

1 UNITED STATES DEPARTMENT OF AGRICULTURE

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6 EMERGENCY PUBLIC RULEMAKING HEARING

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17 EMERGENCY PUBLIC RULEMAKING HEARING:

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20 The Hearing, taken in the above-styled matter at

21 the Kentucky Convention Center, 221 South Fourth

22 Street, Louisville, Kentucky, on the 1th day of January,

23 2006, beginning at 9:00 a.m.

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## 1                   A P P E A R A N C E S

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3       FOR THE UNITED STATES DEPARTMENT OF

4       AGRICULTURE:

5           GARRETT B. STEVENS, ESQUIRE

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1           A P P E A R A N C E S (CONT.)

2

3       FOR ARKANSAS DAIRY COOPERATIVE ASSN.; DAIRY

4       FARMERS OF AMERICA, INC.; DAIRYMEN'S

5       MARKETING COOPERATIVE, INC.; LONE STAR MILK

6       PRODUCERS, INC.; and MARYLAND & VIRGINIA MILK

7       PRODUCERS COOPERATIVE ASSN., INC.:

8       MARVIN BESHORE, ESQUIRE

9       LAW OFFICE OF MARVIN BESHORE

10      130 State Street

11      HARRISBURG, PENNSYLVANIA 17108

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13      FOR DEAN FOODS COMPANY and DAIRY FRESH

14      CORPORATION, A DIVISION OF NATIONAL DAIRY

15      HOLDINGS:

16      CHARLES M. ENGLISH, JR., ESQUIRE

17      THELEN, REID & PRIEST, LLP

18      701 Eighth Street, NW

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22

23

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1           A P P E A R A N C E S (CONT.)

2

3       FOR SELECT MILK PRODUCERS, INC. and

4       CONTINENTAL DAIRY PRODUCTS, INC.:

5       BENJAMIN F. YALE, ESQUIRE

6       YALE LAW OFFICE, LP

7       527 North Westminster Street

8       WAYNESFIELD, OHIO 45896

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10      FOR LAND O'LAKES DAIRY FOODS:

11      DENNIS J. SCHAD

12      LAND O'LAKES, INC.

13      405 Park Drive

14      CARLISLE, PENNSYLVANIA 17013

15

16      ALSO PRESENT:

17      JILL HOOVER

18      CLIFFORD CARMAN

19      MIKE SUMNERS

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21

22

23

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CONTINUED HEARING

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IN RE:

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UNITED STATES DEPARTMENT OF AGRICULTURE

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EMERGENCY PUBLIC RULEMAKING HEARING

5

JANUARY 11, 2006

6

JUDGE DAVENPORT: We are back in

7

session.

8

Mr. Sims, you are still under oath.

9

JEFFREY SIMS, having been previously duly sworn,

10

is examined and testifies as follows:

11

EXAMINATION

12

BY MR. BESHORE:

13

Q. Mr. Sims, would you continue with your

14

statement of direct testimony, where you left off

15

last evening?

16

A. Yes.

17

Q. Thank you.

18

A. [reads] The provisions as proposed use

19

the -- use the Order's monthly average producer

20

milk Class I utilization of pool distributing plants in

21

computing the Class I milk for determining the

22

Intra-market Transportation Credits. Since Intra-

23

market Transportation Credits are only applicable

24

to deliveries to pool distributing plants, this

25

statistic is -- was deemed the most appropriate

1 measure of Class I milk on inside the marketing  
2 area milk movements.

3 As testified earlier, proponents do not desire  
4 to create incentives for uneconomic movements of  
5 milk. There are circumstances when, on the  
6 surface, the Intra-market Transportation Credit may  
7 appear to reward longer movements of milk versus  
8 shorter, but since the Mileage Rate is less than the  
9 true cost of hauling, additional or more lengthy  
10 movements of milk will not be encouraged.

11 Exhibit 25, Pages Q1 and Q2 give an example  
12 of how the milk routing decision-making process  
13 would be followed in the Orders contained the  
14 Intra-market Transportation Credit provisions as  
15 proposed. In the example, milk needed in Winston-  
16 Salem, North Carolina and in Charleston, South  
17 Carolina. Milk was available on that day in Mt.  
18 Crawford, Virginia and in Statesville, North  
19 Carolina. Absent the ul -- Intra-market  
20 Transportation Credit provisions in the Orders, the  
21 choice for routing the milk would be, all other  
22 things being equal, to move the load from Mt.  
23 Crawford to Winston-Salem, and the load from  
24 Statesville to Charleston, since that generates 16  
25 fewer miles to travel and pay for.

1       If Intra-market Transportation Credits a part of  
2 the Orders, on the surface it would appear that the  
3 dispatcher would seek to route the milk from Mt.  
4 Crawford to Charleston and from Statesville to  
5 Winston-Salem because to total Intra-market  
6 Transportation Credit would be greater by \$29.93,  
7 which is the difference between \$695.80 earned  
8 under the Mt. Crawford to Winston-Salem and  
9 Statesville to Charleston routing versus \$665.87  
10 earned under the Mt. Crawford to Charleston and  
11 Statesville to Winston-Salem routing. However,  
12 since the true cost of hauling is greater than the  
13 Mileage Rate used under the Orders, the dispatcher  
14 would continue to seek to minimize miles because  
15 the net loss from moving the milk would be less  
16 than in the fewer-miles routing, even though the  
17 Intra-market Transportation Credit would be less.  
18 It should be noted that in making these  
19 calculations, the actual cost of hauling was used  
20 as the mileage factor for reimbursement under the  
21 Intra-market Transportation Credit provisions. The  
22 actual milage rate would be appli -- would be  
23 applicable [sic] under the Orders, would be less  
24 than the actual cost of hauling; so the incentive to  
25 route milk over the shortest miles would even be

1 greater than in -- demonstrated in the example.

2 As long as the Mileage Rate under the Orders  
3 is inferior to the actual cost of moving milk, and  
4 the locations under the -- location adjustments  
5 under the Orders do not fully compensate for  
6 moving milk, prudent business will result in seeking  
7 to travel fewer miles rather than more.

8 Proposal Number 2 seeks to increase the  
9 regulated cost of Class I milk by a maximum of  
10 \$0.10 per hundredweight in the Appalachian Order,  
11 and by a maximum of \$0.15 per 100 in the  
12 Southeast Order, to at least partially fund the  
13 Intra-market Transportation Credits. The Intra-  
14 market Transportation Credit provisions as  
15 proposed provide that the revenues generated from  
16 the Intra-market Transportation Credit Assessment  
17 flow into the newly created Intra-market  
18 Transportation Credit fund.

19 And if the cost of the Intra-market  
20 Transportation Credits exceeds the available  
21 balance in the Intra-market Transportation Credit  
22 fund, then the dist -- difference be allocated [sic]  
23 from the producer revenue po -- pool prior to the  
24 computation of the producer blend price. The  
25 amount of funds which may be allocated from the



1 producer rev pool in a month is limited to the  
2 balance in the Intra-market Transportation Credit  
3 fund.

4 It is estimated that the revenue generated from  
5 the proposed \$0.10 per hundredweight maximum  
6 Intra-market Transportation Credit Assessment  
7 would have been approximately \$4.19 million during  
8 calendar year 2005 in the Appalachian Order, and  
9 at -- at -- the \$0.15 per hundredweight maximum  
10 Intra-market Transportation Credit Assessment  
11 would have been approximately \$6.96 million during  
12 calendar year 2005 in the Southeast Order. Based  
13 on milk movement data provided by the Market  
14 Administrator Analysis, it is estimated that during  
15 calendar year 2005, Intra-market Transportation  
16 Credits, after inclusion of the adjustment for zone  
17 price enhancements, would have totaled \$3.8  
18 million for the Appalachian Order and \$6.39 million  
19 for the Southeast Order, using a \$0.48 cents per  
20 hundredweight per mile Mileage Rate; thus, the  
21 \$0.10 per hundredweight and \$0.15 per  
22 hundredweight maximum increase in Class I cost  
23 would be expected to be sufficient at current  
24 hauling costs to cover all applicable Intra-market  
25 Transportation Credits. See Exhibit 25, Page R for

1 the calculation of the amount necess -- of the  
2 assessment necessary to cover the estimated Intra-  
3 market Transportation Credits.

4 If the secretary elects to set the assessment  
5 for the Intra-market Transportation Credits at less  
6 than what is necessary to fund all credits, the  
7 differences between the revenue generated from  
8 the Intra-market Transportation Credit Assessment  
9 as proposed at the \$0.10 per hundredweight and  
10 \$0.15 per hundredweight rates would reduce the  
11 producer blend prices. Any reduction in producer  
12 blend would be dependent upon how short the  
13 Intra-market Transportation Credit fund was  
14 compared to the monthly credit obligation amount.

15 Proponents have included Federal Order  
16 language, which would require the market  
17 administrators to collect Intra-market  
18 Transportation Credit Assessments sufficient to  
19 keep the Intra-market Transportation Credit fund at  
20 a level approximating two months Intra-market  
21 Transportation Credit payments. If the secretary  
22 elects to set the assessment for the intra-market  
23 transportation credits at less than what is  
24 necessary to fund all credits, the need for the  
25 market administrators to carry a reserve in the

1 Intra-market Transportation Credit fund will be  
2 moot.

3 Estimating the cost of credits monthly,  
4 seasonal -- seasonally, annually, and based on  
5 possibly rapidly changing costs of fuel, may prove  
6 to be an inexact science. Additionally, assessment  
7 rates will be, by necessity -- will, by necessity, be  
8 announced in advance of the Mileage Rates. The  
9 process of providing for possible funds to pay  
10 Intra-market Transportation Credits from the  
11 pool -- from the producer pool provides a failsafe  
12 process for insuring that a substantial portion of  
13 the Intra-market Transportation Credit will be able  
14 to be paid.

15 The proposed system will enhance producer  
16 equity in the allocation of these costs, and will  
17 preserve handler Class I price equity. Since all  
18 producers will share more or less equally in  
19 additional costs of moving milk for Class I by a  
20 reduction in their blend prices, if any, equity and  
21 cost allocation ber -- beteen [sic] -- between  
22 producers will be enhanced regardless of the  
23 producer's proximity to a pool distributing plant, or  
24 whether the producer's milk moved to a pool  
25 distributing plant other than the producer's nearest

1 pool distributing plant.

2 The reduction in pool revenue, which would --  
3 could occur under the proposals -- the proponent's  
4 proposal, if the assessment is less than the Intra-  
5 market Transportation Credit obligation may well  
6 sound onerous to some. It may seem unusual or  
7 novel or even unfair on the surface to allow a  
8 process of allocating pool funds because a  
9 producer group moves their milk further than their  
10 nearest plant. In reality, Federal Orders every  
11 month reduce producer blend prices to encourage  
12 milk to move to certain plants.

13 The system of market-wide pooling, along with  
14 Class I and producer locations adjustments,  
15 currently provides in every Federal Milk Marketing  
16 Order process for reducing producer ben -- blend  
17 prices for delivery of producer milk to certain  
18 plants. The Class I location adjustment structure  
19 and the producer loca -- location adjustment  
20 structure is the same in Orders 5 and 7, as is true  
21 in all orders. For example, a plant located in  
22 Charleston, South Carolina pays \$0.20 percent  
23 hundredweight more than the -- than -- on that  
24 plant's Class I producer milk than does a plant  
25 located in Spartanburg, South Carolina. Likewise,

1 a dairy farmer delivering producer milk to the plant  
2 in Charleston receives \$0.20 per hundredweight  
3 more on his or her producer milk than does a dairy  
4 farmer delivering producer milk to the plant located  
5 in Spartanburg. The delivery of milk to Charleston  
6 lowers the blend price for the producer delivering  
7 to Spartanburg. How can this be true?

8 The plant in Charleston is never going to be  
9 100 percent Class I. So the amount of money the  
10 producer revenue pool is increased by the  
11 Charleston Class I location adjustment, in this  
12 case, the \$0.20 per hundredweight, is always going  
13 to be less than the amount of money the producer  
14 revenue -- nue pool is drawn down by the  
15 Charleston producer location adjustment, since the  
16 producer location adjustment is paid all producer  
17 milk delivered to the Charleston plant. Put another  
18 way, the total producer revenue pool is reduced by  
19 the amount of the producer location adjustment per  
20 hundredweight times the Class II, Class III, and  
21 Class IV producer milk volume in the Charleston  
22 plant. This scenario is true for all plants receiving  
23 producer milk which have a positive location  
24 adjustment. Of course, the opposite is true for  
25 milk delivered to plants with a negative location

1 adjustment. This process and effect is more fully  
2 explained in Exhibit 25, Page S.

3 In this example, we have added a new pool  
4 distributing plant to a hypothetical existing Federal  
5 Order pool. In the pre-changed pool, all milk is  
6 delivered in the -- to the base pricing zone. The  
7 pool distributing plant, which is added to the pool,  
8 has the same utilization in all classes as the pre-  
9 changed pool; but the new pool distributing plant is  
10 located in a zone with a \$0.50 per hundredweight  
11 higher Class I price than the pre-changed pool.

12 As in -- is the case in Federal Orders  
13 currently, the producer location adjustment is the  
14 same as the Class I location adjustment. In the  
15 example, the blend price to producers delivering  
16 milk to the base zone plants, the pre-change  
17 producers, if you will, see their blend price  
18 reduced from the addition of a new pool  
19 distributing plant. The utilization of the pre-  
20 producer -- the pre-change producer's milk did not  
21 change, the place where their milk is delivered did  
22 not change, the class prices received for their milk  
23 did not change, but their blend price went down.

24 The plain truth is the producers delivering milk  
25 in the base pricing zone help pay to move milk to

1 the new pool distributing plant, and this payment  
2 came in the form of a reduction in their blend  
3 price. Federal Orders do indeed take funds from  
4 one group of producers and give those funds to  
5 another group of producers, all as a result of  
6 moving milk.

7 The essence of the proponent's proposal with  
8 regard to the use of pool funds to cover shortfalls  
9 in the Intra-market Transportation Credit fund is an  
10 extension of the location adjustment concept, but  
11 is much more limited and targeted because it only  
12 applies to Class I milk. If milk moves farther than  
13 its nearest pool distributing plant for Class I use,  
14 and those movements are not reimbursed through  
15 the existing location adjustment, then the  
16 difference is borne equally by all producers.

17 An allocation of funds from the producer  
18 revenue pool, if the Intra-market Transportation  
19 Credit fund -- fund balance is insufficient to pay all  
20 Intra-market Transportation Credits, may seem like  
21 a process of pooling "production costs" since the  
22 producer is presumed to pay for milk delivery to his  
23 or her plant. Such is not the case. Hauling costs  
24 borne by a producer on adjustment to the  
25 producer's marketing revenue, much in the same

1 way as a -- as high somatic cell counts are an  
2 adjustment to producers' revenue in a multiple  
3 component pricing order. Producers may  
4 experience higher than average somatic cell counts  
5 due to production system, climate, or bad  
6 management, or who knows what; and these factors  
7 may or may not be under the producer's complete  
8 control. No matter what the reason, a high somatic  
9 cell count by one producer will enhance the order  
10 blend price for all producers -- for other producers.

11 The orders may seem to have it -- no issue --  
12 excuse me. The orders seem to have no issue with  
13 this cost revenue pooling concept which impacts  
14 one group of producers at the expense of another.  
15 Such should be true for extra cost of moving milk  
16 to Class I as well,

17 As to the question of whether producer farm-  
18 to-plant hauling is a production cost or a reduction  
19 of farm revenue, each month, Dairy Market News  
20 reports a price serie no [sic] -- price series known  
21 as the Mailbox Milk Price. This data series seeks  
22 to compare regionally the revenue received from  
23 milk at the farm gate after mandatory deductions  
24 for milk promotion, marketing services, increases  
25 or decreases in price resulting from quality, volume



1 and component adjustments, and after-the-producer  
2 milk check deduction for hauling. In this series,  
3 published by AMS Dairy Programs, hauling is  
4 considered a function of net producer revenue, not  
5 a cost of production.

6 There has been expressed the sentiment that  
7 any revenue enhancements to help cover these  
8 extra costs of hauling should be a rising tide that  
9 lifts all boats. We can agree with that. However,  
10 the problems faced by marketers of milk in the  
11 southeast is that the waning tide of milk  
12 movements costs does not lower all boats  
13 uniformly, and not all boats are currently sitting on  
14 level seas. The process proposed by proponents  
15 systematizes the collection of the revenues which  
16 raise the boats, and allocates fairly the costs  
17 which lower all boats.

18 The proposals, as submitted, are designed to  
19 return equity to the allegation of cost among  
20 producers of supplying milk for Class I use. These  
21 costs exist currently but are not shared  
22 proportionally while Class I revenues are. The  
23 total revenue to dairy farmers, if Proposals 1, 2  
24 and 3 are adopted as proposed, would increase  
25 dairy farmer income by shifting these costs of

1 supplying milk for Class I use off of dairy farmers  
2 onto the Class I marketplace.

3 The Need for These Provisions in the Orders:

4 The question may be raised as to why these  
5 amendments are sought under the Federal Order  
6 Program as opposed to charges to handlers in  
7 excess of Federal Order minimums. This is a good  
8 question. Proponents offer these amendments to  
9 the Federal Orders as opposed to seeking these  
10 revenues through over-order prices for a number of  
11 reasons.

12 First, the cost identified in these proposals  
13 are tangible and quantifiable. Actual milk  
14 transport costs can be determined in a quantitative  
15 manner, can be verified, and can be readily  
16 converted mathematically into a regulatory pricing  
17 formula. Additionally, milk movements are discrete  
18 actions which generate an extensive paper trail  
19 verifiable by the market administrator; this,  
20 reimbursement of these costs through an unbiased  
21 regulatory mechanism is achievable, cost effective,  
22 transparent, and desirable.

23 Second, proponents have demonstrated that  
24 these costs are ongoing; and, more importantly, the  
25 costs are not impacted by the overall level of milk

1 price. Oftentimes, over-order prices are influenced  
2 by the general -- general milk price level. Just  
3 because Federal Order prices are perceived as high  
4 or are rising does not stop milk from having to  
5 move.

6 Comparatively, high regulated milk prices or  
7 substantial increases over a short period of time in  
8 Federal Order prices can lead to pressure to  
9 decrease over-order prices. In fact, some of the  
10 factors that increase hauling costs can, in fact,  
11 lead to eventual increases in Federal Order prices;  
12 for example, a regional or a national shortage of  
13 milk. It is intrinsically unreasonable to rely on  
14 over-order prices to pay for the entire -- pay the  
15 entirety of these costs of delivery of milk for Class  
16 I use, when the very thing which increases these  
17 costs could put downward pressure on over-order  
18 prices. This revenue and cost conundrum can be  
19 diminished by the inclusion of these revenues and  
20 costs in the regulated price system.

21 Third, over-order prices are often dependent  
22 upon broad recognition of those prices by  
23 marketers of milk all along the marketing chain;  
24 and thus, over-order prices can be transitory.  
25 Simply put, they can be here to go -- here today,

1 gone tomorrow. The perpetual nature of milk  
2 transport cost to supply Class I needs makes  
3 reliance on the possibly ephemeral revenues  
4 generated by over-order prices risky for the  
5 suppliers of milk for Class I.

6 The assurance that these funds will be  
7 available to help cover the cost of supplying milk  
8 for Class I use make marketers of milk much more  
9 likely to take on this marketing function.  
10 Installation of these cost reimburses -- ment  
11 processes in the Federal Orders make much more  
12 sure the reimbursement of these costs than  
13 dependance on over-order prices.

14 Harkening back to our discussion on economic  
15 theory, the assurance of a significant portion of  
16 the variable cost of providing milk to Class I, in  
17 this case, the variable cost is associated with  
18 delivery to a distant plant, will be covered by  
19 regulated revenues, making the decision to  
20 undertake this additional business activity much  
21 more likely, and fulfills the responsibility of the  
22 Agricultural Marketing Agreement Acts  
23 requirements for assure -- for assuring an  
24 adequate supply of milk for fluid use.

25 Fourth, there is provided confidence in -- to

1 those order participants that are bearing these  
2 regulated Class I costs, namely Class I processors;  
3 that the payments are made for actual work  
4 performed, costs are actually incurred, and  
5 payment for these services is uniformly applied.

6 Lastly, the payment for these services of  
7 market-wide benefit must be uniformly applied to  
8 all Class I handlers and to their consumers, who  
9 are the ultimate beneficiaries of a marketing  
10 system which provides an adequate supply of Class  
11 I milk. The cruelest irony concerning over-order  
12 prices is -- is that reliance on over-order prices to  
13 cover these extra costs of hauling can lead to the  
14 degradation of the over-order prices.

15 If the location adjustment structure under the  
16 Federal Milk Marketing Orders does not reasonably  
17 compensate producers from moving milk to Class I  
18 plants beyond their nearest plant, they will seek to  
19 deliver to that nearer plant so as to enhance the  
20 producer's net revenue. If over-order prices exist,  
21 a producer may be willing to bid down the over-  
22 order price to the nearer to a level which equates  
23 the producer's net revenue which would have  
24 accrued if the producer had delivered his or her  
25 milk to the next most advantageous plant.

1       A bedrock principle upon which Federal Milk  
2 Marketing Orders are found is that producers have  
3 limits to their opportunity to impact the price they  
4 receive for their milk. Proponents desire the Order  
5 program to recognize the limits and the ability to  
6 generate revenues to cover the hauling costs that  
7 benefit all producers, processors, and consumers,  
8 standardize the payment for these costs through  
9 the regulatory system, establish uniformity of  
10 bearing these costs, and help ensure that milk will  
11 continue to be provided for Class I use in the two  
12 marketing areas.

13       Recent History of Over-Order Prices:

14       Over-order price in the southeast have risen in  
15 recent months. Exhibit 25, Page T, shows the  
16 announced cooperative Class I over-order price for  
17 30 cities as published each month in Dairy Market  
18 News for calendar year 2005. Over-order prices for  
19 Class I milk in the reported southeastern cities  
20 were generally \$0.99 per hundredweight greater in  
21 December 2005 than in January of 2005. Cities in  
22 the southwestern states have also shown increases  
23 over the year, but these increases in the southwest  
24 were about \$0.34 less than in the southeast. It  
25 should be noted that two cities in the southeast

1 have experienced over-order price increases more  
2 akin to the southwe -- west than the rest of the  
3 southeast. Most cities outside of the southeast  
4 and southwest showed little or no increase in over-  
5 order prices during 2005, with some cities showing  
6 a decline in over-order Class I price.

7 Some of the recent increases in Class I over-  
8 order prices is [sic] related to recognition of  
9 increases in the cost of fuel. Current declines in  
10 fuel cost have put downward pressure on over-  
11 order prices in the southeast. The Class I over-  
12 order price for January 2006 in most southeastern  
13 cities is less than December 2005, and that change  
14 is related to lower fuel costs.

15 Exhibit 25, Pages U and -- U1 and U2, display  
16 the basic diesel fuel cost data and the Dairy  
17 Cooperative Marketing Association, Incorporated  
18 Class I fuel cost surcharge as computed and as  
19 charged for April 2002 through December 2005. As  
20 can be seen from the data, the Class I fuel cost  
21 surcharge has sometimes not followed the  
22 increases in fuel cost. As is the case with over-  
23 order prices generally, the fuel cost surcharge has  
24 tended to follow the fuel cost, then plateau; and  
25 then after some period of fuel cost increases, the

1 fuel cos -- sur -- fuel cos -- fuel cost surcharge  
2 increases and catches up with the fuel cost. And  
3 then it again plateaus, and so on. It takes time for  
4 over-order price increases to be accepted  
5 throughout the milk pricing system. Decreases in  
6 over-order prices seem to be more readily accepted  
7 by processors on a shorter-term notice, we have  
8 observed.

9 Changes in over-order prices must make their  
10 way through a labyrinth of customers and  
11 customer/supplier relationships. The pricing  
12 relationship is not just cooperative to plant; it is  
13 also plant-to-distributor, plant-to-retailer,  
14 distributor-to-retailer, and ultimately, retail --  
15 retailer-to-consumer. For example, in the  
16 Commonwealth of Kentucky alone, there are more  
17 than 180 school districts. Price adjustments must  
18 filter through -- through to grocery stores,  
19 drugstores, convenience stores, restaurants,  
20 nursing homes, schools, colleges and universities,  
21 military establishments, and even prisons. Some  
22 of these supply contracts are bid out on a base  
23 cost per package per unit with escalator clauses,  
24 and often, the escalator clauses reflect only  
25 changes in the regulated cost of Class I milk.



1       At the request of the proponents, the Milk  
2 Market [sic] administrators have reviewed their  
3 respective mailing lists for class price  
4 announcements. These data were previously  
5 introduced in Exhibit 6, Page 6 and 13E. Users of  
6 milk and milk products receive market administrator  
7 price announcements, and, as such, seem to accept  
8 these changes in the regulated cost of Class I milk  
9 as announced. Over-order price -- over-order  
10 charges seem to be another matter.

11       As one would expect, the market administrator  
12 price announcements carry the weight of a United  
13 States Government declaration. The market  
14 administrator price announcements are transparent  
15 and are issued by a neutral government agency,  
16 while over-order prices are not.

17       As evidenced in Exhibit 7, Page 6 and 13E,  
18 may industry participants receive the market  
19 administrator price announcements, and have  
20 accepted, however grudgingly, vol -- the volatility  
21 in prices which the Federal Order Class I prices  
22 display. The problem with the over-order prices is  
23 the customers to not appear to accept the same  
24 kind of volatility in them. The fuel cost surcharge  
25 previously described is an excell -- is an excellent

1 example of this phenomenon.

2 Page T of Exhibit 25 also displays the 2005  
3 annual average Class I over-order price as  
4 reported in Dairy Market News for the 30 subject  
5 cities. A particular note is the relative over-order  
6 price in cities bordering or just outside the  
7 southeast -- or just inside the southeast versus  
8 cities outside the southeast. As is the case for  
9 Federal Order Class I prices, Class I price  
10 alignment in the total Class I price, that is, the  
11 Federal Order Class I price plus the over-order  
12 Class I price, must be a concern. Prices too  
13 divergent over too short a distance can cause  
14 competitive disruptions and disorderly marketing.

15 Exhibit 25, Page V, is a map which shows, for  
16 November 2005, the Federal Order Class I  
17 differential for selected cities. In Exhibit 25, Page  
18 T; the Class I over-order price applicable for that  
19 city and for the cities in Orders 5 and 7 marketing  
20 areas -- excuse me, and four cities in the Order 5  
21 and Order 7 marketing areas, the transportation  
22 credit assessment rate, and the total of the three  
23 Class I price elements. This exhibit reinforces the  
24 differences which exist in total Class I price for  
25 plants located in the southeast versus plants

1 located nearby but outside the southeast.

2 Competitive relationships between plants  
3 develop over time, and are reflective of the -- of  
4 the geographic scope of -- of plants -- of a plant's  
5 business, the plant's relative internal cost  
6 structures, the regulated price configuration, and  
7 any over-order prices which might exist. The most  
8 visible of these elements is the Federal Order  
9 Class I price structure. Industry, and plants in  
10 particular, view the Class I price relationships, as  
11 established under the Federal Orders, as the gold  
12 standard for price differences; in effect, saying  
13 that if differences in Class I prices must exist  
14 between plants, those differences should be  
15 reflective of the Class I differential service  
16 established by the orders.

17 Consequently, it is very difficult to -- to  
18 establish over-order prices between plants which  
19 are greater than the order's Class I price  
20 differences. As a result, over-order price areas  
21 tend to be rather large geographically; and, as  
22 such, suffer from even less variability plant to  
23 plant than do Federal Order Class I prices.

24 When the Federal Order Class I price surface  
25 varies substantially from the actual cost of moving

1 Class I milk, location value imperfections are  
2 institutionalized into the Federal Order price  
3 structure. Since Federal Order Class I  
4 differentials are the most transparent aspect of  
5 Class I price relationships, the message seems to  
6 get lost that there needs to be corrections to these  
7 location value imperfections through over-order  
8 prices. The conundrum facing the industry is that  
9 the orders establish a Class I price surface, which  
10 is viewed as absolute; yet industry is left to its  
11 own devices to correct what is wrong.

12 Proponents offer here an opportunity to -- for  
13 the secretary to address the cost of moving milk for  
14 Class I use without substantially changing the  
15 order's Class I price surface by adopting a new  
16 mechanism for encouraging milk to move within the  
17 marketing areas. Currently, all the costs incurred  
18 in supplying milk for Class I use, which are not  
19 reflected in the Class I price surface, are borne  
20 outside order regulated values.

21 The proponents seek more of these revenues  
22 to be regulated to simply give more assurance that  
23 the revenues will be there to help cover costs of  
24 supplying Class I for the southeast; to offer  
25 assurances to the Class I marketplace, that the

1 cost for these -- for which reimbursement is sauce  
2 [sic] -- is sought is -- are indisputable; to  
3 recognize the limits in over-order pricing, to  
4 address these issues and costs; and to assure  
5 uniform application of the revenues and uniform  
6 sharing of the costs.

7 The Need for Emergency Action:

8 The notice of hearing invited comments on  
9 emergency conditions present in the marketing, and  
10 seeks comments on considering emergency action  
11 and the omission of a recommended decision under  
12 the rules of practice and procedure. Proponents  
13 have demonstrated substantial losses, which are  
14 currently occurring in -- occurred in supplying milk  
15 for Class I use in the Appalachian and southeast  
16 marketing areas, whether that milk originates  
17 inside or outside the marketing areas. These costs  
18 are significant, amounting to an excess of  
19 \$15,000,000 annually at current hauling costs.

20 As has been state -- as has been stated, the  
21 costs defined in these proposals are currently not  
22 borne equitably by all producers, exacerbating the  
23 problem. Delay in implementing these amendments  
24 only worsens the inequities present. Since these  
25 costs fall disproportionately on one segment of the

1 producer population, the cost per hundredweight  
2 borne by those producers exceeds the cost per  
3 hundredweight for the orders as a whole.

