rule, find few instances

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1 of milk from other areas a part of the regular supply
2 for Order 30. In this case, we think that setting the
3 boundaries along state borders is reasonable for the
4 Upper Midwest Order. Thus, our proposal would read: The
5 Federal Order language for Section 1030.7(g) be revised
6 to include the reference to the proposed new section,
7 1030.13(e), and should read the applicable shipping
8 percentages in Paragraphs C and F of Section 1030.7 and
9 of Paragraphs 1030.13(d) (2) and (e) (2) may be increased
10 or decreased at the discretion of the Market
11 Administrator. The language in Section 1030.13(d) (2)
12 should also be revised to include a reference to the
13 proposed Section 1030.13(e) and should read: Of the
14 total quantity of producer milk reported by a handler
15 described in Section 1000.9(c), except as provided in
16 Section 1030.13(e), not less than 10 percent of such
17 milk shall be delivered to plants described
18 1030.7(c) (1) (i) through (4). These percentages are
19 subject to any adjustment that may be made pursuant to
20 Section 1030.7(g). The proposed language for the new
21 Section 1030.13(e) could then read: Milk of producers
22 physically located outside the States of Illinois, Iowa,
23 Minnesota, North Dakota, South Dakota, Wisconsin, and
24 the Upper Peninsula portion of Michigan, shall be
25 grouped by individual state units and each unit shall be

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1 (1) reported on separate reports pursuant to Section
2 1030.30; (2) at least 10 percent of such producer milk
3 of the handlers shall be delivered to plants described
4 in 1030.7..." -- And here I have a correction to make.
5 You need to strike the "A" or "B" and insert (c) (1) (i)
6 through (4), which makes it parallel with the paragraph
7 above. -- "Such deliveries shall not be used by the
8 handler in meeting the minimum shipping percentages
9 required pursuant to 1030.7(c) or (f), or 1030.13(d),
10 and the percentages of 1030.13(e) (2) are subject to any
11 adjustments that may be made pursuant to 1030.7(g). In
12 concert with Proposal 4, and because we feel it should
13 be a part of the current Order language, we are
14 concerned that there is no specified diversion
15 limitation set for a handler operating in the capacity
16 of a pool plant operator. Thus, we would propose
17 changing 1030.13(d) (3) to become (d) (4) and insert a new
18 section (d) (3) to read: The quantity of milk diverted by
19 a handler operating in the capacity of a pool plant
20 operator may not exceed 90 percent of the producer milk
21 receipts reported by the handler pursuant to Section
22 1030.30(a) provided that not less than 10 percent of
23 such receipts are delivered to plants described in
24 Section 1030.7(c) (i) through (iii). These percentages
25 are subject to any adjustments that may be made pursuant

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1 to Section 1030.7(g) and this change under current Order
2 administration will prevent any handler from operating
3 in the capacity of a pool plant operator..." -- I'm
4 sorry. Scratch. -- "This change under a current Order
5 administration will prevent any handler operating in the
6 capacity of a pool plant operator attaching an unlimited
7 quantity of milk to its diversion report because there
8 is no limit prescribed in the Order. And these same
9 limitations would prove necessary under Proposal 4 for
10 the same reason. If a limit is not provided for, a
11 handler may choose to attach an unlimited quantity of
12 distant milk with no constraint. Furthermore, the
13 mechanics of Order 30, the shipping percentage
14 provisions, also act as a de facto diversion limit. By
15 providing a fixed number, both may be altered by the
16 Market Administrator if a request for change is made by
17 the industry. Without our proposal there is no limit to
18 alter. Note that we have changed our proposal to add as
19 a delivery section those plans described by Section
20 1030.7(c)(4). This makes the unit have the same
21 delivery qualifications as local milk. Conclusion
22 Regarding Proposal 4. Data presented in this record
23 indicates that milk from distant areas is being pooled
24 on Federal Order 30 in increasing volumes. This milk
25 volume reduces the blend price to local suppliers.

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1 Additional evidence shows that due to distance and
2 economic return, this milk would never supply the market
3 regularly. We have demonstrated on the basis of the
4 conclusions and the Final Rule that milk such as these
5 supplies generally, and in this case from these specific
6 locations, was never intended to be part of the Federal
7 Order marketing area. Geographically it was never
8 considered to be part of the supply area and from a
9 performance perspective it cannot meet the requirements.
10 In fact this milk is able to share in -- the fact that
11 this milk is able to share in the blend pool should be
12 corrected. The solutions we propose are sound, found in
13 other sections of the Order system, and provide a
14 rationale that can be consistently used for other
15 Orders.

16 ***

17 [Off the record]

18 [On the record]

19 ***

20 MR. HOLLON: "...and in this case from these
21 specific locations was never intended to be part of the
22 Federal Order 30 marketing area."

23 ADMINISTRATIVE LAW JUDGE: Thank you.

24 MR. HOLLON: "Comments on the Emergency
25 Status. Regarding the issue of an emergency Decision we

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1 have the following comments. The problems being
2 discussed at this Hearing are not unique to the Upper
3 Midwest marketing area. While they may be categorized
4 for publicity purposes as double dipping, the problem
5 when converted to cents per hundredweight off the blend
6 price is milk from distant areas taking advantage of
7 open pooling type provisions and reducing the blend
8 price for local producers who regularly serve the
9 market. The emergency is just as great in Kansas or
10 Missouri, Indiana or Michigan, Colorado or Utah, and
11 Washington or Oregon. DFA will ask for emergency
12 Decisions in Hearing requests in the Upper Midwest,
13 Central, Western, Pacific Northwest Orders. We cannot
14 see the fairness in a Decision that favors one
15 geographic area of the Federal Order system over another
16 Order area with the same problem. What is important is
17 that the Decisions in each Order area be either
18 announced over a relatively narrow timeframe or
19 implemented at the same time. If not, the problem that
20 may get corrected in Minnesota will just migrate to
21 Oklahoma. The likelihood that there will be several
22 Hearings, the central focus of each will be similar.
23 The Dairy Division should be able to process the
24 Hearings along similar tracks and produce Decisions that
25 will look reasonably similar. This should speed the

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1 process.

2 ADMINISTRATIVE LAW JUDGE: Thank you, Mr.
3 Hollon.

4 MR. BESHORE: Okay. I...

5 ADMINISTRATIVE LAW JUDGE: Mr. Beshore, could
6 we take a 15-minute break?

7 MR. BESHORE: Certainly. I have a few
8 additional questions then on direct for Mr. Hollon.

9 ADMINISTRATIVE LAW JUDGE: That would be fine.
10 Let's come back. We'll go back on record at 11:45.

11 ***

12 [Off the record]

13 [On the record]

14 ***

15 ADMINISTRATIVE LAW JUDGE: All right. We're
16 back on record at 11:48. Mr. Beshore?

17 ***

18 BY MR. BESHORE:

19 Q. Thank you, Your Honor. Mr. Hollon, is
20 there any additional clarifying language or
21 modifications or clarifications to effectuate the intent
22 of your proposal that you would like to make?

23 A. Yes, there is one additional one. After
24 we put the proposal in place and in preparing and
25 looking back in the Order 1 language, we noticed that

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1 the provision that we've asked for is also included in
2 the Supply Plant Standard in Order 1. And so while it
3 is not written into our proposal, it would be our intent
4 that the language be included in the Supply Plant
5 Standard in Order 30, and we note in Order 1 that it's
6 parallel language. And so we would request that that be
7 included in the Supply Plant Standard here also.

8 Q. So presently your proposed language is an
9 amendment, a proposed amendment to the producer milk...

10 A. That is correct.

11 Q. ...definition? And you would wish to
12 have the same standards, performance standards, and
13 criteria applied to the Supply Plant Performance
14 Standards in the Order 30 language?

15 A. That is correct.

16 Q. Okay. Now I think it's clear, but just
17 so there's no question. Is DFA pooling milk from
18 California on Order 30?

19 A. That is correct.

20 Q. Okay. And can you tell us, you know,
21 before Mr. Vetne or somebody else asks about it, what
22 you're doing with the revenues that are derived, how
23 they're shared, or handled by DFA?

24 A. The absolute values of those details are
25 a proprietary concern. However, I would point out for

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1 the record that any time that there are milk
2 transactions that cross DFA's operating entities, those
3 are the operating or the area councils that those
4 transactions have to pass muster with the local producer
5 input. So each area council has a Board. So as an
6 example the dairy farmer groups who oversee transactions
7 in the Central area, which would include Order 30, and
8 the dairy farmer groups who oversee transactions in
9 California, which would be DFA's Western Area Council,
10 have had a look at if you will how these transactions
11 work. They've had it explained to them and they are
12 satisfied from their local areas that the transactions
13 treat their groups fairly.

14 Q. And is it fair to say that internally
15 there is a negotiated distribution of the revenues?

16 A. Yes, that's a fair characterization.

17 Q. Now you've referred in your testimony,
18 Mr. Hollon, to provisions in Order 1, and is it fair to
19 characterize your proposal here for Order 30 as being
20 similar to and modeled on existing provisions in Order
21 1?

22 A. That is correct. And I think similar to
23 and modeled are better words than I identical to,
24 similar to and modeled after that principle and the way
25 it should work.

1 Q. Okay. Have those provisions in Order 1
2 allowed milk from areas outside the defined marketing
3 area of Order 1, which is the Order for the Northeast
4 United States to in fact be pooled on Order 1?

5 A. Yes. That is correct. I am aware of
6 more than one entity who is outside of that area, it
7 would be distant milk supplies operating under those
8 principles and are pooling milk in Order 1 and
9 performing in those standards. So it's pretty hard to
10 argue that there is a barrier that prevents that
11 activity from taking place because it's taking place
12 now.

13 Q. Has DFA, pursuant to the provisions in
14 Order 1, itself has it supplied and is it supplying milk
15 to fluid handlers in Order 1 from the Upper Midwest and
16 pooled supply plant in the Upper Midwest on Order 1?

17 A. That is correct.

18 Q. Okay.

19 A. And the Order statistics reflect that
20 information so that would be public knowledge and public
21 information.

22 Q. Okay. And on the published plant lists
23 for Order 1 published by the Market Administrator, are
24 there plants in the Upper Midwest in Minnesota and
25 Wisconsin affiliated with other organizations, which

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1 have also been pooled on Order 1?

2 A. That is correct.

3 Q. Okay. And under the Order 1 provisions
4 those plants are required to associate with the market
5 by performing at the same level as plants and units
6 within the marketing area?

7 A. The standards in the Order are ship 10
8 percent, you know, that applies to this particular block
9 of milk and that's what it has to meet the market
10 standards, and those could be adjusted by the Market
11 Administrator.

12 Q. Okay. In your testimony, Mr. Hollon,
13 you've gone to some care, taken some care, to attempt to
14 define a set of principles, and endorse, and espouse a
15 set of principles for associating milk with the Federal
16 Order markets, which you feel should be used for Order
17 30, and also with respect to any other Orders for which
18 there may be Hearings after this. My question is, in
19 endorsing these principles and proposed Order
20 modifications, is it Dairy Farmers of America's intent
21 to exclude and prohibit milk, any milk, from being
22 associated with those Orders?

23 A. No.

24 Q. Is it your intent to allow milk from any
25 source geographically to associate with Order 30, so

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1 long as it performs and meets the economic and
2 performance tests of the Order as you've described them?

3 A. That is correct.

4 ***

5 MR. BESHORE: Unless you have anything further
6 to add, I have no further questions and Mr. Hollon would
7 be available for cross examination, Your Honor.

8 ADMINISTRATIVE LAW JUDGE: Thank you, Mr.
9 Beshore. Do you move the admission of Exhibits 36 and
10 37 into evidence?

11 MR. BESHORE: Yes, I do, with the caveat there
12 are a few portions of Exhibit 37 which are to be
13 referred to in later testimony relating to Proposal 5.
14 I mean, I'm prepared to move the entire exhibit, but
15 with that understanding.

16 ADMINISTRATIVE LAW JUDGE: All right. Thank
17 you. Let's at least take Exhibit 36 at this time. Is
18 there any objection to the admission into evidence of
19 Exhibit 36? There being none, Exhibit 36 is admitted
20 into evidence. I'll hold off on thirty-seven. Mr.
21 Hollon, there was nothing further you wanted to say
22 before cross examination questions?

23 MR. HOLLON: No, ma'am.

24 ADMINISTRATIVE LAW JUDGE: All right. Any
25 cross examination of Mr. Hollon? Yes, Mr. Vetne?

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BY MR. VETNE:

Q. Good morning.

A. Good morning. Barely.

Q. Yes. Barely good or barely morning?

A. Barely morning.

Q. Which Federal Order -- in which Federal Order does DFA not have pooled milk?

A. The Arizona Federal Order.

ADMINISTRATIVE LAW JUDGE: Mr. Vetne, I can barely hear you.

BY MR. VETNE:

Q. Yes. Has DFA at some point in the past had milk pooled in that milk?

A. Probably at some point in time off and on, but it would not be a regular activity.

Q. Does DFA participate in a marketing agreement or organization that also includes milk from Arizona producers?

A. I'm not certain. That could be true but I'm not certain.

Q. You're not familiar with what's called the Southern California Milk Marketing Agency or MAC?

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1 A. I am familiar with that agency, but not
2 of the day to day and I don't know from my own knowledge
3 if UDA is a member of that agency. If you say they are
4 I'll accept it because I could see where it likely would
5 be the case but I'm just not familiar.

6 Q. With respect to the other ten Marketing
7 Orders in which DFA pools milk, can you please go down
8 the list and indicate what DFA's percentage of pooled
9 milk in each of those markets is?

10 A. I don't have that information and I think
11 I would consider that to be a proprietary piece of
12 information.

13 Q. Okay. What percentage of milk in Order
14 30 is DFA member milk?

15 A. Again I don't have that information with
16 me but also I would consider that to be a proprietary
17 factor.

18 Q. Do you have a good idea?

19 A. Some.

20 Q. With respect -- as between Order 30,
21 Order 32, or Order 33, can you rank them in terms of DFA
22 percentage of the pool? That's my question. Will you
23 please do so? In which of those markets does DFA have
24 the greater share, and which of those markets does DFA
25 have second share, and which market does DFA have the

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1 least share?

2 ***

3 ADMINISTRATIVE LAW JUDGE: Mr. Beshore?

4 MR. BESHORE: Yes, he may be asking for
5 proprietary information but I would object to the
6 relevance of the, you know, of the inquiry. I mean,
7 what difference does it make, you know, how much milk,
8 or what rank within DFA its shares in Order 30, 32, and
9 33 are for this Hearing?

10 MR. VETNE: Well -- I'm sorry. -- Mr. Beshore
11 misunderstood my question. My question did not intend
12 to elicit information on rank within DFA, but rank in
13 terms of percentage of DFA milk in the pool from one
14 market compared to another market.

15 MR. BESHORE: The same objection.

16 ADMINISTRATIVE LAW JUDGE: The objection is
17 overruled. Mr. Hollon, to the extent you can answer you
18 may answer.

19 MR. HOLLON: You're asking me of those three
20 Orders which one does DFA have the most or which would
21 have the highest percentage of the Order pool...

22 ***

23 BY MR. VETNE:

24 Q. Yes.

25 A. ...in terms of one, two, and three?

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1 Q. Yes.

2 A. I would say that we would have more milk
3 pooled in thirty-two and thirty-three than we do in
4 thirty. And between those two breakdowns I'm not sure
5 that I, you know, could rank them.

6 Q. Okay. And would it be fair to say that
7 your percentage of milk in the Western Order is greater
8 than the three Orders in the Central part of the
9 country?

10 A. Yes.

11 Q. Is it your opinion that DFA revenues in
12 Order 32 and Order 33 are being currently diluted by
13 distant milk from Minnesota and Wisconsin, the testimony
14 concerning which has been previously given, that has
15 shifted from Order 30 to those two markets?

16 A. Are we at the right Hearing?

17 ***

18 ADMINISTRATIVE LAW JUDGE: You may answer that
19 question if you can.

20 MR. HOLLON: Yes.

21 ***

22 BY MR. VETNE:

23 Q. Okay. And in your testimony when you
24 discussed this as a problem involving multiple markets,
25 for which you do intend to or have already asked for

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1 Hearing relief, is it your objective that for those
2 markets, distant milk from Minnesota or Wisconsin would
3 either ship on a producer unit base or withdraw from the
4 pool?

5 A. I don't have an answer to that question.
6 We do intend to ask for Hearings in those markets and
7 this issue, but as to the exact nature of what remedy we
8 might offer I'm not prepared. It could be, you know,
9 one.

10 Q. Okay. Is it your concern in those
11 markets similar to your concern here that...

12 A. Yes.

13 Q. Yes. And that concern is that distant
14 milk, in those markets it would be milk from Minnesota
15 for example, is being associated with the market that's
16 not part of the historical or natural procurement area?

17 A. Yes.

18 Q. In your testimony you included a number
19 of footnotes that you referred to and those footnotes
20 frequently used the term marketing area and in the text
21 there would be reference to supply area or procurement
22 area. I'm not looking at any one particular one, but is
23 it your intent when you refer to marketing area,
24 procurement area, supply area, and milk shed that they
25 are more or less synonymous?

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1 A. Yes.

2 Q. Okay. If you would turn to Page 25 of
3 your testimony. Under point -- I guess it's a paragraph
4 that begins with the number five...

5 A. Okay.

6 Q. ...in parens in which you testify that
7 tighter diversion limits or supply point restrictions
8 might otherwise cause hardship. The hardship you are
9 referring to there, is that hardship to producers, and
10 suppliers, and plants within the Order 30 marketing
11 area?

12 A. It is.

13 Q. Okay. Would you describe the nature of
14 that hardship?

15 A. Within Order 30 because of the nature of
16 the market and an increase in the touch base requiring
17 delivering two times, or three times, or four times
18 would likely be uneconomic.

19 Q. How so?

20 A. Because of the nature of milk in the
21 market and where the qualifying shipments are demanded
22 at. There is probably a sufficient supply of milk
23 around that that's demonstrated under the current
24 performance standards that it can meet those
25 requirements, so it will require an additional touch

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1 base in Order 30 and it would probably be -- I think
2 that would cost more. Raising the shipping standard
3 again in Order 30 would also probably result in some
4 shipments being made into qualifying locations and then
5 perhaps back out again simply to meet the standard
6 because of the situations in Order 30. So those would
7 be the two primary points.

8 Q. Okay. And would it likewise cause
9 similar hardship if within designated counties of
10 Minnesota or Wisconsin producers from those counties had
11 to ship 10 percent of their supply to distributing
12 plants?

13 A. On an individual basis...

14 Q. On an...

15 A. ...and absent the ability to collectively
16 unitize...

17 Q. Right.

18 A. ...as it's provided now, yes.

19 Q. Yes. By individual basis I meant
20 individual county aggregates or multiple county
21 aggregates, not individual...

22 A. That's the way I understood your
23 question...

24 Q. Thank you.

25 A. ...when I answered it.

1 Q. On Page 22...

2 A. You're going the wrong way.

3 Q. Well, I'll go any way I like. At the
4 very bottom of the page you refer to Idaho deliveries.
5 The Idaho deliveries do not deliver I think is what you
6 meant to any Federal plant at home.

7 ***

8 ADMINISTRATIVE LAW JUDGE: Mr. Vetne, any
9 Federal Order plant at home?

10 ***

11 BY MR. VETNE:

12 Q. Yes, whatever. That's correct. Any
13 Federal Order plant at home. The Idaho deliveries
14 you're referring to there are the thirty-three odd
15 million pounds of Idaho milk currently pooled on Order
16 30?

17 A. Correct.

18 Q. Okay. And Federal Order plant at home in
19 your testimony is intended to mean a Federal Order pool
20 plant associated with the Western Federal Order?

21 A. That would result in a qualified
22 delivery, yes.

23 Q. Okay. In the at home region, how many
24 plants does DFA operate?

25 A. In the at home region, one reload and two
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1 manufacturing plants I think.

2 Q. How many pool plants does DFA operate in
3 the Western market at home region?

4 A. I think zero.

5 Q. How does DFA pool its milk supply
6 associated with that Western market?

7 A. As a cooperative under the performance
8 requirements in the Order.

9 Q. From your aggregate milk supplies
10 shipping a percentage to distributing plants?

11 A. Correct.

12 Q. And does DFA in that market divert to
13 non-pool plants? Does DFA in the Western market divert
14 milk to non-pool plants?

15 A. Yes.

16 Q. And does it divert some milk of producers
17 once they touch base on a day to day, day after day
18 basis? In that market does DFA divert milk of producers
19 to non-pool plants after they have touched base on a day
20 to day, day after day basis?

21 A. Yes.

22 Q. Okay. Does DFA have any full supply
23 agreements with distributing plants in the Western
24 market?

25 A. I think that's a proprietary question.

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1 We supply distributing plants in the market.

2 Q. Okay. Does DFA have any fixed pounds or
3 a fixed percentage supply agreements with distributing
4 plants in the Western markets?

5 A. I think we supply distributing plants in
6 the Western market.

7 Q. And are you being evasive for the same
8 reason that you consider it proprietary?

9 A. Yes.

10 Q. Okay. Within say 100 miles of the
11 counties in Idaho that you've identified, or the Market
12 Administrator has identified, as having milk pooled in
13 Order 30, how many pool distributing plants in the
14 Western market are there?

15 A. I can't tell you. I don't know.

16 Q. You don't know. -- Okay. -- and would
17 that be true for the rest of the Western market also?
18 You don't know?

19 A. Yes.

20 Q. Beyond 100 miles?

21 A. Yes.

22 Q. Okay. Is DFA a participant in a multi-
23 cooperative supply agency in the Western market?

24 A. I'm not sure that there is one in that
25 market.

1 Q. Okay. Does DFA have a separate operating
2 board for the Western market different from the one in
3 California?

4 A. Yes.

5 Q. Well, what DFA office do you work out of?

6 A. The corporate office in Kansas City.

7 Q. Okay. And do you serve the same
8 functions for all of the various DFA operating board
9 units?

10 A. For the most part.

11 Q. Okay. Is there any market in which you
12 have more responsibility than others?

13 A. No.

14 Q. And that would include California?

15 A. That would include California.

16 Q. Okay. Who is responsible within the
17 Western market for making decisions with respect to the
18 pooling of milk?

19 A. The Western Area Council Manager, his
20 staff, and then their Board.

21 Q. Okay.

22 A. I'm sorry. I misspoke. That is the
23 Mountain -- you said -- the DFA's Western...

24 Q. I'm sorry. The Western...

25 A. ...council is in California...

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1 Q. Right.

2 A. ...and the Western Order. And so when
3 you asked that question you meant the Western Order and
4 the answer to that is the Mountain Area Council, their
5 management, and their Board.

6 Q. Okay. Are pooling decisions left to
7 local councils within the DFA organization?

8 A. For the most part, yes. If there is an
9 interface and between councils sometimes that's
10 negotiated council to council, sometimes it's that it
11 requires, but it includes myself and others who work in
12 that area.

13 Q. Okay. Have you, by you I mean DFA as
14 well as yourself individually, made any calculation of
15 the per hundredweight PPD cost to DFA in Order 32 as a
16 result of distant milk being associated, or newly
17 associated, with that market?

18 A. We frequently and routinely, you know, do
19 those types of calculations and it's a part of the every
20 day marketing activity and try to make business
21 decisions based off of those.

22 Q. Uh-hum. And can you share with us your
23 estimate of the most recent impact in Order 32 from
24 distant milk to DFA members?

25 A. No.

1 Q. You cannot because you don't know the
2 number or you're unwilling to share it?

3 A. At this point I would be unwilling to,
4 you know, put that information forward.

5 Q. Okay. And would the same be true for
6 Order 33 and for the Pacific Northwest or -- yes, the
7 Pacific Northwest?

8 A. Yes. I would say this though. The data
9 that Mr. English's clients put forward on some impacts,
10 I would say that those would be reasonable estimates. I
11 didn't do them myself but I know the people who did and
12 I trust their judgment.

13 Q. I'm not asking about Order 30 impacts,
14 I'm asking concerning markets for which there is no data
15 on distant milk concerns right now. You understood
16 that. Correct?

17 A. Uh-hum.

18 ***

19 ADMINISTRATIVE LAW JUDGE: That was a yes?

20 MR. HOLLON: Yes.

21 ***

22 BY MR. VETNE:

23 Q. With respect to the language from Order
24 1, which you have indicated as the inspiration for your
25 proposal, can you identify for me a place in a Decision

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1 of the Secretary published in the Federal Register in
2 which that language is analyzed, explained, and
3 justified?

