

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

IN Re: X FEBRUARY 26, 2004
X 9:00 a.m.
MILK IN THE APPALACHIAN X DOCKET NOS. AO-388-A15,
AND SOUTHEAST MARKETING X AO-366-A44 and DA-03-11
AREAS; NOTICE OF HEARING X
ON PROPOSED AMENDMENTS X WESTIN ATLANTA HOTEL
TO TENTATIVE MARKETING X 4736 BEST ROAD
AGREEMENTS AND ORDERS X ATLANTA, GA

VOLUME IV OF IV

APPEARANCES:

JUDGE PRESIDING: HON. VICTOR W. PALMER
USDA

USDA: MS. SHARLENE DESKINS
USDA/OGC

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

OTHERS PRESENT:

MR. MARVIN BESHORE SOUTHERN MARKETING AGENCY, INC.	MR. JEFF HITCHELL KROGER COMPANY
AL RICCIARDI SARA FARMS AND MICHAEL SUMNERS	MR. CHARLES ENGLISH THELAND, REED & CREEST
MR. GARY LEE PRAIRIE FARMS	MR. EARNEST YATES MR. WILLIAM CURLEY DEAN FARMS
MR. PAUL CHREST MR. CARL CONOBER CONSULTANTS	MR. JOHN VETNE SOUTHEAST MILK, INC.
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3	Exhibit No. 60	--	790
4	Exhibit No. 61	--	790
5	Exhibit No. 62	--	790
6	Exhibit No. 63	--	790
7	Exhibit No. 64	789	810
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9	Exhibit No. 66	932	973
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P R O C E E D I N G S

9:10 a.m.

ELVIN HOLLON

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3
4 having been previously duly sworn, was examined and
5 testified as follows:

6 THE COURT: The witness has returned to the
7 stand, and he's -- and I've noted that he's still sworn and
8 under oath.

9 Go ahead, sir, Mr. Beshore.

10 MR. BESHORE: Yes. Mr. Hollon is available for
11 cross-examination, but I would like to make one brief
12 statement on the issue that came up most frequently
13 yesterday with respect to the Arizona testimony and to try
14 to make clear our intentions. We are not attempting in any
15 way to independently prove facts in Arizona in this hearing
16 for the purpose of what they are out there, but to use the
17 experience from Arizona to enlighten the record with
18 respect to the proposals in this hearing. And I don't --
19 hopefully that will help.

20 THE COURT: I understood.

21 MR. BESHORE: Okay. Thank you.

22 THE COURT: All right. The witness is available
23 for examination.

24 MR. RICCIARDI: We have a couple of questions.

25 THE COURT: I thought you might.

CROSS-EXAMINATION

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BY MR. RICCIARDI:

Q. Good morning, Mr. Hollon.

A. Good morning, Mr. Ricciardi.

Q. How are you?

A. Just fine.

Q. Have you got both Exhibit 47 and also Exhibit 60 and the other exhibits that follow with you?

A. I do.

Q. Okay.

A. Where are you starting?

Q. I don't know. Let's think about this.

I think probably -- probably with some of the issues in 47, which I have nicknamed, Mr. Hollon, your opus, so let's start there.

A. Very well.

Q. Okay. Background. As I understand it, you're here on behalf of DFA but also in support of the proposals that are made by Southern Marketing Agency to the secretary for Federal Orders 5 and 7.

A. That is correct. That's a fair assessment.

Q. Okay. As I understand it from looking at Exhibit 47, SMA has the position that it supports Proposals 1, 2 and 3 but that it would be opposed to Proposals 5 and 8.

All right?

1 A. I think that's right. I don't have my notice in
2 front of me.

3 Q. If you take a look at the bottom of Exhibit 47,
4 page 1 going into 2, I think that's what you said.

5 A. Yes. Okay.

6 Q. All right?

7 A. Yes, sir.

8 Q. Now, is it the position of DFA and SMA that the
9 producer-handler issue, that is, the question of trying to
10 put a hard cap of three million pounds per month on a
11 producer-handler, is that a critical issue?

12 A. Yes.

13 Q. So then let's go through and talk about this for
14 a moment.

15 You support -- SMA and DFA support producer-
16 handler limitations and the language contained in Proposal
17 7 but only if that's part of the acceptance of the
18 proposals made by SMA and DFA, that is, Proposals 1 through
19 3, correct?

20 A. That's not quite right. We support the
21 limitations on producer-handlers, and we support them as a
22 part of our proposal. And while we oppose the proposal
23 that Dean made for the creation of a new order, Dean and
24 Prairie Farms, if the Secretary were to find for that, we
25 would want the producer-handler proposals be included there

1 also.

2 If I didn't articulate that clearly, then I'm
3 sorry.

4 Q. Yeah, actually, it doesn't say that at all. What
5 it says is with regard to the producer milk definition, and
6 et cetera, we support the intent and language but only as
7 they would be included in our own Proposal 1 through 3. We
8 oppose Proposals 5 and 8.

9 So as it's stated in your testimony, Exhibit 47,
10 if Proposals 1 through 3 are adopted, you would agree with
11 the limitation on producer-handlers, but you would oppose
12 it, at least as stated here, if it was only adopted as part
13 of Proposal 5. Are you changing that testimony now?

14 A. Yes.

15 Q. So that --

16 A. Thank you for clearing that up.

17 Q. That was wrong.

18 A. Yes.

19 Q. All right.

20 Let's go through and talk in general since we
21 dealt with a lot yesterday during the course of your direct
22 testimony. Exhibit 60, in reality, other than a few
23 changes and a few changes not made, is identical to the
24 information and testimony you presented with regard to the
25 ongoing 131 and 124 hearings, correct?

1 A. Yes.

2 Q. And, in fact, what you attempted to do was make
3 changes to make it relate to 5 and 7, but as we pointed out
4 through a variety of these, your word processor missed a
5 few, and you still kept information in here that you should
6 have deleted, which you did during the course of your
7 testimony.

8 A. Yes. There was -- I agree that the testimony was
9 largely similar and the same as in the other hearing, and
10 there were some changes that were made to adopt some of the
11 comparisons to Order 5 and 7, and yet some of the data in
12 evidence would be equally applicable to both, and so that's
13 why they were left in place.

14 Q. In fact, that's your position. The position of
15 SMA is that we should be looking at the information for 131
16 and 124 because it would have some relevance to this
17 proceeding, although you'd leave that to the secretary,
18 correct?

19 A. Yes, that's a fair assessment.

20 Q. Okay. Let's talk about what we do know regarding
21 producer-handlers in relationship to Federal Orders 5 and
22 7, which is why at least I'm standing up here to talk.

23 We know at least if we look at the data that is
24 in this record prepared by the market administrators,
25 that -- and I'll reference exhibit numbers just for clarity

1 of the record.

2 In Federal Order Number 7, Exhibit Number 41,
3 there are no producer-handlers in this order, as reflected
4 in those statistics, correct?

5 Not in the marketing area.

6 A. No, I would say that's not correct.

7 Q. Okay. Well, then if you've got Exhibit 41 up
8 there, I'd like you to point out to me where there is a
9 producer-handler located in this marketing area as
10 reflected in Exhibit 41.

11 A. Again, as I pointed out yesterday, there are --
12 there are two differentiations in the -- in the handler
13 lists. There's one that lists producer-handlers, and
14 there's one that lists exempt plants.

15 And in the definition of exempt plants, there is
16 some latitude, in my opinion, as to how those are presented
17 in market administrator statistics, and there are
18 businesses that are listed under that list that are, in
19 fact, producer-handlers.

20 Q. Okay. Then what I'm asking you -- and I don't
21 want to pars through this with you, but I want to also be
22 clear.

23 The fact is that based upon the statistics from
24 the United States Department of Agriculture, Exhibit 41,
25 there are zero, none, producer-handlers listed here. I'm

1 not talking about exempt plants. I'm talking about
2 producer-handlers as listed in this document. Correct?

3 A. I disagree with your assessment. Again, there
4 was an interchange between -- I think it was Mr. Beshore
5 and both Mr. Dupree and Mr. Gooch, who went right down the
6 line of reasoning that I just spoke about, and both of them
7 said that yes, there are businesses in the exempt list who
8 are producer-handlers.

9 Q. Well, you know, I don't want to make a real fine
10 point of this, but the bottom line is I got exempt plants
11 and I have producer-handlers in this document, and there
12 are no producer-handlers in the document. Okay? Right?

13 A. Yes.

14 Q. All right. Thanks.

15 There are a couple of producer-handlers that are
16 outside the marketing area that have, in fact, had sales in
17 the marketing area, and that's why they're listed under
18 producer-handler plants at the back of 41.

19 A. Yes. That's correct.

20 Q. And if we went back since we're on -- we're on
21 Federal Order Number 7, and we go back a couple of years,
22 what we can see is -- to go back to Exhibit 38, 2000, we
23 have the same producer-handler plants outside the market
24 selling into the market, Martin Dairy and Brahms
25 (phonetic), and no producer-handlers, correct?

1 A. That is the listing again. Same thing. I think
2 that that description is inaccurate.

3 Q. I didn't ask you that.

4 A. That's okay.

5 Q. You know, if somebody wants to ask you that,
6 that's fine. I'm talking about this.

7 A. Well, seven times already I've explained that and
8 put that information out, so it's already there.

9 Q. I understand. I get to ask the questions up
10 here, Mr. Hollon, and you've got to answer my --

11 A. Fair enough. Fair enough.

12 Q. Okay. Thank you.

13 MR. BESHORE: He has the opportunity to explain
14 his response, Your Honor.

15 THE COURT: Well, I'm going to -- we'll keep it a
16 little restricted so that the cross-examination will go a
17 little more quickly. So let's restrict ourselves to his
18 questions, and we'll let him explain later.

19 MR. ENGLISH: Your Honor, just one second --

20 THE COURT: Yes, Mr. English.

21 MR. ENGLISH: -- if I may. Okay?

22 Charles English for Dean Foods and Prairie Farms.

23 I think the important distinction here, though,
24 is that you can't just talk about the document without
25 talking about what discussion there was between Mr. Beshore

1 and Mr. Gooch about how that document is to be interpreted,
2 and that is the point that Mr. Hollon was trying to make.

3 You know, you can talk about a piece -- a sterile
4 piece of paper, but the sterile piece of paper was actually
5 discussed by the market administrator, and there was a
6 different explanation given.

7 THE COURT: I understand you, but he wants to get
8 certain points together and get them done fairly quickly,
9 and then we'll let counsel work a little bit on redirect to
10 clarify.

11 Go ahead.

12 MR. RICCIARDI: That would be their job. Thanks.

13 BY MR. RICCIARDI:

14 Q. In the meantime, let's go to Exhibit 39, and for
15 2001, we have the same situation as listed in the market
16 statistics. We have no, zero, producer-handlers, and we
17 have, this time, three producer-handlers outside the
18 marketing area that are selling into the market, Promised
19 Land Dairy, in fact, only having three months where it was
20 a producer-handler selling into the market, correct?

21 A. Correct.

22 Q. Now, Promised Land, from that point on, as
23 reflected in the statistics in Exhibit 39 for 2001, changed
24 to Federal Order 126 and became a regulated pool plant,
25 correct?

1 A. That's not a correct assessment.

2 Q. Okay. It sold, then, to a pool plant in Federal
3 Order 126?

4 A. No.

5 Q. Okay. Then what happened?

6 A. They changed their business form of operation, an
7 example that I was explaining awhile ago, like producer-
8 handlers, and they became -- they chose to -- instead to be
9 a producer-handler, they chose to become a fully regulated
10 distributing plant.

11 Q. They chose, made a decision economically --

12 A. Yes.

13 Q. -- to become a regulated pool plant.

14 A. Well, let me correct that. I know that they
15 chose to make a change. I don't know all the underlying
16 reasons.

17 Q. Okay. You don't know the reasons, but you know
18 they made a change from a producer-handler to a regulated
19 plant.

20 A. Yes.

21 Q. Okay. And for 2002 and 2003, they didn't become
22 a producer-handler again because it's not in the
23 statistics, right?

24 A. I think that is correct.

25 Q. So with regard to this supposed loophole that

1 you've talked about from Promised Dairy's perspective, they
2 didn't see that loophole as being very economically
3 beneficial because they decided to change from a producer-
4 handler to a regulated, correct?

5 A. You mean their choice of being a producer-handler
6 versus being a fully regulated plant?

7 Q. Yes.

8 A. Yes. They -- their regulation changed.

9 Q. Okay. Now, I've dealt with the issue of Federal
10 Order 7, and let's talk about 5, and I'll take two
11 documents, Exhibit 7 and Exhibit 10.

12 Exhibit 7 deals with the compilation of material
13 in the marketing area from January through December of
14 2000, and there's a listing on Table 19 of the producer-
15 handlers in that area. I'm sure you've looked at this
16 information?

17 A. I've glanced at it.

18 Q. Now, for the year 2000, they list under producer-
19 handler plants three, actually: Bob Jones University for a
20 few months, Jackson Dairy and Maple View Farm Milk Company.

21 If we take Bob Jones University out of that
22 column for a moment, we have two, correct?

23 A. Why would we take them out?

24 Q. All right. Well, let's leave them in.

25 If we leave Bob Jones University in for those

1 months, we've got three producer-handlers in the year 2000,
2 correct?

3 A. Okay. Yes.

4 Q. All right. And then if we go to Exhibit 10, the
5 same statistics for 2003, and we look for producer-handlers
6 in this area, do you know how many we have left?

7 A. I do not.

8 Q. The fact is that we have one. We've got Maple
9 View Farm Milk Company.

10 A. Okay.

11 Q. Okay? So we've got a reduction from 2000 to 2003
12 from three down to one, correct?

13 A. Three and one is the reduction. I've not
14 reviewed the list to -- both lists to see if there are
15 other businesses who would fit the definition or not, like
16 I did for Order 7.

17 Q. Now, let's take just that number alone. Your
18 background is as an economist, right?

19 A. Yes, sir.

20 Q. And even with that background and my simple way
21 of doing math, if we take three and we go down to one,
22 we've had a reduction of two, correct?

23 A. Correct.

24 Q. And, again, if, in fact, in this marketing area,
25 the idea of being a producer-handler was the fast track to

1 wealth, the regulatory loophole that you've talked about,
2 we would think that at a minimum, we would go the other
3 direction, that we would have more producer-handlers and
4 not less, correct?

5 A. You could put that theory forward.

6 Q. And I just did.

7 A. Okay.

8 Q. And that's a valid theory.

9 A. But I did not.

10 Q. Okay. I understand. That's a valid theory, isn't
11 it?

12 A. Yes, it's a valid theory.

13 Q. Okay. Now, during the same period of time, from
14 2000 to 2003, there has been a significant consolidation in
15 the milk industry throughout the United States, including
16 Orders 5 and 7, correct?

17 A. Yes.

18 Q. Okay. And what that means is, in general terms,
19 that we've got larger plants, as opposed to more plants,
20 throughout the country, including Order 5 and 7, correct?

21 A. We have fewer and larger retailers, fewer and
22 larger dairy farms, fewer and larger processing
23 organizations, fewer and larger (indiscernible).

24 Q. Okay. I think you also heard testimony, and
25 hopefully you'll agree with this also, that the larger a

1 plant gets, assuming it, in fact, has modern equipment and
2 is operated quickly, the more efficient the plant gets in
3 terms of being able to process the milk, correct?

4 A. In general, I would agree with that.

5 Q. All right. So what we've got in a situation
6 where if you have a larger number -- I mean a smaller
7 number of larger plants that are producing milk at a more
8 efficient level, then we have a situation where the larger
9 plant has a better economy of scale and the ability to be
10 better with a smaller plant in the same area.

11 A. In general, I would agree with that also.

12 Q. Okay. In the marketing area that we're talking
13 about for Federal Orders 5 and 7, there has been a problem,
14 as reflected in the statistics and the information we've
15 heard over the last few days, in obtaining an adequate
16 supply of milk, right?

17 A. Yes.

18 Q. That's one of the hallmarks of the entire Federal
19 Order system, and that is to ensure that there's an
20 adequate supply of milk available to the consuming public
21 at a fair and reasonable price, correct?

22 A. Yes.

23 Q. And one of the things that we would attempt to do
24 to try to deal with that is to make sure in all Federal
25 Orders, including 5 and 7, that consumers have the ability

1 to be able to have a product throughout the course of the
2 year at a fair price.

3 A. That would be an objective.

4 Q. Okay. And one of the ways that we can do that,
5 at least on the local level, is to actually encourage
6 producer-handlers in that area to produce milk so that it's
7 available to the consuming public, correct?

8 A. Sure. Yes.

9 Q. Because one of the things that a producer-handler
10 does is a producer-handler is able, particularly in a local
11 market, to produce milk and make it available in that local
12 market for consumption by the consuming public, right?

13 A. Can a producer-handler produce milk and make it
14 available --

15 Q. Sure.

16 A. -- is that what you asked? Can they do that?

17 Q. Sure.

18 A. Yes, they can do that.

19 Q. And in order to do that, a producer-handler,
20 because it's both a producer and a handler, it owns cows
21 and it processes milk, has to do everything from buy the
22 cows, getting the milk to the dairy, processing that milk,
23 marketing that milk and also balancing the needs throughout
24 the course of the year, correct?

25 A. Did your question say has to or chooses to?

1 Q. Has to. In order to be a producer-handler, they
2 have to do that.

3 A. Chooses to, I would agree. Has to, they have an
4 option.

5 Q. Okay. They have an option to become a regulated
6 handler.

7 A. Yes, sir.

8 Q. Just like a regulated handler could become a
9 producer-handler --

10 A. Yes.

11 Q. -- if they wanted to.

12 A. Yes, they could.

13 Q. So what it is is a choice in terms of a capital
14 structure or structure that it wants to end up following,
15 whether it wants to be regulated or whether it wants to be
16 a producer-handler, right?

17 A. Correct.

18 Q. But all the capital needs for both the production
19 facility and the processing facility and the marketing of
20 that milk are all borne by the producer-handler, correct?

21 A. Correct.

22 Q. And, in fact, in this area, 5 and 7, it's even
23 worse for them because they can't even buy one gallon of
24 milk to balance their needs without converting over into a
25 regulated handler, correct?

1 A. The fact that you stated about the regulation is
2 true. The opinion about whether that's worse or better, I
3 don't agree.

4 Q. Okay. Well, the fact of the matter is this, that
5 what happens is if you're a producer-handler in 5 and 7,
6 and you get to the point in the low months where you need
7 milk, there is no way for you to get the milk without
8 converting to be a regulated handler.

9 A. If you remember back to our discussion on choice
10 and had to, has to -- do you remember that just two minutes
11 ago?

12 Q. Yeah, and I don't want to pars language with you,
13 but --

14 A. Well, but yes, you do because that's what we've
15 done all the way along, so if you go back to that
16 discussion about has to versus choice, if a producer-
17 handler in Order 5 and 7 chooses to be a producer-handler,
18 chooses to commit the capital, chooses to do all of those
19 things, then they also choose to operate under the
20 regulations, and that's what those are.

21 Q. Now, in fact, though, if we look at every other
22 order save for Order 6, which is in Florida --

23 MR. BESHORE: Well, I wonder -- does that mean
24 that the other orders are relevant, Your Honor, to this
25 proceeding?

1 THE COURT: Let's see the question.

2 Go ahead, sir.

3 BY MR. RICCIARDI:

4 Q. In every other order, other than 5, 6 and 7,
5 there is at least a minimum amount of allowance per month
6 that a producer-handler has, 150,000 generally, to be able
7 to balance its needs, correct?

8 THE COURT: Why are you looking at me? He's
9 asked the question of you. Would you --

10 THE WITNESS: And so that's a relevant question
11 and answer?

12 (Laughter.)

13 THE COURT: Yeah.

14 THE WITNESS: Yes.

15 THE COURT: There's no objection. Go ahead and
16 answer the question.

17 THE WITNESS: Okay. I think that is correct. I
18 have looked at a comparison of all the producer-handler
19 provisions, and I think that your assessment is correct
20 there. There are differences in producer-handler
21 provisions in different orders generally arising from the
22 local considerations in those orders.

23 BY MR. RICCIARDI:

24 Q. Well, let's talk about the local considerations
25 in 5 and 7. We have a milk-marketing area that we've

1 already talked about in your testimony and my questions
2 today that, in fact, is occasionally a deficit market,
3 correct?

4 A. Yes, sir.

5 Q. And so with regard to the needs of a producer-
6 handler in these areas, the fact is that the likelihood of
7 producer-handler, if there was one in 5 or 7, to have a
8 requirement to purchase additional milk during the summer
9 months in particular is fairly great, right?

10 A. I'm not sure if we could make that assessment.

11 Q. Well, okay. I want to go to a couple of items in
12 your Exhibit 47.

13 Do you have that around?

14 A. Exhibit 47? Yes, I do.

15 Q. Yeah, that's the larger one.

16 A. Yes.

17 Q. Okay. And I'm covering some of these as we go
18 along, so bear with me when I get to my next point.

19 MR. RICCIARDI: In Exhibit 47, for everybody's
20 consideration, there's a longer testimony of Mr. Hollon.

21 BY MR. RICCIARDI:

22 Q. On page 44, in the middle paragraph, you make a
23 statement about Southeast -- proposed Southeast Marketing
24 Area. It's an extremely self-reliant marketing area in
25 terms of Class I processing and distribution. What does

1 that mean?

2 A. It means that, according to the statistics that
3 are in the record, the majority of the Class I milk is
4 processed by a plant in the marketing area, and the Class I
5 that is disposed of on routes comes from -- primarily from
6 pool plants located within the marketing area, and there
7 were two exhibits that detailed that.

8 Q. Now, that being the case, it's a self-relying
9 market.

10 A. In the -- to the extent that the Class I is
11 produced and produced primarily by plants in the marketing
12 area.

13 Q. Okay. And if, in fact, we have producer-handlers
14 in that area that were, in fact, producing their own milk,
15 processing their own milk and selling their own milk, that
16 would also tend to assist this marketing area to continue
17 to be self-reliant, right?

18 A. Yes.

19 Q. Can you give us, please, any information for the
20 years 2000 through now that shows that any regulated
21 handler lost a specific account to a producer-handler in 5
22 or 7?

23 A. I cannot.

24 Q. Can you tell us then any information that you
25 intend to present, or that you're aware will be presented

1 when we finish this -- through the course of this hearing
2 before we finish as to a specific time when a regulated
3 handler lost a particular account to a producer-handler?

4 A. I am not aware of any.

5 Q. Can you tell us currently, as it exists today,
6 through your testimony right this minute, any specific
7 example of disorderly marketing created by a producer-
8 handler in 5 or 7?

9 A. The thrust of our testimony has been to show
10 examples of where disorderly marketing could exist on a
11 perspective basis.

12 Q. And I didn't ask you that, Mr. Hollon. I
13 appreciate what you said, and if they want to ask you on
14 redirect, they can. Give me --

15 THE COURT: I'll allow that -- I'll allow that
16 answer, though. I think it was responsive. Go ahead.

17 BY MR. RICCIARDI:

18 Q. Okay. Go ahead.

19 THE COURT: Well, he gave the answer.

20 THE WITNESS: I was done.

21 BY MR. RICCIARDI:

22 Q. Okay. So what your testimony is is that you
23 think things may happen in the future, but you have no
24 specific information that it has occurred in the past in 5
25 or 7, correct?

1 A. That is a part of our testimony.

2 Q. Well, then give me specific examples of where it
3 occurred in the past in 5 or 7.

4 A. That wasn't the way I interpreted your question.
5 You asked me was that the only thing that we -- the only
6 comment that we were making --

7 Q. And maybe --

8 A. -- and I said no, it's not the only comment that
9 we were making about producer-handlers.

10 Q. And I apologize. Maybe my question was poorly
11 worded. This one will be hopefully better.

12 Give me specific examples of any disorderly
13 marketing that has occurred, to your knowledge, in 5 or 7
14 as a result of producer-handlers' activities.

15 A. The producer-handlers' activities with regard to
16 customers and sales movements, I'm not aware that there are
17 any.

18 Q. Thank you.

19 Are you aware that anybody, based upon your
20 knowledge or what's going to be presented, is going to
21 present any of that evidence at this hearing?

22 A. I do not know.

23 Q. At least they haven't told you about it.

24 A. That is correct.

25 Q. Take a look at the bottom of 47, as part of

1 Exhibit 47.

2 A. Okay.

3 Q. Last sentence of that particular page, you say:
4 The adoption of our proposal -- and I'm assuming that's
5 Proposals 1 through 3 -- would make this supply function
6 operate more efficiently and less costly.

7 I read that correctly?

8 A. Yes.

9 Q. Is efficiency and cost saving an important
10 objective of the Federal Order system?

11 A. Well, in this case, it's an important objective
12 of the components, and that's what this statement is about.

13 Q. Okay. If a producer-handler operates in a
14 particular market and is able to, by putting up a new
15 plant, by having its own cows and by functioning at fairly
16 efficient -- in a fairly efficient manner, is a producer-
17 handler able to actually assist the supply function into
18 the market by being more efficient and being less costly?

19 A. No.

20 Q. Why not?

21 A. Because if that's -- the remaining competitive
22 factors that the producer-handler does not operate under
23 the classified pricing system causes -- when it gets --
24 when it reaches a certain size and scale in the
25 marketplace, then it causes market reactions that become

1 less efficient for the market as a whole and less efficient
2 for the proponent members.

3 Q. Okay. Let me ask it this way. If we take it
4 from the perspective of the consumer in a local area where
5 a producer-handler is operating and that producer-handler,
6 in fact, is able to assist the supply function by producing
7 a good product efficiently and less costly to the consuming
8 public, hasn't that, in fact, assisted the supply function
9 in that area?

10 A. Yes.

11 Q. Okay. Flip over, if you would -- I'm trying to
12 cut this down -- to page 57.

13 And because I want to make sure that you
14 understand where I'm coming from, I'm going to focus,
15 Mr. Hollon, on a statement that you make about the latter
16 portion of that page, in the second paragraph, with the
17 sentence that begins, "This inequity." Do you see that?

18 A. Yes.

19 Q. Okay. The sentence reads: This inequity results
20 in an unequal regulated cost of milk, and equal cost of
21 milk for handlers similarly situated is a hallmark of the
22 Federal Order regulation.

23 Is that your opinion?

24 A. Yes.

25 Q. Okay. A producer-handler is one integrated

1 entity, isn't it?

2 A. Okay. You realize that this particular statement
3 is not talking about producer-handlers. The sentence that
4 you read is talking about transportation credit balancing
5 funds.

6 Q. I understand.

7 A. Okay. I just didn't want you to take, you know,
8 a statement and then pull it off somewhere else and make
9 some analogy and ask me to agree with it and then get upset
10 when I don't.

11 Q. The last thing I would ever do is get upset at
12 you, Mr. Hollon. Let's see if we can continue through this
13 hearing.

14 A. Yes, sir.

15 Q. Okay. Here's my idea, and let's start with this
16 construct. A producer-handler is one integrated entity,
17 correct?

18 A. Yes.

19 Q. It has two functions. In fact, it has a dairy
20 function or producer function where it supplies the milk,
21 and it also has the handler or processing function at the
22 same time, correct?

23 A. Yes.

24 Q. So a producer-handler, as an integrated entity,
25 is different than either someone who simply owns dairy cows

1 or someone that simply processes milk, correct?

2 A. It's a different entity. It has a different set
3 of regulatory parameters that are associated with it.

4 Q. Okay. So, in fact, a producer-handler is not
5 similarly situated with a regulated handler, correct?

6 A. I'm sorry. You have to flesh out your question
7 some more.

8 Q. Can you answer it?

9 A. I'm not sure --

10 THE COURT: He says he can't, so rephrase it.

11 MR. RICCIARDI: Okay.

12 BY MR. RICCIARDI:

13 Q. Well, if something is similarly situated to
14 another thing, it needs to be at least somewhat co-
15 existent, correct? And we've got a situation where you
16 just told me that a producer-handler as one integrated
17 entity, one thing, is different than just someone who owns
18 their cows and someone who owns a processing plant,
19 correct?

20 A. Correct.

21 Q. So for purposes of the Federal Order regulations,
22 a producer-handler is not similarly situated to a regulated
23 handler, correct?

24 A. Correct.

25 Q. Okay. That was all.

1 Why don't we move on to -- flip through this --
2 page 66.

3 And we talked about this a bit already, but I
4 want to see if I can tie it in to some of the information
5 that you've provided. The last paragraph on 66, you talk,
6 in general at least, about nothing -- no deficits that
7 occurred and demand figures, and in particular, I want to
8 focus on this sentence: It must be noted again that only
9 the orders in the southeast have insufficient in-area milk
10 production to meet Class I needs and a reasonable reserve.

11 That's your opinion.

12 A. Yes.

13 Q. If we were, rather than to try to limit producer-
14 handlers, but, instead, to try to encourage the growth of
15 producer-handlers in this particular area, if we added
16 additional producer-handlers, we might be able to increase
17 the insufficient milk and reserves needed in this area,
18 correct?

19 A. I don't know.

20 Q. That may be one way of doing it.

21 A. Could be one way of doing it.

22 Q. Okay. All right.

23 I may come back to this, Mr. Hollon, but I'm
24 going to at least leave it for the time being and move on.

25 How many plants are owned by DFA or National

1 Dairy Holdings in the 5 and 7 area?

2 A. Our arrangement with National Dairy Holdings is a
3 joint venture, so we do not outright own, you know, any.
4 And off the top of my head, I can't tell you, but whatever
5 we're -- for example, I think there was a map that
6 indicated National Dairy Holdings plants, so I think that
7 map is accurate.

8 Q. Okay. Explain it again to us. You have a -- DFA
9 has a joint venture with National Dairy Holdings, correct?

10 A. That is correct.

11 Q. And other investors, and what happens is they
12 operate fluid milk plants in certain areas, and that would
13 be in conjunction with DFA, correct?

14 A. Yes. That's a fair assessment.

15 Q. All right. Now, focusing a little bit more on
16 your Exhibit 60, without getting into the specifics of it,
17 but I just want to talk about some issues regarding what
18 you say there.

19 Any information that you may provide in Exhibit
20 60 regarding producer-handlers in 5 and 7, you have not
21 seen nor provided to us any income or financial statements
22 of producer-handlers, correct?

23 A. That is correct.

24 Q. You don't have any actual cost of operation for
25 producer-handlers, correct?

1 A. Nothing more than the data that was shown from
2 the ERS about the cost of producing milk on farms of
3 various sizes.

4 Q. Okay. But you haven't gone in, for example, and
5 found a producer-handler, if you could locate one in 5 or
6 7, and got their actual costs of operation, correct?

7 A. I think there are about ten, so you could find
8 them if you went to look, and they are listed in the
9 records, so you could get to the town where they reside.
10 And other than, again, the fact that they would fit the
11 size range of the ERS data so they would be typical.

12 Q. So to pars through your answer, you don't have
13 any actual cost information in Exhibit 60, correct?

14 A. Nothing other than what is in the ERS record.

15 Q. And you don't have any actual research showing
16 what prices were obtained by a producer-handler in 5 or 7
17 for sales of milk in the last three years.

18 A. Do not.

19 Q. You don't have any actual sales by producer-
20 handlers in the marketplace in 5 or 7 at all, at any time,
21 correct?

22 A. You mean sales-wise on producer-handlers as a
23 whole?

24 Q. No. I'm talking about sales, specific sales.

25 A. Would you rephrase your question?

1 Q. Sure. Sure I can.

2 Your testimony, as part of Exhibit 60 or
3 otherwise, does not provide the secretary with any specific
4 information regarding any specific sales made by any
5 producer-handler in 5 or 7, correct?

6 A. Again, we have a list of producer-handlers we
7 have that their volume is less than 150,000 pounds, so to
8 that -- beyond that extent, no.

9 Q. Okay. Now, a person cannot be a member of DFA
10 and still be a producer-handler, correct?

11 A. That is correct.

12 Q. So anybody in 5 or 7 that wants to be a member of
13 a co-op like SMA would have to make a choice between being
14 a member o that co-op and being a producer-handler,
15 correct?

16 A. That's incorrect.

17 Q. Okay. With regard to, then, a membership in DFA,
18 they'd have to make that choice. They couldn't be a member
19 of DFA and also be a producer-handler, correct?

20 A. That is correct.

21 Q. All right. Now, if someone is a member of DFA,
22 is that member required to market all the milk on their
23 farm through DFA?

24 A. Yes.

25 Q. And DFA does not market -- specifically market

1 the milk for its members, correct?

2 What does it do for a member? Let's just do it
3 that way.

4 Q. What does DFA do for a member?

5 A. Yes.

6 Q. The information is spelled out in the membership
7 contract.

8 A. We don't have that here.

9 Q. That's correct.

10 Q. If there are services that are provided by DFA to
11 a member, DFA collects for those services, for dues or
12 membership fees or -- and in some other way, correct?

13 A. DFA does not have a dues structure.

14 Q. Then it collects for it in some fashion from the
15 member, correct?

16 A. DFA markets the membership contract, requires
17 that the member make all of its milk available to its
18 marketing organization, Dairy Farmers of America. We
19 market that milk and then return the proceeds from the
20 marketings back to the member.

21 Q. Now, if someone is a member of DFA, they're
22 required they're required under the agreement not to
23 encumber their milk or place any liens on their milk or the
24 farm, correct?

25 A. The legalities of that one's beyond me, so I don't

1 know.

2 Q. All right. Well, the fact is that DFA has
3 certain restrictions under its agreement with regard to its
4 members, and those restrictions would not apply, for
5 example, if that person decided to become a producer-
6 handler as opposed to a member of DFA. Right?

7 A. I'm not sure the way you phrase the question --
8 the status that a person cannot be a producer-handler and a
9 member of DFA would be true.

10 Q. Okay. Let's go on.

11 Is it your opinion on behalf of DFA and SMA that
12 if a regulated plant became too large in a particular
13 marketing area, that it could cause a disruption in that
14 market?

15 A. We have no opinion on that.

16 Q. Do you have an opinion in general as to whether
17 or not that's true?

18 A. I have no opinion.

19 Q. Could you tell me whether or not, if, in fact, a
20 regulated plant became so large in terms of its control of
21 Class I sales that it would potentially deny producers an
22 opportunity to participate in the pool?

23 A. I don't think that could be true.

24 Q. Well, if there was control exerted such that in
25 an area where there were only several plants and one became

1 so large that it, in fact, took over that entire marketing
2 area and could make a decision as to whether or not to
3 accept milk from a producer or not, isn't it true that in
4 that circumstance, that some producers would be denied an
5 opportunity to participate in the Class I pool?

6 A. As long as there's a Federal Order in a pool,
7 producers have the opportunity to participate if they, you
8 know, sell milk to handlers who are part of the pool.

9 Q. Okay. Your --

10 A. And if there's a -- if there's a Federal Order
11 pool in a geographic area, handlers with Class I sales are
12 required to be regulated by the pool.

13 Q. Okay. Your position, as I understand it, is that
14 size alone is sufficient to have the Secretary limit the
15 size of producer-handlers and cap it at a hard cap of three
16 million pounds per month, correct?

17 A. I don't think you characterized that correctly.

18 Q. Well, let's go through it this way.

19 A. Okay.

20 Q. Let's assume in a marketing area you've got ten
21 producer-handlers that market up to a million pounds of
22 milk a month.

23 A. Each or a total?

24 Q. Each.

25 A. Each? Okay.

1 Q. In that market then we've got producer-handlers
2 that are producing ten million pounds a month, right?
3 Correct?

4 A. Correct.

5 Q. And -- that's fine.

6 And in that situation, under any of the proposals
7 that are made regarding limitations of producer-handlers,
8 none of those producer-handlers would be limited in size.

9 A. Correct.

10 Q. Now, instead, if we take a producer-handler in
11 that same market who produces ten million pounds a month --
12 so we're taking nine participants out, and we've just taken
13 the same volume and transferred it to the producer-handler,
14 your position is that that alone would be enough to have
15 the Secretary limit the producer-handler exemption and make
16 that person a regulated handler, right?

17 A. That would be correct if the producer-handler's
18 volume of Class I sales in a marketing -- in any marketing
19 area or any market where it's greater than three million
20 pounds in a month --

21 Q. And the only distinction --

22 A. -- we would propose that they be regulated and,
23 you know, be treated for price purposes like any other
24 handler.

25 Q. And the only distinction in my hypothetical

1 between the two things is we've taken ten participants
2 producing ten million pounds and reduced it to one
3 participant that is producing ten million pounds, correct?

4 A. Well, our proposal is that three million pounds,
5 if there were a proposal -- perhaps you might make one --
6 we might give it consideration and support to move the
7 limit from three down to one. But --

8 Q. Didn't ask you that, Mr. Hollon. What I asked
9 you was the only distinction in my hypothetical was what
10 we've done is we have the same volume. We just knocked the
11 participants, producer-handlers, from ten down to one.
12 Correct?

13 A. Yes.

14 Q. All right. Thanks.

15 Now, let's take this situation. Same market.
16 Okay? Now we've got three producer-handlers. For each
17 marketing, 2,999,999 pounds of milk per month in that
18 particular market.

19 A. Yes.

20 Q. In that situation, none of those producer-
21 handlers would be required to automatically become a
22 regulated handler under any of the proposals, correct,
23 because they're less than three million?

24 A. Correct. That's correct.

25 Q. And can you tell me the difference in the market

1 in my third hypothetical versus my second? How is the
2 market impacted differently when you have three producer-
3 handlers at 2,999,999 versus one producer-handler at 10
4 million pounds?

5 A. Well, there's always --

6 Q. Other than a pound here or there?

7 A. There's always the possibility that the end
8 results may be similar, so that would be one. And so there
9 may be, indeed, an impact that may, you know, cause some
10 relook at the situation at that date.

11 So that situation would arise. We may come back
12 to the Secretary and say, you know, we're concerned about
13 this situation and we would like to do something about it.

14 Secondly, the impact, as we have seen in other
15 areas, of a single entity of sufficient size appears to be
16 greater on the market than a smaller entity, and the
17 ability to service, perhaps, a larger retail chain without
18 the requirement of paying class prices is greater.

19 Q. Is that your answer?

20 A. Yes.

21 Q. Okay. Now, let's talk about the issue of size
22 for a moment.

23 Kroger has been here, and I believe Mr. Hitchell
24 has provided some testimony. Kroger has plants throughout
25 the United States that have production on any given month

1 of between 7 million to 40 million pounds of milk, correct?

2 A. I don't know.

3 Q. You don't remember that testimony from before?

4 A. Is that what Mr. Hitchell said?

5 Q. You know what? I'll leave it alone.

6 A. Okay.

7 Q. Kroger owns stores, doesn't it?

8 A. Yes.

9 Q. So it has its own built-in market, correct?

10 A. Correct.

11 Q. Now, that would be an advantage over another
12 producer -- excuse me, another processor who doesn't own
13 stores?

14 A. I don't necessarily know that that would be true.

15 Q. Well, let's talk about that for a minute. It has
16 an automatic sort of built-in market, doesn't it?

17 A. That's the business model that they've chosen to
18 pursue, and for their shareholders and their management,
19 they think that's the business model. You can go equally
20 to a large number of other retailers who have chosen a
21 different business model.

22 Q. And a producer-handler chosen its business model,
23 and it can go ahead and proceed according to its own
24 business model, correct?

25 A. With one important distinction. The Kroger

1 business model pays minimum prices into the (indiscernible)
2 of the pool, and the producer-handler business model does
3 not --

4 Q. Now --

5 A. -- and that's the focal point of our proposal.
6 We don't propose saying you can't be a producer-handler. We
7 don't propose any limitation. We simply propose that they
8 pay minimum prices into the pool.

9 Q. Do you propose that -- have you ever proposed
10 that companies like Kroger or Safeway be required, because
11 they have an integrated model with stores, that they be
12 required to pay more into the pool given the fact that they
13 have the competitive advantage of having their own market?

14 A. First, we have never made that proposal, and I
15 have no opinion on whether they have a competitive
16 advantage or not in the market.

17 Q. Okay. There's no prohibition in any of the
18 Federal Orders, as I understand it, for owning stores?

19 A. No, none that I'm aware of.

20 Q. Now, the opportunity for a producer-handler -- as
21 existed for at least 70 years?

22 A. For at least?

23 Q. And --

24 A. Wait a minute. I'm sorry.

25 Q. At least 70 years?

1 A. Oh, at least. Yes.

2 Q. Okay. And I apologize.

3 That opportunity also existed up through '99 and
4 2000, that order reform, correct?

5 A. Yes.

6 Q. And, in fact, one of the propositions that was
7 made prior to the time of order reform is that there be a
8 limitation on producer-handlers, correct?

9 A. I'm sorry. Could you detail your question some
10 more?

11 Q. Sure. That there would be a limitation on
12 producer-handlers?

13 A. I did not understand what your question meant, so
14 could you rephrase your question?

15 Q. I will try.

16 At the time of order reform, there were proposals
17 that were made that the producer-handler exemption be
18 eliminated or at least restricted.