4 The cost associated with -- with delivering milk  
5 for Class I use in the Appalachian and southeast  
6 marketing areas are considerable and are ongoing.  
7 Failure to address these issues through the  
8 Federal Order program puts in jeopardy the  
9 adequate supply of milk for the southeast. Delay  
10 will not lessen the cost, will not see a reversal in  
11 cost trends, nor see an equitable reapportioning of  
12 the cost onto all parties in the marketing areas.

13 The current process for payment of the -- of  
14 the cost for milk delivery for Class I use in the  
15 Appalachian and southeastern orders, as has been  
16 demon -- as demonstrated, does not offer  
17 marketers of ev -- of milk even short-term  
18 reassurance that additional costs of supplying milk  
19 for Class I use will be covered. If a pro --  
20 provisions of the orders are left unchanged, the  
21 economics in the delivery of milk for Class I will  
22 likely, sooner than later, make such deliveries  
23 unworkable; and the supply of Class I milk in the  
24 marketing areas will be threatened. Only quick  
25 action on the part of the secretary will forestall

1 such a lamentable occurrence.

2 The provisions as proposed to be amended are  
3 pursuant to the market-wide service payment  
4 provisions of the Agricultural Marketing Agreement  
5 Act, and therefor deserve quick action.

6 In summary, the proponents wish to thank the  
7 secretary for their opportunity to propose these  
8 amendments to the Appalachian and southeast  
9 Federal Milk Marketing Orders, and look forward to  
10 a quick decision, install the need -- installing the  
11 needed change to the orders. And that concludes  
12 my prepared sta -- statement.

13 Q. Mr. Sims, would you turn to Exhibit 25,  
14 which is the exhibits compiled and submitted with  
15 your testimony? I'd like to review those -- those  
16 documents with you briefly --

17 A. Yes.

18 Q. -- if we could? Okay.

19 The Exhibit A1 through 5 of 25, I think, speak  
20 for themselves.

21 Do they represent written authorizations from  
22 each of the member cooperatives for whom you are  
23 speaking today in support of the position which you  
24 have expressed?

25 A. They represent five written authorizations.

1 There was a verbal authorization from Dairy League  
2 Cooperative in addition, supporting Proposals 1, 2,  
3 and 3.

4 Q. Okay. Now, Exhibit B to 25 [sic] is a one-  
5 page -- a one-page exhibit.

6 How was that prepared?

7 A. The actual cost of hauling milk was  
8 compared to the rate per mile included in the  
9 orders in each of the 1997, 2003, 2004, and 2005  
10 periods; and then was adjusted by the amount of  
11 money that the market administrators were able to  
12 pay, a percentage proration amount out of the  
13 transportation credit funds, to arrive at a  
14 percentage of the total hauling cost on Class I milk  
15 only. This is only Class -- the Class I portions of  
16 the loads in 19 -- in 2005, particularly, versus  
17 1997.

18 Q. And you -- you personally prepared that,  
19 or it was prepared directly under your supervision?

20 A. It was.

21 Q. Yeah. And the details as further stated in  
22 your direct testimony?

23 A. Correct.

24 Q. Okay. Now, Exhibit 25C, did you  
25 personally prepare that calculation as well?



1 A. I did.

2 Q. And as you've explained it, it represents  
3 what you explained in your testimony?

4 A. It does.

5 Q. Okay. 25D is a multi-page exhibit, three  
6 pages.

7 What is the source of the -- of the data in that  
8 exhibit?

9 A. This was taken from the website of the  
10 United States Department of Energy, Energy  
11 Administration Admin -- En -- Energy Information  
12 Administration, detailing the average -- the weekly  
13 diesel price reported for the United States and, I  
14 believe, nine subregions of the United States.

15 Q. Okay. And the URL for that website is at  
16 the bottom of Page D4; correct?

17 A. Correct.

18 Q. Okay.

19 A. A -- particular note in Page 3 -- on Page 3  
20 of this -- of D4, there are some -- some of these  
21 data are highlighted with a box. Those represent  
22 the diesel prices in October and November 2003,  
23 upon which the proponents based their base diesel  
24 price with regard to the Mileage Rate computation.

25 Q. Okay. And those boxed numbers were

1 specifically discussed in your direct testimony?

2 A. They were.

3 Q. Okay. Let's look at Exhibit E, which is a  
4 one-page exhibit.

5 What's the source of that data?

6 A. The -- these data were collected from  
7 actual hauler bills to members of SMA for point-to-  
8 point hauling over the road for the month of  
9 October 2005; and represent the mileages that  
10 those loads moved, the rates which were applied to  
11 those, and then simply averages those rates across  
12 the universe of these hauling transactions.

13 Q. Okay. Did you personally examine those  
14 invoices?

15 A. I did.

16 Q. Okay. And the exhibit was prepared -- you  
17 prepared it in view of that examination and  
18 representing the invoices themselves?

19 A. I did.

20 Q. Now, Exhibit 25F, then, is a -- a one-page  
21 calculation.

22 Did you make that calculation and prepare that  
23 exhibit?

24 A. I did.

25 Q. And it represents what, just briefly? You

1 did dis -- discuss it in your testimony.

2 A. For reference purposes only, it just simply  
3 demonstrates that during -- approximately one year  
4 ago, when the secretary ruled on the hurricane  
5 emergency, the hur -- the \$2.25 to be a -- a  
6 reasonable rate under which hauling costs for  
7 those -- that emergency would be paid. This simply  
8 harkens back to that time period; analyzes the --  
9 the theoretical cost of fuel, which was a part of  
10 that \$2.25 a loaded mile. It simply shows that, at  
11 that time period, if fuel were free, the mileage rate  
12 under the Federal Orders would have been  
13 insufficient.

14 Q. Was 2.25 per hundredweight per -- or 2.25  
15 per loaded mile, the -- the hauling charge upon  
16 which the credits in that hearing were premised?

17 A. I believe that was the maximum rate that  
18 the secretary agreed would be reimbursed.

19 Q. So the reimbursements were actual up to  
20 that maximum rate?

21 A. That is my recollection.

22 Q. Let's turn, then, to Exhibit 25G, which is  
23 what, a two-page -- two-page chart? I'm sorry. A  
24 five-page -- five-page chart.

25 Okay. What's -- what's the source of the

1 information in 25G1 through G5?

2 A. Analogous to the data presented in Page  
3 E, these are summary statistics for -- from actual  
4 bills from haulers on -- for point-to-point hauling  
5 for the months of October 2003 and for November  
6 2003, giving the miles, the amount charged, any  
7 fuel surcharge which was applicable, and the  
8 calculated total rate including fuel surcharges; and  
9 provides an average for all those observations for  
10 the two months of approximately \$1.91 per loaded  
11 mile, which was the -- the average of the universe  
12 of hauling rates charged in the exhibit.

13 Q. Were those observations compiled and  
14 assembled and calculated under your -- by you  
15 personally or directly under your supervision?

16 A. They were.

17 Q. In your professional opinion as a -- as an  
18 economist and as a -- formally a market -- system  
19 market administrator, do they fairly represent the  
20 cost for hauling milk during the proposed base  
21 period of October and November 19 -- 2003?

22 A. I believe that they do.

23 Q. How many observations are summarized on  
24 G1 through G5?

25 A. Approximately 160. I don't have the exact

1 count, but that's about how many, something in that  
2 neighborhood.

3 Q. And they represent a variety of sources  
4 and -- and destinations geographically and -- in  
5 each month?

6 A. Correct; and they also represent a ver --  
7 a --a broad number of actual haulers.

8 Q. Okay. And do they represent, you know,  
9 more than one contracting entity?

10 A. I believe they do; yes.

11 Q. Okay. Let's turn, then, to the next  
12 exhibit, 25 which is H. 25H is a one-page exhibit?

13 A. Yes.

14 Q. What's the source of that -- is the source  
15 of that information as shown in the footnote?

16 A. It is.

17 Q. And so this is all federal agency published  
18 data?

19 A. They are.

20 Q. From -- what, the Federal Highway  
21 Administration?

22 A. Yes.

23 Q. As described in some detail in your direct  
24 statement?

25 A. Correct.

1 Q. Okay. Exhibit 25I, the next exhibit, is  
2 a -- a one-page calculation; is that correct?

3 A. Yes.

4 Q. Did you do that calculation?

5 A. I did.

6 Q. Does it use, in part, information, as the  
7 footnote indicates, from the Energy Information  
8 Administration?

9 A. It does.

10 Q. And you described the calculation, I think,  
11 essentially line by line in your direct testimony?

12 A. I do.

13 Q. Okay. Turn, then, to Exhibit 25J, which is  
14 a two-page chart.

15 Did you prepare that exhibit?

16 A. I did.

17 Q. What was the source of the information?

18 A. The fuel cost data are from the Energy  
19 Administration -- Energy Information  
20 Administration. Pages J-I -- excuse me, to J1 and  
21 J2 are essentially condensed calculations, the  
22 sa -- the same as for Page I, only for each month  
23 of 2005; where -- which also includes the date  
24 which tho -- the -- the announcement of the  
25 mileage rate would have been included, and the

1 weeks that would have been used in the  
2 computation. But it is identical in form and content  
3 to "I." It just simply shows what that mileage rate  
4 would have been under the proposal each month of  
5 2005.

6 Q. The proposed -- the announcement date,  
7 which, looking at January 2005, would have been  
8 announced 1/21/2005.

9 Is that according to the terms of the proposal?

10 A. Correct.

11 Q. Okay. So essentially, Exhibit J1 and J2  
12 shows what the price announcements would have  
13 been during calendar year 2005 if Proposal 3 had  
14 been in effect?

15 A. Correct.

16 Q. Okay. Turn to Exhibit 25K, please?

17 And did you prepare that exhibit?

18 A. I did.

19 Q. What was the source of the information?

20 A. Certain of the information was taken from  
21 the market administrator announced information,  
22 particularly Class I producer milk; and documents  
23 which they either published or provided regarding  
24 claims for -- from the transportation credit fund.  
25 And then, also, for 2005, I -- I made a -- an

1 estimate for the months of -- for December -- for  
2 the month of December; that data were not  
3 available by the time we had to compute this. So  
4 the -- so the 2005 data are som -- estimated for the  
5 month of December only.

6 Sim -- this calculation determines or shows the  
7 amount of assessment for the transportation credit  
8 balancing fund, which would have had to be  
9 assessed to fully fund the claims in 2004 and  
10 estimated 2005 at -- at the \$0.35 per  
11 hundredweight per mile rate included in the orders  
12 currently.

13 Q. Okay. So other than the information for  
14 December 2005 -- which was your personal  
15 estimate; correct?

16 A. Yes.

17 Q. Other than those -- that data, the rest of  
18 the data, in terms of total transportation credits  
19 claimed in the Class I producer of milk, are  
20 published market administrator figures?

21 A. Correct.

22 Q. Are those -- are those in the market  
23 administrator's exhibits in this hearing?

24 A. I -- yes, I believe they do -- they are.

25 Q. And then the rest of the calculations are



1 essentially arithmetic which you performed?

2 A. Yes, with one -- one -- one sma -- minor  
3 caveat; for 2005, I just -- I simply annualized the --  
4 the-- the -- the transportation credit assessment  
5 was increased in three -- by \$0.03 per  
6 hundredweight in November and December. So I  
7 took that \$0.03 and divided it by six, in -- in  
8 essence, and added it to the current rate, to get  
9 a -- an effective rate for -- for the annual period of  
10 -- or the effect -- an -- effective annual rate for  
11 2005.

12 Q. Which -- which line is that --

13 A. Tho -- those would be the --

14 Q. -- reflected in?

15 A. -- the lines footnoted Numbers 2 and 3.

16 Q. Okay. So the lines that -- that have the --  
17 have Footnote 2 and have Footnote 3 reflect that  
18 annualization of the changed rate that you --

19 A. that's correct.

20 Q. -- just described? Okay.

21 Turn to Exhibit 25L. Did you prepare this  
22 exhibit?

23 A. I did.

24 Q. And is the data -- are the data sources as  
25 indicated in the footnotes?

1 A. They are.

2 Q. And essentially, you described in your  
3 testimony that these are the estimated required  
4 increases given in the transportation credit  
5 assessment rates if the mileage factor was .0046  
6 dollars?

7 A. Correct.

8 Q. Okay. For each order?

9 A. Yes. And again, December 2005 for each  
10 order was estimated by me.

11 Q. Just as in the prior exhibit?

12 A. Correct.

13 Q. Okay. And in this case, you've shown the  
14 estimated pounds that you -- or you've indicated --  
15 you estimated pounds of Class I producer milk for  
16 2005?

17 A. Yes.

18 Q. How did you estimate December's volume?

19 A. A typical -- I looked at the historical  
20 relationship between November and December  
21 producer milk, adjusted for the extra day in  
22 December, and looked at the typical relationship  
23 over in the history between November and  
24 December -- and the typical relationship in -- in  
25 transportation credits between November and

1 December, and made a -- a prorated estimate.

2 Q. Okay. Let's look at 25M. This is another  
3 one-page exhibit.

4 Did you prepare it?

5 A. I did.

6 Q. And is the information -- again, includes  
7 the estimates you made for December 2005?

8 A. It does.

9 Q. As you have just described?

10 A. It does.

11 Q. And this, then, shows the build up to the  
12 proposed maximum transportation credit balancing  
13 fund assessment rates in Proposals 1 and 3?

14 A. It does.

15 Q. Okay. Very good.

16 Let's turn to Exhibit 25N, which is two pages,  
17 N1 and N2. And you've described this narrative in  
18 some detail in your direct statement.

19 Did you -- you personally prepare this exhibit?

20 A. I did.

21 Q. And you did the calculations which are  
22 depicted there?

23 A. I did.

24 Q. Presented there? Okay.

25 Do you have anything to add, other than

1 what -- what you've related in your direct  
2 testimony, about N1 and N2.

3 A. No.

4 Q. Exhibit 250 is two pages, O1 and O2,  
5 similar to N1 and N2.

6 Did you prepare those, the exhibit and the  
7 calculations?

8 A. I did.

9 Q. And you discussed them in some detail in  
10 your testimony?

11 A. I did.

12 Q. Do you have anything to add to them?

13 A. I -- I would note that, on Page O2, there's  
14 a typographical error; that city name and the -- and  
15 near the city -- near the center of the page should  
16 be Kosciusko, Mississippi.

17 Q. K-o, not L-o?

18 A. Correct.

19 Q. Okay. Exhibit 25P is a -- a one-page  
20 exhibit titled Intra-Market Transportation Credit  
21 Example Calculation.

22 Did you prepare that exhibit and do that  
23 calculation?

24 A. I did.

25 Q. And the information is -- in part, it's

1 based on the -- the pro -- the language of Proposal  
2 it -- itself; correct?

3 A. It is.

4 Q. Are the mileages -- how did you come up  
5 with the other information in the exhibit?

6 A. The -- the -- the mileages, the -- they are  
7 all purely hypothetical. They represent no actual  
8 producer location or plant locations. They are  
9 purely hypothetical.

10 Q. The abbreviation or the capital letters  
11 IMTC are used several times on that page.

12 Can you just, so there's no question, indicate  
13 what -- what they represent?

14 A. Yes. They represent Intra-Market  
15 Transportation Credit.

16 Q. Okay. Exhibit 25Q is a two-page exhibit,  
17 Q1 and Q2, titled Would the Intra-Market  
18 Transportation Credit Encourage Uneconomic  
19 Movements of Milk?

20 Did you prepare that exhibit, Mr. Sims?

21 A. I did.

22 Q. Is the information in -- what's the source  
23 of the information in the exhibit?

24 A. The mileages are those that I calculated  
25 using the Microsoft product Map Point. The

1 location adjustments are actual location  
2 adjustments pursuant to -- to Order 5. The -- the  
3 other data are hypotheticals based on a fif --  
4 48,000 pound load, 85 -- hypothetical 85 percent  
5 Class I, et cetera. And actual -- the -- the hauling  
6 rate is computed at \$2.35 per loaded mile.

7 Q. Are the plant locations actual plant  
8 locations in the order?

9 A. Yes.

10 Q. Okay. And you described them in your  
11 testimony, what the exhibit represents?

12 A. I did.

13 Q. Do you have anything to add to that?

14 A. No.

15 Q. Exhibit 25R is a one-page exhibit,  
16 Calculation of Class I IMTC Assessment Necessary  
17 to Fund Credits.

18 Did you prepare that exhibit and do that  
19 calculation?

20 A. I did.

21 Q. And it's the -- the build up to the  
22 proposed maximum Intra-market Transportation  
23 Credit Assessment in Proposal 2; is that correct?

24 A. It is.

25 Q. All right. What's the source of the -- of

1 the information in the exhibit?

2 A. The April 2005 and October 2005 Intra-  
3 market Transportation Credits, as computed at  
4 \$0.48 per hundredweight per mile, are those as  
5 computed by the market administrators at the  
6 proponent's request. The data on Class I producer  
7 milk is as announced by the market administrator in  
8 their typical monthly statistics. That's the first,  
9 basically, 2/3 of the -- of the page.

10 The third section represents an annualization  
11 of those two-month's data, an annualization of the  
12 estimated Class I producer milk on -- on each order  
13 for 2005; and then computes a necessary rate,  
14 which would fund those, which would be required to  
15 fund those annualized intra market transportation  
16 credits that the \$0.048 [sic] per hundredweight per  
17 mile.

18 Q. Okay. Would you turn to Exhibit 25S, a  
19 one-page exhibit?

20 Did you prepare that exhibit?

21 A. I did.

22 Q. What's the basis -- what's the source of  
23 the information?

24 A. This is purely hypothetical. It represents  
25 a -- a pre-changed Federal Milk Order pool at a 70

1 percent Class I utilization; 10 percent utilization in  
2 the other three classes; and then what happens to  
3 the base zone blend price with the addition of a --  
4 of a 30,000,000 pound plant of equal, identical  
5 utilization by class if that additional -- that -- that  
6 new plant is in a plus location zone.

7 Q. And it shows that the blend price goes  
8 down?

9 A. It does.

10 Q. Okay. And I think you've indicated in your  
11 testimony that that is in part, at least, maybe  
12 primarily, a function of the fact that under the  
13 operation of location differentials under the order,  
14 all of the producers in the order, in essence,  
15 subsidize the delivery of Class II, III, and IV milk  
16 to higher location price zones?

17 A. That's correct.

18 Q. And thereby, the overall blend price in the  
19 order is reduced by virtue of that subsidy, so to  
20 speak?

21 A. Yes.

22 Q. Okay. And -- and one difference between  
23 changing location differentials and the  
24 transportation credits proposed in Proposal 2 is  
25 that you would only support the transportation of



1 milk for Class I purposes in Proposal 2?

2 A. That is a -- that is an important  
3 distinction; yes.

4 Q. Okay. Whereas under a system which  
5 would change location differentials, that supports  
6 the movement of milk for any purpose to the higher  
7 location zone?

8 A. Correct.

9 Q. In fact, if there's a pool plant that's --  
10 that's all Class II in a higher location zone, the  
11 pool supports the movement of milk for that Class  
12 II purpose to that zone; does it not?

13 A. It -- if --

14 Q. It's a pool plant?

15 A. -- if milk were -- I don't know that we have  
16 that circumstance in the southeast; but the same  
17 would be true for a diversion to that plant --

18 Q. Okay.

19 A. -- if that -- if milk were diverted to a  
20 nonpool plant which was all Class II, that the  
21 location adjustment would -- would support the  
22 movement of that milk out of the pool revenues.

23 Q. Okay. But Proposal 2 does not propose  
24 providing any support from regulated funds for  
25 movement of milk for Class II purposes in -- to

1 plants of that sort?

2 A. The language as proposed by the  
3 proponents for Proposal 2 provides for  
4 reimbursement of those additional costs on Class I  
5 only.

6 Q. Okay. Let's turn, then, to Exhibit 25T,  
7 which -- which is a one-page exhibit, I believe.

8 Did you prepare that exhibit or was --

9 A. I did.

10 Q. What was the source of the -- is the  
11 source of the data Dairy Market News as indicated  
12 in the title?

13 A. It is.

14 Q. And that's a publication of AMS Dairy  
15 Programs?

16 A. It is.

17 Q. Okay. Were there any -- did you do any  
18 calculations here besides just take the data from  
19 Dairy Market News?

20 A. The -- the comparison -- the two  
21 comparison columns to the right-hand side were --  
22 were my comparisons based on -- purely on the  
23 arithmetic. The far-right column was the sim -- is  
24 the simple average of the 12 ob -- monthly  
25 observations. And then the next to right-hand

1 column labeled Change, January to De -- to  
2 December 2005, simply is the difference between  
3 the December amount and the January amount; for  
4 example, for Atlanta, \$2.17 minus \$1.18 is a  
5 change of positive\$0.99.

6 Q. Okay.

7 JUDGE DAVENPORT: One question, Mr.  
8 Beshore.

9 MR. BESHORE: Yes.

10 JUDGE DAVENPORT: Other than as  
11 indicated, there were no changes to the data from  
12 the Dairy Market News?

13 BY MR. BESHORE:

14 Q. Is that correct, Mr. Sims?

15 A. To the best of my belief, I was -- I had  
16 copied it faithfully.

17 Q. Okay. Let's turn, then, to the next  
18 exhibit, which is 25 -- what, "U"? Is that a two-  
19 page exhibit?

20 A. It is.

21 Q. What's the source of the information on  
22 25U?

23 A. Monthly Dairy Cooperative Marketing  
24 Association, which is a marketing agency-in-  
25 common operating in the southeast; computes a

1 fuel cost surcharge based on the -- based on diesel  
2 prices. And those -- that fuel cost surcharge is --  
3 is established in \$0.08 brackets, if you will.

4 And this page, U1, just simply shows the -- the  
5 fuel -- the -- the diesel price that would have been  
6 applicable to each month; that's the -- the graphed  
7 line. And then the lines -- the horizontal lines  
8 represent the various brackets, at \$0.08 per  
9 bracket, moving up from zero to a maxi -- to -- to --  
10 in this exhibit, shown what would have occurred at  
11 \$0.64 per hundredweight. It simply shows the --  
12 where the -- by month, the fuel cost surcharge  
13 calculation would have called for the -- what  
14 bracket the fuel cost surcharge would have called  
15 for in terms of a fuel cost surcharge.

16 Q. Okay. What are the numbers to the left of  
17 the chart, 3.25. \$3 --

18 A. Those -- those are the -- the diesel price -  
19 - the diesel fuel price -- the average diesel fuel  
20 price we used in making this computation as  
21 announced by the Energy Admin -- Information  
22 Administration.

23 Q. Okay. And the -- the -- the dark lines  
24 going horizontally on the chart with indicated  
25 amounts in between them, can you just explain a

1 little bit more about how that operates?

2 A. Yes. For example, at the left, the -- if  
3 the -- if the fuel price falls between I believe it's  
4 \$1.20 and \$1.45 gal -- the -- if the -- if the diesel  
5 price is between \$1.20 per gallon and \$1.45 per  
6 gallon, I can't recall exactly whether the -- those  
7 brackets, but that would signal an \$0.08 fuel cost  
8 surcharge, an FCS abbreviating fuel cost  
9 surcharge. And then from a \$1.45 to I think \$1.70,  
10 I think they're \$0.20 -- \$0.25 brackets, would be a  
11 \$0.16 fuel cost surcharge in each bracket;  
12 thereafter, an additional \$0.08 on Class I fuel cost  
13 surcharge.

14 Q. And that's on Class I only?

15 A. Correct.

16 Q. Okay. Now, what's the difference between  
17 U1 and U2?

18 A. U2 basically takes the -- the bracket  
19 under which ea -- the line in U1 signals the fuel  
20 cost surcharge, and plots that in the -- on the  
21 left-hand side as the fuel cost surcharge 08, 16, 24  
22 and so on. The black line in U2 represents the --  
23 the black line with the squares represents what the  
24 fuel cost surcharge schedule would call for. And  
25 then the line -- the lighter line -- the dashed line

1 with the diamond shape represents the amount of  
2 fuel cost surcharge which was actually charged.

3 So the -- the significance is that, in many  
4 months, the fuel cost surcharge would have -- as --  
5 as bracketed, would have called for a higher fuel  
6 cost surcharge than was actually applied. And then  
7 in the latter months, the right-hand side of the -- of  
8 the graph, if you will, there shows an increase or  
9 increases in the fuel cost surcharge which, at some  
10 point, catches up with where the fuel cost  
11 surcharge computation calls for; then, again, as  
12 fuel ca -- ca -- costs spike, they tend to lag, and  
13 they catch up, they lag, they catch up.

14 Q. The -- the dotted line is the line of actual  
15 charges?

16 A. Under the fuel cost surcharge, that's  
17 correct.

18 Q. The -- the actual charges the DCMA  
19 announced for its customers?

20 A. That were -- yes, that were included in the  
21 overall order-over price, that -- that amount which  
22 was actually included.

23 Q. Do the Dairy Market News figures include  
24 fuel surcharges?

25 A. My reading of the -- the -- the amount that

1 is in -- reported in Dairy Market News is inclusive  
2 of the fuel -- fuel cost surcharge and other over-  
3 order -- the other elements of the over-order  
4 price --

5 Q. Okay. So --

6 A. -- on price one [phonetic].

7 Q. Okay. So when you look at Exhibit T --  
8 25T, the Dairy Market News published price, say,  
9 for Atlanta, whatever DCMA and -- and -- was able  
10 to announce and -- and charge in terms of fuel cost  
11 is already included in the two -- \$2.17 for  
12 December 2005?

13 A. Yes.

14 Q. By the way, is that number a -- a gross  
15 number before any applicable credits to customers?

16 A. I can't speak to cities outside the  
17 southeast; but this number for -- primarily for  
18 cities with -- that -- of the -- of the 30 cities inside  
19 the southeast, that is a number after uniform  
20 receipt of credits and farm rates and credits.

21 Q. Okay. Now, final exhibit in 25, 25V, did  
22 you appropriate that?

23 A. I did.

24 Q. And what was the -- what's the source of  
25 the information?

1       A.    The upper number in each of the boxes is  
2   the Class I differential specified under -- in  
3   Section -- I believe it's Section 52 of the -- of the  
4   Federal Orders, the -- for cities outside of Orders 5  
5   and 7.  Then the -- the lower number -- the bottom  
6   number of the -- of the addition there is the Class I  
7   over-order price for that city as -- as indicated in  
8   exhibit -- Page T.

9       And then for cities within the southeast or  
10   within Orders 5 and 7, the middle number is the  
11   Class -- the Class I assessment for the current  
12   cran -- transportation credit assessment fund,  
13   which became effective November of 2005 -- at --  
14   at the rate which was effective in November 2005.  
15   And then the sum of those represents, if you will,  
16   the total Class I differential, including over-order  
17   prices.

18      Q.    Okay.  So the top number for each city is  
19   the present Federal Order differential?

20      A.    Yes.

21      Q.    Okay.  So some of the exhibits, perhaps,  
22   Mr. Darr's exhibits or some of your testimony,  
23   indicates movements of milk, say, from -- from  
24   Texas into the -- into the south, Atlanta -- or into  
25   Georgia or South Carolina.  You're moving under



1 the current differential system. Say you're moving  
2 from Dallas area to Charlotte, you're moving from a  
3 \$3 differential to a 3.10 differential?

4 A. Yes.

5 Q. So that --

6 A. From Dallas to Charlotte would be a 3 to a  
7 3.10; yes.

8 Q. Okay. There's not a lot of help from the  
9 Federal Order price grid in moving milk that  
10 direction?

11 A. In that example, that -- that represents  
12 the difference in Class I prices, and your -- the --  
13 the difference in those would be \$0.10.

14 Q. Does that get milk from Dallas area to  
15 Charlotte?

16 A. No.

17 Q. Okay. Just a few other questions, Mr.  
18 Sims, and then we'll -- we'll be through with direct,  
19 I guess.

20 There was testimony yesterday from a -- a  
21 dairy farmer in the vicinity of -- of Knoxville, Tes --  
22 Tennessee, whose milk was supplied through a -- a  
23 proprietary marketing organization, to a plant in  
24 Asheville, North Carolina, I believe.

25 Do you recall that?

1 A. I do.

2 Q. Okay. Is there a -- a plant in Asheville,  
3 North Carolina, a dist -- a pool distributing plant?

4 A. Yes.

5 Q. Okay. Is that plant a customer of SMA?

6 A. It is.

7 Q. Okay. Does -- do you have -- I gather that  
8 the plant is supplied also by other sources of milk,  
9 in -- other sources in addition to SMA?

10 A. They -- the -- the testimony was that there  
11 was that proprietary source -- the nonmember  
12 source into that plant.

13 Q. Okay. So it's not -- so there's more than  
14 one source of supply to the plant?

15 A. Yes.

16 Q. Do you know whether SMA has the -- do  
17 you know what portion of the plant's sales are  
18 provided by SMA?

19 A. I do not know the exact portion.

20 Q. Or through the -- let's say through the  
21 SMA cooperatives?

22 A. I do not know the exact portion. I believe  
23 it is more than half.

24 Q. Okay. Does the SMA supply there reflect  
25 a -- a balancing to some degree, at least, of that

1 plant's operations?

2 A. Yes.

3 Q. From what sources does SMA draw milk to  
4 supply the plant in Asheville, North Carolina?

5 A. In any given month, it could be any  
6 number of sources. That plant, based on its  
7 location and the location of the supply, receives  
8 milk from local producers. It re -- receives milk  
9 from producers more distant but within the  
10 southeast. That plant also would receive, on  
11 occasion, milk from the southwest or the --  
12 originating in the Order 126 area; they receive milk  
13 originating in the Order 33 area; and they may  
14 receive milk originating in the Order 1 area.

15 Q. Okay. And those are actual required  
16 deliveries to -- to that plant in order to -- to meet  
17 its -- its order for milk from SMA?