4 A. I cannot.

5 Q. Okay. Have you looked?

6 A. Briefly, but not in depth, and it was
7 not, you know, to my knowledge it was not in the Final
8 Rule.

9 Q. Okay. And with respect to any
10 preexisting language upon which you rely, can you point
11 me to a Decision of the Secretary in which that was
12 explained, justified, or analyzed?

13 A. I cannot.

14 Q. Okay.

15 ***

16 MR. VETNE: That's all I have for the moment.
17 Thank you.

18 ADMINISTRATIVE LAW JUDGE: Thank you, Mr.
19 Vetne. Mr. English?

20 MR. HOLLON: Back to Page 1.

21 ***

22 BY MR. ENGLISH:

23 Q. Mr. Hollon...

24 A. Yes, sir.

25 Q. ...turning to Page 2, and the language in
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1 your first full paragraph, the central issue in each
2 case. You have, through your Counsel in answering those
3 questions, identified the fact that Dairy Farmers of
4 America is an entity that is pooling milk that is
5 otherwise pooled in California on the Order 30.
6 Correct?

7 A. Correct.

8 Q. Can you tell me or tell for the record
9 when DFA first started that?

10 A. In 2001 and during the calendar year.

11 Q. Can you tell me which month of 2001?

12 A. No.

13 Q. Okay. Is that because you don't know or
14 you don't choose to share?

15 A. I know.

16 Q. Okay. You have heard testimony that Land
17 O'Lakes has acknowledged also pooling milk on
18 California. Are you aware of any other entities, other
19 than Land O'Lakes and yourself, that are doing this?

20 A. Yes.

21 Q. Do you know which entities they are?

22 A. I do.

23 Q. Will you tell us?

24 A. No.

25 Q. You made the statement that this was

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1 necessary effectively in order to meet a competitive
2 position. Is that correct?

3 A. Correct.

4 Q. Does that mean that those who either
5 choose not to do so or are unable...

6 ***

7 [Off the record]

8 [On the record]

9 ***

10 MR. HOLLON: Those who choose not to do so I
11 would have to say that they made that choice. So as I
12 analyze what it takes to do this, I think it's an
13 opportunity that's available to most any entity that
14 wants to try.

15 ***

16 BY MR. ENGLISH:

17 Q. Now if the milk in Idaho that you have
18 talked about were also pooled on the Western Order, it's
19 true is it not -- it is true that that milk could not be
20 pooled on Order 30. Correct?

21 A. Correct.

22 Q. So you would at least, whether you call
23 it double dipping or, you know, you'll acknowledge that
24 the fact that it is coming from California and is
25 subject to different rules is one reason why it is so

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1 easy to do in your opinion?

2 A. Yes, because there is not another Federal
3 Order plant there, but that is correct.

4 Q. On Page 21 you reference the marketing
5 area at the bottom with respect to Order 30 and you
6 later in your proposal discuss which jurisdictions are
7 treated as part of the marketing area. And the Market
8 Administrator's map indicates that milk from a county,
9 and Eastern county in Montana, Richland County, Montana
10 to be specific, is part of the "procurement area" of
11 milk for Order 30. Do you know whether the milk from
12 that county or from counties around that area in Eastern
13 Montana have been associated with Order 30 or the
14 predecessor Order, Order 68, prior to Federal Order
15 Reform?

16 A. Only in the context of a recent
17 conversation with somebody from Order 30 who, you know,
18 their conversation led me to believe that that milk in
19 that particular county had been associated prior to.
20 But I didn't know that before a week or so ago.

21 Q. Would that in the context of your
22 proposal change the treatment of Montana with respect to
23 whether or not it ought to be part of this language,
24 assuming Proposal 4 ought to be and is adopted?

25 A. I would tend to -- I agree with your

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1 premise and probably the way I would have proposed that,
2 had I known that would be to include that county. In
3 general, you know, for this proposal we've cut our
4 definition along state lines, that wouldn't necessarily
5 always be the same. But, you know, for that particular
6 area and that particular question it appears like from
7 that map that county is not bounded by others, it's one
8 county. So I would say include that county in the area
9 that would not be subject to the unit qualification.

10 Q. If I may then maybe test some of what
11 your criticisms are of Proposal 1 and discuss one or two
12 aspects of Proposal 4. And so I'm turning effectively
13 to Pages 24 and thereafter and I'll try to reference
14 them. But with respect to Proposal 1 you reference that
15 the fact that there are State Milk Marketing Orders in a
16 number of states. Based upon your knowledge and -- Let
17 me back up for a second. -- do you have a definition
18 based upon your years of experience with Market Orders,
19 of marketwide pooling of returns under a milk
20 classification and pricing program that is imposed under
21 the authority of the state government. Do you have a
22 definition of what that means?

23 A. I would assume that would mean a State
24 Milk Marketing Area that had a marketwide pool.

25 Q. Do you consider California to qualify

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1 under that language?

2 A. I don't have an opinion as to that. I've
3 heard the debate over the last two days both pro and con
4 but I don't have an opinion there.

5 Q. You have not formed an opinion after that
6 debate?

7 A. No.

8 Q. Have you formed an opinion prior to this
9 Hearing with respect to that language?

10 A. No.

11 Q. Have you seen that language before?

12 A. That you just read?

13 Q. Yes.

14 A. That language, no.

15 Q. Were you familiar prior to this Hearing
16 to the fact that that language is part of 1000.76?

17 A. No.

18 Q. You list Nevada. Would you agree with me
19 that Nevada does not have marketwide pooling under any
20 definition?

21 A. Yes.

22 Q. You reference North Dakota. At the
23 present time would you agree with me that North Dakota
24 does not have marketwide pooling?

25 A. Yes.

1 Q. Okay. And you mentioned Montana. Would
2 you agree with me that Montana does have marketwide
3 pooling?

4 A. From the information...

5 Q. Yes.

6 A. ...that I see coming from their
7 publications, I would tend to think they do have some
8 form of marketwide pooling.

9 Q. And would you agree with me that the
10 predominant, the vast predominance of the milk supply
11 with respect to that is in the western part of Montana?

12 A. Yes.

13 Q. Okay. To your knowledge, milk in
14 Richland County, Montana for instance is not...

15 A. I have no knowledge about Richland
16 County, Montana.

17 Q. Okay. So you don't know whether that
18 milk is pooled...

19 A. No.

20 Q. ...on a marketwide pool...

21 A. No.

22 Q. ...from Montana? Turning to my home
23 state, Virginia. Are you familiar whether Virginia has
24 marketwide pooling?

25 A. No.

1 Q. You're not familiar or it doesn't?

2 A. I'm not familiar with the intricacies of
3 the Virginia State pool.

4 Q. With respect to Pennsylvania, the State
5 Order in Pennsylvania. First do you know whether that
6 system has marketwide returns on all classes?

7 A. You mean one, two, three, and four?

8 Q. Yes.

9 A. I don't think it does, I think it's just
10 on one and two.

11 Q. Would you agree that there is effectively
12 a premium above the Federal Order...

13 A. Yes.

14 Q. ...price?

15 A. Yes.

16 Q. And would you agree that at the present
17 time that premium is not shared marketwide?

18 A. Yes.

19 Q. Okay. With respect to New York. The
20 State Order in New York -- you're referring I assume in
21 this to the State Order for Western New York. Correct?

22 A. That is correct.

23 Q. You are familiar that over time there has
24 been a State Order for Eastern New York, which exists
25 coincidentally with the portions of New York that are

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1 part of what used to be Order 2 and now Order 1.

2 Correct?

3 A. I'm not familiar with that.

4 Q. Okay. But to the extent that exists,
5 that's not what you're referring to. Correct?

6 A. No, it's Western...

7 Q. You're referring to Western New York?

8 A. Correct.

9 Q. And to your knowledge, does Western New
10 York, on your opinion, operate a marketwide pool?

11 A. I don't know.

12 Q. And finally Maine. Do know whether
13 Maine, like Pennsylvania, has a premium for Class I
14 milk?

15 A. I do not know.

16 Q. Okay. So you wouldn't know whether if
17 they did whether that's pooled?

18 A. No.

19 Q. Okay. With respect to your comment with
20 respect to the audit burden found in Paragraph 5. Is it
21 not the case that in order to qualify diverted milk at
22 the class as used at the non-pool plant, the non-pool
23 plant must at the request of the Market Administrator,
24 make the requested audit information available to
25 review?

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1 A. That's true.

2 Q. So under 1000.42 if a plant pooling milk,
3 or an operation pooling milk, on Order 30 disclosed milk
4 that could be subject to a Statewide Order, such as
5 California, the Market Administrator could pursuant to
6 1000.42 request information from the non-pool plant to
7 which it diverted to confirm that the milk was not
8 pooled on California. Correct?

9 A. I don't know if that's true or not true.
10 Our current status is that we provide the producer
11 information that the Market Administrator requests.

12 Q. Okay. So if the language of
13 1000.42(d)(ii)(b) provided the non-pool plant operator,
14 for which to milk diverted, maintained books and records
15 showing the utilization of all skim milk and butterfat
16 received at such a plant, which were made available for
17 verification purposes, the Market Administrator could
18 under those circumstances request that data and get it.
19 Correct?

20 A. I didn't hear anything in there about if
21 it was pooled under the jurisdiction of California.

22 Q. But books and records. Wouldn't that
23 include how that milk was treated?

24 A. I'm not necessarily sure that that how
25 treatment might include how it interacted with the State

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1 of California's programs.

2 Q. Did the hear the California Department of
3 Food and Agriculture discuss how they obtained shared
4 information from the Federal Market Administrator's with
5 respect to where...

6 A. I did.

7 Q. ...milk goes?

8 A. I did.

9 Q. Do you have any reason to believe that
10 the USDA could not obtain similar information from CDFA?

11 A. And when they were asked if they would
12 provide individual data about producers on audit they
13 said that that was confidential and they would not
14 provide that.

15 Q. To Market Administrator's?

16 A. They didn't delineate to anyone.

17 Q. Just for a brief moment if I may digress
18 but it is relevant, I will connect up, Your Honor.
19 Dairy Farmers of America is an organization resulting
20 from, it would be fair to say, a number of mergers of
21 organizations over time?

22 A. Correct.

23 Q. Okay. If I use the initials WCDI, would
24 you recognize those initials, sir?

25 A. Yes.

1 Q. What do those initials stand for?

2 A. You know, I always get the exact words
3 mixed up. It was the...

4 Q. That's why I asked you.

5 A. It was the producer group that originated
6 in what would now be primarily the Western Federal
7 Order, the producers in Utah, and Colorado, and Idaho.

8 Q. Western Dairymen's Cooperative, Inc.?

9 A. That's what I would have said but it
10 always seems like I do it wrong.

11 Q. And the Western Order covers the area
12 that was also the Great Basin at one time. Correct?
13 The Great Basin Order for the most part?

14 A. Yes.

15 Q. Going back in history just a little more,
16 does an organization called Intermountain Milk Producers
17 Association ring a bell?

18 A. I remember that group.

19 Q. Did that group become part of WDCI?

20 A. I think, yes.

21 Q. Okay. With respect to your statement in
22 Paragraph 3 on Page 24, that the interface between
23 Federal Orders and the existing State Orders is
24 difficult to determine and impossible with potential
25 future State Orders...

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1 A. Correct.

2 Q. ...are you aware that the organization
3 once know as Intermountain Milk Producers Association,
4 which merged with WDCI, with merged with DFA, was the
5 proponent and author of the language which today is part
6 of 1000.76?

7 A. No.

8 Q. Okay.

9 ***

10 MR. BESHORE: Are we to understand that that's
11 the connection that made all that relevant, Your Honor?

12 ***

13 BY MR. ENGLISH:

14 Q. Yes, and I'll ask for official notice of
15 those Decisions so we'll get there. With respect to
16 Proposal 4, do know whether after Federal Order Reform
17 that the fluid milk product definition has been expanded
18 to include products containing condensed solids?

19 A. I do not know. If you're reading from
20 the code I will accept it.

21 Q. Okay. Do you or anyone else in
22 California operate plants in California that produce
23 condensed products, condensed fluid milk products,
24 condensed solids with...

25 A. Yes, we do.

1 Q. Okay.

2 A. And others do I think.

3 Q. To the extent your exhibits discuss
4 transportation costs, they are I believe based upon the
5 transportation of non-condensed milk?

6 A. Correct.

7 Q. So to the extent that someone in
8 California produced a condensed product, which was
9 shipped in conformance with your Proposal 4 to meet
10 standards, the transportation cost analysis would not
11 apply. Correct?

12 A. That would be true.

13 Q. In fact, it would be far less costly on a
14 per hundredweight basis to move the milk. Correct?

15 A. It would be.

16 Q. If after Proposal 4 were adopted, do you
17 know whether such products that could qualify for Order
18 30 under the outline that I have given you, would also
19 be able to qualify and actually would qualify as
20 California pool milk?

21 A. I do not know.

22 Q. But if that's the case, we would be left
23 with the same problem of milk receiving payments from
24 two pools. Correct?

25 A. Yes.

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MR. ENGLISH:

Thank you. That's all I have.

ADMINISTRATIVE LAW JUDGE:

Thank you, Mr. English. Additional questions
for Mr. Hollon? Mr. Tosi?

BY MR. TOSI:

Q. Hello, and I have several questions for
you.

A. Yes, sir.

Q. Is DFA opposed to the double dipping
situation, what's been referred to here as double
dipping?

A. No.

Q. You're not?

A. The idea that there should be an economic
performance standard and if any milk supply meets that
economic and performance standard that should be
allowed.

ADMINISTRATIVE LAW JUDGE: Mr. Tosi, would you
pull that microphone a little...

MR. TOSI: Sure.

ADMINISTRATIVE LAW JUDGE: ...closer? Thank

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1 you.

2 MR. TOSI: How's that?

3 ADMINISTRATIVE LAW JUDGE: That's much better.

4 ***

5 BY MR. TOSI:

6 Q. Are you familiar with a term of art often
7 referred to as paper pooling?

8 A. I am.

9 Q. Would you please characterize how you'd
10 define that?

11 A. Okay. Paper pooling would exist when
12 there is a minimal standard to be met and a large amount
13 of milk gets to be pooled by meeting that minimal
14 standard, and the intention to serve the market is not
15 there, milk rarely moved to serve the market, and most
16 of the costs associated with serving the market are
17 avoided.

18 Q. And do you think that that's a good
19 thing, a bad thing, there's times when it's appropriate,
20 times when it's inappropriate?

21 A. On the whole it would be a not good
22 thing. You may hit some instances where there is an
23 unusual plant situation maybe, an unusual demand
24 situation where there might be some need to try to pool
25 a milk supply. But in large that is not a good thing

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1 for Orders and that's where we sort of find ourselves
2 now, and we don't view that in the long run as a good
3 thing.

4 Q. Okay. Is it also your opinion that I
5 gathered from your testimony and a quick scan of your
6 Exhibit 36 that one of the most compelling opinions that
7 you have about the Final Decision of Federal Order
8 Reform, that with respect specifically to the Upper
9 Midwest Order, that one of the most critical things was
10 the milk shed or the procurement area that's associated
11 with that market in terms of defining the market
12 boundaries.

13 A. That is correct. There was an extensive
14 amount of information that went point, by point, by
15 point to define that and it seemed to be important. And
16 we share in that criteria that every market has some
17 pretty extensive definition to it, whether it be the
18 Florida market or the Upper Midwest market. And that
19 without the definition of a market it's pretty hard to
20 have an Order.

21 Q. Yes, but with respect to -- I appreciate
22 what you just said, but it was real clear that the
23 Decision said probably the most significant criteria...

24 A. Yes, it did.

25 Q. ...was overlapping...

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1 A. It did.

2 Q. ...procurement -- Excuse me. -- sales
3 areas.

4 A. That's right. That's correct.

5 Q. Okay.

6 A. So that for all criteria that was most
7 important, but for Order 30 the procurement area seemed
8 to be the compelling definition.

9 Q. Okay. And in that regard it leads you to
10 the opinion that based on that, the fact that Idaho and
11 California milk is able to be pooled on the Upper
12 Midwest Order sort of falls outside the scope of the
13 intent as you understood the Decision?

14 A. That is correct. That would be an exact
15 characterization.

16 Q. Okay. And then if I could refer quickly
17 to your tables in Exhibit 37. First of all Table 4 and
18 tell me if my understanding is off base here. What
19 Table 4 is basically showing is, is that given the
20 current situation one of the reasons that California
21 producers and Idaho producers would want to be pooled on
22 the Upper Midwest Order is because there is an 82-cent
23 Producer Price Differential...

24 A. That's correct.

25 Q. ...that they get to share in. Right?

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1 A. After meeting the minimal requirements
2 there is an 82-cent Producer Price Differential in these
3 they would get to share in. That is correct.

4 Q. Okay. Then when we go to Table 5, what
5 your analysis shows is, is that although significantly
6 reduced, there still remains this opportunity...

7 A. That is correct.

8 Q. ...for this distant milk that perhaps
9 never leaves the State of California or the State of
10 Idaho, still deriving some sort of economic benefit from
11 being pooled on the Upper Midwest Order.

12 A. In this example after the 10 percent
13 delivery requirement and over this 17-month period,
14 there would still be some return, but that return some
15 months would be positive, some months would be negative,
16 and there is no factor for any of the day to day things
17 that a day to day milk supply, such as a rejected load,
18 or variations in the market would have to face. And
19 also the effect of the difference in location or Class I
20 differentials are not in this calculation, if it were,
21 it would reduce the Idaho amount by a greater number.
22 But there would be...

23 Q. Do you believe it would be negative?

24 A. It would get close.

25 Q. Okay. Would it be accurate to

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1 characterize your opinion that any distant milk outside
2 what was intended in the Final Decision with respect to
3 procurement area for the Upper Midwest Order that if a
4 situation worked out that even if it were a penny that
5 that milk supply would be inappropriately associated
6 with the Upper Midwest market?

7 A. Yes, but, you know, nonetheless if you
8 had an absolute requirement I think we would probably
9 run into the barrier of trade issues. So if there's an
10 economic ruler that you can apply and then if there is -
11 - a penny is returned, then somebody can decide if that
12 penny's return is worth it for them to try to achieve,
13 and if it's a dollar or if it's a minus dollar.

14 Q. Okay. Your testimony regarding your
15 overall proposals on adjusting the Section 7(c) pool
16 plant definition, part of that is 7(g), which gives the
17 Market Administrator the authority to adjust diversion
18 limits and shipping standards for all or part of the
19 marketing area.

20 A. Uh-hum.

21 Q. Would you be of the opinion that based on
22 that language all or part of the marketing area would
23 give the Market Administrator the ability to adjust the
24 shipping standards or diversion limits for milk from
25 Idaho or California?

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1 A. I would assume that. Traditionally there
2 has been an analysis that goes with that and it might be
3 difficult to substantiate analysis that said the least
4 economic, you know, movements ought to have to be made,
5 but nonetheless I would think that that authority would
6 give the Market Administrator the ability to do that.

7 Q. You would see that then as like a
8 conforming change to accomplish...

9 A. Correct.

10 Q. ...a certain intent?

11 A. I would. I would.

12 Q. Okay.

13 A. And would expect that language to go with
14 it.

15 Q. Okay. This is also another technical
16 question. The modification of your proposal as you
17 talked about on Page 27 would add plants described in
18 1030.7(c)(iv), four indicated as Roman numeral four...

19 A. Yes.

20 Q. ...in small case. What types of plants
21 are these as you understand it?

22 A. It would be distributing plants regulated
23 by another Federal Order and currently Order 30 allows
24 in market milk to earn qualification that way. So we
25 felt like that that was reasonable to allow distant milk

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1 that same opportunity if it met the other hurdles that
2 that could be part of it.

3 Q. Okay. Then does this mean that
4 deliveries to a pool plant in say for example Arizona or
5 Nevada could, with some limits, be used to meet the 10
6 percent shipping requirements required currently by
7 Federal Order 30?

8 A. Yes, which would parallel it to what
9 would be the same standard for in area milk now.

10 Q. And if the result is is that that would
11 also result in California milk in this example being
12 able to continue to be pooled on Federal Order 30, that
13 would not be a problem given your general opinions about
14 the...

15 A. Correct.

16 Q. ...inappropriateness of California milk?

17 A. Yes. That's correct.

18 Q. Okay. One moment please.

19 ***

20 ADMINISTRATIVE LAW JUDGE: Let's go off record
21 just a moment.

22 ***

23 [Off the record]

24 [On the record]

25 ***

1 ADMINISTRATIVE LAW JUDGE: Back on record.

2 Mr. Tosi?

3 MR. TOSI: Yes, I'm through. Thank you very
4 much.

5 ADMINISTRATIVE LAW JUDGE: Thank you. Any
6 other questions for Mr. Hollon? Yes.

7 MR. TONAK: Mr. Tonak.

8 ADMINISTRATIVE LAW JUDGE: Yes.

9 MR. TONAK: And I'm here solely on behalf at
10 this time of Midwest Dairymen's Company.

11 ADMINISTRATIVE LAW JUDGE: I'm sorry. I'm
12 going to have to ask you to adjust the mic upward.

13 ***

14 BY MR. TONAK:

15 Q. Now you indicated that you'd had
16 experience buying and selling milk. Is that correct?

17 A. That's correct.

18 Q. And I would make the assumption that that
19 involves transportation rates, costs, and consideration
20 of those details?

21 A. That is correct.

22 Q. Exhibit 37, Table 4 there is a rate per
23 mile for transportation of \$1.95. I'd like you to
24 clarify one thing for me on that. Is that somewhat of a
25 standard rate for DFA or...

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1 A. It represented in this case rates on
2 transactions that actually met this definition where we
3 had milk moving from western areas into Order 30. And
4 so we went back and looked at those invoices, and the
5 billing rates, and surcharges and computed that rate
6 based on this information. So in this particular case
7 it represented an actual event.

8 Q. Would that have included back haul rates?

9 A. It was the rate quoted us by the carrier.
10 It was not -- we don't operate a fleet in that area and
11 we deal with carriers, you know, on a routine basis, and
12 so we solicited the carriers available, and this was the
13 rates that we got.

14 Q. Are you familiar with the terminology
15 back haul rates?

16 A. I am.

17 Q. Would it fair to state that a back haul
18 rate is generally somewhat less, maybe 20 or 40 percent
19 less than the standard rate?

20 A. Generally, yes. However, if the carrier
21 doesn't offer you that you don't have that much choice,
22 you have to pay the bill that you get.

23 Q. I understand. I understand. In Exhibit
24 36 on Page 16 there is a -- the top paragraph in the
25 bold.

1 A. Okay.

2 Q. And it states, "When reserve supplies are
3 needed by the other markets, Upper Midwest milk can be
4 and is pooled on the more southern markets."

5 A. Yes.

6 Q. Without revealing proprietary
7 information, can you make a statement as to if or if not
8 DFA removes milk from the Upper Midwest pool and pools
9 it in these other markets?

10 A. From time to time that happens, it's not
11 the standard in either direction, but from time to time
12 that happens.

13 Q. Would that create a shorter supply
14 situation for fluid plants in the Upper Midwest to draw
15 on since you've removed milk from the market?

16 A. It could.

17 Q. I've heard a lot of talk in the hallways
18 today, yesterday about short milk supplies this fall.
19 Do you anticipate short milk supplies this fall or tight
20 milk supplies?

21 A. We anticipate milk supplies to be tighter
22 this call.

23 Q. Are you familiar with the term give up
24 charges?

25 A. I am.

1 Q. Would you care to characterize a range of
2 give up charges as \$3.50 to \$4 give up charges unusual
3 in a tight...

4 A. I would say that that tends to the...

5 Q. ...fall milk supply?

6 A. ...high end of those.

7 Q. Are you familiar with the transportation
8 credits for supply plant milk, location adjustment
9 differences, and assembly credits in Order 30?

10 A. I am.

11 Q. Would those partially offset the cost of
12 procuring milk for a fluid milk plant?

13 A. They would.

14 Q. Is it conceivable that a cheese plant,
15 irregardless of the give up charge, would not want to
16 turn loose of milk in the fall a cheese plant located in
17 the Midwest?

18 A. I have experienced that before in
19 negotiations.

20 Q. In Exhibit 7 in the center there is a map
21 with a -- outlining the Upper Midwest marketing area.
22 Are you familiar with that map?