19 A. I've not gone back and looked -- I know that
20 there were some changes with regard to producer-handler
21 regulations that were a part of reform. I can't tell you
22 exactly what those were. We could find out, but I can't
23 tell you exactly what those were.

24 Q. We could find out in the record, and we will, but
25 the fact is that at order form, requests were made to limit

1 producer-handlers and there was no limitation coming out of
2 order reform, correct?

3 THE COURT: Well, you're asking -- he doesn't
4 recall, and it's in the record.

5 MR. RICCIARDI: All right. Let me go on then,
6 Judge.

7 THE COURT: You can brief that --

8 MR. RICCIARDI: I got it.

9 BY MR. RICCIARDI:

10 Q. Let me talk about this then. Tell me, as
11 specifically as you can, in Orders 5 and 7 what disorderly
12 marketing conditions have occurred since Federal Order
13 reform that would require the change in producer-handler
14 status.

15 A. Our proposal deals with possibilities.

16 Q. Okay. Fair enough.

17 Were there large producers that existed in 2000?

18 A. Anywhere?

19 Q. Anywhere.

20 A. Yes.

21 Q. Were there large producers that existed in
22 Federal Orders 5 and 7?

23 A. Yes.

24 Q. Were there warehouse stores, such as Costco and
25 Walmart, in 2000?

1 A. Yes.

2 Q. Are there warehouse stores, such as Costco and
3 Walmart, in Federal Orders 5 and 7 now?

4 A. I know there are Walmart stores. I'm not
5 familiar if Costco is in this market or not.

6 Q. And there were innovative plans in stores such as
7 Kroger and Safeway that existed in the year 2000?

8 A. Anywhere?

9 Q. Anywhere.

10 A. Yes.

11 Q And we know that, at least with regard to Kroger,
12 there are integrated plants and stores in this area,
13 correct?

14 A. Yes.

15 Q. From 2000 to now, can you tell me the amount of
16 Class I sales that have moved from handlers to producer-
17 handlers in Federal Order 5?

18 A. I cannot.

19 Q. Can you tell me, since 2000, the Class I sales
20 that are moved from handlers to producer-handlers in
21 Federal Order 7?

22 A. I cannot.

23 MR. BESHORE: It's at least the third time for
24 that question, Your Honor. It's repetitious. I object.

25 THE COURT: Yes. Okay. Well, we'll let -- this

1 will be the last time.

2 MR. RICCIARDI: I apologize, Judge, but if I'm
3 repetitive on that issue, it was just trying to be
4 complete.

5 THE COURT: All right.

6 BY MR. RICCIARDI:

7 Q. Under the Federal Order program as it currently
8 exists, there is no cap or limitation on the size of a
9 regulated handler, correct?

10 A. Correct.

11 Q. And if a regulated handler want to sell or can
12 sell three million pounds or twenty million pounds or forty
13 million pounds per month, it can, correct?

14 A. It can.

15 Q. Now, with regard to a producer-handler as it
16 exists today in Federal Orders 5 and 7, there is a
17 limitation in the amount of sales per month that can be
18 made to -- by a producer-handler in the market, correct?

19 A. Correct.

20 Q. The only limitation a producer-handler has
21 currently is they have to make enough milk, find the person
22 that they can sell that milk to so that they'll have
23 somebody to buy it, and insure that they have an adequate
24 supply to be able to sell it, right?

25 A. Those are not Federal Order limitations.

1 Q. Those are general limitations on their ability,
2 right?

3 A. That would be part of their business, you know,
4 the business model they choose.

5 Q. Okay. Based upon your review of the information
6 available from the market administrators in 5 and 7,
7 based -- specifically based upon what is actually the date
8 of that -- that's actually available, there is no producer-
9 handler currently that approaches three million pounds a
10 month.

11 THE COURT: I think we've had that answer.

12 MR. RICCIARDI: Okay. I don't think we have,
13 Judge, but that's fine. I'll go on.

14 THE COURT: It's on the record.

15 MR. RICCIARDI: Got it.

16 BY MR. RICCIARDI:

17 Q. Can you identify for me any producer in 5 or 7
18 that has been required to terminate its business in the
19 last three years as a result of the actions of a producer-
20 handler?

21 A. I'm sorry. Would you ask that again?

22 Q. Sure. Can you tell me any specific producer,
23 farmer, dairy farmer, in 5 or 7 that's been required to
24 terminate its business due to the actions of a producer-
25 handler?

1 A. Any producer who's been required to terminate
2 their business --

3 Q. Yes.

4 A. -- through the act of a producer-handler?

5 Q. Yes.

6 A. I'm not aware of any.

7 Q. Can you identify for me in the last three years
8 any producer that's had to go out of business because of
9 consolidation in Federal Order 5 and 7?

10 A. I'm not aware.

11 Q. One way or the other?

12 A. What did that mean?

13 Q. Well, I mean you're not aware whether it's
14 occurred or you're not -- you can't tell me any or what --
15 what is your response?

16 A. I'm not aware that there's been any producer who's
17 gone out of business because of consolidation.

18 Q. Okay.

19 THE COURT: Mr. Beshore?

20 MR. BESHORE: Well, I don't know what
21 consolidation means in the question, and I think maybe
22 that's part of -- consolidation of what or -- I mean --

23 THE COURT: Yeah, we haven't consolidated 5 and
24 7. They're still -- they're still separate markets, so --

25 MR. RICCIARDI: Didn't mean consolidation in that

1 sense, Judge, and to the extent that you're confused,
2 although I don't know if the witness was, I'll be more
3 specific.

4 BY MR. RICCIARDI:

5 Q. You understand that consolidation -- that what
6 I'm talking about is consolidation of businesses, not
7 consolidation of Federal Orders 5 and 7. Just let me break
8 it down.

9 A. Okay.

10 MR. BESHORE: What --

11 MR. RICCIARDI: Can you --

12 THE COURT: Well, let's see if he can phrase it.
13 Go ahead, sir.

14 MR. RICCIARDI: You get to ask the questions when
15 you get up there, Marvin.

16 THE COURT: All right.

17 BY MR. RICCIARDI:

18 Q. Let's break it down this way. Let's talk about
19 Federal Order 5.

20 We understand, as you testified to, that in the
21 last ten years, and certainly over the last three years in
22 particular, there's been a consolidation in the milk
23 industry so that large companies have come in and taken
24 over smaller businesses, right?

25 A. Wrong.

1 Q. Okay. That hasn't occurred?

2 A. No, it hasn't.

3 Q. There's been no consolidation in the last ten
4 years?

5 A. That's a different question.

6 Q. Okay.

7 A. You said larger companies come in and take over
8 smaller companies.

9 Q. Purchase them?

10 A. Purchase them, okay, yes. There have been
11 retailers that have gotten fewer and larger, processors
12 that have gotten fewer and larger --

13 Q. Okay.

14 A. -- producers that have gotten fewer and larger -

15

16 Q. Okay.

17 A. -- cooperatives that have gotten fewer and
18 larger.

19 Q. All right. Then let's use that.

20 A. Okay.

21 Q. Can you tell me whether or not in the last three
22 years in Federal Order 5, as a result of that
23 consolidation --

24 A. Those four things we mentioned?

25 Q. Yes.

1 A. Okay.

2 Q. Whether or not any dairy farmers have gone out of
3 business in that area.

4 A. Dairy farmers have gone out of business in
5 Federal Order 5.

6 Q. Okay. And due to consolidation?

7 A. I don't know that I can say that.

8 Q. Okay. What about Federal Order 7? Same
9 question?

10 A. Producers have gone out of business in Federal
11 Order 7 during that time period. However, if that's due to
12 the -- any of those four reasons we outlined, I do not
13 know.

14 Q. Okay. You haven't looked at that.

15 A. Have not looked at that.

16 Q. Okay. Mr. Hollon, what I want to do --

17 MR. RICCIARDI: And, Judge, I'm going on to
18 another topic. I don't know if it's time to take a -- to
19 break, or you want me to continue.

20 THE COURT: How's the witness feel? Do you --

21 THE WITNESS: I'm fine.

22 MR. RICCIARDI: You ready to go? Let's go.

23 THE COURT: Are you okay? Yeah, let's keep going
24 then for a bit.

25 BY MR. RICCIARDI:

1 Q. Okay. What I want to do at this point,
2 Mr. Hollon, is go through some of the exhibits as part of
3 Exhibit Number 61, your various tables. Can you find that
4 document for us?

5 A. Yes, sir.

6 Q. Okay. Thanks.

7 And I want to direct your attention first to
8 Exhibit Number 61, Table C1, so I can understand what it is
9 and what it's not.

10 A. Okay.

11 Q. Exhibit 61, Table C1, states that it's an
12 estimate of the impact of balancing surplus milk for a
13 producer-handler with 90 percent Class I utilization in
14 Order 1005. I read that correctly?

15 A. Yes.

16 Q. So every time I see the word estimate, here's
17 what I know. There are no actual costs that you have from
18 a producer-handler in 1005 regarding its balancing cost,
19 correct?

20 A. Wrong.

21 Q. Tell me the actual information from a producer-
22 handler that you have there.

23 A. Rephrase that question, please.

24 Q. Yeah. Tell me -- well, first of all, let's do it
25 this way.

1 What producer-handler in --

2 THE COURT: Let me shorten it. In what way was
3 he wrong?

4 THE WITNESS: He was wrong in the sense that for
5 his balancing costs, he would receive a price that would
6 approximate either the Class III price or the Class IV
7 price from a regulated standpoint, and so this table shows
8 the lowest possible regulated option for that price.

9 BY MR. RICCIARDI:

10 Q. So what you didn't do is interview any producer-
11 handler in 1005 and ask him what his balancing costs were.

12 A. I did not.

13 Q. You didn't get any specific documentation from
14 any producer-handler in 1005 and ask him about whether that
15 reflected any balancing costs that he had.

16 A. I did not.

17 Q. Okay. You're making an estimate with the
18 assumption that there is 90 percent Class I utilization and
19 that these would be the numbers that you just testified to.

20 A. Yes.

21 Q. Okay. And the same thing would be true, so we
22 don't have to spend a lot of time on it, if we flipped over
23 Table C2 with regard to Federal Order 1007.

24 A. Yes. The same comparisons were made.

25 Q. Got it.

1 Okay. Then if we can go to Table D of Exhibit
2 61. I think we've covered some of this. I just want to
3 make sure I'm correct.

4 A. Yes.

5 Q. This is your list that you prepared of producer-
6 handlers in Federal Orders 5 and 7, correct?

7 A. Yes.

8 Q. And as I see it, when we look at the heading at
9 the top, you've got one producer-handler and then you've got
10 a number of exempt plants, correct?

11 A. Yes.

12 Q. So that would follow the information that was
13 available in the various exhibits we discussed before,
14 correct?

15 A. Yes.

16 Q. Your estimate with regard to Maple View Farm
17 Dairy -- and it's only an estimate, I assume -- is that it
18 was greater than 150,000 pounds per month, but you're not
19 sure of anything beyond that, correct?

20 A. Correct.

21 Q. Let's flip over then to Table E of Exhibit 61,
22 and we sort of touched on this briefly yesterday during the
23 course of your direct examination, but let me make it more
24 specific now.

25 You have a listing of Federal Order 6 and 7 and

1 you combined those, correct?

2 A. Correct.

3 Q. And you've got nine producer-handlers listed
4 there, but if we were to go back to Exhibit 41 and use that
5 data, and I asked you simply to give me the number of
6 producer-handlers in 7, that number would be zero, correct?

7 A. Wrong.

8 Q. Okay. Okay. Are you talking about the exempt
9 plant issue again?

10 A. Yes.

11 Q. Okay. If we were to use that information in that
12 document, there would be zero, no producer-handlers,
13 correct?

14 A. That would be a useless comparison.

15 Q. I asked you whether or not, if you used the
16 document as the data shows in the statistics, that the
17 number in this column for 7 would be zero.

18 A. Yes.

19 Q. Thank you. Now, the last three items in Exhibit
20 61 are -- the last two items, excuse me, I and J, I believe
21 you testified to this, but let's also make it clear.

22 This is information that was specifically taken
23 from the hearing in 131 and 124, correct?

24 A. This is information that was requested for that
25 hearing that I have reviewed and detailed and asked

1 questions about both before and at the hearing, yes.

2 Q. And none of the information in I and J relates to
3 anything that has occurred currently or in the past in 5
4 and 7, correct?

5 A. Correct.

6 Q. This has to do with, as it says, Federal Order
7 Number 131, correct?

8 A. Correct.

9 Q. And, in fact, in the last exhibit, J, the last
10 sentence in the footnote even says that the table is for
11 informational purposes only and does not reflect an actual
12 blend price computation even in Order 131, correct?

13 A. I think that Mr. Wise, when he spoke of this
14 table and provided detail about it, outlined --

15 Q. Can you answer my question, Mr. Hollon? That's
16 what it says.

17 A. I am.

18 Q. That's what it says.

19 A. I am answering your question. You asked me a
20 question about the table, and I'm answering it.

21 Q. Here's what I -- let me see if I can rephrase it.

22 A. Okay. Rephrase your question.

23 Q. Let me withdraw that question if you didn't
24 understand it and rephrase it.

25 A. Okay.

1 Q. What this says in the last sentence is this
2 table, which reflects 131 and nothing with 5 and 7, is for
3 informational purposes only and does not reflect an actual
4 blend price computation.

5 I read that correctly, didn't I?

6 A. You did.

7 MR. BESHORE: Well, Your Honor, to read the table
8 and ask him if he read it correctly is useless examination,
9 and I object to it.

10 THE COURT: Well, I would -- I would think that
11 we're getting a bit simplistic. I understand -- they've
12 explained why the table is in here. It's a projection of
13 what could happen in this market if you had a large
14 producer-handler and they -- they're basing it on an actual
15 experience in another market, and that's what the table is
16 for, so it's -- it's very similar to other kinds of
17 testimony we get when we're looking forward in a market and
18 don't really have the actual data, but here's some
19 projections for us to -- for the Secretary to consider.

20 So that's the point of it, and we all understand
21 it.

22 MR. RICCIARDI: I understand, Judge. I had a
23 question: Isn't that what the document says --

24 THE COURT: Well, he just answered it for you.

25 MR. RICCIARDI: -- it's for informational

1 purposes only? I understand that.

2 THE COURT: Okay.

3 MR. RICCIARDI: I have no further questions at
4 this time, Judge.

5 THE COURT: Thank you, sir.

6 Other questions?

7 Mr. Vetne -- well, first of all, you're going to
8 have to enter your appearance, Mr. Vetne. Come forward and
9 do that, sir.

10 MR. VETNE: Good afternoon, Your Honor. My name
11 is John Vetne, V-E-T-N-E. I'm an attorney with offices in
12 Newburyport, Massachusetts. I'm entering my appearance on
13 behalf of Southeast Milk, Inc., a cooperative headquartered
14 in Bellville, Florida. Or is it Bellview?

15 THE WITNESS: Bellview's in Florida.

16 MR. VETNE: Bellview.

17 THE COURT: You go there often.

18 MR. VETNE: Yeah. And --

19 THE WITNESS: Haven't sent a bill yet, huh?

20 MR. VETNE: -- with producers located primarily
21 in Georgia and Florida and serving plants in Georgia and
22 Florida, Southeast Milk, Inc. was a member of SMA at the
23 time the principal merger proposal was made and a co-
24 proponent at that time.

25 That's all I'm going to say about my

1 identification with my client, but I do have some questions
2 about your testimony.

3 CROSS-EXAMINATION

4 BY MR. VETNE:

5 Q. You responded to some questions about
6 producers -- I think the words were being forced to exit
7 production as a result of certain things.

8 A. I was asked a question about that, and I said I
9 did not know of any.

10 Q. I know.

11 A. Okay.

12 Q. Okay. My question does not ask you to have
13 knowledge of specific producer names, but I'm going to ask
14 you some general --

15 A. Yes.

16 Q. -- Dairy Economic 101 questions.

17 Is it not accepted economic fact that producers
18 exit the market at a more rapid rate when prices are low as
19 compared to when prices are high?

20 A. Yes.

21 Q. Okay. Is it not an accepted fact by dairy
22 economists that producers add cows, or at least don't cull
23 their cows as fast, when prices are high and take cows out
24 of production when prices are low?

25 A. Yes.

1 Q. And have not dairy industry statistics as
2 reported by CDFA -- I mean not CDFA, USDA -- whew, where am
3 I? If it's Tuesday, this must be Belgium, but, you know,
4 it's not Tuesday -- as reported by USDA that during years
5 preceding 2003, that cow numbers actually went up and
6 produced low prices, and following that, not immediately on
7 the same day, but following that period of low prices, cow
8 numbers have gone down?

9 A. You could do a historical chart, and you could
10 identify that trend.

11 Q. Okay.

12 A. It wouldn't be one for one or time for time, but
13 you could identify that general economic trend.

14 Q. And that trend is a production response in
15 relation to price, correct?

16 A. Yes.

17 Q. And although you don't know of a specific
18 producer which was part of the question asked you, the
19 entry of a producer-handler into the marketplace, or the
20 expansion of a producer-handler's Class I sales in any
21 market, will have the effect of reducing the blend price
22 available to pool producers, correct?

23 A. That would be true.

24 Q. Okay. And that would have the effect of --
25 depending upon the degree, of placing some producers under

1 stress, or if the degree is great, causing some producers
2 to exit the market?

3 A. That would be a valid comparison and logical
4 thought. I agree with that.

5 Q. Okay. And maybe I shouldn't ask this question,
6 but producers do make marketing and production decisions
7 based on their projections of or anticipation of income as
8 little as a few pennies a pound -- a hundredweight,
9 correct?

10 A. That is correct.

11 MR. VETNE: All right. Thank you.

12 THE COURT: All right. Thank you, Mr. Vetne.

13 Questions? Mr. English?

14 CROSS-EXAMINATION

15 BY MR. ENGLISH:

16 Q. Mr. Hollon, I'm Charles English for Dean Foods
17 and Prairie Farms.

18 A. Good morning, Mr. English.

19 Q. You were asked a series of questions by
20 Mr. Ricciardi concerning the existence of and changes or no
21 changes from before 2000, after 2000, and assuming that is
22 relevant for a moment, are you aware of whether there are
23 more and even larger farms serving plants in Orders 5 and 7
24 since 2000?

25 A. There are.

1 Q. In fact, that would be reflected in some of the
2 market administrator data that we saw at the beginning of
3 the hearing with the maps and some of the colors and some
4 of the zones from counties, correct?

5 A. Yes, that would be correct.

6 Q. And would you say that that process has
7 accelerated?

8 A. Yes, that process has accelerated.

9 Q. And you expect it to continue to accelerate?

10 A. We expect it to continue to accelerate. There
11 continue to be new starts of farms, and in many cases,
12 those new farms are large in size.

13 Q. And Mr. Beshore asked you some questions, and you
14 responded with what you acknowledge was a partial list of
15 times in which -- recent times USDA has responded in
16 Federal Order proceedings with respect to prospective
17 disorderly marketing, correct?

18 A. That's certainly a consideration at this hearing,
19 and there have been times, and there are regulations that I
20 think fall into that category.

21 Q. There was a hearing April 2002 in Salt Lake City,
22 Utah dealing with the Pacific Northwest Order and others in
23 which one of the proposals for consideration was the
24 question of double pooling of milk on a Federal Order and a
25 statewide order with market-wide returns. Do you remember

1 that?

2 A. That is correct.

3 Q. At the time of that hearing, there was California
4 milk being pooled on the Pacific Northwest Order, correct?

5 MR. RICCIARDI: Let me object, Judge. First of
6 all, I think it's leading the witness, and I think he's on
7 the same side so I don't think he can.

8 But, two, more importantly, we're talking about
9 issues related to another order and another proceeding that
10 I don't think have any relevance to this, number one, and,
11 number two, if this is an argument they want to make, then
12 tell them to argue it in a brief.

13 MR. ENGLISH: I won't be able to argue it in a
14 brief unless I have the factual foundation, Your Honor.

15 MR. RICCIARDI: Well, it's either the hearing is
16 relevant or it's not, Judge. Not only are we getting into
17 131, we're now getting into a Utah hearing that happened in
18 2002.

19 THE COURT: Mr. English, would you address that.

20 MR. ENGLISH: Your Honor, he says I can argue it
21 on brief, but I can't argue on brief. I don't have the
22 factual foundation.

23 THE COURT: What are you trying to do, just show
24 some problem that could develop?

25 MR. ENGLISH: I'm going to establish about five

1 or six instances in -- since 2000 or around 2000 in which
2 USDA has dealt with matters on a prospective basis, and I
3 think that's relevant to the ongoing objection by this
4 lawyer to the question of whether or not we have to show
5 current disorderly marketing conditions.

6 THE COURT: Well, that may be --

7 MR. RICCIARDI: This lawyer still has the
8 objection, and, Judge, if they want to make that argument,
9 then it's an argument that they can make by saying they can
10 deal with it prospectively, without getting into the facts
11 of those hearings.

12 MR. ENGLISH: But --

13 THE COURT: All right. I'm going to sustain the
14 objection, only because it does seem like we're going into
15 an area that we need not. I mean obviously the -- I will
16 give you a ruling that the --

17 MR. ENGLISH: Well, I'll make an offer, Your
18 Honor.

19 THE COURT: -- from what I hear that the
20 Secretary can deal with the problems prospectively and you
21 really don't need to go into other issues in which he has
22 done, so you can do that on brief by, if you will -- I
23 don't even think you need to take official notice of those
24 decisions. I think you just make the argument.

25 MR. BESHORE: If we -- as long as it's clear that

1 we are free in brief, you know, and unfettered in pointing
2 to other situations, without having official notice having
3 been taken, other situations of prospective rule-making to
4 address perhaps the central contention of the opponents on
5 the producer-handler issue here.

6 THE COURT: All you need to do is mention the
7 decision and ask that official notice be taken at the time
8 you mention it in your brief. I'm sure that will be done.

9 MR. ENGLISH: Well, but the problem, Your Honor,
10 is the decision is not going to reflect the fact that there
11 was not at the time double pooling occurring in the Pacific
12 Northwest, and so the factual predicate will be missing if
13 we aren't allowed to explore very quickly -- and, by the
14 way, I probably would have been done by now.

15 MR. RICCIARDI: Well, so?

16 MR. ENGLISH: Well, but if --

17 MR. RICCIARDI: If you --

18 THE COURT: I'll rule -- I'll strike -- strike my
19 ruling. I'll allow you to ask the question. Why don't you
20 just put it in. Go ahead.

21 MR. ENGLISH: Thank you. I will be as prompt as
22 I can, Your Honor.

23 THE COURT: But you have an exception.

24 MR. RICCIARDI: I do have an exception.

25 THE COURT: You do have an exception.

1 MR. RICCIARDI: Are we going -- am I going to be
2 able to ask about every Federal Order hearing that's ever
3 been --

4 THE COURT: No, no. We're just trying to get
5 this done quickly.

6 MR. ENGLISH: If you already know about them.

7 THE COURT: Go ahead.

8 MR. RICCIARDI: Just wondering.

9 THE COURT: You're going to have to rephrase it,
10 though.

11 MR. ENGLISH: That's fine.

12 THE COURT: Because we've all forgotten.

13 BY MR. ENGLISH:

14 Q. In the Pacific Northwest hearing, were there any
15 issues about California milk being pooled on that order?

16 A. In the Pacific Northwest hearing, there was a --

17 Q. In Utah.

18 A. In that hearing, there was a concern that dual
19 pooling may occur in the Pacific Northwest Order. There
20 were no -- at the time of the hearing, there had been no
21 California milk pool. The proponent cooperatives offered
22 proposals that would affect that even though there had been
23 no instance at that time of dual pooling.

24 And the decision that -- that was in the notice
25 of hearing, it was discussed at the hearing, and there was

1 evidence put in that it was a prospective action.

2 Q. In 2000, when the Federal Order Reform was
3 adopted, were Class I differentials established for every
4 single county in the continental United States?

5 A. Class I differentials were established for every
6 county in the United States.

7 Q. Are there plants located in every single county
8 in the United States?

9 A. There are plant -- there are not plants located
10 in every county. The overwhelming majority of counties do
11 not have a plant.

12 Q. Are you familiar with the provision that appears
13 in all Federal Orders, Point 7B?

14 A. That provision, in general, defines a pool
15 distributing plant, and it speaks of a specific pool
16 distributing plant, one that has ultra-high temperature
17 pasteurized process, such that that product could be widely
18 distributed.

19 Q. And, in your experience, what is the source of
20 that particular provision?

21 A. That provision is generally designed to affect
22 the pooling status of a plant that may produce a limited
23 product with an extremely wide distribution range such that
24 it might have a majority of its sales in an order far
25 distant from where it's located, and that would have a

1 negative impact on that plant's ability to procure a milk
2 supply.

3 So that particular provision, again, is
4 prospective in that if this were to occur, then the order
5 provisions allow for regulation to take place.

6 Q. Where did -- where was the first time this
7 provision was put in?

8 A. To my knowledge --

9 MR. RICCIARDI: Your Honor, we are really getting
10 far afield.

11 MR. ENGLISH: Well --

12 MR. BESHORE: This is an Order 5 and an Order 7
13 provision.

14 MR. ENGLISH: Yeah.

15 MR. BESHORE: It's in both orders.

16 MR. RICCIARDI: Can I finish, please?

17 THE COURT: Go ahead. Make your objection.

18 MR. RICCIARDI: Thank you, Judge.

19 The problem that we have got is we're now making
20 this witness what they want him to be, and apparently what
21 they want him to be is --

22 THE WITNESS: I would have answered all of those
23 questions when you asked them --

24 MR. RICCIARDI: Well, you --

25 THE COURT: Wait, wait, wait. Please don't.

1 THE WITNESS: I'm sorry.

2 THE COURT: Let him finish his objection so I can
3 rule on it.

4 THE WITNESS: You're right. I'm sorry. I'm
5 sorry. Excuse me.

6 MR. RICCIARDI: Yeah, if all of you guys would
7 stop ganging up on me, I know it's very difficult for you,
8 but I'll try my best.

9 THE WITNESS: I apologize.

10 MR. RICCIARDI: Judge, they're trying to make him
11 into someone who is now an expert in the law, an expert in
12 Federal Orders. The Federal Orders say what they are. Why
13 do we need the Secretary -- to tell the Secretary what, in
14 fact, are in the Federal Orders?

15 There is no reason for this witness to provide
16 this kind of testimony.

17 THE COURT: Well, I think -- I think I will allow
18 him to do -- to continue to answer these -- a few more of
19 these questions.

20 MR. ENGLISH: Yeah. And I'm reminded --

21 THE COURT: And the reason -- and the reason I'm
22 doing so, just so the record is clear, is that I think in
23 your cross examination you made the point that there were
24 no disorderly marketing conditions in effect at this point
25 in time so that the proposals for the producer-handler

1 limitations were inappropriate, couldn't be -- couldn't be
2 addressed by the Secretary, and they're trying to show
3 that -- or just want the record to be clear that when some
4 judge perhaps at some future hearing picks it up and looks
5 at it and says, "Well, why did they -- why did that ALJ let
6 that thing go in? Why did he let it go on?" So there we
7 go.

8 All right. Go ahead. Ask the question.

9 MR. ENGLISH: Thank you, Your Honor, and I --
10 somebody in the back has reminded me, and I'll get back to
11 something for clarification, and I promise to be brief.

12 BY MR. ENGLISH:

13 Q. I think part of the source of that last objection
14 was since I wasn't leading you, I was, you know -- didn't
15 get to say the words Savannah, Georgia --

16 A. Yes.

17 Q. -- but, you know, so where was the first order in
18 which this UHT plant provision was installed?

19 A. To my knowledge, the plant was in Savannah,
20 Georgia. It was a UHT processing plant, and so that would
21 currently be in the confines of Order 5. At that point in
22 time, I really don't remember what order it was in, but
23 that's where it would have been.

24 Q. It's 7, but that's okay.

25 A. Okay. 7.

1 Q. But we don't have such plants in every order
2 today, correct?

3 A. We do not.

4 Q. All right. And, again, partly because there was
5 an interruption by the objection and then you said you
6 understood the question, let me just clarify.

7 With respect to the Pacific Northwest, there was
8 milk actually pooled on the Pacific Northwest from
9 California at that time, correct?

10 A. That is true. There were.

11 Q. But it wasn't the so-called double pooled,
12 correct?

13 A. That is correct.

14 MR. ENGLISH: All right. I have no further
15 questions, Your Honor. Thank you very much.

16 THE COURT: All right. Fine. Thank you.

17 Any more questions over here?

18 Any more questions? Anyone at all?

19 MR. VETNE: Yes, sir.

20 THE COURT: Mr. Vetne has a question.

21 I tell you what. Let me -- let me go to --

22 MR. STOKER: Actually, I'm putting mine together.

23 If he wants to go ahead, that's fine.

24 THE COURT: Oh, all right.

25 Mr. Vetne. Yes.

1 Mr. Vetne. Mr. Stoker will ask questions next.

2 CROSS-EXAMINATION

3 BY MR. VETNE:

4 Q. It's not many. I'm just looking to pin down the
5 accuracy of some information that you answered concerning
6 the Pacific Northwest, and I apologize for that.

7 You testified -- I think the question was there
8 was no milk from California being pooled in the Pacific
9 Northwest, and your answer was no. Do you recall that
10 question?

11 A. Right, I do. I do.

12 Q. Okay. Now, let me ask you is it not the case
13 that there was some California milk being pooled in the
14 Pacific Northwest that was -- Pacific Northwest producer
15 milk that was not double pooled that is also pooled in
16 California?

17 MR. RICCIARDI: Judge, why are we -- why are we
18 getting into this area? What relevance does it have to
19 anything in this case?

20 THE COURT: I don't know. We're probably getting
21 more specifics than we need, but I'll allow this one
22 question and answer.

23 THE WITNESS: Okay. Would you rephrase your
24 question?

25 BY MR. VETNE:

1 Q. Is it not true at the time that there was some
2 milk from dairy farms located in California that was pooled
3 in the Pacific Northwest, but it was not being double
4 pooled?

5 A. That is correct. There was.

6 MR. VETNE: Thank you.

7 THE COURT: All right. Just want an accurate
8 record.

9 All right, Mr. Stoker.

10 CROSS-EXAMINATION

11 BY MR. STOKER:

12 Q. Yes, Mr. Hollon, First I'd like to refer to your
13 Exhibit 61, particularly the tables in the back listed D, E
14 and F.

15 Starting with Table D --

16 A. Yes, sir.

17 Q. -- would you agree that it may be more correct in
18 the title over the listing of those entities that the title
19 be phrased producer-handler/exempt?

20 A. That would be accurate.

21 Q. In regards to Table E, same basic principle would
22 hold true where it says number of producer-handlers/exempt
23 in the market?

24 A. Yes.

25 Q. And that would hold true in all reference to PH,

1 producer-handler, abbreviated?

2 A. I'm sorry. You said that would hold true to
3 all --

4 Q. All of the columns --

5 A. Yes.

6 Q. -- where it had PH abbreviated?

7 A. Oh, yes.

8 Q. And that would, of course, go in to also Table F?

9 A. Correct.

10 Q. I think that's important that we get that in.

11 Thank you.

12 Next, is the definition for producer-handler the
13 same for all marketing -- milk marketing areas?

14 A. Do you mean --

15 Q. Is the definition for producer-handler the same
16 for all milk marketing areas?

17 A. Do you mean -- (indiscernible) says producer-
18 handler, are all the provisions identical, or do the
19 provisions vary?

20 Q. Are the provisions identical?

21 A. They are not all identical throughout all the
22 Federal Orders.

23 Q. In that respect, is it possible for a producer-
24 handler, as it's defined in each order, to meet the
25 definition in one (indiscernible) marketing order but not

1 another?

2 A. That would be true.

3 Q. And now, if we could refer to Exhibit 41 and the
4 table in the back, on page 35.

5 A. Yes, sir.

6 Q. Where we have the producer-handler plants listed
7 there?

8 A. Yes.

9 Q. Is it your understanding that these producer-
10 handler plants meet the definition for the Southeast
11 Marketing Area since this is the Southeast annual report?

12 A. That is not my understanding. I understand that
13 they meet the definition for the Order 32 producer-handler,
14 and they simply have sales into Federal Order 7, and, thus,
15 they hit the report with that definition.

16 MR. STOKER: Okay. That's all I have. Thank
17 you.

18 THE COURT: Any questions? Any more questions at
19 all?

20 All right, Ms. Deskins.

21 CROSS-EXAMINATION

22 BY MS. DESKINS:

23 Q. Sharlene Deskins, United States Department of
24 Agriculture, Office of the General Counsel.

25 I had a question for you on page 3 of the --

1 Exhibit 60.

2 A. Yes, ma'am.

3 Q. Okay. In this you list some criteria that could
4 cause, I assume, disorderly marketing within Order 5 and 6?

5 A. Yes, ma'am.

6 Q. I was wondering if you could give us some
7 examples of any of these that you see happening within
8 Order 5 or 6.

9 A. Number 7. Okay.

10 Under a current basis, there are some Class I
11 dollars that are not available to the pool, so that would
12 be Item 1.

13 And in case of Item 3, with regard to at least
14 the two producer-handlers that Mr. Stoker was asking me
15 about, Brahms and Martin Dairy, they do have -- while it's
16 not (indiscernible) as a normal business pattern, Martin
17 Dairy does have distributors that service multiple
18 accounts.

19 I think Point 4 is not necessarily a disorderly
20 practice but is meant to point out some objections to
21 regulated producer-handlers in the past that we believe is
22 not valid.

23 Certainly at this point -- well, again, Martin
24 Dairy and Brahms Dairy are significantly -- or, I'm sorry,
25 are larger -- Brahms is. Martin's, I don't think, is

1 larger than any regulated handler in the marketplace, but
2 Brahms is larger.

3 Both of them are on the large side of all
4 producers and certainly -- oh, no. Both of them are on the
5 large side of all producers in Federal Orders.

6 Q. Okay. Now, are both of those located within
7 either Order 5 or 7?

8 A. No, they are not, but they have sales in the
9 area.

10 Q. Okay. And I'm wondering just within Order 5 or
11 7. Are there any entities that have the potential as
12 being, as you've described the way Braun (phonetic) and the
13 other one was Martin's?

14 A. Martin. Well, of course, that's an opinion
15 question. The current producer-handlers, I do not know
16 their personal situations, so I don't know if they have --
17 if they have the capability or the intent or the desire to
18 be a million pounds or twelve million pounds, in our
19 estimate, in the case of Brahms.

20 However, there is opportunities for producers of
21 that size to be producer-handlers in the order, and there
22 are certainly producer-handlers -- or, I'm sorry, there are
23 producers who supply the order now who would have that
24 potential.

25 So our concern is that they be regulated and pay

1 regulated prices.

2 Q. Okay. When you said there -- I think you said
3 there are conditions that could allow these producers to
4 become that large, and I'm wondering in Order 5 and 7, if
5 you could just -- you could tell us what those conditions
6 are?

7 A. Well, we have -- we have producers now who are
8 that -- let me see. Why don't you try your question one
9 more time.

10 Q. Okay. I'm just wondering within Order 5 and 6,
11 you said there's that potential. Can you point to us what
12 conditions within either 5 or 7 or a merged order --

13 A. Okay.

14 Q. -- what those -- what those conditions are
15 currently that could give rise to that in the future?

16 A. Okay. I personally have had conversations with
17 large producers who have asked questions about being
18 producer-handlers, and in several of those cases, they are
19 of the size that would be greater than our restriction, so
20 they have asked me, you know, "How do I be a producer-
21 handler? What does it take? What are the order
22 requirements?"

23 MR. RICCIARDI: Your Honor, and I don't mean to
24 interrupt here, but I have to.

25 The question I understand. The answer, on the

1 other hand, is now getting into information from unknown
2 people who aren't here who we can't talk to. I realize we
3 don't have any kind of a hearsay rule, but we have a double
4 hearsay issue here for these people. What kind of data can
5 we look at and how do we know that information without
6 having that ability to examine them?

7 THE COURT: You have a question, Mr. Beshore? Do
8 you have a point?

9 MR. BESHORE: Just a response. I think if we're
10 getting into a hearsay, technical kind of hearsay
11 obligation --

12 MR. RICCIARDI: It's not technical, Judge.

13 MR. BESHORE: Well, the fact of the request for
14 information of Mr. Hollon by large producers is probative,
15 and that's what he's testifying to.

16 MR. RICCIARDI: Well, it may be probative, Judge,
17 but he's getting into specific conversations about things
18 that are clearly hearsay that I have no ability in this
19 hearing to cross-examine.

20 THE COURT: That may be, but hearsay does come
21 in, and this is a scenario where he's being responsive to
22 the question.

23 Go ahead, please.

24 BY MS. DESKINS:

25 Q. If you could finish your answer?

1 A. Situations with individual producers who have
2 asked questions about regulations, how they apply, as
3 recently as two months ago, I was approached by a large
4 producer who said he represented other large producers who
5 were interested in the producer-handler hearing process.
6 That was the reason that they were in the room, was to
7 understand how those apply.

8 In the milk shed that we described -- do you
9 remember the map that had the circles, one in Texas, one in
10 Kansas, one in Ohio, one in Indiana, one in the northeast?

11 Q. Yes.

12 A. Do you remember that exhibit? There are
13 producers within that milk shed, and also there are
14 producers in the market who would fit the size requirements
15 to be a producer-handler.

16 And we have had, again, from a DFA level with
17 several companies who are design -- build dairy operations.

18 They will go, you know -- your family would decide you
19 want to be a dairy farmer, and you would go to Company X
20 and say, "I've got some capital. I want to be a dairy
21 farm. You know, what can you do?"

22 They say, "We'll design a facility. We'll build
23 a facility. We'll help you secure the land. We'll help
24 you secure the permits."

25 We've had discussions with companies who do that,

1 and they have inquired about, "Well, what is it to be a --
2 to be a handler? What is it to be a producer-handler?"

3 And typically these operations are -- they don't
4 start up smaller than 1500 to 2,000 cows, and so those are
5 all part of our business background that makes us be
6 concerned about this.

7 Q. Okay. My next question then is in -- I want you
8 do this for Order 5, Order 7 and merge order.

9 Approximately how many potential producer-handlers of that
10 size that you've said of 1500 to 2,000 cows would there be?

11 If you know.

12 A. I can't give you a number. I would say multiple.

13 We're not talking about one or two. You know, the
14 potential is for maybe, you know, 50.

15 Q. Okay. The other question I had -- again, this is
16 relating to page 3 of, I guess, the smaller Hollon's
17 opuses?

18 A. Yes, ma'am.

19 Q. It would be Exhibit --

20 THE COURT: It's his sonata.

21 BY MS. DESKINS:

22 Q. Okay. And this is relating to your Number 1
23 about a producer-handler can draw the sizable dollars out
24 of the order's blend price?

25 A. Yes, ma'am.

1 Q. Do you -- can you quantify what you would think
2 would be a sizable amount to draw from the blend price?

3 A. Well, while I didn't hear all of it, I think that
4 perhaps Mr. Thompson in his testimony talked about dollars
5 that had been affected at blend prices over the last
6 several years, and I think he used numbers of 10 and 15
7 cents.

8 And, you know, we have -- we have situations
9 where we would see, you know, producers who would --
10 members of DFA who are upset about comparisons between our
11 price and somebody else's price of numbers of that
12 magnitude.

13 So, you know, an impact on the blend, you know,
14 of 10 or 15 cents would be a problem from the producer side
15 of it.

16 From the handler side, I think we had testimony
17 that cost advantages of even, you know, a half a cent is a
18 competitive factor.

19 MS. DESKINS: I don't think I have any other
20 questions for you. I think Ms. Carter does.

21 THE COURT: Ms. Carter.

22 CROSS-EXAMINATION

23 BY MS. CARTER:

24 Q. Antoinette Carter with USDA.

25 Just one clarifying question, Mr. Hollon, for the

1 record.

2 A. Yes, ma'am.

3 Q. Could you identify who are the members of SMA?

4 Because --

5 A. Okay.

6 Q. Yeah.

7 THE COURT: Did you have an exhibit that had a
8 list?

9 THE WITNESS: Yes, sir.

10 MS. DESKINS: It's Mr. Hollon's opus. It's in
11 there.

12 MR. BESHORE: It's 47. 47, Table 1.

13 THE WITNESS: Yes. On pages 2 and 3, list of
14 proponents for the proposal, and those would be -- the
15 proponents would be Arkansas Dairy Co-Op, Dairy Farms of
16 America, Dairymen's Marketing Cooperative, Lone Star,
17 Maryland and Virginia and Southeast Milk.

18 BY MS. CARTER:

19 Q. Okay.

20 A. And so at the time the proposal was submitted --
21 in fact, I think Mr. Vetne just mentioned that, saying that
22 Southeast Milk was a member of SMA at the time the
23 proposals were submitted.