18 A. Those are with the -- the sources of milk  
19 that were put in there to -- to meet their demand;  
20 yes.

21 Q. When -- and -- and say you're -- you're  
22 drawing milk from the southwest to that plant from  
23 Order 126 area, roughly, what's the transportation  
24 expense on a movement of milk from that distance?  
25 Do you have any idea?

1       A.    In a rate per loaded mile reference of  
2   \$2.35, \$2.30, 2.40, depending on the hauler,  
3   depending on the day, depending on the availability  
4   of equipment, the -- the diesel price that week or  
5   that month, certainly in that -- in that  
6   neighborhood.  There may be some days when --  
7   when demands are very high, midweek demands,  
8   those long-distance prices can even be higher.

9       Q.    Do you know what the -- what the diff --  
10   Class I differential is in that -- in Nash --  
11   Asheville?

12      A.    I believe that it is \$2.80.

13      Q.    So it's actually lower, perhaps, than the --  
14   than some of the differentials in Order 126 where  
15   the milk's coming from?

16      A.    It could be where that -- the -- most of the  
17   milk from the Order 126 area comes from.  Some of  
18   it may be higher than 2.80; some would be lower.

19      Q.    Okay.  When milk comes -- is required to  
20   be drawn down to Asheville from -- from the Order  
21   1 area, do you have any idea approximately what  
22   the freight would be on that -- on those deliveries?

23      A.    It would be similar.

24      Q.    \$2 or so?

25      A.    More than \$2 per -- per 100 -- \$2 per

1 load -- more than \$2 per loaded mile. Pro -- the  
2 freight rates would be similar, probably 2.35.

3 Q. Per loaded mile?

4 A. Yes.

5 Q. Okay. And was that -- the 2.35 was per  
6 loaded mile from Texas over --

7 A. Yes.

8 Q. Okay. Do you have any idea how much  
9 that translates to per hundredweight, or is that  
10 shown on any of your exhibits?

11 A. On a -- Exhibit 25, Page C, at \$2.35 per  
12 loaded mile, a 48,000 pound load translates to just  
13 fractionally less than point -- \$0.49 per  
14 hundredweight per mile.

15 Q. Okay. And how many miles is it from  
16 Texas to western North Carolina? Do you have any  
17 idea?

18 A. A lot.

19 Q. Okay. Do you need to draw milk from  
20 areas beyond the -- within the order, but beyond  
21 a -- you know, a local procurement area for that  
22 plant?

23 A. Need is an inter -- is a question of daily  
24 balancing of supply and demand.

25 Q. Okay.

1       A.    There may be sufficient milk surrounding a  
2 plant to supply that plant; but to minimize the total  
3 miles in the system, that milk may need to move  
4 away from the plants that it's closest to supply  
5 another plant.  And then milk comes into that --  
6 that plant to replace the milk around it.  And -- but  
7 the desire is to minimize the total miles, because  
8 miles is where money is.

9       So you can have a supply around a plant that's  
10 adequate for that plant, but may not go to that  
11 plant; because in a total system of minimizing cost,  
12 that milk is moved to a more distant plant, and milk  
13 from a distant area is pulled into there to -- in a  
14 domino theory, to replace it.

15      Q.    Well, since you've got to go all the way to  
16 Texas and -- and up into Order 1 to get some of the  
17 supplies for that plant, I assume -- or would it be  
18 correct to assume that SMA would exhaust its  
19 supplies available at closer points within Order 5  
20 and Order 7?

21      A.    The -- the logical progression of supply is  
22 to use the closest milk first in whatever mile  
23 minimization process that generates; and then,  
24 as -- as you need to fill the -- the deficit, you  
25 reach further and further away, you want to use the

1 long-distance miles last.

2 Q. Okay. And is that how, in fact, you, as an  
3 administrator with -- with SMA, and the SMA  
4 cooperatives and their dairy farmers, organize that  
5 milk supply --

6 A. That --

7 Q. -- and dispatch it?

8 A. That's the desire; yes.

9 Q. Okay. Now, the gentleman supplying milk  
10 to Asheville there testified that he's paid a  
11 premium of \$0.70 or so over the Federal Order  
12 blend price for supplies to that plant.

13 Is it possible -- is it possible, under current  
14 order regulations with respect to the ability to  
15 recover transportation costs, for SMA to supply its  
16 milk to the Asheville plant and return  
17 \$0.70/hundredweight, or anything near that, over  
18 the blend price back to the supplying sources?

19 A. No.

20 MR. BESHORE: May I have a moment,  
21 your Honor?

22 JUDGE DAVENPORT: Certainly.

23 [WHEREUPON, a brief recess is taken.]

24 BY MR. BESHORE:

25 Q. I have just one -- one small -- small point

1 on Exhibit 25E. Let's make sure there's no  
2 question here.

3 No -- there's a column on this exhibit labeled  
4 FSC, and I don't know if I -- if you clarified or  
5 indicated what that was, or if I asked you to. Can  
6 you tell us what it is?

7 A. Yes. To the extent that the individual  
8 invoices reflected a base rate per loaded mile and  
9 a fuel cost -- fuel surcharge is FSC, fuel  
10 surcharge, that fuel surcharge was -- was identified  
11 separately, columnized separately. And I -- I note  
12 that that was the case at each of these  
13 observations. That represents an addition to the  
14 base rate, to -- for the fuelage [sic] -- for a fuel  
15 adjuster negotiated with that particular hauler.

16 Q. Okay. So taking the top line on Exhibit  
17 25E, the delivery on October 23rd by the Alvis  
18 Transport firm from Fair Oaks, Indiana to  
19 Murfreesboro, Tennessee, the total charge for that  
20 delivery of 417 miles was \$1,059.18 based upon a  
21 charge per loaded mile of -- a base charge per  
22 loaded mile of two -- \$2.20, plus a fuel surcharge  
23 of \$0.34 per loaded mile, for a total rate charge  
24 per loaded mile of \$2.54?

25 A. Yes.



1 Q. Okay. And those are rates per loaded  
2 mile for that truck to deliver that load of milk that  
3 distance?

4 A. Correct.

5 Q. And if you'd go to -- to G -- 25G, you've  
6 got the same column headings, including the FSC  
7 column -- the rate FSC and calculated rate. And is  
8 it correct that those are the same set of itemization  
9 of charges by the hauling company involved?

10 A. Yes.

11 MR. BESHORE: All right. With that, I  
12 have no further questions for Mr. Sims on direct.  
13 And I would move, at the appropriate time, for the  
14 admission of Exhibits 24, 25, and 26.

15 JUDGE DAVENPORT: As -- as amended  
16 by oral comments.

17 MR. BESHORE: As amended by all  
18 comments. And let's make Mr. Sims available for  
19 cross examination

20 JUDGE DAVENPORT: If there are no  
21 objections, Exhibits 24, 25, and 26 will be admitted  
22 into evidence as modified by comments.

23 MR. BESHORE: Thank you, your Honor  
24 [WHEREUPON, documents referred to were  
25 previously marked Exhibit 24, Exhibit 25,

1 Exhibit 25A, Exhibit 25B, Exhibit 25C, Exhibit  
2 25D, Exhibit 25E, Exhibit 25F, Exhibit 25G,  
3 Exhibit 25H, Exhibit 25I, Exhibit 25J, Exhibit  
4 25K, Exhibit 25L, Exhibit 25M, Exhibit 25N,  
5 Exhibit 25O, Exhibit 25P, Exhibit 25Q, Exhibit  
6 25R, Exhibit 25S, Exhibit 25T, Exhibit 25U,  
7 Exhibit 25V and Exhibit 26 for identification.]

8 JUDGE DAVENPORT: And at this time,  
9 it's -- as it's about 10:15, what we'll do is we'll  
10 take our morning break at this time, and then  
11 resume after the break.

12 How long do you-all think would be  
13 appropriate? Fif -- 15 minutes? Twenty minutes?  
14 Which. . .

15 MR. ENGLISH: Fifteen's fine.

16 JUDGE DAVENPORT: Fifteen? We'll  
17 resume at 10:30.

18 [WHEREUPON, a brief recess is taken.]

19 JUDGE DAVENPORT: Mr. English?

20 We're back in session.

21 MR. ENGLISH: Good morning, your  
22 Honor. This is Charles English for Dean Foods.

23 JUDGE DAVENPORT: Good morning.

24 EXAMINATION

25 BY MR. ENGLISH:

1 Q. Morning, Mr. Sims.

2 A. Good morning.

3 Q. I want to chat with you a little bit today,  
4 before we get to details, about philosophy of -- of  
5 transportation credits, and maybe a little history of  
6 how we've gotten to where we are today in the  
7 southeast. And I -- I first want to just review, and  
8 I -- I promise I was listening carefully, but I didn't  
9 write down. And it was yesterday.

10 You started working in this industry in 1983,  
11 you said?

12 A. Yes. Yes.

13 Q. And -- and that was with the market  
14 administrator's office?

15 A. Correct.

16 Q. And how long did you remain with the  
17 market administrator's office?

18 A. Through the middle part of 1996.

19 Q. Okay. And after leaving the market  
20 administrator's office, did you immediately start  
21 working for what is now SMA?

22 A. I began working with what is -- well, I -- I  
23 began working with Dairy Cooperative Marketing  
24 Association --

25 Q. Okay.

1       A.   -- and now also Southern Marketing  
2 Agency.

3       Q.   And is Dairy Marketing something -- I'm  
4 sorry.  What is it?

5       A.   Dairy Cooperative Marketing Association.

6       Q.   Does that still exist today?

7       A.   It does.

8       Q.   Okay.  How is that different from SMA?

9       A.   It -- Dairy Cooperative Marketing  
10 Association is the marketing  
11 agency-in-common which establishes the over-order  
12 prices for the southeast.

13      Q.   Are there members of that entity that are  
14 not members of SMA?

15      A.   Yes.

16      Q.   Who are they?

17      A.   Zia Milk Producers, Select Milk Producers,  
18 Cooperative Milk Producers, Southeast Milk,  
19 Incorporated.

20      Q.   Is that all?

21      A.   I'm thinking.

22      Q.   [laughs]

23      A.   I believe that's it; yes.

24      Q.   Southeast Milk is basically the Florida  
25 cooperatives?

1 A. Southeast Milk is --

2 Q. No, is --

3 A. -- based in Florida; yes.

4 Q. -- is based in Florida.

5 And Cooperative Milk is a Virginia  
6 cooperative?

7 A. Based in Virginia, yes.

8 Q. And Select is primarily in New Mexico, but  
9 has operations out -- outside of New Mexico; but is  
10 it --

11 A. I believe they're headquartered in New  
12 Mexico; yes.

13 Q. And Zia, I -- I know I've heard that once  
14 before, but I confess as --

15 A. They likewise are headquartered in New  
16 Mexico.

17 Q. I'd also like to discuss a little bit more of  
18 what SMA is, and -- and your statement yesterday  
19 about marketing of the milk of -- of 80 percent of  
20 the producers in this area.

21 First, did -- DMS, as I understand it, is -- is  
22 part of SMA; is that correct?

23 A. The -- some of the DMS milk is marketed  
24 through an SMA member.

25 Q. Okay. So it's -- so it's that it's marketed

1 through an S -- an SMS -- S -- SMA member?

2 A. Yes, some of it.

3 Q. Now, when you use the term "marketed"  
4 for the purposes of the -- the DMS milk, does it  
5 mean anything more than -- that the -- that the  
6 functions of fieldwork were outsourced to DMS?

7 A. I'm not familiar with the -- the workings of  
8 the field staff, et cetera.

9 Q. So when you use the term "marketed" as to  
10 the DMS milk, is that because someone's told you  
11 that, or because you know how that's done?

12 A. I'm aware that -- that that milk is directed  
13 to market, and the customer to which it's -- to  
14 which it's delivered receives a bill from the -- from  
15 the cooperative that marketed it.

16 Q. Do you know whether the producer,  
17 though, receives a check from the processor to  
18 which the milk is shipped as opposed to from the  
19 cooperative?

20 A. I don't believe that the processor pays the  
21 producer, but I can't say whether the cooperative  
22 pays them directly or not.

23 Q. Do you know if the -- if the handler  
24 remains responsible for payment regardless?

25 A. The han -- the handler is responsible for

1 payment at the minimal order prices, and they pay  
2 that amount to the cooperative, I believe.

3 Q. Do you know whether they are nonetheless  
4 responsible still to the individual independent dairy  
5 farmer for payment?

6 A. That I do not know.

7 Q. So when you used the term "marketed"  
8 yesterday, or Mr. Darr used the term "marketed,"  
9 for the 80 percent, what you really meant was that  
10 this is the information we have. We -- we know  
11 about a little more than 80 percent of the milk; but  
12 you're not sure, as to the DMS milk, as to whether  
13 or not that was necessarily milk that is under the  
14 control of your member?

15 A. That would include some milk which is  
16 un -- which is directed for sales purposes by the  
17 member.

18 Q. Now, going to the other side of what is  
19 and what is not SMA, you were asked some  
20 questions by Mr. Beshore about the dairy farmer  
21 who appeared yesterday, and -- and testified about  
22 an organization through whom he markets his milk.

23 And just for clarity of the record, that's  
24 Piedmont Milk Sales, to your knowledge?

25 A. I believe that's true.

1 Q. Now, is Piedmont Milk Sales today, unlike  
2 in 1995, a truly independent organization, or is it  
3 owned by any of the members of SMA?

4 A. I don't know if it's owned by a member of  
5 SMA.

6 Q. Regardless, if it's owned by a member of  
7 SMA or not, you are not including the buying of  
8 Piedmont Milk Sales, you or Mr. Darr, in the  
9 statement that 80 percent of the milk in this market  
10 is marketed by SMA members; correct?

11 A. There may be some small -- there is a  
12 sum -- okay. Let me just say this.

13 SMA members deliver or receive from Piedmont  
14 Milk Sales some volume of that milk. As to whether  
15 or not it's directly marketed, it probably is not; and  
16 would not be, therefore, included in that number.

17 Q. In that 80 percent?

18 A. Correct.

19 Q. Do you have -- and recognizing the need  
20 for confidentiality, do you have a preci -- a more  
21 precise number than Mr. Darr gave as -- as  
22 opposed to between 80 or 85 percent of the milk  
23 marketed in this order by SMA?

24 A. I could calculate such a number, but it  
25 would probably reveal a confidence. I'd rather not.



1 Q. Thank you.

2 Now, when you said you were working at a  
3 market administrator's office, was that always the  
4 same market administrator's office that you worked  
5 at?

6 A. No.

7 Q. Which market administrator offices did  
8 you work at?

9 A. Atlanta and Louisville.

10 Q. For what time frame were you in Atlanta?

11 A. 1983 through 19 -- mid 1991.

12 Q. And then after that, until you left, was --  
13 was it Louisville?

14 A. Yes.

15 Q. Okay. Going back to the 1980's, there  
16 were more Federal Orders represented by the  
17 territory that is covered today by the two orders  
18 under consideration; correct?

19 A. Yes.

20 Q. I guess, for a short time, when there was  
21 a Carolina order and before the merger of the  
22 Southeast Orders, were there 12 orders, if you  
23 remember, that are now covered by this territory?

24 A. Describe the territory -- the territory  
25 largely covered by the current --

1 Q. Yes.

2 A. -- Orders 5 and 7?

3 Q. Yes.

4 A. I count ten.

5 Q. Do you have Paducah in there?

6 A. I think I did.

7 Q. Okay [laughs].

8 A. No, I didn't; but I did have Memphis.

9 Q. Okay [laughs].

10 A. [laughs]

11 Q. Okay.

12 A. That's -- I -- I would not dis --

13 Q. Okay.

14 A. I -- it certainly could be 10 or elev -- 10,

15 11, or 12. I wouldn't disagree with that.

16 Q. And in the nine -- mid 1980's, when there

17 were that many orders, were there credits of the

18 form that are presently in -- or were there any

19 credits for transportation within those orders?

20 A. Yes.

21 Q. Over and above location adjustments in

22 Class I pricing, there were -- there were

23 transportation credits?

24 A. Yes.

25 Q. What form of transportation credits

1 existed in the 1980's?

2 A. As I recall, the -- in the early '80s, there  
3 were transportation credits which aided in the haul  
4 out of surplus milk. And in the middle '80s, I  
5 believe in two years, but I may be -- my  
6 recollection may be faulty, there was a -- a hauling  
7 credit for moving milk into the Southeast Orders,  
8 as I recall, at that time it may have been seven  
9 orders or eight, which helped with the cost of  
10 transport to bring supplemental milk into the orders  
11 when the supply was critically low.

12 Q. Well, now, the one in the mid '80s, was  
13 that the one that was found to be outside the  
14 authority of the secretary?

15 A. That's my recollection.

16 Q. Okay. So going now to transportation  
17 credits of this kind in the mid '80s, other than  
18 those that were found to be unlawful at the time,  
19 were there any transportation credits in this  
20 market?

21 A. Not that I recall.

22 Q. Okay. So after -- well, let's -- let me  
23 strike that and save it.

24 Congress came along and -- and added some  
25 authority, otherwise we wouldn't be here today;

1 correct?

2 A. I presume so, yes.

3 Q. Okay. And -- and after that time, two  
4 things happened. I'm going to keep them in  
5 sequence here.

6 Would you agree with me that prior to the  
7 supplemental transportation credits that are  
8 presently within these orders being implemented,  
9 that a number of the orders that we discussed,  
10 whether they were 10, 11 or 12, were either on  
11 their own voted out or otherwise consolidated into  
12 the Southeast Order?

13 A. There have been some orders that failed a  
14 referendum or were voted out, and there has been  
15 a series of consolidations of orders since then.

16 Q. And would it be fair to say that the  
17 entities or groups that voted out orders were  
18 co-ops which are either members of SMA today or  
19 predecessors of entities that are members of SMA  
20 today?

21 A. I can't recall in every circumstance, nor  
22 do I really know, which -- which cooperatives or  
23 producers may have voted not in favor of an or --  
24 issuance of an order; and if I knew, I might not  
25 could say [sic] because of lingering

1     confidentialities from my previous employment.

2     Q.   Well, at least one of those became public  
3     knowledge, when the Paducah vote of -- order was  
4     voted out, and my good colleague here, Mr.  
5     Beshore, sued to keep it in place.

6     So there is a public record for that; correct?

7     A.   I -- I never worked at the Paducah order.

8     Q.   Okay. And that wasn't covered, at that  
9     time, by either of these two offices, Louisville or  
10    Atlanta?

11    A.   Paducah, I believe, was administered out  
12    of the St. Louis office at that time.

13    Q.   Even though you had moved to the  
14    Louisville office -- well, let me back up. Back up.

15    The -- the merger of orders in the southeast,  
16    that are now Order 7, occurred in 1995; correct?

17    A.   Substantially, there wo -- have been some  
18    additions. I re -- at -- at -- there was addition, I  
19    recall, I believe as a result of order reform.

20    Q.   I understand --

21    A.   Principally, the Order 7 is -- is now  
22    comprised, in my recollection, of what was -- been  
23    the orders in that time frame; yes.

24    Q.   And what I'm trying to get at is sort of  
25    sequentially -- and obviously, we had Federal

1 Order reform as well, but sequentially, as to Order  
2 7, a significant consolidation occurred in 1995;  
3 correct?

4 A. I -- that -- I tend to recall tha -- about  
5 that time frame; yes.

6 Q. Did you, in your capacity in Louisville at  
7 that time, attend that hearing or follow that  
8 hearing?

9 A. I believe I did.

10 Q. Is it true that that hearing and the  
11 consolidation of that hearing, the result from that  
12 hearing, was the result of proponents primarily  
13 members of SMA or predecessor members of SMA?

14 A. That would likely be true; yes.

15 Q. And then Federal Order reform, as you've  
16 already discussed, as to the southeast, resulted in  
17 a -- a larger portion, an -- an addition to Order 7;  
18 correct?

19 A. Yes.

20 Q. And that, too, was proposed and  
21 supported by one or more members who are  
22 predecessors or members of SMA?

23 A. That is my recollection.

24 Q. And also, Federal Order reform -- and  
25 maybe some of this resulted from Congress. But

1 noneththeless, Federal Order reform resulted in the  
2 merger of -- of several orders that -- that were  
3 covered by your office, the Louisville office;  
4 correct?

5 A. Again, that was post my leaving the  
6 Federal Order Program; but what now is the  
7 Appalachian Order is the -- principally the territory  
8 that was covered by the Louisville order --  
9 Louisville office at that time previously; yes.

10 Q. And noneththeless, even though that you'd  
11 left Louisville, you know that because you started  
12 working with these various cooperatives doing the  
13 over-order pricing, whether it was SMA or the Dairy  
14 Cooperative Marketing Agency; right?

15 A. Some of that knowledge is that -- a result  
16 of that; yes.

17 Q. And to be fair for completeness purposes  
18 on that, actually, in that circumstance, the -- the  
19 proponents of SMA, or at least several members  
20 of them, maybe not all, at that time advocated  
21 merge -- merging what is Order 5 and Order 7;  
22 correct?

23 A. I -- I recall there being some proponents  
24 of -- of that entire area being -- now, well, you  
25 mean subsequent to the reform?

1 Q. No, part of -- I'm talking about reform  
2 still.

3 A. As my -- my recollection was there was  
4 some interest in a broader consolidation in the  
5 southeast.

6 Q. And indeed, there were some people, who  
7 are proponent members of SMA, who were actually  
8 on the other side and -- and advocated the  
9 Appalachian Order?

10 A. May very well have been; yes.

11 Q. Now, let me go back again for a moment.  
12 Post the consolidation of a number of the  
13 orders in the southeast into Order 7, which we  
14 discussed is 1995, the -- the initial element, at the  
15 time that the order was created, were there  
16 transportation credits in either Order 7 or the  
17 orders that make up Order 5 today?

18 A. My recollection is that the transportation  
19 credits were installed in 1996. I don't recall the  
20 implementation date of the consolidation of that --  
21 that form of Order 7, so I can't say for sure  
22 whether -- when that happened. But --

23 Q. But -- but --

24 A. -- 1996 was the year when transportation  
25 credits were first installed in the Southeast Orders.



1 And my recollection is that it was, at that time, the  
2 broader Order 7, but I may be mistaken.

3 Q. All right. If you'll accept my  
4 representation, it was -- I mean, I've got the --  
5 the -- the Code of Federal Regulations here --

6 A. I believe everything you say.

7 Q. Everybody got that [laughs]?

8 And do you recall whether, even before they  
9 were implemented in 1996 as a result of an  
10 emergency hearing, that there was shortly before  
11 that another emergency hearing that resulted in no  
12 change? Basically, that hearing was terminated.  
13 Do you recall an earlier hearing for transportation  
14 credits that -- that did not result in any result one  
15 way or the other?

16 A. I recall a -- a -- one hearing sometime  
17 previous to that, the date now escapes me, where a  
18 number of market-wide service payment provisions  
19 were proposed, all of which were denied. And  
20 transportation credits may have been a part of  
21 that, but my recollection is poor.

22 Q. At -- at that time, around that time,  
23 '95/'96, when you started working for Dairy  
24 Marketing Cooperative, it's -- can you tell me  
25 approximately what percentage of the milk on these

1 orders was represented by the proponent  
2 cooperatives today?

3 A. No, I do not recall that.

4 Q. Do you know whether it was less than 80  
5 percent?

6 A. I do not recall.

7 Q. Would it be fair to say that the percentage  
8 of milk, represented by these co-ops, has gone up  
9 over time?

10 A. It may very well have, but I cannot --  
11 again, I cannot recall specifically.

12 Q. Now, going to the 1996 hearing in which  
13 supplemental -- a -- the credits for supplemental  
14 milk, as you've [sic] yourself discussed, were put  
15 in in 1997 --

16 A. 1996 or 1997?

17 Q. Well, the hearing was in '96 and I guess --  
18 they were temporarily installed in '96, with then  
19 some amendments in '97; correct?

20 A. Yes.

21 Q. What were the nature of the amendments  
22 that changed it from '96 to '97? Do you remember?

23 A. Yes. In 1996, there was the -- I think the  
24 mileage use for use in transportation credits and  
25 the computation of the credit was the full miles

1 from the origination point to the plant; that was in  
2 for -- and for producer milk in the 1997  
3 promulgation, the -- the secretary installed a -- an  
4 exclusion of the first 85 miles, if you will. The  
5 mileages that you use to compute the  
6 transportation credits are the actual miles minus  
7 85.

8 I recall there was a -- a -- I -- I think -- well, I  
9 do recall that in the 1996 process, the mileage rate  
10 was \$0.37 per hundredweight per mile; that was  
11 reduced to \$0.35 per hundredweight per -- per mile  
12 in the 1997. And in the 1996 promulgation, there  
13 was a process for if the transportation credit  
14 payment exceeded the amount available from  
15 assessments, the difference was taken from the  
16 producer revenue pool.

17 Q. And that was removed?

18 A. It was removed in the 1997 process; yes.

19 Q. Now, when the proponent cooperatives in  
20 1996 and in 1997, but essentially in 1996, asked  
21 for the transportation credits, it was not just on  
22 supplemental milk from outside these marketing  
23 areas; it was also for supplemental milk that would  
24 move between these marketing areas?

25 A. I don't recall that, but that -- it may be

1 true. It's -- that's not my rec -- I just don't recall  
2 that.

3 Q. So if the secretary's decision of July 18th,  
4 1996 reflects that there was such a request and it  
5 was denied, then there is some history here for  
6 what the secretary is looking at in terms of its  
7 philosophy for supplemental supply; correct?

8 A. I would agree that there is history.

9 Q. From attending -- well, let me come  
10 forward.

11 Post Federal Order reform, we had another  
12 hearing. And this time on Groundhog Day -- and --  
13 and I guess it sort of is. But we had a hearing  
14 requested by the proponent cooperatives just a  
15 couple of years ago to merge the southeast and the  
16 Appalachian Orders; correct?

17 A. Yes.

18 Q. And as part of that hearing -- you know,  
19 limited to just this subject 'cause there's other  
20 areas, obviously; but part of that hearing,  
21 regardless of whether there was a merger, the  
22 proponent cooperatives requested an increase in  
23 the assessment rate --

24 A. The --

25 Q. -- correct?

1       A.    -- the result -- the -- the secretary found  
2       that an increase of \$0.03 in the assessment rate  
3       for the coun -- for the transportation credit  
4       balancing fund was appropriate.

5       Q.    And -- and the secretary didn't just find  
6       that out either.  The proponent cooperatives  
7       offered evidence, and the proponent cooperatives  
8       supported that in support of proponent  
9       cooperatives after that; correct?

10      A.    Yes.

11      Q.    Okay.  And they asked for that regardless  
12      of whether the orders were merged; correct?

13      A.    I recall the proponent testimony largely  
14      relating to the -- a merged transportation credit  
15      balancing fund, and that \$0.03 was the amount  
16      needed to fund that merged fund.

17      Q.    Were you the witness for that?

18      A.    No.

19      Q.    You were not.

20      You were there; you attended the hearing?

21      A.    Yes.

22      Q.    Okay.  The secretary, nonetheless,  
23      determined not to merge, but to increase the  
24      assessment; correct?

25      A.    Yes.

1 Q. And that was effective November 1st of  
2 2005?

3 A. The increased assessment was effective  
4 November 2005.

5 Q. Now, let's talk about supplemental milk  
6 and the philosophy behind it for a moment.

7 The proponents in 1996, as I see it today, but  
8 the secretary accepted, essentially, the concept  
9 that, A, these markets are deficit; correct?

10 A. Yes.

11 Q. B, that there is a requirement to have  
12 supplemental milk -- milk supplies from outside the  
13 marketing area; correct?

14 A. Yes.

15 Q. And finally, that -- and maybe not quite  
16 finally, but for my purposes, finally, that the  
17 cooperatives shared or handlers supplying those  
18 supplement milk supplies carried an undue burden  
19 of that supplemental supply; correct?

20 A. Could you repeat that?

21 Q. That the market participants did not share  
22 equally in the marketplace as opposed to the order  
23 structure in supplying that supplemental milk into  
24 the market?

25 A. I believe that's correct.

1 Q. And therefore, on that basis, adopted  
2 some -- not 100 percent, but some supplement --  
3 some transportation credits in supplemental milk;  
4 correct?

5 A. Yes.

6 Q. But it was limited in the number of  
7 months; correct?

8 A. Yes.

9 Q. It's not paid in every month?

10 A. Correct.

11 Q. And are you aware --

12 A. The -- the transportation credit payments  
13 are not paid in every month.

14 Q. The assessment may be in every month?

15 A. Yes.

16 Q. But the payment may not be?

17 A. Correct.

18 Q. And do you remember whether the  
19 proponent cooperatives also, at the time, proposed  
20 that it be for every month? That basically they be  
21 paid in every month?

22 A. I do not recall that.

23 Q. Regardless, it was limited to the number  
24 of months; correct?

25 A. Yes.

1 Q. And ultimately, whether it was in '96 or  
2 '97, there was some mileage limitations put on, as  
3 you yourself said; correct?

4 A. Yes.

5 Q. And even though a rate of 3.7 cents had  
6 been determined, later the secretary went to a  
7 level that's slightly less than 98 percent of that,  
8 which -- 3 -- 3.5 cents; correct?

9 A. Yes, \$0.35.

10 Q. I'm sorry. Well, per mile or per ten miles.  
11 I mean, it depends on -- I was using ten miles,  
12 you're using one mile; correct?

13 A. Yes.

14 Q. Okay. And the secretary determined that  
15 the producer settlement fund would not be the  
16 subject for funding for the supplemental in 1997;  
17 correct?

18 A. Would not be subject to -- would -- well,  
19 yeah; that -- that there would be no provision for --  
20 for pay -- for removing funds from the producer  
21 settlement fund or the producer revenue pool if the  
22 transportation credit balancing funds were  
23 insufficient.