23 A. I am.

24 Q. Do those borders have any particular
25 significance to an Order 30 pool distributing plant?

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1 A. Why don't you try that question again?

2 Q. Let me approach it another way.

3 A. Okay.

4 Q. How would a pool distributing plant or a
5 fluid milk plant become regulated under Order 30?

6 A. By meeting the requirements of a route
7 disposition and in area sales within the Order Marketing
8 Area.

9 Q. So basically they have to meet a certain
10 performance hurdle based on that described geographic
11 area?

12 A. That is...

13 ***

14 [Off the record]

15 [On the record]

16 ***

17 BY MR. TONAK:

18 Q. ...in Order 30 other than the
19 distribution criteria for a fluid distributing plant?

20 A. Then there are the supply plant
21 provisions, and the diversion provisions, and the touch
22 base provisions, and the performance provisions, and the
23 audit parameters of who gets, you know, looked at.

24 Q. And the producer provisions are basically
25 that if you're going to pool milk on Order 30 you have

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1 to touch base on a supply plant regulated by Order 30.
2 Would that be correct?

3 A. You'd have to touch base and ship some
4 prescribed amount.

5 Q. And the supply plant provisions are
6 somewhat the same in that you have to supply milk to a
7 distributing plant regulated under Order 30 to the
8 minimal...

9 A. Yes.

10 Q. ...performance standards?

11 A. That's correct.

12 Q. And in the case of the unit pooling, the
13 supply plant needs to either basically be located within
14 the Order 30 -- the prescribed Order 30 area?

15 A. I think that is correct.

16 Q. But the Order does not necessarily
17 mandate the regulating of a producer located within that
18 border or exclude a producer outside that Order?

19 A. I would agree.

20 ***

21 MR. TONAK: Thank you. I have no more other
22 questions.

23 ADMINISTRATIVE LAW JUDGE: Thank you, Mr.
24 Tonak. Mr. Tosi?

25 ***

1 BY MR. TOSI:

2 Q. Thank you, Your Honor. Excuse me, Elvin,
3 I had lost my thoughts there.

4 A. Okay.

5 Q. Many of the questions that come to mind
6 had been answered and it was trouble for me just trying
7 to find the order in which I needed to ask things. I'd
8 like to just touch back again on our previous
9 examination here of your opinions about paper pooling.

10 A. Okay.

11 Q. Would you consider what is happening
12 today with the fact that Idaho milk and California milk
13 is being in effect paper pooled...

14 A. I would....

15 Q. ...on the Upper Midwest Order?

16 A. I would.

17 Q. Would you also be of the opinion that
18 that milk, given how the Order is currently written,
19 would not consider that to be paper pooling? I mean,
20 this milk is meeting the criteria for being pooled, and
21 in that regard an argument could be made that it is...

22 A. Yes, that would be correct.

23 Q. ...in full compliance with the Order.

24 A. Yes, I agree with that.

25 Q. Okay. And could you just offer an

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1 opinion on how the Secretary should conclude that
2 perhaps the Order needs to be amended...

3 A. Okay.

4 Q. ...maybe for your proposal...

5 A. Well, first of all I would think...

6 Q. ...to draw this line between appropriate
7 pooling and inappropriate pooling.

8 A. Well, you are right that we are I guess
9 characterizing, we're meeting the spirit or maybe we're
10 meeting the letter of the law. But if you go to the
11 full intent of the Final Rule, and all of the time that
12 it took to put it together, and all the comments that
13 came in it, while we may be meeting the letter, we seem
14 to be a long way away from the spirit of the law. And
15 that there was a strict criteria or multiple criterias
16 dealing with marketing areas and dealing with the
17 concept of what it takes to share in the pool. And when
18 you read through those and try to boil down and distill
19 those, yes, you could say that if you touch base once
20 for life, and you deliver once to the market, and you're
21 associated with a block of milk that meets 10 percent,
22 yes, if you meet the letter of the law you can pool.
23 But the spirit seems to be that you have share in the
24 performance of the day to day activities of the Order in
25 order to share the pool, and that is true in every

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1 Order. And I would think that there could be a
2 distinction and a compelling argument and discussion
3 made to the Secretary to understand that.

4 Q. Okay. So if I understand you correctly
5 that the Decision should focus and make it a prime
6 importance that any changes to the pooling provisions of
7 the Upper Midwest Order rely heavily on performance...

8 A. Yes.

9 Q. ...requirements or standards, that it be
10 performance based.

11 A. Yes, and a solution to this problem in
12 our opinion should be performance based, there should be
13 a performance and an economic ruler that you can apply
14 to it and go back and look and see what things you need
15 to do to meet those criteria.

16 Q. Okay. And I'd like to add something
17 else. That the Secretary should continue to rely on its
18 findings of the procurement area for the current Order
19 30 continue to be the most important consideration for
20 why that market...

21 A. Yes.

22 Q. ...is defined as it is?

23 A. Yes, we would agree with that.

24 Q. Okay. One last question. Many witnesses
25 and proponents of other proposals these last couple days

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1 have presented arguments that liberal pooling is a good
2 thing for the Federal Order program in general, and
3 specifically for the Upper Midwest Order. Would you
4 agree with that characterization?

5 A. I would not agree with that
6 characterization in general because what we tend to find
7 is that we have producers who come to us and say I used
8 to -- my blend price used to be this, it's that now.
9 Why is it lower? And so you explain to them things like
10 the commodity markets have moved and there's been ups
11 and downs. He says, well, I understand that part, I can
12 see that, I read that. I get the CME reports every day.
13 But, you know, what else? I used to expect maybe a
14 higher utilization or a higher blend price. And so you
15 explain to them the mechanics of that and then they say,
16 well, you know, in this Order here's my -- I kept this
17 pool from last year and it said that there was, you
18 know, a 500 million pounds and now there's 1,500,000.
19 Well, where did all that milk come from? And after they
20 work there way around he says, well, does that serve the
21 market every day. Well, no, and, you know, does my
22 milk? Yes. And who pays that cost? Well, you do. And
23 they begin to say, well, now do I need an Order, you
24 know, why do I need that to get a lower price? And so
25 part of the answer when you explain what are some of the

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1 benefits that Orders provide producers that have for a
2 long time, and continue to, and in my opinion and our
3 opinion, will continue to do so in the future, but you
4 have a hard time explaining how this situation does
5 provide for a lower price. Well, as they begin to
6 grumble or they begin to question that, the discontent
7 grows some, and there are those in Congress who don't
8 like Federal Orders, not very many, and their influence
9 has been weak. But it's our opinion that if this
10 doesn't change some of that influence may grow. And we
11 continue to think that for a number of reasons Federal
12 Orders are important to producers and so this is a step
13 we need to take to make sure that they continue.

14 Q. Okay. I appreciate that as your opinion
15 and it's very well spoken. But I was asking if you
16 would agree with a characterization of other people's
17 testimony that open pooling or very liberal pooling for
18 the Federal Order market by Order 30, or Upper Midwest
19 entities, find it to be an acceptable and perhaps even a
20 preferred way of looking at pooling?

21 A. I have heard other people say that would
22 not be our view.

23 Q. Okay. And that in the end what they're
24 really saying is that we don't mind distant milk being
25 associated with our market as much as we mind that the

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1 same milk that's being pooled here is also being pooled
2 somewhere else and receiving another economic benefit in
3 addition to the one that we're able to provide that
4 milk.

5 A. I have heard that argument, but in our
6 view that's not the stronger argument.

7 Q. Okay. What would you -- Let me -- in the
8 end the Decision of the Secretary is put to a vote, and
9 in that regard we hope that we accomplish something
10 that's proper and in...

11 A. Okay.

12 Q. ...accordance with the law and the
13 requirements of the Act. But at the same time represent
14 the interests of the producers who are this market.
15 What sort of guidance or priorities you think that
16 should be placed on reconciling...

17 A. Okay.

18 Q. ...your opinion versus all other
19 testimony so far?

20 A. You know, the opinion of DFA producers,
21 what they express to us, is that if it lowers my price
22 I'm not really sure if I care if it comes from
23 California or Idaho. But the prevailing thought is that
24 when I went to the bank it was different. And I think
25 if we reconvene this meeting and filled it up with dairy

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1 farmers and asked them that question, they would answer
2 it the same way. That my greatest concern is that my
3 price is lower and it's somehow related to the letter of
4 the law but not the spirit of the law and I don't think
5 that's right. So I think that the prevailing finding
6 needs to be, you know, something that takes care of
7 that. And that, you know, DFA members have a concern
8 about what their absolute level of price is, if this is
9 something that lowers it, that's something that needs
10 attention.

11 Q. Okay. Are you of the general opinion
12 that blend price differences should be the mechanism
13 under which producers make their long terms decisions
14 about which market they want to associate their milk
15 with?

16 A. Yes.

17 Q. Okay. Also back to how you've
18 characterized the spirit of the Order program or the
19 Order versus the letter of the law. Could you please
20 explain why you are not opposed to double dipping as
21 it's currently been...

22 A. Okay.

23 Q. ...talked about here at this Hearing?

24 A. Again the end result is the price level,
25 and the strict characterization of that would only

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1 effect one narrow focus, that being California, the
2 California milk. But it would not affect any other milk
3 supplies in Order 30 or in any future Hearings, any
4 other distant milk supplies, whether it be distant milk
5 supplies to Florida, or Kentucky, or anybody anywhere
6 else. And so if that becomes the standard, that system
7 wide that's not going to be a good answer. And in a
8 Hearing in Order 33, which we have made a request that
9 that happen, that would not be a good answer. In Order
10 32, which is a Hearing request we are about to make,
11 that would not be a good answer. In the Pacific
12 Northwest Order, which, you know, I understand that
13 there has been a request into the Department and is
14 under consideration, that would not be a good answer.
15 So we think that there are better answers and answers
16 that apply better system wide. So we would rather see
17 the Department go that route.

18 Q. Okay. So in effect what you're saying
19 is, is that, if I understand you correctly, is, is that
20 double dipping, as it's been talked about here where
21 you're deriving a benefit from the Federal Order
22 program, and a state operated Order that has marketwide
23 pooling, is different than double dipping say on the
24 same milk within two Federal Orders at the same time.
25 You see that as being different?

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1 had a number of people propose that we work right
2 through so that they can get onto California or home.
3 It may mean skipping lunch all together because we may
4 not finish until dinnertime but we could finish earlier.
5 Let me have an indication by show of hands. How many of
6 you would like to skip lunch today?

7 ***

8 [Off the record]

9 [On the record]

10 ***

11 ADMINISTRATIVE LAW JUDGE: On record. We're
12 back on record at 1:12. Mr. English, would you like to
13 resume questioning?

14 ***

15 BY MR. ENGLISH:

16 Q. I just had a couple questions. Mr.
17 Hollon, to the extent that Proposal 4 could under the
18 circumstances that I outlined or other circumstances,
19 nonetheless continue to permit California milk, or any
20 other milk that's pooled under a Statewide Order, to be
21 pooled on Order 30, would you be willing to in addition
22 to Proposal 4, assuming the Secretary deems that
23 necessary to adopt, agree to adoption of Proposal 1 as
24 well, in addition to Proposal 4 in order to close any
25 remaining loophole that may be left after adoption of

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1 Proposal 4?

2 A. I think our overall preference obviously
3 would be Proposal 4. And I don't know that we would
4 necessarily be opposed to that but -- let me
5 characterize it this way. Proposal 1 by itself would
6 not meet our objectives. Proposal 4 by itself would,
7 and Proposal 4 and Proposal 1 we would probably not
8 oppose. But I think there's some conflicts that you set
9 up by doing that. Don't you occasionally run --
10 wouldn't you run the potential of running a foul of
11 maybe a -- how about a plant that's in California that
12 gets pooled in a Federal Order? Wouldn't you have some
13 conflicts there with how the milk might be priced?

14 Q. If the plant becomes fully regulated
15 under Federal Orders that it seems to me for such
16 facilities, could you not adopt an exception, and isn't
17 that likely going to be out West somewhere? So if you
18 adopted...

19 A. Yes, well...

20 Q. We're not asking for this provision out
21 West, we're asking this for Order 30.

22 A. I think we could accept that.

23 Q. Thank you.

24 ***

25 ADMINISTRATIVE LAW JUDGE: Thank you, Mr.

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1 English.

2 MR. HOLLON: Could I...

3 ADMINISTRATIVE LAW JUDGE: Yes.

4 MR. HOLLON: You had asked me a question
5 earlier and a wrong answer, you asked me about dates for
6 when DFA milk became pooled on Order 30 and I told you
7 calendar year 2001? That was incorrect. It was
8 calendar year 2000.

9 MR. ENGLISH: Would your answer remain the
10 same about which month you tell me?

11 MR. HOLLON: That would remain the same.

12 MR. ENGLISH: Which you would not tell me I
13 guess is the case. Thank you.

14 ADMINISTRATIVE LAW JUDGE: Yes, Mr. Vetne.

15 ***

16 BY MR. VETNE:

17 Q. Mr. Hollon, you gave some definition of a
18 term that you used and Mr. Tosi used called paper
19 pooling and related that to performance, milk that
20 performs but draws -- doesn't perform but draws after
21 making an initial shipment to qualify. That's the non-
22 paper portion, the initial shipment...

23 A. Yes, yes.

24 Q. Would you agree with me that there is
25 milk located in Minnesota and Wisconsin that also meets

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1 the definition of paper pooling as we've described it?

2 A. At some time, somewhere, some place?

3 Q. On a regular basis. Milk that has
4 touched based once and goes to manufacturing ever since.

5 A. In Order 30, in any Order, in anywhere?

6 Q. Order 30 is my question, yes.

7 A. Yes.

8 Q. The answer is yes?

9 A. Yes.

10 Q. And philosophically would you prefer that
11 the opportunity for local milk to paper pool also be
12 addressed and eliminated?

13 A. I think there's a distinction there in
14 your line of questioning that, you know, that in area if
15 you will, milk and paper pooling seems to have some
16 different performance standard maybe than out of area.

17 Q. It seems to have, you mean currently has?

18 A. That within the marketing area what those
19 performance standards are, and in this case, touch base
20 once and ship 10 percent, is something that's pretty
21 workable and is a good thing for Federal Order 30. But
22 it doesn't appear to be a good thing when we talk to
23 distant milks that we're looking at a performance
24 standard that anybody can meet. You know, if I meet
25 that performance standard, I pass muster, and so that

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1 seems to be a reasonable thing.

2 Q. So you wouldn't want to apply the same
3 rule for out of region producers -- for in region
4 producers as you're proposing for out of region
5 producers?

6 A. We didn't propose, for example,
7 increasing touch base, and we didn't propose, for
8 example, changing shipping percentages.

9 Q. My question was you wouldn't want to
10 either. You would not want...

11 A. Yes.

12 Q. Okay. Thank you. Is that because you
13 think you believe that it's a matter of Federal Order
14 policy that the performance standards ought to
15 accommodate the pooling of Grade A milk that's available
16 to the market whether it's shipped or not?

17 A. Let's try that question again.

18 Q. Is that because you believe that as a
19 matter of Federal Order policy performance standards,
20 pooling requirements, ought to accommodate Grade A milk
21 supplies whether pooled or not?

22 A. I didn't hear your question with regards
23 to a marketing area. Could you relate your question to
24 a marketing area and then...

25 Q. Yes, Grade A milk supplies within the

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1 marketing area or within the milk shed of the marketing
2 area...

3 A. Okay.

4 Q. ...ought to be accommodated whether
5 shipped or not?

6 A. The performance standards need to be
7 related to the marketing area and accommodate the
8 marketing area.

9 Q. And milk that -- a little bit different
10 answer than my question. And milk that is Grade A and
11 available to the market ought to be accommodated whether
12 or not it's shipped because there are problems if the
13 pooling standards don't allow that milk to be
14 accommodated. Would you agree with that?

15 A. Again are you in the marketing area or
16 out of the marketing area?

17 Q. I am referring to...

18 A. If you're saying that you use Grade A
19 milk anywhere in America and it ought to be able to pool
20 anywhere in America, that would not characterize our
21 position.

22 Q. These questions relate to Order 30...

23 A. Okay.

24 Q. ...and the Order 30 milk shed.

25 A. Okay.

1 Q. Okay. I don't -- unlike you I have never
2 synonymized, if that's a word, marketing area, and
3 procurement, or supply area.

4 A. Okay.

5 Q. But the milk shed.

6 A. Okay.

7 Q. Is your answer, yes, that as a matter of
8 regulatory policy, Orders ought to accommodate available
9 milk supplies whether they're pooled, shipped, or not?

10 A. Each area is going to have to have a
11 performance standard that works for it. And if that
12 accommodates, you know, all of the Grade A milk supply
13 in that area and works for it, then that would be the
14 standard and there may be a case where it doesn't.

15 Q. Okay. Would you agree with me that there
16 is -- that problems may arise in the market and between
17 producers if performance requirements are such that the
18 available Grade A milk supply cannot be accommodated?

19 A. Yes.

20 Q. You also referred in your cross
21 examination answers to blend prices between markets as
22 being a factor of producers should use to decide in
23 which market they will be pooled.

24 A. Provided they can meet the performance
25 standards, but that's going to be the target that

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1 they're going to start -- that the producer is going to
2 look to.

3 Q. Providing they, they usually meaning the
4 handler through which they market their milk?

5 A. Yes.

6 Q. Okay. Individual producers...

7 A. Rarely.

8 Q. ...rarely do that. Right?

9 A. Correct.

10 Q. And would you also agree with me that the
11 PPD or blend price draw from the Western market is
12 greater than the Upper Midwest or Order 30 market?

13 A. I haven't looked and don't look ongoing
14 but I'll accept that it is.

15 Q. So under the normal marketing
16 deliberation that a producer would go through if he were
17 located in Idaho, you would expect, would you not, for
18 the producer to prefer to market his milk in Idaho?

19 A. Uh-hum.

20 Q. Could you please articulate your answer
21 because...

22 A. Yes, yes.

23 Q. Okay.

24 A. I'm sorry.

25 Q. Is DFA, through its organization or in
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1 concert with pool plants that it supplies, willing to
2 provide a market for the Idaho milk that is now being
3 pooled in Order 30?

4 A. DFA has made solicitations from time to
5 time to attract and put milk supplies in the fluid milk
6 distribution channels in the Western Order and have not
7 been successful. And I think that currently...

8 Q. But...

9 A. ...there are some overtures out to
10 perhaps even this block of milk to include it in a
11 current marketing, you know, channel. But I'm not aware
12 that any of those have struck yet.

13 Q. Okay. In the second part of your answer
14 you refer to "even this block of milk."

15 A. Uh-hum.

16 Q. I infer that you did not mean to include
17 even this block of milk in the first part of your
18 answer. Am I correct? You said from time to time DFA
19 has whatever, you know...

20 A. From time to time DFA has made overtures
21 to supplies in the market...

22 Q. Right.

23 A. ...to be a part of its marketing channel.

24 Q. And the second part of your answer, "even
25 this block of milk..."

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1 A. Yes.

2 Q. ...you were distinguishing a different...

3 A. I made overtures...

4 Q. Overtures.

5 A. ...to both blocks of milk.

6 Q. Both blocks. Both blocks meaning blocks
7 that are currently in Idaho milk production of Grade A
8 that's not currently being pooled in...

9 A. Yes.

10 Q. ...the Western market?

11 A. Yes.

12 Q. What specific overtures has DFA made to
13 your knowledge?

14 A. To make shipments to fluid handlers as a
15 part of its marketing channel.

16 Q. And is this something that you're
17 involved in or the council for the Western Marketing
18 Area, the Mountain...

19 A. Those guys.

20 Q. The Mountain States Marketing Group
21 located in Federal Western Marketing Order?

22 A. The Mountain Council Region has the
23 direct day to day involvement in that and I'm...

24 Q. Okay.

25 A. ...involved only peripherally.

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1 ADMINISTRATIVE LAW JUDGE: Thank you, Mr.
2 Beshore. Mr. Hollon is well equipped to determine
3 whether he's about to divulge proprietary information.
4 I can see that Mr. Vetne's inquiries are designed in
5 part to determine whether there will likely be some
6 alleviation of some of the difficulties that are
7 currently present. And to that extent this inquiry is
8 quite relevant. Mr. Berde?

9 MR. BERDE: Yes, well, I have a...

10 ADMINISTRATIVE LAW JUDGE: Please, the
11 microphone.

12 MR. BERDE: I have an additional objection to
13 this line of questioning, which appears...

14 ADMINISTRATIVE LAW JUDGE: Please put it near
15 your mouth.

16 MR. BERDE: I have an additional -- I don't
17 want to eat it. I have an additional objection to this
18 line of questioning, which appears more directly to
19 address the possibility of private negotiations between
20 two supply organizations as to the willingness or
21 unwillingness to supply or deal with each other in the
22 Idaho marketing area. I don't know what possible
23 relevance this has to the issues before the Hearing
24 Officer or the Secretary at this time.

25 ADMINISTRATIVE LAW JUDGE: Thank you, Mr.

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1 Berde.

2 MR. BERDE: It's a relevancy question.

3 ADMINISTRATIVE LAW JUDGE: I understand. The
4 objections are overruled. To the extent, Mr. Hollon,
5 that you feel proprietary information is involved, you
6 may continue to refuse to answer as you have all along.
7 Mr. Vetne?

8 ***

9 BY MR. VETNE:

10 Q. Thank you, Your Honor. In the response
11 to some cross on double dipping -- Let me change horses
12 now before I go back to that and try to sneak another
13 one in. -- you said you are not opposed to double
14 dipping and that if you meet performance requirements
15 under two regulatory systems it's okay as far as you're
16 concerned.

17 A. Yes.

18 Q. And with respect to a supply plant then
19 located so that it can serve say the Central market and
20 the Upper Midwest market, 10 percent required in the
21 Upper Midwest, 25 percent in the Central market. If the
22 plant meets both why shouldn't it draw or maybe you want
23 it to draw from both markets.

24 A. I wouldn't want that to happen under the
25 Federal Order scenario.

1 Q. And why...

2 A. And I didn't think that question implied
3 two Federal Orders.

4 Q. Okay. And why would you not want it to
5 happen within or between Federal Orders?

6 A. It's prohibited so we wouldn't want to do
7 anything that's prohibited.

8 Q. Well, the rules are against it, I mean,
9 that's what the rules say, but we're here to consider
10 rules, and changes, and options. Are you opposed to
11 that in the Federal Order system?

12 A. Yes, we would be opposed to that and the
13 person to...

14 Q. Okay. And why?

15 A. We agree with the regulations as they are
16 currently written.

17 Q. Okay. And why?

18 A. That's as good an answer as I have.

19 Q. You have referred to, and I think it's
20 Exhibit 37, Table 6, to economic benefit of California
21 or Idaho milk associating with the pool after
22 transportation, Table 5.

23 A. Table 5. -- Okay. -- Table 4 was with no
24 performance standard and Table 5 was with a performance
25 standard.

1 Q. Okay. Table 4.

2 A. Okay.

3 Q. Let's go to Table 4 and Table 5 for that
4 matter.

5 A. Okay.

6 Q. And you referred in your testimony to the
7 net effect after cost of transportation to the producers
8 from an 83-cent or 82-cent draw from the Order 30 pool?

9 A. Uh-hum.

10 Q. Are you aware that producers whose milk
11 is diverted to a plant in Idaho do not receive and 83 or
12 an 82-cent draw?

13 A. For?

14 Q. For any producer milk pooled in Order 30.

15 A. With the exception of perhaps the
16 different in the location adjustment I would say that,
17 you know, these are a gross approximation of the
18 numbers. You could probably go to any one spot and
19 find, you know, yes or no.

20 Q. Well, with the exception of the
21 difference, I mean, the difference in what's the zones
22 is what their draw is. You did not...

23 A. That presupposes that everything from the
24 top passes to the bottom...

25

1 [Off the record]

2 [On the record]

3 ***

4 BY MR. VETNE:

5 Q. ...is your estimate of impact on the pool
6 and benefit to producers is 20 cents...

7 A. Yes.

8 Q. ...per hundredweight off base?

9 A. Which I pointed out that it didn't take
10 into account the difference in the differentials.

11 ***

12 MR. VETNE: That's all. Thanks.

13 ADMINISTRATIVE LAW JUDGE: Thank you, Mr.
14 Vetne. Any other cross examination? Yes, Mr. Cooper?

15 ***

16 BY MR. COOPER:

17 Q. Mr. Hollon, with...

18 A. Yes.

19 Q. ...regard to organizations that so far
20 have pooled the same milk under the California State
21 Order and Order 30, in his prepared testimony yesterday
22 Pete Hardin indicated that that practice had been
23 engaged in by DFA, Land O'Lakes, and National Farmers
24 Organization. To the best of your knowledge is he
25 correct in that regard?