24 Q. So are they currently a member of SMA?

25 A. I think that the -- their current membership

1 status is an item of debate.

2 Q. Okay. Okay. But they -- but they are in support
3 of the proposal being submitted?

4 A. Yes. Yes, ma'am.

5 MS. CARTER: Okay. Thank you.

6 THE COURT: Other questions?

7 Yes, Mr. Stoker.

8 CROSS-EXAMINATION

9 BY MR. STOKER:

10 Q. I also have -- this is Mr. Stoker, USDA. I have
11 one more question for clarification.

12 Again, in your Exhibit 61, on page -- actually,
13 it's Table C1, the second page of Table C1?

14 A. Yes, sir.

15 Q. If you could specifically look at the second
16 column over from the right, where it states uniform price
17 at test?

18 A. Correct.

19 Q. Where is that uniform price at test obtained?
20 Where do you obtain that?

21 A. Obtain that from Mr. Gooch and from Mr. Duprey,
22 and I think one of those are -- one of those tables is in
23 the record, and I'm not sure if the other one is.

24 But I asked both of the market administrators to
25 provide that to me.

1 Q. And then the next column over, where it says PH
2 blend?

3 A. Correct.

4 Q. Is that also obtained from MA office?

5 A. It is not. That is a multiplication of the 90
6 percent utilization at the Class I skim and fat price, and
7 the remaining 10 percent utilization at the lower of the
8 Class III or IV skim and the Class III or IV butterfat
9 price.

10 Q. In other words, is that a calculation that you
11 have done?

12 A. It's a calculation that I have done, but all of
13 the numbers are in the exhibit.

14 MR. STOKER: Okay. Thank you.

15 THE COURT: Yes, Mr. Ricciardi.

16 MR. RICCIARDI: Just a couple of more points
17 based in response to some answers given by Mr. Hollon to
18 Ms. Deskins and also, I think, to Mr. English.

19 RE-CROSS-EXAMINATION

20 BY MR. RICCIARDI:

21 Q. Mr. Hollon, I think you testified when
22 Mr. English asked you questions that in the last several
23 years in 5 and 7, there are more and larger farms in
24 this -- these particular Federal Order areas, correct?

25 A. There are larger farms. If I said there are more

1 farms, that was probably inaccurate. The farm count has
2 gone down.

3 Q. Okay. There are larger farms, but there have
4 been no additional producer-handlers in those areas,
5 correct?

6 A. No, that's not correct.

7 Q. Okay. Let's talk about startups then. You also
8 told him that there have been, in the last several years in
9 5 and 7, some new larger startups in that area, correct?

10 A. Yes.

11 Q. And none of those new startups have been
12 producer-handlers, correct?

13 A. That is correct.

14 Q. And that has been the choice made by those farms
15 or producers or processors, whoever it might be, to go
16 ahead and follow that business model verus the producer-
17 handler business model, correct?

18 A. Correct.

19 MR. RICCIARDI: Thank you.

20 THE COURT: All right. Other questions?

21 There are none, sir.

22 MR. BESHORE: Your Honor.

23 THE COURT: Oh, I'm sorry.

24 MR. BESHORE: I'm sorry. Yeah, I do have some
25 redirect. This would be a good time to take a short break,

1 if we could.

2 THE COURT: We'll take a recess then for -- you
3 need a long one, do you? You need a longer recess? Okay.
4 Fifteen minutes?

5 MR. BESHORE: Thank you.

6 (Off the record at 10:50 a.m., and reconvened at
7 11:00 a.m.)

8 MR. BESHORE: Thank you, Your Honor.

9 REDIRECT EXAMINATION

10 BY MR. BESHORE:

11 Q. Mr. Hollon, I'd like to first turn to Exhibit 61,
12 Table C1.

13 A. Yes.

14 Q. Okay. Just for clarification, following up
15 Mr. Stoker's question, we didn't spend a huge amount of
16 time with the details in the calculation of this when we
17 reviewed it initially, but when you reached the end of the
18 second page of the spreadsheets, when you reached the
19 producer-handlers blend at test, can you just walk us
20 through a little bit how you get to that point.

21 Since that's not a published -- a published
22 price. It's a calculated price in this exhibit, correct?

23 A. Correct. First off, let me say that we'll be
24 glad to provide an electronic version of this that could be
25 put out on the website, and if I made an error, it would be

1 there for all to see, but also then somebody could go line
2 by line, formula by formula, and see, so if that's
3 acceptable, we'll submit that. It will be next week before
4 we can email it in, but if that's agreeable, we can do
5 that.

6 And, obviously, if the spreadsheet doesn't match
7 the table, then that will be obvious, and there -- so
8 somebody can cry foul if need be, but as long as they're
9 identical, then somebody can see how --

10 THE COURT: Well, I don't know where we're going
11 with that. I mean the exhibit is the exhibit that we have
12 here. If you want a revised exhibit, I'm not --

13 THE WITNESS: No, I do not want a revised
14 exhibit.

15 MR. BESHORE: No, no. No, no, no. It's a matter
16 of making available the spreadsheet electronic file, which
17 has the calculations, you know, imbedded within it.

18 THE COURT: Well, so that won't be an exhibit
19 here because it's --

20 MR. BESHORE: I'm not sure how we do that with
21 the hearing clerk if it's --

22 THE COURT: Yeah, no, I --

23 MR. BESHORE: -- if it's possible, but it will
24 be made available to -- you know, anyone who's interested,
25 Mr. Hollon will make that available.

1 THE COURT: To the participants, but you're not
2 going to be able to use it as part of your hearing record.

3 MS. DESKINS: Well, are you talking about when we
4 post it on the internet?

5 THE COURT: No, he's talking about their posting
6 it on their internet.

7 THE WITNESS: No, no. No, no. We would send it
8 to the Department --

9 THE COURT: Oh, I see.

10 THE WITNESS: -- and they could post it with the
11 hearing record that's on the internet.

12 THE COURT: I think that would be changing the
13 record. I think we're sort of stuck with the piece of
14 paper we have.

15 THE WITNESS: Okay.

16 THE COURT: Unless you want to file some motion
17 to accept it. You'd have to do something a bit more than
18 just say -- send it to Mr. Rower and Mr. Stoker and say,
19 "Here, put this on the internet." I mean it would have to
20 be a little bit more to it.

21 THE WITNESS: The issue of validity would be that
22 so long as the last column, which is the most important
23 one, matches on the spreadsheet that is on the paper, all
24 you're providing somebody is how did you multiply A times B
25 to get C, and sometimes that's easier to do when you have

1 it in your hand and you can manipulate it than when you're
2 trying to go back and recreate it.

3 THE COURT: I understand the good intentions.

4 THE WITNESS: Okay.

5 THE COURT: I'm just thinking of what the record
6 is if there's ever an appeal --

7 MR. BESHORE: Right.

8 THE WITNESS: Fair enough.

9 THE COURT: -- and it goes up and what do you
10 look at?

11 MR. BESHORE: So the appropriate --

12 MS. DESKINS: Judge Palmer, what we post on the
13 internet is what's part of the official record --

14 THE COURT: Right.

15 MS. DESKINS: -- and if it's not part of the
16 official record, we don't post it.

17 THE COURT: Right. So this piece of paper --

18 MS. DESKINS: So that's no problem.

19 THE COURT: Yeah.

20 MR. BESHORE: So we could file -- but we could
21 file a motion to accept a floppy disk that's got the
22 electronic file on it --

23 MS. DESKINS: And it had been accepted by the
24 Court.

25 THE COURT: Yeah, but that --

1 MS. DESKINS: And let me just see. Technically,
2 can they post something like that on the internet?

3 THE COURT: I see all sorts of difficulties.
4 People can't see it. They can't object to it. I just see
5 difficulties.

6 I understand you're being -- you're giving more
7 than you need to in a sense, but I think you'd be better
8 off not to. I just think it's going to confuse the world.

9 MS. DESKINS: Another problem is it could be a
10 Department security regulation.

11 MR. BESHORE: We couldn't get the floppy past
12 security probably.

13 MS. DESKINS: Sometimes they have rules on what
14 you can put on the web page..

15 THE COURT: Yeah.

16 MR. BESHORE: Okay.

17 THE COURT: Thank you. Thank you for the offer.

18 MR. BESHORE: Okay.

19 THE WITNESS: Sorry.

20 BY MR. BESHORE:

21 Q. So let's -- let's just walk --

22 A. Okay.

23 Q. -- walk through the calculation, you know,
24 briefly so there's no question about how it was -- how it's
25 prepared.

1 A. Okay. The first page of the exhibit, which
2 would -- it has an actual title, C1, on it. All of the
3 numbers on this page come from published sources, so
4 there's a published source for the butterfat in producer
5 milk, for the butterfat in Class I in the order, for the
6 uniform skim and butterfat prices. Those are all
7 published. For a Class III and IV price, a Class III skim,
8 a Class IV butter -- a Class III butterfat price, a Class
9 IV skim and a Class IV butterfat price.

10 And then the last two columns, lower, would just
11 pick, in the prevailing month, what was the lowest
12 prevailing skim price and what was the lowest prevailing
13 butterfat price, and since the butterfat prices are the
14 same, it would always pick the same -- it would always pick
15 the same number in either case.

16 And so the idea of lower would be that in a
17 strictly regulated environment, that consideration only, a
18 producer-handler's balancing cost would be you would have
19 so much milk getting sold at Class I and so much milk that
20 is disposed of at Class IV or III, whichever was lower, and
21 that then this would be a worst case scenario and the -- I
22 think in any rational business, you would try to avoid the
23 worst case, again from a regulated viewpoint.

24 The second page then takes the example and breaks
25 it down, and the hypothetical is a 90 percent Class I use.

1 Based on our experience in SMA, Class I handlers, or just
2 a pool of distributing plants in the market, have a Class I
3 utilization that's not far from that number.

4 Class -- and the remaining 10 percent, again, a
5 worst case scenario was in the -- what I've labeled here as
6 Class IV. It would be in the lowest possible value.

7 And just to have a number to multiply, ten
8 million pounds of producer milk.

9 So you would have -- out of that ten million
10 pounds, you would have so many pounds of skim, and at the
11 market test, you would have so many pounds of butterfat.

12 You supplied so much to Class I, and you had so
13 much remaining. You had -- took that -- supplied to Class
14 I, and you had so much skim and so much butterfat. Those
15 are all -- should all be multiplications.

16 Of the remaining 10 percent, then that was in the
17 surplus class -- my label says pounds of Class IV skim and
18 Class IV butterfat is really -- for pricing purposes would
19 be whatever is the lowest value.

20 The next set of columns that have table labels
21 for value are just multiplications of so many pounds of
22 skim at the skim price, so many pounds of fat at the fat
23 price, so many pounds at the lowest value of skim and the
24 lowest value of butterfat.

25 And you add up all those dollars, so \$1,324,317

1 in the case of January of 2000 would simply be the sum of
2 the four numbers to the left.

3 Q. Okay. So just going back to the pounds in each
4 class, the pounds for the producer-handler -- a
5 hypothetical here -- the pounds of Class I skim and
6 butterfat was calculated by taking the gross pounds of 90
7 percent, or 9 million, in Class I, and utilizing that Class
8 I at the rate that butterfat and skim were utilized at
9 Class I in the order.

10 A. Correct.

11 Q. Okay. And then the residual -- residual skim and
12 butterfat, whatever it is for the producer-handler, is what
13 you show in the next two columns as pounds of skim or
14 butterfat.

15 A. Right.

16 Q. After all the Class I is used, that's what's left
17 over.

18 A. Correct.

19 Q. For each. And then the values for each
20 utilization were multiplied, you had a gross value and your
21 blend is the gross value at the --

22 A. That is correct.

23 Q. Averaged. Okay. Thank you.

24 Now, Mr. Hollon, you were asked a series of
25 questions by Mr. Ricciardi about producer-handlers and

1 similarly situated handlers.

2 A. Yes.

3 Q. And it was -- the take-off point was page 57 of
4 Exhibit 47, where you had used the phrase similarly
5 situated in a sense.

6 A. That is correct. I have that.

7 Q. Okay. Now, what is your intent with respect to
8 the applicability of regulations to producer-handlers and
9 distributed -- distributing plant, pool handlers, regulated
10 handlers?

11 A. It would be our intent that that be another
12 similarly situated event, that they both -- they both be
13 subject to minimum classified pricing when the producer-
14 handler reaches the size of three million pounds of Class I
15 sales in any area, any marketing area. Or not marketing
16 area.

17 And so that would also be a similarly situated
18 condition. I think Mr. Ricciardi, he applied similarly
19 situated to operating costs, and we would, you know, agree
20 with his assertion but also would say that similarly
21 situated must include, you know, that they pay the
22 regulated minimum, and that's the purpose of our proposal.

23 Q. Okay. Now, a technical question with respect to
24 the way Proposal 7 would work.

25 The three million pound limit, what universe of

1 distribution does that apply to? Is that three million
2 pounds in any one marketing area?

3 A. It is not. It's three million pounds of Class I
4 distribution. What we were concerned about if we had any
5 further subdivision is that there would be an attempt made
6 to have 2.999 million in Federal Order 5 and 2.9 in Federal
7 Order 7 and 2.9 in some unregulated area and not be
8 regulated at all.

9 So in that case, the sum would be eight nine nine
10 seven million, and that would be over three, and that would
11 get the producer-handler regulated.

12 So it's not a by marketing area division. It's
13 any -- it's a Class I sale in any form.

14 Q. So a producer-handler that has Class I
15 disposition in Order 7 and has aggregate Class I
16 distribution of three million pounds or more in all of
17 its --

18 A. Sales.

19 Q. -- sales would become regulated under Proposal 7.

20 A. Yes. That's correct.

21 Q. Now, Mr. Ricciardi -- another question with
22 respect to the language of Proposal 7 and your intention
23 with respect to how it -- how it should operate.

24 Mr. Ricciardi asked you -- proposed to you a
25 hypothetical with respect to the impact in the market of

1 one ten million pound producer-handler --

2 A. Yes.

3 Q. -- versus three producer-handlers at the
4 2,999,999 pound level. Have you considered how the
5 regulation -- how Proposal 7 -- what your intention is with
6 respect to Proposal 7 affecting that type of situation?

7 A. Well, certainly a -- three three million pound
8 producer-handlers would not have the necessarily same
9 impact as one ten million pound handler, even though the
10 pound volumes might be the same, because of the interaction
11 with the retail environment, and today's retail
12 environment, many retailers, supermarkets, grocery stores,
13 look to -- for their own purposes and reasons, look to
14 supply relationships so they can have either a single
15 source or fewer sources.

16 So they would -- a multi-store retailer is going
17 to need a supplier, whether it be of canned peas or milk,
18 that can meet their supply requirements, and so they would
19 look to a larger processor in the case of milk and dairy
20 items.

21 And a smaller producer-handler may not and likely
22 would not have as much impact in the retail environment,
23 therefore, as much impact in the Class I sales, that a
24 larger one would.

25 Q. Okay. Now, there's a second limitation in

1 Proposal 7 that -- in addition to the three million pound
2 limitation, and that is that producer-handlers would not
3 be -- Proposed Sub F, would limit producer-handlers from
4 distributing fluid milk products to wholesale customers
5 served by other plants that are -- I'm paraphrasing, but
6 that are placing the same labeled fluid milk product in the
7 same size container in the same store.

8 You're familiar with that.

9 A. That's correct. Yes.

10 Q. Okay. Now, what is your intention with respect
11 to whether that would apply to fluid milk products from
12 other producer-handlers?

13 A. Well, just like we discussed, that we would
14 expect it to apply to all the stores of the chain and not a
15 single store, we would also expect that the intent, which
16 is that the producer-handler would not be able to use the
17 retail -- the retailer for balancing purposes, that if a
18 group of producer-handlers were to attempt to supply a
19 label and then claim that because there's more than one
20 producer-handler involved in the supply, that our
21 limitation would also apply.

22 Our intent, again, goes to balancing, so to the
23 extent that someone attempts to find a technicality around
24 the point -- for example, two producer-handlers or more
25 than one of the stores in a chain, we would -- our intent

1 is that that not be allowed.

2 Q. Okay. Now, you were asked by Mr. Ricciardi isn't
3 a statement you've made in Exhibit 60 very similar in
4 various parts to the statement you presented in the
5 proceeding involving the Arizona/Las Vegas and the Pacific
6 Northwest Federal Orders, and you acknowledged that it was.

7 A. Correct.

8 Q. Do you recall that?

9 A. Yes.

10 Q. Why is it similar?

11 A. It's similar because many of the concerns -- in
12 fact, I think all of the concerns that we have in -- in
13 regard to producer-handlers' impact on the Federal Order
14 system apply in all Federal Orders, and it just so happens
15 that we had a hearing in these two orders. We expressed
16 our concern. We provided not only concern, but data in
17 evidence to the Secretary, and we feel like that those
18 apply equally in this order.

19 And the concerns apply equally, and the potential
20 impact to the regulated environment and to our members'
21 returns and to the proponent members' returns are all --
22 have a negative impact.

23 Q. Okay. In fact, you had collected and presented
24 in both the hearing for the -- Arizona/Las Vegas and
25 Pacific Northwest orders, you had collected and presented

1 some national data for all orders, did you not?

2 A. That is correct.

3 MR. RICCIARDI: Can we stop the leading, Judge?

4 THE COURT: Well, we'll allow it. Go ahead.

5 BY MR. BESHORE:

6 Q. And you presented the same national data in this
7 hearing as well.

8 A. That is correct.

9 Q. Okay. So as far as the DFA and the SMA
10 cooperatives are concerned, its' a national issue, just as
11 Dr. Cryan testified.

12 A. Yes.

13 MR. RICCIARDI: Objection. Can it have at least
14 some semblance of a question?

15 THE COURT: Well, it's an institutional kind of a
16 presentation, so we'll allow it. He's just --

17 MR. BESHORE: That's my last question.

18 THE COURT: -- trying to get the point down here
19 so we all know it.

20 MR. RICCIARDI: Okay.

21 THE COURT: And that finishes his questions, and
22 it speeded it up by him doing it that way, I presume.

23 Questions. Any more?

24 Anything else? Nobody?

25 You have another question, Mr. Beshore?

1 MR. BESHORE: When we're done with this sequence,
2 I would like to have Mr. Hollon remain for a short set of
3 questions and answers on Proposal 6.

4 THE COURT: We seem to be done with this
5 sequence, so go on.

6 BY MR. BESHORE:

7 Q. Okay. Let's turn to Proposal 6 in the hearing,
8 Mr. Hollon.

9 A. Yes.

10 Q. Can you -- to set these questions in context,
11 what's the issue with Proposal 6?

12 A. Proposal 6 deals with the issue of dual pooling
13 or double dipping, where milk is pooled at the same -- the
14 same pounds of milk in the same month on a state order, or
15 not, and a Federal Order, or not.

16 Q. And, specifically, is it addressed to a state
17 order which has a market-wide pooling of milk utilizations.

18 A. Proposal 6 -- 6?

19 Q. 6.

20 A. Yeah, Proposal 6 deals with a state order with
21 market-wide utilization.

22 Q. Okay. And it's not addressed to any interaction
23 with state orders that have individual handler pooling
24 situations and over minimum Federal Order regulations.

25 A. It is not directed toward it. That's correct.

1 Q. Okay. What has been the problem with respect to
2 dual pooling, as you've described it, or double dipping?

3 A. As the regulations progressed out of Federal
4 Order Reform, it became apparent that with the change in
5 the pricing service throughout the country, and the
6 elimination of what were commonly called the zone-out
7 provisions in pre-reform orders, that there was an
8 opportunity to gain some economic advantage by taking milk
9 that was not pooled -- was pooled in, in this particular
10 case, California, but it wasn't the only opportunity, and
11 pool in the California order and the Federal Order at the
12 same time.

13 That was apparent very early on in calendar year
14 2000. Look at the market administrator statistics,
15 published some very unusual numbers, and so investigation
16 said, "Well, hey, here is an opportunity."

17 And Federal Orders had for -- I think since
18 inception -- prohibited pooling the same pound in two
19 different Federal Orders at one time, but this was, in
20 essence, a loophole that was discovered. And in our
21 business, when loopholes are discovered, they're exploited
22 rapidly and greatly, and this was one.

23 So there began to be a -- the easiest opportunity
24 to take advantage of this was to take milk from California,
25 and because of the performance standards on Order 30, pool

1 it there at the same time. It was a very lucrative
2 proposition, and there were several entities who did that,
3 including DFA.

4 Q. So has that loophole been plugged in a number of
5 other orders?

6 A. That loophole has been plugged in a number of
7 orders, in Orders 30, 32, 33, the Pacific Northwest Order.

8 It is being proposed to be fixed in the Arizona/Las Vegas
9 Order. It was plugged, or the provisions were changed in
10 the Western Order. That order was voted out. And there
11 had been proposals in Order 1 to also affect dual pooling,
12 so this is simply a continuing step in the evolutionary
13 process to fix that problem.

14 Q. Okay. And Dean Foods has advanced specific
15 language in Proposal 6 of this hearing to fix that problem
16 in these orders, correct?

17 A. That's correct. Dean Foods has advanced
18 proposals, as have DFA, in all of the hearings, not always
19 the same proposal, but in this case, the same proposal, and
20 the proponent cooperatives at SMA support that proposal to
21 fix dual pooling whether or not -- either of the marketing
22 areas that come out of this hearing.

23 So whether or not our merger proposal is found
24 for, or in the case that Dean's proposal, which we don't
25 support, is found for, the dual pooling prohibition should

1 be invoked.

2 MR. BESHORE: Okay. Thank you. That's all I
3 have on that.

4 THE COURT: Questions, anyone, about this
5 particular proposal?

6 Doesn't appear to be any. It looks -- it looks
7 like you're excused, sir.

8 THE WITNESS: Yes, sir.

9 THE COURT: Off the record for a second.

10 (Off the record.)

11 THE COURT: We have a statement as Exhibit 64.

12 (Exhibit No. 64 was marked.)

13 THE COURT: Did we receive 60, 61, 62 and 63?

14 MR. BESHORE: I thought --

15 THE COURT: I don't --

16 MR. BESHORE: I think we did, but if -- I would
17 like to move them if we did not and to make sure.

18 THE COURT: Yeah, let's make sure they're
19 received.

20 60, 61, 62, 63 are received.

21 MR. BESHORE: Thank you.

22 MR. RICCIARDI: I have an objection then.

23 THE COURT: And you have an objection.

24 MR. RICCIARDI: I have an objection to 60 as
25 being effectively identical to the information presented in

1 131 and 124, and, therefore, it should be excluded from
2 this hearing.

3 THE COURT: All right. And your objection is
4 denied.

5 MR. RICCIARDI: I understand.

6 THE COURT: All right.

7 (Exhibit Nos. 60, 61, 62 and 63 were received.)

8 THE COURT: Okay. So now we have 64, and please
9 proceed, Mr. English.

10 PAUL G. CHRIST,
11 was examined and testified as follows:

12 DIRECT EXAMINATION

13 BY MR. ENGLISH:

14 Q. Mr. Christ, what is your very brief educational
15 background?

16 A. Okay. I was trained in vocational agriculture at
17 Southern Illinois University. I have a bachelor's --

18 THE COURT: You might want to push the mike away
19 a little bit. You're --

20 THE WITNESS: I have a bachelor of science degree
21 in vocational agriculture. I have a master's degree in
22 agricultural economics from Kansas State -- I mean from
23 Southern Illinois University.

24 I was studying for a Ph.D. at Kansas State
25 University but did not complete the dissertation.

1 BY MR. ENGLISH:

2 Q. And since that time, you have spent 40 years
3 working with Federal Orders, both for governmental
4 entities, as well as educational entities, as well as
5 private entities?

6 A. Yes. My first job out of school after I got my
7 master's degree was with the federal milk market
8 administrator in Detroit, and since then, I have worked in
9 Washington, D.C., Office of the Dairy Programs, and also
10 worked for the Kansas City federal milk marketing
11 administrator.

12 In 1974, I took a position with Land O'Lakes,
13 Incorporated and continued there until I retired in June of
14 2000.

15 Q. But since that time you've remained active with
16 the industry on a consultant business?

17 A. Yes. Not a great deal, but I have done some
18 consulting, and I have tried to keep abreast of the major
19 developments in the industry.

20 Q. And you're appearing today for Dean Foods?

21 A. That is correct.

22 Q. And they have expressly authorized you to
23 testify?

24 A. Yes, they have.

25 Q. And you have had some conversations with them

1 about market conditions in Orders 5 and 7?

2 A. Yes, I have.

3 Q. Would you please present your testimony.

4 A. My name is Paul G. Christ. I reside at 245
5 Indian Trail South in Afton, Minnesota 55001. I appear
6 here as a dairy consultant with 40 years of experience in
7 working with federal milk marketing orders, both as an
8 employee of the dairy programs of the Agricultural
9 Marketing Service and as a vice president of Land O'Lakes,
10 Incorporated. During this time, I have been exposed to
11 nearly all the issues related to federal milk orders, and
12 participated in the development of many of the current
13 provisions of milk orders.

14 I am testifying here as an advocate for Dean
15 Foods Company, and my testimony is intended to support
16 Proposal Number 7 that would place certain limits on the
17 size and flexibility of producer-handlers in Federal Orders
18 Number 5 and Number 7.

19 It is my view that exemption from the pricing and
20 pooling provisions of a federal milk order should be a rare
21 and highly restricted privilege. The foundation for this
22 view is my belief that the basic purposes of a federal milk
23 order are to, A, assure an adequate supply of milk for
24 fluid use and enhance the returns to milk producers. It
25 should also serve the public interest.

1 All three of these are embodied in the
2 Agricultural Marketing Agreement Act of 1937.

3 Number two, federal milk marketing orders achieve
4 their objectives by doing five things. A, classify milk
5 according to how it is used. B, setting differential --
6 different prices for each class of milk, and this is a form
7 of price discrimination. C, pooling the proceeds from all
8 uses of milk to all producers and verifying the accuracy of
9 reports of milk received and utilization.

10 The market -- federal milk orders also serve the
11 public interest by doing all four of the above things
12 efficiently.

13 The critical features of these activities that
14 insure the effectiveness and equity of federal milk orders
15 is that that be applied universally and uniformly. Without
16 universality and uniformity, some participants in the
17 market will enjoy competitive advantages over other
18 participants that arise from regulatory laxity rather than
19 from business acumen.

20 Historically, there have been only a few types of
21 firms that have been exempted from the pooling and pricing
22 provisions of milk orders. These include, A, institutional
23 milk processing plants, such as those operated by
24 governmental institutions and universities; B, small plants
25 for which the administrative costs of regulation exceed the

1 regulatory benefit; and, C, plants located in Clark County,
2 Nevada, and, D, producer-handlers.

3 Only plants located in Clark County, Nevada have
4 a legal right to be exempted from regulation. The
5 exemption of the other three types of plants has been
6 permitted for administrative convenience or to achieve a
7 modest social objective.

8 The idea that a typical dairy farmer should be
9 able to enjoy a regulatory advantage in processing his own
10 milk has a measure of social appeal. The key word here is
11 typical.

12 The expectation was -- and I hope continues to
13 be -- that such an exemption would have a negligible affect
14 on the other producers and handlers in the market who are
15 fully subjected to the regulatory program.

16 An exempt plant, and, in particular, a producer-
17 handler plant, enjoys a significant competitive advantage
18 over other producers and other handlers in the market. As
19 a producer, the exempt producer-handler can receive more
20 than the blend price for his milk depending on his internal
21 transfer price between his plant and his milk production a
22 activity.

23 As a handler, the exempt producer-handler may pay
24 less than the Class I price for his milk supply, again
25 depending on his internal transfer price between his plant

1 and his milk production facility.

2 Of course, if the producer-handler views his milk
3 production activities and his milk processing and marketing
4 activities as a single integrated enterprise, his
5 profitability depends on all of his costs and all of his
6 revenues.

7 Nevertheless, the combination of these two
8 activities in the presence of regulatory exemption gives
9 the producer-handler a significant competitive advantage
10 over his rival producers and handlers. This advantage is
11 the difference between the local Class I price and the
12 local blend price.

13 A producer who participates in the federal milk
14 order pool receives a blend price for the milk he sells.
15 The handler who is regulated pays the Class I price for the
16 milk that he buys and uses in Class I products.

17 In 2003, the difference between these two prices
18 amounted to \$1.03 in the Southeast Order -- this is taken
19 from Exhibit 41, page 11 -- and 94 cents in the Appalachian
20 Order -- and this is taken from Exhibit 10 on page 2. That
21 gap is eliminated for a producer-handler who is exempt from
22 regulation, and that amount of money is available to the
23 producer-handler to create a competitive advantage for his
24 business.

25 As a result, a producer-handler represents a

1 severe competitive problem for rival handlers and rival
2 producers.

3 There are other sources of competitive advantage
4 that the producer-handler may or may not be able to
5 exploit. These might include efficiency in milk
6 production, efficiency in milk processing and distribution,
7 effective marketing, high quality and better service.
8 However, these sources of competitive advantage are equally
9 available to the producer-handler and to his rival
10 producers and handlers. They are not a consequence of
11 regulatory privilege.

12 The competitive advantage arising from exemption
13 from the pooling and pricing provisions of a milk order is
14 a consequence of regulatory privilege and is not a
15 consequence of the skill, luck or effort employed by the
16 producer-handler.

17 Other pool participants effectively subsidize the
18 operations of a producer-handler. To the extent that he
19 experiences a raw milk cost for his fluid milk products
20 that is less than the local Class I price, the producer-
21 handler can use its financial advantage to offer lower
22 prices or better service than his rival regulated handlers
23 can. As a result, his rivals must reduce their selling
24 prices or increase their service costs to maintain their
25 business. This means reduced profits or increased losses

1 to those rival firms.

2 To the extent that a producer-handler as a
3 producer experiences a raw milk selling price higher than
4 the local blend price, his profits in milk production will
5 be larger than those of his rival producers, and he can use
6 those profits to acquire more and better resources than his
7 rivals can.

8 In the long run, given equal skill, luck and
9 effort, the producer-handler wins the competitive struggle
10 with both his handler rivals and his producer rivals. All
11 of this arises out of a regulatory artifact and not out of
12 the merit of the producer-handler business enterprise.

13 In effect, the producer-handler is able to
14 extract significantly more from a particular market
15 environment than can his rivals because he is exempt from
16 the minimum pricing and pooling regulations of the order.
17 The more he extracts means that other firms extract less.
18 This shows up most vividly in the form of reduced resale
19 prices and profits for packaged fluid milk in the reduced
20 amount of producer milk classified as Class I in the market
21 and in the reduced blend price that accrues to other
22 producers.

23 I stated earlier that the exemption of a
24 processing firm from the pooling and processing -- pooling
25 and pricing provisions of a milk order would be tolerable

1 if it had a negligible effect on the other firms in the
2 market, including producers and handlers who were fully
3 regulated. This raises the question of what is negligible
4 and what is not.

5 Based on my experience, I would assert that
6 anything more than one cent per hundredweight reduction in
7 the local blend price is not trivial. Dairy farmers, both
8 individually and collectively, are very sensitive to
9 differences in pay prices, even differences as small as one
10 cent per hundredweight.

11 In the Southeast Market, a shift of about two
12 million pounds of Class I sales per month between a fully
13 regulated handler and any and all producer-handlers would
14 change the blend price by about one cent. A smaller shift
15 of Class I sales between fully regulated handlers and
16 producer-handlers in the Appalachian market would cause a
17 change of one cent per hundredweight in the blend price.

18 For a regulated fluid milk processor under either
19 of the two orders, a change in resale price of one-half
20 cent per gallon would be significant. Mr. Hitchell of the
21 Kroger Company testified to this amount, and Mr. Herbein
22 stated that his clients gain and lose business based on one
23 cent to two cents per gallon differences in resale prices.

24 In 2003, the \$1.03 difference between the Class I
25 price and the blend price under the Southeast Order

1 represented 8.9 cents per gallon.

2 The question arises as to why there are not more
3 or bigger producer-handlers if they enjoy such great
4 advantages. The same question can be asked more generally
5 as to why more resources do not move more rapidly into the
6 more profitable activities in the general economy. The
7 answer is that resources are sticky and cannot be quickly
8 or easily shifted among alternative uses.

9 However, there is a great potential for both a
10 larger number and larger-sized producer-handlers in the
11 future. The structure of milk production is changing
12 rapidly in the United States with more than a third of the
13 milk produced on farms with more than 500 cows. I checked
14 that number as of 19 -- or 2002. The farms with more than
15 500 cows produced 41.9 percent of the milk in the country.
16 It was probably higher in 2003.

17 These enterprises are large enough to gather the
18 resources needed to set up a bottling operation and compete
19 effectively in the market for fluid milk products. I don't
20 believe that these are the kind of producers that the
21 current producer-handler exemption is intended to protect.

22
23 In addition, there is a high risk of regulatory
24 change. An average or larger fluid milk processor, because
25 of its size, can expect that if it sought producer-handler

1 status for one of its plants, there would be an immediate
2 legislative and regulatory change, and the plant would
3 become fully regulated. The same risk does not seem to
4 apply to existing producer-handlers who choose to expand
5 the size and importance of their operation.

6 For what size producer-handler is exemption
7 tolerable? There is no definitive answer, but it is
8 imperative to choose a fixed number. Fixed numerical
9 standards are common and have been found to be necessary in
10 all forms of regulation, including the Tax Code and
11 environmental standards. Federal milk orders are no
12 different in that an objective measure is needed to judge
13 whether an individual or firm is or is not in compliance
14 with the order.

15 I offered one measure above, that the exemption
16 of producer-handlers collectively could be based on the
17 volume of Class I sales that would cause a one cent change
18 in the blend price. In the Southeast Order, that would be
19 about two million pounds per month. It would be a lesser
20 amount in the Appalachian market.

21 Another measure could be the average size of milk
22 producers in the market. This measure would conform to the
23 idea of a typical dairy farmer integrating into processing.

24 In the Southeast Market, the average producer sells about
25 150,000 pounds of milk per month, so a size limit for

1 exempting producer-handlers could be set at about that
2 level.

3 How relevant is the cost of milk production for a
4 producer-handler? Obviously it is important for him as it
5 affects his profits, but it is not important whether his
6 costs are more or less than other producers in the market.

7 The costs of milk production vary greatly from one
8 producer to another as a result of differences in
9 management and resources employed. The decision of whether
10 to continue in milk production is based in the short run on
11 whether all variable costs are paid. In the long run, the
12 decision to produce milk depends on whether all costs of
13 production are paid.

14 As a result, when milk prices go up and down,
15 most producers continue to produce milk because variable
16 costs are being paid. For the market as a whole, the cost
17 of production must be at or below the blend price.
18 Otherwise, milk production would fall, and there would not
19 be an adequate supply of milk for Class I use.

20 If a producer-handler cannot survive paying the
21 Class I price for his milk supply and receiving the blend
22 price for his milk production, that means he is less
23 efficient in milk processing and distribution and/or in
24 milk production than his rivals and should be discouraged
25 from continuing in the business.

1 If he continues in business, there is a loss of
2 economic efficiency because other producers and regulated
3 handlers are willing and able to provide the same goods and
4 services at lower costs. Society benefits as a result.

5 And this relates to the deadweight loss that
6 Dr. Cryan talked about yesterday.

7 Balancing is an important cost for the fluid milk
8 market. Significant reserves of milk are needed to ensure
9 that sufficient milk is available for Class I use at all
10 times. Each plant needs an operating reserve that covers
11 unavoidable Class II, Class III and Class IV uses, such as
12 shrinkage and the disposition of cream arising out of
13 standardizing Class I milk.

14 In addition, a reserve is needed to cover
15 seasonal variation in Class I sales and milk production.

16 In an average market, the minimum average of
17 these two kinds of reserves is about 15 percent. The
18 actual size of the reserve in a particular market depends
19 on how much milk is pooled and how many Class I sales are
20 regulated.

21 In 2003, the Class I utilization of producer milk
22 in the Southeast Market was 65.47 percent, meaning that
23 34.53 percent of pooled milk was reserve. Reserve milk
24 must be disposed of in lower-valued uses. This is one of
25 the reasons for classified pricing and pooling within

1 federal milk orders.

2 The process of pooling ensures that all producers
3 share in the lower value of reserve milk. Producer-
4 handlers do not share in the cost of disposing of the
5 market-wide reserve, but they do incur the cost of
6 disposing of their own reserve. However, their reserve is
7 likely to be much smaller than the market-wide reserve, and
8 they may have opportunities to get higher prices than can
9 be obtained for the market-wide reserve.

10 A producer-handler has a high degree of control
11 over both volume and variation in milk -- monthly milk
12 production. For example, he operates both a farm
13 associated with a producer-handler enterprise. In another
14 pool farm, he can shift cows back and forth to tailor his
15 producer-handler milk supply to his Class I needs.

16 A pool producer can control his own production,
17 but he cannot control the volume of monthly variation of
18 other producers in the market-wide pool. Therefore, a
19 producer-handler is likely to experience an even smaller
20 reserve than the minimum average of 15 percent mentioned
21 above.

22 Also, a producer-handler may be able to sell his
23 reserve milk in an non-pool Class I market, while a
24 regulated handler cannot, so the producer-handler may be
25 able to get higher returns for whatever reserve milk he has

1 than can a regulated handler.

2 Whatever costs a producer-handler does incur in
3 balancing his milk supply against his Class I sales are no
4 different in kind than the costs incurred by pool
5 participants, but they are likely to be much smaller in
6 degree.

7 This completes my prepared statement.

8 THE COURT: Mr. English, do you have further data
9 you wish to bring out from the witness?

10 MR. ENGLISH: I have further questions for the
11 witness, Your Honor.

12 BY MR. ENGLISH:

13 Q. First is a housekeeping matter so I don't forget
14 it. Mr. Hollon testified a few moments ago about Proposal
15 Number 6, the --

16 A. I recall that.

17 Q. -- so-called double pooling permit. You recall
18 that?

19 A. Yes.

20 Q. Since Dean Foods is a proponent of that, do they
21 adopt that --

22 A. Yes, we adopt the rationale and the testimony of
23 Mr. Hollon for Proposal Number 6.

24 Q. Now, I, for my part, numbered the pages of your
25 statement, and the fourth page, which has Section 6 in it,

1 your second paragraph refers to, "Based on my experience,"
2 and then you made assertions about the importance of one
3 cent a hundredweight to dairy farmers.

4 That experience would include your years of
5 experience at Land O'Lakes?

6 A. Yes. On the average, I had many meetings,
7 averaging more than one a week, with dairy farmers where we
8 discussed things like milk prices.

9 Q. And in those meetings, this kind of thing would
10 come up on a regular basis.

11 A. Yes, it would, and any observable difference was
12 enough to get a reaction from dairy farmers, and one cent a
13 hundredweight is observable.

14 Q. With reference to three paragraphs below, you've
15 referenced testimony that you've heard yourself in this
16 room, correct?

17 A. I did not hear Mr. Hitchell mention the half cent
18 per hundredweight. I was out of the room at the point --
19 at that point. But I did hear Mr. Herbein's statement.

20 Q. But Mr. Hitchell's statement was reported to you.

21 A. Yes. Mr. Hitchell's statement was reported to
22 me.

23 Q. And was there a statement reported to you from
24 Mr. Lee?

25 A. Yes. It was reported to me that Mr. Lee also

1 suggested that a half cent a hundredweight or a half cent a
2 gallon in the resale price of fluid milk would be
3 significant.

4 And, again, this is an observable difference that
5 both buyers and sellers will look at the last decimal digit
6 in the price to compare offers from different suppliers.

7 Q. And have you had discussions with Dean Foods
8 personnel as recently as today with respect to Dean Foods'
9 experience in Orders 5 and 7 with respect to this issue?

10 A. Yes. I received information from Mark Eisel
11 (phonetic), who is the senior executive at Purity Dairy in
12 Nashville, which is a Dean Foods plant.

13 MR. RICCIARDI: And, Your Honor, are we going to
14 get to talk to Mr. Eisel?

15 THE COURT: No, we're going to have him make it
16 as an organizational statement.

17 MR. ENGLISH: It's an organizational statement,
18 and it is the kind of information that Mr. Christ does
19 normally rely on.

20 And he will make, you know, available what he
21 knows.

22 THE COURT: Go ahead, sir.

23 THE WITNESS: Okay. And the information he gave
24 me relates to low-fat chocolate milk in half-pint cartons
25 offered to various school districts, and he gave me

1 examples where Purity won the -- won the business based on
2 various small differences in price.

3 An example is the (indiscernible) County,
4 Kentucky school district. There was a difference in price
5 of one-tenth of a cent per half pint, which is 1.6 cents
6 per gallon, and the business was awarded based on that
7 small difference.

8 A second example was the Edmonson County,
9 Kentucky school district where the difference in price was
10 two-tenths of a cent per half pint, and which represents
11 3.2 cents per gallon. Again, the business was awarded on
12 that relatively small difference.