24 Q. Well, now, let me go back in history just a  
25 little bit again.



1 Do you recall, back in 1990 when you were still  
2 with the Louisville market administrator --

3 A. No.

4 Q. [laughs]

5 A. I was not with the Louisville market  
6 administrator in 1990.

7 Q. I'm sorry. I'm sorry.

8 In Atlanta, when you were with Atlanta. I  
9 apologize.

10 A. I may or may not remember 1990; yes.

11 Q. Okay. Do you remember in 1990 -- first of  
12 all, in 1990 -- whether it was '94, '95 or '96, and I  
13 said it's '95, certainly, back in 1990 there wasn't a  
14 merge Southeast Order; correct?

15 A. I beg your pardon?

16 Q. There was no merged Southeast Order.

17 There were separate orders for what's now the  
18 southeast in 1990; correct?

19 A. My recollection is that is true; that -- well,  
20 let me just put it this way: When I left -- I believe  
21 when I left Atlanta, they were still basically a --  
22 several orders that now -- now encompass the  
23 single Order 7.

24 Q. Would you recall, you know, in a range,  
25 what the Class I utilization was in 1990 for

1 Georgia?

2 A. I would imagine in a range, depending on  
3 the month, depending on the year, somewhere in  
4 the high 70s to low 80s.

5 Q. Your recollection is very good.

6 After the merger, moving ahead to -- to 1996 --  
7 actually, let me go back.

8 I know you were in the Atlanta market, but  
9 would you have known what the Class I utilizations  
10 were in the markets to the north of you, north of  
11 Georgia?

12 A. I may have some vague recollection; yes.

13 Q. Would they have also been in the high 70s  
14 to low 80s?

15 A. Not necessarily. The Tennessee Valley  
16 Order probably was in the middle 70s most months  
17 to maybe low 80s. The Louisville, Lexington, and  
18 Evansville Order probably was more in the order of  
19 the low 60s to the low 70s. And the Carolina  
20 Order, when it was promulgated, probably were in  
21 the upper 70s to low 80s.

22 Q. Were those percentages essentially the  
23 same in 1996 after the consolidation of the  
24 southeast, or about the time of the consolidation of  
25 the southeast?

1 A. I'm sorry. I misunderstood your question.

2 Q. Would -- would the Class I utilizations in  
3 1996, about the time that the transportation credit  
4 hearing was held, be about the same as they were  
5 in 1990?

6 A. I recall them being similar.

7 Q. Yeah. Do you agree that, today, post  
8 Federal Order reform, post mergers, post  
9 transportation credits, that the evidence in this  
10 record is that the merged orders have Class I  
11 utilizations in the 50s to 60s?

12 A. I believe that the ca -- the utilization  
13 Order 5 exceeds 60 per -- 60 sometimes.

14 Q. But it's certainly not 70?

15 A. I believe if -- if it's not in the 60s, then  
16 it's more in the 60s than the 70s.

17 Q. Okay.

18 A. I believe that the -- the Class I utilization  
19 in the -- in the -- the Appalachian does reach into  
20 the 70s.

21 Q. Okay. Would you agree it's lower than  
22 what it was if you'd used the combined back in  
23 1990 after Carolina came around?

24 A. I don't know necessarily whether that's  
25 true, because Louisville -- as I'd testified, the old

1 Order 46, Louisville, Lexington, and Evansville had  
2 utilizations in the 60s. So I -- I really don't know  
3 what the -- the con -- the weighted average of  
4 those utilizations were.

5 Q. Well, if we -- obviously, we can have data  
6 put in. And would you at least agree, that if -- that  
7 everything else being equal, if Class I utilizations  
8 dropped, that the blend prices to dairy farmers  
9 would have dropped?

10 A. All things being equal, lower Class I  
11 utilizations result in a lower uniform price.

12 Q. And lower uniform price to producers in  
13 this market can certainly affect their production of  
14 milk for the market; correct?

15 A. I would think that's true anywhere.

16 Q. I want to turn now to some of your  
17 exhibits, and then ask some questions about how  
18 Proposal 2 would work.

19 First, when the proposals were submitted, they  
20 were submitted by Dairy Farmers of America, or  
21 were they submitted by SMA?

22 A. The hearing notice notices that they were  
23 submitted by Dairy Farmers of America.

24 Q. And when did SMA become involved?

25 A. SMA's been involved all along. It just --

1 the timing allowed for DFA to provide -- to send in  
2 the hearing request; but -- under their signature,  
3 but SMA has been involved all along.

4 Q. Do you know when the hearing notice was  
5 submitted? When -- when the request for a hearing  
6 was submitted?

7 A. I don't recall exactly; no.

8 Q. Do you know if it was before or after the  
9 secretary had announced finalization of the merger  
10 proposal of how the merger. . .

11 A. I believe it was after. But now -- I just  
12 can't recall. I don't -- I don't recall when the final  
13 decision on the merger was issued and when the  
14 initial request for a hearing went in.

15 Q. Now, in your testimony, I think you said  
16 three or four times that having been, in your view,  
17 conservative in calculating the haul rate  
18 adjustment, that you didn't see any need for a  
19 further reduction?

20 A. Yes.

21 Q. Nonetheless, in 1997, when the secretary  
22 adopted the transportation credits, the secretary  
23 reduced the rate by, in essence, 5 percent;  
24 correct?

25 A. It was reduced from the 1996 rate to the

1 1997 rate, yes, at approximately 5 percent.

2 Q. And wouldn't it be fair to reduce this  
3 again by the same 5 percent in order to make  
4 certain that we aren't overcompensating for -- for  
5 transportation and to give people the right  
6 incentives?

7 A. My opinion is that the -- the -- the rate  
8 proposed, the \$1.91 base rate, already reflects a  
9 rate which is less than -- now, if you -- if you bring  
10 that rate forward to now, that we already reflect a  
11 mileage rate which is reduced below the actual cost  
12 of hauling and, perhaps, more than 5 percent.

13 Q. Do you have a percentage? You say  
14 perhaps. You don't know?

15 A. I do not know what the percentage is; but  
16 believe it would be something in excess of 5 -- at  
17 or 5 -- around 5 percent or more.

18 Q. Turning to Exhibit 25, Page F for a  
19 moment, and your discussion with Mr. Beshore  
20 about the hurricane hearing decision. And as I  
21 understood it, this was designed to illustrate the  
22 concept that -- that at the present rate, you  
23 couldn't haul the milk if -- if the fuel was free?

24 A. That's correct.

25 Q. And is that all it's there for? Or does the

1 2.25 figure in your calculation today? Did you use  
2 the 2.25 from the hurricane as a mechanism for --  
3 for coming up with the rate today?

4 A. No, the 2.25 is purely referenced from the  
5 hurricane decision. That's a -- a rate the secretary  
6 recognized, and that was -- that's it's only  
7 significance.

8 Q. Okay. Turning to Exhibit 25H, and this is  
9 the combination truck fuel consumption and travel.  
10 And I'm looking, for a moment, at the footnote with  
11 the asterisk that says, "Beginning in 1998, the  
12 Federal Highway Administration used the Census  
13 Bureau's 1997 [Federal] Vehicle Inventory and Use  
14 Survey for its baseline estimate. . ."

15 Does that change explain, in any way, the drop  
16 from 1997 to 1998 of the average miles traveled  
17 per gallon, from 6.1 to 5.1?

18 A. I do not know.

19 Q. Do you know whether, when the FHA  
20 started using Census Bureau numbers, that they  
21 normalized going back?

22 A. I do not know.

23 Q. And the answer to question on -- on "T," I  
24 believe a question from Mr. Beshore, you indicated  
25 that these announced cooperative Class I prices, at

1 least for the southeast, which is the market you  
2 know of --

3 A. Yes.

4 Q. -- is the net price, net of certain credits?

5 A. Yes.

6 Q. And I think you mentioned two different  
7 credits.

8 Could you tell us what the credits were you  
9 mentioned?

10 A. Yes, I -- actually, three. I prob --

11 Q. Right.

12 A. -- I probably said 'em so it sounded like  
13 two. There are principally three charges which  
14 would exist over and above the stated -- let's just  
15 use Atlanta for an example --

16 Q. Okay.

17 A. -- for December, the 2.17. There's a  
18 \$0.30 charge for nonuniform receipt, that is, plants  
19 that do not receive uniformly seven days; and then  
20 a \$0.05 charge each for purchasing on other than  
21 farm weights and other than farm weights and tests  
22 [phonetic]. So the gross price charged to handlers  
23 is \$2.57, and they may receive up to that \$0.40  
24 credit back if they receive evenly seven days  
25 purchase on farm weights and purchase on farm



1 tests. So the 2.17 presumes a full receipt of those  
2 credits.

3 Q. I do not want confidential information; but  
4 to the extent you know, what percentage  
5 approximately of the handler's -- the distributing  
6 plants in these markets receive milk on farm  
7 weights and tests?

8 A. The vast majority.

9 Q. And what about the seven-day receipts?

10 A. Some.

11 Q. And would the fact that it's "some" be  
12 reflected in some of the market administrator  
13 statistics that were put in especially for Order 7,  
14 that showed some daily receipts varying from -- I  
15 think for January, one month, 11,000,000 to  
16 16,000,000?

17 A. That would account for a substantial  
18 portion of that variation; yes.

19 Q. So that if more handlers chose the even-  
20 day receipts, that conceivably that would -- would  
21 be balanced out a little bit?

22 A. If handlers received even -- if all handlers  
23 received evenly every day of the week, a  
24 substantial portion of the balancing reserve could  
25 be eliminated.

1 Q. Has that credit for seven-day receipts  
2 changed over the last ten, 15 years, or has it  
3 remained relatively the same?

4 A. My recollection is that it went from \$0.20  
5 to \$0.30 some number of years ago, five or six  
6 maybe.

7 Q. Have any -- have your members discussed  
8 increasing that from \$0.30 in order to encourage  
9 more even receipts?

10 A. That has been discussed on occasion.

11 Q. As an economist, would you agree,  
12 apparently, the economic incentive has not been  
13 high enough for the handlers receiving the milk in  
14 order to -- to get the credit?

15 A. Something has prevented them from  
16 making those changes.

17 Q. Let me turn for a few moments to the  
18 workings of Proposal 2. And it probably would be  
19 handy to look at Exhibit 25, Page Q1 and Q2, but  
20 you may also want to have with you the exhibit that  
21 Mr. Darr put in, Exhibit 22. That is the map. And I  
22 don't know whether you have any maps with you  
23 that show pricing or if you know pricing of various  
24 zones, or that you can accept when I go through  
25 zones and we'll talk about it and we'll figure it out.

1 A. I have some knowledge.

2 Q. Yeah. Well, I'm not doing this because  
3 I'm, you know, trying to say I know something. The  
4 only reason I know it is I have the map in front of  
5 me.

6 I think Asheville is actually 2.95 and not 2.80?

7 A. You're absolutely right. That's minus  
8 \$0.15. That is -- that -- you -- you are absolutely  
9 right.

10 Q. Okay. I think you testified earlier, in  
11 answer to a question of Mr. Beshore, that it was  
12 2.80?

13 A. You're right. That -- that previous  
14 testimony was incorrect. It is minus \$0.15 off the  
15 3.10 base.

16 Q. And as I say, I have a map in front of me,  
17 so I have an advantage, but -- I'd like to see, for a  
18 moment -- I mean, you've -- you've provided some  
19 examples on -- on Q1 of how the credit would work.  
20 And in essence, Q1, as I see it, is more to show  
21 that you're not creating an incentive to move the  
22 milk to the eco -- uneconomic place; correct?  
23 That's what it's there for?

24 A. That's the purpose of the exhibit; yes.

25 Q. But -- but nonetheless, the exhibit also

1 reflects the credit that would be available at two  
2 different locations; correct?

3 A. Yes.

4 Q. Can we run through this analysis, for a  
5 moment, of what the credit would be for milk  
6 received here in Louisville at the Dean Foods  
7 plant --

8 A. Okay.

9 Q. -- where the Class I differential is \$2.20?  
10 And if you want to look at that map that is Exhibit  
11 22, it would look to me that, you know, maybe the  
12 Dean Foods plant is -- is -- combines with other  
13 plant [sic], but it looks like it might be that yellow  
14 circle on the border --

15 A. I believe that is true.

16 Q. -- of Indiana and Kentucky?

17 A. Yes.

18 Q. Can you explain to me under what  
19 circumstances the Dean Foods plant, under  
20 Proposal 2, or -- or the supplier of the Dean Foods  
21 plants, whoever it is, under Proposal 2, would  
22 receive a credit under Proposal 2?

23 A. If that plant received milk from a producer  
24 who was closer to another pool distributing plant  
25 than they are from the Louisville plant, I can think

1 of a -- of a supply area between Louisville and  
2 Winchester that may extend close enough to  
3 Winchester; it may not. But that a producer could  
4 be closer to the Winchester, Kentucky plant, may  
5 be moved to Louisville, and would thus be eligible  
6 for a credit. Also for, perhaps, a producer in  
7 southern Indiana who may be closer to a plant -- I  
8 think there's a plant in Holland, Indiana ma --  
9 perhaps that plant would be closer than Louisville,  
10 in which case that producer would be -- or the milk  
11 of that producer would be eligible for a credit.

12 Q. All right. Let's turn to the Dean Foods  
13 plant in Morning -- the Morning Star facility in Mt.  
14 Crawford?

15 A. Yes.

16 Q. Under what circumstances can that plant  
17 receive -- or the supplier of the plant receive a  
18 credit for delivering milk to that plant?

19 A. Again, if the milk moved into that plant  
20 from a -- from a producer who was nearer another  
21 pool distributing plant, then that -- that -- that milk  
22 would be eligible for a credit.

23 Q. Now, Exhibit 22 would reveal that there is,  
24 within a very short distance, more than 200 percent  
25 of the milk required for that plant, that, without

1 demand constraints, according to Mr. Darr, would  
2 put a -- well, 200 percent of the milk that that  
3 plants needs. And --

4 A. At least 200 percent.

5 Q. Two hundred percent. And that is th e--  
6 the closest distance, as he -- as he described it,  
7 the -- the -- the shortest linear distance; correct?

8 A. Yes.

9 Q. So what is the economic likelihood that  
10 there would be, you know, any milk closer to  
11 another plant in this order that would be  
12 economically feasible in order to -- to get a credit?

13 A. Likely for milk delivered into Mr.  
14 Crawford, there would be -- it would be unlikely  
15 that much milk would move in there from inside the  
16 marketing area which is further a -- which is nearer  
17 another -- another plant. However, th e-- I think  
18 the point of the proposal is that this milk, in that --  
19 in the Mt. Crawford neighborhood, if you will, is --  
20 is more than sufficient to supply those plants. The  
21 producers near that Mt. Crawford plant can't go to  
22 Mt. Crawford, or all of them can't. That milk has to  
23 move some place else, to their red and yellow  
24 plant, if you will. And that plant would then be --  
25 would be due a credit because moving it's away

1 from its nearest plant.

2 Q. And Morning Star, nonetheless, for the  
3 privilege of having no milk that is economically  
4 eligible or feasible to come into it, gets the  
5 privilege of paying \$0.20/hundredweight?

6 A. I believe the maximum rate --

7 Q. Or \$0.15, I'm sorry. Fifteen --

8 A. I believe the maximum rate we proposed in  
9 Order 5 is \$0.10.

10 Q. I'm sorry, \$0.10. But still,  
11 \$0.10/hundredweight, I'm confusing orders --  
12 Proposals 1 and 2, and I apologize. So let -- let's  
13 go over that.

14 In Proposal 1, you're proposing increasing the  
15 rate for Order 5 to \$0.15 and Order 7 \$0.20;  
16 correct?

17 A. To \$0.15 and to \$0.20 --

18 Q. To \$0.20, yeah.

19 A. -- yes.

20 Q. Yeah, not "by" but "to."

21 And since it's brand new, the transportation --  
22 the Intra-market Transportation Credits would be  
23 \$0.10 in Order 5 and \$0.15 in Order 7?

24 A. That would -- that is the proposed  
25 maximum --

1 Q. Proposed maximum --

2 A. -- rate.

3 Q. But nonetheless, under the proposed  
4 maximum, a plant in Mt. Crawford for the privilege  
5 of having 200 percent of its milk supply nearby  
6 would be paying \$0.10/hundredweight; correct?

7 A. At the maximum rate, yes.

8 Q. There was some discussion with Mr. Darr  
9 yesterday, I be -- I'm not sure if this was Mr. Yale  
10 or not; but looking to sort of the western edge of  
11 Exhibit 22 for a moment, plants either in Fort Smith  
12 or -- or Shreveport, that the logical milk supply,  
13 say, for Shreveport might very well be Hopkins  
14 County, Texas?

15 A. That may be a source or an [sic] sor --  
16 yes.

17 Q. Is it a source today, to your knowledge?

18 A. I believe milk does move from that part of  
19 the world to -- to Shreveport; yes.

20 Q. Because that milk is outside the marketing  
21 area, it would not be eligible for a credit for  
22 moving into the plant at Shreveport; correct?

23 A. That is -- it would not be eligible for an  
24 intra --

25 Q. Right.



1       A.    -- market transportation credit; that's  
2 correct.

3       Q.    And if it moved every day of ev -- of every  
4 month, it wouldn't be eligible for a supplemental  
5 one, either; right?

6       A.    It would not -- by virtue of its -- of its  
7 pooling virtually year-round, it would not be  
8 eligible on that basis for -- for a -- for a  
9 transportation cro -- balancing fund --  
10 transportation credit balancing fund payment. It  
11 would be eligible by geography, but ineligible by  
12 exclusion.

13       Q.    And yet the plant in Shreveport -- which I  
14 promise just happens to be a Dean Foods plant; but  
15 the plant in Shreveport would -- would nonetheless  
16 pay up to the maximum of \$0.15 in Order 7?

17       A.    \$0.15 for the intra --

18       Q.    Cents -- for the -- for the intra-market?

19       A.    -- market -- for the intra -- Intra-market  
20 Transportation Credit Assessment, yes.

21       Q.    Did you consider for the -- the plants --  
22 and I'm -- again, now, I'm going to go up to  
23 Missouri -- southern Missouri. There's, I think,  
24 five plants in the 220 zone or along the western  
25 border, or for the plants in the north.

1 Did you consider some mileage zone or some  
2 concept of being able to bring milk into the  
3 marketing area and using that credit that's for  
4 regular milk?

5 A. I'm sorry. Could you repeat that  
6 question?

7 Q. Did your cooperatives consider using milk,  
8 other than just milk produced within the marketing  
9 area, if it's daily delivered into these areas, and is  
10 coming from 50 to maybe 100, but a -- a -- a short  
11 distance away along this western and northern  
12 border of 5 and 7?

13 A. I can say that consideration was given to  
14 whether or not some additional territory on the  
15 western side, if you will, or just to the west of  
16 Order 7, should be included as a -- as a piece of  
17 geography from which Intra-market Transportation  
18 Credits could be earned. We rejected that not  
19 because of anything other than it made  
20 administration of the provisions, with regard to the  
21 current transportation credit balancing fund, dicey.  
22 It -- it -- it -- the language would be very unruly.  
23 The provisions would be very unruly in terms of  
24 how to qualify for one versus the other, because  
25 you would have a -- a piece of geography with

1 overlapping credit provisions.

2 Q. Good thing this isn't unruly. So -- I mean,  
3 we already have, but -- let me go back to my first  
4 example for a moment, because I'm, you know,  
5 looking at the map, and I don't have mileages.  
6 But -- but if -- if you look at Dean Foods, and --  
7 and you -- you mentioned Winchester Farms; but  
8 is -- it's true, is it not, that there's not much milk  
9 around Winchester Farms? There never has been?

10 A. That -- that is an area which could use  
11 more milk.

12 Q. Okay. So it's not likely that there's going  
13 to be milk closer to Winchester Farms than the  
14 Dean Foods plant, since that area has, from the  
15 time that plants was built, been a deficit area;  
16 correct?

17 A. That -- there -- there -- it is possible, but  
18 perhaps unlikely.

19 Q. So realistically, that leaves Dean Foods,  
20 if it's going to -- if it or the supplier of a plant here  
21 in Louisville were going to benefit from up to \$0.10  
22 that it's going to put into the -- a fund and going to  
23 benefit, it's going to have to be in -- in southern  
24 Indiana in an area that's closer to Hoosier Dairy;  
25 right?

1       A.   Not necessarily.  If -- if milk is drawn from  
2   the moderately-heavy production area in south  
3   central Kentucky, which might move back to  
4   Louisville if that milk is closer to Nashville, it  
5   would receive a [sic] Intra-market Transportation  
6   Credit if it were -- if that plant -- if a producer  
7   were closer to Nashville, say, than to Louisville,  
8   located in that Glasgow production area, and that  
9   milk moved back to Louisville, it would be -- it  
10  would receive a transporta -- inter -- an Intra-  
11  market Transportation Credit.

12       Q.   What happens -- and I -- I generally  
13  don't -- I mean, I -- what happens if that milk is  
14  coming from the 240 zone of south-central  
15  Kentucky into the 220 zone, in your calculation?  
16  How does that work in your calculation?

17       A.   If --

18       Q.   Does that become a plus number?

19       A.   No, there's just no adjustment.

20       Q.   There's no adjustment.  So it's --

21       A.   No adjustment for the zero difference.

22       Q.   -- it's -- it zeroes out?

23       A.   Yes.

24       Q.   It's the sa -- it's effectively the same  
25  thing as if the milk stayed in the 220 zone?

1 A. Yes, sir.

2 Q. Which is zero adjustment?

3 A. Yes.

4 Q. And similarly, if it came out of, say, the

5 280 zone, it's a zero adjuster [sic]?

6 A. Yes. If you go from a 280 to a 240,

7 there's still no adjustment. I -- was your -- was the

8 question 280 --

9 Q. No. You -- you and I are communicating

10 correctly; yeah. The --

11 A. Yeah.

12 Q. -- the peanut gallery over here --

13 A. We've got to convince the. . .

14 Q. [laughs] Has your organization done any

15 calculation based upon existing movements of milk,

16 since you're hoping there's not going to be

17 uneconomic movements? I'm assuming that

18 existing movements, you assume, will remain the

19 same; correct?

20 A. The --

21 Q. You're assuming that the lo -- if these

22 location adjustments -- I'm sorry . If these intra-

23 market transportation adjustments went into effect,

24 you have -- your Exhibit 25Q, if your analysis is

25 correct, indicates that it will not create incentives

1 to move milk where it isn't moved presently;

2 correct?

3 A. The design of the proposal is that the  
4 actual rate of mileage, the mileage rate, is less  
5 than the -- the true cost of hauling, and that the --  
6 the mileage rate is only applied to the Class I  
7 portion of the load; so when you combine those two  
8 less-than-real numbers, you're going to come up  
9 with an answer -- a credit which is less than the  
10 true cost of hauling. And you shouldn't move more  
11 miles -- yeah, as long as the credit is less than the  
12 actual cost of moving milk, you're not going to  
13 desire to move milk further. You're always going to  
14 want to minimize miles, even if you receive a  
15 credit.

16 Q. But even if you're going to want to  
17 minimize miles, aren't you going to alter the  
18 incentive for a dairy farmer, say, located between  
19 Dean Foods and Hoosier Dairy if -- if there is no --  
20 if it's closer to Hoosier Dairy, if the farm is closer  
21 to Hoosier Dairy, it gets no credit for moving to  
22 Hoosier; correct?

23 A. That would be correct.

24 Q. Okay. So now, if it's 20 miles farther to  
25 Dean, it gets a credit for moving to Dean. It gets

1 no credit for Hoosier. So you're subsidizing a  
2 portion of the haul to Dean; none of the haul to  
3 Hoosier.

4 I understand you're saying it doesn't cover all  
5 of it, but doesn't that alter the incentive and the  
6 thought process for these dairy farmers as to where  
7 they end up?

8 A. It could.

9 Q. Nonetheless, in your assumption that --  
10 that it doesn't create an incentive to move, has  
11 your organization or your member organizations  
12 done any analysis of which plants are likely to  
13 receive a higher portion of this credit that is paid  
14 in by handlers?

15 A. No, we have not.

16 Q. But you agree, would you not, that to the  
17 extent a plant such as Mr. Crawford has more than  
18 200 percent very close by and is not likely to get  
19 the credit, it is not going to get its investment of  
20 the \$0.20 back for the haul -- or the supplier is not  
21 going to get his investment back?

22 A. On an individual plant basis, that may  
23 very well be correct. On a region basis, where we  
24 need to move the milk around, that would pay for  
25 those additional movements.

1 Q. But nonetheless, you're going to have all  
2 plants pay?

3 A. Correct.

4 Q. Are you familiar with a decision by the  
5 secretary in the mid 1980s to increase the location  
6 adjustment between Dallas and Houston by  
7 \$0.18/hundredweight?

8 A. I -- no, I'm really not familiar.

9 Q. Are you familiar with a decision sometime  
10 after the 1985 Farm Bill and the two-year rule ---  
11 remember, there was a -- there was a rule that  
12 there were minimum Class I differentials for two  
13 years after the '85 Farm Bill was implemented? Do  
14 you remember that?

15 A. Yes.

16 Q. That after that limitation came off, do you  
17 know whether there was a decision altering the  
18 price surface in Indiana, the location adjustments,  
19 between handlers in Indiana?

20 A. I vaguely remember that, yes.

21 Q. To you -- to the extent you vaguely  
22 remember it, do you know whether the -- the  
23 secretary's decision in that proceeding, whether it  
24 was the first or the second or the third, was sort of  
25 the precursor to using the Cornell model for pricing



1 the Class I price surface?

2 A. That -- that I do not recall.

3 Q. Okay. I take it that, based upon your  
4 conclusion, that you're going to tax all handlers  
5 equally but benefit others differently for the market  
6 that -- that your organizations have concluded; and  
7 that's a fair and equitable way of dealing with the  
8 situation?

9 A. The -- the process described allows a very  
10 narrow adjustment to the current location  
11 adjustment process. It -- it targets only Class I.  
12 It -- it establishes the bare minimum amount of  
13 increase in Class I cost which would be necessary  
14 to move the milk. It's -- and it -- and it only  
15 applies Class I. It doesn't alter the -- the producer  
16 location structure, but it would apply to each  
17 handler the same.

18 Q. It's -- it's an intents and purposes, except  
19 in name, an increase in the Class I price; correct?

20 A. Oh, it -- it increases the regulated Class I  
21 cost; yes.

22 Q. And yet, assuming for a moment that what  
23 happened in Houston was that the secretary  
24 determined that those handlers needed to pay more  
25 relative to Dallas handlers because they were

1 farther from the milk supply, what you would do is,  
2 in essence, turn that decision by the secretary in  
3 1985 on its head?

4 A. Having no knowledge of that decision, I  
5 really can't make that comparison.

6 MR. ENGLISH: Okay. I have no further  
7 questions at this time

8 JUDGE DAVENPORT: Mr. Schad?

9 EXAMINATION

10 BY MR. SCHAD:

11 Q. Morning, Jeff.

12 A. Good morning.

13 Q. My name is Dennis Schad. I work for Land  
14 'O Lakes. Jeff, I have just a couple of questions,  
15 and I'll start off with -- and you don't have the  
16 exi -- exhibits in front of you, so I'll name some  
17 exhibits and kind of describe what's going on. If  
18 you have any questions to -- need -- and such that  
19 you need the exhibits, we -- we can stop at any  
20 point.

21 Okay. In --

22 JUDGE DAVENPORT: Mr. Schad, I can  
23 loan him those -- any exhibits that he might need.

24 MR. SCHAD: If he determines that he --  
25 he needs 'em, we can do that. Thank you, sir.

1 JUDGE DAVENPORT: Very well.

2 BY MR. SCHAD:

3 Q. Okay. In exhibit -- Exhibit 6 and Exhibit  
4 12, they describe 7C and 7D plants for the various  
5 orders. For instance, in -- in Federal Order 5, the  
6 7C and the 7D plants are -- are plants located in  
7 Strasburg, Virginia and -- and a plant located in  
8 Louisville; is that correct?

9 A. Yes, those in the past -- or -- or currently  
10 or in the past had -- would -- would have qualified  
11 as 7C or 7D plants; yes.

12 Q. Okay. And there are -- there are also in  
13 Exhibit 12 four plants lo -- named as 7C and 7D  
14 plants, that would be receiving, for -- for some of  
15 the months of 9 -- of 1995: Arkansas Dairy  
16 Receiving Station; Dairy Farmers of America in  
17 Cabool, Missouri; Dairy Farmers of America in  
18 Franklinton; and Dairy Farmers of American in  
19 Monett, Missouri?

20 A. Monett, yes.

21 Q. Okay. Are you familiar with those plants?

22 A. I am.

23 Q. Okay. And by the way, I'm asking these  
24 questions to you in -- in view of your -- the fact  
25 that you're an expert in -- in milk marketing and --

1 and regulatory decisions in the -- in this area, Fed  
2 Orders 5 and 7; and insofar as you were a  
3 secretary -- assistant secretary, I guess, and with  
4 management capabilities within DCMA and  
5 especially SMA. Okay. Thank you.

6 Could you -- given your expertise, could you  
7 list other cheese and butter powder plants located  
8 in the -- the marketing areas of 5 and 7?

9 A. Yes. There are some nonpooled  
10 manufacturing plants. There's one -- there's a -- a  
11 plant located at Leitchfield, Kentucky; one in  
12 Glasgow, Kentucky; one at Springfield, Kentucky;  
13 one in Antioch, Tennessee, which is just outside of  
14 Nashville; one in Ashe County, North Carolina.  
15 There's a -- a -- a plant in Uniontown, Alabama.  
16 There are ice cream plants scattered, two or three  
17 around -- may -- one in Birmingham, Alabama; I  
18 think two in the state of Arkansas. If I --

19 Q. Okay.

20 A. There -- there -- oh, yes. There are  
21 plants in southwest Missouri and northwest  
22 Arkansas.

23 Q. Okay. Thank you.

24 And you're familiar with these plants and  
25 their -- their relative size and --

1 A. Somewhat, yes.

2 Q. -- and -- and their -- the -- the way they  
3 operate within the parameters of Orders 5 and 7?

4 A. Somewhat, yes.

5 Q. All right. Thank you.

6 In Exhibit 12 and Exhibit 13C, Attorney  
7 Beshore yesterday was, I believe, with -- with Mr.  
8 DuPrey, was -- was comparing the Class I of Fed  
9 Order 7 against 13 -- Exhibit 13C, which al --  
10 reported the in-area production of -- of Order 7;  
11 okay? And in that -- in that exchange, it was  
12 determined that there was a deficit of Class I, the  
13 difference between the orders Class I and the in-  
14 area production of 118,000,000 pounds.