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1 A. Yes.

2 Q. Do you know of any other organizations
3 that have engaged in that practice so far?

4 A. No, I am not aware of any other.

5 ***

6 MR. COOPER: Okay. Thank you.

7 ADMINISTRATIVE LAW JUDGE: Thank you, Mr.
8 Cooper. Any other cross examination? Any redirect
9 examination? Mr. Beshore?

10 ***

11 BY MR. BESHORE:

12 Q. Yes. Thank you. Just a couple of
13 questions on redirect, Mr. Hollon. With respect to the
14 Idaho milk that has shown up as being pooled on Order 30
15 in April and May of 2001, do you know of your personal
16 knowledge whether that represents milk of one, two,
17 three, or perhaps even more handlers?

18 A. I do not.

19 Q. Okay. So you don't have any personal
20 knowledge then which handlers may or may or not be
21 involved, or may be involved in pooling that milk?

22 A. There...

23 Q. Other than the fact that Mr. Tonak
24 testified that it was on his...

25 A. That is correct.

1 Q. ...Order 30 pool report. -- Okay. -- I
2 think you may have alluded to this in your direct
3 statement but I want to make sure there's no question
4 about it in the record. With respect to your preference
5 for the regulations, the Order 30 regulations, not
6 referencing the status of state regulation of milk, is
7 one of your concerns that state regulations for pricing
8 or pooling milk may change from time to time in ways
9 that we do not know now and that we would not be able to
10 factor in the affect or the interface of the Federal
11 regulations and those possible changes in the state
12 regulation?

13 A. That is correct.

14 Q. So that when you were asked questions
15 about, you know, what are the regulations in Virginia
16 now, or Pennsylvania now, or New York now, or California
17 now, or North Dakota now for that matter, whatever they
18 are now they may be something different next month and
19 that may have some different affect on the regulations
20 if that's the only point which the Federal Order
21 regulation uses to determine whether the milk's in or
22 out of the pool?

23 A. That would be correct.

24 Q. How long have you been involved, Mr.
25 Hollon, in the milk marketing business?

1 A. Since 1979. It will be 23 years.

2 Q. Okay. And have marketing conditions
3 changed any in the market place over that period of
4 time?

5 A. Yes.

6 Q. And if we were going back another ten
7 years would you have knowledge as a student of the
8 industry that conditions have changed since the early
9 1970s until...

10 A. Yes, that would be true.

11 Q. Okay. And the positions of that persons
12 have taken with respect to issues would be based on
13 marketing positions at the time the positions were
14 taken. Would you agree?

15 A. That would be certainly true.

16 Q. Okay. And so any possible predecessor of
17 DFA could have taken any position, who knows what the
18 position was, and 30 years ago, and do you think it has
19 any importance to what the issues are in the Hearing
20 today?

21 A. It would be hard other than taking a
22 historical position and saying, gee, that might be
23 something that would be useful or not. But to say it
24 worked then, it's got to work now, so we need to do it
25 now, you couldn't make that assumption at all.

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1 perfectly willing and would ask Mr. Hollon to defer the
2 testimony in Proposal 5 to accommodate those witnesses.

3 ADMINISTRATIVE LAW JUDGE: All right.

4 MR. HOLLON: This brings...

5 MR. BESHORE: With Your Honor's...

6 MR. HOLLON: This brings to the end Proposal
7 4?

8 MR. BESHORE: Well, our testimony with respect
9 to Proposal 4.

10 MR. HOLLON: And cross?

11 MR. BESHORE: And cross.

12 ADMINISTRATIVE LAW JUDGE: Thank you, Mr.
13 Hollon. Did you have any other witness with regard to
14 Proposal 4?

15 MR. BESHORE: No, we do not.

16 ADMINISTRATIVE LAW JUDGE: All right. Good.
17 Then thank you for yielding, Mr. Beshore. With regard
18 to the next witness to be called, is there agreement or
19 do several of you have proposals? Mr. Vetne?

20 MR. VETNE: Mr. Beshore and I talked about
21 this, although I guess he's not at liberty...

22 ADMINISTRATIVE LAW JUDGE: I can barely hear
23 you.

24 MR. VETNE: I guess Mr. Beshore is not at
25 liberty to speak for other people that would present

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1 opposing testimony, but I feel sort of a compelling need
2 for Mike Reinke to present his opposition to Proposal 4
3 at this time. And there will be no affirmative
4 proposal, simply opposition testimony.

5 ADMINISTRATIVE LAW JUDGE: All right. Does
6 anyone object to that witness being called next? -- All
7 right. -- there being no objection he may come forward.
8 If you'd be seated please. Please identify yourself
9 spelling your name and identifying your representation
10 here or your work.

11 MR. REINKE: My name is Mike Reinke, R-e-i-n-
12 k-e, and I've been employed for 20 years by Kraft Foods,
13 a major U.S. manufacturer and seller of cheese and Class
14 II products.

15 ADMINISTRATIVE LAW JUDGE: All right. Mr.
16 Reinke, would you please stand and raise your right
17 hand?

18 ***

19 [Witness sworn]

20 ***

21 ADMINISTRATIVE LAW JUDGE: Thank you. You may
22 be seated. Would you draw that mic just a little closer
23 to you? I think it might make it easier.

24 ***

25 MIKE REINKE,
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1 having first been duly sworn, according to the law,
2 testified as follows:

3 MR. REINKE: My name is Mike Reinke. I have
4 been employed for 20 years by Kraft Foods, a major U.S.
5 manufacturer and seller of cheese and Class II products.
6 A major part of my responsibility for Kraft involves
7 procurement of raw milk and dairy products, including
8 Federal and State rules and statutes that affect cost
9 and regulatory burdens on Kraft and on dairy farmers
10 supplying raw milk to Kraft. Prior to working with
11 Kraft I was employed for ten years by the Chicago
12 Regional Market Administrator's Office, primarily in
13 Field Audit. Kraft operates manufacturing and
14 processing facilities in ten states. These include six
15 dairy plants in New York, a soft products plant in Ohio,
16 processed cheese plants in Pennsylvania, Illinois, and
17 Minnesota, a cream cheese and processed cheese plant in
18 Missouri, a cheddar cheese plant in Arkansas, Italian
19 cheese and soft products plants in California, a cream
20 cheese plant in Wisconsin, and a cream cheese and low
21 fat cheddar plant in Rupert, Idaho. Grade A producers
22 associated with the Idaho plant are pooled in the Upper
23 Midwest Marketing Order. Since the inception of the
24 Federal regulation in Idaho 20 years ago, Kraft has
25 sought to allow its producer patrons to participate in a

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1 Federal Order pool. At the original Promulgation
2 Hearing we successfully opposed performance proposals
3 based on marketwide Class I utilization of 50 percent
4 projected by proponents of DFA predecessors. As it
5 turned out Class I use was closer to 10 percent. We
6 have tried over the years through making Hearings and
7 through market participants to find an efficient way to
8 allow our producers to share in the same benefit in a
9 marketwide pool as their neighbors. But limited local
10 Class I markets and market power of a few supply
11 organizations frustrated our efforts. Because the
12 economic benefit to other producers from pooling was
13 generally modest, we were able to retain our milk
14 supplies at competitive prices. Following Federal Order
15 Reform, however, and its adoption of a more equitable
16 system of regional pooling, the disadvantage to Kraft
17 and its patrons from pool exclusion was exacerbated.
18 Kraft renewed its efforts to allow it's independent
19 patrons to participate in the local pool. Again limited
20 market outlets and control of the markets by a few
21 suppliers, including a proponent of Proposal 4,
22 frustrated our efforts. Eventually we found a pooling
23 home for our Grade A milk supply in the Upper Midwest
24 market. Proposal 4 in significant part appears to
25 solicit USDA's help to exact retribution or economic

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1 coercion in response to our limited success in finding a
2 pooling home for this relative small volume of Grade A
3 milk. Kraft has actively participated in the Federal
4 Milk Market Order program as a milk handler and as an
5 advocate in the Administrative Hearings for over 50
6 years. In many Hearings over the past three decades
7 Kraft has struggled to ensure that independent dairy
8 farmers supplying its plants have the same opportunity
9 to share in the benefits of a marketwide pool as other
10 farmers without a greater cost or burden to Kraft or its
11 patrons. We have frankly met with mixed success against
12 the opposition of organizations that sought to use the
13 regulated system to keep additional milk off the pool.
14 Unless of course producers of the added milk were
15 willing to join the opposing organization and forego
16 their rights under the Agricultural Fair Practices Act.
17 Over the years the USDA has recognized that market
18 barriers have a greater potential to create than to cure
19 market disorder, and as a result pooling regulations
20 have provided a greater opportunity for producers as
21 well as handlers to enter markets and shift between
22 markets. While producers may pool their milk in only
23 one market at a time, the reform system provides
24 opportunities for producers to choose. This opportunity
25 has also tended to mitigate or self-correct sharp

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1 differences in blend prices between markets. For
2 example, since Federal Order consolidation became
3 effective a substantial quantity of milk has left the
4 Order 30 pool and is now associated with the markets to
5 the South and the East. Proposal #4 seeks to recreate
6 market barriers of the type that were abandoned many
7 years as unwise or unlawful regulatory policy. It may
8 be helpful, nevertheless, to revisit some of the guiding
9 principles that have influenced the current structure of
10 Federal Milk Market Order regulation. We believe that
11 Proposal 4, if adopted, would violate the Agricultural
12 Marketing Agreement Act for at least three reasons.
13 First, the proposal would create an unlawful and
14 unauthorized exception to the Uniform Producer Prices
15 required by 7 U.S.C., Section 608(c)(5)(b)(ii). It
16 would require selected groups of distant producers
17 disfavored by the DFA proposal to incur transportation
18 cost and other direct regulatory burdens not required of
19 nearby producers under the Order. Distributing plants
20 regulated under the Upper Midwest market are
21 predominantly located in Southeastern Minnesota, near
22 the twin cities, and near metropolitan areas in Illinois
23 and Wisconsin along the Lake Michigan shore. The
24 mileage from Rupert to Minneapolis is 1389 miles and
25 from Rupert to Milwaukee or Chicago is 1538 miles. A

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1 transportation cost of not less than 4-and-a-half cents
2 per hundredweight per miles the proposal has designed
3 reduced net revenue to distant producers by \$6.25 or
4 more per hundredweight on each mandated shipment to
5 Order 30 distributing plants in Southeastern Minnesota
6 if a market outlet can be found. In order safely to
7 meet the at least 10 percent requirement, four days milk
8 production per month from the reporting unit would have
9 to be shipped and effect a producer's shipping
10 requirement of 13 to 14 percent applied to the
11 producer's total monthly production. The transportation
12 cost on 13 percent shipments would reduce net pool
13 revenue from the Producer Price Differential by 81 cents
14 per hundredweight. The average Order 30 PPD since
15 January 2000 has been 83 cents, but this is reduced by
16 20 cents from milk diverted to Idaho plants. So even
17 before marketing service deductions and administrative
18 fees are considered, the special distant producer
19 provisions proposed by DFA effectively guarantee that
20 distant farms can participate in the Upper Midwest
21 market only at a loss to the dairy farmers. The result
22 we believe is not substantially different from the
23 nearby versus distant producer pool provisions and
24 validated by the Supreme Court in Zuber v. Allen thirty-
25 one years ago. Second, Proposal #4 is unlawful because

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1 it conditions pooling of distant producers upon
2 utilization of their milk by a Class I distributing
3 plant. This aspect of the proposal is also prohibited
4 by 7 U.S.C., Section 608(c)(5)(b)(ii), which provides
5 for producer participation in a marketwide pool
6 irrespective of the use made of such milk by the
7 individual handler to whom it is delivered. In a
8 surplus market such as the Upper Midwest, most producers
9 participate in a pool with milk that is delivered to
10 pool and non-pool manufacturing facilities 365 days a
11 year. It is left to the handler to select milk supplies
12 which may most effectively serve the markets remaining
13 Class I plants and to satisfy the handler pool plant
14 requirements of Section 7 of the Order. Proponents
15 suggestion that designated groups of dairy farmers may
16 only share in pooled revenue and receive the benefit of
17 a pool PPD if they incur extraordinary expense of
18 shipping milk to Class I plants, while other pool
19 farmers uniformly share in the Class I revenue without
20 such shipment requirements, is indistinguishable and
21 results from the provisions condemned by the U.S. Court
22 of Appeals in Blair v. Freeman forty-five years ago as a
23 utilization based economic preference maintaining for
24 nearby producers a greater share of the markets Class I
25 revenues. Third, the proposal would exceed the

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1 Secretary's authority under the trade barriers
2 limitations on the Agricultural Marketing Agreement Act
3 under 7 U.S.C., Section 608(c)(5)(g) as described in the
4 Lehigh Valley Cooperative Farmers v. The United States
5 almost 40 years ago. This section prohibits Marketing
6 Order provisions that in any manner limit the market of
7 milk products in the regulated area, or that prohibit
8 the marketing of milk in the regulated market for any
9 production area in the United States. This included as
10 was the case for the compensatory payment at issue in
11 Lehigh Valley provisions that have the economic effect
12 of excluding or prohibiting milk from out of region
13 plants or producers. The extraordinary and the unique
14 transportation burden proposed by DFA to be imposed
15 exclusively on groups of dairy farmers located outside
16 of designated Midwest states has the same exclusionary
17 effect as provisions condemned in Lehigh. It is not my
18 purpose to discuss or invite detailed questions
19 concern9ing the Federal Court cases. We will address
20 the law in our Brief. Rather I hope to direct the
21 Department's focus on the practical effect of the
22 proposals on our dairy farmers and on the regulatory
23 policies of the past three decades that have moved away
24 from market isolation and regionalism in favor of
25 universal pooling. This regulatory evolution was in

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1 large part inspired by the Nourse Committee report in
2 1962 and influenced by the Justice Department's Milk
3 Marketing report in 1977. With handler and cooperative
4 consolidation and transportation improvements the
5 nation's milk markets are no longer isolated from each
6 other. USDA should reject this proposal to isolate
7 Order 30 from milk supplies located outside the region.

8 ***

9 BY MR. VETNE:

10 Q. Thank you, Mr. Reinke. Does that
11 conclude your prepared testimony?

12 A. Yes, it does.

13 Q. Before I ask you if you have any other
14 additional comments. You spoke of efforts to associate
15 your Grade A milk supply in Idaho with the local western
16 market pool. Can you provide a little bit more detail
17 in fact concerning those frustrated efforts?

18 A. For the last two years we've been talking
19 with various organizations, West Farm Foods being one,
20 Dairy Farmers of America being another one, Gossner
21 being another one. We've talked to Dean Foods about
22 trying to ship milk to their plant in Salt Lake to meet
23 the pooling requirements and they had indicated they had
24 a full supply agreement with DFA through its predecessor
25 co-op, so they weren't interested in buying any milk.

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1 And the last proposal we had from DFA was, you know, we
2 would prefer that you turn over our producers but, you
3 know, in order for us to pool you it would be have to
4 pool draw. Which Kraft would be responsible for the
5 full pool settlement and so the difference of the other
6 half would have to come out as a cost to Kraft, and that
7 was more than we were willing to pay.

8 Q. Okay. Do you have any additional
9 comments you wish to make after hearing the testimony up
10 until now?

11 A. Well, you know, I find this truly as a
12 trade barrier because I look at, you know, we had pooled
13 significant amounts of milk on Order 30, particularly
14 from our Melrose plant up until March of this year when
15 we sold it. And we shipped to the fluid market but we
16 pretty designated the close end milk to the fluid
17 market, so that a great majority of that milk never went
18 to the fluid market and was pretty much diverted to our
19 non-pool cheese plant in Melrose. And I don't see
20 what's happening in Rupert is really any different than
21 what we did in Melrose other than distance. I also look
22 at -- I think as I view the Final Rule that came out by
23 USDA was that an effort to balance some of these
24 differences between pools, and I think in reality Order
25 30 has lost, or not lost, but milk has moved off of

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1 Order 30 in the neighborhood of four, to 500, maybe 600
2 million pounds relative to maybe the double poling in
3 California, which has actually benefited the Midwest
4 producer. So I think that it was, you know, an effort
5 by a flatter differentials and more open pooling to
6 mitigate some of these wide differences between pools,
7 and I feel it actually has worked.

8 Q. When you refer to benefit to producers,
9 were you referring to the milk that's moved off the
10 Order 30 pool into other markets?

11 A. Well, it benefits the producers in both
12 ways. The producers that moved off were probably moved
13 to Order 32, 33, maybe a couple other Orders for a
14 higher differential, as well as then lower the
15 utilization on Order 30, which created a higher PPD in
16 Order 30.

17 Q. Okay. Part of the direct testimony by
18 DFA in support of Proposal 4 is in effect that DFA hopes
19 to use this Hearing as precedent in future Hearings and
20 this is a test case for tightening rules that allow milk
21 beyond the marketing area boundaries to associate with a
22 Market Order pool. With respect to extension of this
23 kind of proposal to other markets, do you also have a
24 concern about that?

25 A. Well, I was -- since it's the end of the
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1 day if we have the same Hearing and they tighten up
2 pooling provisions to go back to maybe where we were
3 prior to Federal Order Reform, that the net of it is, is
4 that substantial producers will lose their ability to
5 pool, and I think the Midwest producers and that group
6 of producers will end with the lower milk prices.

7 Q. Lower than they have now even with
8 California and Idaho pooled?

9 A. Yes.

10 Q. I have one procedural think I'd like to
11 make it...

12 ***

13 ADMINISTRATIVE LAW JUDGE: Yes, Mr. Reinke,
14 would you just make the microphone come up a little
15 higher. I think that will help.

16 MR. REINKE: Okay.

17 ADMINISTRATIVE LAW JUDGE: Thank you.

18 MR. VETNE: Your Honor, in connection with
19 this issue, I have a few more documents that I would
20 like to request official notice of. And I don't have a
21 printed list like Mr. Beshore or Mr. English did, but
22 I'll go through them carefully.

23 ADMINISTRATIVE LAW JUDGE: Please.

24 MR. VETNE: Okay. Perhaps first interest,
25 since this relates to a lot of the previous testimony,

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1 is a Final Decision of the Secretary promulgating the
2 Great Basin Marketing Order. And that's found at 53
3 Fed. Reg. 686, January 11, 1988. 1988 -- I'm sorry. --
4 and that Decision, in addition to discussing the market,
5 and performance, and market outlets in Idaho and the
6 Great Basin market, also contains the provision
7 referring to state regulation under a marketwide pool
8 that Mr. English referred to earlier and its adoption in
9 the Great Basin market, particularly with reference to a
10 discussion in the Decision of milk in California subject
11 to the state marketwide pool.

12 ADMINISTRATIVE LAW JUDGE: All right. Thank
13 you. The Secretary will of course take official notice
14 of that.

15 MR. VETNE: And the second, there's a few
16 others. The second one being the -- and Mr. Reinke
17 referred to this briefly, the decision creating the
18 regulation in Idaho, it was Idaho and Eastern Oregon,
19 and that's found at 46 Fed. Reg. 21944, April 14, 1982.

20 ADMINISTRATIVE LAW JUDGE: Thank you. The
21 Secretary will also take official notice of that.

22 MR. VETNE: Okay. Third, a Final Decision,
23 and supplemental Decisions, involving what was call a
24 National Hearing Decision, which involved a national
25 overview of Federal Order regulation in 1991, and it was

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1 subject to two amplified Decisions resulting from a
2 lawsuit brought by Minnesota milk producers. I don't
3 have the exact Federal Register cite for those
4 publications, but it's a well known, recognized, and
5 easily ascertainable Decision.

6 ADMINISTRATIVE LAW JUDGE: All right. Thank
7 you, Mr. Vetne. The Secretary will of course take
8 official notice of that and please cite it in your
9 Brief.

10 MR. VETNE: Thank you. I shall. Thirdly I'd
11 like to request official notice, and some of this may
12 already be in but I think it's not broad enough, of
13 handler lists and as published by the individual Market
14 Administrator's offices for calendar years 2000 and
15 2001, and producer milk by State and County. And that's
16 for all of the markets of the eleven markets intending
17 to cover those that have not already been included in
18 exhibits or officially noticed.

19 ADMINISTRATIVE LAW JUDGE: Do you propose to
20 obtain those and attach them to your Brief?

21 MR. VETNE: They are -- no, I don't propose to
22 do that. They are currently available on the Market
23 Administrator's web sites available to any person who
24 wishes to click onto them. So they're readily
25 accessible. The list of handlers and producers, milk by

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1 State and County for the regulated markets. It's for
2 the calendar year 2000-2001.

3 ADMINISTRATIVE LAW JUDGE: And do you propose
4 that the Secretary would access those at the time the
5 Decision is being finalized in that it may contain
6 information that is not currently available to any of
7 us...

8 MR. VETNE: It...

9 ADMINISTRATIVE LAW JUDGE: ...or only through
10 current dates?

11 MR. VETNE: It's available to all of us, to
12 most of us it's also sent in published form on a
13 regular...

14 ADMINISTRATIVE LAW JUDGE: I mean, because it
15 may include months that are not yet compiled.

16 MR. VETNE: To the extent that there is a
17 publication showing producer milk by State and County,
18 up through the month of June that is not yet published.
19 Yes, I will, you know, if it's available to us before
20 the Briefs are due I would, I guess it's reasonable to
21 have a cut off to the extent it's available and
22 accessible up to the time Briefs are due, it may be
23 relied on for purposes of argument and constitute a part
24 of the record by official notice.

25 ADMINISTRATIVE LAW JUDGE: So if it's on the
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1 web site by the day that Briefs are due or by five days
2 prior to Briefs due?

3 MR. VETNE: Yes, I see your point, five days
4 prior to.

5 ADMINISTRATIVE LAW JUDGE: Five days prior to
6 the Briefs being due. Then you would like official
7 notice to be taken...

8 MR. VETNE: Yes.

9 ADMINISTRATIVE LAW JUDGE: ...of that data?

10 MR. VETNE: Yes.

11 ADMINISTRATIVE LAW JUDGE: Yes, Mr. Cooper?

12 MR. COOPER: Could I just ask the relevancy of
13 all eleven Orders? I mean, certainly we're dealing with
14 this Order and one or two around here, but why are we
15 taking official notice of the Southeast Order and
16 Florida?

17 ADMINISTRATIVE LAW JUDGE: Mr. Vetne?

18 MR. VETNE: For a number of reasons, but not
19 least of which is the proponent of Proposal #4's
20 affirmative testimony, to which there was no objection
21 by the Department or anybody, that they wish to use this
22 as a precedent, and have submitted and will submit
23 follow-up proposals of a similar nature elsewhere. If
24 this is going to be a precedent we better have some
25 foresight as to what the consequences are and whether

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1 they may be intended or unintended.

2 ADMINISTRATIVE LAW JUDGE: Mr. Beshore?

3 MR. BESHORE: I mean, we were...

4 ADMINISTRATIVE LAW JUDGE: Please adjust the
5 mic.

6 MR. BESHORE: Mr. Hollon and DFA has certainly
7 been candid with respect to its thoughts on the
8 importance of this Hearing, but we're not, you know,
9 we're not here to address the regulations and all the
10 other Orders. So I'm not sure what pertinence it all
11 has either.

12 ADMINISTRATIVE LAW JUDGE: Thank you, Mr.
13 Beshore.

14 MR. VETNE: There was, likewise I might add,
15 testimony concerning milk from what has been referred to
16 as the traditional procurement area, supply area, or
17 milk shed of the Upper Midwest moving to other markets
18 and its impact here. We may not know where that milk
19 has moved unless we take official notice of documents in
20 which there will be information showing producer milk
21 for a month. And as I -- traditionally the Market
22 Administrator's compile this information for December in
23 all cases, but in many cases for December and a flush
24 production month such as May or June.

25 ADMINISTRATIVE LAW JUDGE: Mr. Vetne, I'd like
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1 to ask if you would be willing, rather than having the
2 Secretary take official notice of all of this data, if
3 you would be willing to attach to your Brief that data
4 that you extract from the web sites that you find to be
5 pertinent to your argument in your Brief.