13 And in Glasgow (phonetic) County, Kentucky, the
14 difference was three-tenths of a cent per half pint, and
15 representing 4.8 cents a gallon, and the business was
16 awarded on that difference.

17 All three of these differences are well below the
18 per gallon value of the difference between the blend price
19 and the Class I price in the Southeast Market.

20 BY MR. ENGLISH:

21 Q. And this kind of information for school milk bids
22 as opposed to other kind of competitive information becomes
23 publicly available when school milk bids are opened?

24 A. My understanding is that is correct, but I have
25 not observed in the public realm these particular prices,

1 but I think an interested person could find them.

2 Q. And to be clear in advance, maybe to forestall
3 some questions, maybe not, was Dean Foods -- any personnel
4 at Dean Foods able to tell you about any business losses in
5 Orders 5 and 7 presently to producer-handlers?

6 A. No. I did not get any information of that type.

7 Q. On redirect Mr. Hollon was asked some questions
8 by Mr. Beshore based upon a hypothetical from Mr. Ricciardi
9 about three producer-handlers at 2.9999999 million pounds
10 versus one handler at ten million pounds. Do you remember
11 that?

12 A. Yes.

13 Q. And having heard that and considered both that
14 hypothetical and Mr. Hollon's testimony on redirect, do you
15 have any proposed language change to 1007.10 and
16 potentially 1005.10 and potentially 1094.10F that would
17 address that issue?

18 A. Yes, I do. I rather quickly wrote it out here.

19 Q. For purposes -- this was -- the language was as
20 proposed, both in the hearing notice, but also as on page
21 16 of Exhibit 60.

22 A. Okay. In paragraph 1007.10E -- F, I'm sorry, F,
23 I would -- I would change it to read as follows: Does not
24 distribute fluid milk products to a wholesale customer who
25 also is serviced by a plant described, and I would insert

1 the words, "In this section," and add a comma, and continue
2 in Section 1007.7A, B or E, or other handler described in
3 Section 1000.8C, and --

4 Q. And then the language would continue thereon.

5 A. It would continue there.

6 Q. Basically --

7 Q. And I would also make the same substitution in
8 federal milk order Number 5 for Appalachia.

9 The section -- the appropriate section there
10 would be 1005.10F, and I would make that same insertion of
11 the words, "In this section," comma, in Section 1005.7, et
12 cetera.

13 Q. And if the Secretary, in her wisdom, also adopted
14 Proposal 5, which has not been discussed yet, and which you
15 will be talking about later, you --

16 A. Then I would substitute those same words in
17 Section -- Proposed Section ten zero nine four point one
18 zero zero F. Again, I would substitute in the words, "In
19 this section," comma, in Section 1094.7A, B or C -- or E,
20 rather, et cetera.

21 MR. ENGLISH: Your Honor, that completes his
22 direct examination. The witness is available for cross.

23 THE COURT: Questions?

24 MR. RICCIARDI: We have some, Judge.

25 THE COURT: Should we adjourn for lunch?

1 MR. RICCIARDI: I think that's a good idea.
2 Let's adjourn for lunch. We'll be back at 1:00.
3 (Off the record at 12:00 noon, and reconvened at
4 1:00 p.m.)

5 THE COURT: It's 1:00.

6 MR. ENGLISH: Your Honor, Charles English.
7 Before the break, I made the witness available for cross-
8 examination. It does occur to me that I have not yet moved
9 admission of his Exhibit 64, and I would so so at this
10 time.

11 THE COURT: Any objection?

12 THE COURT: Received.

13 (Exhibit 64 was received.)

14 MR. ENGLISH: And now he is available for cross-
15 examination.

16 THE COURT: There he is.

17 MR. RICCIARDI: I'm sorry, Your Honor. We're
18 having our discussion over here. I'm ready to ask
19 Mr. Christ questions.

20 THE COURT: Please step forward.

21 MR. RICCIARDI: Thank you.

22 CROSS-EXAMINATION

23 BY MR. RICCIARDI:

24 Q. Mr. Christ, good afternoon.

25 THE COURT: Mr. Ricciardi.

1 THE WITNESS: Good afternoon.

2 MR. RICCIARDI: Al Ricciardi. I apologize.

3 THE COURT: That's all right.

4 BY MR. RICCIARDI:

5 Q. Let me ask you some questions about some of the
6 testimony that you gave orally as opposed to the reading of
7 your testimony in Exhibit 64.

8 A. Okay.

9 Q. Okay? In response to some questions that were
10 posed to you by Mr. English, you gave some information
11 about some loss of business -- I think it was all in
12 Kentucky -- and the basis of it, I think, was -- or at
13 least the important point was that the business was lost
14 because of differences in pennies or so a gallon.

15 A. That's close, but it was business that was won
16 by -- and I'm not even sure that it was business that
17 changed hands, but it was business that was won by
18 fractions of a cent per half pint, which means pennies per
19 gallon.

20 Q. Okay. Then with that as our predicate, let's
21 talk a little bit about that issue.

22 With regard to that particular business, you said
23 it was school business. Have you ever seen the RFP for
24 those particular contracts?

25 A. No, I did not.

1 Q. Okay. So you don't know what the RFP provided
2 with regard to things like services or --

3 A. No.

4 Q. Okay. You don't know what the RFP might have
5 provided with regard to quality issues?

6 A. No.

7 Q. And you don't know what connection, if any, that
8 there was between the people that obtained the business and
9 the people at the school district or school system?

10 A. No.

11 Q. And you'd agree with me that there's a change in
12 business that may occur for things other than price, such
13 as quality, services, relationships, et cetera.

14 A. Yes. Prices is a factor, a significant factor,
15 but so are the other attributes of the transaction.

16 Q. And price may be the significant factor in a
17 transaction or it may not be, depending upon the type of
18 transaction we're talking about.

19 A. Yeah. The school milk examples is a little
20 cleaner because the terms of trade are standardized through
21 the RFP even though I didn't see them, and so price becomes
22 the focus of differences.

23 Q. Well, a lot of the time what happens is even on
24 RFPs, you're not automatically required to take the low
25 bidder. You may have other issues that will come into it

1 and not require you to take a low bid.

2 A. I suspect that's correct, but I've never engaged
3 in that type of transaction.

4 Q. Okay. So you don't have any real familiarity
5 with the type of transaction we're talking about.

6 A. No, not any specific personal familiarity, but I
7 do have a general understanding.

8 Q. I understand.

9 Now, with regard to -- if there was a change in
10 business, that would have been a change in business between
11 two regulated handlers, not a producer-handler, correct?

12 A. I think in the examples I gave, the competing
13 firms were regulated handlers, but I don't think it would
14 necessarily mean that. It would be anyone in the market
15 who had the product available to the school.

16 Q. But as far as you understood it, at least, the
17 competition we're talking about which was won was between a
18 couple of regulated handlers.

19 A. Yes. That's my expectation.

20 Q. All right. Now, you gave -- and this is, again,
21 reflecting some of the questions that were given to you by
22 Mr. English, not your testimony in Exhibit 64.

23 You gave some changes to the proposals that have
24 been advanced by Dean, some language changes, and I did
25 write it down, but you're going to have to help me out.

1 Can you explain to me the -- at least your
2 understanding of the intent of those proposed changes to
3 the proposal.

4 A. Okay. The original proposal was intended to
5 prevent a situation where a producer-handler could be
6 balanced by a regulated handler who absorbed the give and
7 take in the producer-handler's production by servicing the
8 same customer.

9 What this proposed change would do would also
10 limit the ability of a producer-handler to be balanced by
11 other producer-handlers serving the same customer with the
12 same products.

13 Q. So it wouldn't be a change in the proposed three
14 million pound hard cap per month, correct?

15 A. No, it would not.

16 Q. All right. Now, you've acknowledged in the
17 beginning of Exhibit 64 that you're here as an advocated
18 for Dean Foods.

19 A. That's correct.

20 Q. Okay. And you've been an advocate for Dean Foods
21 in the past, including testifying in Order 131 and 124.

22 A. Yeah, that's the only other case of my advocacy
23 relationship with Dean Foods.

24 Q. Okay. You'd also agree, Mr. Christ, that, at
25 least in your opinion, the only evidence that the Secretary

1 should be considering with respect to these proceedings is
2 evidence relating to marketing conditions in these two
3 Federal Order areas and none other.

4 A. Well, I think it's broader than that because, in
5 my experience, the Secretary has frequently considered
6 prospective marketing conditions, as well as existing or
7 past marketing conditions.

8 Q. By rule, don't you have the opinion that the
9 Secretary can only consider evidence relating to marketing
10 conditions in these two Federal Order areas and no other?

11 A. I think prospective effects of plausible causes
12 is a marketing condition.

13 Q. Do you recall when you did testify in the 131 and
14 124 proceedings, you were under oath, as you are today?

15 A. Yes, I remember.

16 Q. And you recall being asked some questions by
17 Mr. English on this particular topic as to what should be
18 considered, and let me see if you recall these questions
19 and answers.

20 This would be at page 1587, beginning at line 15.

21 Now, under -- with your experience of Federal
22 Orders, what orders are open for consideration at this
23 proceeding?

24 Answer: In this proceeding -- in these
25 proceedings, there are just two orders, Federal Orders

1 Number 124 and Number 131.

2 Do you recall giving that answer?

3 A. Yes.

4 Q. Question: And what evidence should the Secretary
5 be considering with respect to these proceedings?

6 Answer: I believe by rule he's required to
7 consider evidence relating to marketing conditions in these
8 two Federal Order areas and none other.

9 Do you recall giving that testimony?

10 A. I don't recall it specifically, but I accept that
11 as being correct.

12 Q. Okay.

13 A. I may -- might elaborate a little further on that
14 in that --

15 Q. I didn't ask you a question yet, Mr. Christ.

16 A. Okay.

17 THE COURT: I'm going to let him elaborate on
18 this one just to get it cleared up. Go ahead.

19 THE WITNESS: Well, I would elaborate that any
20 individual order is imbedded in the national system of
21 federal milk marketing orders, and the Secretary has
22 responsibility for the system as an entity, as well as each
23 individual order.

24 BY MR. RICCIARDI:

25 Q. Of course, you would agree with me that the

1 record would speak for itself. We're not going to --

2 A. Yes, yes.

3 Q. -- do anything that you never said that when
4 asked that particular question by Mr. English.

5 A. Yeah. I didn't --

6 Q. Okay.

7 A. -- as you recited it, I accept that as being
8 correct.

9 Q. Okay. Now, Dean Foods has an interest in
10 essentially limiting the producer-handler exemption to a
11 three million hard cap in every one of the Federal Orders,
12 correct?

13 A. I would, by extension, agree with that, that the
14 marketing conditions we're talking about are national in
15 scope and will affect each individual order.

16 Q. And so this is the second one, and I assume there
17 may be others.

18 A. I'm not participating in the development of
19 proposals for other orders, but it may very well be.

20 Q. Okay. You'd also agree with me, and I think you
21 have it actually in your statement, that one of the
22 purposes for the federal milk orders is to assure an
23 adequate supply of milk for fluid uses, correct?

24 A. That's correct, yes. That's stated in the law.

25 Q. And to serve the public interest.

1 A. Yes.

2 Q. Now, a producer-handler, particularly if it's a
3 producer-handler in an area where there is a deficit
4 market, would, in fact, advance the purposes of the Federal
5 Order by being able to supply milk, fresh milk, to the
6 consuming public in that area, correct?

7 A. A producer-handler would be one of the sources of
8 milk for fluid use in a market, yes.

9 Q. And so that producer-handler would, in fact,
10 advance the purposes of the Federal Order system.

11 A. Well, that is correct, but the foundation of
12 federal milk orders is to achieve that through the process
13 of classified pricing and pooling.

14 Q. Now, you would also agree with me, wouldn't you,
15 that producer-handlers currently are subject to regulation
16 within the Federal Orders?

17 A. They are regulated to the extent that they have
18 to file reports and have to conform to the -- whatever
19 restrictions are embodied in a Federal Order. They are not
20 regulated in terms of pricing and pooling.

21 Q. They're subject to audit, as you've said, of
22 their books and records.

23 A. That's correct, yes.

24 Q. And in this particular series of orders, 5 and 7,
25 they have no ability to go out to balance their supply by

1 purchasing any milk whatsoever, correct?

2 A. In -- yes, I've read the producer-handler
3 sections. That is correct. They're not able to buy
4 supplemental milk from other sources.

5 Q. Whereas a 7A handler has no such limitation,
6 correct?

7 A. Excuse me? Repeat the first part of the
8 question.

9 Q. Sure. Whereas a 7A handler has no such
10 limitation, correct?

11 A. Well, they have a limitation that they only milk
12 that they have access to is milk that's pooled under the
13 order. Well, they also can get other source milk. That's
14 correct.

15 Q. They can get any -- whatever amount of source of
16 milk that they need, assuming they have the access to it
17 and the ability to pay for it, they can get it.

18 A. Yeah, provided they can find a seller who would
19 agree to sell.

20 Q. Now, that has some kind of value to a plan,
21 doesn't it, the ability to be able to have an unlimited --
22 roughly, at least, unlimited supply of milk available?

23 A. They have access to sellers of milk, but that
24 does not mean that the sellers of milk will agree to sell
25 the milk. They have to offer terms that are acceptable,

1 and very often the terms offered by the federal milk order
2 are not acceptable.

3 Q. Well, at a minimum then, you'd agree with me that
4 they certainly have a lot more flexibility than a producer-
5 handler does in terms of milk, particularly in this order,
6 these orders.

7 A. Yes. They can -- they have access to a wider
8 range of sellers than a producer-handler would have.

9 Q. And a 7A plant also doesn't have to develop the
10 milk production themselves. They look to producers,
11 correct?

12 A. Provided they can successfully negotiate the
13 purchase of milk from people who do produce milk.

14 Q. Making that assumption, they certainly would --
15 don't have the requirement to spend the capital to go ahead
16 and produce milk. They have access --

17 A. No, not as a -- if they are able to engage in
18 successful transactions, they do not need to invest in milk
19 production.

20 Q. And producers that supply milk, either
21 individually or cooperatively, they don't share the full
22 cost of any balancing of the milk, correct?

23 A. I would argue yes, they do, because they incur
24 the cost of disposing the non-Class I portion of the pool
25 of milk supply.

1 Q. Well, it's shared with the rest of the
2 participants in the pool, correct?

3 A. They do. They share that cost as a group, yes.

4 Q. Now, on the other side, producer-handler limited
5 to the supply in the amount of milk that he's actually got
6 on his farm that he actually produces, correct?

7 A. In these two orders, that is correct, in terms of
8 the milk that he can process.

9 Q. And the producer-handler, because it's one
10 integrated entity, has all of the risks associated with
11 both production, processing and also marketing of the milk,
12 correct?

13 A. That's correct. And that's one of the
14 requirements to achieve producer-handler status.

15 Q. Now, the producer-handler, given that risk, there
16 is all of the financial risk in a sense because he has to
17 deal with all of the costs of production, processing and
18 marketing, correct?

19 A. That is correct, yes.

20 Q. Whereas the 7A plant has a fixed cost for at
21 least Class I milk, irrespective of what the actual cost is
22 to produce the milk.

23 A. That's correct.

24 Q. And a producer-handler operation is going to be
25 viable or not viable given the ability of the producer-

1 handler to do all of the things that we just talked about.

2 A. Yes, that the -- his total costs are less than
3 his total revenues.

4 Q. And some producer-handlers are better at doing
5 that, whether it be production, processing and marketing,
6 than others.

7 A. I agree. That's true of any set of enterprises.

8 Q. Now, some people, if they pick up the violin, are
9 good enough ultimately to get to Carnegie Hall, and some
10 people never get out of the living room, correct?

11 A. That is correct, and I'm at the last part of that
12 statement.

13 Q. I understand.

14 Now, there is also a benefit that a regulated
15 handler has versus another regulated handler if the first
16 regulated handler has a new and fairly efficient plant and
17 is able to process milk for less money than the second
18 regulated handler is.

19 A. Okay. It may be a little more complex. An older
20 operation may be less technically efficient, but they have
21 lower fixed costs because of lower investment, whereas a
22 new one may have lower variable costs with more efficient
23 technology but a higher level of investment.

24 Q. And so just to -- not to put too fine a point on
25 it, but if you've got one plant that's larger -- and we've

1 heard evidence throughout the course of this proceeding
2 about that. One plant that's larger when we get into the
3 12 or 18 million gallon or pounds of milk --

4 A. Pounds per month.

5 Q. -- pounds per month area, they're going to be
6 able to process that milk cheaper than somebody who's
7 operating a smaller plant.

8 A. On the average, that's correct.

9 Q. And so in reality, there's an advantage that's
10 given to someone who is able to operate a plant at that
11 higher capacity, correct?

12 A. It's hard to say specifically, but on the
13 average, it is correct.

14 Q. So that if someone has more money, more access to
15 capital and is able to build a plant of that size,
16 processing that much per month, they're going to have some
17 type of a benefit, an advantage, over someone who doesn't.

18 A. Again, it's a little more complex, and it may
19 have to do with the cost of capital. If one firm has a
20 higher cost of capital than another because of risk factors
21 or something like that, they have a disadvantage.

22 But I'm not sure access to capital is the issue.

23 Q. Okay. Whether it be access to capital or --

24 A. Cost of capital.

25 Q. -- having the capital itself, the fact is if one

1 plant is able because of the fact that they can build a
2 higher processing plant at the higher number, they're going
3 to get a benefit.

4 A. On the average, I would argue that that's
5 probably right, correct.

6 Q. Okay. So what happens then, Mr. Christ, is when
7 the entity that has the bigger plant is able to process
8 milk cheaper than the entity that doesn't, then what can
9 happen is one of two things. That additional cost saving
10 can either be taken away by that particular plant or given
11 in the way of a cost reduction to a customer, correct?

12 A. If they have lower cost, they can -- and
13 consequently higher profits, they can increase -- or reduce
14 their revenue by giving special deals to customers, or they
15 may increase their profitability.

16 Q. And, by the way, that occurs in this business,
17 doesn't it?

18 A. Yes, there are price adjustments to meet specific
19 competitive situations.

20 Q. Price adjustments are generally given to the best
21 customers, aren't they?

22 A. I never actually sold fluid milk -- or packaged
23 fluid milk. I sold raw fluid milk.

24 In there, the prices were uniform.

25 Q. But with regard to any business, including the

1 milk business, there are adjustments that are given to the
2 best customers.

3 A. I would agree that volume discounts are a common
4 feature of most industries.

5 Q. And in addition to that, in addition to the
6 volume discounts, there may be some type of a decision at
7 any given time in order to achieve business, to get your
8 foot in the door, to do it as a loss, correct?

9 A. Within limits, you might choose to do that, but I
10 would not generalize and say that that is always the case.

11 Q. It's not always the case, but it happens.

12 A. It happens.

13 Q. Okay.

14 A. Maybe wisely and maybe unwisely.

15 Q. I understand.

16 Give a moment because there's some questions I
17 want to ask you about some of the language in Exhibit 64.

18 A. 64.

19 Q. That's your statement itself.

20 A. Oh.

21 Q. Okay? Some of it's familiar to me, but I'll see
22 if I can get to the points that I want to make.

23 On page 2, you indicate an historical reference
24 with regard to exemptions, and you give four examples,
25 including producer-handlers, and you indicate that the only

1 plants that really have a legal right, as you term it, to
2 be exempted from regulation were those that are located in
3 Clark County, Nevada.

4 A. That's correct, and there was recent legislation
5 that exempted that territory from regulation by the federal
6 milk marketing order program.

7 Q. And the question becomes was that a legal right
8 or a politically expedient decision?

9 A. All I can speak to is the status of the law as it
10 is now, and the law says that they are not to be regulated.

11 Q. And currently producer-handlers are not subject
12 to certain regulations. You've talked about what they are
13 in the pricing and pooling provisions, correct?

14 A. Uh-huh.

15 Q. That's a yes?

16 A. That's correct.

17 Q. Okay. You also indicate about in the middle of
18 page 2 under the last sentence of the paragraph under your
19 listing of these four exempt items that -- and I think you
20 use the language the exemption would have a negligible
21 effect on the other producers and handlers in the market
22 who are fully subjected to the regulatory program.

23 Do you see that?

24 A. Yes.

25 Q. Now, based upon the market data available in this

1 particular hearing with regard to Orders 5 and 7, you'd
2 agree with me that producer-handlers have had at best a
3 negligible effect on the other producers and handlers in
4 these markets, correct?

5 A. Given the statistics presented by the marketing
6 industry, there appear to be a very small number of very
7 small producer-handlers, and my expectation is they would
8 fall below the threshold that I define for negligible
9 effect.

10 Q. Okay. So currently then, and in the past, there
11 have been -- there have been no substantial effect,
12 actually a negligible effect, on the producers and handlers
13 by producer-handlers in these markets, correct?

14 A. I don't have the historical data, just the four
15 years presented by the marketing industry, and I would
16 agree for that period.

17 Q. Okay.

18 A. But one issue is the past and another issue is
19 the future, and the prospects with the development of much
20 larger dairy farms is greater that there will be an effect
21 in the future.

22 Q. Well, you've heard the testimony, and I think it
23 came from Mr. Hollon, and then I followed up with it. The
24 fact is there have been a number of larger farms that he,
25 at least, was aware of in the last three years that have

1 begun operations in 5 and 7, and none of those have become
2 producer-handlers, correct.

3 A. That's correct, and they would have been
4 identified in the marketing industry data, yes.

5 Q. That's right.

6 A. But those farms exist, according to his
7 testimony.

8 Q. And they came into play in the last three years,
9 were built, and obviously producer-handler exemption was
10 available then, and they chose not to take that exemption,
11 correct?

12 A. That's correct.

13 Q. Okay.

14 A. Up to this point.

15 Q. Yeah, and a hundred years from now, they may
16 change their mind.

17 Now, you also talk in the next paragraph about
18 producer-handlers and internal transfer prices. Let me get
19 one thing out of the way.

20 A producer-handler is an integrated entity,
21 correct?

22 A. Yes, I think I recognize this statement.

23 Q. You did.

24 A. Yeah.

25 Q. And so if, in fact, the milk goes from the farm

1 and goes to the processing plant, there is no arm's length
2 transaction or sale, correct?

3 A. They may choose to have a transfer price to
4 measure the performance of the individual activities, but
5 there's no legal requirement that I know of that they do
6 so.

7 Q. Okay.

8 Take a look at, if you would, page 3 of your
9 statement, which is Exhibit 64.

10 You talk under paragraph 5 of things like skill,
11 luck and effort, that in no circumstance, a producer-
12 handler would win the competitive struggle with his handler
13 rivals and his producer rivals.

14 Do you see that?

15 A. I don't recall saying in no circumstances.

16 Q. Yeah, and I apologize.

17 A. Is that --

18 Q. To the extent -- yeah.

19 A. Okay. That's in the second-to-last paragraph.

20 Q. That it is.

21 A. Yeah.

22 Q. That was a jumping-off point more than anything
23 else, Mr. Christ, and I apologize if I misread something.
24 I didn't intend to.

25 Let's talk in general, and then we'll get back to

1 the milk business.

2 You told me before that essentially in any kind
3 of business operation, there's going to be the issue --
4 issues like skill, luck and effort that are going to end
5 up --

6 A. Yes.

7 Q. -- coming into play.

8 A. And that's just to demonstrate there are many
9 things that affect business success or failure other than
10 the regulation by itself.

11 Q. That I understand.

12 A. Yeah.

13 Q. And the fact is the same would be true when
14 competing regulated handlers have direct competition.

15 A. Yes. That's correct.

16 Q. I mean if, in fact, one is better at doing what
17 he or she does, they're going to end up being more
18 successful --

19 A. That's correct. Yes.

20 Q. -- and more profitable.

21 A. Yes.

22 Q. And size would also factor in, wouldn't it?

23 A. Size, on the average, could be significant in
24 affecting the cost of the operation.

25 Q. I mean, for example, Dean's, which you know about

1 because you're an advocate for them, they're a substantial
2 dairy operation in the United States of America, correct?

3 A. Yeah, it's one of the largest dairy companies in
4 the United States, as was Land O'Lakes, where I worked when
5 I was a few years younger.

6 Q. I understand. Yes, I understand that, too.

7 And, in fact, in 2002, Dean's had dairy sales of
8 somewhere in the range of eight to nine billion dollars?

9 A. Okay. I don't have those numbers memorized.
10 Over time, I've seen references, and it's in that order of
11 magnitude, yes.

12 Q. Okay. And let's use the number eight billion
13 just for our discussion right now. If you've got an entity
14 that has eight billion dollars in revenue and it's
15 competing against an entity in the same business that has
16 one million dollars, for example, in revenue, or ten
17 million dollars -- makes no difference, we're talking M's
18 and B's -- the fact is --

19 A. You're talking what?

20 Q. M's -- millions versus billions.

21 A. Okay.

22 Q. Sorry. What happens is that in average -- and
23 we're talking about competition here in the same business.

24 The billion dollar company, the larger company, is going
25 to prevail over time.

1 A. I -- I guess -- I'm not sure I would agree with
2 that. That depends on whether the customer has choices or
3 not. If the customer has choices, he can exercise them in
4 any way he chooses. He may choose to do business with a
5 large firm like Dean Foods, or he may choose to do business
6 with a smaller firm.

7 Q. Sure. And those choices would depend on some of
8 the things we talked about before, which would be am I
9 getting the service? Is the quality of the product I'm
10 receiving good? Am I otherwise having a decent
11 relationship with the company I'm dealing with?

12 A. Yes. That's correct.

13 Q. And price would also factor in.

14 A. Yeah.

15 Q. Okay. Have you looked at, in preparing your
16 testimony in this case, the issue of an integrated handler,
17 such as a Kroger's or a Safeway, that has its own stores to
18 be able to market its milk?

19 A. Well, I'm familiar with that kind of enterprise.
20 I've never worked for a firm that had that kind of
21 arrangement.

22 But I'm generally familiar with it in the dairy
23 industry.

24 Q. And would you agree with me that there is some
25 type of an event, whether it's -- whether it's a

1 competitive event or otherwise, to have your own stores to
2 market your milk?

3 A. I agree, and I think the primary advantage is
4 coordination between manufacturing and sales.

5 Q. One of the things that we ultimately reward in
6 business is a company that is able to be efficient in what
7 they do, correct?

8 A. In a free enterprise economy, that's correct.

9 Q. And overall in the economy, the last thing that
10 we want to end up doing is subsidizing an inefficient
11 operation, right?

12 A. In terms of social well-being, agree with that.

13 Q. And so, for example, if you've got a producer-
14 handler that's efficient at what it does, and we have a
15 regulated handler that's inefficient for whatever reason,
16 whether it be the plant operation or the ability of the
17 producer -- of the handler himself to do the work, it
18 wouldn't be your opinion that the producer-handler should
19 be required to subsidize that inefficient operator.

20 A. No. All else being equal, which is a caveat in
21 most economic statements, all else being equal, the less
22 efficient operation should fail.

23 Q. I have a few more things, Mr. Christ, and I
24 appreciate your attention.

25 I'm going to ask -- I'm going to give you a few

1 statements. I want to know if you agree with them or not.

2 A. Okay.

3 Q. Do you agree with this statement: Producer-
4 handlers don't interfere with the purposes, intent or other
5 provisions of the federal milk marketing order system?

6 A. I think they do because the intent, as I put in
7 my statement, is to have uniformity, especially with
8 respect to the pricing divisions.

9 Q. Well, they certainly wouldn't interfere and
10 actually would help the purposes for the other things that
11 we talked about, assuring an adequate supply of milk and
12 serving the public interest, right?

13 A. Serving the public interest relates to
14 efficiency, in my view, that we should get the regulatory
15 objectives achieved at the least cost to society as
16 possible.

17 And if they used few resources to get the same
18 thing done, maybe I would -- I would accept that, but if
19 they used more resources to get it done, then I would not.

20 Q. And you don't know about any kind of producer-
21 handler operation, with regard to the last comment on
22 resources, in 5 and 7 because you haven't studied that.

23 A. No. That's correct.

24 Q. Would you also agree with -- do you agree or
25 disagree with this statement: That the existence of

1 producer-handlers promotes more fluid milk consumption?

2 A. Well, if I were to list the determinants of
3 demand, the type of firm is probably not one of them. It
4 might be things like advertising promotion, the income of
5 consumers, the demographic makeup of the population, a
6 long -- there's a list of things that we could identify as
7 being determinants of demand for fluid milk.

8 But the type of enterprise, I don't think I
9 would -- that offers it for sale, I probably would not.

10 Q. Would you agree with me that the existence of
11 producer-handlers as they currently exist in this
12 regulatory market actually promotes competitiveness in the
13 fluid milk market?

14 A. Okay. In one statement, I'll say the more
15 players in the market, the more competition, but, on the
16 other hand, if one has a handicap relative to another, it
17 may actually reduce competitiveness.

18 Q. Well, in this -- in this area in 5 and 7, the
19 Federal Orders that we're talking about, we have a
20 situation where we have a deficit market. We don't have
21 enough milk. Wouldn't it be --

22 A. Well, I evaluated the reserves and things like
23 that a lot in my career, and this market carries more than
24 the minimum reserve, and there's not enough milk, pooled
25 milk, that will readily flow to bottling plants all -- all

1 the time.

2 Q. So what happens is they have to bring in milk
3 from outside sources in order --

4 A. This is a common practice for this market, yes.

5 Q. And if we had more producer-handlers who were
6 available to supply this particular market, then what we
7 would do is we would possibly, at least, reduce the amount
8 of milk coming in from the outside, correct?

9 A. To the extent that the producer-handler would be
10 able to coordinate his supply with the demands of the
11 market to a better extent than is being done by the group
12 of pool producers, maybe so, but it's an issue of being
13 able to coordinate the supply with the fluid demand.

14 For example, the Southeast Order has a Class I
15 utilization of 65 percent year round. If there was perfect
16 coordination, I think it could be done for -- with a Class
17 I utilization of 85 percent, but it's not perfect by any
18 means.

19 Q. I understand. One way we could encourage
20 producer-handlers to hopefully deal with the deficit supply
21 issue is to at least give them the opportunity during the
22 month in 5 and 7 to go out and buy milk to balance their
23 needs, correct?

24 A. Well, that would take care of their individual --
25 that would give them more flexibility on coordinating their

1 production with their Class I demand, but I don't see how
2 that would help the market.

3 Q. Well, if we allow them to coordinate their
4 production so that they're able to balance their needs and
5 they're able, therefore, to increase the milk production,
6 if that's possible, so they can supply it to the market,
7 that would help the market have more of an adequate supply,
8 correct?

9 A. If any producer coordinates his milk production
10 to the pattern of Class I demand in the market, it would
11 have that same effect, whether it were a producer who is
12 also a handler or a producer who sells to a regulated
13 handler.

14 Q. But a producer-handler in this market under 5 and
15 7 currently is handcuffed because he has no ability to buy
16 even a gallon of milk to balance his supply needs, correct?

17 A. Well, in this market, he's not able to buy
18 outside of his own production, but if the milk production
19 were coordinated with the fluid demand, there would be no
20 need to buy outside.

21 And the same thing is true of the market as a
22 whole, and I think it is not well coordinated in this
23 market. Otherwise, the 65 percent would be more than
24 adequate.

25 Q Okay. And do you have a position as to whether

1 or not Proposal 8 should be adopted by the Secretary?

2 A. Proposal 8 is --

3 Q. The addition of allowing a producer-handler to
4 balance his needs by being able to get a percentage of his
5 milk during a particular month.

6 A. Okay. That's not a proposal of Dean Foods. At
7 this point, we would be opposed to that.

8 Q. Dean's is -- do you have a position on it?

9 A. We have a position that's in support of Proposal
10 Number 7, and that Proposal Number 7 does not include the
11 ability to purchase milk from other sources.

12 Q. But are those mutually inconsistent?

13 A. I would not go beyond the proposal that we have
14 made. The producer-handler always has the opportunity to
15 coordinate his own production with his own sales.

16 Q. At whatever cost it requires to balance.

17 A. Yes.

18 MR. RICCIARDI: Nothing further right now, Judge.

19 THE COURT: Any other questions?

20 Mr. Vetne?

21 CROSS-EXAMINATION

22 BY MR. VETNE:

23 Q. John Vetne for Southeast Milk.

24 Good afternoon.

25 A. Good afternoon, Mr. Vetne.

1 Q. I just had a couple of questions on your last
2 colloquy there.

3 With -- assume that the market as a whole is
4 constant, that it balances its Class I needs, as you say,
5 inefficiently at the
6 current time. And assume further that a producer-handler
7 were given what has been termed greater flexibility to buy
8 outside milk.

9 With those two assumptions, isn't it true that if
10 a producer-handler were to buy outside milk from local
11 sources, there would be a greater burden on the market and
12 the system as a whole with respect to balancing what's left
13 in the market?

14 A. Yeah. The coordination of what's left would be
15 less efficient than it is now.

16 MR. VETNE: Thank you.

17 THE COURT: Other questions?

18 Mr. Rower?

19 CROSS-EXAMINATION

20 BY MR. ROWER:

21 Q. Thank you. Jack Rower, Dairy Programs.

22 Can you hear me?

23 A. Yes.

24 Q. Thank you. On page 4 of -- at the bottom of page
25 4 of your testimony, please.

1 A. Yes.

2 Q. My question is regarding your statement, "In
3 addition, there's a high risk of regulatory change."

4 A. Yes.

5 Q. And you go on to say, "An average or larger fluid
6 milk processor, because of its size, can expect that if it
7 sought producer-handler status for one of its plants, there
8 would be immediate legislative or regulatory change."

9 Can you -- can you elaborate on that? I'm not
10 aware of where that came from in the record.

11 A. I don't know of any -- of a large -- medium --
12 average or larger fluid processor that's gone into milk
13 production to supply its own needs and become a producer-
14 handler, but the impact would be immediate on the other
15 participants in the market. On the one hand, the processor
16 would have the potential of buying milk at less than the
17 Class I price, and this would be an extremely -- a matter
18 of extreme competitive concern by his other processing
19 competitors.

20 And, on the other hand, dairy farmers could see
21 that this particular milk production operation has the
22 potential of receiving more than the blend price for milk
23 production. And, again, they would be upset by the
24 preferential opportunity, at least, available to that firm.

25 And as a -- and I would expect, number one, there

1 would be a request for an emergency hearing filed with the
2 dairy division, and, number two, there would be efforts to
3 get some legislative help.

4 Q. Okay. But we weren't speaking about a specific
5 case that you know about.

6 A. No. No. Just that it relates to my discussion
7 of negligible effect. In most fluid milk markets,
8 including this one, an average plant is a significant
9 player, and if it changes its operation to either have
10 lower costs or higher revenues, then that would be a matter
11 of major concern to dairy farmer competitors and fluid
12 processor competitors.

13 MR. ROWER: I understand what you said. Thank
14 you for clarifying that.

15 THE COURT: Mr. Stoker?

16 CROSS-EXAMINATION

17 BY MR. STOKER:

18 Q. Randal Stoker, dairy programs.

19 Also in reference to your statement in Exhibit
20 64, Item 8 on page 5, in that particular section you're
21 talking about the fixed number.

22 A. Yes.

23 Q. I assume that fixed number is the three million
24 pounds?

25 A. Yes. We support the three million pounds,

1 although, as this discussion implies, it's easy to come up
2 with a smaller number. Using the measure of an observable
3 difference in price or the measure of the average size of
4 dairy farms, you come up with a smaller number.

5 Q. I guess that's my question in the paragraph right
6 under that, the second paragraph, where it says that, you
7 know, you say it could be based on the volume of Class I
8 sales? Is that intended to be considered as an alternative
9 to the three million pounds, or is that just as a --

10 A. No, the three million pounds is acceptable, but
11 the point is that you can make an argument that something
12 over two million, for example, would have a one cent per
13 hundredweight difference on the blend price, and also half
14 a cent a gallon would be significant to a fluid processor.

15 Either one of them would give you a smaller number than
16 this.

17 This would allow maybe a more generous limit.

18 Q. So you're not proposing that.

19 A. No, we're not proposing that. We're proposing
20 the three million.

21 MR. STOKER: Thank you.

22 THE COURT: Yes, Ms. Carter?

23 CROSS-EXAMINATION

24 BY MS. CARTER:

25 Q. I'm Antoinette Carter with USDA.

1 Directing your attention to page Number 2 of your
2 statement --

3 A. I apologize that I did not number the pages, but
4 we can find them.

5 Q. That's okay. Item Number 4, in which you
6 indicate that an exempt plant, in particular a producer-
7 handler plant, enjoys a significant competitive advantage
8 over other producers and handlers in the market, with
9 regards to that, for the current Appalachian and Southeast
10 Order, does this situation currently occur in those
11 markets?

12 A. Yes. There's a gap between what the producer
13 receives and what the Class I processor pays. That gap
14 exists for regulated -- producers who participate in a pool
15 and for regulated handlers.

16 So starting with zero, adding the cost of
17 production and price available for milk and the cost of
18 milk for Class I use, there's a gap. It is \$1.03 for 2003
19 in the Southeast Order, and I think it was 94 cents in the
20 Appalachian Order.

21 That gap does not exist for a producer-handler
22 because there's no difference. Whether you count it at
23 zero when you start calculating this cost of production or
24 you calculate it from the revenue stream, that gap does not
25 exist, and my statement here is meant to illustrate that

1 that is a significant advantage over regulated participants
2 in the market.

3 Q. Okay. You also indicate an internal transfer
4 price that I -- could you explain that in a little more
5 detail?

6 A. Okay. In the -- in most businesses that have
7 several activities, where maybe there's a processing
8 activity and then the product is transferred to a marketing
9 activity, there's an internal price that's used to measure
10 the performance of the two activities separately.
11 Sometimes an external market price is used. Sometimes not.

12

13 I understand that there are some transactions where
14 under the Tax Code you have to have a transfer price, but I
15 would expect that a producer-handler would not be required
16 to have an internal transfer price.

17 But if you were going to use an observable market
18 price, the transfer price for milk production would be the
19 blend price, and the transfer price for milk processing
20 would be the Class I. And, again, there's a gap between
21 the two that is available to the producer-handler but is
22 not available to regulated -- or pooled dairy farms and
23 regulated fluid milk processors.

24 Q. Okay. I just have a few questions on Dean Food
25 Company's structure.

1 A. Okay.

2 Q. Could you identify what plants Dean Foods
3 operates under the current Federal Order 5, as well as
4 Federal Order 7?

5 A. Okay. They have plants operating in Number 5 and
6 Number 7 and in their proposed 94. I think the clearest
7 identification of those plants is there's an exhibit that
8 was presented by Dairy Farmers of America. I don't have it
9 here. It was their statistical exhibit that attached to
10 their statement in support of Proposal Number 1, and I
11 would accept that as being an accurate representation of
12 the Dean Foods plants.

13 Q. Okay. It identified all of the plants under
14 those current orders that were owned by Dean Foods? That's
15 what you're saying?

16 A. Yes. It has the ownership identified in 2003,
17 and I would accept that as being accurate.

18 Q. Okay. And since I don't have that exhibit in
19 front of me, just bear with me a little.

20 A. Uh-huh.

21 Q. Were all of those pool distributing plants under
22 the order, fluid processing plants, or are some of --

23 A. Well, the plants that I'm referring to in the
24 exhibit were listed as pool distributing plants over the
25 two markets. It's also highly likely that there are

1 partially regulated distributing plants or other order
2 plants who have distribution in this market that are
3 operated by Dean Foods.

4 THE COURT: The witness has just been handed a
5 copy of that exhibit.

6 MR. BESHORE: It's Exhibit 48.

7 THE WITNESS: Exhibit 48. And for my purposes,
8 this is probably the best identification of Dean Foods'
9 plants.

10 THE COURT: And what page is it on Exhibit 48?

11 THE WITNESS: Okay. I would start on Item Number
12 5 -- oh, no. I would start on Item Number 4, which is pool
13 distributing plants on the Appalachian Order, and that
14 would -- I don't have a page number, but it's Exhibit 48,
15 Item Number 4, and if you like, I can read the names of the
16 plants and the location.

17 THE COURT: Would you like those read in,
18 Ms. Carter?

19 THE WITNESS: Or you can just choose to pick them
20 out.

21 MS. CARTER: No. That's okay. Thank you.

22 THE COURT: All right.

23 MS. CARTER: I see it here.

24 THE WITNESS: And then the next page would be --
25 or the next item would be Item 5A in Exhibit 48, which

1 identifies the plants associated with Southeast Order,
2 Federal Order 7, 1007.

3 But those are pool distributing plants.
4 There's -- I don't think there's any listing of partially
5 regulated plants in this exhibit.

6 BY MS. CARTER:

7 Q. Okay.

8 A. Or other order plants.

9 Q. Does Dean Food operate any manufacturing plants
10 within these marketing orders?

11 A. I don't have any specific knowledge of that, but
12 Dean does market things like ice cream and cottage cheese,
13 and I presume some of that is manufactured within these
14 orders, but I don't know that.