15 Were -- were you here for that exchange?

16 A. I was.

17 Q. Would you agree that that characterizes  
18 the fact that there -- there was a deficit Class I  
19 market for October 2005?

20 A. Yes.

21 Q. Although it wasn't brought up in this  
22 exchange, would you agree that there is a -- if I  
23 told you the numbers showed that there was also a  
24 deficit for April of 2005, would you agree that there  
25 would -- there is, without checking the numbers?

1 A. I -- I would suspect that that is true; yes.

2 Q. Okay. Would you -- as your -- in your --  
3 in your capacity as a -- working for SMA, you --  
4 would you characterize the southeast market, one  
5 as a deficit Class I market that re -- that requires  
6 milk being imported 12 months of the year?

7 A. Absolutely.

8 Q. Okay. Thank you.

9 Again, 13C, I -- I realize you don't have it in  
10 front of you, but 13C would purport to show that  
11 there -- there was in-area production in April of  
12 358,000,000 pounds; and there was -- in October,  
13 there was 273,000,000 pounds?

14 A. Yes, I -- I am -- I'm now viewing Exhibit  
15 13C; and yes, that's the -- the implication of the  
16 exhibit.

17 Q. Okay. Would you -- as a dairy economist,  
18 would you -- you know, was -- is this -- does this --  
19 can you conclude from that, that this is a -- the  
20 seasonal variation of the dairy farmers located  
21 in -- in Fed Order 7?

22 A. This represents at least a portion of the --  
23 of the seasonal variation. October may not very  
24 well be the low production month and April may not  
25 be the high production month, so the actual high to

1 low variation would exceed the ratio of 353,000,000  
2 to 274,000,000.

3 Q. Right. What -- what this -- you know,  
4 for -- for illustrative purposes, this is about  
5 between 15 and 20 percent?

6 A. Yes.

7 Q. And, you know, taken to your point,  
8 October is a 31-day month and April a 30-day  
9 month, so this -- this is actually probably  
10 underestimates 'em?

11 A. Agreed.

12 Q. Okay. And these numbers, if we looked at  
13 the Order 5, the exhibit in Order 5, we would sho --  
14 there would show a difference, not to this extent,  
15 but -- but it would show a seasonal variation?

16 A. I believe that it would; yes. And it might  
17 not --

18 Q. Okay

19 A. -- but it -- in my -- my supposition would  
20 be that the difference might not be this great.

21 Q. And -- and -- and the numbers would show  
22 that?

23 A. [nods head]

24 Q. All right. Okay.

25 Okay. If you -- if we wanted to, but -- we

1 could look at Exhibit 7, Page 12, and Exhibit 13H.  
2 I don't think we need to, because what that -- those  
3 exhibits show is, for Order 5 and 7, the daily  
4 delivers to pool distributing plants?

5 A. I -- I recall those data.

6 Q. Okay. And if you looked at those -- if you  
7 looked at the numbers and you ascribe days to 'em,  
8 you ascribe variation between pounds delivered to  
9 distributing plants based on the -- the day of the  
10 week?

11 A. Yes.

12 Q. Okay. And again, talking -- speaking to  
13 your expertise as a manager of -- of the Southern  
14 Milk Agen -- Milk -- Milk Agency, the -- is there a  
15 daily variation in deliveries to distributing plants?

16 A. Yes, there is a marked deliv -- difference  
17 in deliveries. Saturday and Sunday deliveries  
18 constitute a -- a -- a fraction of the daily deliveries  
19 on -- typically Wednesday being the high day. And  
20 those differences between Saturdays and Sundays  
21 and -- and the midweek deliveries often are 20  
22 percent or higher.

23 Q. Okay. These -- I've -- we've just talked  
24 about two -- two variations in milk production: a  
25 seasonal variation and also a daily variation



1 demand -- driven by demand rather than supply.

2 We have supply and demand variations. Okay.

3 We've -- my -- my first question is -- to you,  
4 talked about the -- the fact of 7C, 7D and other  
5 butter powder and cheese plants. With your  
6 knowledge and with the -- the fact that we've  
7 brought out the -- these variations in the -- in the  
8 Southeast Orders, do you think there is adequate  
9 balancing facilities located in the marketing area  
10 to balance these supply and demand  
11 characteristics?

12 A. Based on the -- the available capacity at  
13 that -- those plants that -- that -- that have been  
14 listed, and the fact that tho -- those capacities are  
15 needed seriously disproportionately on a small  
16 number of days a week, in large part, that capacity  
17 is insufficient to -- to balance that kind of supply.

18 Q. Ag -- again, from your position as an  
19 expert, would you -- would you then say that the --  
20 the balancing for Orders 5 and 7 would be  
21 characterized by out of out -- let me say that  
22 again, please -- out-of-area balancing plants?

23 A. There -- there -- the -- some portion of  
24 the supply is certainly balanced outside the  
25 marketing areas; yes.

1 Q. Okay. Would you agree with this  
2 statement; that the -- that the trend in the -- the  
3 southeastern por -- region in the United States is  
4 one with a decrease in milk production and  
5 increase in demand?

6 A. Yes, I certainly would.

7 Q. Okay. My question to you would be: How  
8 does that play out when the southeast -- and again,  
9 from your perspective as an -- an expert in the  
10 Southeast Marketing Agency, how does that play  
11 up when you go to locate supplemental supplies in  
12 the -- the corresponding balancing? Is there -- is  
13 there any relationship from the distance form the  
14 market, given the characteristics of the market  
15 as -- as described?

16 A. Yes. The -- the declining production  
17 within the marketing areas and the increasing  
18 Class I demand combine to create a -- a -- a  
19 situation of a growing milk shed, if you will, or an  
20 expanding milk shed; a milk shed which reaches  
21 further and further away from the southeast to  
22 attract that -- that necessary supply. Distance  
23 from the marketing -- or distance from the  
24 processing area to -- from a production area to a  
25 processing area, the greater those distances, the

1 more reserve is ab -- is necessary. And it's obvi --  
2 and it's also necessary, since that reserve  
3 increases, to have available processing or -- or  
4 reserved processing in those supply areas.

5 So we -- so the southeast tends to look at  
6 those places where -- that have milk and have  
7 boun -- outside the areas and have balancing  
8 capacities, so that as those reserve requirements  
9 increase, there is a place to balance at -- at the  
10 point of -- of origin in the milk.

11 Q. And just to be clear: This -- this growing  
12 milk shed that you refer to, this growing milk shed  
13 is -- is growing outside of the geographic  
14 boundaries of the marketing area of Orders 5 and  
15 7?

16 A. That -- that's -- that was my intent; that  
17 the -- the milk shed -- the -- the sources of milk  
18 for the marketing areas is -- is -- is growing far --  
19 the -- the -- the farthest reaches of the -- of the  
20 milk shed are moving farther away, or we have to  
21 reach farther and farther away every year to -- to  
22 attract a -- an ad -- adequate supply.

23 Q. All right. Just as a followup: Your --  
24 your -- your testimony -- your direct tomes --  
25 testimony didn't direct -- didn't go to these points.

1 Is there anything else you would like to say  
2 about that, the balancing characteristics of this  
3 market?

4 A. That -- but the -- the -- the balancing in  
5 the southeast is a -- a -- a real challenge. The  
6 seasonality of production, which exceeds the  
7 seasonality of a lot of the country, creates a  
8 challenge. The sea -- the -- the daily variation  
9 of plant receipts, the growth of the size of plants,  
10 ca -- causes a -- a challenge. The -- the declining  
11 number of farms inside the southeast and the  
12 growth of the size of the -- of the milk shed and the  
13 reserve requirements, that requires all -- all our --  
14 multipla -- multiplicative problems. Each -- each  
15 problem builds on the other one. And it creates a  
16 substantial cost to -- to supply and balance the  
17 southeast.

18 MR. SCHAD: Thank you very much

19 JUDGE DAVENPORT: Mr. Yale? Or I  
20 guess my question is -- in other words, how long do  
21 you feel that your examination will be?

22 MR. YALE: It shouldn't be long, but, you  
23 know, I'm a lawyer. I can't be honest in that, how  
24 long the exam will take.

25 JUDGE DAVENPORT: Well, I was -- in

1 other words --

2 MR. YALE: Or accurate.

3 JUDGE DAVENPORT: We're at about a  
4 quarter of. It's highly likely that I'll say -- Mr.  
5 Nierman in the back, who has talked to the Secret  
6 Service people, and it's my understanding that --  
7 in other words, you will not be able to use the  
8 escalator because they're blocking off the  
9 mezzanine; but you may be able to use the  
10 escalator and the stairs.

11 Is that correct, Mr. Nierman?

12 MR. NIEMAN: The staircase and all  
13 the. . .

14 JUDGE DAVENPORT: And we can go out  
15 through the pedway and that -- that general  
16 direction; but the other side of the building, you  
17 will encounter security.

18 MR. ENGLISH: And will we be able to  
19 come back?

20 JUDGE DAVENPORT: [laughs] My  
21 understanding is, as long as you're coming up  
22 here, you will not be impeded. But Mr. Yale, in  
23 other words, if you want to proceed, we can -- we  
24 can take your cross.

25 MR. YALE: I mean, if -- if somebody gets

1 hungry, including your Honor, you can just shut me  
2 up and we can come back later.

3 JUDGE DAVENPORT: I understand that  
4 lawyers are not very tasty.

5 MR. YALE: [laughs] Wow.

6 EXAMINATION

7 BY MR. YALE:

8 Q. All right. I want to get back -- I want to  
9 kind of take you back to the end of Mr. English's  
10 testimony [sic].

11 And you said that the effect of the intra-market  
12 is to increase the regulated price of milk within the  
13 order -- the regulated price within the order?

14 A. That is -- that is one of the impacts, yes.

15 Q. All right. What will be the impact on the  
16 total price of milk of plants within the order?

17 A. That's hard to say. There could be some  
18 reaction in the over-order price. That's not known.

19 Q. Has there been any consideration, by  
20 SMA, whether or not it would adjust its over-order  
21 pricing to reflect the increase in the regulated  
22 price?

23 A. I can say that -- that as -- is a possibility.  
24 I can't say that there's been any decision. And  
25 SMA -- and by the way, it's -- would be Dairy

1 Cooperative Marketing Association that establishes  
2 the Class I over-order price.

3 Q. But in establishing that over-order price,  
4 its purpose is, in part, to compensate the cost that  
5 producers incur in delivering the milk to the  
6 market; is that not right?

7 A. That's a -- an element; yes.

8 Q. So that to the degree that the regulated  
9 price covers that, is it reasonable to expect that  
10 there would be an adjustment in that [sic] over-  
11 order charges to -- because now some of those  
12 costs have been picked up by the regulated price?

13 A. I tend not to predict the future of over-  
14 order prices; but your -- your statement is -- if -- if  
15 part of the pro -- if part of the cost in the over-  
16 order price is related to costs of serving the -- the  
17 marketing areas, and part of that cost now is -- is  
18 regulated, there could be some adjustment.

19 Q. You now, I think, have some of the  
20 exhibits in front of you? Copies? Do you?

21 A. Of -- of which --

22 Q. Do you have Exhibit 13?

23 A. Yes, I have 13.

24 Q. Could you look at Exhibit 13C and D? And  
25 this is kind of a clarifying question.

1 Do you have that in front of you?

2 A. Yes.

3 Q. And you see the percentage share, for  
4 example, for April, the proponent co-op, 66  
5 percent, on C1? Do you see that?

6 A. C1? I'm sorry.

7 Q. Proponent co-ops, the percentage of  
8 revenue that they would obtain?

9 A. On C -- on 13? I'm sorry.

10 Q. Well, maybe I've got the wrong number.  
11 This is the exhibit prepared by the Southeast  
12 market administrator at the request of DFA and  
13 SMA. Is that the --

14 A. Yes.

15 Q. Okay.

16 A. 13D?

17 Q. Is it 13D? Well, maybe I mislettered. I  
18 mean, you know, might -- might not be able to know  
19 the alphabet, either. 13D has the same thing. It  
20 has -- pertaining to dollars claimed, I have.  
21 Maybe -- what -- what's the title of your -- that --  
22 that exhibit, so I can know where you're --

23 A. If -- if -- if I am looking at what you're  
24 looking at, Federal Order 7, transportation credit  
25 balancing fund --



1 Q. All right. Go -- go to the exhibit before  
2 that?

3 A. Share of producer milk?

4 Q. Share producer milk, right.

5 A. Yes.

6 Q. All right. And you see that percentage,  
7 there -- there was some discussion, in one of the  
8 other cross examinations, that one of your  
9 members does the marketing for DMS.

10 Do you recall that?

11 A. Yes.

12 Q. And also I think there was some --

13 A. Or some, yes.

14 Q. Some of the marketing of DMS.

15 And some of the marketing, I think, also, of  
16 Piedmont's milk?

17 A. Some.

18 Q. All right. Are those numbers included in  
19 this percentage, or is this strictly member milk of  
20 the proponents?

21 A. If I am interpreting the Footnote 2  
22 properly, it would not include those other sources.

23 Q. Do you know if, under this proposal, to the  
24 degree that SMA or its members are marketing the  
25 milk of other cooperatives whe -- or organizations,

1 whether its DMS or Piedmont or -- or others,  
2 whether they would receive the payment or not?

3 A. It would be the intent of the proposal, that  
4 the -- that the new Intra-market Transportation  
5 Credit work analogously to the current  
6 transportation credit balancing fund, such that  
7 the -- the marketer or the obligating handler of  
8 the -- the -- I think the Federal Order people call  
9 'em brokers sometime, if the -- the broker would  
10 then be the one that -- if it delivered to a plant,  
11 that broker or that cooperative, that marketer,  
12 would be the -- the -- the entity which collects the  
13 Intra-market Transportation Credit in -- analogous  
14 to the way it works currently for the transportation  
15 credit balancing fund.

16 Q. Okay. So then going to the next exhibit,  
17 the one that we had our confuse -- Federal Order 7  
18 transportation credit balancing? And over at the  
19 end it's got proponent share.

20 Do you see that there to the right?

21 A. Yes.

22 Q. So that number might be higher than if it  
23 reflected the amount of milk that -- of nonmembers  
24 that they're also being the broker of or marketing  
25 or delivering?

1 A. It certainly could.

2 Q. All right. I know Mr. Schad asked it kind  
3 of in this question, but I want to ask it a little  
4 differently.

5 Dealing with the amount of Class II, III, and IV  
6 milk in the marketing area, is the bulk of that, that  
7 is pooled on Orders 5 and 7, outside of -- or plants  
8 outside of the marketing area?

9 A. I'm -- I'm sorry. I --

10 Q. All right.

11 A. -- you said in the marketing area and then  
12 outside the marketing area.

13 Q. I'm sorry. That -- that's a confusing  
14 question. It was trick. I was supposed to get you  
15 to the wrong place. No. Let's -- let's take this  
16 back from the beginning.

17 The -- the question deals with the amount of  
18 milk that's not Class I that is pooled on Class -- or  
19 the Orders 5 and 7; okay? The amount of milk  
20 that's not Class I, that's classified as other use, 2,  
21 3, or 4, but on either -- on both Orders.

22 What share of that is due to plants located  
23 outside the marketing area?

24 A. Due to receipt of milk pooled --

25 Q. Right.

1       A.   -- milk at plants outside the marketing  
2 area?

3       Q.   Right.  Right.

4       A.   I would suspect, based on no empirical  
5 evidence, that it would probably be at least half,  
6 maybe -- maybe the majority.  But it -- even within  
7 pool distributing plants, you know, plants which are  
8 predominantly Class I --

9       Q.   Right.

10      A.   -- according to the statistics by the  
11 market administrator, anywhere from 13 to 18  
12 percent of the milk in those plants, which are -- we  
13 call -- we call Class I plants, is Class II, III, and  
14 IV.  So I -- I just can't base my answer on any  
15 empirical information.  It's a -- it's a hard question  
16 to answer.

17      Q.   But you had mentioned the -- the idea that  
18 the higher price, that this -- the issue of paying for  
19 the hauling for Class II, III, and IV milk, that only  
20 would have dealt with Class II or III, or IV milk at  
21 plants located within the marketing area; right?

22      Mr. -- Mr. Bay -- let me back up.

23      Mr. Beshore asked you some questions about  
24 the hauling, and -- and the -- and the way the  
25 differentials were, and -- and the way your

1 proposal would work and the -- the way the blend  
2 price at plant [sic] works as far as its  
3 compensation to producers to move milk to the  
4 market; that if you just added it to the Class -- to  
5 the location differential, that, in fact, you would be  
6 paying to move II, III, and IV milk to those plants.  
7 Is that a misstatement of what --

8 A. If -- if I may crystalize what I think you  
9 asked me?

10 Q. That would be a good idea.

11 A. If -- if the -- if the location adjustments  
12 under the order were adjusted such that prices  
13 were in -- the location adjustments were increased  
14 in areas, say, south and east --

15 Q. Right.

16 A. -- if that happened and there wasn't any  
17 adjustment, say, in the -- the northern areas, you  
18 just changed the -- the relationship, say, between  
19 the -- the lowest price zones and the highest price  
20 zones, increasing the highest price zones, the pool  
21 would then pick up additional cost of moving the  
22 Class II and III -- II, III, and IV milk into those  
23 zones who now have higher location adjustments  
24 than previously.

25 Q. By that would not have an impact on the

1 milk that's now currently being delivered outside of  
2 the marketing area for uses II, III, or IV?

3 A. If it -- it would depend on whether those  
4 location adjustments are -- changes are applicable  
5 only within the marketing area or everywhere.

6 Q. Okay. I want to move your attention to  
7 Exhibit 16, and -- what I have marked as Exhibit  
8 16. It may be the incorrect one. It's the Dean  
9 Foods Company Part 2 prepared by the southeast.  
10 Does somebody. . .

11 What I would like to do is look to the -- the  
12 first map, which I have marked as "B" --

13 A. Yes.

14 Q. -- okay? I got that one right.

15 As I understand it, the -- the different  
16 shadings deal with the amount of milk from that  
17 county that was pooled on Order 5 or 7; and they  
18 determined the percentage of that milk that was  
19 actually not just pooled, but actually delivered to  
20 a -- a -- a pool distributing plant in those two  
21 orders.

22 Is that your understanding?

23 A. That -- that's my reading of the exhibit.

24 Q. Okay. So if you have a black county  
25 there, that meant that all the milk that was pooled -

1 - all the milk produced in that county that was  
2 pooled on the order went to a distributing plant  
3 within the order; right?

4 A. My reading of it's between 75 percent and  
5 100 percent.

6 Q. Seventy-five percent and 100; that's fine.  
7 I mean, you could miss some.

8 What -- and one would expect, I guess, is if  
9 you got out of the marketing area to the fringes,  
10 that you would tend to have some of the lower  
11 percentages, right, because those are your  
12 balancing supplies; right?

13 A. I -- I think that this -- yeah -- yes, I would  
14 agree with you. My reading of this data is that the  
15 milk is moving as one would expect; that the milk  
16 within the marketing area is filling the demand --  
17 the local demand area, filling local demand first;  
18 and then the last milk to move in is the farthest  
19 milk, which is the --

20 Q. Right.

21 A. -- economically rational process.

22 Q. Right. And -- and I would -- one would  
23 expect that, but I -- I draw your attention, for  
24 example, there in central Tennessee. And I  
25 believe that's Tennessee. It's hard to figure these

1 things -- or even central Kentucky. One begins to  
2 see counties in which less than 75 percent, in some  
3 case even less than half, of the milk produced in  
4 the middle of this -- these marketing areas, is not  
5 going to pooled distributing plants?

6 A. That's true.

7 Q. Where is that milk going?

8 A. There -- that may be balancing milk within  
9 week, which may have to find its way to a pool --  
10 pool -- to a manufacturing facility. When milk  
11 doesn't -- isn't demanded equally on seven -- seven  
12 days a week, sometimes you -- you would -- you  
13 would certainly want to park on the -- over a  
14 weekend at the places where the -- the  
15 manufacturing plants are. There are manufacturing  
16 plants, a couple of them, in east -- east and  
17 central Tennessee; so that milk may very well be  
18 staying at -- in a -- in a place around there, rather  
19 than the -- the other milk moving into the  
20 distributing plants.

21 Q. Okay. Because the -- the spottiness of it  
22 is due to the proximity of a balancing plant to that  
23 milk; is that --

24 A. That would be my read of the data.

25 Q. It's not necessarily reflecting an



1 inefficient movement of milk? I mean --

2 A. I would agree to that.

3 Q. Okay. And I may have missed -- again,  
4 misunderstood the answer to the question; but  
5 early on, Mr. English had asked you about DCMA  
6 and SMA. And as I understand it, SMA basically  
7 manages and creates this agency in kind of terms  
8 of marketing the milk in a coordinated and efficient  
9 manner between the cooperatives; is that correct?

10 A. Yes.

11 Q. Now, when you acquire milk outside of the  
12 marketing area for balancing purposes, whether it's  
13 in the southwest of --

14 A. For supplemental purchases -- pur --  
15 purposes? Yes.

16 Q. For supplemental purposes. Not for  
17 balancing, for supplemental purposes. Thank you.  
18 I'm going back to the early 1980s. For  
19 supplemental purposes.

20 And whether you bring it out of the northeast  
21 or the, you know, mid east or upper Midwest or the  
22 southwest, do you negotiate any kind of terms  
23 regarding the amount of milk that the suppliers of  
24 that supplemental milk can use to divert off of the  
25 southeast or the Appalachian Orders?

1 A. That -- that can be an element of the -- of  
2 the agreement; yes.

3 Q. And is that commonly done?

4 A. Depends on the source. It does happen.  
5 Some places you buy it all and -- and -- and we --  
6 we buy a certain block, and we manage it. Some  
7 places we buy certain por -- portions and allow  
8 the -- the supplier to balance with the use of  
9 diversions. It's -- it's a mixed bag.

10 Q. And does it make a difference whether  
11 you're a member or a nonmember of SMA what kind  
12 of terms that diversion is?

13 A. No, it's based on -- I would -- many --  
14 many, many elements, some of which is the ability  
15 of the -- of the supplier to balance and the relative  
16 price of the -- of the source, distance. Any number  
17 of things.

18 Q. Towards the end of your testimony, I want  
19 to draw your attention, you made a comment, "If we  
20 aren't able to do this, the conditions would become  
21 chaotic." Is that. . .

22 A. I -- I -- I think disorderly --

23 Q. Disorderly?

24 A. -- is the -- maybe the word I -- or a word I  
25 would use.

1 Q. Okay. We'll -- we'll use the word  
2 disorderly.

3 If you are a plant -- you know, for example,  
4 look at it -- I think you have it, Exhibit 22, Page 1,  
5 the one with the colored dots on it?

6 A. The one you like?

7 Q. Yeah, the one I like. I thought it was -- I  
8 thought it was a -- it was very well done. Not  
9 complete enough, but, you know, that's -- you  
10 know, we always have to have some pickiness on  
11 this.

12 But you take this red dot here in Char -- I  
13 assume that's Charleston, South Carolina?

14 A. On -- on the South Carolina coast?

15 Q. Right.

16 A. Yes, that would -- that would represent  
17 Charleston.

18 Q. Okay. And it appears that it receives --  
19 there's less than 50 percent of its milk is available  
20 locally?

21 A. Yeah, I -- I believe that dot does actually  
22 represent two plants.

23 Q. Okay.

24 A. But yes, it would receive less than -- if it  
25 could only draw from those producers who are -- or

1 those counties with producers who are nearest that  
2 metropolitan area, it would receive less than 50  
3 percent of the milk it -- it desired, or those --  
4 those two plants combined desired.

5 Q. As -- as an economist, forgetting for the  
6 moment your experience in the dairy industry for a  
7 little bit, which is sometimes difficulty for us to do,  
8 what would one expect that plant to do in order to  
9 attract the other 50 percent or more than it need --  
10 or those plants to attract that milk?

11 A. Absent all other constraints --

12 Q. Right.

13 A. -- that plant would have to bid up the  
14 price to attract a supply away from plants where  
15 it's more closely located.

16 Q. And the other plants that compete with  
17 that supply would have to respond to that; right?

18 A. I -- I would think so.

19 Q. All right. And the -- it brings down to this  
20 question: Why should the market orders at this  
21 point be concerned about that factor after they've  
22 established the minimum prices? Why can't they  
23 just let the market do its thing rather than impose  
24 this scheme that -- that we're dealing with?

25 A. I -- the variability which would be required

1 for each plant for over-order prices to reflect that  
2 kind of difference that you are describing there,  
3 probably is simply unworkable at an over-order  
4 price level. The -- the constraints, the -- the -- the  
5 marketing realities which require over-order prices  
6 to be pretty broadly applied, would not really allow  
7 that kind of variability at a plant-to-plant level;  
8 therefore, we apply same kind of thought to the --  
9 to the marketing area in total; say we need to  
10 generate so much money. Let's apply that  
11 uniformly that works as well and has all of the  
12 advantages of the regulated process without the  
13 disadvantage of the unregulated process.

14 MR. YALE: I'll leave it with that

15 JUDGE DAVENPORT: Very well. Thank  
16 you, Mr. Yale.

17 Yesterday we -- we took a half -- hour and a  
18 half for lunch. In other words, what was the  
19 experience? Do we need less time or, in other  
20 words, is that a good ballpark again?  
21 Understanding today may be unique, anyway

22 MR. BESHORE: It's about right.

23 JUDGE DAVENPORT: Very well. Let's --  
24 let's come back at 1:30 again.

25 [WHEREUPON, a lunch recess is taken.]

1           JUDGE DAVENPORT:  Let's -- let's come  
2 back to order.

3           Would you raise your right hand, please?

4           MICKEY CHILDERS, after having been duly sworn,  
5 is examined and testifies as follows:

6           JUDGE DAVENPORT:  Please be seated.

7           Tell us your name and, if you would, spell your  
8 name for the hearing reporter.

9           THE WITNESS:  I'm Mickey Childers, M-i-  
10 c-k-e-y --

11 [WHEREUPON, off-the-record remarks are  
12 made.]

13           THE WITNESS:  I am Mickey Childers, M-  
14 i-c-k-e-y Ch-i-l-d-e-r-s.

15 EXAMINATION

16 BY MR. BESHORE:

17           Q.  Mr. Childers, are you a dairy farmer?

18           A.  Yes, sir.

19           Q.  And are you a board member or a --  
20 what -- what cooperative are you a member of?

21           A.  Dairy Farmers of America.

22           Q.  Okay.

23           A.  DFA.

24           Q.  Are you here to testify on behalf of DFA,  
25 Dairy Farmers, in your area?

1 A. Yes, I am.

2 Q. Okay. And have you -- have you prepared  
3 a statement that you would like to present for the  
4 hearing today?

5 A. Yes, sir; I have.

6 MR. BESHORE: Okay. Would you -- I -- I  
7 do not propose to mark Mr. Childers' statement,  
8 although we have made some copies available, your  
9 Honor. So I'd just like to have him proceed with  
10 his statement, if he would?

11 JUDGE DAVENPORT: Very well.

12 A. [reads] I am Mickey Childers. I live at  
13 277 Blue Springs Road, Somerville, Alabama, ZIP  
14 code 35670, near Huntsville, Alabama. After  
15 graduating from Auburn University in June of 1966,  
16 I started dairying in the Florette Community of  
17 Morgan County, Alabama, where I presently dairy  
18 with my father-in-law, Ganes Burden, and my two  
19 sons Jim and John. Presently we are milking 700  
20 cows, with a herd average of 22,000 pounds of milk  
21 at 3.80 percent butter fat.

22 I have marketed milk as an independent  
23 producer and through several Cooperatives over  
24 the years, most recently, Dairy Farmers of America  
25 (DFA). In 1995 I was elected to serve on the Gulf

1 South Area Board of Mid-America Dairy Farmers.  
2 Since that time, the formation of the Dairy Farmers  
3 of America in 1998 I served on the Southeast  
4 Council Board, currently as first vice-chairman.  
5 From 2000 until today, I serve on the DFA  
6 Corporate Board of Directors.

7 "Along with other cooperatives, DFA is a  
8 member of the Southern Marketing Agency (SMA).  
9 Other members of SMA are Maryland-Virginia Milk  
10 Producers, Lone Star Milk Producers, Arkansas  
11 Dairy Cooperative and Dairyman's Marketing  
12 Cooperative, Inc. of Missouri.

13 Thank you for agreeing to our proposals to  
14 change the transportation credits for the pla --  
15 Appalachian and Southeast Federal milk orders.  
16 You have heard the testimony given by our staff  
17 from DFA and SMA. I would like to thank them for  
18 their efforts in preparing for this hearing. These  
19 proposals have the full support of DFA's Southeast  
20 Council Board and DFA's Corporate Board. I  
21 support the three proposals that our cooperatives  
22 are presenting at this hearing. Any increases that  
23 are made to these credits will boost dairy farmers'  
24 income. Circumstances today are even more  
25 critical than ten years ago when transportation



1 credits were initiated.

2 The proposal that deals with intra-market  
3 credits will align more with the actual cost of  
4 transporting supplemental milk into this market.  
5 Historically, the transportation credits have not  
6 covered the full cost of supplying supplemental  
7 milk for the Southeast. Some months in the fall  
8 there are not enough funds to pay the credits. Any  
9 shortfalls are subsidized by co-op dairy producers.  
10 Cooperatives working together through SMA have  
11 been supplying these needs at a substantial cost to  
12 our dairy farmer members. If there is a need for  
13 the transportation credit fund, then it should cover  
14 the necessary costs incurred and have enough  
15 flexibility to adjust to market conditions. Raising  
16 the assessment to \$0.15 and \$0.20 per  
17 hundredweight respectively for Federal Order 5 and  
18 Federal Order 7 should generate enough funds to  
19 maintain a balance in the fund.