6 MR. VETNE: I will refer to it and/or attach
7 it, yes, but, you know, that won't help anybody else who
8 may want to make similar arguments to know. And in
9 order for all of us to have a finite universe of data,
10 official notice must be -- we must all now be aware of
11 what is to be officially noticed or not. The Secretary
12 may look at data that's in the Brief and say, no, this
13 is too much of a stretch, but that's something that can
14 be done in the course of decision making. If a Decision
15 is not now made to include in an official notice,
16 producer milk by State and County, to show among other
17 things, you know, the history of distant milk
18 participating in pools, where it's done now, where it
19 has done in the past, then we won't be able to use it in
20 Briefs at all. Because the rules say you may not rely
21 on anything that's not received in this record. And
22 official notice is a way of receiving...

23 ***

24 [Off the record]

25 [On the record]

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MR. VETNE: ...an argument at all if they're not officially noticed.

ADMINISTRATIVE LAW JUDGE: All right. Are there any objections to the Secretary taking official notice of the data by State and County under every one of the eleven Federal Marketing Orders, Milk Marketing Orders, for the calendar year 2000 and 2001 through June 2001, so long as that data is available on a web site of at least five days prior to the Briefs being due. There is no objection. The Secretary will take such official notice. However, I caution each of you, if you find relevant information there that you wish to argue in your Brief, it would be wise to attach a copy of that web site information to your Brief so that it's readily available in the record at the time the record is reviewed.

MR. VETNE: Thank you.

ADMINISTRATIVE LAW JUDGE: You're welcome.

MR. VETNE: Third item, or category of items, that I'd like to request official notice of is the U.S. Census of Agriculture. I think the last one was done in 1997 and the responsibility for that in '97 moved to USDA from the Census Bureau. Particularly the data, the State and County data, and maps, the agricultural atlas

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1 showing milk/cow inventory for 1997, and milk/cow
2 inventory change between 1992 and 1997.

3 ADMINISTRATIVE LAW JUDGE: All right.
4 Comments with regard to that request, are there any? --
5 All right. -- and how would you provide that for the
6 record should the Secretary choose to take official
7 notice of it?

8 MR. VETNE: Yes, that also is available on the
9 USDA's official web site under their Agriculture Census
10 page and I would be happy to print a copy and attach it
11 or submit it separately bound along with my Brief...

12 ADMINISTRATIVE LAW JUDGE: All right.

13 MR. VETNE: ...for the convenience of the
14 Secretary.

15 ADMINISTRATIVE LAW JUDGE: All right. Thank
16 you, Mr. Vetne.

17 MR. VETNE: Okay.

18 ADMINISTRATIVE LAW JUDGE: The Secretary will
19 take official notice of the Census of Agriculture
20 information that you've identified. But I would caution
21 anyone who wishes to rely on it to make sure a hard copy
22 is in the record attached to your Brief or otherwise
23 provided for the...

24 MR. VETNE: Okay.

25 ADMINISTRATIVE LAW JUDGE: ...for the written
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1 record.

2 MR. VETNE: And one final category of
3 documents for which I request official notice. And that
4 is -- I'm not sure this is the right word for it.
5 Perhaps somebody from the Market Administrator's Office
6 can correct me. But it's a hauling charge study, which
7 is a report prepared by the Market Administrator's
8 Office for the Upper Midwest for 1999, which also
9 contains 1998 data, and a report by the Market
10 Administrator's Office out of the State of Washington,
11 which contains hauling cost charges for Idaho and other
12 states. I'm concerned mostly about Idaho there also for
13 the same years. The most recent report contains two
14 years data. So I'd like to request official notice of
15 both of those Market Administrator generated hauling
16 cost studies, which are also available on the Internet
17 on the individual Market Administrator's web sites.

18 ADMINISTRATIVE LAW JUDGE: All right. And for
19 the record, how do you spell hauling chart study?

20 MR. VETNE: Pardon?

21 ADMINISTRATIVE LAW JUDGE: How do you spell
22 it?

23 MR. VETNE: Hauling, h-a-u-l-i-n-g, and it's a
24 charge or cost. I'm not sure whether it's a cost study
25 or a hauling charge study. Charge. The Market

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1 Administrator says charge.

2 ADMINISTRATIVE LAW JUDGE: Hauling charge...

3 MR. VETNE: Charge.

4 ADMINISTRATIVE LAW JUDGE: ...study?

5 MR. VETNE: Right.

6 ADMINISTRATIVE LAW JUDGE: C-h-a-r-g-e?

7 MR. VETNE: Correct.

8 ADMINISTRATIVE LAW JUDGE: And you want two of
9 them. One is for the Upper Midwest Marketing Order Area
10 and the other is for the State of Washington because it
11 includes Utah -- Idaho.

12 MR. VETNE: The other is from the Market
13 Administrator's Office in Washington, but it includes --
14 and the request is directed to hauling charges for
15 producers located in Idaho.

16 ADMINISTRATIVE LAW JUDGE: In Idaho. -- All
17 right. -- the Secretary will take official notice of
18 that information. And again, I caution you to provide a
19 hard copy in the record.

20 MR. VETNE: Thank you so much.

21 ADMINISTRATIVE LAW JUDGE: You're welcome.

22 MR. VETNE: Okay. Mr. Reinke?

23 MR. REINKE: And I had one other additional
24 comment. I think since the proponents of Proposal 4 had
25 quoted quite extensively from the Decision, I wanted to

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1 read another paragraph that was in a Decision on
2 producer milk for Order 30 just to maybe indicate there
3 was selective quotes taken. And there are some other
4 views that the Department quoted here also...

5 MR. VETNE: You mean they didn't read all of
6 it?

7 MR. REINKE: And this is from Page 322, it's
8 the Federal Milk Market Order Reform published in March
9 1999.

10 MR. VETNE: Proceed.

11 MR. REINKE: What I'm reading, it says, "There
12 is little or no justification for forcing producer milk
13 to be received at a pool plant to maintain or prove
14 association with the market. Supply plants and
15 cooperatives will be required to ship a fixed percentage
16 of their total milk supply and not just a portion
17 receipt with their plants to the fluid market. Since
18 both cooperatives and proprietary handlers can move milk
19 directly from the farm to the fluid market, there is
20 little reason to force milk into a pool plant solely for
21 the regulatory purposes. Certainly the extra cost to
22 the handler of moving milk for regulatory purposes does
23 not enhance economic efficiency or milk quality, and in
24 fact decreases economic efficiency and milk quality to
25 the detriment of the entire market." Now, you know,

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1 this was published just a little over two years ago and
2 I don't really think the markets have changed
3 dramatically since then.

4 ADMINISTRATIVE LAW JUDGE: Mr. Vetne?

5 MR. VETNE: Thank you. The witness is
6 available for cross.

7 ADMINISTRATIVE LAW JUDGE: All right. Thank
8 you. Mr. Beshore, cross examination of Mr. Reinke?

9 ***

10 BY MR. BESHORE:

11 Q. John turned it tighter there. I'll work
12 on it this way. Mike, why isn't your Idaho milk pooled
13 on the Florida Order where you'd have even a much
14 greater PPD?

15 A. Well, I think the performance
16 requirements from obviously from Florida to Idaho and
17 the freight is, you know, particularly performance
18 requirements.

19 Q. Okay. You can't meet the performance
20 requirements there. Why isn't it pooled in the
21 Southeast Order?

22 A. Well, I guess, you know, rather than
23 going through all of them, I looked basically at --
24 Idaho was my preference and I couldn't get it pooled
25 there. And so I looked at the next available Order

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1 that, you know, I had relationships with where I could
2 maybe strike a pooling arrangement, and that was the
3 Upper Midwest. And it's as simple as that.

4 Q. Okay. So you didn't look at any other
5 Orders? You didn't look at Order 32?

6 A. I looked at, you know, I did not look at
7 Order 32, although the pooling requirements in Order 32
8 would have been very similar, I mean, just one day touch
9 base. I think the big difference was in Order 30 it was
10 one day within the first month's pool and in Order 32 it
11 was one day prior to it being pooled.

12 Q. Okay. So you went with the easiest
13 option available to you?

14 A. On retrospect I probably should have
15 looked harder at Order 32 because it would have been,
16 you know, a higher utilization and a higher blend price
17 and it probably would have delayed me being at this
18 Hearing for a couple months.

19 Q. Okay. With respect to the milk that's
20 now pooled on Order 30, is it -- how much has been
21 delivered to Order 30 plants?

22 A. Well, you have to remember when we...

23 Q. No, how much has been delivered...

24 A. Okay.

25 Q. ...to Order 30 plants?

1 A. One days production, which was the Order
2 requirement.

3 Q. Okay. And the rest of it's been
4 delivered to the plant in Rupert, Idaho for cheese
5 production...

6 A. Correct.

7 Q. ...by Kraft. Correct? That's a yes?

8 A. Yes, I said correct.

9 Q. Okay. Thank you. Now Order 30 has
10 performance requirements at the level of 10 percent does
11 it now?

12 A. Yes.

13 Q. Okay. But your milk's not performing at
14 all, how is that performance being met to allow your
15 milk to be pooled?

16 A. Well, our milk is performing on the touch
17 day requirement and the arrangement we had that the
18 cooperative that we're pooling through was performing on
19 our milk.

20 Q. Okay. So somebody, other milk that's in
21 Order 30 that's pooled by the cooperative through which
22 you're pooling is performing for your milk in Idaho.
23 Correct?

24 A. And that's no different than probably
25 much of the milk in Minnesota and Wisconsin.

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1 Q. Well, I wasn't asking whether it was
2 alike or different than anything else, but is your, you
3 know, I just want to make sure the testimony is clear or
4 the record's clear.

5 A. Yes.

6 Q. Yes, there's milk in -- and the milk
7 that's performing for your Idaho milk is milk that's in
8 where, Minnesota, Wisconsin, Illinois?

9 A. I think it's mostly Illinois, probably
10 some Wisconsin.

11 Q. Okay. So what -- and your complaint with
12 Proposal 4 is that -- by the way, is the milk in
13 Minnesota, in Illinois, or Wisconsin, which is
14 performing for Kraft's Idaho milk, is that service being
15 rendered for a fee?

16 A. Yes, there is a fee.

17 Q. Okay. So Kraft is paying the cooperative
18 a fee to perform for its milk in Idaho...

19 A. Where there's two...

20 Q. ...and pool it. Correct?

21 A. There's two ways to get pooling as one is
22 to ship and one is to pay a fee for performance.

23 Q. Okay. And you've gone the pay a fee
24 route because it was less expensive than shipping.
25 Correct?

1 A. Yes.

2 Q. Okay. Now what if you were to be
3 required to ship 10 percent from Idaho instead of having
4 milk in Illinois perform for you. Would you pool on
5 Order 30?

6 A. Well, I think we demonstrated in our
7 testimony that there would be no economic incentive to
8 do that and the milk would -- it make any sense to pool
9 it.

10 Q. Okay. So it doesn't make any economic
11 sense for that milk to actually perform for the market
12 under the current performance standards?

13 A. Under what...

14 Q. Correct?

15 A. No, under what you're proposing. It's
16 performing under the current performance standards like
17 any other of the rest of the milk is in Minnesota,
18 Wisconsin, and South Dakota, even Montana.

19 Q. Well, let's examine that a little bit.
20 If you've got milk, you know, a block of milk in
21 Illinois and Southern Wisconsin, let's say the
22 cooperative you're pooling through, other than your
23 Idaho milk, let's assume, and I think correctly, that
24 all it's milk is located in Southern Wisconsin and
25 Illinois and it has to ship 10 percent of that milk to a

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1 pool plant to pool it. Correct?

2 A. Yes.

3 Q. Okay. And the milk is basically located
4 in areas where, you know, any of the milk could for
5 approximately the same cost be delivered to that pool
6 plant and qualify. Wouldn't you agree?

7 A. Well, you can isolate certain plants but
8 that may be true of some milk in Illinois or Southern
9 Wisconsin and it's not true of milk in Minnesota or
10 Northern Wisconsin.

11 Q. You're saying that there is areas of
12 Northern Wisconsin that are further from some pool
13 plants than milk in Southern Wisconsin is from pool
14 plants?

15 A. Yes.

16 Q. Okay. But they're a lot closer than the
17 milk in Idaho is to any pool plant. Isn't that correct?

18 A. Yes, that would be quite obvious.

19 Q. Okay. And the economics of that milk
20 supplying the Order 30 market are quite different than -
21 - on a proportionate basis are quite different than milk
22 in Idaho. Isn't that correct?

23 A. Yes, because of the freight differential.

24 Q. Right. And that milk has been associated
25 with the Order 30 or Order 68 market for many years

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1 because it has demonstrated its willingness and ability
2 to do whatever it takes to supply those pool plants and
3 be part of that market. Isn't that correct? Isn't that
4 the history of Order 30 pool...

5 A. Well...

6 Q. ...requirements?

7 A. Order 30 pool requirements, at least for
8 the, well, I guess 30 years that I've been associated
9 with it, have been fairly open pool requirements. But I
10 also think that what was applicable two to 28 years ago
11 is not applicable under Federal Order Reform.

12 Q. Okay. And is there a part of the Federal
13 Order Reform Decision that you can cite and read to us
14 today that articulates the philosophy that you've stated
15 in your testimony that milk anywhere should be able to
16 be pooled without performing even if it's uneconomic to
17 ship it from where it's located to perform?

18 A. I don't think there was anything in that
19 Decision that prohibited that.

20 Q. Now is there anything in the Decision
21 that said that's what it's intended to do?

22 A. I don't recall reading that specifically.

23 Q. Okay. Thank you.

24

25

ADMINISTRATIVE LAW JUDGE: Thank you. Other
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1 cross examination of Mr. Reinke?

2 MR. GULDEN: Neil Gulden with Associated Milk
3 Producers.

4 ADMINISTRATIVE LAW JUDGE: Yes, sir.

5 ***

6 BY MR. GULDEN:

7 Q. Just a few questions, Mr. Reinke. The
8 milk that you have currently pooled on Order 30, that's
9 geographically located in the Western Federal Order, at
10 least parts of it?

11 A. The Idaho milk that you're saying?

12 Q. Yes, the Idaho milk.

13 A. Yes, yes.

14 Q. That's correct?

15 A. I have a small amount of other milk in
16 Order 32.

17 Q. Okay. Would you agree that the PPD in
18 that Western Federal Order 135 has been on average over
19 the last 17 months and over 50 cents higher than the
20 Federal Order 30?

21 A. Yes, that, you know, obviously my
22 preference would have been to pool it on the Western
23 Order had I been able to do so.

24 Q. Okay. And your company, Kraft, is
25 willing to ship to distributing plants in Order 135?

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1 A. Wherever we pool, when we had Melrose,
2 which was -- I don't know. -- close to a million-and-a-
3 half to a million a day, we shipped our percentages in
4 the Southeast and we'd be willing to ship. And
5 arrangement with our pooling agent is if that milk is
6 needed we're willing to ship that.

7 Q. Good. Thank you. To the best of your
8 knowledge, are the distributing plants in Federal Order
9 135 being adequately supplied with milk?

10 A. Yes, I mean, that's part of the reason I
11 couldn't find a market. They said they had, you know,
12 supplier arrangements and that they had no interest in
13 additional milk.

14 Q. Okay. Do you, Mr. Reinke, believe that
15 the Western Federal Order should be structured to
16 accommodate? By that I mean pool the milk that, you
17 know, in that area as long as the distributing plants
18 are being adequately supplied?

19 A. Yes, I, you know, you'd look at the
20 percentage of utilization there relative to thirty and
21 then you may question whether the 35 percent performance
22 requirement is too high. There is also an issue of
23 diversity out there, there's, you know, there's just a
24 lot of land and very few population centers, and so it's
25 also hard to find a distributing plant that you can sell

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1 to.

2 Q. Right. But my question was do you
3 believe that the Federal Order in the Western Federal
4 Order 135 should accommodate that milk in that area as
5 long as the distributing plants are being adequately
6 supplied? It should accommodate your milk in that area.

7 A. Well, as long as I could find a place to
8 do it, yes, I agree with that.

9 Q. Right. And that's my question. -- Okay.
10 -- so instead of building barriers around other Orders,
11 would you agree that maybe the fundamental problem might
12 lie in the Western Federal Order pooling provisions?

13 A. I think that's part of the problem, and I
14 think the other part of the problem like I said is
15 diversity of finding an outlet.

16 Q. Okay. One more question. Would you
17 agree that restricting access to higher valued Federal
18 Orders by tightening pooling provisions forces the
19 problem of lower prices back on other dairy farmers who
20 are denied this very access?

21 A. And I tend to think that's one of the
22 reasons that USDA has moved in that direction both, you
23 know, my 25 or 30 years of experience with Order 30 as
24 well as in Order Reform. I think it's, you know, the
25 real equity issue is, is I think there's two equity

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1 issues. One is the issue of access to a market place
2 and I think the second issue, which I think most of the
3 debate has been about here is the double pooling equity
4 issue that in primarily California where very few people
5 have access to that ability to double pool, and that
6 creates an economic or a competitive issue for everyone
7 else that doesn't have that access. I think had that
8 not been going on I'm not so sure we'd have had a
9 Hearing for that small amount of milk from Idaho that's
10 being pooled on Order 30.

11 Q. Thank you, sir.

12 ***

13 ADMINISTRATIVE LAW JUDGE: Thank you, Mr.
14 Gulden. Yes, Mr. Berde? Cross examination of Mr.
15 Reinke.

16 ***

17 BY MR. BERDE:

18 Q. Mr. Reinke, Kraft has had an operation of
19 its plant in Idaho for a number of years hasn't it?

20 A. Yes, it's as long as I've been associated
21 with Kraft. We used to have more and now we have one.

22 Q. And it's had an associated milk supply in
23 Idaho for a number of years...

24 A. Yes.

25 Q. ...with that plant?

1 A. Yes.

2 Q. Did Kraft ever pool any of that milk
3 either in Idaho or in any of the surrounding marketing
4 areas?

5 A. I think I said in my testimony, you know,
6 up until Federal Order Reform, the utilizations were so
7 low that it didn't make any economic sense for us to do
8 that. And so to my knowledge I don't recall us, at
9 least in my 20 years with Kraft, of doing that.

10 Q. And certainly prior to Order Reform,
11 Kraft did not pool any of its Idaho producers in Order
12 30 did it?

13 A. No.

14 Q. And what was it about Order 30 or the
15 regulatory system that persuaded Kraft that it would
16 make no sense to even attempt to pool milk in Order 30?

17 A. Prior to Federal Order Reform?

18 Q. Yes.

19 A. Well, I think it was mentioned yesterday
20 by Mr. Carlson that there was a whole different
21 structure where it was primarily I think the big
22 difference was how the zoning was done.

23 Q. And so if that milk was zoned out to
24 Idaho from Minneapolis, or anywhere in Order 30, it
25 would have constituted what might be called a barrier, a

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1 realistic economic barrier to the marketing of that
2 Idaho milk in Order 30?

3 A. And that was pretty much a Federal Order
4 system wide program, it wasn't specific to one area or
5 one Order.

6 Q. Nothing illegal about that was there?

7 ***

8 MR. VETNE: Objection, Your Honor.

9 ADMINISTRATIVE LAW JUDGE: Mr. Vetne, you may
10 make your objection at the microphone.

11 MR. VETNE: Yes, he's asking the witness about
12 a circumstance beyond his direct testimony and on the
13 issue beyond his direct testimony, he's asking for a
14 legal conclusion.

15 MR. BERDE: Well, the testimony of the witness
16 brought up the question in response in his direct
17 written statement about the illegality of what is
18 proposed in Proposal 4. And I am simply questioning
19 whether he considered the circumstances prior to reform
20 to constitute an illegal arrangement of some kind under
21 the Order system.

22 ADMINISTRATIVE LAW JUDGE: Mr. Vetne?

23 MR. VETNE: My only notation is that he did
24 not address the location adjusted system prior to in any
25 of his comments.

1 ADMINISTRATIVE LAW JUDGE: Mr. Beshore?

2 MR. BESHORE: Yes, I'd just like to say the
3 witness in his direct testimony made all kinds of legal
4 contentions about proposals in this Hearing and about
5 what the Act does or does not allow. Now if he's not
6 going to be allowed to be questioned about that
7 testimony, I would move to strike it and I do move to
8 strike it.

9 ADMINISTRATIVE LAW JUDGE: Thank you, Mr.
10 Beshore. Mr. Berde, your question is fair game.
11 However, I have no doubt that the witness prepared his
12 direct testimony with the assistance of Counsel. He is
13 at this point operating without that assistance. He may
14 be erroneous in legal conclusions that he may offer
15 opinions about here. And with that caveat in mind, you
16 may continue to inquire.

17 ***

18 BY MR. BERDE:

19 Q. Well, I'll put it this way, Mr. Reinke.
20 Prior to Order Reform was Kraft -- did Kraft ever
21 undertake to claim that the Secretary's manner of
22 administering the Order system in a fashion that
23 excluded Kraft producer milk from Order 30 constituted
24 an illegal barrier?

25 A. From Order 30, I'm not aware that we
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1 have.

2 Q. Do you believe that the reinstatement of
3 provisions, which existed prior to reform, would be
4 illegal?

5 A. Well, if they were reinstated on a
6 nationwide basis, and this is not a legal this is my
7 opinion, on eleven Orders equal, or, you know, like they
8 had equally in the past I'd say no. But if they do one
9 Order that's going to exclude milk from another area
10 then I think that that is problematic.

11 Q. Well, you've been associated with the
12 Order system for some years haven't you?

13 A. Yes.

14 Q. And you're aware that even when there
15 were 30 Orders they were not identical in their
16 provisions in terms of pooling, in terms of...

17 A. And I think I...

18 Q. ...performance requirements.

19 A. Yes, and I think I've testified that over
20 time USDA has moved away from some of those perceived
21 market barriers that were created by those Orders that
22 didn't have -- the provisions were dramatically
23 different or whatever and created market barriers and
24 they've moved away from that.

25 Q. Well, you would agree would you not that

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1 if the evidence in any Hearing record relating to a
2 certain marketing area justified certain provisions,
3 which differed from the Hearing record relating to other
4 marketing areas, the Secretary would be certainly within
5 his authority to institute different regulatory
6 structures for each of those different marketing areas.

7 A. Well, as long as it...

8 Q. Wouldn't you agree?

9 A. As long as it didn't create market
10 barriers, you know, unfair market barriers. I think
11 when you -- what you talked earlier about was the
12 location differential and I think all Orders used Old
13 Clair, Wisconsin and zoned milk off of Old Clair,
14 Wisconsin. So they were all using that same basing
15 point, you know, if you're proposing now that we do
16 something dramatically different in one Order to
17 preclude milk, then, you know, that's a problem.

18 Q. Well, you're aware that even now under
19 the eleven Orders regulatory provisions differ from
20 Order to Order in terms of performance.

21 A. But they all use the same location base
22 map.

23 Q. They have different producer definitions
24 do they not?

25 A. Different...

1 Q. Different producer milk definitions.

2 A. Performance requirements...

3 Q. Yes.

4 A. ...and then there is the issue that I
5 think we addressed earlier in New York.

6 Q. Different diversion limitations?

7 A. Yes.

8 Q. Different requirements for individual
9 producer performance in terms of delivery to a pool
10 plant either once a month?

11 A. Based on utilization, yes.

12 Q. Yes.

13 A. And what I'm seeing in Order 30 is a
14 market that has 80 percent surplus.

15 Q. Can you indicate for the record the
16 identity of the outlet in Order 30 at which you pool the
17 Kraft Idaho producers?

18 A. Well, normally I'd say that's
19 confidential but I think you already said who it was and
20 that's Midwest Dairymen.

21 Q. Thank you.

22 ***

23 MR. BERDE: That's all I have. Thank you.

24 ADMINISTRATIVE LAW JUDGE: Thank you, Mr.

25 Berde. Other cross examination of Mr. Reinke? Mr.

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1 Tosi?

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BY MR. TOSI:

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Q. Mr. Reinke, a few questions. In your view, even though your ability to pool your Idaho milk on the Upper Midwest Order currently meets the Upper Midwest Order's pooling provisions, would you be of the opinion that this would be an example of paper pooling?