15 Q. Okay. And in terms of source of supply for
16 these -- the plants that you've identified, from whom does
17 Dean Food obtain its source of supply?

18 A. Okay. Again, I don't have specific knowledge.
19 We heard earlier testimony that Southern Milk Sales is a
20 major supplier to all of the processing -- or probably most
21 of the processing firms. And I'm not sure that that is the
22 only supply that they have. I don't have specific
23 knowledge of that.

24 Q. Could some of their plants possibly be supplied
25 by non-member producers under those orders?

1 A. It's possible, but I think, if it exists, it's a
2 very small factor.

3 Q. Okay. And just one final question for you with
4 regards to Proposal Number 6 that you've testified in
5 support of. Actually, it's proposed by Prairie Farms as
6 well as Dean Foods.

7 A. This is the --

8 Q. It's --

9 A. Okay. I'm with you.

10 Q. Want me to -- do you have it in front of you, or
11 do you want me to tell you what that proposal is? It's a
12 proposal to prevent producers from being -- producers of
13 milk from being pooled under a federal order as well as a
14 state --

15 A. Oh, yes, yes. I am familiar with that.

16 Q. Okay. What -- in your opinion, what would be the
17 benefits of adopting this proposal in the current orders or
18 a merged order?

19 A. Well, this is -- as it exists, is a mechanism for
20 potentially creating a competitive advantage for one firm
21 over another, or one group of dairy farmers over another
22 group related strictly to a regulatory artifact that has
23 nothing to do with efficiency or quality or management
24 expertise. It's just taking advantage of a regulatory
25 artifact that would disadvantage the people who don't take

1 advantage of it, so it's a loophole.

2 And we would recommend that that loophole be
3 closed.

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

5 THE COURT: Ms. Deskins.

6 CROSS-EXAMINATION

7 BY MS. DESKINS:

8 Q. Sharlene Deskins at USDA OGC.

9 In response to a question, you said that there
10 are some conditions in the future that would require
11 Proposal 6. Can you tell us --

12 A. Proposal 6 --

13 Q. I'm sorry. Not Proposal 6. The limitation on
14 producer-handlers. I'm sorry. I misspoke.

15 A. Proposal 7?

16 Q. Proposal 7.

17 A. Okay. Conditions in the future --

18 Q. I was wondering if you could tell us what
19 conditions currently within Order Number 5 or 7 do you see
20 changing in the future that require that regulation.

21 A. Okay. Require separate regulation or require
22 regulation of producer -- or this --

23 Q. Well, would you -- your testimony, as I
24 understood it, was there is going to be some conditions in
25 the future --

1 A. Yes, yes.

2 Q. -- that would require that, so I'm trying to find
3 out what conditions now --

4 A. Okay. Okay. Probably the most dramatic trend in
5 the American dairy industry is the growth of very large
6 dairy farms, and it's occurring at a different pace in
7 different parts of the country, but it's occurring in all
8 parts of the country to some degree.

9 These large dairy farmers are not our traditional
10 family, family laborers supported enterprise where most of
11 the resources are provided from within the firm. These
12 are -- these are effective businesses run by a general
13 manager who acquires most of his resources externally. He
14 hires labor. He buys his feed. He buys his bred heifers.
15 And these become more of a business enterprise than a way
16 of life.

17 Okay. The businessmen who run these, the one who
18 are successful -- the ones who are successful are going to
19 look for other ways to improve the performance of their
20 business, and when they look at options, one might be to
21 expand further into milk production. Others might be to do
22 something with dairy genetics. Another might be to expand
23 into some form of processing, including fluid milk
24 processing.

25 So these successful businessmen will be looking

1 at opportunities to expand the business, either by
2 horizontally integrating or vertically integrating, and
3 some of them will choose to vertically integrate, I would
4 expect.

5 Q. And can you tell us approximately how many there
6 would be in Order Number 5 and Order Number 7 now?

7 A. I would give a source. The dairy division -- or
8 not the dairy division. The National Agricultural
9 Statistics Service publishes a monthly milk production
10 report. Typically in February, they report by state how
11 many dairy farms there are of each size and the amount of
12 milk production produced on those.

13 It was not in the February issue of 2004, where I
14 normally expected it. I expect there will be in the March
15 issue.

16 The last report I was able to look at was the
17 February milk production that was published in 2003, which
18 reported for 2002 the number and size of milk producers by
19 state.

20 Q. Okay. And do you know how many there would be in
21 the current Order Number 5 and 7?

22 A. I looked at those numbers this morning, but I did
23 not look specifically at the milk -- the states that
24 encompassed -- that are embodied in Federal Order 7 and
25 Federal Order 5.

1 But I would maybe recommend that the Court take
2 special -- or official notice of that publication. It
3 would be Milk Production published by the National
4 Agricultural Statistics Service, February of 2003.

5 THE COURT: Any objection to taking official
6 notice of that?

7 Official notice will be taken.

8 BY MS. DESKINS:

9 Q. My next question, you said that a certain
10 percentage of those, some of them will choose to become
11 producer-handlers. Can you tell us what percentage of that
12 number would become producer-handlers in the future?

13 A. No, I don't -- I don't know, but they're trying
14 to find -- any rational businessman who is successful will
15 try to find ways to extend the success of his business.
16 Some of them will evaluate the merits of entering fluid
17 milk processes -- processing. I would expect some of them
18 will choose to do it.

19 Q. You can't quantify that for us?

20 A. No, I can't quantify it.

21 MS. DESKINS: I have no further questions.

22 THE COURT: When you said these larger entities
23 that are coming into being are not traditional family farms
24 that are just expanding but they're other business -- who
25 are these other business entities? I mean give me an

1 example of who goes out and decides I'm going to have a
2 big -- I'm going to get into a dairy farm, and I'm going to
3 buy a fairly large one?

4 THE WITNESS: Okay. I personally know of two
5 dairy farmers that have gone into these larger enterprises.
6 One of them had been a turkey producer, and he decided to
7 get --

8 THE COURT: A turkey producer?

9 THE WITNESS: Yeah, a turkey producer, and he
10 decided to get into large-scale dairy farming. And
11 sometimes it's dairy farmers who make a huge jump from a
12 relatively modest operation into a larger operation.

13 In the west, I think, more typically it's people
14 who grew up in a dairy family are farming new enterprises
15 with a lot of cows.

16 THE COURT: All right. Well, we're not talking
17 about some agri business that's been in existence --

18 THE WITNESS: No, no.

19 THE COURT: -- and then decides set up a farm --

20 THE WITNESS: It usually is an individual
21 entrepreneur that would be doing this, and, of course, many
22 of them are incorporated, but usually an individual
23 entrepreneur.

24 THE COURT: Okay. Now I understand. Very well.

25 More questions? Mr. Beshore?

CROSS-EXAMINATION

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BY MR. BESHORE:

Q. Mr. Christ, the document for which official notice was just taken, when someone -- when that's reviewed with respect to the number of enterprises it discloses that may -- that would be potential producer-handlers in these orders, what geographic area would you look at? Would you limit it to the geographic confines of the marketing areas or include the large dairies that are -- supply in the area at present but not necessarily in the marketing area per se?

A. Okay. I would -- I believe that the relevant territory for the evaluation would be that which encompasses the supply area for these two markets.

Q. Okay. So, for instance, in the data in the hearing with respect to the States of Indiana and Michigan, I think, shows that there are some very large -- large farms in those areas by Order 5 and Order 7, and those enterprises potentially could ship -- could become producer-handlers and ship packaged fluid milk product the way they're shipping bulk fluid milk product presently.

A. That's entirely possible, and I guess you could look at where are the most distant suppliers of packaged milk to this market located, that a producer-handler at the same location would have the same opportunity as existing

1 processors at that location.

2 Q. So that would include partially regulated plants
3 from other -- or plants from other orders.

4 A. Yes. Yes. Clearly it's within the distribution
5 range of the existing firms. I would expect it to be in
6 the distribution range of a new firm.

7 Q. Okay. Now, in your view, when is the best time
8 to make regulatory changes that would address changes of
9 that sort or --

10 A. Well, when we run into --

11 MR. RICCIARDI: Let me interpose an objection,
12 Your Honor. That's a decision by the Secretary, not by
13 this witness. His opinion isn't -- doesn't matter.

14 MR. BESHORE: His opinion does matter.

15 THE COURT: Well, we'll get his opinion because
16 he's been in the industry for a long time involving
17 regulations, and he's talking about after the regulations
18 come into effect, what's the optimum time as a handler and
19 as a dairy cooperative to -- for it to have effect.

20 THE WITNESS: My response was, if you anticipate
21 a problem, it's better to provide a remedy before the
22 problem develops. Otherwise, entrepreneurs may commit
23 resources that were -- that may turn out to be unwisely
24 vested in the future.

25 BY MR. BESHORE:

1 Q. Now, if I understood your testimony correctly
2 previously, in your -- your testimony is that the
3 present -- a present marketing condition in these markets
4 is the opportunity for large dairy enterprises to become
5 producer-handlers and create marketing disorder.

6 A. Well, yes. The large farmers exist and likely to
7 increase in number and maybe increase in size as well, and
8 among the available options for their future development
9 would be processing fluid milk. And when that occurs, it
10 would be similar to my discussion about an existing fluid
11 processor becoming a producer-handler. It would create a
12 significant impact on the market.

13 Q. By the way, with respect to fluid processors
14 becoming -- the potential for large fluid processors
15 becoming producer-handlers and what, if any, regulatory
16 risk would be involved there, do you recall the testimony
17 of the Kroger witness in Phoenix with respect to that?

18 A. Yes, I do.

19 Q. And --

20 A. We're going to get an objection.

21 MR. RICCIARDI: Objection, Your Honor. What in
22 the world does that have to do with this?

23 THE COURT: I'll sustain that objection.

24 THE WITNESS: Okay. I heard the testimony, and
25 it's available in the records --

1 THE COURT: Wait, wait, wait, wait, wait. I
2 sustained the objection. Don't -- don't go on.

3 THE WITNESS: Oh, you sustained the objection.
4 I'm sorry.

5 THE COURT: Yes. It's -- you lost one.

6 MR. BESHORE: Okay. I have no other questions.

7 THE COURT: All right. Fine.

8 Mr. Vetne?

9 MR. VETNE: Before I start questions, Your Honor,
10 I would like to be able to make more complete reference to
11 the milk production publication.

12 THE COURT: That was just official noticed?

13 MR. VETNE: Mr. Christ talked about a trend, and
14 one-year data doesn't show a trend, so, Your Honor, I would
15 like to request official notice of the milk production
16 monthly publication that shows groupings of producers by
17 size, which is usually February of each year --

18 THE WITNESS: But not this year.

19 MR. VETNE: -- for the previous five years, so
20 that will be 1998 to 2000 -- we have 2003, so 1998 to 2003.

21 And also official notice of the milk production
22 publication containing the same information, which is
23 imminently expected, so that it may be used for briefing
24 purposes.

25 THE COURT: All right. We shall do so. Official

1 notice will be taken.

2 MR. VETNE: Okay. And, secondly, because it's
3 related to that and it's nice to see these things all in
4 one part of the record, I'd like to request official notice
5 of the US Agriculture Census, which is data from 19 -- or
6 from 2002, which will be, according to the website,
7 released also next month, the state and county data, and
8 that permits observation of a lot of things, including
9 production --

10 THE COURT: All right.

11 MR. VETNE: -- where it is, by size, by --
12 Volume 1 is state data, and Volume 2 is county data.

13 THE COURT: Very well. Official notice will be
14 taken for that as well.

15 CROSS-EXAMINATION

16 BY MR. VETNE:

17 Q. Mr. Christ, you -- as I recall, you testified you
18 had some personal knowledge of producers that have
19 increased their size.

20 A. Yes.

21 Q. Okay. Can a producer that has made a commitment
22 grow substantially in a very short time?

23 A. Yes. Usually when one of these new dairy farms
24 is built, it's built at a very large scale. It's not done
25 in small incremental increases. It might be a tripling of

1 the existing operation.

2 Q. Okay. And that could happen within a period of a
3 few months.

4 A. No, it takes probably two years to build one, but
5 it probably takes longer than that to get the permit.

6 Q. Okay. I'm -- well, let's see. The increase in
7 cows and production, you know, once the facilities are
8 built --

9 A. Yes.

10 Q. -- if they're there, it's just a matter of
11 acquiring cows and the cows are available from your
12 neighbors --

13 A. Yes.

14 Q. -- whether they're next door or across the
15 country.

16 A. Yes.

17 Q. Should existing large -- strike that. Let me --
18 there's one more link here.

19 It's true, isn't it, that processing plants have
20 closed over the last few years and --

21 A. Yes, yes.

22 Q. -- as processors have gone out of business and
23 consolidated? Correct?

24 A. That's correct.

25 Q. Okay. And the processing plants that are thereby

1 closed are potential milk bottling assets that are
2 available for sale.

3 A. Yes. That's true. Any kind of a processing
4 facility, you look for the buyer who's willing and able to
5 pay the most, and he may use it for the same type of
6 activity.

7 Q. And an existing processing plant is one of the
8 means that a large producer-handler can use by lease of the
9 facilities -- a large producer can use to become a
10 producer-handler by leasing the facilities.

11 A. Yes. That's one mechanism for getting into fluid
12 processing, to buy an existing establishment.

13 Q. Or lease an existing establishment.

14 A. Uh-huh. Yes.

15 Q. Okay. In fact, leasing facilities is fairly
16 common in the industry, isn't it?

17 A. I don't have any personal knowledge of that, but
18 it's one of the options.

19 Q. You don't -- you're not familiar with Land
20 O'Lakes having leased facilities to others or leasing
21 facilities --

22 A. Oh, yes. We have -- at my former employer, we
23 did engage in purchases, sales and leases both ways.

24 Q. Okay. Now, the process for -- again, I have to
25 start over.

1 Should a large existing producer become a
2 producer-handler or should a new large producing facility
3 be constructed with bottling facilities, say five million
4 pounds of Class I milk --

5 A. A month.

6 Q. A month, yes. Would that, in your opinion, have
7 a disorderly effect in either one of these markets in terms
8 of either producers or handlers or both?

9 MR. RICCIARDI: Your Honor, don't we have to have
10 some kind of a factual predicate before a witness is giving
11 an opinion as to events that haven't occurred, we have no
12 information that they may occur, have no information that
13 they will occur?

14 MR. VETNE: Uh-huh.

15 MR. RICCIARDI: I mean we don't have any factual
16 basis for him to give an opinion.

17 THE COURT: What would you say to that,
18 Mr. Vetne?

19 MR. VETNE: Well, I mean I'm sure that the
20 witness can supply the assumptions that he makes in his
21 response and he can be examined on them, or I can supply a
22 few, and he can agree with them, and --

23 THE COURT: Well, let's -- let's try the question
24 and see what happens with the answers.

25 THE WITNESS: Okay. In my testimony, I argued

1 that a price difference of a half a cent a gallon would be
2 significant to fluid processors competing in the market,
3 and clearly even in the highest utilization market in the
4 United States, which is Florida, there's much wider spread
5 between the blend price and the Class I price than that.

6 And the question is what volume would become
7 significant? The price clearly would be significant, price
8 difference. And what volume would be certainly
9 significant.

10 I suppose if a firm were able to solicit an
11 average-size supermarket, for example, that would be
12 significant. If it were a matter of selling to a few
13 neighbors, to a few households, it probably would not. But
14 if it were enough to solicit the business of a supermarket,
15 yes, I would say it was significant.

16 BY MR. VETNE:

17 Q. Okay. Isn't it true in the milk business, as in
18 many others, that -- that the market price is frequently
19 driven by the low price competitor, even though that
20 competitor may be a small share of the market?

21 A. That's right. The buyer, if he has an
22 alternative to buy from a lower-cost supplier, that will
23 affect the pricing of the other potential sellers to that
24 buyer.

25 Q. Even if the buyer doesn't switch suppliers, the

1 buyer may insist on a reduction in the price charged from
2 his existing supplier.

3 A. As I understand it, that is tactic that is used
4 by buyers in the dairy industry, as well as other
5 industries.

6 Q. And are you -- you're familiar with the time it
7 takes from a problem developing, in fact, rather than
8 prospectively, to the submission of a petition to USDA to
9 correct the problem, to USDA's decision to call a hearing
10 on the problem, to holding a hearing, to making a decision,
11 to making that a rule if there's any effective. Are you
12 familiar with that time period?

13 A. Yes. Two years is not unusual.

14 Q. Okay. And if there is disorder after the cow is
15 out of the barn, so to speak, that two years could result
16 in significant marketing disorder under the hypotheticals
17 you and I described.

18 MR. RICCIARDI: Your Honor --

19 THE WITNESS: Only if, in fact, the producer-
20 handler enters the business, yes.

21 MR. RICCIARDI: -- let me -- can I object,
22 Judge? Can we at least get some kind of factual foundation
23 for anything in this hearing? There is no factual
24 foundation for any type of disorder in this market.
25 Hypothetical subdivisions don't count.

1 THE COURT: Well, he's giving you the problem
2 that things can develop in a couple of years, and he'd like
3 to get something done before it develops.

4 MR. RICCIARDI: And we --

5 THE COURT: That's where we are.

6 MR. RICCIARDI: Yeah, I understand. We can go to
7 the moon tomorrow, too.

8 BY MR. VETNE:

9 Q. Mr. Christ, there are five million pounds -- more
10 than one five million pound producer is in the country.

11 A. Yes.

12 Q. Okay.

13 A. Let's see. That would be like 2500 cows. Yes.

14 MR. VETNE: That's all. Thank you.

15 THE COURT: Thank you.

16 MR. VETNE: Oh, no, that wasn't all.

17 THE COURT: Okay.

18 MR. VETNE: That wasn't all.

19 THE COURT: I take my thank you back.

20 BY MR. VETNE:

21 Q. When Mr. Hollon was up here before, I asked him a
22 couple questions about producer response to prices.

23 A. Uh-huh.

24 Q. Were you in the room when I asked those
25 questions?

1 A. I don't recall the questions, but you might
2 repeat them.

3 Q. But I might ask -- okay.

4 Isn't it true that producers respond to
5 production -- respond to price signals in their production.

6 A. Okay. I remember that discussion now, yes, about
7 lower prices. They sell out more than when prices are
8 higher, yes.

9 Q. Right. So in this colloquy that we just had,
10 should a producer-handler of whatever size enter the market
11 and result in a decrease in the blend available to pool
12 producers, it would have that effect of putting pressure or
13 distress on the producers in direct proportion to the price
14 decrease.

15 A. All else being equal, that would be correct, but
16 at any point in time, there's a whole bunch of things that
17 are changing that affect the producer, but all else being
18 equal, you're correct.

19 Q. Right. And we're not talking about the level of
20 price. We're talking about whatever the price would have
21 been with an isolated factor and whatever the price then
22 would be under the hypothetical, without --

23 A. Yes. All else being equal, the lower the price,
24 the greater distress on the milk producer.

25 MR. VETNE: Thank you.

1 THE COURT: Any other questions?

2 MR. RICCIARDI: I've got a few now, Judge.

3 THE COURT: Yes. Mr. Ricciardi, of course.

4 RECROSS-EXAMINATION

5 BY MR. RICCIARDI:

6 Q. Mr. Christ, I apologize you're up there this
7 long, but --

8 A. That's fine.

9 Q. I know. I know you are.

10 Just because we've heard all of these
11 hypothetical questions, I'm going to get back to the facts.

12 As of right now, in the markets that are covered
13 by these Federal Orders, there is no information that you
14 can provide to the secretary of any type of current
15 disorder in these markets caused by producer-handlers,
16 correct?

17 A. I'm not denying that I have.

18 Q. Okay. Now, people and businesses that have money
19 to get into an enterprise, we have to assume are rational
20 in terms of making their decisions, correct?

21 A. Yeah. Based on whatever information is available
22 to them.

23 Q. And so, for example, since the producer-handler
24 exemption has been available for 70 years and has been
25 available in this particular Federal Order area for at

1 least that long, too, we would assume that was a
2 significant advantage that money would move into the market
3 and would create producer-handlers of a fairly large size,
4 correct?

5 A. Over time we would expect that, and we're now
6 seeing that at the production level, but we have not seen a
7 great deal of it at the processing level.

8 Q. We've seen none of it in 5 and 7 on the
9 processing level, correct?

10 A. Not in conjunction with large-scale milk
11 production. Not yet.

12 Q. Okay. Now, take a look for me, if you would, at
13 what we have seen. Look at -- and Ms. Carter has asked you
14 about this -- Exhibit 48, Item Number 4 and Item 5A.

15 A. Exhibit 48. I have it here, yes.

16 Q. Do you have it? Okay.

17 A. Item Number 4?

18 Q. Item 4 -- let's start with 4.

19 A. Okay.

20 Q. These are some facts that we know about.

21 A. I accept these as facts, yes.

22 Q. I understand. What this shows is a pool
23 distributing plant in the Appalachian Order, that's Federal
24 Order 5, from January '96 through December of 2003, am I
25 correct?

1 A. Right.

2 Q. And if we look at -- and I've counted them, and I
3 apologize, and I'm not trying to trap you, but I've looked
4 at it while you were being examined on other issues.

5 In that period of time, here's what we know. We
6 know that six plants were closed in this area, am I
7 correct?

8 A. Well, I would accept your representation of
9 that --

10 Q. Okay. And if I miscounted, I apologize.

11 A. Yeah.

12 Q. And then, if we take a look at the ownership, the
13 current ownership as of December of 2003, if you look at
14 the plant ownership and include in my question something
15 that's either owned by DFA or which DFA has a joint
16 venture, which would include National Dairy Holdings, and
17 owned by Dean Foods, and we added those up, that would be
18 13 of the plants in Federal Order Number 5, and when you
19 deduct out the plants that have been closed, that would be
20 a substantial majority of those plants in the Federal
21 Order, correct?

22 A. Now, you're talking about the combination of
23 those --

24 Q. Yes.

25 A. -- in which Dean Foods has an interest, those in

1 which DFA has an interest and those that closed.

2 Q. Correct.

3 A. It's probably a large number of plants, but,
4 again, I accept your representation, but I did not count
5 them.

6 Q. Okay. Now, we have somebody who's got money and
7 has a closed plant that they're looking at in Federal Order
8 5, and they have to make a rational decision as to whether
9 they want to compete against DFA and its entities or joint
10 ventures and Dean Foods given the type of ownership that we
11 have and the control that it has, those entities have, in
12 Federal Order Number 5. Isn't it true, given your
13 experience, that there are not many people who would want
14 to become a producer-handler and try to compete against
15 those type of entities in this area?

16 A. I really can't draw that conclusion. Any mature
17 industry that has a set of established firms, a new entrant
18 has to consider can I be competitive. And if I have some
19 particular advantage, I am very likely to consider it, and
20 I would argue that the producer-handler does have an
21 advantage in not being required to pay the Class I price.

22 Q. Let's go to 5A, and I'm going to go through the
23 same kind of construct. Again, these list the pool
24 distributing plants in Federal Order 7, January '96 through
25 December of 2003, and assuming I counted them right -- and

1 never make that assumption with me -- but there have been
2 13 plants that have been closed during that period of time.

3 And, by the way, doesn't that show that there's
4 been consolidation?

5 A. Yes. There have been consolidation -- there's
6 been consolidation on all levels of the dairy industry.

7 Q. And I will also tell you, leaving Kroger out of
8 this question, that if you count up the pool distributing
9 plants in Order 07 and you use the same usual suspects of
10 DFA and Dean Foods or related entities, like National Dairy
11 Holdings, again, for some reason, we end up with 13 of the
12 plants owned or operated by those entities, correct?

13 MR. ENGLISH: Your Honor --

14 THE WITNESS: Yeah. And I accept your
15 representation of that, yes.

16 MR. ENGLISH: -- Your Honor, I just want to
17 object to the characterization, usual suspects. I think
18 it's unnecessary.

19 THE COURT: I think -- I think I'm guilty for
20 having brought up Casa Blanca yesterday.

21 MR. ENGLISH: Yeah, but I think that's
22 unnecessary and should be stricken.

23 MR. RICCIARDI: I don't think it should be
24 stricken, Judge, and I meant it in that reference.

25 THE COURT: Well, we're not going to strike it,

1 but we'll have your comment. And as I say, I apologize
2 for --

3 THE WITNESS: Yeah. I accept the representation,
4 yeah.

5 BY MR. RICCIARDI:

6 Q. Okay. And so --

7 A. There's a number of plants. Yes.

8 Q. And so we have -- we have the same situation.
9 We've had consolidation since '96 --

10 A. Uh-huh.

11 Q. -- and we have a situation where the major
12 players in the dairy industry, Dean Foods and DFA, control
13 the processing plants, at least by a majority of number, in
14 07, correct?

15 A. Well, you neglected of them, like the Kroger
16 plants and that sort of thing, so they -- they have a large
17 number of plants. I accept that. Whether it's the
18 majority of volume or the majority of the number, I don't
19 have any direct information about that.

20 Q. Anybody that you were giving advice to in terms
21 of expending their capital to come into this market would
22 have to be given information to show that you're going to
23 compete against the biggest players in the dairy industry
24 if you do that, correct?

25 A. Well, they're going to compete with whichever

1 firms are operating within the particular market that
2 you're interested in. Whether they -- they are large
3 firms, small firms, horizontally integrated firms may or
4 may not imply efficiency or effectiveness, but since they
5 do exist, they've been successful in the past.

6 MR. RICCIARDI: Fair enough. Thank you.

7 THE COURT: Any other questions?

8 Mr. English, did you have any because I don't see
9 anybody else with questions.

10 REDIRECT EXAMINATION

11 BY MR. ENGLISH:

12 Q. Just a couple of questions on redirect,
13 Mr. Christ.

14 There were a number of questions asked by
15 Mr. Ricciardi that -- with respect to regulated handlers
16 and competing among them, among themselves or dealing with
17 customers. The phrase was used advantage given. Do you
18 remember that? There was sort of a phrase that
19 Mr. Ricciardi used that there's an advantage given in the
20 form of a loss leader.

21 Do you remember some of those questions?

22 A. Well, I remember him talking about -- not in
23 terms of loss leaders, but in order to -- somebody offering
24 a lower selling price to a customer, yes.

25 Q. Is the Government involved in that advantage in

1 any way?

2 A. No. No. That's -- that's strictly a matter of
3 private transactions.

4 Q. In every one of those instances, that would be
5 the case.

6 A. Yes. At that level of trade, yes.

7 Q. And what you're discussing is a particular
8 situation that is a Government advantage.

9 A. The Government establishes the terms of trade
10 between pool dairy farmers and regulated fluid milk
11 handlers, and the producer-handler would not have to meet
12 those terms of trade.

13 Q. And, indeed, you were asked some questions about
14 efficiency, and you started a question in terms of in a
15 free enterprise context about efficiency. Do you remember
16 that?

17 A. Yes, yes.

18 Q. What is the status of free enterprise as to the
19 dairy industry?

20 A. Okay. Well, the federal milk order program, by
21 setting minimum class-wide prices and having a pooling
22 mechanism, distorts the competitive environment somewhat.
23 A great deal, I would -- I would say.

24 Q. And then you were asked some questions
25 hypothetically by Mr. Ricciardi, I'm sure, about an eight

1 billion dollar company competing with a one million dollar
2 company. Do you remember those questions?

3 A. Yes.

4 Q. Would that eight billion dollar company be
5 competing in any marketplace against one one million dollar
6 company, or would there be a number of competitors?

7 A. Well, in any specific market, especially with the
8 larger markets we now have, there are a range of
9 competitors, small and large, in each market.

10 Q. And his questions implied an advantage based upon
11 size.

12 A. Well, I think I responded to that, that size does
13 not imply efficiency, but a firm that is now in business
14 had done something successful in the past or they would no
15 longer be in business.

16 Q. Size didn't exactly save (indiscernible), did it?

17 A. No.

18 MR. ENGLISH: Thank you.

19 THE COURT: Mr. Beshore.

20 RE-CROSS-EXAMINATION

21 BY MR. BESHORE:

22 Q. Do you have Exhibit 61?

23 A. 61? I do not.

24 Now I have Exhibit 61.

25 Q. Okay. And I've opened it to item or -- item

1 what, H?

2 A. H.

3 Q. Okay. In terms of the market structure that
4 would face a producer-handler entrant in Orders 5 and 7,
5 that table -- I mean the specter was raised in
6 Mr. Ricciardi's questions that, you know, this 2500-cow
7 dairy, five-million-pound-a-month producer-handler would
8 face a marketplace of Giant's.

9 Okay. The first column -- this is information
10 that Mr. Hollon presented, having obtained from the market
11 administrators. The first column from the left shows the
12 median size of the smallest one-third of the distributing
13 plants by number.

14 A. Yes. That's correct, and I can see these
15 numbers.

16 Q. Okay. And in Order 5, the median size of the
17 smallest one-third of distributing plants is how big?

18 A. Well, I can't calculate it in the middle of my
19 head --

20 Q. Well, the number --

21 A. -- for all orders, but for Federal Orders 6 and
22 7, it's slightly less than five million.

23 Q. Less than five million --

24 A. Yes.

25 Q. -- was the smallest third -- in other words,

1 fully one-third of the competitors in the marketplace would
2 have a lower Class I volume than that 2500 --

3 A. (indiscernible) million, yes.

4 Q. -- than that 2500-cow dairy.

5 A. Yeah, and I accept the -- these numbers because
6 they were generated by the federal milk market
7 administrators.

8 Q. Okay. And the number for Order 5 is?

9 A. Is 5.9 million, which is just under six.

10 MR. BESHORE: Okay. Thank you.

11 THE COURT: Any other questions?

12 You're excused, sir. Unless we're going on to a
13 separate point. Because I know he was going to testify --

14 MR. ENGLISH: I would like to take a break before
15 we move onto the next --

16 THE COURT: All right. Well, we're going to take
17 a break at 3. That's --

18 MR. ENGLISH: Well, then, we won't take a break
19 now.

20 THE WITNESS: Okay.

21 THE COURT: Yeah, if you don't mind.

22 MR. ENGLISH: We can move on.

23 THE COURT: All right. Thank you.

24 MR. ENGLISH: I've already handed out, Your
25 Honor, except to the court -- well, maybe

1 (indiscernible) --

2 THE COURT: Except to the important people here.

3 MR. ENGLISH: -- his testimony on Proposal
4 Number 5.

5 THE COURT: Thank you very much.

6 We'll mark this as 65.

7 (Exhibit No. 65 was marked.)

8 MR. BESHORE: May I inquire, Your Honor? We've
9 got, I think, only one -- one other -- two other witnesses
10 after this. I wonder if their testimony is available for
11 distribution yet? Mr. Sumners --

12 THE COURT: This would be a good time to
13 distribute it.

14 MR. ENGLISH: Well, you've got Mr. Hollon. Are
15 you going to make his testimony available?

16 THE COURT: Can we just distribute that
17 testimony?

18 If I can read it, take a moment -- let's go off
19 the record for a moment so that can take place.

20 (Off the record and reconvened.)

21 THE COURT: On the record.

22 Mr. English, Mr. Christ is still on the stand,
23 and you have an additional proposal you wish him to
24 discuss.

25 MR. ENGLISH: And the witness is still under

1 oath, and he's --

2 THE COURT: Yes.

3 MR. ENGLISH: -- already given his background,
4 and so I'm going to let him give his statement first, and I
5 have a few questions after that.

6 THE COURT: And his statement will be marked as
7 Exhibit 65.

8 MR. ENGLISH: Thank you, Your Honor.

9 THE COURT: Thank you.

10 Go ahead, sir.

11 DIRECT EXAMINATION

12 THE WITNESS: Again, my name is Paul Christ. I
13 reside at 245 Indian Trial South, Afton, Minnesota 55001.
14 I appear here as a dairy consultant with 40 years of
15 experience, plus one day, in working with federal milk
16 marketing orders, both as an employee of the dairy programs
17 of the Agricultural Marketing Service and as a vice
18 president of Land O'Lakes, Incorporated. During this time,
19 I have been exposed to nearly all the issues related to
20 federal milk orders, and participated in the development of
21 many of the current provisions of milk orders.

22 My testimony here in Exhibit 65 is offered on
23 behalf of Dean Foods Company, in support of Proposal Number
24 5 and in opposition to Proposal Number 1. Proposal Number
25 5 would divide the existing Federal Order Number 7 area

1 into a smaller territory representing the eastern part of
2 the existing marketing area, and a new Mississippi Valley
3 Marketing Area, Proposed Federal Order Number 94, that
4 would cover the western part of the existing Federal Order
5 Number 7 Marketing Area.

6 The provisions of the new Federal Order Number 94
7 would be the same as the provisions of the existing Federal
8 Order Number 7, with the exception of the marketing area
9 provision, which is paragraph 1007.2, and the producer-
10 handler definition, which is paragraph 1007.10.

11 The new Mississippi Valley Marketing Area
12 proposed by Dean Foods, Incorporated and Prairie Farms
13 Dairy would include all the territory in Arkansas,
14 Louisiana and Mississippi, plus the counties in Missouri
15 and Tennessee that are now included in the Southeast
16 Marketing Area.

17 The effect of our support of Proposal Number 5
18 and opposition to Proposal Number 1 would be to construct
19 three independently functioning Federal Orders in a
20 territory now covered by the Appalachian and Southeast
21 Marketing Areas. The reason for doing this is to create a
22 more flexible set of incentives to get milk delivered to
23 all the pool distributing plants in the area covered by the
24 three orders.

25 There are two basic incentives to ship milk to a

1 pool distributing plant under any order. These are:
2 Number one, the blend price paid on the milk shipped at the
3 location of the pool distributing plant receiving the milk;
4 number two, the blend price paid on additional milk that is
5 qualified for pooling by the shipment but not shipped to
6 the distributing plant.

7 There are two basic disincentives to ship milk to
8 a pool distributing plant under any order. These are the
9 net cost of transportation of the milk shipped to a pool
10 distributing plant and, number two, the blend price
11 available on the same milk, shipped and not shipped, under
12 another federal milk marketing order.

13 Obviously milk that is currently pooled on
14 Federal Orders Number 5 and 7 could be pooled on another
15 order. Maybe not so obviously, milk that is not currently
16 pooled on Federal Orders 5 and 7 could be pooled on other
17 orders -- on these orders. I'm sorry. That should not say
18 on other orders -- could be pooled on these orders or on
19 Proposed Federal Order Number 94 if the incentives to do so
20 were greater and the disincentives for not doing so were
21 smaller.

22 From the above discussion, it is clear that the
23 primary force driving where milk is shipped and pooled is
24 blend price and, in particular, relative blend prices among
25 potential destinations. So any modification of the

1 existing orders that will facilitate flexibility in the
2 blend price within an order and greater variation of blend
3 prices between locations will encourage shifts in milk away
4 from areas with a relative abundance of milk to areas with
5 a relative shortage of milk.

6 It is now the case for the Southeast Order that
7 much of the milk pooled in the area originates to the north
8 or to the west of the marketing area, and since the
9 Southeast Order produces an attractive blend price, there
10 exists an incentive to ship milk to pool distributing
11 plants under the order. However, the greatest incentive is
12 to ship to the closest pool distributing plant, which would
13 likely be located on the fringe of the marketing area.

14 There is less of an incentive to ship to a more
15 distant pool distributing plant within the marketing area
16 even though it has a greater need for milk.

17 The disincentive on increased transportation cost
18 increases faster than the incentive of greater location
19 value of the blend price.

20 An example of the same phenomenon occurs in the
21 same southern Illinois portion of the central milk
22 marketing area. The Central Order has an abundance of milk
23 pooled on it and a low Class I utilization percentage.

24 The fluid processors in the St. Louis/southern
25 Illinois portion of the marketing area have great

1 difficulty attracting adequate supplies of milk for Class I
2 use. The difference in blend prices between the fringe
3 areas where much of the milk is pooled and St. Louis is too
4 small to cover the additional cost of transporting milk to
5 St. Louis.

6 The current situation in the southeast
7 complicates the problems of St. Louis and southern Illinois
8 handlers in attracting milk for Class I use. While there
9 is not enough incentive to attract milk to the area from
10 other Central Order locations, the western Kentucky and
11 western Tennessee portions of the Southeast Marketing Area
12 provide much better incentives to attract milk for Class I
13 use.

14 For example, the difference in location value
15 between St. Louis, which is in a \$2 location zone, and
16 western Kentucky, which is in a \$2.20 location zone, is
17 small, only 20 cents. The difference in blend prices
18 during 2003 was 81 cents, as shown in Exhibit 44. This
19 means that milk flowing from north to south has an
20 incentive to bypass the deficit location in St. Louis to be
21 delivered to a less-deficit area of western Kentucky and
22 western Tennessee, but once the milk from the north finds
23 an outlet under the Southeast Milk Marketing Order, there
24 is little further incentive to find an outlet further east
25 or further south.

1 Splitting Federal Order Number 7 into two orders
2 would reduce the blend price difference between St. Louis
3 and the new Mississippi Valley Marketing Area, reducing the
4 incentive for milk to bypass St. Louis.

5 Splitting the Southeast Order area into two would
6 also increase the blend price difference between the
7 western portion of the current order and the eastern
8 portion of the order. This would increase the incentive to
9 move milk farther east and south to a more deficit portion
10 of the current marketing area.

11 This change of circumstances would improve the
12 functioning of all three orders: The Central Order, the
13 new Southeast Order and the new Mississippi Valley Order.

14 Keeping a separate order to regulate the
15 Appalachian Marketing Area will provide separate and
16 distinct incentives to ship milk to pool distributing
17 plants under both orders, encouraging milk to go to the
18 more favorably priced area, which has the greater need for
19 milk.

20 Similarly, establishing a separate order to
21 regulate the Mississippi Valley Marketing Area would
22 provide separate and distinct incentives to ship milk to
23 pool distributing plants under what is now the eastern --
24 that should be the western part of the Southeast Marketing
25 Area and what is now the western -- okay. Let me reread

1 that and see if I got it right.

2 Similarly, establishing a separate order to
3 regulate the Mississippi Valley Marketing Area would
4 provide separate and distinct incentives to ship milk to
5 pool distributing plants -- yes -- under what is now the
6 eastern part of the Southeast Marketing Area and what is
7 now the western part of the Southeast Marketing Area. Milk
8 would be encouraged to flow to the area that had the
9 greatest need for milk as exhibited by the higher blend
10 price.

11 Another reason for splitting the current Federal
12 Order Number 7 Marketing Area into two is that it would
13 improve the functioning of the transportation credit
14 program. The rate of payment for movements of supplemental
15 milk from the west, Texas and New Mexico, is greater than
16 the rate of payment for movements of supplemental milk from
17 the northeast, such as Pennsylvania, Virginia or Maryland,
18 because the Class I price differences are smaller.

19 It is likely with our proposed change that the
20 new smaller Southeastern Order transportation credit pool
21 could operate at a lower average cost than if it must also
22 absorb the higher transportation credit payments for
23 supplemental milk from the west. The result of these
24 recommendations would be to enhance the performance of
25 local federal milk marketing orders in fulfilling their

1 legal mandate of assuring an adequate supply of milk for
2 fluid use.

3 That completes my statement.

4 THE COURT: Any objection to its receipt? I
5 assume it's being offered at this point?

6 MR. ENGLISH: Yes, it is being offered, Your
7 Honor.

8 THE COURT: Any objection?

9 There appears to be none. It's received.

10 (Exhibit No. 65 was received.)

11 BY MR. ENGLISH:

12 Q. Sir, a few questions, if I may.

13 You referenced in the middle of page 1 of your
14 statement that the order provisions would be the same for
15 94 and 7, with certain exceptions, the marketing provision
16 and, of course, the producer-handler definition, the
17 producer-handler definition that we've just discussed,
18 correct?

19 A. Yes. That's correct.

20 Q. If Proposal 6 were adopted, that also -- the
21 producer milk definition in the new 94 is the new Proposal
22 6 for those other orders, correct?

23 A. That's correct. That would also be -- I would
24 recommend that also be adopted in Federal Order 94.

25 Q. You discussed incentives to ship milk to a pool

1 distributing plant under present provisions of orders.

2 A. Yep, I did.

3 Q. At the bottom of your page and -- on page 1 and
4 the top of page 2.

5 A. Yes.

6 Q. As the orders are currently constructed. But
7 in the past, have you, in particular, and Dean Foods or its
8 predecessors, been advocates for other methods of
9 incentives that are not being considered in this hearing?

10 A. Yes. I've been involved in discussions over
11 many, many years, and the -- it's clear that blend price
12 differences within an order are not sufficient to move milk
13 from one place to another. Sometimes the blend price
14 differences between markets are sufficient to move milk
15 from one market area to another, and sometimes they are
16 not.