20 Our proposal to implement a fuel cost adjuster  
21 into the regulations would allow for monthly  
22 computations and adjustments to the assessment  
23 rate. The system simply is too slow to react to  
24 changing fuel prices. Recently when Southeastern  
25 fuel prices spiked to over \$3.40, the system plainly

1 could not react fast enough to re -- recover these  
2 costs. Starting the computation with 2003 freight  
3 and fuel rates as a base appears to be reasonable.  
4 Using 5.5 miles per gallon of fuel is a conservative  
5 number. During my years of hauling my own milk to  
6 market, I average 4.5 miles per gallon with my  
7 transfer truck. A friend hauls feed and his average  
8 miles per gallon are 5.0. These additional costs to  
9 deliver milk to the market are significant, and  
10 again our dairy farmers make up the difference. It  
11 simply is not fair to require dairy farmers to  
12 subsidize this fluid milk market. The market, not  
13 dairy farmers, should bear these costs.

14 In just the last few years, the dairy industry in  
15 the Southeast has changed drastically. Production  
16 is significantly less in the processing capacity in  
17 many areas of the south. Some deficit areas, such  
18 as Alabama and South Carolina, require long hauls  
19 to supply those markets. Just five years ago, my  
20 milk went 40 miles to another plant in Huntsville,  
21 Alabama today. Today, that milk plant has closed,  
22 and the nearest plant is nearly 90 miles.

23 Processing is consolidated, plants are closing, and  
24 I am asked to pay the additional cost of moving  
25 that milk. Alabama dairy farmers produce less than

1 20 percent of milk consumed in that state. These  
2 conditions are continuing, and measures should be  
3 taken to help supply fresh -- help supply fresh fluid  
4 milk to the consumer in those deficit areas.

5 The concept of intra-market credits seemingly  
6 is new, but I submit to you that the Federal Order  
7 System rec -- recognized a necessity for location  
8 adjustments and differentials. These location  
9 adjustments have not reacted to the rapidly  
10 changing cost of freight. A good example is a  
11 \$0.20 location adjustment between Huntsville,  
12 Alabama and Birmingham, Alabama. It's almost 100  
13 miles exactly between the two cities. Actual cost  
14 of moving milk 100 miles, as shown by earlier  
15 testimony, is easily twice \$0.20. Our staff has  
16 clearly shown that milk production in the southeast  
17 does not coincide with consumption in processing  
18 areas. Additional cost to moving this production  
19 beyond the first point of sale should be borne by  
20 the market.

21 Change in location differentials to reflect the  
22 actual market condition would be the most logical  
23 solution, but I understand the broad implications of  
24 doing this. So the next best solution is when you  
25 implement a new Intra-market Transportation

1 Credit. Credits would give some relief of the  
2 additional cost involved in moving milk long  
3 distances within our southeast marketing order.

4 One might suggest that the additional cost  
5 might be covered by over-order premiums. Our  
6 board of directors is constantly reviewing price and  
7 policies, and urging management to be as  
8 aggressive and responsible as possible. Asking  
9 and receiving over-order premiums is a slow  
10 process, and doesn't carry the validity and weight  
11 of a Federal Order regulation. Premiums can't  
12 always keep up with cost.

13 I would prefer that the market provide the  
14 additional amount of credits for the Class I price of  
15 milk. Any blend price adjustment should be a last  
16 resort. If we must adjust the pool, it shares the  
17 expense equally with all producers. Our requests  
18 are not unreasonable; only to modernize a system  
19 that has failed to keep up with the times. You have  
20 an opportunity and an obligation to react to these  
21 changing conditions. I only request that you act  
22 quickly and judicially, as I know you will.

23 Thank you for your time. I will try to answer  
24 any questions you might have.

25 BY MR. BESHORE:

1 Q. I have one additional question, Mr.  
2 Childers, for you: How did you become a member  
3 of the Southeast Council Board of Dairy Farmers of  
4 America?

5 A. I was elected by the producer members in  
6 my district in Alabama.

7 Q. Okay. And about how many producers are  
8 in that district?

9 A. At this time, about 40 producers.

10 Q. Okay. And -- and then how did you come  
11 to serve on the DFA corporate board of directors?

12 A. By being elected from the Southeast  
13 Council Board to a two-year term to serve on the  
14 DFA Corporate Board.

15 Q. Okay. So is the -- the internal governance  
16 of -- of DFA is a democratic process by election by  
17 the members?

18 A. Yes, sir.

19 Q. And the members are all dairy farmers?

20 A. Yes, sir.

21 MR. BESHORE: Thank you

22 JUDGE DAVENPORT: Mr. Beshore, you  
23 don't want to reconsider marking his exhibit?

24 MR. BESHORE: If -- I have no objection  
25 to it being marked, and maybe it -- since we all

1 have reference to it, it might be useful. And I --

2 JUDGE DAVENPORT: Let's -- let's do

3 that. Let's mark it as Exhibit 27.

4 MR. BESHORE: Okay.

5 JUDGE DAVENPORT: Unless there's  
6 objection, I'll admit it into evidence at this time.

7 MR. ENGLISH: What number? I'm sorry.

8 MR. BESHORE: Twenty-seven.

9 [WHEREUPON, document referred to is marked  
10 Exhibit 27 for identification.]

11 JUDGE DAVENPORT: Questions, Mr.

12 English?

13 EXAMINATION

14 BY MR. ENGLISH:

15 Q. Good afternoon, Mr. Childers. My name is  
16 Charles English. I'm here for the Dean Foods  
17 Company.

18 A. Good afternoon.

19 Q. And I have just a couple of questions for  
20 you, and thank you for testimony today.

21 Were you here yesterday as well, or just  
22 today?

23 A. Yes, sir; I was here yesterday.

24 Q. I know that's a -- quite an investment in  
25 your time, and I appreciate it; but I'm going to have

1 a couple of questions about what you might have  
2 heard yesterday, but we'll see.

3 First, I note that until five years ago, you  
4 shipped your milk to a medical facility in  
5 Huntsville, Alabama; and then you said today that  
6 plant has closed, and the nearest plant is 90 miles  
7 away. Do you ship to that nearest plant that's 90  
8 miles away?

9 A. My milk is dispatched from Knoxville,  
10 Tennessee, the central office, central dispatch;  
11 and that -- and my milk goes to wherever it is  
12 needed that day. I cannot say that it always goes  
13 to that plant.

14 Q. Five years ago you knew that it went to  
15 the plant in Huntsville?

16 A. Five years ago I delivered my milk  
17 personally to the plant in Huntsville.

18 Q. Yesterday there was testimony by the  
19 market administrator, and some exhibits, that  
20 showed the percent of milk by various states, and  
21 in some cases categories of states, that were  
22 delivered to distributing plants in Orders 5 and 7.

23 And recognizing that you might not have  
24 looked at that in some detail, would it surprise you  
25 to learn that for the state of Alabama, where you

1 are a dairy farmer, the percent for the four months,  
2 provided by the market administrator, which were  
3 June of '04, October of '04, June of '05, and  
4 October of '05 --

5 MR. BESHORE: What exhibit number?

6 MR. ENGLISH: I'm sorry. It's Exhibit  
7 16C.

8 BY MR. ENGLISH:

9 Q. That the percent of milk from Alabama  
10 farms delivered to pool plants on Orders 5 or 7  
11 ranged from 97 percent to 100 percent. Would  
12 that. . .

13 A. If -- if that's what the numbers show, I  
14 would agree.

15 Q. But in your experience, is it the case that  
16 the milk produced in -- on Alabama farms is -- is  
17 shipped to distributing plants in these orders?

18 A. Not having full knowledge of where all of  
19 that milks [sic] go, I cannot speculate on that, sir.

20 Q. Okay. Did you hear testimony and  
21 discussion, that there are producers from outside  
22 the marketing area of 5 and 7 that have some milk  
23 delivered, but a much smaller percentage of their  
24 milk actually is delivered and much more stays  
25 outside on most days?



1 A. Yes, sir; I am aware of that testimony.

2 Q. Okay. When that happens, when -- when  
3 those producers touch base but their percentage of  
4 milk stays largely outside, does that depress your  
5 blend price?

6 A. Beg your pardon?

7 Q. Does that depress your blend price?

8 A. I'm -- I'm not expert enough to answer  
9 that question.

10 Q. Do you think it's fair that, on -- on what's  
11 97 to 100 percent of the time, Alabama farmers  
12 deliver to plants but dairy farmers outside, sharing  
13 in your pool, might ship only 27 or 40 percent of  
14 the time?

15 A. I -- I wouldn't have any comment on that.

16 MR. ENGLISH: Thank you very much, sir

17 JUDGE DAVENPORT: Other questions?

18 Mr. Tosi?

19 EXAMINATION

20 BY MR. TOSI:

21 Q. Thank you for appearing, Mr. Childers.

22 A. Yes, sir.

23 Q. A couple of questions: Do you know what  
24 over-order premiums, when you market your milk  
25 through DFA, what level of over-order premiums

1 that is able to be charged?

2 A. The actual number of over-order  
3 premiums, I'm not aware of. I do know that we  
4 encourage our management to implement over-order  
5 premiums to the maximum that the market will  
6 stand.

7 Q. Okay. Given those over-order premiums  
8 here, are you receiving at least the blend price of  
9 the order, or blend price plus a share of the over-  
10 order premium?

11 A. I would have to say that the blend price at  
12 my farm that I receive is less than the uniform  
13 price announced in February Order 7.

14 Q. Okay. In your statement, you indicate  
15 that in -- any increases that are made to these  
16 credits -- transportation credits, will boost dairy  
17 farmer income.

18 How will these transportation credits increase  
19 your income?

20 A. In supplying the -- the market with the  
21 needs of the milk as it's demanded, we incur extra  
22 cost of freight to get that milk to market. Those  
23 extra costs go into the pool and are reblended,  
24 reblends our pool and lowers the uniform -- or the  
25 blend price that our co-op can pay. Those costs

1 come directly out of the pool that is shared with  
2 the producer members.

3 Q. Okay. On the intermarket, bringing milk  
4 from outside the -- outside the marketing area --

5 A. Yes, sir.

6 Q. -- that that -- that's paying other people --  
7 it's -- are -- are you of the opinion that that credit  
8 puts a little more money in your pocket as a dairy  
9 farmer?

10 A. Would you rephrase that, please?

11 Q. Okay. The in -- we're -- we're -- we're  
12 looking today at two different credits.

13 A. Yes, sir.

14 Q. One is increasing the existing -- what --  
15 what people are referring to as the intermarket --

16 A. Yes, sir.

17 Q. -- milk coming from outside the marketing  
18 areas, and then establishing a [sic] intra --

19 A. Yes, sir.

20 Q. -- movement of milk within an order.

21 A. Yes, sir.

22 Q. Okay. Do you differentiate between those  
23 two in terms of how it might affect your income?

24 A. Both inter and intracredits, if intracredits  
25 are implemented, would enhance the members --

1 the co-op member producer milk price.

2 Q. On?

3 A. Simply by reducing the expenses that we  
4 incur to supply the market.

5 MR. TOSI: Okay. That's all I have.

6 Thank you.

7 THE WITNESS: Yes, sir

8 JUDGE DAVENPORT: Mr. Stevens?

9 EXAMINATION

10 BY MR. STEVENS:

11 Q. Good afternoon, sir. Tha -- again, thank  
12 you for coming and spending your time here with  
13 us. And -- and we -- we appreciate you investing  
14 your time in this.

15 Let me ask you: In -- in the notice of hearing  
16 that the secretary put out, he defines small  
17 businesses, in terms of dairy farmers, as a  
18 business with a -- a gross income of less than  
19 750 -- \$750,000 a year?

20 A. Yes, sir.

21 Q. I read -- I hear from your statement and  
22 your -- your comments that you're -- you're a family  
23 farm, I assume?

24 A. Yes, sir.

25 Q. It's you and your -- some of your relatives

1 and your sons are involved in the dairy business  
2 with you?

3 A. Yes, sir.

4 Q. Would -- under that definition, 750,000  
5 gross income, would you consider yourself a small  
6 business?

7 A. We are a family-run operation. We have  
8 four families invested 100 percent of the time in  
9 managing and operating a dairy farm.

10 If you take the four entities and consider them  
11 as separate entities, then we would be a small  
12 business; but under the true sense and technical  
13 term of the definition, no, sir.

14 MR. STEVENS: All right. Thank you very  
15 much

16 JUDGE DAVENPORT: Other questions of  
17 this witness? Thank you, Mr. Childers.

18 THE WITNESS: Thank you, sir

19 MR. BESHORE: Calls our next witness,  
20 Gerald Heatwole. We do have a two-page  
21 statement that I would ask be marked for  
22 identification with the next consecutive number?

23 JUDGE DAVENPORT: It will be Exhibit  
24 28.

25 [WHEREUPON, document referred to is marked

1 Exhibit 28 for identification.]

2 JUDGE DAVENPORT: Would you raise  
3 your right hand?

4 GERALD HEATWOLE, after having been duly  
5 sworn, is examined and testifies as follows:

6 JUDGE DAVENPORT: Please be seated.

7 Tell us your name and, if you would, spell your  
8 name for the hearing reporter?

9 THE WITNESS: [reads] My name is  
10 Gerald Heatwole, G-e-r-a-l-d H-e-a-t-w-o-l-e. Our  
11 address is 3943 Lawyer Road, McGaheysville,  
12 Virginia. We have a poultry and a 300-cow dairy  
13 farm at McGaheysville, and 175-cow dairy farm in  
14 Keezletown, Virginia. Our family-operated dairy  
15 farms are five and ten miles east of Harrisonburg,  
16 Virginia, which is in the middle of the Shenandoah  
17 Valley of Virginia.

18 I am a dairy farmer member owner of DFA, and  
19 have always, for the past 33 years, marketed all  
20 our milk through a cooperative. I serve as a board  
21 member of the DFA Southeast Area Council, which  
22 has reviewed this proposal for transportation  
23 credits and a fuel adjuster; and we support its  
24 intent. DFA Southeast Area Council has more than  
25 3,200 farms. The overwhelming majority of these

1 farms are small businesses. The average monthly  
2 delivery from these farms is 140,000 pounds per  
3 month, well within the definition of a small  
4 business dairy farm. While I do not have a precise  
5 number, from the information available to me as a  
6 council member, I believe that more than 90  
7 percent of DFA members in the Southeast Council  
8 are small business dairy farms. In addition to DFA  
9 members, I have discussed these concepts with  
10 other dairy farmers in my area; and they support  
11 them also.

12 I am not a technical expert on Federal Orders.  
13 And after yesterday and today, I realize that I have  
14 even less expertise on the subject than I had  
15 previously thought. But as a dairy farmer for the  
16 past decades, I have watched closely how milk is  
17 marketed in the southeast. I have seen milk  
18 production decrease markedly in many areas of the  
19 southeast. This has resulted in large volumes of  
20 milk being hauled longer distances to supply  
21 bottling plants in milk-deficit areas.

22 I realize that the Shenandoah Valley is one of  
23 the few areas with a surplus of milk. Only 20  
24 percent or less of our milk production is processed  
25 at a local bottling plant. With approximately 325

1 dairy farms in our two-county area of Rockingham  
2 and Augusta County, and approximately 50,000,000  
3 pounds of milk produced monthly, the majority of  
4 the milk produced is hauled long distances to  
5 plants in the south.

6 For the past 12 years, most of the time the  
7 tractor trailer that leaves our driveway at Cub Run  
8 Dairy, it heads directly to a fluid plant in  
9 Charleston, South Carolina, about 485 miles to the  
10 south. Who ends up paying for most of the haul  
11 cost on this load? Sad to say, it seems to be the  
12 dairy farmers in the southeast. As you are all  
13 aware, in the southeast, a number of dairy farms  
14 and the volume of milk production is decreasing,  
15 while the population and the demand for milk  
16 increasing; which means that, most months, several  
17 hundred million pounds of milk is hauled into the  
18 southeast.

19 Dairy farmers in the southeast are faced with  
20 higher cost to produce milk, caused by the high  
21 temperatures and high humidity in the summer  
22 compared to other regions in the country. In  
23 recent years, we often received fewer dollars per  
24 hundredweight for milk than some other regions in  
25 the country.



1 Dairy farmers already have to pay for the high  
2 cost of energy on our farms. A few examples:  
3 electricity, natural gas, and diesel fuel, the higher  
4 cost of fertilizer, and the higher transportation  
5 cost of having commodities delivered to our farms.  
6 As president of our local rural electric cooperative,  
7 I am directly aware of the increased expense of  
8 providing electricity to our community. The  
9 increased transport cost adversely affects mailbox  
10 milk prices; and combined with today's higher on  
11 en -- higher on-farm energy costs really squeezes  
12 margins and contributes to the exodus of dairies in  
13 the southeast.

14 The producers I represent thinks [sic]  
15 Proposals 1, 2, and 3 are a reasonable answer to  
16 the problems we are facing today. Thank you for  
17 hearing my comments, and I will be glad to try to  
18 answer any questions you may have.

19 EXAMINATION

20 BY MR. BESHORE:

21 Q. Mr. Heatwole, as a member of the board  
22 member Southeast Area Council, how did you come  
23 to hold that position?

24 A. I was elected probably about ten years  
25 ago by our district there in the Shenandoah Valley

1 to that position.

2 Q. Okay. And what -- what geographic area  
3 does [sic] your district composed of?

4 A. It is presently a five-county district, but  
5 about 98 percent of us are from Rockingham and  
6 Augusta Counties there in the middle of the  
7 Shenandoah Valley, with just a few farmers in the  
8 counties to the north.

9 Q. You need to speak up.

10 A. Speak into the mike --

11 Q. Pull the microphone clo -- perhaps a little  
12 closer; okay? Speak towards it.

13 And they -- you were saying where the farms  
14 are that compose the district from which you are --

15 A. Yes. The vast -- the vast majority of the  
16 farms are in Rockingham and Augusta County.  
17 There's just a few farms to the counties -- a few  
18 dairy farmers in the counties to the north.

19 Q. Okay. And you're appearing today on  
20 their behalf?

21 A. Yes, sir.

22 Q. As their elected representative?

23 A. Yes, sir.

24 MR. BESHORE: Thank you

25 JUDGE DAVENPORT: Examination of this

1 witness? Mr. English?

2 EXAMINATION

3 BY MR. ENGLISH:

4 Q. Again, Mr. Heatwole, my name is Charles  
5 English for Dean Foods, and we're grateful for  
6 having your testimony today.

7 When you say that 20 percent of your milk  
8 production is processed at a local bottling plant, is  
9 that 20 percent of your individual farm Cub Run  
10 Dairy that is processed there, or the dairy farmers  
11 in your area?

12 A. Sir, that would be 20 percent of the dairy  
13 farmers in the district that I represent.

14 Q. Okay. So that --

15 A. Yes.

16 Q. -- that "our" is referring to -- to  
17 everybody?

18 A. Yes.

19 Q. And your milk on a day-to-day basis goes  
20 to Charleston, South Carolina?

21 A. Yes, sir. The majority of the times it goes  
22 to Charleston, South Carolina. There are other  
23 certain times a year it might go to other farm, but  
24 the majority of the time it goes to Charleston. But  
25 depending on where it's needed, but many times

1 directly to Charleston.

2 Q. Certainly, in the short of the time of the  
3 year, it -- it goes down to Charleston?

4 A. Yes.

5 Q. Like September or October it goes down to  
6 Charleston?

7 A. Yes. Over the last 12 years, most of the  
8 times the drivers of the truck, when they come in,  
9 they say, "We're heading from here directly to  
10 Charleston."

11 Q. Were you here yesterday?

12 A. Yes, sir.

13 Q. Okay. And you also heard me question  
14 Mr. Childers?

15 A. Yes, sir.

16 Q. As opposed to your milk that's going there  
17 every day, if there's dairy farmers who share in the  
18 pool but they only ship, say, 40 percent of the time  
19 or 27 percent of the time into this market and yet  
20 they get to draw out on the pool, is that fair to you  
21 as a dairy farmer?

22 A. I'm not sure I understand the question.  
23 You know, the majority of the milk is obviously  
24 leaving the valley --

25 Q. Right.

1 A. -- every day of the year.

2 Q. All your milk is. But if -- if -- if a dairy  
3 farmer, who is from outside the marketing area, is  
4 it able to share in your pool -- you know what the  
5 pool draw is; correct?

6 A. Uh-huh.

7 Q. Yes?

8 A. Yes, sir.

9 Q. I'm sorry. The -- the -- the court reporter  
10 can only pick up "yeses" and "noes," not nod of  
11 heads.

12 If -- if dairy farmers outside the market are  
13 able to share in the pool, but unlike you, when  
14 you're shipping almost all the time down to South  
15 Carolina, are only shipping 27 percent of the time  
16 during a given month or 40 percent of the time  
17 during a short month, doesn't that deplete your  
18 blend price?

19 A. I'm not sure I understand the question,  
20 sir.

21 Q. Okay.

22 A. But the -- obviously, we -- as I've said in  
23 my testimony, we have a surplus of milk produced  
24 in the valley, which is one of the few areas in the  
25 southeast. And so we are very unique in that

1 sense. And so our local plant only needs 20  
2 percent or less of our milk; so that means 80  
3 percent of it is going to head further south where  
4 it's needed. And right now, we're incurring the  
5 hauling cost of getting it there.

6 Q. And -- and that's precisely my point:  
7 You're making sure that all that milk in the valley  
8 that's needed in the southeast is ending up in the  
9 southeast; correct?

10 A. Yes.

11 MR. ENGLISH: Thank you

12 JUDGE DAVENPORT: Other questions?

13 Mr. Beshore, redirect?

14 MR. BESHORE: Yeah, just one additional  
15 question.

16 EXAMINATION

17 BY MR. BESHORE:

18 Q. Mr. Heatwole, Exhibit 22, Page 1, is a --  
19 do you happen to have that there?

20 A. Yes, I brought that with me.

21 Q. Okay. The -- the map with the blue and  
22 yellow and red dots on it, now, can you identify --  
23 the -- the blue dot that -- is there a dot that  
24 represents the plant in your valley?

25 A. Yes. The upper dot in Virginia represents

1 the Mt. Crawford plant. And if you look at that dot  
2 and think of it as a clock, our farm is located at  
3 about 2:00.

4 Q. Okay.

5 A. We're right there about 15 miles from Mt.  
6 Crawford plant, is Cub Run Dairy; yes, sir.

7 Q. Okay. Now, can you identify on Exhibit  
8 22, Page 1, the dot to which your milk is delivered  
9 most days?

10 A. Yes, to Charleston, South Carolina. It's  
11 the red dot right down there on the ocean border, I  
12 believe.

13 Q. The red dot in South Carolina on the sea  
14 coast?

15 A. Yes. Seacoast, yes, sir.

16 MR. BESHORE: Okay. Thank you

17 JUDGE DAVENPORT: Other questions?

18 Thank you, Mr. Heatwole. We can. . .

19 MR. BESHORE: Our next witness is Glen  
20 Easter. I would ask that Mr. Easter's statement be  
21 marked as the next consecutive exhibit, your  
22 Honor?

23 JUDGE DAVENPORT: That'll be Exhibit  
24 29, Mr. Beshore.

25 MR. BESHORE: Thank you.

1 [WHEREUPON, document referred to is marked  
2 Exhibit 29 for identification.]

3 JUDGE DAVENPORT: Would you raise  
4 your right hand?

5 GLEN EASTER, after having been duly sworn, is  
6 examined and testifies as follows:

7 JUDGE DAVENPORT: Please be seated.

8 Tell us your name and, if you would, spell your  
9 name for the hearing reporter?

10 THE WITNESS: My name is Glen Easter,  
11 G-l-e-n E-a-s-t-e-r.

12 EXAMINATION

13 BY MR. BESHORE:

14 Q. Mr. Easter, before you proceed with the  
15 rest of your statement, just a couple of -- couple of  
16 introductory questions.

17 Have you been here to listen to portions of the  
18 hearing thus far?

19 A. Yes, sir.

20 Q. Okay. And are you -- you hold an office,  
21 also, as a member of DFA's Southeast Area  
22 Council?

23 A. Yes, sir.

24 Q. Okay. Is that -- and that's an elected  
25 position?



1 A. Yes.

2 Q. From dairy farmers in your area?

3 A. From dairy farmers in the state of South --  
4 it covers -- my area covers the entire state of  
5 South Carolina.

6 Q. Very well. And you have a statement that  
7 you've prepared to present today?

8 A. Yes.

9 Q. Go ahead, please.

10 A. My name is Glen Easter. My address is  
11 900 East Glen Road, Laurens, South Carolina,  
12 29360. My town is located in the upstate of South  
13 Carolina, 35 miles south of Greenville, South  
14 Carolina.

15 I own and operate our family dairy East Glen  
16 Farm, which my parents began in 1927. I have  
17 managed our farm for the past 41 years. My family  
18 farm has moved twice in the past, covering more  
19 than 2,000 miles, because of milk marketing  
20 situations. At 61 years of age, that is no longer an  
21 option.

22 I am a member owner of Dairy Farmers of  
23 America, and market all my milk through the  
24 cooperative. I serve as a council person in the  
25 Southeast DFA Council. Our farm is located in

1 DFA's Southeast Area Council, which spans  
2 portions of Order 5 and 7.

3 Our council board of directors has reviewed  
4 the proposals and made our cooperative -- made by  
5 our cooperative, in conjunction with several others  
6 [sic] southeastern cooperatives, and supports it in  
7 its intent. Additionally, my cooperative is a  
8 member of the Southern Marketing Agency, which  
9 I'll refer to as SMA. In addition, I am serving as  
10 president of the United Dairy Herd Improvement  
11 Association for Virginia, North Carolina, and South  
12 Carolina. I also serve on the South Carolina State  
13 Farm Bureau Committee, and I am president of the  
14 South Carolina Jersey Cattle Association.

15 I support the three proposals that our  
16 cooperatives are making here today. The proposal  
17 that deals with milk from outside the market will  
18 help us in two ways. The current program has been  
19 in effect for nearly ten years. There's no dispute  
20 that it is needed in the southeast, but it needs to  
21 work correctly. The credit simply doesn't pay all it  
22 is supposed to now. Our proposal should increase  
23 the charge enough to make sure that the costs are  
24 covered. Additionally, the fuel adjuster will help  
25 us do a better job of keeping up with fuel costs.

1       The intra-market credit program, while new,  
2 will also help us to supply the market and recover  
3 the cost in a fair manner. Our management team  
4 has shown that where milk is processed and where  
5 farms are located are not necessarily in the same  
6 place. It is not reasonable to think that either --  
7 either businesses will relocate, so the milk must be  
8 hauled.

9       Our proposal identifies the costs, outlines a  
10 method to pay for them, and then recovers most of  
11 the cost through the order system. It does not  
12 cover every cost, but -- but it does help some; and  
13 most importantly, it will move up and down with the  
14 fuel prices.

15       I am a dairyman, and I do not profess to know  
16 all the workings of the Federal Orders. And so  
17 technical questions I may not be able to answer. I  
18 would leave those to the management team of my  
19 co-op.

20       The producers -- the producers call me  
21 frequently in my area about milk prices and milk  
22 marketing. It never takes long for the conversation  
23 to get around to balancing milk supply locally or in  
24 the entire order. It is hard for me to convince  
25 myself, let alone other dairymen in South Carolina,

1 that it is right for South Carolina dairymen to pay  
2 for the expense of transporting milk all around the  
3 southeast.

4 As farmers, we have historically paid for the  
5 transportation cost of our produce, whether it be  
6 corn, beans, cotton, or milk to the local market.  
7 As dairymen, this is not what we have been  
8 compelled to do in the -- in South Carolina or in  
9 the southeast. We have paid the lion's share of  
10 the transportation cost to move milk all around the  
11 southeast. It is very hard to convince a South  
12 Carolina milk producer that he, rather than the  
13 consumer, should be paying the transportation cost  
14 to get milk moved from Virginia to Alabama, or for  
15 that matter, from Evansville, Indiana to Charleston,  
16 South Carolina or wherever.

17 Under SMA, we have worked together for  
18 several years to be as efficient as possible at  
19 moving milk around the southeast between co-ops;  
20 but the cost of move -- of moving milk is very  
21 expensive, and even more so with the cost of fuel  
22 prices in the past year. Dairymen in the southeast  
23 need the Federal Order help to recover as much of  
24 the market supply costs and to share them with all  
25 producers, just like we share Class I returns. That

1 is why we support these proposals.

2 Some -- some say we should do it with over-  
3 order premiums, which sounds like a great idea;  
4 but history has taught us that over-order pricing is  
5 slow and can be unreliable. With very little market  
6 disruptions, such as in '95 and '96, over-order  
7 premiums went to zero overnight. Because of these  
8 facts, we are interested in the hearing process.  
9 The industry accepts Federal Order price changes  
10 more readily than changes in premium levels. We  
11 know that the Department of Agriculture and  
12 secretary recognizes from [sic] the results of the  
13 freight adjustment hurricane hearings from last  
14 year.

15 No other section of the country is asked or  
16 expected to bear these transportation burdens that  
17 we have been expected to accept in the southeast.  
18 There is no doubt -- there is no doubt that is part  
19 of the exodus of the dairy industry in the  
20 southeast.

21 I believe, as evidence, one only has to look at  
22 the latest CWT, Cooperatives Working Together,  
23 bids, which is volun -- which is the voluntary  
24 buyout of dairy cows by the dairy industry. Under  
25 the CWT guidelines, safeguard thresholds have

1 been established for five separate regions of the  
2 country, limiting the total milk withdrawals as  
3 possible in each. The limits are strictest in the  
4 northeast, southeast, Mid -- and Midwest, and less  
5 strict in the southwest and west.