A. No, I think it's no different than milk in Northern Minnesota or milk that we -- historically we don't have anymore, but we had Northwest of Melrose that, you know, it never went to the fluid market with an 80 percent surplus utilization in the market, there was no need for it to go to the market. The only difference is the distance.

Q. Okay.

A. But we met the same performance requirement at Melrose with those patrons as we did at Rupert, Idaho with the Midwest.

Q. Okay. I'd like to give you a hypothetical situation just to probe why you believe Proposal 4 would be illegal, and I respect that you're not a lawyer but just to try to grab a few opinions about your views on that. The fact that the Florida Orders, or the Florida Order, has tight pooling

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1 standards, a high degree of performance relative to the
2 Upper Midwest, would the fact that you, in order to be
3 part of that market, that you would have to incur
4 transportation costs that were higher than the producers
5 say who were physically located within the boundaries of
6 the Florida marketing area to be less. Would you
7 consider that to be a trade barrier?

8 A. Could you repeat that?

9 Q. Okay. If you were trying to supply the
10 Florida market, it's got very high performance
11 requirements.

12 A. I am or someone is. I guess I don't...

13 Q. The Florida Order.

14 A. If Kraft is?

15 Q. Yes.

16 A. Okay.

17 Q. I'm just trying to give you a
18 hypothetical example. If you were wanting to supply
19 milk to the Florida Order that has higher performance
20 standards and tighter pooling requirements relative to
21 the Upper Midwest Order, would you consider it to be a
22 trade barrier that if you're trying to move your milk
23 from the Upper Midwest or from Idaho to the Florida
24 market, and you're incurring transportation costs that
25 are higher than producers who are located within the

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1 Florida Order...

2 A. I guess...

3 Q. ...would you consider that to be a trade
4 barrier?

5 A. I guess the difference I'm seeing here is
6 that Florida is going to have one performance
7 requirements for everybody that serves the market.
8 Proposal 4 is going to have two different performance
9 requirements whether you're in the marketing area or
10 you're a state that's not adjacent.

11 Q. Okay.

12 ***

13 ADMINISTRATIVE LAW JUDGE: Mr. Reinke, then
14 your answer is no, you would not regard Florida's
15 restrictions as a trade barrier. Is that correct?

16 MR. REINKE: My answer is no because Florida
17 is uniform to all participants.

18 ***

19 BY MR. TOSI:

20 Q. With regard to Proposal 4, is it your
21 opinion that the performance requirements placed on
22 producers within the Order would be different than
23 producers outside the Order?

24 A. Yes, they're saying every month that 10
25 percent of that milk from Idaho would have to move,

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1 where within the Order it's 10...

2 ***

3 [Off the record]

4 [On the record]

5 ***

6 MR. REINKE: ...percent comes from and they're
7 differentiating and saying the 10 percent has to come
8 specifically from Idaho. There's no criteria in Order
9 30 that says 10 percent's got to come from Minnesota, 10
10 percent's got to come from Illinois, 10 percent's got to
11 come from Wisconsin, 10 percent's go to come from South
12 Dakota.

13 ***

14 BY MR. TOSI:

15 Q. Producers within the Order are required -
16 - or a supply plant is required to ship 10 percent of
17 its receipts to the fluid market. Is that your...

18 A. Right.

19 Q. ...testimony on the Upper Midwest? And
20 that what Proposal 4 is doing is it's in effect -- is it
21 in your opinion in effect asking that milk that's
22 located outside of the states that currently encompasses
23 the Upper Midwest Order to organize itself and to report
24 itself as if it were supply plant milk, and in that
25 regard performing the same way as milk located within

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1 the Order.

2 A. Well, except it's, you know, it's causing
3 uneconomic shipments that aren't -- in any 80 percent
4 market aren't need I don't think. I mean, it's kind of
5 arbitrarily it's saying this milk but not this milk
6 where you've got to do that. Where the current Order
7 says that the most economical milk should move, this
8 proposal said I don't care whether it's economical or
9 not you've got to move it.

10 Q. Okay. If the Florida Order for example
11 had more liberal pooling requirements, and you were able
12 to pool your Idaho milk on the Florida Order and not
13 have any of it move to Florida other than, for example,
14 to have a one-day touch base requirement. Would you
15 consider that to be paper pooling?

16 A. Well, it's pretty hypothetical, I mean,
17 Florida is with this 80, 90, you know, to me the big
18 difference here is utilization and Florida has got a
19 dramatically different utilization than Order 30. I
20 guess, you know, if Florida had one-day touch base and
21 they would no longer have...

22 A. Yes, but...

23 Q. ...the 70, 80 percent you were basing...

24 A. ...it's the utilization of a market that
25 gives you the Producer Price Differential or a blend

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1 price that causes you to say, well, I'd rather pool my
2 milk there because I can pay my producers more.

3 A. But I guess it...

4 Q. I'm a producer I'll get more money if I
5 do that.

6 A. I guess all I'm saying is if there's one-
7 day touch base in Florida, Idaho would probably be the
8 last one to be getting to the pump.

9 Q. Okay. Let's ask this question then. If
10 it were a producer in the Appalachian Order located
11 closer to Florida who wanted to do that in Florida with
12 liberal pooling standards, would you consider that to be
13 paper pooling?

14 A. If you met the same definition of pooling
15 that...

16 ***

17 ADMINISTRATIVE LAW JUDGE: Mr. Reinke, right
18 into the mic please.

19 MR. REINKE: If you met the same definition of
20 pooling that the Florida producer did, and met the same
21 performance requirements, then I don't call that paper
22 pooling.

23 ***

24 BY MR. TOSI:

25 Q. I guess I'm just at a loss to understand
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1 your opinion about how Proposal 4 is somehow treating
2 people outside the Order differently than inside.
3 Because...

4 A. Well, I guess what, you know, I'm...

5 Q. The language seemed clear to me that it
6 was requiring the same and I just don't...

7 A. Well, I guess all I'm, you know, I think
8 I said earlier, it's not -- currently under Order 30
9 it's not saying that you've got to ship 10 percent of
10 milk in Minnesota, South Dakota, North Dakota, Montana,
11 Minnesota, Wisconsin, Illinois, or any of those
12 counties. But you're saying you ship the most efficient
13 milk and the most equitable milk. And what this
14 proposal says, you're going to ship 10 percent of your
15 milk from Idaho, or if you're not a contiguous state,
16 whether it's economical or not. And I'm not saying that
17 our milk's not available to the pool if needed, I mean,
18 if Midwest Dairymen calls us and says they need milk
19 because of tightness and supply, you know, we'll ship
20 them milk, you know, and, I mean, that's no different
21 then when I had a plant in Melrose, Minnesota.

22 Q. Okay. Thank you.

23 ***

24 ADMINISTRATIVE LAW JUDGE: Thank you, Mr.
25 Tosi. I need a break and I think there are a number of
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1 other questions for you, Mr. Reinke. I'm aware you're
2 on a tight schedule. Can we take a ten-minute break?

3 MR. REINKE: I'll defer to you, Your Honor.

4 ADMINISTRATIVE LAW JUDGE: Thank you. Let's
5 come back here at 2:50. Thank you.

6 ***

7 [Off the record]

8 [On the record]

9 ***

10 ADMINISTRATIVE LAW JUDGE: We're back on
11 record at 2:52. Mr. Tonak?

12 ***

13 BY MR. TONAK:

14 Q. Do you remember the ownership that Kraft
15 had in a plant at Stockton, Illinois?

16 A. Yes, that I think was the original site
17 of the first Kraft plant we ever had.

18 Q. During the time Kraft owned that was that
19 a pool supply plant on Order 30?

20 A. Yes, it was.

21 Q. Did that plant participate in a pool unit
22 with Midwest Dairymen's Company?

23 A. Yes, it did.

24 Q. Did that plant meet the necessary minimum
25 Order shipping requirements for a pool supply plant?

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1 A. In a pool supply plant and a unit, yes.

2 Q. In other words, it made the necessary
3 minimum shipment from that plant and the unit met the
4 overall Order requirement for a supply plant?

5 A. Yes.

6 Q. As such, some of the milk from that
7 supply plant found its way to a fluid distributing plant
8 did it not?

9 A. Yes.

10 Q. Did you also pay a fee for participation
11 in that pool supply plant unit?

12 A. That's a very -- it's been a common
13 practice for years in Order 30.

14 Q. If Proposal 4 was adopted and Kraft found
15 it necessary to make the 10 percent shipments as called
16 for in Proposal 4 from Idaho, would you expect any
17 difficulty in finding markets for that milk in the
18 Midwest at distributing plants during the fall of the
19 year?

20 A. I would think there probably would be a
21 problem with that particularly from Idaho.

22 Q. From the standpoint of covering the
23 freight costs?

24 A. Yes.

25 Q. Over your years of experience in the

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1 industry, has there been more difficulty in selling milk
2 to fluid plants in the fall or in the spring as far as
3 the availability of market from the fluid plant?

4 A. There's been more of a market in the fall
5 than the spring, I mean, it's -- I think when we came on
6 the pool in -- or was it April, I asked if you wanted
7 the milk at your bottling plant in Rockford and you said
8 you had other commitments and didn't really need it
9 there. So take it to another pool plant, which is what
10 we did.

11 Q. You've also indicated that if I do need
12 the milk out of a fluid plant in the fall, provided we
13 cover the transportation or whatever costs are
14 necessary, it's available for the market place. Is that
15 correct?

16 A. Yes, we have always been willing to
17 perform.

18 Q. If as an example there is 20 million
19 pounds of milk in the Rupert, Idaho, or associated with
20 the Rupert, Idaho plant, 10 percent of that would be two
21 million pounds. Would that be correct?

22 A. That's pretty good. I think I can agree
23 with that math.

24 Q. And since Midwest is making those
25 qualifying shipments for the plant, that would mean that

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1 Midwest would have to make an additional two million
2 pounds of milk shipped to fluid than what they would
3 otherwise have to do under the Order language. Would
4 that be correct?

5 A. Yes.

6 ***

7 MR. TONAK: No other questions.

8 ADMINISTRATIVE LAW JUDGE: Thank you, Mr.
9 Tonak. Further cross examination of Mr. Reinke? Yes,
10 Mr. Beshore.

11 ***

12 BY MR. BESHORE:

13 Q. I have just one question. You've heard
14 over the years in these Hearings a discussion of the MMM
15 Program, Money Moves Milk?

16 A. Yes.

17 Q. Okay.

18 A. And more money moves more milk.

19 Q. Is Kraft's program the MMNM Program, Move
20 Money, Not Milk?

21 A. No.

22 ***

23 ADMINISTRATIVE LAW JUDGE: Mr. English?

24 ***

25 BY MR. ENGLISH:

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1 Q. Mr. Reinke, on the middle of Page 3 of
2 your testimony you state, "While producers may pool
3 their milk in only market at a time, the reform system
4 provides opportunities for producers to choose."

5 A. Okay.

6 Q. Do you remember making that statement?

7 A. Yes.

8 Q. That's not true now if producer's pool on
9 a state marketwide pool and also on a Federal pool.
10 Correct? That statement is not correct to that extent
11 that at the moment they may pool actually on more than
12 one market?

13 A. Yes.

14 Q. Does your statement express a
15 philosophical position on that ability to do that?

16 A. Yes, and that's -- you possibly were out
17 of the room when I mentioned and, you know, I thought
18 there were really two issues of equity here and one is
19 the equity of the ability to a producer to pool. And I
20 think there was the other issue of equity, which is I
21 think the reason we have this Hearing today, and this is
22 the fact that there's this double pooling on California
23 and it's limited to just a couple of organizations that
24 happen to have producer milk on California that allows
25 them to pool milk on Order 30 or any other Order, Order

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1 32 even, which is not available to the rest of us and
2 that creates an equity issue for the rest of us. And so
3 I philosophically have a real difficult time with double
4 pooling.

5 Q. Thank you, sir.

6 ***

7 ADMINISTRATIVE LAW JUDGE: Thank you, Mr.
8 English. Any further cross examination? Redirect, Mr.
9 Vetne?

10 ***

11 BY MR. VETNE:

12 Q. Just a couple questions to follow-up on
13 Mr. Tonak. Would it not be true that if this Proposal 4
14 is adopted and you continue to associate your milk
15 supply through one of Midwest's supply plants, that
16 because this milk doesn't count for qualification, the
17 supply plant would in effect have a greater performance
18 standard imposed on it by virtue of the receipt of out
19 of region milk than other supply plants within the
20 market?

21 A. Yes.

22 Q. And if you were to operate your own
23 supply plant say in Idaho and ship 10 percent each month
24 to the Order 30 market, you couldn't qualify that supply
25 plant with any Idaho milk because the Idaho milk

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1 wouldn't count towards qualification.

2 A. Yes.

3 Q. So you would in effect, if you were to
4 have an out of region supply plant or receive out of
5 region milk, you'd have to double your supply. The milk
6 coming from Idaho would count towards your total
7 receipts but none of it going to a distributing plant
8 would count for qualification. So you'd have to find
9 milk elsewhere and meet an effective supply plant
10 qualification of 20 percent. Whereas in area plants
11 receiving local milk only supply 10 percent. Correct?

12 A. Which, you know, becomes a chasing your
13 tail type thing because the more milk you procure the
14 more you have to ship.

15 Q. Okay.

16 A. Either that or buy somebody else's pooled
17 milk.

18 Q. Thank you. That's all.

19 ***

20 ADMINISTRATIVE LAW JUDGE: Thank you, Mr.
21 Vetne. May this witness be excused? -- All right. --
22 thank you very much, Mr. Reinke. You may step down and
23 you may depart. Thank you. Mr. Vetne, Mr. Beshore, who
24 would be the next witness?

25 MR. BERDE: In concurrence of other Counsel, I
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1 would have a witness with a reasonably short statement.

2 ADMINISTRATIVE LAW JUDGE: All right. Mr.
3 Berde, would you approach the microphone and your
4 witness may take the witness stand. If you'll please be
5 seated and identify yourself into the microphone?

6 MR. BERDE: Would you state your name?

7 MR. VAN DAM: My name is William C. Van Dam.
8 The last name is spelled capital V-a-n, capital D-a-m.

9 MR. BERDE: And...

10 ADMINISTRATIVE LAW JUDGE: All right. Sir,
11 would you stand and raise your right hand please?

12 ***

13 [Witness sworn]

14 ***

15 ADMINISTRATIVE LAW JUDGE:

16 Thank you. You may be seated.

17 ***

18 WILLIAM C. VAN DAM,
19 having first been duly sworn, according to the law,
20 testified as follows:

21 ***

22 BY MR. BERDE:

23 Q. Mr. Van Dam, your appearance here is on
24 behalf of whom?

25 A. Of Northwest Milk Marketing Federation.
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1 Q. And would you describe what that
2 organization is?

3 A. The Northwest Milk Marketing Federation
4 is a Capper-Volsted cooperative in the -- that operates
5 in the states of Washington and Oregon completely within
6 Order 124. We represent the producers in that market,
7 represent 97.7 percent of the producers, many of them
8 through the cooperatives in the market place, and then
9 most of the independent producers through separate
10 marketing agreements.

11 Q. You have had some prior experience in the
12 dairy industry have you not?

13 A. Yes, quite a bit. I've been around it a
14 long time.

15 Q. Would you briefly describe for the record
16 what your background, and training, and experience is in
17 the dairy industry?

18 A. Well, it goes back to being born and
19 raised on a dairy farm in Southern California and then I
20 went to University of California, Davis Campus and got a
21 degree in Agricultural Economics, a B.S. And then after
22 a stint in the service I went to Cornell University and
23 got my Masters Degree also in Agricultural Economics
24 with a minor in Ag Policy. And after that, 1969 to
25 1990, I worked in California, a number of different

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1 places in California and not particularly relevant,
2 well, it's all dairy business relevant stuff. And then
3 in 1990 moved to Washington, operated in the Federal
4 Order there for awhile, and then in 1992 moved to Idaho
5 and operated with the Simplot [ph] Company in Idaho, and
6 then in the last three-and-a-half years have been
7 manager of the Northwest Milk Marketing Federation.

8 Q. Now you're here not necessarily because
9 you have an interest in the Upper Midwest Milk Marketing
10 Organization. Is that correct?

11 A. That's correct.

12 Q. And would you describe the reasons why
13 you decided to appear at this Hearing?

14 A. Well, other than the clear need to learn
15 what's going on here and understand the Federal Order
16 and how the provisions work in this area, the most
17 important reason that we came here was to try to impress
18 upon the Dairy Division that it isn't just the Upper
19 Midwest that has similar problems, those of us in the
20 Pacific Northwest Order have pool loading going on. We
21 have exactly the same situations and it is a situation
22 that we find rather untenable.

23 Q. And would you describe for the record
24 what those circumstances are that prompted you to come
25 here?

1 without -- it comes in for pooling without ever being
2 moved into the market place. This has caused no end of
3 heartburn among the producers that I represent, which is
4 nearly all of them in the Order. And we are very
5 interested in finding procedures that would correct
6 that. And it looks to us as we look at the situation
7 that although location differentials, as were used in
8 the past, would be very adequate to solve our problems.
9 There are some political problems in getting that done
10 and we're very interested and quite supportive of the
11 proposal put out by DFA today, the Number 4 under the
12 proposals here.

13 ***

14 ADMINISTRATIVE LAW JUDGE: Mr. Berde, any
15 further questions?

16 MR. BERDE: No, I think the witness is
17 available for cross examination.

18 ADMINISTRATIVE LAW JUDGE: Thank you, Mr.
19 Berde. Mr. English?

20 ***

21 BY MR. ENGLISH:

22 Q. Testing what you said about the
23 circumstances in the Pacific Northwest versus what's
24 going on here, the milk that is pooled on your Order
25 from Idaho, to your knowledge is not pooled on another

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1 Federal Market Order. Correct?

2 A. It clearly is not.

3 Q. Is it pooled on a State Order with
4 marketwide pooling?

5 A. No, it is not.

6 Q. The milk pooled on your Order from Utah,
7 is that pooled on a Federal Marketing Order?

8 A. No, it is not.

9 Q. Is it pooled on a State Order with
10 marketwide pooling and returns?

11 A. No.

12 Q. The California milk, which has been
13 discussed early in this Hearing and was introduced in an
14 exhibit by Mr. Conover, from Northern California that is
15 pooled on the Pacific Northwest. To your knowledge does
16 over 90 percent of that milk go direct from the farms in
17 Northern California to plants in Oregon?

18 A. Yes. That's correct. You're talking
19 about this is not milk that is pooled in California
20 though?

21 Q. That's correct.

22 A. Yes. Correct.

23 Q. To your knowledge that milk that is
24 showing up on the Federal Market Order statistics from
25 Order 124 is not being pooled in California. Correct?

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1 A. That is correct.

2 Q. And it is not pooled on another Federal
3 Marketing Order. Correct?

4 A. It is not.

5 Q. Thank you.

6 ***

7 ADMINISTRATIVE LAW JUDGE: Additional cross
8 examination? Yes, Mr. Vetne?

9 ***

10 BY MR. VETNE:

11 Q. Good afternoon.

12 A. Good afternoon.

13 Q. Is the milk that you described from Idaho
14 or Utah that's being pooled in the Pacific Northwest
15 Order, is any of that milk cooperative association
16 member milk?

17 A. All of it is.

18 Q. All of it is. Is that milk member milk
19 of organizations that are also members of the federation
20 that you represent?

21 A. No, it is not.

22 Q. Could you identify the Idaho and Utah
23 based cooperative associations who are pooling milk in
24 the Pacific Northwest?

25 A. It's DFA.

1 Q. Any other organization?

2 A. Not to my knowledge. I believe there is
3 none other occurring. I should follow-up by saying we
4 are very worried about others fairing out the system and
5 starting it.

6 Q. Okay. DFA is not a member of your
7 organization?

8 A. They are not currently a member. They
9 were until a month ago.

10 Q. Okay. And when you said you represented
11 97.7 percent of the Pacific Northwest market...

12 A. Uh-hum.

13 Q. ...that's 97.7 percent of the pool
14 volume?

15 A. Of the pool volume in Order 124, yes.

16 Q. Okay. So the milk that's coming from
17 Idaho or Utah would be the other 2.3 percent?

18 A. No.

19 Q. No?

20 A. I'm not counting those numbers at all and
21 you're...

22 Q. So...

23 A. Yes, I take back my previous answer.
24 Before I do my math, I only take the traditional milk
25 that is of supply to the PNO, the Pacific Northwest

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1 Order, and we're 97.7 percent of that.

2 Q. Okay. And what percent of the pool is
3 member milk of your organization?

4 A. Of the entire pool?

5 Q. Yes.

6 A. I'd have to do some guestimating on that,
7 it's 95.5, somewhere in that neighborhood. The amount
8 of pool loading volume is not huge, although it's
9 bothersome and costs some money, it doesn't really
10 reduce our numbers.

11 Q. Thanks naturally.

12 ***

13 ADMINISTRATIVE LAW JUDGE: Thank you, Mr.
14 Vetne. Further cross examination of Mr. Van Dam? Mr.
15 Beshore?

16 ***

17 BY MR. BESHORE:

18 Q. Is it your thought, Mr. Van Dam, with
19 respect to Proposal 4, that the Orders, Federal Orders,
20 should have performance requirements, which reasonably
21 require all volumes of milk associated with the pool to
22 proportionately service the needs of the market?

23 A. That certainly is our view and we would
24 make it even tougher if we could. If it's not normally
25 associated and not needed for the market. However, we

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1 have to live within the system that exists.

2 Q. Okay. Is there other milk, milk of other
3 associations besides the DFA located in Idaho that's
4 pooled on Order 124 from time to time?

5 A. No, there isn't. The only time that
6 would ever happen is if there were some emergency
7 movements and it hasn't happened in the three-and-a-half
8 years I've been. No, that has happened once in July of
9 last year otherwise it's not pooled there. There is
10 some milk that moves but it's not pooled. It is pooled
11 in the Western Order and then moves after that. That is
12 condensed milk. I'm probably adding more to it than you
13 want to hear.

14 Q. Okay.

15 A. But sorry.

16 Q. Okay. So there's milk that moves out of
17 Idaho that's pooled on the Western Order? It moves into
18 the North into Order 124 from Idaho...

19 A. Right.

20 Q. ...but it's not pooled on 124?

21 A. Not pooled.

22 Q. Thank you.

23 ***

24 ADMINISTRATIVE LAW JUDGE: Thank you, Mr.

25 Beshore. Mr. Van Dam, was there anything else that you

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1 wanted to say while you're here?

2 MR. VAN DAM: Unless Syd tells me to.

3 ***

4 BY MR. BERDE:

5 Q. Bill, you're familiar with the supplies
6 of pooled an unpooled milk in Idaho are you not?

7 A. Fairly familiar with it. I live in Idaho
8 and spend some time with the producers there.

9 Q. In addition to the Kraft Milk supply,
10 about which there has been much testimony here today,
11 the milk of Kraft that is pooled in Order 30, are there
12 additional significant supplies of milk in Idaho that
13 are not pooled in any Federal Order?

14 A. Yes. That is correct. My calculations
15 show that approximately half of the milk produced in
16 Idaho is not pooled anywhere. That would be 300 million
17 pounds.

18 Q. And theoretically those 300 million
19 pounds could be pooled in Order 30 in the same fashion
20 that the Kraft milk supply is now pool couldn't it?

21 A. Yes, certainly there or any other Order
22 that they could reach. That's right.

23 Q. And do you conceive of that possibility
24 as a threat to the Federal Order system?

25 A. I see that as a threat to the Federal

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1 Order system, and I see it as a threat to our
2 organization, the Pacific Northwest Order. The milk
3 would certainly like to be pooled there also. So we're
4 worried...

5 Q. Uh-hum.

6 A. ...a lot about that.

7 Q. And that is essentially the reason why
8 have requested a Hearing of the Secretary in order to
9 solve that problem in your area, and it is also why the
10 reason why you are here and urging the Secretary to
11 solve that problem throughout the system are you not?

12 A. This is exactly true.

13 Q. Thank you.

14 A. We are concerned and we have asked for a
15 Hearing, but we will have to reformulate our request and
16 that will happen shortly.

17 Q. Thank you. That's all I have.

18 ***

19 ADMINISTRATIVE LAW JUDGE: Thank you, Mr.
20 Berde. Mr. Vetne?

21 ***

22 BY MR. VETNE:

23 Q. To follow-up, Mr. Van Dam, 300 million
24 pounds. Is that what you said?

25 A. It was approximately 600 million pounds
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1 produced in Idaho and half of it is not pooled.