17 So blend price is an inefficient mechanism in
18 some cases, and at least in my belief, I would like to see
19 more direct incentives to get milk delivered to a fluid
20 process. For example, a direct delivery incentive for milk
21 that actually gets to a fluid processor.

22 Q. But going back to the existing incentives, if you
23 merge existing Order 5 and 7, going to your comment a
24 moment ago about the usefulness, if you would, of the blend
25 price difference within an order moving milk, what will

1 happen, in your opinion, if you merge Orders 5 and 7 vis-a-
2 vis that part of it, the blend price, within the new merged
3 order affiliated movement?

4 A. It's my belief that the blend price difference
5 within an order is not enough to move milk from areas of
6 relative abundance to areas of relative need.

7 Q. And so if you tie this back to the transportation
8 credit fund, if you merge Orders 5 and 7, and you have
9 decreased the ability to move it from abundance where it's
10 needed, how are you going to get milk to, say, southeast
11 Georgia relative to what you do today?

12 A. Within the Federal Order system, there's no
13 incentive. Now, the transportation balancing credit does
14 help cover the negative part of the transportation costs.
15 It reduces the negative aspects of transportation cost, but
16 there is no increase -- in fact, there would be maybe a
17 reduction in the blend price incentive to move it from one
18 part -- one place that is not on the Appalachian Order or
19 in the Southeast Order to another place in the other order.

20 Q. So, in your opinion, will we become more
21 efficient or less efficient if we merge Orders 5 and 7?

22 A. Well, we would become less efficient in precisely
23 allocating to the plants -- allocating milk to the plants
24 that need it for Class I use.

25 Q. And if instead we were to create three orders, as

1 Dean Foods and Prairie Farms (indiscernible), what is your
2 opinion as to relative efficiency?

3 A. Well, that would increase that -- incrementally
4 increase the efficiency of blend price because we could
5 develop greater differences in blend price between markets.

6 We still would not develop greater differences in blend
7 prices within the three, but we would incrementally make an
8 improvement.

9 Q. Now, have you looked at the provisions of Order 5
10 and 7 with respect to touch base, supply plant shipping,
11 diversion limits -- have you looked at those?

12 A. Yes, I've looked at all the aspects of provisions
13 that relate to pooling in the two markets.

14 Q. And Proposal 1 would adopt the Federal Order 7
15 provisions, correct?

16 A. That's correct.

17 Q. And there was some discussion yesterday that that
18 would increase the touch base requirements, correct?

19 A. Yes. The touch base requirements are stricter in
20 Order Number 7 than they are in Order Number 5, but I don't
21 believe that those are the binding provisions.

22 Q. What about the diversion limits?

23 A. Well, diversion limits would become binding
24 before the touch base provisions, and in that case, Order
25 Number 5 has more restrictive diversion limitations than

1 has Federal Order Number 7, the Southeast Order.

2 Q. So if you adopt the Federal Order 7 diversion
3 limits, which are not as strict as the Federal Order 5,
4 what does that mean vis-a-vis the merged order and its old
5 relationship to Order and Order 7 to deal with marketplace?

6 A. Okay. If the diversion limitations are relaxed
7 to the level as they now exist in Federal Order 7, that
8 would create the potential to pool some additional milk on
9 the combined order compared to the two existing orders.

10 Q. So let's backtrack for one moment now.

11 Leaving that piece out of it for a moment --

12 A. Okay.

13 Q. -- if you merge a -- two orders, one with a lower
14 blend price and one with a higher blend price, when all is
15 done, what do you think is going to happen to the blend
16 price?

17 A. All else being equal, the blend price would be
18 average. It will be -- it will go down in the territory
19 that was covered by the higher price market, and it will go
20 up in the territory that was covered by the lower price
21 market.

22 Q. And then you have to factor in the change that
23 you discussed that could happen as a result of the
24 diversion --

25 A. Okay. Now, that's -- that would not be all else

1 being equal. With that additional change, there would be
2 some lowering of the average because of the potential to
3 pool more milk.

4 Q. But would you still expect the blend price in the
5 market that is presently lower to be somewhat higher than
6 it is today?

7 A. Yeah, that would be a matter of degree. I would
8 not expect much additional pooling, but some.

9 Q. So now vis-a-vis a competitive situation along
10 the border, that is to say St. Louis --

11 A. Uh-huh.

12 Q. -- and let's talk about St. Louis for a moment.

13 You've had some direct experience with respect to
14 St. Louis, correct?

15 A. Yes. When I was working for Land O'Lakes, I was
16 responsible for selling milk into that market.

17 Q. And your position with respect to that in terms
18 of the desirability while you were at Land O'Lakes was?

19 A. Well, without any additional incentives, I
20 refused to put milk in that area. I did get extra
21 incentives for my customer.

22 Q. Incentives ultimately meant you got more money?

23 A. Now, this was milk originating in Minnesota and
24 northeast Iowa, but I had opportunities to sell to other
25 customers, which I declined because it was not

1 remunerative.

2 Q. And if Proposal 1 is adopted, and if, as we've
3 just said, there would be some additional pooling but you
4 wouldn't expect a lot, and if the -- as a result, in your
5 opinion, the lower blend price area, which is Order 7,
6 would go up, what would happen to the competitive situation
7 for plants in St. Louis competing against plants in Order
8 7?

9 A. Again, all else being equal and no change in the
10 blend environment in St. Louis and a slightly -- slight
11 increase in blend in Southeast, the problem of milk
12 bypassing St. Louis would become greater.

13 Q. And that number today, or that difference today,
14 is already very significant, according to market
15 administrator statistics?

16 A. I have the number in my statement here between
17 St. Louis and the 2.20 zone of the Southeast Order, and
18 that difference was 81 cents. Twenty cents difference in
19 Class I price, 81 cents difference in blend price.

20 Q. And the record will reflect what it did. I'm not
21 sure if you remember looking at the differences between
22 Orders 5 and 7, but if I represented to you that that
23 number is actually below 81 cents, then the --

24 A. Yeah.

25 Q. -- problem in South -- St. Louis is what versus

1 the one in 5 and 7?

2 A. It would be greater between St. Louis and
3 Southeast than it would be between the two orders being
4 considered for merger.

5 Q. Half an hour or an hour ago, in response to a
6 question from Mr. Ricciardi, you referenced sort of
7 disorderly marketing and national system. What is your
8 opinion, based upon your years of experience in the
9 industry, of an effort to fix one problem making a
10 different problem worse.

11 A. Okay. Okay. I believe the Secretary of
12 Agriculture has got a responsibility for operating the
13 national system of federal milk orders efficiently, and
14 when he makes a change in one order, he needs to consider
15 the effects on other orders because he has responsibility
16 for the system, as well as each individual marketing area,
17 and I'm hopeful that he would do that in this case.

18 MR. ENGLISH: Your Honor, before I make the
19 witness available for cross-examination, I just want to
20 make one brief statement.

21 We believe that thanks to the very diligent and
22 hard work of the market administrators and a number of the
23 participants and the data they've already put in, that the
24 data is necessary -- that the data necessary to evaluate as
25 an impact analysis Proposal 5 is in the record. I mean

1 obviously the witness is available for cross-examination,
2 but we intend to use the existing data and make the
3 arguments from that on our brief.

4 THE COURT: Very well.

5 MR. ENGLISH: And the witness is available for
6 cross-examination.

7 THE COURT: Questions? Mr. Beshore?

8

9

CROSS-EXAMINATION

10 BY MR. BESHORE:

11 Q. Mr. Christ, your many years of experience in the
12 dairy business were primarily geographically in the upper
13 midwest, am I correct?

14 A. Yes. The upper midwest. Most of the milk supply
15 was in Wisconsin, Minnesota, northern Iowa and North and
16 South Dakota. In the late '90s, we also merged with
17 organizations in Pennsylvania and California.

18 Q. Okay. And your personal milk marketing
19 responsibilities were primarily in the upper midwest

20 A. That's correct.

21 Q. During your years. And you've never had personal
22 experience and responsibility for being responsible for
23 supplying a high -- high Class I utilization region, such
24 as the southeast, as represented by the Southern Marketing
25 Agency.

1 A. I occasionally engaged in spot sales to the
2 southeast, but that was all.

3 Q. Okay. But in terms of day-to-day marketing to
4 processors, you were doing that in a region that was flip-
5 flopped in utilization, if not worse, in terms of Class I
6 versus manufacturing classes.

7 A. Yeah, in the markets where I marketed milk, the
8 Class I utilization was usually pretty low.

9 Q. Okay. Would Proposal 5 add any new Class I
10 plants, new distributing plants to the -- to the pool?

11 A. No, not that I know of. There is no change in
12 the definition of the -- of a pool distributing plant. The
13 definition would be the same under all three orders, and I
14 would not expect any difference from what we have today.

15 Q. Okay. So basically you're taking -- your
16 proposal is to take the existing Order 7 pool with its
17 blend price, split it at a line, which I'll explore with
18 you in a minute, split it so that you've got a lower price
19 over on the western side. Your new order would have a
20 lower blend price. There'd be a higher blend price then
21 present on the -- in the eastern half of the order, and
22 you'd have just more blend prices, period, all over the
23 place, and that would be -- create a situation that would
24 make for more efficient marketing, in your view.

25 A. In my view, with more price differences between

1 markets, milk would be more likely to move from lower-
2 priced areas to higher-priced areas, and I do expect Order
3 94 to have a lower blend price because I think there's a
4 greater abundance of milk available relative to the
5 consumer demand in that area.

6 Q. The bulk of that milk is located in the State of
7 Missouri, is it not?

8 A. Yeah, in southwest Missouri.

9 Q. The bulk of the milk that you're looking to keep
10 associated with Order 94 to reduce the blend price is
11 in -- is in Missouri and not in the consumption regions --

12 A. Well, there is milk produced --

13 Q. -- in Louisiana or Mississippi --

14 A. -- there is milk produced --

15 Q. Let me finish, please.

16 A. Okay.

17 Q. Okay. It's in southern Missouri, actually closer
18 to St. Louis, than it is to the -- than that milk is to the
19 main consumption areas of your new Order 94, isn't that
20 correct?

21 A. Geographically, it would be closer. Now, that
22 would be some of the milk supply, but there would be
23 additional milk supplies available to that area.

24 Q. Okay. But you spoke about relative abundance of
25 milk supply in this new Proposed Order 94, and if you don't

1 have southern Missouri in that area, you've got a sharply
2 deficit area, do you not? Take southern Missouri out.

3 A. Yeah, I haven't made those calculations, but my
4 general knowledge of milk production areas, I would agree
5 with you. Yeah, southwestern Missouri would be a major
6 source of supply for that area.

7 Q. In fact, that's the only milk that you can
8 possibly talk about that area as having a relative
9 abundance, isn't it?

10 A. Well, it's feasible that there's a lot of milk
11 being produced in New Mexico, for example, that
12 occasionally comes into the southeastern area and might
13 some day want to be pooled there.

14 Q. But not in Mississippi?

15 A. Well, Mississippi -- southern Mississippi has
16 some milk production, and Louisiana has some, but not
17 enough to take care of their local needs.

18 Q. Arkansas, the same thing.

19 A. Arkansas, the same thing, yes.

20 Q. Now, are you proposing to include -- in your
21 statement, you say that the new Mississippi Valley
22 Marketing Area -- I'm looking on page 1, the fourth full
23 paragraph -- would include all the territory in Arkansas,
24 Louisiana, Mississippi, plus the counties in Missouri and
25 Tennessee now in the Southeast Marketing Area. Is that --

1 is that the proposed area as you would define it?

2 A. Well, it's the area -- I may have heard, if there
3 are some western Kentucky counties in the Southeastern
4 Order, I would want to include them, but I looked at the
5 map in the market administrator's exhibit, and I believe
6 this includes all the territory that is now included in
7 Federal Order 7, which is either west of Order 5 or west of
8 the Alabama/Mississippi line.

9 Q. Well, do you -- let's talk about Tennessee for a
10 moment. Do you intend to include the Nashville area in
11 Order --

12 A. Yes, that would be -- that area is not in Order
13 5, it's in Order 7, so I would include that.

14 Q. Okay. Do you know if that -- if that's the way
15 the proposal reads on the Notice of Hearing?

16 A. Well, it's the Tennessee counties that are now
17 included in Federal Order 7 are the counties that I would
18 include in new Federal Order 94.

19 Q. So you want the Nashville area included in 94.

20 A. Yeah. And I don't know specifically whether that
21 particular county is in Order 5 or Order 7. My belief at
22 this point is it's Order 7, but the maps will bear that
23 out. Whatever the maps show is correct.

24 Q. The current maps.

25 A. Yes. Well, the maps that were presented by the

1 market administrators as identified in the marketing area.

2 Q. Now, if -- you state that your new Order 94 would
3 have some areas of relative abundance. Would it -- is it
4 not correct that it would still be a deficit area where
5 milk would need to be imported as it is now to supply it?

6 A. Well, I would -- it's my belief that there's not
7 enough milk produced with the defined marketing area to
8 meet the needs within the defined marketing area, but that
9 area now draws on milk supplies well outside the area, and
10 I would expect it would continue to.

11 Q. Well, to the extent that you reduced the blend
12 price there, you're reducing the ability of that area to
13 draw from outside the marketing area, are you not?

14 A. Yes, but it's also my belief that this area has
15 access to a greater abundance of milk relative to demand
16 than the eastern part of current Order Number 7.

17 Q. Has Dean Foods been -- failed to receive milk
18 that it has needed at its plants in the present Order 7
19 area?

20 A. Okay. I have no direct knowledge of the supply
21 negotiations that Dean Foods engages in. My guess is they
22 will make use of the incentives in the Federal Orders and
23 negotiate incentives above that in order to get an adequate
24 supply.

25 Q. Okay. But have the Dean Foods representatives to

1 whom you've had access informed you of any circumstances
2 under the present market orders where they have not been
3 delivered the milk that they need for their bottling
4 facilities?

5 A. I don't know of any specific case, but I don't
6 know whether that's a consequence of order provisions or a
7 consequence of incentives outside the order or minimum
8 order prices.

9 Q. Okay. Now, your statement references the St.
10 Louis area more than any other --

11 A. Yes.

12 Q. -- area, as far as I can tell. That's really the
13 main driving force behind the proposal, is it not?

14 A. Well, the St. Louis area is an extreme example of
15 a problem that also exist in the southeast area, and that
16 is that there's not enough incentive within these large
17 marketing areas to move milk from where it is already
18 pooled to where the greatest Class I need.

19 The same thing exists within the Southeast Order.

20 The area where the milk is pooled may be in the west,
21 whereas the greater need may be in the east.

22 Splitting the market in two would create a
23 differential blend price which would serve to attract milk
24 from the west to the east or from other origins to the
25 east.

1 Q. Okay. What demand point in the south -- in the
2 east of present Order 7 is having difficulty attracting
3 milk supply so that you need to break present Order 7 to
4 get more milk moving to the east?

5 A. Okay. I don't have -- I don't know of any that
6 is not able to get an adequate supply of milk, but, again,
7 I would argue that that's a consequence of negotiated
8 incentives over and above the Federal Order minimums that
9 make that possible.

10 And the Federal Order would serve a stronger role
11 if there were blend price differences between the two
12 areas.

13 Q. Okay. But you don't know of any particular
14 problem in the eastern portion of Order 7, but you have
15 called attention repeatedly to the problem in the St. Louis
16 area. Isn't that the main point of the whole proposal?

17 A. Well, the St. Louis is an example, again. The
18 people in St. Louis can buy milk at stores because there
19 are negotiated incentives over and above the minimum
20 Federal Order values.

21 The Federal Order values do not provide adequate
22 incentives to move milk that's already pooled from an area
23 of abundance to an area of less abundance.

24 Q. And isn't it correct that the main point of
25 Proposal 5 is to attempt to address that problem in the St.

1 Louis area?

2 A. It would decrease the incentives to bypass St.
3 Louis to go into the western portion of what is now Federal
4 Order Number 7, and it may increase the incentives to pull
5 milk into the eastern portion of what is now Federal Order
6 7.

7 THE COURT: Break at this time to allow the
8 reporter to get some documents out, and we'll be back by
9 3:15.

10 (Off the record at 3:00 p.m., and reconvened at
11 3:15 p.m.)

12 THE COURT: On the record.

13 MR. BESHORE: With Your Honor's permission, for
14 purposes of clarifying the question with respect to
15 Tennessee, I would yield to Mr. English, if I may.

16 THE COURT: Oh, all right.

17 MR. ENGLISH: Actually, it may involve Kentucky,
18 too, but ...

19 Charles English. Your Honor, I beg your
20 indulgence. I apologize to everybody, especially
21 Mr. Beshore, but also the Government, and to Mr. Christ.

22 REDIRECT EXAMINATION

23 BY MR. ENGLISH:

24 Q. Mr. Christ, you write the testimony, right?

25 A. Yes, I wrote the testimony.

1 Q. And it's my job to review it, and I missed
2 something.

3 A. Well, it was my job to be accurate, and I missed
4 something.

5 Q. Okay. So in reference to the questions asked by
6 Mr. Beshore about Tennessee on page 1, what is the accurate
7 answer?

8 A. Okay. The proposal as published in the Notice of
9 Hearing is correct. To the degree that my testimony
10 disagrees with that, the Notice of Hearing is correct.

11 I will read the Tennessee counties that we
12 propose to include in the new Federal Order 94. They would
13 include Benton, Carroll, Chester, Crockett, Decatur, Dyer,
14 Fayette, Gibson, Hardeman, Hardin, Haywood, Henderson,
15 Henry, Lake, Lauderdale, McNairy, Madison, Obion, Shelby,
16 Tipton and Weakley.

17 That means the counties in Tennessee would be
18 divided be among three orders, some that are now in Order 5
19 would remain there. The counties I read would become part
20 of Federal Order 94, and the remaining Tennessee counties
21 that are in Order 7 would remain in Order 7.

22 Q. And Nashville, in particular, would stay in Order
23 7.

24 A. Nashville would stay in Order 7.

25 THE COURT: The material that you read from,

1 maybe get it to the reporter so that she can have the
2 correct spelling of all those counties because I had some -
3 - are you okay with that?

4 THE WITNESS: Yeah, I just circled the counties.

5 THE COURT: Let me give that over to you. He
6 circled the counties. I think you can read that to write
7 it in.

8 And then do you need that back?

9 THE WITNESS: No.

10 THE COURT: Okay. That's yours then. Those are
11 the counties. Thank you.

12 Back on the record.

13 MR. ENGLISH: Your Honor, before I yield back to
14 Mr. Beshore, and let me just finish, because it turns out
15 that in identifying this issue, I have belatedly realized
16 something else, and let me see if I can explain as well
17 enough for the record as I can and then explain what I
18 propose to do.

19 When Dean Foods and Prairie Farms submitted
20 proposals to the Department, they included two proposals,
21 one to divide up 7 and create a new 94 and the old 7, but
22 also to create a new Lower Midwest Order, Order 50, using
23 an old number that was Order 50, that would have taken
24 portions of Order 5, Order 7 and what is 32 and made a new
25 Order 50.

1 The Department, for its own good and sufficient
2 reasons, declined to hear that proposal at this time, and
3 in the Department's defense, they called me several times
4 to ask, you know, where all these things should be listed
5 based upon they were not going to take that proposal, and
6 I, through oversight or otherwise, was unable to respond.
7 And as a result, there are probably some counties in
8 Kentucky, the very far western portion of Kentucky, which
9 need to be examined, first by ourselves, and then on brief,
10 vis-a-vis how they would end up should the Secretary adopt
11 Proposal 5 and not Proposal 1 because there may be some
12 counties in western Kentucky that may be sort of left
13 hanging out there as a result.

14 And that is entirely my responsibility. I will
15 try to give notice to people in advance of briefing,
16 especially Mr. Beshore, of what our position would be, but
17 it literally looks a little odd on the map if you look at
18 it as to what might end up being left in Order 7.

19 THE COURT: Well, let me look at the Government
20 table. They had problems with that, that we're not
21 addressing certain counties specifically by name, but they
22 will be addressed on brief?

23 MS. DESKINS: It don't think we have any problem
24 with that. Of course, the preference is to know what those
25 counties are so if there's anyone here who wants to object

1 again as to --

2 MR. ENGLISH: Well, let me -- again, I don't know
3 how it's going to come out, but I can tell you which
4 counties are probably in question.

5 And, for the record, you know, the line drawn up
6 through Tennessee basically followed the Mississippi
7 border, basically the Tennessee River, and if you continued
8 on up the Cumberland River into Kentucky, what would be
9 west of that, I think, are the counties that are in
10 question.

11 I do not have an answer today, but those are the
12 counties that would be in question, and they would appear
13 to be in Kentucky. Ballard, McCracken, Marshall, Graves,
14 Calloway, Carlisle, Hickman and Fulton.

15 THE COURT: All right.

16 MR. ENGLISH: Those would be the counties that
17 would be, you know, at least in question based upon the
18 fact that the Department didn't hold one piece and did hold
19 another piece and were grateful for having what we have,
20 and I take full responsibility.

21 THE COURT: All right.

22 MR. ENGLISH: And I also thank Mr. Beshore for
23 allowing me to clarify that.

24 MR. BESHORE: It have a suggestion. Perhaps the
25 confusion could be completely solved if Proposal 5 were

1 withdrawn?

2 THE COURT: Yeah, that's one way to take care of
3 that.

4 MR. ENGLISH: Yeah. I no longer thank
5 Mr. Beshore for anything.

6 No, we are not withdrawing Proposal 5.

7 THE COURT: All right.

8 CROSS-EXAMINATION

9 BY MR. BESHORE:

10 Q. Mr. Christ, you mentioned in your direct
11 testimony in questions from Mr. English your occasional
12 advocacy of direct delivery differentials.

13 A. Yes.

14 Q. Okay. Can you tell us a little bit about how
15 direct delivery differentials work.

16 A. Well, direct delivery differentials have existed
17 in other orders in the past -- the Chicago Order had it for
18 awhile -- where milk that was actually delivered to a fluid
19 processor received payment out of the pool before the blend
20 price was calculated, and I'll just give you a hypothetical
21 example. Let's --

22 Q. I'm sorry. Funds for that direct delivery
23 differential were contributed to the pool by the receiving
24 handlers, were they not?

25 A. I'm not sure if that's the case in all cases, but

1 that would be one mechanism where a surcharge would be paid
2 by the receiving handlers, and that money would be
3 distributed to the people who shipped the milk.

4 Another mechanism that would work equally well is
5 simply that some of the money that's in the basic pool, the
6 producer settlement fund, would first be paid to those
7 producers whose milk was directly delivered to a pool
8 distributing plant, and the remainder then would be used to
9 calculate a residual blend price.

10 Q. Okay. In any --

11 A. These are just options. None of that is being
12 proposed today.

13 Q. Okay. But the problem of St. Louis, getting back
14 to that, that's been discussed and highlighted could be
15 addressed by a direct delivery differential of the type
16 that's been in, you know, Philadelphia, that was in
17 Philadelphia or Detroit. They're the only ones I'm aware
18 of over the years. Could it not?

19 A. That's a mechanism that could be considered.
20 There are other things, like balancing payments and
21 subsidies (indiscernible). So far, we have not resolved
22 the problem of providing adequate incentives to get milk to
23 move within an order to fluid distributing plants.

24 Q. Okay. Let's go -- let's get back to your
25 proposed Order 94. Have you calculated with the

1 utilization is likely to be for that proposed --

2 A. No, It haven't. I've given my general impression
3 that there would be more milk relative to the Class I
4 demand in that part of what is now Order 7 than there would
5 be in the eastern part of what is now Order 7.

6 Q. Okay. So the utilization -- if the blend price
7 would go down, the utilization would go down. That's one
8 utilization.

9 A. That's what I would expect, yes.

10 Q. Okay. And the Class III utilization that's
11 presently in Order 7 would overwhelmingly be -- you would
12 expect that it would overwhelmingly be associated with
13 Order -- new Order 94.

14 A. More of it than the average in Order 7.

15 Q. Okay. And that would -- if presently there is an
16 annual average in Order 7 in 2003, according to Exhibit 41,
17 page 2, if there was roughly 18 percent Class III in Order
18 7, new Order 94 would have, perhaps, 30 percent Class III
19 utilization.

20 A. It -- It can't define the magnitude. It would be
21 greater than the average for existing Order 7.

22 Q. Okay.

23 A. But It don't --

24 Q. Have you attempted to estimate that magnitude?

25 A. No, It have not attempted to estimate that.

1 And -- okay.

2 Q. Okay. Now, most of the Class III utilization in
3 Order 7 is associated -- as Mr. Hollon testified, it's
4 associated with the cheese plants in southern Missouri and
5 Arkansas, correct?

6 A. Yes.

7 Q. And you'd expect that, therefore, just by
8 geographics, most of that milk would be pooled on the new
9 Order 94, correct.

10 A. Yes. And I know there is some cheese production,
11 you know, in the east, but not very much.

12 Q. If you assume with me that you're going to
13 have -- would the Class I sales in present Order 7 be
14 roughly split 50/50 between new Order 7 and new Order 94
15 under your proposal?

16 A. Let me make a rough estimate based on the
17 population of the areas.

18 I think I have a rough estimate of the population
19 of the new Order 94 area, and I think it would be around 12
20 million. I think that is well below half the population of
21 the existing Order 7, which means Class I sales would not
22 be distributed evenly, that more of them would be in the
23 east and less of them would be in the west.

24 Q. Okay. So there would be -- in that case, the
25 utilization could be substantially less in Order 94 than in

1 Order 7, isn't that correct?

2 A. Yes, it would be substantially less unless milk
3 were to respond to the differential incentives. I would
4 expect that the blend price would be higher in the east
5 than it would be in what is now the western part of Order
6 7, and some of the milk now associated with plants in the
7 western part of Order 7 would become associated with plants
8 in the eastern part of Order 7, and that would moderate
9 that.

10 You would have more milk shifting to the
11 relatively higher value market than is the case today.

12 Q. So in common production areas, you'd now have, in
13 all likelihood, three blend prices instead of two.

14 A. Yes.

15 Q. Order 5, Order 7 and Order 94.

16 A. Yes. Yes. And it would be reasonable for the
17 milk to reallocate based on these different incentives.

18 Q. How often do you think it would reallocate?
19 Monthly?

20 A. It would be based -- from my own experience with
21 this, probably the people who make those arrangements would
22 try to forecast the relative values and then respond to
23 their forecast. Because typically you make an arrangement
24 with a buyer, a milk bottler, for example, over longer
25 periods of time. Most of my arrangements were at a minimum

1 of annual.

2 Q. Now, when you have more smaller pools, you've got
3 greater changes in blend prices, do you not?

4 A. Between markets, yes, you'll have changes in
5 blend prices. You would not change the relationship of
6 blend prices within each order, but you would change them
7 between orders.

8 Q. Okay. And in new Order 94, you're going to have
9 less than half the Class I sales in present Order 7 and the
10 bulk of the -- assume with me you're going to have most of
11 the current cheese utilization in Order 7 pooled on Order
12 94.

13 A. That is if and only if the suppliers do not
14 respond to the improved incentives to go east.

15 Q. Well, it's a matter of where they -- where the
16 milk can be pooled, is it not?

17 A. Yes, but the pooling standards would be the same
18 east or west.

19 Q. Okay. Well, if you've got a cooperative supply
20 plant that's a cheese plant, okay, pooled on Order 7 now,
21 supplying the entire region, both the -- both the western
22 portion of current Order 7 and the eastern portion of
23 current Order 7, where is that plant going to be pooled
24 under your program?

25 A. Okay. In the very short run, it will be pooled

1 at the same plant where it's being pooled now, which --

2 Q. No, the plant --

3 A. -- It would guess is more likely to be -- if it's
4 pooled at a distributing plant regulated under Order 7, it
5 doesn't matter which distributing plant, the -- the effect
6 of pooling is the same.

7 And if it's pooled in a plant, for example, in
8 the western portion now, the supplier may have to
9 reconsider where he wants to pool it under the split order.

10 Q. Well, are you familiar with the current Order 7
11 provisions and what they provide with respect to the
12 pooling of cooperative supply plants?

13 A. Yes. Yes.

14 Q. Are they pooled -- is the plant pooled on the
15 basis of --

16 A. Well, the plant is pooled on the basis of 60
17 percent of its producer milk being delivered to pool
18 distributing plants.

19 Q. Sixty percent of the plant's producer milk?

20 A. No. Sixty percent of the cooperative's producer
21 milk. But that is just one alternative mechanism for
22 pooling.

23 Another would be simply to pool as a 9C co-op
24 without pooling the plant. Or pooling as the operator of a
25 pool supply plant and not identified as a cooperative

1 plant.

2 Q. Have you explored, Mr. Christ, the provisions of
3 Orders 7 and 94 with respect to whether those kinds of milk
4 poolings and -- would be possible?

5 A. Yes, It have.

6 Q. Okay. And whether they would be efficient?

7 A. Yes.

8 Yes. I guess it depends on what term you apply
9 efficiently. The most efficient way to supply distributing
10 plants is take the milk from the farm, tanker loads, and
11 deliver it to a pool distributing plant.

12 If you're trying to increase the amount of milk
13 pooled, you would -- you would maybe run it through a pool
14 supply plant. Have some of it delivered to a pool supply
15 plant, some of it diverted to an unpool plant and then 50
16 percent delivered to a pool distributing plant. You would
17 get more pooling power that way than you would by pooling a
18 cooperative plant.

19 Q. Now, let's assume that we have at least 30
20 percent Class III utilization in the new Order 94 instead
21 of 18 percent.

22 A. Okay. I'll accept that.

23 Q. Okay.

24 A. But It don't know what it will be.

25 Q. Would it not be the case that that blend price

1 would move in greater -- move up and down more -- with more
2 volatility with the movements of the cheese market than it
3 does at present?

4 A. No, because the Class I price in both proposed
5 new orders would be driven by the same index price. It
6 might be --

7 Q. I'm talking about the blend price.

8 A. -- the Class III or the Class IV, whichever is
9 higher.

10 Q. I'm talking about the blend price.

11 A. The blend price --

12 Q. What is the blend price?

13 A. Yes. The blend price would be -- no, I'm not
14 sure of that. If the Class I price is driven by Class --
15 by cheese, you have to answer -- add the Class I to the
16 Class III to get the impact of the cheese price.

17 Q. Listen to my question again.

18 A. Okay.

19 Q. Okay? If a market is 30 percent Class III --

20 A. Yes.

21 Q. -- rather than 18 percent Class III --

22 A. Okay.

23 Q. Okay? And the Class I prices remain the same --

24 A. Remaining the same relative to the cheese price
25 or relative to --

1 Q. They're the same. You know, they're the same.

2 A. Okay.

3 Q. We're not doing anything with Class I prices.

4 A. But they do move with respect to the cheese
5 price.

6 Q. Okay. But the Class I prices remain the same.
7 We're not changing Class I prices at all.

8 A. Okay.

9 Q. We're just changing the utilization -- the
10 percentage of the pool that is Class III and, therefore,
11 priced directly on the cheese market.

12 A. Yes, I'm with you.

13 THE COURT: Just for clarification, you're
14 changing the Class III percentage but changing it from
15 what? The Class I or the Class IV?

16 MR. BESHORE: From -- no, no. I'm changing it --
17 oh, as to where the utilization comes? Out of Class I.

18 THE COURT: It's going to come out of Class I.
19 Okay.

20 BY MR. BESHORE:

21 Q. Your Class I utilization is going to go down.

22 A. And Class IV -- III will go up is what you're --

23 Q. Class III is going up.

24 A. Okay. I'm with you.

25 Q. Now, isn't it the case that that blend price is

1 going to be more volatile with respect -- more connected to
2 movements in the cheese market than it was before and,
3 therefore, more volatile?

4 A. Only to the extent that the Class I price is
5 driven by the Class IV price rather than the Class III
6 because the Class I price, I would expect to move in
7 harmony with the Class III price as long as the Class III
8 price is the higher of the Class III or Class IV.

9 So if all -- Class III and Class I would move up
10 and down together as long as the Class III price is the
11 Class I driver.

12 But yes, you are correct, and I agree with you if
13 the Class I price is driven sometimes by the Class IV
14 price.

15 Q. Now, let's talk about the transportation -- the
16 change in transportation credit funds that would be -- that
17 would occur if you've got three orders in the southeast
18 area rather than two or one.

19 You're familiar with the information that's been
20 presented with respect to the current variations in
21 payout --

22 A. Yes.

23 Q. -- of the transportation credit funds.

24 A. Yeah, It saw the evidence that was presented
25 earlier.

1 Q. Wouldn't there, in all likelihood, be three
2 different rates of payout if you've got three different
3 pools rather than two?

4 A. Okay. As I recall from the evidence that's been
5 submitted, the Appalachian Order pays out a hundred
6 percent, and as I stated in my testimony, I think the rate
7 of payout will be smaller in the eastern portion of the
8 market and the dollars paid in would be greater because of
9 the greater amount of Class I sales in that portion of the
10 existing Southern Marketing Area.

11 So the pay-ins at the seven cent rate, or
12 whatever rate, would be greater than they are now per
13 (indiscernible) producer milk, and the rate of payout would
14 be less because the differences in Class I prices between
15 the origin and the destination are likely to be greater,
16 whereas milk moving from southwest Missouri or from New
17 Mexico into the western portion of what is now Order 7, the
18 Class I price differentials are -- the difference between
19 the two is smaller.

20 So I think that there would be a deficit in -- or
21 the area that would have the most difficulty making the
22 payments would be the western portion.

23 Q. Would new -- would production from your new Order
24 94 area that is delivered -- that's outside the new Order 7
25 area, that's delivered to plants in the new Order 7 area,

1 be eligible for transportation credits?

2 A. Yes, they would, and in that case, the rate of
3 payout may be greater, again because of the smaller
4 differences in the Class I prices.

5 Q. But you're going to be paying out transportation
6 credits on a lot more milk, are you not?

7 A. Well, if my argument earlier that the eastern
8 portion of Order 7 will attract more milk than it does now,
9 yes, that's correct.

10 Q. And all that milk that it's attracting which is
11 outside its market area would be subject to payments of
12 transportation credits under your proposal.

13 A. If it's not pooled. If it is pooled, then it
14 would not be subject to transportation payments. If it is
15 pooled -- if it's not pooled, yes, but ...

16 Q. Wouldn't the incentive of the marketer be to
17 collect the transportation credits?

18 A. It think the value on pooling milk is probably
19 greater than the value of the transportation credits. Now,
20 compensating for transportation cost is an incentive to get
21 milk to the bottling plant, and a higher blend price at the
22 destination is an incentive to get the milk to the bottling
23 plant.

24 But I've argued that that's inadequate to cover
25 the cost of transportation and probably is inadequate even

1 if you include the transportation credit.

2 But the third piece is the milk I keep at home
3 and am able to pool and get, for example, an extra 81 cents
4 of blend price, that adds to the value of making that
5 shipment. And so I may want to be pooled rather than make
6 spot shipments.

7 Q. So in your view, Mr. Christ, there would be
8 greater markets -- market efficiencies in the southeast if
9 the organization responsible for marketing in the entire
10 area had three sets of producer qualification provisions to
11 meet, three sets of blend prices to juggle, three
12 transportation credit pools to calculate whether they get
13 paid out or not and at what prorate, and it was responsible
14 for marketing milk to that entire area and had all those
15 additional complexities to relate to.

16 Efficiency would be enhanced.

17 A. Okay. The pooling provisions, for example, touch
18 base, where there would be two, one for the -- the same as
19 the current Appalachian Order and the same provisions in
20 the other two,

21 But yes, the pooling agency or the marketing
22 agency would have to calculate how each producer is doing
23 in each of those markets, and he would have three blend
24 prices.

25 But the reason you would have three blend prices

1 would be to give market information to the supply
2 organization as to which market to deliver more milk to and
3 which market to deliver less milk to.

4 Q. Is it your -- is there something, some
5 information that Dean Foods has as a buyer in all these
6 areas in the southeast that suggest that their current
7 supply organization doesn't have enough market information
8 to get milk to your plants when you need it, as you need
9 it?

10 A. It's my belief that they get the milk when they
11 need it and where they need it. However, the incentives
12 are provided by negotiated terms over and above the federal
13 (indiscernible)

14 My proposal would improve the incentives provided
15 by the federal milk order.

16 Q. So you think you could get the milk -- the same
17 milk when you need it, where you need it, at a lower price.

18 A. I'm not sure it would be lower price or not. It
19 would -- more of the incentives would be provided by the
20 federal milk order, and a smaller portion of the needed
21 incentives would be provided through negotiated
22 arrangements.

23 Q. Well, if you didn't gain in prices and you made
24 the world a lot more complicated for your supplier, what
25 have you achieved?

1 A. Well, what we've achieved is the Federal Order
2 filling the objectives stated in the Act, and that is to
3 assure an adequate supply for fluid use.

4 Now, that exists --

5 Q. You've got that already.

6 A. We've got that. There's plenty of milk in the
7 United States to service all the fluid needs.

8 The breakdown occurs in providing the incentives
9 to get it to the right place at the right time.

10 The milk does get to the right place at the right
11 time, but it's based on negotiated arrangements outside of
12 the federal milk order. The federal milk order by itself
13 is not achieving what I consider an efficient result.

14 MR. BESHORE: Okay. Thank you.

15 THE COURT: All right. Other questions? Any
16 other questions?

17 Yes. Ms. Carter.

18 CROSS-EXAMINATION

19 BY MS. CARTER:

20 Q. Antoinette Carter with the USDA.

21 Just to clarify, you stated that you're
22 testifying in opposition to Proposals 1 and --

23 A. Just to 1.

24 Q. Just to 1. Do you have a position on Proposals
25 2, 3 and 4?

1 A. It gave up my Notice of Hearing. Can you just
2 recite the context of each of those?

3 Q. Certainly. Proposal 2 would combine --

4 THE COURT: Just a second. Let's just go off the
5 record for a second.

6 (Off the record and reconvened.)

7 THE COURT: On the record again. Okay.

8 THE WITNESS: Proposal Number 2, combining the
9 fund balances in the producer settlement fund, that would
10 be unnecessary if our Proposal Number 5 is adopted.

11 BY MS. CARTER:

12 Q. Okay. Go right ahead.

13 A. Okay. Proposal Number 3 that would include
14 certain unregulated counties and independent cities in the
15 State of Virginia, my client has no position on Proposal
16 Number 3.

17 Proposal Number 4, unregulated counties in
18 Virginia, again, my client has no position on Proposal
19 Number 4.

20 Other -- did I cover them all?

21 Q. Yes, you did.

22 A. Okay. Thank you.

23 Q. If your Proposal Number 5 is adopted, what do you
24 recommend happen with regards to the transportation credit
25 balancing fund, the funds that -- the remaining balances in

1 that fund, as well as the administrative assessment,
2 producer settlement fund and the administrative assessment?

3 A. That's a question I haven't considered, but I
4 think an equitable way to handle it would be simply to
5 divide it on the basis of Class I sales in the two areas.
6 That's -- the milk -- the money originated with -- based on
7 Class I sales, and maybe just distribute it based on the
8 last six months or something of Class I sales in the two
9 territories.

10 Q. If It understand your statement and your
11 testimony thus far correctly, one of the reasons that
12 you're proposing Proposal Number 5 is to provide greater
13 incentives to move milk to where it's needed.

14 A. That's correct.

15 Q. Are there any other criterias you believe the
16 Secretary needs to consider in determining if the new order
17 should be formed?

18 A. Okay. There is evidence in the record introduced
19 by Southern Milk showing circles around distributing
20 plants, and that exhibits very little overlap between the
21 territory we propose for Order 94 and the territory we
22 propose for Order 7, so I think you should consider the
23 level of overlap of distribution between fluid processors
24 in the two territories.

25 I think a lesser concern would be the overlap of

1 milk procurement because clearly there are a few areas
2 of -- for example, southwest Missouri would service a
3 variety of destinations. Southwest Missouri at one time
4 was a major source of supply for St. Louis. At another
5 time, it was a major source of supply for Dallas. At the
6 current time, it's a major source of supply for both the
7 western and eastern portion of Federal Order 7.

8 So I think there exists these sources of milk
9 which will respond to the market that has the greatest
10 need, so I would give lesser emphasis to the overlap in
11 milk production, but overlap in distribution would be worth
12 considering.

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

14 THE COURT: Other questions? Mr. Stoker?

15 CROSS-EXAMINATION

16 BY MR. STOKER:

17 Q. Randal Stoker, USDA. Just one quick question on,
18 let's see, I guess it's page 2 of your statement.

19 The last sentence in the third paragraph from the
20 bottom, where it says the disincentive of increased
21 transportation costs increases faster than the incentive of
22 the greater location value of the blend price, do you have
23 any data or analysis to support that statement?