6 Q. Now, let me in -- interrupt right there.

7 Mr. Easter, in your statement, which has been  
8 marked in -- in -- as Exhibit 29, first of all, did you  
9 prepare this statement?

10 A. Yeah.

11 Q. You did?

12 A. This statement?

13 Q. Yeah.

14 A. Yes.

15 Q. Okay. And you've got a table there, which  
16 will be part of the record in the exhibit. And that's  
17 information that -- that you compiled and -- and  
18 presented here; correct?

19 A. This -- this -- the table itself is the -- is  
20 CWT's table that they have published. It's -- it's --  
21 you know, it's available in lots of website, National  
22 Milk, whatever, has the same table.

23 MR. BESHORE: Okay. Without reading  
24 all those numbers, you know, into the record, I  
25 would suggest that it will be included in the record,

1 your Honor.

2 BY MR. BESHORE:

3 Q. And that you can proceed to the rest of  
4 the text --

5 A. Oka.

6 Q. -- of your statement without going through  
7 all these numbers.

8 A. It is evident by the CWT chart that the  
9 average bid price for the southwest and west is  
10 \$7.44 per hundredweight, the average for the  
11 northeast and Midwest is \$6.59 per hundredweight,  
12 and the average bid price in the southeast is  
13 \$5.22/hundredweight. In other words, the average  
14 bid price for the southeast versus the northeast  
15 and Midwest is a \$1.37 less. The average bid price  
16 for the southeast versus the southwest and west is  
17 \$2.22/100 less. In my mind , this is in disputable  
18 evidence as to the lesser profitability in the  
19 southeast.

20 A significant portion of that -- of that is the  
21 burden the southeastern dairymen bear due to the  
22 tremendous transportation costs that we incur from  
23 balancing the fluid milk supply more so than any  
24 other region in the country. To me, this reminds  
25 me of the Jerry Clower story when he was racoon

1 hunting with his buddy, found himself up in an oak  
2 tree wrestling a bob cat; and he hollers down to  
3 Jerry, "Shoot. Shoot. One of us has got to have  
4 some relief." I believe the southeast dairymen are  
5 saying exactly the same thing with these bids.

6 The burden of southeast milk prices has  
7 created a situation where even several states have  
8 tried to devise ways at state government levels to  
9 put safety nets in place to save local dairymen.  
10 Even my state of South Carolina is well in -- is well  
11 advanced in understanding that if something is not  
12 done at the federal level with milk prices in the  
13 southeast, that even the 85 existing dairy farms in  
14 South Carolina will dwindle very quickly. Even  
15 though I appreciate the efforts of the South  
16 Carolina legislature, I do not believe the way to  
17 solve reliable milk prices in the southeast is with a  
18 hodgepodge of -- of legislation by each state.

19 As I see it, the present system has two very  
20 large problems. First, all producers do not share  
21 equally in the cost of balancing the milk supply in  
22 the southeast. And secondly, there is no incentive  
23 on the part of the processors to build or operate  
24 plants where the milk supply is. A very vivid  
25 example is that National Dairy Holdings operates a



1 milk plant in Charleston, South Carolina; probably  
2 the most expensive plant to supply milk to in the  
3 southeast. And at the same time, Dean Foods  
4 builds a soy milk plant in the heart of the  
5 Shenandoah Valley in Virginia, one of the largest  
6 pockets of the milk production in the southeast.

7 To finish, I would like to make a comment on  
8 how the cost should be recaptured. I, as a  
9 dairyman, would like to see the price increased to  
10 cover the amount requested. I believe that the  
11 quickest and easiest way to cover the cost of the  
12 proposed credit is with a price adjustment to the  
13 Class I price each month. But obviously, both I  
14 and the co-op understand the urgency of this  
15 request, and we want to give the secretary as much  
16 flexibility to -- finding a solution as we can.

17 Thanks for listening to my concerns and input.  
18 I will try to answer any questions that I can, with  
19 the understanding that I may be -- not be able to  
20 answer any technical questions about the Federal  
21 Order.

22 Q. Okay. Thank you, Mr. Easter.

23 The State of South Carolina has only red dots  
24 on Exhibit 22, Page 1?

25 A. Definitely.

1 Q. Just for -- for reference, which red dot is  
2 the closest plant to your farm?

3 A. It's in the upper -- it's the upper left-hand  
4 corner. It -- which would be the Spartanburg plant.

5 Q. In the north --

6 A. Upper -- upper left-hand corner of South  
7 Carolina.

8 Q. Northwesterly --

9 A. Northwestern part, yeah.

10 Q. Thank you

11 JUDGE DAVENPORT: Questions of this  
12 witness? Mr. Tosi?

13 EXAMINATION

14 BY MR. TOSI:

15 Q. Thank you for coming today, Mr. Easter.  
16 Appreciate it. I see that you've been here a couple  
17 of days, too, and that's --

18 A. Yes. I --

19 Q. -- we always appreciate it when dairy  
20 farmers come and participate --

21 A. I've -- I've been --

22 Q. -- in these proceedings.

23 A. I have been interested in -- and it's --  
24 it's -- it's been an experience.

25 Q. You ought to try doing this for a living,

1 then [laughter].

2 MR. BESHORE: You should try to milk  
3 some cows.

4 BY MR. TOSI:

5 Q. Where -- where you're located in -- in  
6 South Carolina, do -- are you able to see at least  
7 the Federal Order blend price in -- in your milk  
8 check?

9 A. It is -- it is close, but not -- not every  
10 day -- not -- not every month; no.

11 Q. Okay. In your -- in your -- in your written  
12 statement, it was on the second page there, where  
13 you were talking about over-order premiums; and  
14 that you -- you -- you were saying that history's  
15 taught us that over-order pricing is slow and can be  
16 unreliable.

17 Can -- what is it -- what is it about that  
18 characterization, that -- that over-order pricing is  
19 slow and unreliable? I'm -- I'm not exactly sure  
20 what that -- what that means or what -- what you  
21 intend that to mean?

22 A. It takes -- it takes very little milk supply  
23 that moves on an independent basis, for whatever  
24 reason, to disrupt an entire market. This '95/'96  
25 year-type thing was when a group in the -- in the

1 southwest decided they were going to enjoy some  
2 of our market overnight. And -- and -- and I don't  
3 remember the exact price now. We lost a dollar, a  
4 dollar and a quarter/100 for milk, because as soon  
5 as that milk supply came in at a negotiated price, it  
6 was -- it -- it just disrupted the whole thing just  
7 immediately. It was not -- it was not a gradual  
8 retreat. It was from a buck to zero overnight.

9 Q. That -- that milk that you referring to,  
10 would -- did it receive a transportation credit to  
11 come into the market?

12 A. I'd -- I would not have the foggiest.

13 Q. Okay. Are -- are you of the opinion, then,  
14 if we adopt these proposals for increasing the --  
15 the current transportation credit, the inter-market,  
16 bring in the milk from outside the marketing areas,  
17 and the intra-market, it will -- it'll tend to increase  
18 your milk check?

19 A. I -- I have -- I have no doubt that it will.  
20 It -- the burden of -- the burden of sup -- of -- of  
21 the expense of supplying the market, the moving of  
22 the milk, whether it is bringing in outside milk or  
23 whether it's moving it -- moving my milk to a  
24 distant plant for whatever reason, that -- that that  
25 cost, at the present time, is -- is -- is not shared

1 equally between all milk producers in the  
2 southeast.

3 Q. Okay.

4 A. And -- and this proposal, if it is -- if it  
5 is -- if it is applied to the Class I price, that -- that  
6 immediately changes that situation.

7 Q. Well, it -- I mean, if you're -- you're a  
8 DFA board member or -- you know, for your council  
9 and for your area of the country, and if it's costing  
10 you money to supply plants that you can't earn a --  
11 or at least break even on, why are you doing it?

12 A. For that exact same reason of -- if I tell a  
13 plant I am not going to supply the milk, somebody  
14 will at some price. And -- and as soon as you start  
15 leaving that market wide open, those over-order  
16 premiums will be gone immediately.

17 Q. But if -- but if you're going to continue to  
18 dairy farm and supply a plant at a loss, aren't --  
19 aren't you going to end up in the same situation,  
20 where you're going to -- you're going ahead and  
21 paying what you already owe, you're sort of paying  
22 for the privilege of supplying this guy?

23 A. Yes. And -- and -- and this problem that  
24 we have gets worse every day. It's not a case that  
25 it's -- that this a stagnant problem. Every day that

1 we lose a dairyman, the problems that -- that are  
2 our staff has -- has described is -- it's worse  
3 tomorrow than it is today; because there is fewer  
4 dairymen [sic] to spread a larger bill, because  
5 there's got to be more money -- there's got to be  
6 more milk that comes in to cover the guy that just  
7 went out. And so the -- the problem gets worse by  
8 the day. And -- and -- and -- and that's why we're  
9 asking for this to be applied to the Class I price,  
10 so that -- that we all share equally.

11 MR. TOSI: Okay. I understand your  
12 answer, sir. Thank you very much. I appreciate  
13 your patience with. . .

14 JUDGE DAVENPORT: Any other questions  
15 for Mr. Easter? Mr. Stevens?

16 EXAMINATION

17 BY MR. STEVENS:

18 Q. Good afternoon, sir. Thank you for  
19 coming.

20 I -- I don't know -- I -- I -- I heard your  
21 statement, and I'm not sure if I heard this; and so  
22 I'll ask it: Under the -- under the notice of  
23 hearing, the secretary defines a small business, in  
24 terms of dairy farmers, as a business that has a  
25 gross income yearly of -- of \$750,000 or less.

1       Would you consider your dairy farm being in  
2 operation a small business?

3       A.   No, it would not qualify under that --  
4 under that -- under that terms [sic]. The -- the --  
5 the dairymen that I represent, I -- there would be  
6 greater than 50 percent of them that would qualify  
7 for that, but I do not.

8       Q.   All right. And -- and -- and your  
9 statement is for -- on your behalf and on the behalf  
10 of your membership there in -- in --

11      A.   Right, in South Carolina.

12      Q.   -- in your location in South Carolina?

13      A.   And -- and over 50 percent of them you --  
14 you -- you think, and you're --

15      A.   Right.

16      Q.   -- you're informing the record, would --  
17 would qualify under that definition as a small  
18 business?

19      A.   Right.

20      Q.   And when you say 50 percent, is that a  
21 number? Can you put a number to it?

22      A.   I -- there's 40-some people in my district,  
23 and so --

24      Q.   Right.

25      A.   -- it would be 20 herds.

1 Q. In the 20s?

2 A. Yeah.

3 MR. STEVENS: Thank you, your Honor.

4 Thank you

5 JUDGE DAVENPORT: There was a  
6 question from the back, Mr. Beshore. Would you  
7 come forward and identify yourself? And then you  
8 may ask your question.

9 MR. SUMNERS: My name is Mike  
10 Sumners. I'm a dairy farmer from Paris,  
11 Tennessee.

12 My question is: You -- you stated you don't  
13 understand the Federal Order system?

14 THE WITNESS: I -- I understand some.  
15 Obviously, from listening to testimony here for two  
16 days, I think there's very few people that  
17 understand the Federal Order system totally.

18 MR. SUMNERS: Well, you -- you're a  
19 board member of a cooperative?

20 THE WITNESS: Uh-huh.

21 MR. SUMNERS: And you have meetings at  
22 least once a month?

23 THE WITNESS: Uh-huh.

24 MR. SUMNERS: Is there ever any  
25 education of what the Federal Order is?



1           THE WITNESS:  There is -- there is  
2 discussions [sic] all the time about the Federal  
3 Order.

4           MR. SUMNERS:  But you still don't  
5 understand what the Federal Order does?

6           THE WITNESS:  I understand what the  
7 Federal Order does.  As far as the -- the fine  
8 incranacy [sic] -- intricacies of the -- all of the law  
9 ramifications and -- and -- no.  No, do not.

10          MR. SUMNERS:  But you think the Federal  
11 Order system is not working and needs to be  
12 changed; correct?

13          THE WITNESS:  Uh-huh.

14          MR. SUMNERS:  How can you know that if  
15 you don't understand what's going on now?

16          THE WITNESS:  They -- I think -- I -- I --  
17 I think we understand the system; okay?  I don't --  
18 I -- no.  There is -- there is no way in the world  
19 that I can stand here and say that I know as much  
20 as Mr. Beshore or Mr. English does about. . .

21          MR. SUMNERS:  Do -- do you know the  
22 basics?

23          THE WITNESS:  I believe I do.

24          MR. SUMNERS:  Why -- why do you feel,  
25 as a dairy farmer, that you are obligated to haul

1 milk in here?

2 THE WITNESS: As far as -- as supplying  
3 the -- the -- the market needs?

4 MR. SUMNERS: As a dairy farmer, why do  
5 you think, Bill [sic], you should haul milk -- your  
6 competitor's milk to the same plant that your milk's  
7 going to?

8 THE WITNESS: The -- the co-op at the  
9 present time in most of these --

10 MR. SUMNERS: Well, the co -- co-op is a  
11 separate -- separate business. What the co-op  
12 does is outside the Federal Order.

13 MR. BESHORE: Your Honor, let me object  
14 to this witness. Mr. Sumners interrupted Mr.  
15 Easter, who is attempting to answer his questions.  
16 Now, Mr. Sumners will have an opportunity to  
17 testify, if he wishes to; but I'd like Mr. Easter to  
18 have the opportunity to answer his questions  
19 before --

20 JUDGE DAVENPORT: Your point's well  
21 taken. Mr. Sumner [sic], let Mr. Easter answer the  
22 question if he can; and if he can't, he can --

23 THE WITNESS: The -- the co-op --

24 JUDGE DAVENPORT: -- advise you.

25 THE WITNESS: -- has a full-supply

1 contract with -- with many of these plants, and so  
2 the milk has to come in. This is -- it -- and that is  
3 why -- and that's why the burden of -- of supplying  
4 the market under the present system end up on the  
5 dairymen that belong to the -- the co-ops and SMA.

6 MR. SUMNERS: Okay. I'll -- I'll restate  
7 my question: Why, as a dairy farmer, not as a co-  
8 op board member, you -- you're a dairy farmer;  
9 you're also part owner of a cooperative that has a  
10 separate business. But why, as a dairy farmer, do  
11 you feel like you should haul your competitor's milk  
12 in?

13 THE WITNESS: As a -- as a dairy -- you  
14 want me to answer that as a dairy farmer?

15 MR. SUMNERS: Yes.

16 THE WITNESS: I guess the belief for that  
17 would be that, you know, I -- I am -- I am of the  
18 belief that -- that the market has to be supplied,  
19 and I do not believe -- milk will flow in. Somebody  
20 will supply it. And if they become the full-supply  
21 contract -- if I -- if -- if I do not supply the market  
22 and somebody comes in and says they will supply  
23 the market, then I have no place for my milk. And I  
24 don't want to wake up tomorrow morning and find  
25 no place for my milk to go.

1           MR. SUMNERS:  So -- so you're telling me  
2 you're willing to take less out of fear of not having  
3 a place to sell your milk?

4           THE WITNESS:  I have -- I woke up one  
5 morning belonging to a small co-op, and I received  
6 a registered letter from my processor that said, "In  
7 30 days, I do not accept your milk."  And that letter  
8 went to every member of my small co-op.  So I have  
9 been through that.  I have been through the  
10 wonderful feeling of, "Where do I go tomorrow with  
11 my milk?"

12          And -- and in my particular case, I -- I -- there  
13 is -- there is [sic] four families that are all kin to  
14 me, that -- that live on the farm, that I am --  
15 basically, that is the -- that is their source of  
16 income.  And I just -- I, personally, don't want to  
17 go through that again.  And that is what will  
18 happen.

19          And I don't care whether it's to big ole DFA or  
20 to a small co-op.  If we do not supply the market,  
21 somebody will.  And I -- I -- I do not wish on  
22 anybody the registered letter that comes and says,  
23 "You do not have a milk market tomorrow."

24           MR. SUMNERS:  Thank you very much

25           MR. BESHORE:  Just one final question.

1 EXAMINATION

2 BY MR. BESHORE:

3 Q. You indicated, Mr. Easter, that your farm  
4 supports four families; is that correct?

5 A. Yes.

6 Q. Okay. What -- how many cows do you milk  
7 there in that operation?

8 A. We normally milk around 300 cows, and --  
9 and most -- virtually of the labor on the farm is --  
10 is family: cousins, nephews, whatever.

11 Q. Okay. So 300 cows, four families, that's  
12 475 cow farms?

13 A. Yeah. Yeah.

14 Q. Okay.

15 A. Under the -- under the -- under Mickey's  
16 definition, that -- you know, I'm definitely a  
17 small -- small dairyman; but -- but no, I do not  
18 qualify that way.

19 MR. BESHORE: Right. Okay. Thank you

20 JUDGE DAVENPORT: Other questions of  
21 this witness? Very well. Thank you, Mr. Easter.  
22 You may step down.

23 Mr. Beshore?

24 MR. BESHORE: Our next witness is Reta  
25 Dyess.

1           JUDGE DAVENPORT: Mr. Beshore, her  
2 statement will be marked as Exhibit 30.

3           MR. BESHORE: Thank you, your Honor.  
4 [WHEREUPON, document referred to is marked  
5 Exhibit 30 for identification.]

6           JUDGE DAVENPORT: Ms. Dyess, would  
7 you raise your right hand?

8           RETA DYESS, after having been duly sworn, is  
9 examined and testifies as follows:

10          JUDGE DAVENPORT: Please be seated.

11          And if you would, spell your last name,  
12 please?

13          THE WITNESS: My name is Reta Dyess,  
14 R-e-t-a D-y-e-s-s.

15          EXAMINATION

16          BY MR. BESHORE:

17          Q. Ms. Dyess, have you been here during  
18 parts of this hearing the last two days?

19          A. Yes, I have.

20          Q. Okay. And do you have a -- a statement  
21 that you've prepared that's been identified here as  
22 Exhibit 30, that you'd like to present?

23          A. I do.

24          Q. Okay. Can you just talk towards the  
25 microphone, if you -- if you would? And go ahead

1 with your statement.

2 A. My name is Reta Dyess. My husband and I  
3 operate two dairies located in the heart of east  
4 Texas, halfway between Dallas and Houston in  
5 Cherokee County. Our son, grandson, daughter,  
6 her husband, and our nephew operate dairies in the  
7 same area.

8 In a total of the six dairies, we milk about  
9 2,000 cows. We market all of our milk through  
10 Dairy Farmers of the America Cooperative. Our  
11 milk, plus milk from several other dairies, leaves  
12 east Texas and is delivered to the Southeast  
13 Council most every day.

14 We are in Federal Order 126. These proposals  
15 for Orders 5 and 7 do not directly affect us, but do  
16 dir -- affect us indirectly.

17 I serve dairymen on several boards. In the DFA  
18 Southeast Council, I serve as a council person.  
19 DFA Southeast Council has about 330 dairies in  
20 east Texas, with an average size of approximately  
21 150 cows. I also serve with the Texas Animal  
22 Health Commission as a commissioner; with the  
23 Texas Beef Council as a director; with the National  
24 Cattlemen's Beef Association as a director in the  
25 Federation Division. And I also represent dairymen

1 at the U.S. Animal Health Association. At heart, I  
2 am a dairyman.

3 I do not know a lot about Federal Orders nor  
4 transportation credits, but I do know the cost of  
5 getting milk to the market; and the cost of keeping  
6 a balanced supply of milk for our customers in the  
7 southeast are increasing. The increase in fuel and  
8 the increase in hauling distance are costing the  
9 dairymen in this area more and more. Many have  
10 gone out of the dairy business, which creates a  
11 larger gap between supply and demand in the  
12 southeast. Every time a dairyman goes out, the  
13 price of supplying the market goes up milk. More  
14 milk must be brought in to supply the demand at  
15 this expense of the dairymen in the southeast.  
16 This is a never-ending circle.

17 As long as the southeast dairymen are carrying  
18 the expense of supplying the market with the Class  
19 I mil, the results will be fewer and fewer dairymen  
20 in the area where we need the milk the most. We  
21 need an increase in the transportation credits to  
22 help cover these added expenses.

23 I support this appo -- I support the proposals  
24 that our cooperative is making here today. The  
25 proposal that deals with milk outside the market



1 will help us in that it will increase the charge  
2 enough to make sure that the cost is covered. The  
3 proposal that deals with the intra-market credit  
4 program will help us to supply the market and to  
5 recover the cost in a way that is fair to all  
6 producers.

7 All the producers that draw off the pools of  
8 returns will share in the expenses as well. I feel  
9 this is a reasonable expectation. It will not cover  
10 all of the costs, but it will help.

11 The proposal relating to the fuel adjuster will  
12 be helpful in that it has a sliding scale built in that  
13 moves up and down with the fuel prices. It will  
14 increase the charge enough to make sure that the  
15 costs are covered. As dairymen, we are well aware  
16 of the rising cost of fuels [sic] for our trucks and  
17 our tractors. The cost of bringing in hay,  
18 cottonseed, and grain has increased due to an  
19 increase in fuel prices. The fuel adjuster will  
20 follow the price of fuel, which will help cover the  
21 actual cost of fuel.

22 One of the reasons we are asking for help with  
23 the Federal Orders is that the industry accepts the  
24 order price changes more readily than changes in  
25 premium levels. All programs cost money. So how

1 can these costs be recovered? We feel our staff  
2 has done the research, and has arrived at the best  
3 solution for the problem. We would like to see the  
4 hauling credits increased enough to cover the  
5 amount requested. We also need some relief as  
6 soon as possible. We have some thoughts as to  
7 how it could be recovered, but our top -- top  
8 priority is to get as much covered as soon as  
9 possible to stop the hemorrhaging of the dairy  
10 industry in the southeast.

11 The preferred way is to cover the cost with an  
12 increase in the Class I price each month. We also  
13 want to give the secretary as much flexibility as he  
14 needs to get as much done as quickly as it can be  
15 done. Up to one-half of the cost could be shared  
16 in the blend price pool as a last resort, so that all  
17 dairy farmers who are sharing in returns of the pool  
18 would share in the cost, also. We want to work  
19 together with the secretary to get the best results  
20 for all involved.

21 And I thank you for listening to my comments.  
22 As I said, I do not know a lot about market orders  
23 or transportation credits, but I do know the needs  
24 of the dairymen. And I will try to answer any  
25 questions that you may have.

1 Q. Ms. Dyess, is your position, as a member  
2 of the Southeast Council, an elected position?

3 A. Yes, it is.

4 Q. Okay. And that's elected by the 330 or so  
5 dairies in -- in east Texas?

6 A. Yes.

7 Q. Okay. Now, an average herd of 150 cows,  
8 would it be your judgment that that size operation  
9 would qualify as a small business? Less than  
10 \$750,000 in -- in income per year?

11 A. Yes.

12 MR. BESHORE: Okay. Thank you. That's  
13 all I have on direct

14 JUDGE DAVENPORT: Very well.

15 Questions of this witness? Mr. English?

16 EXAMINATION

17 BY MR. ENGLISH:

18 Q. Good afternoon, Ms. Dyess. Again, I  
19 express my appreciation as -- for showing up today.  
20 And I -- I know it's a good ti -- a big time  
21 commitment for you. I'm confused by just one or  
22 two things. You say your farms are in Texas?

23 A. Yes.

24 Q. So not actually in the marketing area of  
25 Orders 5 and 7; correct?

1 A. No, I'm in Order 126.

2 Q. Okay. So the intra-market credit program  
3 would not actually help you, your farm, supply milk  
4 to these markets; correct?

5 A. Not directly.

6 MR. ENGLISH: Thank you

7 JUDGE DAVENPORT: Very well. Thank  
8 you, Ms. Dyess.

9 Mr. Beshore?

10 MR. BESHORE: Our next witness is Jeff  
11 Smith

12 JUDGE DAVENPORT: Mr. Smith's  
13 statement will be marked as Exhibit 31.  
14 [WHEREUPON, document referred to is marked  
15 Exhibit 31 for identification.]

16 JUDGE DAVENPORT: Would you raise  
17 your right hand?

18 JEFF SMITH, after having been duly sworn, is  
19 examined and testifies as follows:

20 JUDGE DAVENPORT: Please be seated.

21 Tell us your name; and then, if you would,  
22 spell it for the hearing reporter?

23 THE WITNESS: My name's Jeff Smith,  
24 J-e-f-f S-m-i-t-h.

25 EXAMINATION

1 BY MR. BESHORE:

2 Q. Mr. Smith, have you been present at the  
3 hearing or -- or much of it the past two days, as  
4 some of your colleagues have?

5 A. Yes, sir.

6 Q. Okay. And have you prepared a two-page  
7 statement, which has been marked here as Exhibit  
8 31, with your -- the thoughts you'd like to present  
9 for the hearing?

10 A. Yes, I have.

11 Q. Okay. Could you proceed with that,  
12 please?

13 A. Good afternoon. My name is Jeff Smith. I  
14 live at 6359 Highway 98 East, Comer, Georgia,  
15 30629, which is located about 90 miles northeast of  
16 Atlanta.

17 I began dairying when I was 21 years old  
18 between my junior and senior year at the University  
19 of Georgia, where I obtained a degree in  
20 agricultural education. I've been dairying for  
21 the -- for 16 years, and have been in partnership  
22 with my brother for the last ten years. We milk  
23 around 950 head three times a day, with a total  
24 herd size, including replacement heifers, steers,  
25 and bulls, up 2,700 head.

1 I'd like to take this opportunity to thank the  
2 USDA for granting this hearing to address the  
3 proposals that have been presented. I would al -- I  
4 would also like to thank the Dairy Farmers of  
5 America and Southern Marketing Agency staffs for  
6 their hard work in putting together the information  
7 that was necessary to try and find a solution to the  
8 problems we are -- are experiencing in Federal  
9 Order 5 and 7.

10 I'm a member owner of Dairy Farmers of  
11 America, and serve as a director on the Southeast  
12 Council. Our farm is located within the Southeast  
13 Council geographic boundaries, which spans  
14 portions of Federal Order [sic] 5 and 7. Our board  
15 of directors has reviewed the proposals made by  
16 our cooperative, along with several other  
17 southeastern cooperatives, and support their  
18 intent.

19 I am not an expert on Federal Orders, but  
20 understand enough about transportation credits and  
21 the cost of hauling local and supplemental milk.  
22 My brother Steven and I have operated a trucking  
23 company for the last five years, and have hauled  
24 milk and feed throughout the southeast. Each year  
25 the cost of hauling has increased. Higher labor,

1 insurance, tires, and equipment has -- have also  
2 increased. The past year we saw fuel prices reach  
3 over \$3 per gallon, and no means of relief within  
4 the order system. This burden was again placed on  
5 the back [sic] of cooperative dairy farmers.

6 One of the figures used in fuel adjuster in  
7 the -- in the fuel adjuster is 5.5 miles per gallon.  
8 When I compared the past five years of operate --  
9 of operations in the trucking business using  
10 different -- different-sized trucks to haul milk, the  
11 average fuel mileage for our company was 5.1  
12 miles per gallon. So I believe the 5.5 miles per  
13 gallon is a conservative number.

14 Dairy farmers in the southeast understand  
15 pooling. They realize that sharing in the Class I  
16 market is what makes our paychecks. In the pool,  
17 everyone shares in the returns; but not everyone  
18 shares in the cost of supplying the market. This  
19 cost falls back on cooperative members, which  
20 includes me.

21 The proposal that deals with milk from outside  
22 market will help in two ways. The current program  
23 is definitely needed in the southeast, but is  
24 outdated. It needs to be updated and -- with  
25 adjustments for today's and future needs, along

1 with a fuel adjuster which would allow us to better  
2 cover the cost of supplemental milk.

3 The proposal that deals with transportation  
4 credits for local milk is also very important. It  
5 would -- would allow us to receive the cost in a fair  
6 manner, while supplying the market. The fuel  
7 adjuster in this proposal will also move up and  
8 down with fuel prices. We need to be able to  
9 recover this cost through the order sy -- order  
10 system.

11 In addition to working together to be more  
12 efficient, we need the Federal Order's help to  
13 recover some of the costs related to supplying the  
14 market. I understand the order prices can move  
15 more frequently in the same manner that fuel  
16 prices can move very quickly [sic]. The over-order  
17 prices take longer and cannot assure equity among  
18 all handlers as a Federal Order does.

19 To ensure the survival of the dairy farmer --  
20 the southeastern dairy farmer, we need an answer  
21 that will cover as much of the problem as possible  
22 and as soon as possible. We decided that the best  
23 way to -- to do this is to recover the cost through  
24 Class I returns, which would be passed onto the  
25 consumer.



1       We, as dairy farmers, incur the additional cost  
2 of producing milk through fuel surcharges on feed  
3 deliveries, on farm diesel fuel, electricity, and  
4 higher prices for products and equipment due to  
5 higher energy output cost. In today's market,  
6 dairymen are responsible and expected to pay the  
7 increase in cost of producing a gallon of milk and  
8 the extra cost of bringing in supplemental milk;  
9 delivering local milk beyond the closest plant; and  
10 the unpredictability of fuel prices.

11       We believe the first means of recovery should  
12 be to pass the Class I price through to the  
13 consumer. We are flexible -- we are flexible in finding  
14 a solution, and any help is better than no help at  
15 all. If necessary, but only if necessary, some of  
16 the cost could be recovered through the blend.  
17 This would at least pass the cost to all dairy  
18 farmers equally. It is time to take some of the  
19 pressure associated with supplying the market off  
20 dairymen.

21       I thank you again for your time and your  
22 awareness of the problems that we are  
23 experiencing in Federal Order 5 and 7. Thanks for  
24 listening to my concerns, and I will try to answer  
25 any questions that I can.

1 Q. Mr. Smith, you are an elected member of  
2 the Southeast Council of DFA: is that correct?

3 A. Yes, sir.

4 Q. Okay. What geographic area -- what part  
5 of the state of Georgia or -- or the -- well, where  
6 are you elected from?