2 Q. Okay. You didn't distinguish of the 300
3 million pounds that's not pooled what portion of that
4 milk does not have a Grade A permit. Do you know?

5 A. It almost all has Grade A permits.
6 There's a very small amount of Grade B milk.

7 Q. Do you know that from some personal
8 experience?

9 A. Personal experience and the pooling
10 reports that I see from the Western Order.

11 Q. Okay. And it's your testimony that
12 allowing the Grade A milk that's currently eligible for
13 fluid use that's located in Iowa to have access to a
14 Federal Order market is a threat to the Federal Order
15 system?

16 A. Did you mean Iowa when you asked that
17 question?

18 Q. Idaho.

19 A. Okay. Now ask it again because you
20 stopped me...

21 Q. Okay. Did you mean...

22 A. ...with Iowa.

23 Q. Did you mean that the Grade A milk that's
24 not currently pooled located in Idaho...

25 A. Yes.

1 Q. ...that may be looking for or will be
2 looking for a pooled home, that it's a threat to the
3 Federal Order system for such milk to be pooled?

4 A. Yes, it is. You get to the point where
5 enough shows up in your market and producers wonder why
6 we even bother to have it.

7 Q. Okay. And is it your position that this
8 Grade A milk should not have a home in any market or
9 just not in your market?

10 A. Not in my backyard. The -- I'll stop
11 there. Yes, they have voluntarily moved to Idaho to
12 produce milk there because of production conditions
13 there. And there wasn't Class I marketing available
14 there when they moved there, and so it's a personal
15 decision that's made by the producers. On the other
16 hand, the producers I represent in the Pacific Northwest
17 have volunteered to move there with the expectation
18 they'll continue to share in their Class I market.

19 Q. Okay. This production growth in Idaho,
20 can you identify a time period during which that took
21 place or it predominantly took place?

22 A. Well, in the last five years they've been
23 pretty phenomenal, production increases, in the
24 neighborhood of 10 percent per year.

25 Q. And even before that?

1 A. Yes, and even before that.

2 Q. What percentage of Idaho's current
3 production occurred during the last two years?

4 A. I haven't looked at that specifically.

5 Q. No, you haven't looked at that?

6 A. It's go to be 30, 32, 33 percent.

7 Q. And that would be growth of the
8 individual farms including pooled farms?

9 A. Yes.

10 Q. And do you have any...

11 ***

12 [Off the record]

13 [On the record]

14 ***

15 COURT REPORTER: Go ahead, Your Honor.

16 ADMINISTRATIVE LAW JUDGE: All right. All
17 right. Mr. Van Dam and Mr. Tosi did you have -- Mr. Van
18 Dam, was there anything else you wanted to say?

19 MR. VAN DAM: Not a word.

20 ADMINISTRATIVE LAW JUDGE: All right. Thank
21 you. You may step down. Mr. Beshore, is there any
22 agreement for any other witnesses to intercede before
23 you resume?

24 MR. BESHORE: I am not aware of any other
25 witnesses to address Proposals 1 through 4, or Proposal

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1 4 in particular.

2 ADMINISTRATIVE LAW JUDGE: Mr. English?

3 MR. ENGLISH: Your Honor, I don't have a
4 witness but as a housekeeping matter during the cross
5 examination of Mr. Hollon I referenced a proceeding
6 before the Department with respect to the Great Basin
7 Order. And it may be that there were additional
8 proceedings that preceded this one, but for official
9 notice purposes, I'd like to take official notice of a
10 proceeding, which led to a Final Decision that was
11 implemented on February 17, 1988. That was the language
12 of the prior 1139.76. And so I'd like to take official
13 notice both of the Decision and of the Final Decision
14 that was implemented. 52 Fed. Reg. 27372 and following,
15 those pages 27372 and following, for July 21, 1987
16 implemented 53 Fed. Reg. Page 4589(x) [ph] at February
17 17, 1988. And so I'd like to take official notice now.
18 It may very well be that when I get back to my office
19 and look at that, it could be that that was a merger and
20 it could be the provision actually goes back even
21 farther. I do have that information and I'll get it to
22 the parties if it's different before the briefing date.
23 But I would ask for official notice because that
24 provision has language identical to language that is
25 proposed in Exhibit 28.

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1 MR. BESHORE: May...

2 ADMINISTRATIVE LAW JUDGE: Mr. Beshore?

3 MR. BESHORE: May I inquire of Mr. English, if
4 that is the promulgation procedure that he referred to
5 as being participated in by Intermountain Milk
6 Producers, a predecessor of DFA?

7 MR. ENGLISH: That's correct.

8 MR. BESHORE: And do I assume that he intends
9 to attribute the acts or positions of Intermountain
10 fifteen or 20 years ago to DFA in this proceeding?

11 MR. ENGLISH: To the extent the law may allow
12 that or to the extent that the Secretary may interpret
13 that positions taken of an entity, you know, the main
14 issue is that it really ultimately is not a surprise to
15 the industry, you know, it may be a surprise to some
16 people. But the fact of the matter is this provision
17 exists, it's been interpreted by the Department of
18 Agriculture to apply to California. And so to the
19 extent that an argument that is made that California
20 isn't something that it is, USDA has addressed this very
21 issue and that's the main purpose for putting it in,
22 Your Honor. And Mr. Vetne may have it.

23 MR. BESHORE: The only point I would make with
24 respect to that is that I would like the liberty then to
25 identify in Brief, and I'd be glad to give Mr. English

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1 advance notice. Other Federal Register proceedings
2 taken by his clients or predecessors of his clients with
3 respect to the appropriateness of pooling milk in
4 Minnesota, and Wisconsin, and the Upper Midwest. What
5 the appropriate standard should be, what markets should
6 be merged up there, and things of that nature. I think
7 if they're attributable, if acts of predecessors are
8 attributable to DFA, then the acts of Associated Milk
9 Producers, Inc. Of North Central -- Mr. Gulden's
10 company, its predecessors with respect to what milk in
11 Minnesota should be pooled, what Orders should be merged
12 are quite appropriate to comment upon with respect to
13 their positions in this proceeding. And I'd like to
14 draw the -- have the liberty of drawing those
15 proceedings into the record.

16 MR. ENGLISH: I'm not drawing the proceeding,
17 Your Honor, I'm drawing the Decision. And I think one
18 of the differences I'm not sitting here saying I'll do
19 it afterwards, I've disclosed to him today what it is
20 and it's a direct issue in this proceeding for the
21 pooling of this milk.

22 ADMINISTRATIVE LAW JUDGE: Now, Mr. English,
23 what you've just given me citations for are rules 15
24 years ago. Is that correct?

25 MR. ENGLISH: They are the Decisions

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1 implementing a rule that until December 31, 1999 applied
2 in the Great Basin Order and is the source of a rule
3 that beginning January 1 of 2000 now exists throughout
4 the Federal Order system. And the principle purpose,
5 the other is a sidelight. Let's face it, that's what it
6 is. But the principle purpose is to put into the record
7 the fact that this language has existed in Federal
8 Orders, as Mr. Beshore did on his part for Federal Order
9 1 and Federal Order 2. And that purpose is to
10 establish, contrary to the testimony of some witnesses
11 or the questions of some cross examiners, the fact that
12 contrary to what some people have said, California has
13 already been addressed as a State Order in a provision
14 in Federal Orders. That is to say, 1000.76 and the old
15 1139.76 with respect to the sentence marketwide pooling
16 of returns imposed by a state government has been
17 interpreted consistently by the government as meaning
18 California. That's the reason it's in. Everything else
19 is peripheral. And so Mr. Beshore's use of what his
20 thing would be would be peripheral as well. That's the
21 reason I want to put it in and that's the argument I
22 will be making.

23 ADMINISTRATIVE LAW JUDGE: Thank you, Mr.
24 English. Mr. Beshore?

25 MR. BESHORE: Yes, I mean, we've not even --

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1 have not even felt the need to discuss the pertinence of
2 the compensatory payment provisions in the Great Basin
3 Order prior to, you know, to December 1999 to this
4 proceeding and I don't think they have any pertinence at
5 all. The compensatory payment provisions have nothing
6 to do with the pooling provisions of any of the Orders
7 past, present, or future. That aside, if Mr. English is
8 withdrawing all of his claims to attribution of
9 predecessor organizations to DFA in this proceeding, I
10 won't find it necessary to bring to bear Mr. Gulden's
11 organization or other of Mr. English's clients. Their
12 organizations position on pooling issues, performance
13 issues prior to the present Hearing.

14 MR. ENGLISH: I'm not withdrawing anything.

15 ADMINISTRATIVE LAW JUDGE: Mr. English, I want
16 to make sure that's on record. If you will just go to
17 the microphone.

18 MR. ENGLISH: I'm certainly not withdrawing
19 anything. I think there certainly is a distinction
20 between actually putting in a description of what the
21 language means and testifying, by the way, this means
22 California. And what positions might have been under a
23 former system when we didn't have Federal Order Reform.
24 The fact of the matter is, this provision has survived,
25 it is today's provision, it doesn't -- the fact that

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1 it's a compensatory payment is meaningless. The fact of
2 the matter is, it is a provision that the USDA has in
3 the Federal Order system and has interpreted
4 consistently as a result of a prior proceeding as
5 meaning California. And it addresses concerns raised
6 directly in testimony and questions from cross
7 examiners. It is so directly related.

8 ADMINISTRATIVE LAW JUDGE: Thank you, Mr.
9 English. Mr. Vetne?

10 MR. VETNE: I don't know how this got to be
11 such a big deal, but the proceedings and the Decisions
12 that Mr. English asked to be officially noticed...

13 ADMINISTRATIVE LAW JUDGE: Yes.

14 MR. VETNE: ...the Final Decision was
15 officially noticed on my request a few hours ago. Thank
16 you.

17 ADMINISTRATIVE LAW JUDGE: Thank you. The
18 Secretary will take official notice of these portions of
19 the Federal Register identified by Mr. English.
20 However, again I caution you if you wish to use them,
21 please make sure hard copies accompany your Briefs or
22 are otherwise made part of the record. With regard to
23 Mr. Beshore's request to provide like information, all I
24 can say at this point, Mr. Beshore, is if you find the
25 need to do that, attempt to do it either through your

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1 Briefs or before, and we'll deal with it. -- All right.
2 -- you're welcome. Now back to witnesses to be called.
3 Does Mr. Beshore again have the floor? Apparently so.
4 Mr. Beshore, you may recall.

5 MR. BESHORE: I will recall Mr. Hollon to
6 present his statement in support of Proposal 5 and I
7 will assume that he continues to be under oath and
8 doesn't need to identify himself any further, and may
9 directly proceed to the statement, copies of which...

10 MR. HOLLON: I think back along...

11 MR. BESHORE: ...are available in the room for
12 any interested parties.

13 ADMINISTRATIVE LAW JUDGE: And do you intend
14 to have Mr. Hollon's statement regarding Proposal 5 to
15 be made an exhibit or will he just make it as his direct
16 testimony on this issue?

17 MR. BESHORE: He will just make it as his
18 direct testimony. It will not be -- we do not intend it
19 to be offered as an exhibit.

20 ADMINISTRATIVE LAW JUDGE: All right. Fine.

21 MR. BESHORE: He will refer to several of the
22 tables that have not yet been referred to in Exhibit 37
23 and I do want to offer that exhibit before he's done.

24 ADMINISTRATIVE LAW JUDGE: Very fine. You may
25 proceed.

1
2 MR. HOLLON: Proposal 5 reflects the need to
3 alter the advanced payment provisions of Order 30. DFA
4 members continue to request that they be paid an
5 advanced payment that more closely resembles the actual
6 blend price. Their individual farm business needs
7 demand a more consistent cash flow in order to remain
8 viable. The current provisions that call for advanced
9 billings at the prior month's lowest class price do not
10 make sufficient funds to meet our member's cash flow
11 objectives. The Final Rule makes the following
12 statements about the uniform price and the advanced
13 price. "Payments to Producers and Cooperative
14 Associations. The AMA provides that handlers must pay
15 all producers and producer organizations the uniform
16 price. The existing Orders generally allow proper
17 deductions authorized by the producer in writing.
18 Proper deductions are those that are unrelated to the
19 minimum value of milk in the transaction between the
20 producer and the handler. Producer associations are
21 allowed by the statute to reblend their payments to
22 producer members. The Capper-Volsted Act and the AMA
23 make it clear that the cooperative associations have a
24 unique roll in this regard. The payment of provisions
25 to producers and cooperatives for the consolidated

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1 Orders vary with respect to payment frequency, timing,
2 and amount. These differences are generally consistent
3 with the current Order provisions and with the industry
4 practice and customs in each of the new marketing areas.
5 Each of the new Orders will require handlers to make at
6 least one partial payment to producers in advance of the
7 announcement of the applicable uniform prices. The
8 Florida Order will require two partial payments
9 mirroring the payment schedule now provided in the three
10 separate Florida Orders. The amount of the partial
11 payment varies among the new Orders reflecting the
12 anticipated uniform price. Thus for example in the
13 Upper Midwest Order the partial payment rate for milk
14 received during the first 15 days of the month will not
15 be less than the lowest announced class price for the
16 proceeding month. By comparison the partial payment for
17 the Florida Order for milk received during the first 15
18 days of the month will be at a rate that is not less
19 than 85 percent of the preceding month's uniform price
20 adjusted for plant location. Citation 64 Fed. Reg.,
21 April 2, 1999. There is a wide variety of payment dates
22 and payment levels among the various Orders. The table
23 identified as DFA Exhibit 37, Table 7 presents the
24 differing provisions.

25 MR. BESHORE: Do you have Exhibit 37 with
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1 you...

2 MR. HOLLON: I do.

3 MR. BESHORE: ...Mr. Hollon? Would you check
4 whether you're referring to...

5 MR. HOLLON: It's Table 6.

6 MR. BESHORE: Table 6.

7 MR. HOLLON: Okay.

8 MR. BESHORE: Yes.

9 MR. HOLLON: Flipping back to Table 6. I
10 would note that the marketing areas are listed and
11 various informations about the advanced payments are
12 listed on this table. And I would point out that the
13 dates vary from time to -- for Order to Order, they're
14 not all the same. And over in the column of rate I
15 would note that there are at least four different rates,
16 the highest, well, one being 90 percent of the blend
17 price, in other Orders the lowest class price or the
18 lowest prevailing class price of the prior month. The
19 Arizona-Las Vegas Order requires 1.3 times the lowest
20 class price of the prior month, and the Western Order
21 requires 1.2 times the lowest class price for the prior
22 month. And all this information I pulled out of the
23 various Order regs. Flipping back to Table 1 -- I'm
24 sorry. -- to Page 1. "There is no precedent for a
25 uniform payment level or terms across all Orders. Among

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1 the Order system there are three broad groupings. In
2 the Southern Orders payments are set at a percentage of
3 the prior month's blend price adjusted for a location.
4 The Northeast and Central area of the country sets the
5 advanced payment level at the prior month's lowest class
6 price. The Western Orders use an add on percentage
7 applied to the prior month's lowest class price. The
8 Final Rule supports the principle that all handlers pay
9 the uniform price and we can see no reason why the
10 advanced payment should not come closer to approximating
11 the uniform price. Examination of recent data shows the
12 advanced prices getting further from the uniform price.
13 See the DFA Exhibit 37, Table 7, Data for Advanced
14 Prices in the chart of price trends, Pages 1 through 8."
15 Moving back in the exhibits to Table 7. I prepared this
16 table and in Column 1 is months from January of 1997 to
17 date. Column 2 has the Class 3-A or Class IV price, and
18 for each month that there was either a 3-A price I used
19 that until I got to 1999 and there the Federal Order 30
20 bulletin provided an estimated Class IV price, and the
21 Class IV price is used from that point forward. The
22 column labeled Class III price is the published Class
23 III price in the Order system each month. The lowest
24 price would just be whichever one of those two prices
25 are lower. The next columns at 3 percent, at 4 percent,

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1 at five, at six, at seven, at eight would be the lowest
2 price multiplied by 103 percent, 104 percent, 105
3 percent on across. And the final column is the
4 appropriate blend price for that month. It takes two
5 pages to list all the data, and I think if I counted
6 properly there were 15 months that that Class IV price
7 was the lower of the two, and the remaining months the
8 Class III price was the lower of the two. The third
9 page in, it says the title is, well, it says Page 3 and
10 4, Differences Between this Month's Blend and Last
11 Month's Class III price is simply a subtraction of each
12 of those prices across all of the months and across all
13 the percentage ranges. What would be Page 4 at the
14 bottom is some averages for the all 53-month period.
15 For example, the blend minus Class III averaged 85 cents
16 with a minimum of -- the lowest number in that range was
17 a negative \$1.30 and the highest was a positive \$3.29.
18 For the first 36I months of that period, which would be
19 the time period before Federal Order Reform, that
20 average was 73 cents and the last 17 months of that,
21 which would be the period of time after Federal Order
22 Reform, that average was \$1.08. And as you work your
23 way across each of the inflated by three, four, five,
24 six, 7 percents, it shows the average of each of those
25 ranges. Pages 5 and 6 are percentages of those

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1 differences divided by -- I'm sorry. -- the Class III
2 price. It's not the difference, it's the Class III
3 price divided by the blend and the Class III inflated by
4 103, 104, 105 divided by the blend price. The summary
5 page would show that all 53 months, the average of that
6 relationship was 93 percent, the first 36 months
7 averaged 95 percent, and the last 17 months averaged 91
8 percent. And across each column then it would show the
9 average percentages of each month. And in an attempt
10 just to smooth out some of the monthly variation, I took
11 a three months moving averages of those percentages and
12 that's what's recorded on Pages 7 and 8. And the time
13 period of significance is the last 17 months. In that
14 three-month moving average the all 53-month average was
15 94 percent, the first 26 months was 95 percent, and the
16 last 17 months was 91 percent. To try to illustrate
17 those percentages graphically is the graph at the last
18 part of the page. The red line is the blend price and
19 the purple line with the circle in it is the 103
20 percent, the black line with no marker, 104, and the red
21 line with no marker, 105. Attempting to try to show
22 some of that variation and which one of those changes in
23 the blend price might better reflect the trend of the
24 first 36-month period. Moving back to Page 2. By
25 examining the data, it is clear that there's been a

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1 change in trend in the advanced price versus blend
2 relationship. The price measure is this month's blend
3 less last month's Class III price. For the period
4 January '97 to May 2001, 53 months, the monthly average
5 spread between the two prices was 85 cents. However,
6 the first 36 months averaged only 73 cents, 1997 to
7 1999, and the last 17 months, \$1.08. Graphically this
8 trend is shown in the chart of price trends, DFA Exhibit
9 37, Table 7. Where even after a three-month average was
10 used to smooth out some of the fluctuations, a
11 difference in trend can be noted. In order to determine
12 a better relationship between the prior month's lowest
13 class price and this month's blend price, the lowest
14 class price was inflated by three, four, five, six,
15 seven, and 8 percent. These ranges were chosen after
16 testing several different ranges. The spreads were
17 measured and compared in the same manner as the existing
18 blend price versus class price data. After examination
19 it appears that a 3 percent inflation of the prior
20 month's lowest class price is a reasonable adjustment to
21 approximating the spread that existed over the first 36-
22 month period. It is a problem that the advanced price
23 is larger than the final because some producers may not
24 have enough funds to cover their deductions. Also in
25 some extraordinary cases the advance may overpay the

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1 total amount due and result in the need for some type of
2 a collection proceeding, which is difficult and costly.
3 However, as dairy prices are more volatile, this is an
4 issue under the current system even if no adjustment is
5 made. Producer premiums are substantial in the Federal
6 Order 30 procurement area and that should be a -- that
7 should buffer the overpayment concerns. This concern
8 needs to be balanced by a dairy farmer's right to a
9 reasonable approximation at the blend price advanced
10 payment. Thus we would request that the rate for
11 advanced payment is to be set at 103 percent of the
12 prior month's lowest class price.

13 MR. BESHORE: I would like to move at this
14 time, Your Honor, for the admission of Exhibit 37 as all
15 of the tables and maps have now been identified and
16 discussed by Mr. Hollon. And I think that concludes his
17 statement in support of Proposal 5 and he would be
18 available for further questions.

19 ADMINISTRATIVE LAW JUDGE: Thank you, Mr.
20 Beshore. Is there any objection to the admission into
21 evidence of Exhibit 37? There being none, Exhibit 37 is
22 hereby admitted into evidence. Cross examination of Mr.
23 Hollon with regard to -- Excuse me. -- yes, with regard
24 to Proposal 5? Yes, Mr. Tonak?

25

1 BY MR. TONAK:

2 Q. I'm just trying to understand the numbers
3 and some of the impacts. Now those first 36 months,
4 would those have been before Federal Order Reform?

5 A. Yes.

6 Q. With a Class I price based off of the
7 Class III price from an earlier month?

8 A. Yes.

9 Q. And the blend price derived accordingly?

10 A. Correct.

11 Q. And the following 17 months or whatever
12 it was, that's where we were using the higher of a Class
13 III or a Class IV price, generally Class IV being
14 higher?

15 A. During that time period thus far.

16 Q. During that time period...

17 A. Yes.

18 Q. ...and all those impacts?

19 A. Yes.

20 Q. So part of this impact we're seeing is
21 from the higher of. Would that be a true assessment
22 that at least part of it comes from the usage of higher
23 of?

24 A. Well, the only thing you can say for sure
25 is there is a difference and that indicates in the

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1 numbers. From there you can say what's different now
2 than then and that's one of the things that's different
3 now than then.

4 Q. Thank you.

5 ***

6 ADMINISTRATIVE LAW JUDGE: Other cross
7 examination of Mr. Hollon with regard to Proposal 5?
8 Mr. Hollon, was there anything you wanted to add?

9 MR. HOLLON: No, ma'am.

10 ADMINISTRATIVE LAW JUDGE: All right. Any
11 redirect? -- All right. -- you may step down, Mr.
12 Hollon. Thank you. Yes?

13 MR. UMHOEFER: Your Honor, I'd like to make a
14 brief statement to the proposal.

15 ADMINISTRATIVE LAW JUDGE: All right. Would
16 you like to come forward and be sworn?

17 MR. UMHOEFER: Yes, please.

18 ADMINISTRATIVE LAW JUDGE: You may. Please
19 state and spell your name.

20 MR. UMHOEFER: My name is John Umhoefer.
21 J-o-h-n, U-m-h-o-e-f-e-r.

22 ADMINISTRATIVE LAW JUDGE: And please state
23 who you represent or your work?

24 MR. UMHOEFER: I am Executive Director of the
25 Wisconsin Cheesemaker's Association in Madison,

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1 Wisconsin.

2 ADMINISTRATIVE LAW JUDGE: All right. Would
3 you stand and raise your right hand please?

4 ***

5 [Witness sworn]

6 ***

7 ADMINISTRATIVE LAW JUDGE: Thank you. Mr.
8 Umhoefer, [sic - Umhoefer] you may proceed.

9 ***

10 JIM UMHOEFER,

11 having first been duly sworn, according to the law,
12 testified as follows:

13 MR. UMHOEFER: Thank you. My name is John
14 Umhoefer, I'm Executive Director of the Wisconsin
15 Cheesemaker's Association. I have been directed by the
16 associations Board of Directors to make a brief
17 statement on behalf of our association. Our association
18 members operate 25 dairy plants that serve as supply
19 plants to the Upper Midwest Order. The Board of
20 Directors of the Wisconsin Cheesemaker's Association
21 opposes the changes to the Order offered in Proposal 5.
22 The current Order language with regard to partial
23 provides for minimum pricing. WCMA member supply plants
24 can voluntarily choose to pay milk prices above the
25 lowest class price from the previous month for the first

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1 check. The Board of Directors of WCMA finds the
2 proposed changes arbitrary and unnecessary. The
3 mandated increase in the partial payment can increase
4 the level of short-term loans used by supply plants to
5 pay dairy plants -- Excuse me. -- to pay dairy
6 producers. The increase in the loan increases the
7 amount of interest paid, and thus increases the
8 manufacturer's cost for doing business. And that
9 concludes my statement.

10 ADMINISTRATIVE LAW JUDGE: Thank you, Mr.
11 Umhoefer. [sic - Umhoefer] Cross examination? Yes, Mr.
12 Beshore?

13 ***

14 BY MR. BESHORE:

15 Q. Mr. Umhoefer, do I understand -- you
16 mentioned that the Federal Order payments are minimum.
17 Is it your testimony that your members are only making
18 the minimum monthly payment required for the Order?