24 A. Okay. Well, let's consider milk moving from --
25 let's say southwest Missouri into Atlanta as an example. I

1 don't know the distance, but it would be relatively easy to
2 look at the Federal Order location map to determine how
3 much difference in blend price is available between those
4 two -- the origin and the destination and, second, to
5 calculate the likely transportation costs at, let's say, a
6 dollar a loaded -- or two dollars a loaded mile would be a
7 reasonable number, and deduct from that the value of the
8 transportation credit.

9 And my belief is, without having made the
10 calculation, is that the net cost of transportation
11 probably will rise faster than the difference in blend
12 price.

13 MR. STOKER: Okay. Thank you.

14 THE COURT: Any questions? Mr. English?

15 THE WITNESS: Let me -- let me back up to the
16 last question. That's -- reduction in the net
17 transportation cost would only occur with milk that is not
18 normally pooled in this market. If milk is pooled in this
19 market, the transportation credit is not available, so the
20 distance, I think, would be much greater.

21 REDIRECT EXAMINATION

22 BY MR. ENGLISH:

23 Q. Mr. Christ, you were asked a number of questions
24 by Mr. Beshore with respect to the pooling of milk on these
25 respective orders. Remember those?

1 A. Yes.

2 Q. As the Secretary is evaluating proposals and as
3 briefs come in, to the extent that there might be
4 provisions in the old Order 7 that might be left over if 94
5 were adopted that would limit the ability of those plants
6 that are presently in Missouri to pool on Order 7, those
7 could easily be adjusted in order to permit those plants
8 the same opportunity to pool on Order 7 they have today.

9 A. Yes, and an example of that is the market
10 administrator has flexibility in adjusting the shipping
11 percentages for pool supply plants and the diversion
12 limits. The market administrator has the opportunity to do
13 that.

14 Q. But, for instance, if Order 7 has a provision in
15 it that says that a co-op marketing plant -- a co-op plant
16 located in the marketing area has certain opportunities, we
17 could, either on brief or discussion, the Secretary on her
18 own initiative could permit a plant located in the adjacent
19 marketing area, that's to say Order 94, that is a
20 cooperative plant to have some opportunity to pool on Order
21 7 in order to encourage milk to pool there.

22 A. Yes, that's one of the options that would be
23 available. And I would encourage greater flexibility in
24 these kind of pooling arrangements, again, to get the milk
25 to the right place at the right time.

1 Q. And you were asked a number of questions, or
2 maybe not a number, but a few questions from the
3 Government's side with respect to what the motivations
4 were, and also Mr. Beshore asked questions, it is a
5 combination of things that have been discussed in this
6 record, correct? That it's the desire to be able to move
7 milk to where it's needed and blend price differences,
8 correct?

9 A. Well, they're interconnected.

10 Q. Right.

11 A. The blend price differences will encourage the
12 delivery of milk where it's needed.

13 Q. And Dean Foods and Prairie Farms has submitted
14 that their proposal would address multiple disorderly
15 marketing conditions.

16 A. It would address disorderly marketing conditions
17 outside of the southeast area. It would address -- or it
18 would not make the situation worse in other parts of the
19 national milk order system. It may make the situation
20 better in other parts of the national milk order system.

21 Q. But going to the discussion you had with
22 Mr. Beshore about blend prices, if the western part of what
23 is now Order 7 has a lower blend price, going back to our
24 discussion, your conclusion would be in sort of reverse
25 that the -- what's left over Order 7 would have a higher

1 blend price than it has today?

2 A. Yes.

3 Q. And that would be a blend price that would then
4 be closer to the blend price in Order 5?

5 A. Yeah. All else being equal, the blend price in
6 the Appalachian area would not change.

7 Q. And Mr. Beshore suggested in his questions, last
8 questions to you, that having three separate orders is
9 somehow inefficient. If that's what he was suggesting --

10 A. Well, the -- as I understood his suggestion, that
11 the complexity of managing a supply for three areas, a
12 common supply for three areas, would be greater than
13 managing a common supply for three areas -- or for two
14 areas, incrementally yes. But my experience is that these
15 things can be modeled and dealt with.

16 Q. And, in fact, in years past, you've dealt with
17 multiple orders.

18 A. Yes. Yes.

19 Q. And you were asked some questions by Mr. Beshore
20 about whether or not you'd ever really sold milk in high
21 utilization markets. Upon reflection, do you have any
22 comments about Order 32 and Order 50?

23 A. Yes. Before Federal Order Reform, both Order 32
24 and Order 50 were relatively high utilization markets, not
25 compared to the southeast or Florida, but relatively high

1 compared to the upper midwest and Chicago regional. In
2 fact, the utilizations were, well (indiscernible) around 65
3 percent and a little higher in Order 50.

4 Q. Similar percentages that are present in the
5 southeast and Appalachian today.

6 A. Yes. Similar percentages that exist here now.

7 Q. And, of course, that's no longer the utilization
8 we've got in St. Louis, right?

9 A. No.

10 MR. ENGLISH: Thank you.

11 THE COURT: Any more questions?

12 Anything more for Mr. Christ?

13 You're free to go, sir. Thank you very much.

14 THE WITNESS: Thank you.

15 THE COURT: Mr. English.

16 MR. ENGLISH: Before the next witness, Your
17 Honor, sort of in logical sequence, if I may?

18 THE COURT: Sure.

19 MR. ENGLISH: I'd like to take official notice of
20 some materials, and I always like to explain why I'm taking
21 official notice of it.

22 THE COURT: Sure.

23 MR. ENGLISH: I would like to take notice of
24 producer milk by state and county for Order 32 data that is
25 available from the market administrator of Order 32 on the

1 internet at www.fmmacentral.com. Specifically, there is a
2 six-state marketing data database and a 162-page annual
3 report, for the purpose only of looking at producer milk by
4 state and county in Order 32 as pooled on Order 32.

5 THE COURT: For what years?

6 MR. ENGLISH: 2000, 2001 and 2 -- I believe the
7 data is for December 2000, December 2001 and 2000, December
8 2002. The December 2003 data is not yet up. If it is up
9 by the date of briefing, I'd like to take official notice
10 of that as well.

11 THE COURT: We'll let you do that. That's
12 granted.

13 MR. ENGLISH: In addition, while there is more
14 limited data, Order 6 maintains data on its website from --
15 and I'd like the data from 2000 through 2003 -- for volume
16 of producer milk. It is not broken down. It is just total
17 for the reasons discussed with the market administrative
18 representative. That is found at www.fmmatlanta.com back
19 slash H-I-S-T-O-R-I-C-A-L percentage --

20 THE COURT: That was --

21 MR. ENGLISH: -- two zero bulletins, B-U-L-L-E-
22 T-I-N-S.

23 THE COURT: I'm sorry --

24 MR. ENGLISH: And that is the volume of producer
25 milk for monthly 2000 to 2003.

1 THE COURT: All right. I'm sorry I interrupted.
2 Okay. Thank you.

3 MR. ENGLISH: In addition, Your Honor, there's
4 been reference to producer milk data from NASS, the
5 National Agricultural Statistics Service. They also
6 publish on a monthly basis milk production data, and it is
7 referred to as Report DA1-1, parenthesis, month for the
8 year -- month as a numerical -- one two -- for instance,
9 for December '03, it would be 12-03, and that is -- and
10 that was issued on December 17th, 2003 for November data.

11 So I would like to take official notice for 2000
12 through 2003, which would take us to December 17, 2004, to
13 have the December 2003 data, and it's by state.

14 THE COURT: All right. Well, we'll take
15 official notice of both of those, the Order 6 and the NASS
16 data.

17 MR. ENGLISH: And finally, Your Honor, Hoard's
18 Dairymen (phonetic), a longstanding -- to my knowledge, the
19 longest-standing agricultural publication in the United
20 States, publishes yearly, usually in July -- and It believe
21 it is published in July, so the most recent data would be
22 July 2002 -- data on co-ops, the largest co-ops by name,
23 the number of producers and their milk marketings, and I'd
24 like to take that -- official notice of that information
25 for 2000 --

1 THE COURT: Anybody have any problem with that
2 one?

3 All right. Official notice is taken.

4 MR. ENGLISH: And that's all I have, Your Honor.
5 Thank you.

6 THE COURT: All right. Fine.

7 Let's go off the record a second.

8 (Off the record and reconvened.)

9 THE COURT: All right. Mr. Hollon again.
10 Back on the record.

11 I presume I'll make the statement 66 and Exhibit
12 67?

13 MR. BESHORE: I'm sorry. What -- what are the
14 numbers?

15 THE COURT: The exhibit will be 66 -- I'm sorry,
16 the statement will be 66, and the tables will be 67.

17 (Exhibits 66 and 67 marked.)

18 THE COURT: All right. On the record.

19 You called the witness to the stand. You've
20 given me a copy of a statement by Mr. Hollon which we mark
21 for introduction as Exhibit 66, and it's also some tables,
22 and they'll be marked for identification as Exhibit 67.

23 ELVIN HOLLON,
24 having been previously duly sworn, was examined and
25 testified as follows:

1 BY MR. RICCIARDI:

2 Q. Okay. Mr. Hollon, let's turn first to the four-
3 page set of tables marked as Exhibit 67. Could you explain
4 the first page of Exhibit 67.

5 A. Exhibit 67 is designed to get some way to try to
6 measure the potential milk attraction from the proposal
7 that Mr. Christ referred to. Isn't that Proposal 7?

8 Q. 5.

9 A. Proposal 5. Because there is no way to construct
10 a credible blend price analysis. The market administrator
11 declined to do it, and the data necessary to do that can't
12 be done in a credible way.

13 Nonetheless, we wanted to try to get some idea of
14 what the ability for that order to attract milk might be,
15 so we used a construction that's outlined in this table,
16 and this table in no way constructs a blend price, but it
17 does take some comparisons of differentials, utilizations
18 and transportation costs to try to construct a methodology
19 that would see the proposed new order might be -- might be
20 able to attract milk at the order values.

21 Q. Okay. The top line of the first page of Exhibit
22 77 references a DFC proposal. Is that Dean Foods Company?

23 A. Yes.

24 Q. And you're referring to then Proposal 5.

25 A. Correct.

1 Q. Okay. Now, the methodology that you have used,
2 could you walk us through that, please.

3 By the way, is this the best -- we don't have any
4 blend prices. The market administrator couldn't give us to
5 them -- could not calculate them.

6 A. Correct.

7 Q. Or release them. None have been provided by any
8 other witnesses.

9 A. Correct.

10 Q. Is this the best possible methodology, in your
11 judgment as a milk marketer and a milk marketing expert, to
12 evaluate the economic effects of this proposal?

13 A. That was the reason why we put it together --

14 Q. Okay.

15 A. -- was that there was not a way to do it
16 otherwise.

17 Q. Okay. Now, explain the methodology then.

18 A. The top half of the page is a generic example,
19 and the bottom half is what we would consider an actual
20 example and is reproduced in the table itself.

21 So the methodology we presumed was at some origin
22 supply point, there would be a differential, in this
23 example \$2, and in the origin point, a Class I utilization,
24 so that a producer who supplied milk at the origin point
25 could expect his blend to be reflective of 60 cents, or a

1 \$2 differential in 30 percent of that milk being used in
2 Class I, he'd have 60 cents in his hand at home.

3 To the potential destination point, that had a
4 hypothetical differential of \$3, a destination point
5 utilization of 70 percent, and then the hypothetical return
6 then at that point would be \$3 times 70 percent, or \$2.10.

7 So on the surface, there would be a dollar
8 fifty's worth of attractiveness, or 2.10 minus 60 cents.
9 However, in our hypothetical, if it cost \$2.50 to transport
10 the milk there, that dollar fifty gain was quickly turned
11 into a dollar's worth of loss.

12 Or running those calculations through -- and,
13 again, this is on --

14 THE COURT: Let me just stop you for a moment.

15 THE WITNESS: Yes, sir.

16 THE COURT: I'm having trouble with some of this,
17 but the origin point differential, what does that mean?

18 THE WITNESS: Well, how about if we use an actual
19 example and try it that way.

20 THE COURT: You want to go through the actual
21 example?

22 THE WITNESS: Yes, sir.

23 THE COURT: You think that will clarify the
24 evidence? Go ahead.

25 THE WITNESS: I hope so.

1 If you had a load of milk that was in Roswell,
2 New Mexico, and it was pooled on the Southwest Order, a
3 proxy or a reasonable utilization for the Southwest Order
4 before 2003 would not be a good example because there was a
5 good bit of depooling that went on that year. But
6 historically, utilization would be 43 percent Class I.

7 So the blend price in that order would be the
8 differential times how much milk was sold at that price, or
9 90 cents.

10 BY MR. BESHORE:

11 Q. The differential here is the Class I differential
12 at Roswell, New Mexico.

13 A. At Roswell. As published in all orders, there's
14 the Class I differential in all locations.

15 Q. Okay.

16 A. And so the 43 percent would be the order -- the
17 order's differential, and he would have 90 cents in his
18 hand.

19 Q. Okay. And if that milk was then delivered to
20 Baton Rouge?

21 A. At Baton Rouge, the differential is \$3.60. A
22 Class I utilization in Baton Rouge in our example was 60
23 percent, so there would be a return of \$2.16.

24 So on the surface, you would say, "Well, instead
25 of getting 90 cents in Roswell, It think I'd like to sell

1 my milk in Baton Rouge and get \$2.16. That's a more
2 attractive price."

3 But it cost \$3.45 to get there, so --

4 Q. That's an actual cost?

5 A. That's an actual cost based on mileages and a
6 transportation rate, I think, of \$1.90, which is a
7 reasonable transportation rate per mile per the market.
8 You'd have \$2.19 negative -- \$1.85? Sorry. \$1.85. You have
9 a \$2.19 negative return, so you wouldn't do that at order
10 values.

11 Q. Okay. Now, the --

12 THE COURT: How did you get 2.19?

13 THE WITNESS: Okay.

14 THE COURT: Did you subtract from 2.16 from
15 3.45?

16 THE WITNESS: No, sir.

17 THE COURT: Because it doesn't come out to --

18 THE WITNESS: Took 2.16 minus 90.

19 THE COURT: Pardon?

20 THE WITNESS: Took two -- let's go -- for this,
21 let's go back up to the examples. I can do that one in my
22 head.

23 THE COURT: Okay.

24 THE WITNESS: \$2.10 minus 60 cents is a buck and
25 a half.

1 THE COURT: Yeah.

2 THE WITNESS: And then from there, my haul bill
3 of 2.50. At 1.50 minus 2.50, I've lost a dollar.

4 THE COURT: Oh, I see. Okay. There's a figure
5 you've got to sort of --

6 THE WITNESS: You're right. That's -- that's not
7 clear unless you happen to be the one who did it the first
8 time. I understand.

9 THE COURT: All right. You've got to bring --
10 you've got to bring another number down. Okay.

11 THE WITNESS: Yes, sir.

12 THE COURT: All right.

13 BY MR. BESHORE:

14 Q. Now, the 60 percent Class I utilization at Baton
15 Rouge in the actual example, how did you come up with that?

16 A. We made an estimate in our judgment of what that
17 utilization might be.

18 Q. In that new Order 94.

19 A. In that new order. And we applied whatever --
20 our collective judgment in the Southern Marketing Agency.

21 Q. Okay. So that's your methodology and an actual
22 example on the first page of Exhibit 67.

23 A. Okay.

24 Q. What are the following pages?

25 A. So then we took our example, so if we just -- if

1 we stick to Roswell and Baton Rouge, that would be the
2 first line of the next page, and we kept -- we kept the
3 utilizations in that first box, 43 percent at Roswell, 43
4 percent at Roswell. We took a milk supply at Liberal,
5 Kansas -- that would be in the Central Order -- 28 percent
6 Class I utilization. We took a milk supply in Rensselaer,
7 Indiana. That would be the Mideast Order. We used a proxy
8 of 40 percent. Springfield, Ohio, Mideast Order, we used a
9 proxy of 40 percent. Lancaster, Pennsylvania in Order 1,
10 we used a proxy of 42 percent for the utilization.

11 Q. Now, those, what you call the proxy utilizations,
12 are those reasonable?

13 A. It's a reasonable -- reasonable estimates of the
14 Class I utilization in the Federal Orders that contain
15 those markets.

16 Again, it's something that would be pre-2003,
17 when there was a large amount of depooling going on.

18 Q. Okay. And are those locations, Roswell, New
19 Mexico, Liberal, Kansas, Rensselaer, Indiana, Springfield,
20 Ohio and Lancaster, Pennsylvania, actual location points
21 for the delivery of supplemental milk outside the southeast
22 into the southeast?

23 A. Those would be points that would be supplemental
24 milk supplies that might be attracted to the southeast and
25 that are actual delivery points that we do on a frequent

1 basis.

2 Q. Okay. Now, the second column, this Class I
3 differential, I take that is the actual existing Class I
4 differential at those locations.

5 A. That is correct.

6 Q. Go ahead then.

7 A. Next column is the multiplication of those two.
8 The next block -- the next box then takes destination
9 point, so going back to the first line, Baton Rouge is a
10 destination point of 60 percent utilization estimate. That
11 would be for the Lower Mississippi Valley Order. Made the
12 best -- our best guess of what we thought that might be.

13 \$3.60 differential because that wouldn't change.

14 There's no proposal to change that.

15 Multiply those two, you've got \$2.16.

16 It's 895 miles between the two. At \$1.85 per
17 loaded mile, you'd have a haul bill of \$3.49, and the
18 difference --

19 Q. \$3.45?

20 A. I'm sorry. \$3.45. And so does the haul exceed
21 the return? It does. And at the end of the day, you'd be
22 left at the starting point of our scenario of \$2.19
23 negative, so you could say that today Baton Rouge, at a 60
24 percent utilization, could not attract milk from Roswell at
25 strictly order values.

1 Work your way down, and the various
2 multiplications, and, you know, multiply themselves out.
3 All the numbers are strictly multiplications.

4 So the box on the lower half of the page then
5 says, well, what happens if the resulting market is more
6 attractive in terms of utilization and our estimate of 60
7 percent is incorrect or is higher than that?

8 So we increased our five destination points by
9 five percentage points each, did all the same
10 multiplications, and the line all the way over in the right
11 says still would not attract a milk supply at order values,
12 although the differences are smaller. But they're all
13 still negative, and in most cases significantly negative.

14 Q. If you turn to the third page of Exhibit 67,
15 which also has two charts --

16 A. That's correct.

17 Q. -- what do these depict?

18 A. The top half says okay, instead of being -- you
19 started out at 60, you went up to 65, well, we can be 70,
20 10 percentage points, and we performed all the
21 multiplications, and we're still negative at this point in
22 all cases.

23 And so finally we included one more example.
24 Well, let's assume hypothetically, which, you know, would
25 not be the case, but that they were all a hundred percent

1 Class I.

2 Q. That's the bottom --

3 A. Bottom box.

4 Q. -- box. Okay.

5 A. So at Baton Rouge in the new Lower Mississippi
6 Valley Order, it would be a hundred percent Class I
7 utilization on the remaining Federal Order 7 in Atlanta or
8 on the remaining Federal Order 5 in Winston-Salem at a
9 hundred percent Class I, and under that example, in our
10 cases, here, three of them turned out to be an attractive
11 possibility. The remainder are negative, but you had to
12 get, you know, somewhere between 80 and a hundred percent
13 Class I to get there in order to do that.

14 The last table is all of the same
15 multiplications, just sorted a slightly different way. In
16 these boxes, each box represents a different utilization.
17 This one is sorted by markets.

18 And so our conclusion from this is that if you
19 could theorize a hundred percent utilization order, you
20 might get to a case where the blend would be attractive
21 enough to move milk solely on its own, but not likely.

22 Q. Okay. So the fourth page of Exhibit 67 is a --
23 is the same data on the second and third pages, just
24 ordered in a different fashion.

25 A. That's correct. There's no new information

1 presented there, no new computations.

2 Q. Okay. Would you proceed then with your
3 statement, Exhibit 66, addressed to Dean Foods and Prairie
4 Farms Proposal 5.

5 A. Testimony in opposition to the Prairie Farms and
6 Dean Foods proposal promulgating a Mississippi Valley
7 Order. Elvin Hollon, Dairy Farmers of America. And while
8 this was done (indiscernible) also representing the
9 proponents of SMA.

10 This testimony is presented in opposition to the
11 Prairie Farms and Dean Foods proposal promulgating a
12 Mississippi Valley Order and is offered on behalf of
13 Arkansas Dairy Cooperative Association, Dairy Farmers of
14 America, Inc., Dairymen's Marketing Cooperative, Inc., Lone
15 Star Milk Producers, Inc., Maryland and Virginia Milk
16 Producers Cooperative Association and Southeast Milk, Inc.

17 The promulgation of the new Mississippi Valley
18 federal milk marketing order designated as Potential Order
19 94, Proposal 5 in the Notice of Hearing, from the Arkansas,
20 Louisiana, Mississippi, Missouri and western Tennessee
21 portions of the current Southeast Federal Milk Marketing
22 Order Number 7, and the resulting decrease in the size of
23 the Southeast Order would not lead to greater logistical
24 efficiencies in milk marketing, would worsen problems
25 associated with the current Order Number 5 and 7

1 transportation credit balancing funds, would worsen problems
2 of disrupted blend price differences in the area, would not
3 increase incentives to attract milk to the Southeast and
4 would be in conflict with the consolidated history and
5 order consolidation measures set forth by numerous of the
6 previous decisions issued by the Secretary consolidating
7 orders in the southeastern United States.

8 Logistical marketing issues. The establishment
9 of the Mississippi Valley Order and the reduction in size
10 of the Southeast Order would make efficient movement of
11 milk supplies within the southeast more difficult, not less
12 difficult. The splitting of the current Southeast Order
13 would require further segregation of milk supply within the
14 southeast by requiring milk to be assigned to smaller
15 geographic areas.

16 As has been previously demonstrated, substantial
17 volumes of milk, both inside and outside the current Order
18 7 Marketing Area, are delivered to and capable of being
19 delivered to multiple plant locations within the current
20 Order 5 and Order 7 areas.

21 The requirement that these milk supplies used in
22 common among the Southeast and Appalachian Order be even
23 further segregated to meet the separate producer
24 qualification requirements of another order would negate,
25 or worse, reverse the logistical efficiency gains

1 cooperatives have made since consolidating their supply of
2 milk to the southeast.

3 Milk supplies, both within and outside the
4 marketing area, which can serve both Orders 5 and 7
5 currently suffer the need to meet producer qualification
6 requirements on both orders in the fall, 16 days, 10 days
7 on Order 7, plus 6 days on Order Number 5.

8 The promulgation of yet another order would
9 result in another layer of producer qualification
10 requirements, bringing the real touch base requirements for
11 producers that can serve all three orders to an
12 unfathomable 26 days in a short supply season, 10 days on
13 Order 7 plus 6 on Order 5 plus 10 days on Order Number 94.

14 This 26-day touch base requirement would mean
15 milk that supplies all three orders could not be diverted
16 more than 4 days in a 30-day month, meaning the milk must
17 be delivered to pool plants even during half the weekends
18 during the month.

19 The effective increase in the producer
20 qualification requirements would increase the cost of
21 supplemental milk supplies to the cooperatives procuring
22 the reserve supply of milk by effectively limiting the milk
23 that could be pooled on the orders.

24 Any increase in the cost of supplemental milk
25 supplies would not necessarily be borne proportionally by

1 all market suppliers.

2 The establishment of a Mississippi Valley Order
3 and the reduction in size of the Southeast Order would not
4 provide any additional economic incentive to move milk into
5 the southeast from reserve supply areas. While the
6 theoretical increase in Class I utilization percentage
7 which might occur in the remaining Southeast Order may well
8 generate a higher blend price than may be generated under a
9 consolidated environment, this increase in blend price to
10 producers delivering producer milk to pool plants located
11 in Alabama, Georgia and middle Tennessee, the remaining
12 Southeast Order area, would come at the direct cost to
13 producers delivering producer milk to pool plants located
14 in the new Mississippi Valley Order.

15 The proponents of the new Mississippi Valley
16 Order have indicated they expect no new pool plants to be
17 regulated as a result of their proposal. Therefore, no
18 additional Class I milk would be attached to the remaining
19 Southeast Order and the new Mississippi Valley Order than
20 currently exist in the Southeast Order, nor would any Class
21 II, Class III or Class IV milk currently associated with
22 the Southeast Order not be associated with the Mississippi
23 Valley Order or the current Southeast Order.

24 The proposed diversion limits and expected pool
25 plants under the remaining Southeast Order would suggest a

1 higher Class I utilization than a new Mississippi Valley
2 Order. Thus, any division of the current order's Class I
3 milk among the two orders with the same milk attached to
4 the two orders as was attached to the single current
5 Southeast Order will create a direct income transfer
6 through blend price increases to producers delivering
7 producer milk to pool plants regulated in the remaining
8 southeast area at the expense of producers delivering to
9 plants regulated by the proposed Mississippi Valley Order.

10 In short, this would be robbing Peter -- that is,
11 producers supplying plants regulated under the proposed
12 Mississippi Valley Order -- to pay Paul -- that is, the
13 remaining Southeast Order.

14 While an increase in the blend price to producers
15 delivering producer milk to pool plants located in Alabama,
16 Georgia and middle Tennessee may appear to offer an
17 additional incentive to deliver producer milk to these
18 plants, at the same time there is created a counter
19 disincentive to deliver milk to plants regulated by the new
20 Mississippi Valley Order.

21 As we have demonstrated, all the territory
22 covered by the current Appalachian and Southeast Orders is
23 a deficit of milk for Class I use. The establishment of
24 economic incentives to move milk between two deficit areas
25 is completely without merit. Both areas need milk from

1 outside the area.

2 Further, the establishment of an order of higher
3 Class I utilization and, thus, higher blend price in the
4 remaining Southeast Order does not increase blend prices
5 enough to encourage milk supplies to move into the
6 southeast without the aid of order values to provide the
7 necessary economic incentives to get milk to move to the
8 southeast.

9 Exhibit 67 demonstrates that even at 100 percent
10 Class I utilization in the proposed Southeast Order, over
11 order prices are necessary to attract milk to the
12 southeast.

13 Transportation credit balancing fund. The
14 establishment of the Mississippi Valley Order and the
15 reduction in size of the Southeast Order would fail to
16 address the need to establish a consolidated transportation
17 credit fund for the southeast which would equalize handler
18 Class I costs across the region and would equalize
19 supplemental milk costs through a common payout from the
20 transportation credit balancing fund.

21 In addition, increasing the number of orders, and
22 thereby the number of transportation credit balancing
23 funds, will increase incentives to move milk in economic
24 ways to maximize collections from the multiple
25 transportation credit funds.

1 Prior Federal Order hearings and decisions. The
2 establishment of a Mississippi Valley Order and the
3 reduction in the size of the Southeast Order does not
4 address the order consolidation factors enumerated by the
5 Secretary in the Order Reform decision. Separate
6 Appalachian, Mississippi Valley and Southeast Orders do not
7 address the substantial and increased producer milk overlap
8 among the order areas, nor does the proposal recognize the
9 substantial and increasing Class I sales overlap among the
10 areas as detailed earlier in this hearing record.

11 Further, the proposal does not reflect the
12 significant and substantial increases in the consolidation
13 and coordination of the milk supply for the southeast nor
14 the substantial consolidation which has occurred in the
15 processing sector.

16 The establishment of a Mississippi Valley Order
17 and the reduction in the size of the Southeast Order would
18 not recognize the importance of the development of new
19 large dairy farms outside the marketing area which have
20 become an important source of supply for the southeast.

21 As was demonstrated previously, this milk
22 supplies many plants located within the current Appalachian
23 Order and plants which would likely be pooled on both the
24 proposed Mississippi Valley Order and the proposed
25 remaining Southeast Order.

1 The proponents of the establishment of a
2 Mississippi Valley Order and the reduction in size of a
3 Southeast Order state that more orders are needed, not
4 fewer. The marketing goals and objectives that would be
5 satisfied from the promulgation of the Mississippi Valley
6 Order seem to be predicated on the supposed need for a
7 greater number of orders in parts of the country outside
8 the southeast.

9 Even if there is evidence of the need for smaller
10 and more numerous orders outside the southeast, this does
11 not provide any evidence that more orders are needed in the
12 southeast. The Secretaries throughout the history of
13 Federal Orders in the southeast recognize the increasing
14 interplay of milk supplies among the southeastern states,
15 as well as Class I sales competition between handlers in
16 the region. The Secretary rejected a similar proposal for
17 a Southeastern Order structure which was submitted in the
18 Order Reform process.

19 The proponents of the establishment of a
20 Mississippi Valley Order and the reduction in the size of
21 the Southeast Order do not address or answer the market
22 overlap which existed when -- in central Arkansas and
23 Mississippi -- Memphis, Tennessee market areas were
24 included in the Southeast Order. This market overlap
25 continues to exist.

1 Likewise, the overlap that existed when the
2 southern Missouri portion of the then Southwest Plains
3 Market Area was included in the reformed Southeast Order
4 2000 continues to exist.

5 Market structure issues. The establishment of a
6 Mississippi Valley Order and the reduction in the size of
7 the Southeast Order would not recognize that the current
8 area covered by the Southeast and Appalachian Orders is a
9 single fluid milk market, supplied as a single market, with
10 many plants serving common customers in geography. The
11 establishment of a Mississippi Valley Order and the
12 reduction in size of the Southeast Order would increase the
13 number of Federal Order blend prices generated for the
14 southeast, and, therefore, the disorderly blend price
15 differences and the concurrent market disruptions would
16 increase.

17 The proponents of the Mississippi Valley Order
18 and a reduced-size Southeast Order recognize in their
19 proposal the interplay of supply between the current
20 orders, 1005, 1007 and the subsequent orders, 1005, 1007
21 and 1094, by limiting the producers eligible for
22 transportation credits to those not located with any of the
23 three proposed orders.

24 If the proponents of the Mississippi Valley Order
25 and a reduced-size Southeast Order area believe that the

1 Mississippi Valley Order was truly separate and distinct
2 from and a reserve supply area for the Southeast and
3 Appalachian Order areas, then producers located within the
4 Mississippi Valley Order area should be eligible to receive
5 transportation credits when their milk moves into either
6 the Southeast or the Appalachian Orders.

7 The proponents of the Mississippi Valley Order
8 and a reduced-size Southeast Order recognize in their
9 proposal the similarity of the proposed Mississippi Valley
10 Order to the proposed -- to the Southeast Order by
11 proposing pool plant qualification provisions and producer
12 qualification requirements identical to the current
13 Southeast Order. If the Mississippi Valley Order was truly
14 separate and distinct from and a reserve supply area for
15 the Southeast Order and the Appalachian Order areas, then
16 the pool plant qualification provisions and producer
17 qualification requirements for such an order would be less
18 restrictive than either the Southeast or the Appalachian
19 Order.

20 If it is true that the proposed Mississippi
21 Valley Order is not truly separate and distinct from and a
22 reserve supply area for the Southeast and Appalachian Order
23 areas, then no justification exists for a different
24 producer blend pricing in the Mississippi Valley Order
25 versus either the Southeast or the Appalachian Orders.

1 Administrative issues. The establishment of a
2 Mississippi Valley Order and the reduction in size of the
3 Southeast Order would increase the number of Federal Order
4 reports of receipts and utilization, as well as the payroll
5 reports that cooperatives and processors must file with
6 market administrators, which would increase cooperative and
7 handler administration costs.

8 Likewise, an increase in the number of blend
9 prices announced by the market administrator would increase
10 order administration costs.

11 Lack of support for the proposal. The
12 establishment of a Mississippi Valley Order and the
13 reduction in size of the Southeast Order is not supported
14 by a majority of the producers supplying the market, much
15 less supported by two-thirds of the producers supplying the
16 order.

17 Cooperative service area. The cooperative
18 service -- the cooperative members serving the current
19 Southeast and Appalachian Order areas would continue to
20 serve the plants pooled under the proposed Mississippi
21 Valley Order and the proposed remaining Southeast Order
22 area. The common supply for the two marketing areas
23 proposed by Prairie Farms and Dean Foods would have to be
24 split in order to accommodate the separate orders' producer
25 qualification requirements despite the cooperative

1 suppliers to the area consider the entire area to be a
2 single fluid milk market and the cooperative suppliers to
3 the area serving the market in just that way. This
4 represents a case where cooperative service area must be
5 considered as a significant order consolidation factor.

6 Summary. Dividing the current Southeast
7 Marketing Area into a new Mississippi Valley Order and a
8 smaller Southeast Order would, number one, impose
9 substantial challenges to the ability for marketers of milk
10 to efficiently supply the southeast with milk, would
11 establish multiple producer blend prices to producers
12 supplying a single fluid milk market, would increase
13 handler and order administration costs, would perpetuate
14 and likely worsen equity issues in the operation of the
15 transportation credit balancing fund system and would not
16 create any new true incentives to move milk into the
17 southeast.

18 Q. Mr. Hollon, I'd like you to turn to page 6 of
19 your statement.

20 A. Yes.

21 Q. Exhibit 66, page 6.

22 The first line at the top, when you read this,
23 did you mean to state uneconomic ways to maximize
24 collections?

25 A. That's what I meant to read.

1 Q. Okay. You may have said economic.

2 A. That would have been in error.

3 Q. It's intended to be as in the printed statement.

4 A. That is correct.

5 Q. Okay. Now, can we go back to Exhibit 67, the last
6 page of it. We've been at this awhile, and I think I
7 steered off the track here.

8 A. Okay.

9 Q. Page 4 of Exhibit 67, in fact, contains some
10 analysis of deliveries from and to different -- from
11 different origin points and different destination points
12 than the prior page, does it not?

13 A. That is true. My mistake.

14 Q. Okay. Well, joint error, I think.

15 Can you describe what is shown on the last page
16 of Exhibit 67. Are these points of origin within new Order
17 94 to --

18 A. Yes.

19 Q. To where?

20 A. To -- this would be in the proposed Mississippi
21 Valley Order to points in the remainder Order 7.

22 Q. Okay. And take the top line. What does it show?

23 A. Springfield, Missouri, which would be in the -- a
24 supply location within the new -- or in the proposed
25 Mississippi Valley Order. And if you go through all of the

1 same comparisons with that as the delivery point to
2 Atlanta, if that would be a new supplemental supply source
3 or market supply source in the current comparison of
4 differentials, all the way up to if Atlanta were a hundred
5 percent, which would be four lines down, it would still be
6 a negative number, so the new order blend price would not
7 by itself, you know, attract a new blend value.

8 Q. Even if it was a hundred percent utilization.

9 A. Even if were a hundred percent.

10 Q. Okay. So the movements -- in your view, the
11 analysis needs to be used to determine whether a revised
12 structure such as set out in Proposal 5 would attract those
13 milk movements or not.

14 A. As stated by the witness, you know, their
15 chief -- their main objective -- their only or main
16 objective or one of their objectives was to better attract
17 a milk supply into the market. And, again, we don't think
18 a good analysis can be done of projecting blend prices, so
19 this comparison, in our view, shows that it doesn't serve
20 the purpose of doing it on order values alone.

21 MR. BESHORE: Okay. Thank you. Mr. Hollon is
22 available for other questions.

23 THE COURT: All right. Fine. Let's see if there
24 are some questions.

25 Mr. English.

1 CROSS-EXAMINATION

2 BY MR. ENGLISH:

3 Q. Mr. Hollon, Charles English for Dean Foods and
4 Prairie Farms.

5 A. Yes, sir.

6 Q. Let me see if I can understand 67 enough so that
7 maybe on brief I can reproduce it or do some things.

8 A. Okay.

9 Q. The Roswell differential is the differential
10 presently at Roswell, correct?

11 A. Yes, sir.

12 Q. And the Roswell Class I utilization, is that the
13 Class I utilization from the Southwest Order --

14 A. Yes.

15 Q. -- 43 percent?

16 And the haul origin to destination, how is that
17 number derived? The \$3.45.18 A. Should be the miles between the two times \$1.85
19 divided by 500? 480, you know -- we either used a 48,000-
20 pound truckload or a 50,000-pound truckload, and so I think
21 it was a 48,000 pound.22 Q. Times the number of miles using what as the
23 guide? What guide, mileage guide, did you use?24 A. You know, we did this over the phone, and I did
25 some parts and -- which parts -- what did we use for

1 mileage, do you remember?

2 Trip Maker, the Rand McNally Trip Maker Program.

3 MR. ENGLISH: Once upon a time in a hearing
4 long, long ago. Your Honor, I don't know what number
5 they're up to, but we've always used -- always being a
6 relative term since I've only been doing this 20 years --
7 the Household Goods Carrier's Guide -- Bureau for
8 standardizing miles. I just want one standard, and I'm
9 happy to use -- if they want to tell us what they use and
10 it's readily available, that's fine, but I guess in order
11 to be able to reproduce this and since this is the first
12 time I've had a chance to see it to be able to brief it,
13 I'd like to at least establish something and use one common
14 -- the Household Goods Carrier's Guide has been
15 traditionally the mechanism used in Federal Order hearings.
16 I literally --

17 THE WITNESS: I have no objection. They're all
18 reasonably close. They're just not all exact.

19 THE COURT: All right. So we'll take official
20 notice of the --

21 MR. ENGLISH: Of the most recent one, and I will
22 try to tell people which one I used in the brief.

23 THE COURT: All right.

24 BY MR. ENGLISH:

25 Q. Now, if, in your actual example, or in your

1 methodology, if the utilization in both the origin market
2 and the destination market are the same as opposed to the
3 utilization and the origin market being lower than the
4 Class I utilization for the destination market, would you
5 agree that under those circumstances, the loss, the net
6 Class I return negative, would be larger?

7 A. So if 43 were also 60?

8 Q. Yes.

9 A. Okay. Without having my calculator, I would say
10 that whatever the numbers come out to be, they would come
11 out, so no real --

12 Q. Well, let's just look at that philosophy and talk
13 about this for a minute.

14 A. Okay.

15 Q. If they were both 60 percent, the Roswell number,
16 as opposed to being 90, would be \$1.26?

17 A. Yes.

18 Q. \$1.26 is now 36 cents more than it was. You say
19 you subtracted that number from the 2.16?

20 A. Yes.

21 Q. Okay. So now you're subtracting a bigger number
22 from the 2.16.

23 A. Yes.

24 Q. And then you subtract that result from the 3.45,
25 correct?

1 Or you can subtract the 3.45 from that number,
2 correct?

3 A. Right. So on -- all the way across the page, you
4 know, the example that's there, 90.3 cents?

5 Q. Right.

6 A. And \$2.16?

7 Q. Right.

8 A. That difference is \$1.257.

9 Q. Right.

10 A. And \$1.257 minus --

11 Q. Okay. I'm on the first page.

12 A. Huh?

13 Q. I'm still on the first page.

14 A. Oh. Well, they're the same.

15 Yes.

16 Q. Okay. So that the result negative would be
17 larger under those circumstances, correct? By that 36
18 cents?

19 A. Yes.

20 Q. And you have not included transportation credits
21 in any way here to show a compensation for moving
22 supplemental milk, correct?

23 A. No. Our view of the proposal is they were the
24 same all the way through, so it would be consistent in any
25 example.

1 Q. But in terms of an incentive, one would at least
2 have to include that in looking at the incentive.

3 A. (indiscernible) but wouldn't they be equal all
4 the way through? If you've got a dollar under one and
5 there's no proposal to change them, you get a dollar under
6 another.

7 Q. Bottom line, they're not -- the whole idea of
8 transportation credits are not in Exhibit 67, correct?

9 A. That is correct.

10 Q. Okay. So now let's go to the last page, and
11 let's assume that Proposal 5 is not adopted and, instead,
12 let's say the Secretary leaves things the way they are,
13 just for current assumption.

14 A. Okay.

15 Q. Let's go down to the bottom category -- or
16 actually any of these. You've now got origins at a
17 percentage Class I utilization that's lower than your
18 destination. Would you agree with me that if Proposal 5 is
19 not adopted and Proposal 1 is not adopted, that as to the
20 current situation -- that is the current situation, right?

21 Right now we have no proposals adopted, so --

22 A. Yeah.

23 Q. -- it might be an easier assumption to think
24 about. Let's think about the current situation.

25 A. Okay.

1 Q. The Class I utilization for both of these columns
2 would then be the same, that is to say for the origin and
3 the destination, correct?

4 A. Yes.

5 Q. And, therefore, every single one of your last
6 columns would be a greater loss than it is under the chart
7 that is Exhibit 67.

8 A. It haven't done that, so -- I can try to work
9 that through and see.

10 Q. Well, didn't we just agree that if the origin
11 percentage Class I utilization and the destination Class I
12 utilization were the same, that as -- that in that event,
13 the loss would be greater than under your analysis?

14 A. Yes.

15 Q. So in every single one of your last column, the
16 status quo for moving milk to the southeast is worse than
17 it would be if Proposal 5 were adopted.

18 A. Again, I'd have to study through some of the
19 examples before I'd want to do that.

20 Q. Turning to page 4 of your testimony, when you're
21 discussing adoptions of Proposal 5, you essentially say the
22 same things, and you say it poetically at one point about
23 robbing Peter to pay Paul.