19 A. Some are, yes.

20 Q. Is that on?

21 ***

22 COURT REPORTER: Yes.

23 ***

24 BY MR. BESHORE:

25 Q. Okay. And they oppose having a higher
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1 minimum advanced payment to be made?

2 A. They oppose having it mandated, yes.

3 Q. Okay. They understand that if they make
4 a higher advanced payment they have a lower minimum
5 final payment to make?

6 A. Yes.

7 Q. Okay. They want to keep their money as
8 long as they possibly can. Is that it?

9 A. No, sir, they take out loans to pay that
10 first check so they don't have the money yet.

11 Q. Okay. So they don't, well, if they make
12 the payment on credit they've been advanced the money by
13 their bank I assume or their...

14 A. Yes.

15 Q. ...credit agency?

16 A. Yes.

17 Q. Okay. Aren't there dairy farmer patrons
18 in the same position?

19 A. That have loans?

20 Q. Yes.

21 A. Yes, I can only imagine, yes.

22 Q. Okay. And if their minimum payment has
23 declined with respect to the final payment, as Mr.
24 Hollon has documented, they have to have greater loans
25 to finance their operations during the period of time

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1 than they had to previously. Wouldn't that be correct?

2 A. That may be and my Board expressed that
3 they consider the trend that Mr. Hollon has found to be
4 possibly temporary and that's why they used the words
5 arbitrary and unnecessary.

6 Q. Well, do you have any analysis, any data
7 to document that contention that your Board...

8 A. Only that milk prices...

9 Q. ...directed you to advance?

10 A. Only that milk prices go up and milk
11 prices go down, and we appear to be in a timeframe the
12 last 17 months where that trend, according to Mr.
13 Hollon's data, went down.

14 Q. Okay. But the data, the advanced payment
15 is just a relationship between the final payment and the
16 lowest class price. Correct? And it's not a matter of
17 whether prices are going up, or down, or whatever, it's
18 a matter of whether the relationship has changed.
19 Wouldn't you agree with that?

20 A. I'm not sure I understand.

21 Q. Well, Mr. Hollon's data shows that the
22 relationship between the final price that's required to
23 be, the minimum price that's required to be paid to the
24 dairy farmer, the blend price.

25 A. Uh-hum.

1 Q. Okay. But the relationship between that
2 price and the advanced price has increased. In other
3 words, the advance price, the first check the farmer
4 gets for his month's milk, the first check has declined
5 as a percentage of the total receipts for the month.

6 A. I believe that's what the showed, yes.

7 Q. Okay. Are you contending that that
8 relationship is somehow related to the absolute price
9 level whether prices are high or low?

10 A. Well, the price -- they pay the lowest
11 minimum price, class price, for the advanced check.

12 Q. Yes.

13 A. And that's either the Class III or IV
14 price...

15 Q. Yes.

16 A. ...generally speaking. And this is based
17 on the NAS prices, which are based on market conditions.

18 Q. Yes, and...

19 A. So, yes, it is related to the market.

20 Q. You're saying when NAS prices are low.
21 Well, which way is it related? Is the advance a higher
22 percentage of the blend when prices are low, or is it a
23 lower percentage of the blend when prices are low?

24 A. A Chinese puzzle. Ask the question again
25 please. I'll keep thinking.

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1 proposal.

2 Q. Okay. Thank you.

3 ***

4 ADMINISTRATIVE LAW JUDGE: Thank you, Mr.
5 Beshore. Any further examination of this witness? Yes.

6 MR. TONAK: You're representing...

7 ADMINISTRATIVE LAW JUDGE: Mr. Tonak...

8 MR. TONAK: ...cheesemakers...

9 ADMINISTRATIVE LAW JUDGE: ...would you
10 please...

11 ***

12 BY MR. TONAK:

13 Q. ...pooling milk on Order 30. Is that
14 correct?

15 A. I represent the Wisconsin Cheesemaker's
16 Association and their Board of Directors.

17 Q. And some of those people pool milk on
18 Order 30?

19 A. Yes.

20 Q. And that's the people that this
21 regulation particularly applies to?

22 A. Yes.

23 Q. Now to the extent that they make a
24 qualifying shipment, meaning qualifying for pooling on
25 Order 30 to a fluid milk plant, they would receive

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1 payment from that fluid milk plant according to these
2 same general terms. It would be somewhat of a pass
3 through would it not?

4 A. I'll take your word on that.

5 Q. And if they really find it onerous,
6 burdensome to make the payments they could voluntarily
7 depool all the milk remaining at the cheese plant and
8 pay whenever they wanted to couldn't they?

9 A. Could they depool because of this?

10 Q. Well, yes, I mean, if it's too burdensome
11 could they depool the milk and not be affected by this
12 regulation?

13 A. I don't believe they can depool at any
14 given moment, but I believe they can take that option at
15 certain times of the year.

16 Q. You don't think they can just decide this
17 month they don't want to pool the milk or that they
18 don't want to make the payments and...

19 A. It depends on what the Order language is
20 to that regard.

21 Q. Well, my understanding would be that they
22 could depool basically whenever they wanted as long as
23 they didn't ship to a fluid plant...

24 A. Okay.

25 Q. ...or their Grade A intake, or whatever.

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1 Is this regulation or change in the opinion of the
2 cheesemakers so burdensome that they would want to
3 depool their milk?

4 A. I don't know.

5 Q. Thank you.

6 ***

7 ADMINISTRATIVE LAW JUDGE: Thank you, Mr.
8 Tonak. Any further questions? Any redirect? -- All
9 right. -- thank you, Mr. Umhoefer. You may step down.
10 Mr. Tosi?

11 MR. COOPER: Yes, we...

12 ADMINISTRATIVE LAW JUDGE: Mr. Cooper?

13 MR. COOPER: Yes, Your Honor. Yesterday Mr.
14 English asked Mr. Halverson to check out some
15 information for him and I'd like to put Mr. Halverson on
16 the stand now to report back as to what he found, if
17 anything, and what limitations there are involved.

18 ADMINISTRATIVE LAW JUDGE: Yes, thank you.

19 MR. COOPER: Mr. Halverson.

20 ADMINISTRATIVE LAW JUDGE: Mr. Halverson?

21 MR. COOPER: I believe he's still under oath,
22 Your Honor.

23 ADMINISTRATIVE LAW JUDGE: Welcome back.

24 MR. HALVERSON: Thank you.

25 ADMINISTRATIVE LAW JUDGE: Mr. Halverson, you
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1 may proceed.

2 MR. HALVERSON: Well, maybe, yes, this is
3 Victor Halverson again and I will answer the question as
4 I understood it. I believe the question was, based on
5 Market Administrator records we presented data on the
6 quantity of milk pooled from California and Idaho and I
7 was asked if we knew what portion of that milk actually
8 was received at pool plants. And I believe, I don't
9 know if you meant pool plants in the marketing area, but
10 there are no pool plants in the California or Idaho
11 areas. All the pool plants in our market are either
12 inside the marketing area boundaries or there are a
13 couple of pool plants in North Dakota that have
14 historically been part of our milk shed. We had a
15 couple of employees run some estimates, and I guess the
16 answer would be that the vast majority of the milk that
17 was pooled from California and Idaho physically was
18 diverted to non-pool plants in or near California and
19 Idaho. Based on some estimates, we would say every
20 month was since October of 2000, which I believe is what
21 I was asked. 90 percent or more of the milk stayed in
22 or near the states where it was produced. So the
23 California milk stayed in California and the Idaho milk
24 stayed in Idaho or nearby.

25 ADMINISTRATIVE LAW JUDGE: Mr. English?

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1 you again state your name?

2 MR. HOLLON: My name is Elvin Hollon and I'm
3 employed by Dairy Farmers of America. Mr. Tosi?

4 ***

5 BY MR. TOSI:

6 Q. Yes, thank you for taking the stand
7 again, Mr. Hollon. In Proposal 5 it proposes to change
8 Section 73 of the Order. In that regard, and this is a
9 highly technical question I suppose, we're talking about
10 -- it has two parts to it, one is a partial payment to
11 producers and another part that has to do with partial
12 payments to cooperatives. Is it your intent that this
13 103 percent partial payment rate applied to both
14 payments to cooperatives and to producers?

15 A. Yes.

16 Q. And we're going to treat both the same?

17 A. Yes.

18 Q. Okay. Thank you very much.

19 ***

20 ADMINISTRATIVE LAW JUDGE: Any other questions
21 in that regard? Mr. Beshore, any redirect?

22 MR. BESHORE: No.

23 ADMINISTRATIVE LAW JUDGE: All right. Thank
24 you. You may step down, Mr. Hollon. Is there any other
25 evidence to be presented today? There being none, the -

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1 - Mr. Cooper?

2 MR. COOPER: We have no more evidence, but in
3 every one of these Federal Milk Order Hearings there is
4 a proposal at the end, which doesn't require testimony
5 and in this case it's labeled Proposal 6. It's by the
6 Agricultural Marketing Service and it's basically to
7 advise all interested persons that the Department may
8 make incidental or conforming changes to other
9 provisions of the Marketing Order as a result of the
10 changes adopted at this Hearing. And I just thought it
11 should be on record. Thank you.

12 ADMINISTRATIVE LAW JUDGE: Thank you, Mr.
13 Cooper. There being no further evidence, the evidence
14 in this record is closed. Now as I've indicated when
15 you're Briefs come in, you may want to provide
16 attachments. In addition Mr. Beshore raised one issue
17 in which he'd like to keep the door open. We'll see if
18 that develops if there is anything further he wants to
19 present, if so, we'll see if there is any objection to
20 that being made a part of the record. What I'd like to
21 do now before we adopt a briefing schedule is I'd like
22 to talk for a moment about the transcript. Someone
23 indicated to me that he expected to get a copy of the
24 transcript off a web site and I just wanted to indicate
25 that the Office of the Hearing Clerk entered into an

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1 agreement with the reporting service to provide the
2 Court reporting at this Hearing. Anyone who wants a
3 copy of the transcript may make arrangements with the
4 Court Reporter. If you do not have some agreement with
5 the reporting service, it is probably not advisable to
6 use the transcript, except for your own purposes. I
7 would question whether posting it on a web site would be
8 in violation of the proprietary interest of York
9 Stenographic Services. So I caution some additional
10 inquiry before anyone chooses to do that. That's not a
11 document that the USDA has control over, it's not a
12 record that we would be posting on the web site without
13 making contractual arrangements, and I would think any
14 other party would be subject to similar limitations.
15 Mr. Vetne?

16 MR. VETNE: I don't know what to say. I think
17 that's incorrect. Although the manpower for the
18 transcription of this proceeding is contracted out, the
19 transcript when it gets into the hands of the Dairy
20 Division is a public document. It's subject to the
21 Freedom of Information Act and any other statute
22 involving a public document, it's not copyrighted. And
23 in the past year or so, as a matter of efficiency and
24 service to the industry, the Dairy Division has posted
25 exhibits, Briefs, and the transcript of Hearing on the
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1 Internet site, and we've all come to rely on that as a
2 very efficient way to make available to everyone,
3 including dairy farmers and interested citizens, all of
4 the records so they can comment on it. I don't know if
5 they plan anything else, but I was told at the beginning
6 of this Hearing that as following the recently
7 established practice, the web site would contain the
8 record and the Briefs as it had in the past year.

9 MR. COOPER: Does it say it on there?

10 ADMINISTRATIVE LAW JUDGE: Thank you, Mr.
11 Vetne. Mr. Cooper?

12 MR. COOPER: Yes, I'm certainly not an expert
13 on the contracts between the Hearing Clerk's Office and
14 the reporting service in Washington, but it was my
15 understanding that in the past at least the Department
16 of Agriculture in it's contract there's something that
17 allows them to put it on the web site. And I know we
18 have in past Hearings and I believe the intent was to do
19 it in this Hearing too. In fact, I think something may
20 have been mentioned in the Hearing Notice, but I don't
21 have it, well, maybe I do have it right in front of me.
22 Yes, in the Hearing Notice published on June 11, 2001
23 due to 66 Fed. Reg. 31186 after the last proposal, a
24 couple paragraphs later, there was something that said,
25 "Copies of the transcript of testimony taken at the

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1 Hearing will not be available through the Hearing
2 Clerk's Office due to..." -- Now where did you see this?
3 -- now I'm lost again here, Your Honor.

4 ADMINISTRATIVE LAW JUDGE: Does it go on to
5 say if you wish to purchase a copy...

6 MR. COOPER: And where's it at in the web
7 site?

8 ADMINISTRATIVE LAW JUDGE: ...arrangements may
9 be made with the Reporter at the Hearing?

10 MR. COOPER: I'm not sure if it will be on the
11 web site. Let me put it that way. I...

12 ADMINISTRATIVE LAW JUDGE: If the Department
13 of Agriculture has contracted with York Stenographic
14 Services in such manner that it can be posted on
15 Agriculture's web site, great. But...

16 MR. COOPER: I don't know the current status
17 of the contract, Your Honor. I know in the past we have
18 had such a provision in there and we did put transcripts
19 on in the past. Now I don't know the current status of
20 it, we're not responsible for these contracts. So...

21 ADMINISTRATIVE LAW JUDGE: All right.

22 MR. COOPER: In my office.

23 ADMINISTRATIVE LAW JUDGE: All right. I would
24 just like to read into the record the address of the
25 Court Reporter just in case interested parties might

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1 want to order a copy who were not here. It's my
2 understanding that this service is being provided by
3 York Stenographic Services, 34 North George Street,
4 York, Pennsylvania, 17 -- I've got too many digits for
5 the zip code. I'll read the digits I see, 177401.

6 MR. ENGLISH: It's 17401.

7 ADMINISTRATIVE LAW JUDGE: All right. Thank
8 you. 17401. Thank you. -- All right. -- then let's
9 talk about briefing with the idea that you would want to
10 have a copy of the transcript to use in preparing your
11 Briefs. Do Counsel have a proposal with regard to
12 Briefing?

13 MR. ENGLISH: You can never find out when the
14 transcript will be available regardless of how it's
15 available. Did we find out a date of when the
16 transcript's expected to be available?

17 ADMINISTRATIVE LAW JUDGE: Do you have an
18 estimate for us?

19 COURT REPORTER: I know it's on a five-day
20 turn around is what I was told. So it should be
21 available to you within a five-day period.

22 MR. ENGLISH: Does five-day include the
23 weekends or is that five business?

24 COURT REPORTER: I would assume it's business.

25 MR. COOPER: Now is that five days delivered
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1 or is that five days mailing from the transcript place?

2 COURT REPORTER: I don't know.

3 MR. COOPER: Okay. That I don't know either.

4 MR. ENGLISH: Your Honor, I would propose ten
5 days for the date of the transcript...

6 ADMINISTRATIVE LAW JUDGE: From...

7 MR. ENGLISH: ...on the grounds that we have
8 an emergency and we have asked for emergency
9 consideration. I guess one of the questions we have to
10 address is I don't know how if at all the emergency
11 applies to all the proposals in the Hearing Notice. I'm
12 not going to try to get in a debate about Proposals 3
13 and 4. I certainly think Proposal 5, we heard no
14 testimony that it's an emergency. So whether we have
15 two different briefing dates or it could be on a
16 different schedule, I certainly for our part for the
17 quantity of milk that's being pooled doubly on a State
18 Order and the Federal Order, for the amount of money
19 we're talking about, and for the expense this is costing
20 producers, I think that we certainly need a fast
21 turnaround. Ten days is certainly not unheard of and I
22 would request ten days from the date the transcript's
23 available.

24 ADMINISTRATIVE LAW JUDGE: And, Mr. English,
25 just so I'm clear, do you envision that on the tenth day

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1 the Brief would arrive at the Hearing Clerk's office
2 or...

3 MR. ENGLISH: No, traditionally it's been
4 mailed on that day.

5 ADMINISTRATIVE LAW JUDGE: You deposit in the
6 mail?

7 MR. ENGLISH: It does have a postage stamp on
8 that day, Your Honor.

9 ADMINISTRATIVE LAW JUDGE: All right.

10 MR. ENGLISH: I have not -- it has been
11 traditionally received on that day, it's been -- I would
12 not ask to change that tradition.

13 ADMINISTRATIVE LAW JUDGE: And your ten days
14 would run from receipt of the transcript?

15 MR. ENGLISH: Well, I can't say from receipt
16 of transcript because somebody then could order it, you
17 know, I'd some from the availability of the transcript.
18 If it's available five days from now that would be next
19 Wednesday, which is the...

20 ADMINISTRATIVE LAW JUDGE: The 4th of July.

21 MR. ENGLISH: Well -- Okay. -- we'll knock off
22 the 4th of July. So we're assuming it's not going to be
23 available the 5th of July, give it an extra day, so the
24 6th of July. I would say July 16, which conveniently is
25 a Monday.

1 ADMINISTRATIVE LAW JUDGE: All right. Thank
2 you, Mr. English. Mr. Beshore?

3 MR. BESHORE: I think that briefing schedule
4 for this proceeding is completely unrealistic. 30 days
5 from receipt of the transcript is a modest time for the
6 parties to have the opportunity to digest the transcript
7 and the issues, which we agree are substantial. And,
8 you know, I think that's a minimum period of time that
9 is needed to appropriately Brief the issues here.

10 ADMINISTRATIVE LAW JUDGE: All right. Thank
11 you. Before I hear from you, Mr. English, let me hear
12 from Mr. Vetne.

13 MR. VETNE: Let me try to mediate this. In my
14 experience the transcripts are never available when
15 they're promised, so I'm counting on, you know, maybe at
16 the earliest a week from Friday, given the holiday and
17 so forth. That takes one week. What we need is a point
18 certain regardless of when the transcript comes in
19 whether it's seven days, or eight days, or, you know, a
20 week from next Monday. We don't need the transcript to
21 start working on our Brief. We need the transcript to
22 fill in references to testimony and, you know, I'm going
23 to start working, and referencing the exhibits, and so
24 forth before I look at the transcript. I would like to
25 suggest exactly four weeks from today, which, you know,

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1 provides room for the transcript and provides, you know,
2 somewhere between two, two-and-a-half weeks after the
3 transcript's received.

4 ADMINISTRATIVE LAW JUDGE: All right. That
5 would be July 25, that would be four weeks from today.

6 MR. VETNE: As a briefing deadline and as a
7 mailing deadline, and the USDA is glad as I understand
8 it to receive copies of Briefs by email attachment as
9 long as you comply with -- am I correct? They have a
10 fax number and an email address. Because a courtesy
11 copy is normally supplied directly to the Dairy Division
12 and frequently to other parties. And I encourage
13 parties to email me a copy of their Brief, don't mail it
14 and please don't fax it.

15 MR. COOPER: But...

16 ADMINISTRATIVE LAW JUDGE: Mr. Cooper?

17 MR. COOPER: But even if you email one to the
18 Dairy Division, please file one with the Hearing Clerk
19 because the Dairy Division can't read it unless it's
20 also filed.

21 ADMINISTRATIVE LAW JUDGE: Mr. Tosi, would you
22 add to that?

23 MR. TOSI: I may be wrong, Your Honor, but Mr.
24 Cooper's advice that a copy also be sent to the Hearing
25 Clerk's Office, that's in effect the official copy and

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1 it's from there that it's determined whether it's
2 received on time or not.

3 ADMINISTRATIVE LAW JUDGE: Correct. It's not
4 part of the record unless the Hearing Clerk receives
5 it...

6 MR. TOSI: That's correct.

7 ADMINISTRATIVE LAW JUDGE: ...timely. Yes,
8 Mr. Berde, did you want to weigh in on this before I
9 hear from Mr. English?

10 MR. BERDE: I don't really have standing to
11 file a Brief in this Hearing. It will be interesting to
12 see what happens. I might suggest, however, that in my
13 experience, the date for filing Briefs simply is the
14 date to trigger a request for extension of the time to
15 file Briefs. So I don't think it deserves much time or
16 argument.

17 MR. ENGLISH: Which is by way of saying the
18 longer the worse, this is an emergency. We are talking
19 about \$2,000,000 a month. It's easy for Mr. Beshore to
20 talk about it, his client's receiving some of the money.
21 And the fact of the matter is the longer we go, the more
22 we're out. The fact of the matter is that I believe
23 that ten days from the time the transcript is available,
24 which would be the July 16, is entirely reasonable given
25 the amount of money we're talking about and the effort

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1 that has already gone into this Hearing. Mr. Beshore
2 and his client have essentially already presented a
3 Brief, I mean, we've got, you know, and all of us have
4 done that to a great extent. We've heard a tremendous
5 amount of argument. And, you know, 30 days is
6 oftentimes the time from the time the transcript is
7 filed for a regular Hearing. It loses the entire
8 notice, concept, anything about an emergency to say
9 we're going to file 30 days or even three weeks. And
10 from the part of all the clients that I have represented
11 at this Hearing, and all of the issues that have been
12 erred, we urge a briefing date, at least as to Proposal
13 1. If Mr. Beshore wants to wait 30 days as to Proposal
14 4, but as to Proposal 1 and the emergency we have
15 established with respect to Proposal 1, we really insist
16 on a ten-day briefing date.

17 MR. BESHORE: I don't think that was a serious
18 comment Mr. English just made about segregating the
19 briefing of Proposal 1 and 4. I also find myself in the
20 unenviable position of having my adversaries mediate my,
21 you know, my position here. 30 days, you know, the
22 emergency aspect of the whole thing is whether the
23 Secretary finds it advisable to issue a Final Decision
24 or an Interim Final Decision to put on Order into effect
25 without having the opportunity for parties to submit

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1 comments to a recommended Decision. The fact that that
2 is being requested and could be considered, only
3 underlines the need to have an appropriate amount of
4 time for briefing in chief to be done on the issues of
5 the Hearing. And the issues, the Hearing was
6 substantial, the issues are substantial, and 30 days
7 from the time the transcripts available is not in any
8 way unreasonable to Brief the emergency issues as well
9 as the issue of the emergency as well as the substantial
10 issues on Proposals 1 through 4.

11 ADMINISTRATIVE LAW JUDGE: All right. Thank
12 you. My heart is with the decision makers within the
13 Department who can only be helped by lucid argument.
14 And so I want you to have adequate time to make it and
15 to make that part of the record. Yes, it's an emergency
16 situation, yes, we need to move right along, but to the
17 extent your Briefs are thorough, that should assist the
18 Secretary. And so I'm actually going to cut you a
19 little short, Mr. Beshore. I am going to accept Mr.
20 Vetne's proposal, I think it's quite a good one to go
21 four weeks from today. I think that gives you all
22 adequate time to present very clear and thorough Briefs.
23 That is July 25, a Wednesday. All Briefs must be
24 deposited in the mail no later than July 25, 2001 to be
25 timely filed. Absent some extraordinary emergency and

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1 with the concurrence of all opposing Brief filers, there
2 are not likely to be any extensions granted. So please
3 get your Briefs in or perhaps suffer the consequence of
4 not being permitted to file one. -- All right. --
5 anything further today? I thank you all. This was an
6 excellent Hearing, I look forward to more of them.

7 MR. ENGLISH: Thank you, Your Honor.

8 ADMINISTRATIVE LAW JUDGE: You're welcome.

1 CERTIFICATE OF REPORTER, TRANSCRIBER AND PROOFREADER

2
3 IN RE: UPPER MIDWEST MILK MARKETING ORDER4
5 HELD AT: BLOOMINGTON, MINNESOTA6
7 DATE: Wednesday, June 27, 20018
9 We, the undersigned, do hereby certify that the
10 foregoing pages, numbered 310 through 600, inclusive,
11 are the true, accurate and complete transcript prepared
12 from the reporting by the reporter in attendance at the
13 above identified hearing, in accordance with applicable
14 provisions of the current USDA contract, and have
15 verified the accuracy of the transcript by (1) comparing
16 the typewritten transcript against the reporting or
17 recording accomplished at the hearings, and (2)
18 comparing the final proofed typewritten transcript
19 against the reporting or recording accomplished at the
20 hearing.21
22 Date:23
24 _____
25 Amy M. McLain-Berry, Transcriber
26 York Stenographic Services, Inc.

27 Date:

28
29 _____
30 Sarah Mowrer, Proofreader
31 York Stenographic Services, Inc.

32 Date:

33
34 _____
35 S.M. Peterson, Reporter
36 York Stenographic Services, Inc.