24 A. Yes.

25 Q. If we substitute the Southeast Order for

1 Mississippi Valley and St. Louis Order 32 for Southeast
2 Order, isn't that what's happening today?

3 A. That? Continue.

4 Q. That the producers who are delivering to plants
5 in Order 32 in St. Louis, in competition with producers who
6 are delivering to plants in Order 7, are in the same
7 situation that you say will result if the Mississippi
8 Valley Order is created.

9 A. Does that say that there would be no new money
10 generated and that --

11 Q. I'm asking you whether your statement could not
12 be applied -- a direct income transfer through blend price
13 increases to producers delivering producer milk to pool
14 plants regulated under the southeast area at the expense of
15 producers delivering to plants regulated by the existing
16 Order 32 for St. Louis. Isn't that statement the same?

17 A. Again, I've not -- in this particular case, I've
18 not given that St. Louis/southeast area -- I've not studied
19 through that, so I don't have the detail readily available
20 to me here. I've gone back and forth and looked at them,
21 so I have no opinion.

22 Q. Okay. Now, in context of your Exhibit 67, and
23 your assertion that there's a disincentive, you,
24 nonetheless, say at the bottom of page 5 and 6 that
25 increasing the number of orders and thereby increasing the

1 number of transportation credit balancing funds will
2 increase incentives to move milk -- now, you say in
3 uneconomic ways -- but you say to move milk to maximize
4 collections from the multiple transportation credit funds.

5 So won't the existence of a transportation credit
6 fund in the Lower Mississippi Valley Order create an
7 incentive to move supplemental milk to that market?

8 A. Where are you at again?

9 Q. Bottom of page 5, top of page 6.

10 A. Oh, sorry.

11 The purpose of that statement, or that sentence,
12 was back to the example that we had in the earlier
13 testimony about moving milk past Atlanta into Greenville.
14 The thought here is that with three orders, you would find
15 more examples to do that and take advantage of those
16 uneconomic movements.

17 Q. But there would be a transportation credit fund
18 in the Lower Mississippi Valley Order that would help move
19 milk into the Lower Mississippi Valley Order, correct?
20 Otherwise, you couldn't collect the money.

21 A. Oh, you mean a transportation fund in the Lower
22 Mississippi Valley Order that would help move milk into --

23 Q. Milk to that order, yes.

24 A. Yes, that's been proposed.

25 Q. And that would have the effect to create

1 incentive to use that fund, and the only way to get the
2 money is to move milk from supplemental supplies into the
3 Lower Mississippi Valley.

4 A. Yes, that's correct.

5 Q. Thank you.

6 Now, on page 7, the large paragraph in the
7 middle, the last sentence, you say the Secretary has
8 rejected a similar proposal for Southeast Order structure
9 which was submitted in the Order Reform.

10 A. Yes.

11 Q. Are you saying there that in Federal Order
12 Reform, the concept of dividing up current Order 7 was
13 rejected?

14 A. Yes.

15 Q. And you would agree the Secretary also rejected a
16 proposal to merge Order 7 and Order 5.

17 A. That is true.

18 Q. And on page 10, referencing producer support.

19 A. Yes.

20 Q. Prairie Farms has producers that would be pooled
21 under the Mississippi Valley Order, correct?

22 A. I'm not certain. Under the Mississippi Valley
23 Order?

24 Q. You're not certain.

25 A. I'm not sure. I think they -- I don't know.

1 Q. Well, you heard the testimony of Georgia and
2 North Carolina producers that say they would --

3 A. Yes.

4 Q. -- well, strike the North Carolina because they
5 opposed but they didn't -- but the Georgia producers
6 indicated support --

7 A. Yes.

8 Q. -- for this idea.

9 A. Yes.

10 MR. ENGLISH: Thank you. I have no further
11 questions.

12 THE COURT: Any questions? Mr. Ricciardi?

13 CROSS-EXAMINATION

14 BY MR. RICCIARDI:

15 Q. Mr. Hollon, It do have a couple of questions on
16 Exhibit 66, which is your third statement at this hearing.

17

18 A. Yes, sir.

19 Q. All right. Page 6. Under the prior Federal
20 Order hearings and decisions section, that full paragraph,
21 and it's really the last clause that I'm interested in in
22 that particular paragraph, but I'll read the sentence.

23 Further, the proposal does not reflect the
24 significant and substantial increases in the consolidation
25 and coordination of the milk supply to the southeast nor

1 the substantial consolidation which has occurred in the
2 processing sector.

3 That's a statement you've prepared and you adopt.

4 The time period that you're talking about for the
5 substantial consolidation which has occurred is after
6 Federal Order Reform, correct?

7 A. Yes.

8 Q. Okay. And are you talking about the Federal
9 Order 5 Area, Marketing Area, and Federal Order 7?

10 A. Yes.

11 Q. Okay. Thanks.

12 Next, let's take a look at page 7. Deals with
13 the first full paragraph on page 7 of Exhibit 66.

14 A. The position that you adopt here -- I'm not going
15 to read it all to you, but basically what you're saying is
16 the proponents of this proposal seem to basically support
17 the reason for the proposal by looking at parts of the
18 country outside the southeast, and so you say even if there
19 is evidence of the need for smaller and more numerous
20 orders outside the southeast, this does not provide any
21 evidence that more orders are needed in the southeast.
22 That's your position.

23 A. That's correct.

24 Q. Okay. Now, with regard to the producer-handler
25 issue, you've taken the position that the Secretary should

1 look to an area in Arizona to try to make determinations
2 for Federal Order 5 and 7.

3 A. That's not a correct characterization.

4 Q. That's part of what you said, isn't it?

5 A. The correct characterization would be that the
6 Secretary should consider things that have happened in the
7 Arizona market as potential to happen in the southeast.

8 Q. So with regard to producer-handler issues, the
9 Secretary should look outside of Federal Orders 5 and 7.
10 With regard to this particular proposal which you are
11 against, the Secretary doesn't need to look outside because
12 they don't need to look at evidence for more orders outside
13 the southeast but only in the southeast, right?

14 A. No, that's not correct.

15 Q. Okay. So I read your statement incorrectly?

16 A. No, you interpreted it incorrectly.

17 Q. Okay. So tell me then how you can intellectually
18 coordinate those two positions.

19 A. Okay. There have been several statements made at
20 this hearing regarding the St. Louis market and the reason
21 for doing things in this market would be its impact on St.
22 Louis. We're saying that that's an incorrect piece of
23 logic.

24 We have said concurrently, at the same time, that
25 there are situations regarding producer-handlers that have

1 happened in other parts of the country and that that can --
2 that logic can be applied.

3 Q. Okay. So, again, you don't want the Secretary to
4 look outside of Federal Orders 5 and 7 in this particular
5 proposal, but you do want the Secretary to look out of --
6 outside of Federal Orders 5 and 7 for the producer-handler
7 issues. That's your testimony, correct?

8 A. Yes.

9 MR. RICCIARDI: Thank you.

10 THE COURT: Questions? Mr. English?

11 MR. ENGLISH: Just to be clear on the record, and
12 it's directly in response to that.

13 RE-CROSS-EXAMINATION

14 BY MR. ENGLISH:

15 Q. On page 6, when you were asked a question by
16 Mr. Ricciardi about consolidation which has occurred in the
17 processing sector, and he said since Federal Order Reform,
18 the evidence in the record is from January 1996 to the
19 present, correct?

20 A. That is true.

21 MR. ENGLISH: Thank you.

22 THE COURT: Any questions? Oh, I'm sorry.

23 Ms. Carter. Ms. Carter, go ahead, please.

24 CROSS-EXAMINATION

25 BY MS. CARTER:

1 Q. Antoinette Carter with USDA.

2 A. Yes, ma'am.

3 Q. It only have one question, and it's just to
4 clarify.

5 Earlier in the hearing, you provided testimony
6 regarding proposed changes to the transportation credit
7 balancing fund.

8 A. Yes.

9 Q. With regard to those proposed changes, are you
10 proposing that the Secretary only consider those changes
11 with regard to your proposed merger proposal, which is
12 Proposal Number 1 or ...

13 A. Okay. So if Proposal 5 were to be -- still -- if
14 this proposal were to be established, then would we support
15 raising the transportation credit balancing fund assessment
16 to a dime, for example? Yes, we would.

17 Q. And -- well, that wasn't really what my question,
18 but thanks for your testimony.

19 A. Okay.

20 Q. But more -- I guess more specifically what I 'm
21 asking is if Proposal 1 were not adopted, are you still
22 proposing that the transportation credit balancing fund --
23 those proposed changes with regards to the transportation
24 balancing fund be adopted for the current Order 5 and 7 is
25 my question?

1 A. Oh. So if the Secretary decided to do nothing
2 with the merger and nothing with splitting them apart --

3 Q. Uh-huh.

4 A. -- but, nonetheless, would we like to see the
5 transportation credit? Okay.

6 Yes.

7 MS. CARTER: Okay. Thank you. That's all I
8 have.

9 THE COURT: Mr. Beshore.

10 REDIRECT EXAMINATION

11 BY MR. BESHORE:

12 Q. Okay. Just a question or two, Elvin.

13 Mr. English asked you a couple of questions about
14 wouldn't having a transportation credit fund in Proposed
15 Order 94 help attract milk into -- supplemental milk into
16 Proposed Order 94.

17 A. Yes.

18 Q. Okay. You've already got a transportation credit
19 fund in that area in current Order 7, correct?

20 A. Yes. That's true.

21 Q. So it's not really adding anything to the mix.

22 A. No, that's correct. It would be nothing new.

23 Q. Now, let me take a run at the St. Louis question.

24 Is it your position that these -- if there is a
25 problem in St. Louis, it shouldn't be addressed by changes

1 in these orders?

2 A. Yes.

3 Q. And it's your reaction, in part, to what you've
4 heard with respect to Proposal 5 that it's addressed to
5 trying to do something with the St. Louis alleged problem.

6 A. Yes.

7 Q. And the comments about addressing problems
8 outside of this area, of St. Louis, that Mr. Ricciardi
9 asked you about was meant in that way.

10 A. Correct.

11 Q. Okay. Now, you've been asked a couple of
12 questions by Ms. Carter and perhaps Mr. English, but most
13 recently Ms. Carter. In the event the Secretary declined
14 to adopt Proposal -- to change the current marketing -- the
15 current order configuration of an Order 5 and an Order 7,
16 would you still want to increase the transportation credit
17 assessment, and you said yes.

18 A. Correct.

19 Q. Okay. Would the same answer apply to extending
20 the marketing area of Order 5 into the counties in
21 Virginia, as represented in Proposal 3?

22 A. Yes.

23 MR. BESHORE: Okay. Thank you. That's all I
24 have.

25 THE COURT: More questions? Anyone?

1 A. Paris, Tennessee.

2 Q. What's your business?

3 A. I'm a dairy farmer.

4 Q. How long have you been a dairy farmer, Michael?

5 A. Since college.

6 Q. And do you have a dairy farm that's located in
7 either one of the Federal Orders that's at issue, 5 or 7,
8 in this particular hearing?

9 A. As it is now, it's Federal Order 7.

10 Q. Now, have you prepared a statement or testimony
11 that you would like the Secretary to consider as part of
12 the hearing and the proposals in the Appalachian and
13 Southeast Milk Marketing Areas?

14 A. Yes.

15 Q. Why don't you go ahead and read that statement
16 now.

17 THE COURT: Which we've marked for identification
18 as Exhibit 68.

19 MR. RICCIARDI: Thank you, Your Honor.

20 THE WITNESS: My name is Mike Sumners. I'm a
21 dairy farmer from Paris, Tennessee.

22 THE COURT: You might want to pull the microphone
23 in towards you a little bit.

24 Okay. Go ahead, sir.

25 THE WITNESS: My father was a dairy farmer. I

1 have been involved in the dairy business from a very early
2 age. I received a degree in Animal Science from the
3 University of Tennessee in 1980, and soon after college, in
4 1981, I began a long-time partnership with a farmer in
5 Franklin, Tennessee.

6 As a partner in Harlin & Sumners Dairy, I began
7 managing a dairy of 84 cows. The herd grew to 250 cows,
8 and in 2001, I bought out my partner and purchased a 450-
9 acre farm in Paris, Tennessee and increased the herd size
10 to 500.

11 I am here today to offer testimony in support of
12 Proposed -- Proposal Number 8. I also opposed the various
13 proposed regulations that would limit the size of producer-
14 handler operations of three hundred million pounds of Class
15 I sales per month, although my statement is directed
16 primarily at Proposal Number 8.

17 I have been an independent dairy producer since
18 1990. In 2001, I signed the independent supply agreement
19 with Dean Foods. Since that agreement was entered into,
20 the agreement has been assigned first to the new Dean Foods
21 and then to Dairy Marketing Services. While many dairy
22 farmers have known that DMS was affiliated with Dairy
23 Farmers of America, this week was the first time I have
24 ever -- I was made aware that my milk was actually marketed
25 by DFA, the testimony that was given. What that actually

1 means, I do not know.

2 My situation is not unique. The ability of the
3 dairy farmer to independently market his or her milk
4 outside the cooperative structure is quickly disappearing.

5 There are fewer and fewer cooperatives each year, fewer
6 processing plants and processing companies today than there
7 were three years ago. Dean Foods has recently announced it
8 will close even more plants.

9 The evidence presented at this hearing in support
10 of the merger of Orders 5 and 7 established that two
11 processing companies control over 40 percent of the pool
12 plants in these orders, and the Southern Marketing Agency
13 is responsible for marketing a huge majority of the milk
14 sold in the Appalachian and Southeast Marketing Areas,
15 which DFA controls the majority of the milk.

16 Even though I have increased my herd size and
17 milk production, milk production has been declining in the
18 southeast. The southeast has been balancing milk plants by
19 bringing milk in from other areas for many years. Federal
20 Orders 5 and 7 both recognized the importance of outside
21 milk to balance when they allowed transportation credits.

22 All of this consolidation, which has even grabbed
23 the attention of the Senate Judiciary Committee, limits the
24 options available to dairy farmers. As it stands today,
25 there are very few choices for dairy farmers to market

1 their milk.

2 The availability of being a producer-handler may
3 be the only alternative that some dairy farmers have other
4 than being associated with cooperatives who have a totally
5 different agenda than independent producers. However, the
6 current regulations in Orders 5 and 7 practically eliminate
7 the producer-handler option as a realistic possibility for
8 a dairy farmer.

9 It is obvious, based on the evidence submitted at
10 this hearing, that the current regulations in the
11 Appalachian and Southeast Marketing Areas are not conducive
12 to the establishment and the prosperity of a producer-
13 handler operation. While I'm sure that this does not upset
14 the cooperatives' representatives here, it should be
15 troubling to dairy farmers and these dairy cooperatives --
16 and farmers that these dairy cooperatives claim to
17 represent.

18 The reason that producer-handlers are a non-
19 factor in Appalachia and the southeast is because this is a
20 deficit market, and the current regulations do not permit
21 the producer-handler to purchase a single ounce of milk in
22 order to balance his supply. The Appalachian and Southeast
23 Orders, along with the Florida Order, are the only Federal
24 Orders that do not allow producer-handlers to purchase any
25 milk with the purpose of balancing. In fact, each of

1 Orders 1, 30, 32, 33, 124, 126, 131 and 135, before it was
2 voted out, permits all producer-handlers to purchase up to
3 150,000 pounds of milk each month.

4 As has been mentioned repeatedly during this
5 hearing, the southeast is particularly prone to seasonal
6 swings in production. Since a producer-handler would only
7 be able to commit to consumers based on the lowest
8 production amount during the course of the year, this means
9 that they would have a 35 to 40 percent surplus to deal
10 with during the flush months. I base this figure on my own
11 personal experience and by comparing the producer milk
12 figures in Exhibit 43, Table 1. That surplus milk is still
13 needed in the marketing area, but the absence of the
14 purchase allowance means it may not be available to service
15 the Class I market.

16 Allowing a producer-handler to purchase milk
17 during the lean months, which would be accountable for at
18 the Class I price, would make being a producer-handler a
19 more viable alternative than it is today.

20 I selected a purchase allowance of 10 percent
21 during the flush months, December through May, and during
22 the remaining months, a purchase allowance that would --
23 that would increase to 30 percent, which would be -- allow
24 the producer-handler to service the majority of the
25 customers serviced during the flush month.

1 However, given the large swings in production
2 experienced in the region of the country, even a 30 percent
3 purchase allowance might be insufficient to compensate for
4 the seasonal drop in production.

5 For the purpose of determining the purchase
6 allowance, I suggest that the market administrator
7 calculate the quantity of -- calculate the quantity of the
8 purchase allowance based on the producer-handler's
9 production in the immediate preceding month.

10 There are no producer-handlers of consequence in
11 these markets today, largely because they cannot balance
12 supply economically. Producer-handlers would be a plus to
13 the marketing area because they would directly service the
14 Class It needs of the market, which are now serviced in
15 large part by milk produced outside the area and shipped in
16 at the expense of local producers and consumers.

17 Producer-handlers also provide fresh milk to the
18 consuming public at a reasonable price. In addition,
19 producer-handlers can service niche markets and small
20 clients, possibly ignored by larger processors. Also,
21 producer-handlers provide competition to the marketplace,
22 which is good for consumers and dairy farmers.

23 In conclusion, the Secretary should adopt
24 Proposal 8 because it permits nominal milk purchases by
25 Orders 5 and 7 producer-handlers, thereby making their

1 establishment and existence in the southeast more
2 realistic. It provides dairy farmers an option to the take
3 it or leave it situation that is now forced on them by the
4 shrinking number of purchasers of milk. It brings the
5 terms of the Section 1007.10(c) more in-line with the terms
6 of the same subsections in other Federal Orders. And it
7 reflects the realities of milk production and balancing in
8 the southeast.

9 Thank you for your consideration of this
10 testimony.

11 MR. RICCIARDI: Your Honor, we'd move the
12 admission of Exhibit 68.

13 THE COURT: It's received.

14 (Exhibit No. 68 received.)

15 MR. RICCIARDI: And at this point, other than
16 questions It may have on redirect examination after
17 whatever cross there is, It don't have any further
18 questions.

19 THE COURT: All right. Other questions?
20 Mr. English?

21 CROSS-EXAMINATION

22 BY MR. ENGLISH:

23 Q. Good afternoon, Mr. Sumners.

24 A. Good afternoon.

25 Q. My name is Charles English, and I'm here for Dean

1 Foods and Prairie Farms, and It just have a couple of
2 questions with respect to the top of page 2 of your
3 statement.

4 A. Page 2?

5 Q. Top of page 2.

6 And this is your discussion in which you state
7 that your independent producer agreement was assigned first
8 to new Dean Foods and then to Dairy Market Services, and It
9 don't want to be complicated about this, but let me start.

10 You're not a lawyer, right?

11 A. Huh?

12 Q. You are not an attorney, a lawyer?

13 A. No.

14 Q. When you use the term assigned your independent
15 contract first to new Dean Foods, what did you mean by that
16 term?

17 A. The new Dean Foods?

18 Q. Yeah. You used the term assigned first to new
19 Dean Foods, and then you say and then, so It assume that
20 also -- and I'm going to get to that later -- that you mean
21 assigned to Dairy Market Services. But when you say the
22 agreement has been assigned first to new Dean Foods, what
23 is it you mean by that?

24 A. The new Dean Foods or the old Dean Foods? Like
25 It said --

1 Q. If you look at your statement, you said the
2 agreement has been assigned first to new Dean Foods. Do
3 you see that statement?

4 A. Okay. Suisse (phonetic) and Dean's merged, and
5 they became a different company.

6 Q. And you're saying that that resulted in
7 assignment of your agreement to new Dean Foods?

8 A. Well, it's passed over to. It may have used the
9 incorrect word. I'm not sure. I'm not a lawyer.

10 Q. It guess that's what I'm getting at. You don't
11 use the word assigned as it may have a special legal
12 meaning, do you?

13 A. No.

14 Q. Now, you then say -- and the verb is repeated,
15 but I take it you mean by your statement that the agreement
16 was assigned later to Dairy Marketing Services. Is that
17 what you mean to say in that statement? Is that what
18 you're saying by --

19 A. Yes.

20 Q. And what do you mean by the term assigned there?

21 A. Well, now, as far as I know, Dairy Marketing
22 Services service that agreement.

23 Q. They service the agreement, correct? That's what
24 you just said. They service the agreement.

25 A. Maybe. I don't really know. I've never been --

1 Q. But you still have a contract with Dean Foods,
2 correct?

3 A. As far as I know.

4 MR. ENGLISH: Okay. That's all I have.

5 THE COURT: Other questions? Mr. Beshore?

6 CROSS-EXAMINATION

7 BY MR. BESHORE:

8 Q. Good afternoon, Mr. Sumners. Marvin Beshore
9 representing Southern Marketing Agency.

10 A. Good afternoon.

11 Q. You have been represented at the hearing here by
12 Mr. Ricciardi. He so announced at the beginning of the
13 hearing, is that correct?

14 A. That's correct.

15 Q. Okay. When did you employ Mr. Ricciardi?

16 MR. RICCIARDI: Objection, Your Honor. It's not
17 relevant, and it also may get into confidential
18 information. I don't think it's important here.

19 MR. BESHORE: That's not confidential.

20 MR. RICCIARDI: Well --

21 THE COURT: I'll sustain the objection. I'll
22 sustain the objection.

23 BY MR. BESHORE:

24 Q. Was Mr. Ricciardi representing you before you
25 came to the hearing?

1 A. Yes.

2 Q. Okay. Is your testimony presented just on your
3 behalf or on anyone else's behalf?

4 A. It's on my behalf.

5 Q. Do you -- do you personally have knowledge of the
6 operations of any of the existing producer-handlers in
7 Order 7?

8 A. Yes.

9 Q. Okay. Can you -- can you tell me -- I have a
10 list of them. Can you tell me which ones you know, know
11 about?

12 A. In Federal Order 7?

13 Q. Yes.

14 A. There aren't any.

15 Q. Well, you said you had knowledge of the
16 operations of producer-handlers.

17 A. You -- I understood you to say I knew what a
18 producer-handler was (indiscernible) I know what the
19 regulations are.

20 Q. Okay. Well, let me ask you this. Do you
21 know -- do you know anything about Rocksprings Dairy in
22 Wildersville (phonetic), Tennessee?

23 A. It know that there is a dairy farm that has a
24 small unit that is bottling its own milk in glass bottles.

25 Q. At the farm.

1 A. At the farm.

2 Q. Okay. And is it your understanding that they
3 bottle their own -- their own milk that they produce, they
4 put into glass bottles?

5 A. It have some information on that unit, but it's
6 just what I've been told by other people. Other than that,
7 I don't -- I know it's small. I know he has a son. I know
8 they do some things. I know they work for the DFA. DFA
9 sold them their milk back at a time. I don't think they're
10 doing that now. But your client would know better than I do
11 what they do.

12 Q. Do you know anything about Wright Dairy in
13 Alexandria, Alabama?

14 A. No.

15 Q. How about Humphrey's Dairy in Hot Springs,
16 Arkansas?

17 A. No.

18 Q. Jackson Dairy in Homestead, North Carolina?

19 A. No.

20 Q. How about Mapleview Dairy -- Mapleview Farm Dairy
21 in Hillsboro, North Carolina?

22 A. No.

23 Q. Okay. Have you investigated the costs of
24 operating as a producer-handler?

25 A. I'm in the process of doing that.

1 Q. Okay.

2 A. It have no figures at this point.

3 Q. Okay. So you have no figures on what balance in
4 costs a producer-handler may or may not have, correct?

5 A. It know it's a significant cost.

6 Q. Well --

7 A. Anybody who's been in the southeast knows it's a
8 very significant cost.

9 Q. Well, you don't have any -- you said you don't
10 have any figures on operating as a producer-handler,
11 correct?

12 A. Correct.

13 Q. Okay. When you say you know the balancing would
14 be a significant cost, what are you -- how are you
15 determining that?

16 A. You can look at figures in Dairy Market News,
17 what (indiscernible) charges are that plants are charging
18 plants and things of that nature. You can look at what co-
19 ops pay their members. And that money goes somewhere.

20 Q. Okay. What does that have to do with what it
21 would cost to be a producer-handler?

22 A. Balancing or producer-handler? Which --

23 Q. A producer-handler. You said -- you said you
24 know a producer-handler --

25 A. Well, you have a big -- you have a supply that

1 you have to maintain.

2 Q. Okay.

3 A. That's almost impossible to do in the southeast
4 with the temperatures the way they are, and the humidity.
5 I've dealt with that all my life.

6 You'd have customers to service, and it's been
7 determined long before today that buying milk and bringing
8 it in is a much more viable way of balancing a plant than
9 it is trying to produce it here and then doing something
10 with it when you don't need the milk.

11 So plants in the southeast today are balanced by
12 milk brought in because it's more economical, not because
13 it costs more.

14 Q. Well, the plants that are importing milk or that
15 are buying milk from other regions are just doing that.
16 They're buying milk, they're not producing it, correct?

17 A. Plants without dairy cows have to buy milk.

18 Q. Right. And how are you translating those costs
19 into the costs of processing and selling the milk you
20 produce on your own farm?

21 A. I'm not sure what you're asking.

22 Q. Well, as a producer-handler, you said you looked
23 at the regulations and your -- of course, your proposal is
24 addressed to this.

25 As a producer-handler, you would not have any

1 cost of buying milk and bringing it in because you would
2 not be permitted to purchase any milk.

3 A. As it is today, there's no fee to purchase any
4 milk. It's my proposal --

5 Q. So you wouldn't have those costs, correct? The
6 cost of purchasing milk and buying paying premiums to buy
7 milk, you wouldn't have if you're a producer-handler,
8 correct?

9 A. No.

10 Q. Well, if you can't -- how would you have costs --
11 if you're not permitted to buy milk, how would you have
12 costs for buying milk?

13 A. You said I wouldn't have costs. I would have
14 costs.

15 Q. Okay. What would your costs be?

16 A. For decent milk?

17 Q. Right. Same as they are now, right?

18 A. My cost production would be confidential, as it
19 is now.

20 Q. Okay. But if you were a producer-handler, it
21 wouldn't be any different than it is now, correct? Stuff
22 costs you the same to run your dairy farm, correct?

23 A. No.

24 Q. Okay. What new costs would you have to produce
25 milk?

1 A. Because I'm not just putting it in a tank and
2 expecting somebody to come pick it up. I'm actually
3 marketing that milk and servicing a demand.

4 Q. Okay. So you'd have the cost of processing it
5 and marketing it, correct?

6 A. That's correct.

7 Q. But instead of getting the blend price, you'd get
8 the price you get for that Class I milk that you sell,
9 correct?

10 A. That would be part of it.

11 Q. Well, you'd get to keep all those Class I that
12 you sold, correct?

13 A. I don't -- I don't know that it's Class I at that
14 point. Class I is in the Federal Orders. That wouldn't be
15 Class I.

16 Q. Well, if you were -- if you're going to be
17 producer-handler, do you plan to bottle the milk that you
18 now produce?

19 A. I would bottle it, yes.

20 Q. Okay. When you bottle it -- and sell it for
21 drinking milk, I assume. Sell it in the bottle to
22 consumers to drink, correct?

23 A. Consumers drink milk, yes.

24 Q. And you want to buy your own milk production and
25 sell it to consumers to drink, correct?

1 A. I want to make it viable for a producer-handler
2 to exist in the Southeast and Appalachian Orders.

3 Q. Okay. And you want to do it yourself, I take it.

4 A. That might be an option, as I stated in my
5 testimony.

6 Q. Okay. Well, did you -- if you don't do it
7 yourself, did you invest the time and money to get this
8 regulation changed for other folks?

9 A. If other folks want to be a producer-handler,
10 yes.

11 Q. Okay. And is it your testimony that that's going
12 to benefit you as a pool producer?

13 A. Yes.

14 Q. In what way?

15 A. Because it would enter competition in the
16 marketplace, and those that are in the regulated industry
17 and co-ops pooling milk, if they don't get it right, then
18 the opportunity to producer-handlers would exist.

19 Q. And your blend price would go down, correct?

20 A. No.

21 Q. Well, if the Class I use that the producer-
22 handlers -- do you understand that producer-handlers are
23 not part of the pool? Do you understand that?

24 A. Yes.

25 Q. And, therefore, their Class I sales aren't

1 included in the blend price that you receive from Dean
2 Foods in your case? Do you understand that?

3 A. Yes.

4 Q. And if there's less Class I, do you understand
5 that your blend price is reduced?

6 A. No.

7 Q. You don't?

8 A. No.

9 Q. Okay.

10 A. Because plants have to pay the price to get the
11 milk to market regardless of what the Federal Order prices
12 are.

13 Q. You presently milk 500 cows, I think you said,
14 correct?

15 A. Correct.

16 Q. Okay. Is your -- does that make your monthly
17 production -- approximately what's your monthly production?

18 A. Well, that's --

19 MR. RICCIARDI: Objection, Your Honor.

20 THE WITNESS: -- confidential, but your client
21 knows.

22 MR. RICCIARDI: That's -- that would be
23 proprietary information. I don't know why he should have
24 to answer that.

25 MR. BESHORE: He can -- he --

1 THE COURT: Well, I think we have 500 cows, and
2 it's not that -- it's not that secret. I think he can tell
3 us how many -- what his pounds are for the cows.

4 Probably Mr. Beshore knows. He probably figured
5 that out himself. He knows a little bit about cows.

6 THE WITNESS: His client knows. If he wants to
7 look it up, they know.

8 MR. BESHORE: Well, that's not part of the
9 hearing record.

10 THE COURT: Yeah.

11 MR. BESHORE: I mean I'm just asking --

12 THE COURT: I mean about what do you put out a
13 month in milk?

14 MR. BESHORE: You don't -- you don't have to
15 answer it. Okay? But --

16 THE COURT: You don't want to answer it.

17 MR. RICCIARDI: And you don't have to answer it.
18 Let me make that decision.

19 BY MR. BESHORE:

20 Q. You don't have to answer it. But let me ask
21 this. And, again, you don't have to give us any
22 proprietary information that you don't care to.

23 Would it not be much less than three million
24 pounds per month?

25 A. It's less than three million pounds a month.

1 Q. Okay. Now --

2 THE COURT: Would it be less than 150,000 pounds
3 per month?

4 THE WITNESS: Let's hope not.

5 THE COURT: Okay.

6 MR. BESHORE: Over 150,000. Okay.

7 THE COURT: All right. I don't know.

8 BY MR. BESHORE:

9 Q. In your statement, you -- can you tell us on your
10 farm what the -- what's the high month of production?
11 April? May?

12 A. It would be March, April, May, one of those
13 months, depending on the year.

14 Q. And the low month is what? September? August?

15 A. August, September.

16 Q. What's the swing from high to low on your farm?

17 A. About 37 percent.

18 Q. Thirty-seven percent?

19 A. Been consistent.

20 MR. BESHORE: Thank you. Thank you, Mr. Sumners.

21 THE COURT: Other questions?

22 Any questions up here? Ms. Deskins?

23 CROSS-EXAMINATION

24 BY MS. DESKINS:

25 Q. I'm Charlene Deskins with the Office of General

1 Counsel at USDA. I was just wondering for Proposal 8, if
2 the Department were to put that in, do you have any idea
3 how many people might want to become producer-handlers?

4 A. If they were treated fairly in the market, I
5 don't think there would be very many that would want to
6 take that risk. If they weren't treated fairly in the
7 market, there would be more.

8 Q. What do you mean by treated fairly in the market?

9 A. In the southeast, if you look at what we get paid
10 and look at how milk's marketed, basically what have is a
11 captive audience in southeast that you pay as little as you
12 can, and then any additional money, you use to bring that
13 milk in, and it's a pretty much a year around deal.

14 If you look at mailbox (phonetic) prices, blend
15 prices and award of charges, which are all public
16 information, plants can be paying over \$2 award price for
17 milk but receiving -- producers in southeast may be
18 receiving blend prices or even below some months if you're
19 a co-op member.

20 That money has to be going somewhere, but it's
21 not coming back to the farmers in the southeast.

22 Q. And also, if the Department weren't to put in
23 Proposal Number 8, would that be a barrier to people
24 becoming a producer-handler in the southeast?

25 A. Put in which proposal?

1 Q. If they weren't to put Proposal 8 in, would that
2 be a barrier to people becoming a producer-handler in the
3 southeast?

4 A. I think it would help. Proposal 8 would help.

5 Q. My question is if it wasn't put in, would it keep
6 people from becoming a producer-handler?

7 A. Yes.

8 Q. And I'm trying to figure why would that be.

9 A. Because if you're going to bring milk -- you'd
10 have to do something with the milk. You'd have to become a
11 producer-handler and make cheese in the winter, which would
12 be two different plants. Or you'd have to dispose of that
13 milk somehow.

14 And your options of being able to purchase milk
15 would be greater than disposing that milk, and, of course,
16 you'd have to maintain a much larger herd size to be able
17 to service your customers through the year because your
18 lowest month in the summer month, that would be the maximum
19 that you could sell. If you're going to have customers
20 that, say, was -- say you were selling a million pounds a
21 month, that means you'd have to be producing --
22 (indiscernible) calculator, but maybe as much as a million
23 and a half through the winter months, and you'd have a half
24 a million pounds of milk that wouldn't qualify for Class I
25 that you would have to do something else with even though

1 they're going to be hauling milk into the market to -- for
2 Class I needs, for the fluid milk needs.

3 But then you're forced to maybe even haul it out.

4 Q. Haul that to mean dispose of it?

5 A. You --

6 Q. Or dump it or?

7 A. Well you wouldn't -- I hope you wouldn't have to
8 dump it, but you would have -- it would have to go into
9 another class. You could go to a cheese plant or -- I
10 guess it can go in Class I -- well, actually, if it is
11 today, it will be allocated into the lowest class
12 (indiscernible) at the plant.

13 MS. DESKINS: Thank you.

14 THE COURT: No other questions? Mr. Beshore.

15 RECROSS-EXAMINATION

16 BY MR. BESHORE:

17 Q. Just your last response to Ms. Deskins,
18 Mr. Sumners. There's nothing in the regulation that
19 prohibits producer-handlers in the order from selling any
20 surplus milk that they -- any milk that they don't wish to
21 process at their own plant to pool plants. I mean you
22 could sell it to bottling plants here. There's nothing that
23 prohibits that, right, just as you indicated?

24 A. As far as I know, that's correct.

25 MR. BESHORE: Okay. Thank you.

1 THE COURT: Other questions? Mr. Ricciardi?

2 REDIRECT EXAMINATION

3 BY MR. RICCIARDI:

4 Q. I just want to ask a couple of things, Michael,
5 based in part upon some questions that were raised of you.

6 Tell us the reasons why you have gone ahead and
7 provided Proposal Number 8 to the Secretary.

8 A. Because -- the main reason, I want to make a
9 producer-handler option in the southeast with -- the co-ops
10 come here (indiscernible) and -- that are all trying to
11 regulate their (indiscernible) and I would like to maybe
12 just step out of all that and market milk, and there's
13 fewer and fewer people to deal with, and as a dairy farmer,
14 if you deal with a co-op, that means their legislative
15 agenda, you're part of that.

16 In my views -- and dairy marketing is not what
17 their -- there are a lot of things they do that I don't
18 agree with.

19 Q. Do you have an opinion as to whether or not you
20 think it's fair at this point under Federal Orders 5 and 7
21 for a producer-handler not to have any type of allowance in
22 terms of purchasing milk when milk would be required to
23 balance?

24 A. Well, if you look at the other orders that do
25 have provisions to buy milk, and these are deficit orders,

1 and they can't buy any milk, that -- it looked like to me
2 it ought to be more alike. And because of the southeast,
3 the heat plus the humidity and big swings, I think what I
4 proposed is more actual than just a straight 150.

5 The 30 percent in the summer months is still not
6 going to get your production up to where it is in the
7 winter months, so you're still going to have to have a
8 reserve that you're going to have to deal with.

9 And it's important to have a reserve if you're
10 selling fluid milk because some days people may diet and
11 they next day they may not, so you -- you're not going to
12 just sell all your milk as fluid if you're a producer-
13 handler.

14 MR. RICCIARDI: I don't have any further
15 questions, Judge.

16 THE COURT: Anything else? Any other questions?

17 Don't appear to be any. Thank you very much,
18 sir, for giving us your testimony.

19 THE WITNESS: Thank you.

20 THE COURT: Is there any other witnesses? Any
21 other testimony? Any other --

22 MR. RICCIARDI: Your Honor, I don't have any
23 other witnesses. As we mentioned when Mr. Herbein was here
24 -- and I'm not waiving my objection to any of this
25 testimony and the use of it. On the other hand, to the

1 extent that this Court is going to order it in from Order -
2 - from the hearings on 131 and 124, we have requested for
3 sake of completeness that we not only have that testimony
4 given in Phoenix, but also the testimony given in
5 Alexandria.

6 And what I've got, Judge -- and it's available on
7 the website. I have gotten a copy, a hard copy, of that
8 testimony, starting with the direct examination of
9 Mr. Herbein by Mr. Beshore, starting at page 2983, and
10 continuing through the end, which is 3057. I don't have
11 copies for everybody, Your Honor, but what I would suggest
12 that we do is mark this as -- I think it's Exhibit Number
13 69?

14 THE COURT: Yes.

15 (Exhibit No. 69 was marked.)

16 MR. RICCIARDI: And it would then be available to
17 everybody on website in any event.

18 THE COURT: All right. I think that's good
19 enough. I have no problem with that.

20 Let me mark --

21 MS. DESKINS: Government has the same objection
22 to it, which is it's from another hearing, and it's not
23 relevant.

24 THE COURT: I understand. But as I understand
25 it, everybody kind of agreed that that would be the way

1 that we would do it. Is that right?

2 MR. BESHORE: Yeah, we have no objection. We
3 agree. The only -- I'm not -- and I haven't seen it, but I
4 accept Mr. Ricciardi's representation that the exhibit is
5 the entirety of Mr. Herbein's testimony the second time at
6 Alexandria.

7 MR. RICCIARDI: And I -- and, Judge, that's the
8 best that we've been able to do, and I believe we have it
9 complete. To the extent that I'm wrong about that,
10 obviously it needs to be supplemented, but I don't think
11 so. I think we got everything.

12 THE COURT: All right. Well, and on brief, you
13 can use any part that you can find on the transcript.

14 I'm going to hand this over -- or somebody's
15 going to hand it over to the -- do it this way. Here you
16 go. Thank you.

17 Off the record for a minute.

18 (Off the record and reconvened.)

19 THE COURT: Yes. Let's go on to Proposal 9.

20 MR. BESHORE: Before we do, just --

21 THE COURT: Oh, okay.

22 MR. BESHORE: -- again, and I accept
23 Mr. Ricciardi's representations, but I want to make sure
24 the record is clear that Exhibit 69, what we have -- what
25 has been accepted is the entirety of Mr. Herbein's

1 testimony, direct and cross and redirect and recross,
2 whatever it might be, at the Alexandria session of the
3 hearing on Arizona/Las Vegas and Pacific Northwest.
4 Whether it be those exact page numbers -- I assume it is,
5 but in the event that it's not, it's whatever pages of that
6 transcript that testimony consumes. That's what will be
7 accepted into the hearing record.

8 THE COURT: That's what it is.

9 MR. BESHORE: Okay.

10 THE COURT: So modify.

11 And then we have Proposal 9, and that's a pro
12 forma proposal, is it not?

13 MS. DESKINS: Yes. Proposal 9 is the
14 Department's own proposal to make any conforming changes as
15 necessary. As you can tell with this hearing, there are
16 several proposals, some of which are conflicting, and
17 depending on what the Department decides to do, some parts
18 of the orders may need to be changed in order for them to
19 conform to the proposals as stated here.

20 THE COURT: All right. Any problems -- Proposal
21 9 is always granted. We also have a modification proposal
22 along with this hearings, so that's -- no need for anything
23 more than a statement.

24 We need to look at briefing dates and so forth,
25 and for that, let's go off the record because that may take

1 a little time.

2 (Off the record and reconvened.)

3 THE COURT: The transcript of this hearing, you
4 can, of course, obtain a transcript directly from the
5 reporter if you want a copy, but as I understand it, the
6 Department of Agriculture is going to put it on the
7 website, so I don't know when that's all going to happen,
8 but let's go back off the record. Anyway, it can be
9 obtained that way as well.

10 (Off the record and reconvened.)

11 THE COURT: We've just discussed the filing of
12 proposed corrections to the transcript and the filing of
13 briefs, and the corrections, the proposed corrections shall
14 be filed by April 28th or 30 days after the transcript of
15 this hearing is posted to the internet, whichever is later.

16

17 And then as far as the filing of briefs, that will
18 also be on June 30th or 30 days after the filing of the
19 proposed corrections, whichever is later.

20 And I believe that concludes everything, does it
21 not? Thank you very much.

22 (Whereupon, the proceedings were concluded at 5:45 p.m.)

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