7 A. The north -- north part of Georgia.

8 Q. Okay. Approximately how many DFA  
9 members are in that district?

10 A. Around 50 to 55.

11 Q. Okay. And are a number of them, perhaps  
12 the majority of them, of the small business  
13 category you've heard discussed here?

14 A. Yes, the majority of 'em are.

15 MR. BESHORE: Okay. Thank you

16 JUDGE DAVENPORT: Questions? Mr.

17 English?

18 EXAMINATION

19 BY MR. ENGLISH:

20 Q. Good afternoon, Mr. Smith. Charles  
21 English for Dean Foods.

22 A. Good afternoon.

23 Q. Do you know where your milk goes?

24 A. Yes, I do.

25 Q. Where does it go?

1       A.    It goes to Winter Haven and Miami,  
2 Florida.  That -- that is as of the end of November.

3       Q.    So as of the end of November, your milk is  
4 now going to an Order 6 plant?

5       A.    Yes.

6       Q.    Where did it go before November?

7       A.    It went to a plant close to Atlanta,  
8 Georgia.

9       Q.    About how far away was that?

10      A.    Eighty miles north.

11      Q.    So does Florida have transportation  
12 credits?

13      A.    I'm not sure.

14      Q.    For that time when you were shipping to  
15 the plant in Atlanta, Georgia, would it surprise you  
16 to learn, from the market administrator data that  
17 was introduced, that Georgia dairy farmers shipped  
18 98 to 99 percent of their milk to Order 5 or Order 7  
19 plants on a day-to-day basis?

20      A.    I'm not sure.

21      Q.    Do you understand that Georgia producers  
22 [sic] milk, in order to be pooled on -- on this  
23 market, would have to be delivered to a pool  
24 distributing plant on some basis in this market?

25      A.    Yes.

1 Q. Do you understand that when the Class I  
2 utilization in this market drops, so does your blend  
3 price if all -- if other price is held equal?

4 A. I couldn't answer that.

5 Q. Do you understand that when dairy  
6 farmers from outside the market participate at a  
7 much lower daily rate than dairy farmers inside the  
8 market, that lowers the pay price to dairy farmers  
9 inside the market?

10 A. Could you repeat that?

11 Q. Do you understand that when dairy  
12 farmers from outside the market ship 27 to 30  
13 percent of the time what you, as a Georgia dairy  
14 farmer, ship to a plant in this market 98 percent of  
15 the time, that as a result of not delivering milk to  
16 this market, those outside producers are reducing  
17 your blend price?

18 A. I'm not sure. I don't --

19 Q. Okay.

20 A. -- understand enough about this.

21 Q. Well, let me read a statement from your  
22 statement. [reads] In the pool, everyone shares in  
23 the returns, but not everyone shares in the cost of  
24 supplying the market.

25 Did you write that statement?

1 A. Yes, I did.

2 Q. Okay. If a producer ships just six days a  
3 month into this market, and the remaining 24 days  
4 of the month their milk goes to a local  
5 manufacturing facility in Kansas, are they  
6 supplying the market at the same rate you are day  
7 in and day out?

8 A. No.

9 Q. But if they share in the pool of returns but  
10 don't share in the cost of supplying the market,  
11 isn't that what your statement is about?

12 A. Yes. Yes.

13 MR. ENGLISH: Thank you

14 JUDGE DAVENPORT: Other questions?

15 Very well.

16 Mr. Beshore, I think we have time for one more  
17 before our afternoon break

18 MR. BESHORE: Okay. I call Buckey

19 Jones.

20 JUDGE DAVENPORT: Would you raise

21 your right hand?

22 BUCKEY JONES, after having been duly sworn, is  
23 examined and testifies as follows:

24 JUDGE DAVENPORT: Please be seated.

25 And if you would, spell your name for the

1 hearing reporter? Mr. Beshore, Mr. Jones'  
2 statement has been marked as Exhibit 32.

3 MR. BESHORE: Thank you, your Honor.  
4 [WHEREUPON, document referred to is marked  
5 Exhibit 32 for identification.]

6 THE WITNESS: My name Buckey Jones.  
7 Buckey's spelled B-u-c-k-e-y, Jones, J-o-n-e-s.

8 EXAMINATION

9 BY MR. BESHORE:

10 Q. Okay. Mr. Jones, have you prepared the  
11 two-page statement marked as Exhibit 32 for this  
12 hearing?

13 A. Yes.

14 Q. Okay. And have you, like your colleagues,  
15 been present during a portion of the hearing to  
16 date?

17 A. Yes.

18 Q. Okay. Would you go ahead and present  
19 your statement? And then I have a couple  
20 additional questions for you when you're done.

21 A. Okay. Thank you, sir. I am Buckey  
22 Jones, a dairy farmer from Mississippi. My address  
23 is 6755-A Thompson Road, Smithdale, Mississippi,  
24 ZIP 39664. My farm is located in Amite County,  
25 Mississippi, and just a short distance north of the

1 Louisiana/Mississippi state line; being about 80  
2 miles north of New Orleans, Louisiana, and  
3 regulated by Federal Order Number 7.

4 I am a third generation dairy farmer, becoming  
5 involved in a dairy after college in 1962. My  
6 confarm [sic] -- my farms consists of dairy, timber,  
7 and row crop. I am a member of Dairy Farmers of  
8 America, and serve on the Southeast Council board  
9 as second vice president. My cooperative  
10 leadership began in 1962, when I first he elected to  
11 a dairy cooperative board of directors; thus, I claim  
12 to have some experience in dairy cooperative  
13 politic [sic].

14 Because of my affiliation with Dairy Farmers of  
15 America, I also serve on other dairy-related boards  
16 of directors that give me some insight into the  
17 trends and events that may do damage or give new  
18 life to the industry. I am chairman of the board of  
19 directors of both Dairy Cooperative Marketing  
20 Association and the Southern Marketing  
21 Association. Both of these associations  
22 encompass the entire southeast in scope and in --  
23 in their overall operation; therefore, blanketing  
24 both Federal Order 5 and Federal Order 7. These  
25 before-mentioned associations have most of the

1 dairy cooperatives in the southeast as members,  
2 and the Southern Marketing Agency markets a vast  
3 majority of the milk in Federal Order 5 and 7.

4 I am also chairman of the board of directors of  
5 the Southeast United Dairy Industry Association,  
6 an association which is a promotion entity of the  
7 dairy farmer funded program that the USDA has  
8 oversight responsibilities for. In this capacity, I  
9 see every month very accurate production and  
10 income triggers for the southeast. Please  
11 understand that I state no claim to Federal Order  
12 expertise, but I do claim to understand the events  
13 within the industry that do harm or good for those  
14 that I represent.

15 Not long ago, there were 12,000 dairymen in  
16 the southeast, with approximately 12,000,000,000  
17 pounds of production annually. Today, those  
18 numbers come in at less than 5,000 producers with  
19 less than 8,000,000,000 pounds of production. It  
20 is safe to say that we are indeed losing a vital  
21 industry at an alarming rate.

22 As I stand before you today, my fear is that  
23 the little children of the southeast will be  
24 condemned to drinking reconstituted powdered milk  
25 like third-world countries in the future. It is not



1 our charge to provide -- is it -- is it not our charge  
2 to provide fresh nutritional just milk for our  
3 population? Is this not what the Federal Order  
4 system was established for in 1938?

5 Please indulge me as I relate to you two of the  
6 department's actions that cause much grief in the  
7 southeast: The Federal Order reorganization in --  
8 in 2000, and the last two price support tilts. These  
9 had a negative effect on the Class I mover, as all  
10 of you are aware. I point this out not as  
11 condemnation, but only to say it is time for you to  
12 do something that will have a positive effect on the  
13 southeast. Your actions are not benign, but do set  
14 the benchmark for the health of the dairy industry.  
15 Thus, I seek your objective analysis of our  
16 proposal.

17 Dairy farmers stay in or exit the business on a  
18 level of pay price relative to their cost of  
19 production. They determine their sense of worth  
20 of -- or self on the price relative to the  
21 competition. As of late, because of extreme costs  
22 associated with servicing the market, they have  
23 arrived at the state of despair and disappointment,  
24 knowing that on both count [sic] they have suffered  
25 and come up short.

1       If you expect a certain percentage of the  
2 12,000 producers, then the 8,000 producers, then  
3 the 4,000 producers, then maybe 2,000 producers  
4 or even 1,000 producers, and maybe sometime in  
5 the future down to one producer, to bear the  
6 burden of the cost of servicing the market, at some  
7 point in time, that burden will become unbearable  
8 financially. Then the dairy consumers of the  
9 southeast will suffer for the folly of our action. I  
10 suggest that the time has arrived, and now is the  
11 time for action to restore some equity for  
12 southeastern producers.

13       Please listen as I urge you to approve our  
14 three proposals while -- that will attempt to  
15 transfer some of the cost from the producers back.  
16 Our proposal [sic] are an attempt to build fairness  
17 and equity for all within the market. As chairman  
18 of the South -- Southern Marketing Agency, I see  
19 the prohibitive cost of hauling milk long distances.  
20 I see the producers net income being swept away  
21 as their share of the pool arrives -- erodes because  
22 of freight. All producers need relief; but think for  
23 a fleeting moment for those producers who get  
24 saddled with most of the cost while providing their  
25 services that benefits all producers in the

1 southeast.

2       What we are requesting is not new policy, but  
3 a program that has been partially funded for about  
4 ten years. These costs vary violently, therefore  
5 making it almost impossible for premium to -- in the  
6 market to react quickly enough. Thus, the need  
7 arises for a set sable [sic] system that all  
8 understand, and is not contested on a monthly  
9 basis. This will give rise to a better  
10 producer/processor relationship.

11       As I have pointed out before, the market has  
12 changed drastically; and now is the time for us to  
13 change with it. It is just, it is right for the times,  
14 and it will benefit those who treasure fresh  
15 wholesome milk and dairy product. You are aware  
16 that dairy products provide more than 20 percent of  
17 the American nation's diet.

18       As far as an intra-market credit proposal is  
19 concerned, I'm sure you're aware that in a system  
20 and an area as large as the southeast, there is an  
21 increasing imbalance within the order. Points in  
22 case is northern Virginia production versus the  
23 processing capacity; or ev -- or even in my own  
24 area, the Louisiana/Mississippi production versus  
25 processing ability. Then on the other end of the

1 spectrum, consider the state of South Carolina with  
2 large processing with very little production; or  
3 even Alabama with the same issues.

4 It costs to move milk in today's economic  
5 environment from Virginia to Alabama. You know  
6 this story so much better than I do. Is there a  
7 need for me to mention fuel cost and the volatility  
8 that we have experienced in the last year? What  
9 we seek in this area is needed, accepted by the  
10 business sector as reasonable and just. We, in the  
11 southeast, have done about all we can do to  
12 economize and make our system more efficient.  
13 We have consolidated. We have shared costs. We  
14 have moved routes to make -- take milk to its nu --  
15 nearest market. We have done about all we know  
16 how to do.

17 Therefore, now is the time for the Department  
18 to come to the aid of the southeast dairy industry  
19 in helping us to recover some of the market cost  
20 and to share with all producers. Now is the time if  
21 we are to main -- re -- maintain a viable dairy  
22 industry in the southeast.

23 I thank you for allowing this hearing to  
24 proceed, and I thank you for an ongoing  
25 consideration of our proposal, and I thank you for

1 your concerns for the dairy industry in the eastern  
2 half of this great country. Thank you.

3 If there is any question, I'll try to respond.

4 Q. Thank you, Mr. Jones.

5 First of all, a question about DFA Southeast  
6 Council area for which you are -- you're the second  
7 vice president. Now, that's an elected position  
8 within DFA, of course; correct?

9 A. Yes. Yes.

10 Q. Okay. What -- what's your area from  
11 which you are elected there?

12 A. I -- I was he elected in District 13 in  
13 Mississippi. And it encompasses the -- the  
14 southwestern, one-quarter of the state of  
15 Mississippi, encompassing eight that have dairy.  
16 The dairy numbers in my district for DFA is 68  
17 producers. The dairy numbers for the entire  
18 district would be closer to 80 producers.

19 Q. Okay. Are the majority of those producers  
20 small businesses as that's been discussed --

21 A. The majority --

22 Q. -- in this hearing?

23 A. The majority of the dairy farmers in that  
24 district would be small businesses; yes.

25 Q. Now, DFA Southeast Council,

1 geographically, does that extend, as Ms Dyess, into  
2 ea -- the east -- eastern part of Texas?

3 A. The -- the Southeast Council encompasses  
4 a la -- reg -- geographical area from Virginia  
5 through -- all the way into the eastern part of  
6 Texas in -- in Federal Order 126. So they'd be --  
7 yes, they'd be a part of our council.

8 Q. And the DFA members in the eastern part  
9 of Texas, although they are geographically located  
10 in Order 126, is the majority of their milk  
11 production marketed to the east into Order 7?

12 A. Yes.

13 Q. And then Order 5, I assume --

14 A. Yes.

15 Q. -- at times, perhaps? Okay.

16 Now, I want to talk about your -- one of your  
17 other positions within the industry, and that is your  
18 position as chairman of the board of Southern  
19 Marketing Association; okay?

20 That's an elected position from within the  
21 membership of SMA; is that correct?

22 A. I -- I was elected to the board from DFA  
23 representation, and the membership producers of  
24 the SMA board elected me chairman of the board.

25 Q. Okay. Now, the SMA board, who -- who's

1 on that board? What -- what -- I'll put it this way:  
2 How do the members of that board make their  
3 living?

4 A. The -- the members of the SMA board  
5 are -- are elected by the individual cooperatives,  
6 apportioned -- the board is apportioned by a  
7 contribution to the system; in our -- in other words,  
8 what percentage of milk you have as a percentage  
9 of the whole gives you direct representation, with  
10 each member having a minimum of one regardless  
11 of the production.

12 Q. Okay. Are all of the members of the board  
13 of SMA dairy farmers?

14 A. Every member of the board of directors of  
15 SMA are dairy farmers; yes.

16 Q. Okay. Now, does DFA have the ability to  
17 have -- control that board in whatever manner it  
18 chooses as -- as a single entity?

19 A. If I may, I -- let me expand on that just a  
20 bit. The SMA board has a peculiar set of bylaws.  
21 We operate with a super majority as only the way to  
22 move forward, which is 75 percent of the vote. So  
23 actually, no one can dominate the board, because  
24 it requires at least three of -- of the members to --  
25 to carry the debt [phonetic].

1 In practice, what we have done, and -- and if  
2 my memory serves me correctly -- correctly on  
3 SMA, we have never moved forward on an issue  
4 without unanimity; because if you don't have  
5 unanimity in a situation which requires 75 percent,  
6 you have problems moving forward anyway. So we  
7 have -- we have not moved forward in any issue  
8 that didn't have a unanimous vote.

9 Q. Okay. And are the members of SMA, here  
10 at this hearing, unanimously, every one of 'em, in  
11 support of these proposals?

12 A. The -- the vote to support the -- the  
13 Federal Order's proposal was unanimous from the  
14 SMA board.

15 Q. Okay. And as chairman of board of SMA,  
16 you're here to speak on behalf of all of those mor -  
17 - board members?

18 A. Correct.

19 Q. Okay. Now, let's talk about the members  
20 of SMA a little bit. We've heard about DFA, but the  
21 other -- there are five members of SMA; is that  
22 correct?

23 A. That is correct.

24 Q. Okay. And the other members include --  
25 Mr. Sims had these in his statement, so I'll just go



1 from there.

2 Arkansas Dairy Cooperative Association is one  
3 of the members of SMA; is that correct?

4 A. That's correct.

5 Q. Can you tell us approximately how many  
6 dairy farmers -- dairy farmers [sic] members  
7 Arkansas Dairy Cooperative has?

8 A. Of Arkansas Dairy?

9 Q. Yes.

10 A. It's 74 members.

11 Q. Okay. Now, do you know, without  
12 revealing specific information about the volume of  
13 that cooperative itself, can you tell us, however,  
14 from your knowledge, whether the average member  
15 of Arkansas Dairy farmers -- the Arkansas Dairy  
16 Cooperative Association is a small business?  
17 Within the size identified as a small business?

18 A. That is a correct statement; yes.

19 Q. Okay. Let's talk about the Dairymen's  
20 Marketing Cooperative Association, then, or DM --  
21 DMCI you call it? Is that it?

22 A. Yeah.

23 Q. Is that how you com -- how it's commonly  
24 referred to? DMCI?

25 A. Right.

1 Q. Okay. Where is that located, by the way?

2 A. It's in -- in southwestern Missouri.

3 Q. Southwestern Missouri?

4 And are the members of --

5 A. It's -- it is exactly Mountain Grove,  
6 Missouri, is wherever that is exactly.

7 Q. Mountain Grove, Missouri?

8 A. Right.

9 Q. Okay. Approximately how many members  
10 does DMCI have?

11 A. They have approximately 71 -- 41 members  
12 at this time.

13 Q. Okay. And is the average member of DMCI  
14 of a size that qualifies as a small business entity?

15 A. Correct.

16 Q. Okay. In fact, are most of their producers  
17 in southern Missouri, to your knowledge?

18 A. Most of their producers in southern  
19 Missouri; correct.

20 Q. And that geographic area is a -- a  
21 concentration of smaller dairy farms; would you  
22 agree?

23 A. That's -- that's correct.

24 Q. Now, Lone Star Milk Producers is also a  
25 member of SMA; correct?

1 A. Correct.

2 Q. And approximately how many members  
3 does Lone Star have?

4 A. One hundred and fifty-four.

5 Q. Okay. Now, are the Lone Star members,  
6 on average now, of a size that is within the  
7 category of a small business?

8 A. Exactly what -- what entails a small  
9 business? 'Cause I'm -- I'm -- I'm -- I'm pretty  
10 sure --

11 Q. Okay. Well, let's --

12 A. I'm pretty absolute [sic] sure that they  
13 are, but I don't know what. . .

14 Q. Okay. Well, there are some larger farms  
15 that are members of Lone Star; correct?

16 A. Right.

17 Q. Okay. Now, if -- if we assume, for -- for  
18 this purpose, that a small business would -- to be  
19 under the \$750,000 of gross revenue, would have  
20 no more than 300,000 pounds of milk production  
21 per month?

22 A. Well, that's right. That Well, that would  
23 be a small business.

24 Q. On average?

25 A. On average.

1 Q. Okay. Although, as we -- we know, and --  
2 and some of these organizations may be several --  
3 a couple of big -- bigger farms; but on average, the  
4 majority of the dairy farms are -- are under that.  
5 Correct?

6 A. That's correct.

7 Q. Okay. Now, Maryland & Virginia Milk  
8 Producers Cooperative Association is also a  
9 member of SMA; correct?

10 A. Correct.

11 Q. Okay. Now, approximately how many  
12 members Maryland & Virginia are marketing through  
13 the SMA --

14 A. Five of 'em.

15 Q. -- being aware that Maryland & Virginia  
16 has operations in other orders as well?

17 A. Through SMA is about 556 members.

18 Q. Okay. And now the same question with  
19 respect to those Maryland & Virginia members, can  
20 you testify that, on average, they come within the -  
21 - the size that constitutes a small business entity?

22 A. That's correct.

23 Q. Okay. Now, you've heard earlier  
24 testimony from one of your colleagues, who's on  
25 the -- the DFA Southeast Council, that DFA's

1 Southeast Council members are approximately 90  
2 percent or more than 90 percent small businesses?

3 A. Right.

4 Q. And you've testified about the small  
5 business status of the other members of SMA.

6 Would it be fair, then, to conclude that the  
7 overwhelming majority of the producers  
8 represented -- that you represent through SMA, are  
9 small businesses --

10 A. Yes.

11 Q. -- supporting these proposals?

12 A. Yeah.

13 MR. BESHORE: Okay. Thank you, Mr.  
14 Jones. I have no other questions on direct.

15 JUDGE DAVENPORT: Let's -- let's take  
16 our afternoon break at this time. Let's be back at  
17 20 after the hour.

18 [WHEREUPON, a brief recess is taken.]

19 JUDGE DAVENPORT: All right. We're  
20 back in session.

21 Mr. Beshore, you were through with your  
22 direct?

23 MR. BESHORE: I was; yes.

24 JUDGE DAVENPORT: Very well. Mr.  
25 English?

1 EXAMINATION

2 BY MR. ENGLISH:

3 Q. Mr. Jones, Charles English for Dean  
4 Foods.

5 A. I'm -- I'm -- I'm sorry. I'm -- I'm -- I'm  
6 hard of hearing, so you'll have to speak direct --

7 Q. That's very -- it's very rare that someone  
8 says that to me, that they want me to speak up  
9 [laughs].

10 JUDGE DAVENPORT: Would you speak  
11 up, Mr. English?

12 MR. ENGLISH: [laughs]

13 THE WITNESS: Well, I don't -- I don't  
14 feel like I've got posts sticking in my ears for  
15 nothin'. I'm trying my best to hear.

16 BY MR. ENGLISH:

17 Q. I -- I understand, Mr. Jones. I -- I don't  
18 have a lot of questions for you, and -- and I  
19 certainly understand that you've made the  
20 statement that you stake no claim to Federal Order  
21 expertise; but you've been dairying twice as long  
22 as I've been doing this as a lawyer, so I think you  
23 know a lot about Federal Orders, if. . . [laughs].

24 A. I'm -- I'm sorry. I -- I just didn't hear you.  
25 I'm sorry.

1 Q. You cannot hear me?

2 A. No, I'm sorry.

3 Q. Okay.

4 A. Let -- let me see if I can adjust [laughs].

5 Okay.

6 Q. Okay. I just want to ask you a couple of  
7 questions, Mr. Jones.

8 A. Yes, sir.

9 Q. You referenced Federal Order  
10 reorganization in 2000 as having a negative effect  
11 on dairy farmers in the southeast; correct?

12 A. Correct.

13 Q. And one of those reasons was the  
14 negative effect on the Class I mover; correct?

15 A. Correct.

16 Q. That negative effect on the Class I mover  
17 lowered pay prices to dairy farmers in the  
18 southeast; correct?

19 A. Correct.

20 Q. And that lowering of pay prices to dairy  
21 farmers in the southeast hurt production in the  
22 southeast; correct?

23 A. Any time you lower the -- the price of milk  
24 paid to dairy farmers, it normally lowers production  
25 unless your cost go down with it.

1 Q. And then, when production was lowered,  
2 that meant more supplemental sup -- supplies of  
3 milk had to be brought into the market; correct?

4 A. The lower the local production, the more  
5 order supply coming from outside; correct.

6 Q. And when that supply came from outside,  
7 along with it came the balancing of that supply  
8 from outside; correct?

9 A. Correct.

10 Q. And that further lowered the blend price;  
11 correct?

12 A. Correct.

13 Q. And part of your position today is to try to  
14 recover some of those lost dollars that have been  
15 lost to the pay price in the southeast; correct?

16 A. Correct.

17 MR. ENGLISH: Thank you, sir.

18 JUDGE DAVENPORT: Other questions?

19 Very well. Mr. Jones, you may step down.

20 Mr. Beshore, I understand you and Mr. English  
21 have come to some agreement as to the order of  
22 witnesses?

23 MR. BESHORE: Procedure only; yes, we  
24 have. Mr. English has the next witness

25 JUDGE DAVENPORT: Very well. Mr.



1 English?

2 MR. ENGLISH: Your Honor, I have a Mr.  
3 Lee Robey who's a dairy farmer witness. And I --  
4 I'm grateful to Mr. Beshore for allowing -- and to  
5 Mr. Sims for allowing us to further interrupt that  
6 schedule. After that, we'll return to Mr. Sims.

7 JUDGE DAVENPORT: Would you raise  
8 your right hand?

9 LEE ROBEY, after having been duly sworn, is  
10 examined and testifies as follows:

11 JUDGE DAVENPORT: Please be seated.

12 If you would, please give us your name, and  
13 spell the name for the hearing reporter?

14 THE WITNESS: My name is Lee, L-e-e,  
15 Robey, R-o-b-e-y.

16 EXAMINATION

17 BY MR. ENGLISH:

18 Q. Mr. Robey, thank you for appearing today.

19 Could you tell us -- tell us a little bit about  
20 yourself as a dairy farmer? Background.

21 A. I'm a dairy farmer. My family and I own  
22 Robey Farms at 2160 Schochoh Road at Adairville,  
23 Kentucky. We are 45 miles north of that red dot  
24 that's Nashville, Tennessee.

25 Q. Does your milk go to that red dot?

1 A. Yes, sir.

2 Q. And how long have you been dairying?

3 A. My family's been in the dairy business  
4 since the mid '50s. Our farm was founded in 1899  
5 by my great-grandfather, Herbert Robey; currently,  
6 my parents, my wife and I and our three sons, two  
7 daughter-in-laws [sic], my brother, and we're  
8 fortunate enough to have three grandchildren. So  
9 we have four generations that livelihoods are from  
10 our dairy farm, and are actively involved in the  
11 day-to-day operations of our dairy operation.

12 Q. And approximately how many cows do you  
13 milk on that operation?

14 A. Our current number of cows on test is  
15 1,054 cows. We have a new dairy facility that we  
16 built in 2002; started operations in in 2 -- March of  
17 '03. We have doubled our herd size in -- in that  
18 period of time. Our rolling herd average has  
19 increased from 21,000 pounds of milk to 29,000  
20 pounds of milk. Butter fat's 1,020 pounds per cow  
21 per year. Moving to these new facilities, by not  
22 only increasing herd size, we've also been able to  
23 increase production and curt [sic] our -- and cut  
24 our coal rate from 39 percent to a current level of  
25 17 percent.

1 Q. So it's fair to say you're trying to do  
2 everything you can to become an efficient dairy  
3 farm operation?

4 A. Yes, sir. We're very fortunate. Our sons,  
5 Chris and Adam, and my wife are in the day-to-day  
6 operations of the dairy and of the calf-feeding  
7 business. And our younger son Adam -- I'm sorry.  
8 Our younger son Ely is a junior at the University of  
9 Kentucky, and is in -- planning to come back to the  
10 farm; is involved in the management of the  
11 operation when he's not at school.

12 Q. So with the multiple generations taken  
13 into consideration, nonetheless, getting maybe a  
14 second ahead of Mr. Stevens, with your operation,  
15 the size that it is, may be a family operation and  
16 may be small for you; but for government purposes,  
17 it's not viewed as being a small business  
18 operation; correct?

19 A. Yes, sir; that is correct.

20 Q. Now, you have been here throughout the  
21 hearing?

22 A. I arrived here yesterday afternoon about  
23 3:30.

24 Q. Okay. So you attended yesterday  
25 afternoon and -- and today's hearing; and -- and

1 have otherwise discussed the hearing process  
2 and -- and what's going on with hearing  
3 participants out in the hallway or over dinner;  
4 correct?

5 A. Yes, sir.

6 Q. And have you either, before the hearing  
7 of -- or during the hearing, formed any opinion  
8 about Proposals 1 and 2; that is, the intermarket  
9 credits and intra-market credits?

10 A. Yes, sir.

11 Q. Why -- why don't you tell us what that  
12 opinion is?

13 A. My feelings about Pro -- Proposals 1 and 2  
14 is I oppose Proposals 1 and 2. I -- by gathering  
15 information from other dairy farmers and from the  
16 market administrator and the information that they  
17 provided, and the information that I've learned  
18 today, reinforces my opposition to that.

19 I believe that the transportation credits that  
20 are being asked for devalues the local milk, and --  
21 and prohibits increased production in the  
22 southeast.

23 Q. And by way of example, is that red dot  
24 that you ship to, is that the closest plant that  
25 you -- to you?

1 A. Yes, sir.

2 Q. And so Proposal 2, if adopted, would not  
3 actually result -- assuming you continued shipping  
4 to that red dot, that in -- would not actually result  
5 in any transportation benefit to you or the person  
6 hauling your milk; correct?

7 A. That's correct.

8 Q. Okay. And yet you understand, the plant  
9 that is at that location would, nonetheless, pay up  
10 to \$0.10/hundredweight to the pool on -- on  
11 volumes of milk used in Class I at that plant?

12 A. That's my understanding.

13 Q. Do you have any other comments on -- on  
14 Proposal 1 and 2, for instance, about the risk that  
15 the Producer Settlement Fund could be used to  
16 fund intra-market credits?

17 A. My concerns with Proposals 1 and 2 is  
18 that they devalue local milk, and give milk from  
19 outside the order the opportunity to be pooled  
20 here, even if that milk isn't delivered to this order  
21 on a daily basis. I don't believe that that milk  
22 should have -- that they should be able to get  
23 those credits if it's only delivered here on a  
24 temporary basis.

25 Q. And do you have any comments on any

1 other proposals at the hearing?

2 A. Yes, sir. I would support Proposals 4 and  
3 5 for the reasons that I just stated; that milk -- and  
4 this is my understanding of these proposals. That  
5 if that milk is pooled here on these orders and then  
6 is diverted out of order for part of that period, they  
7 wouldn't be able to receive those credits on the  
8 days that they did have the milk here.

9 Q. Before I sit -- sit down and let Mr.  
10 Beshore or others, if they have any questions, ask  
11 any questions, do you have anything else that you  
12 would like the secretary to consider as a result of  
13 this hearing?

14 A. Yes, sir. It is a concern of our family  
15 operation that our utilizations in the southeast  
16 have fallen from the mid to high 70s to 60 percent;  
17 and over half of that milk that's coming into our  
18 order now, that's not Class I, is coming from  
19 outside this order. I see no need for that milk to  
20 move here if it's not meeting Class I needs.

21 Q. And -- and the number of witnesses before  
22 you have indicated that they do not have tes --  
23 technical expertise in Federal Orders.

24 Where do you put yourself in that category?

25 A. I'm pretty much at a lev -- level playing

1 field with them [laughs]. I am on the mailing list.  
2 I get a lot of information from the Milk market  
3 administrator. I appreciate that. I try to  
4 understand it as best as I can.

5 MR. ENGLISH: Thank you, sir.

6 I have no further questions, and the witness is  
7 available for cross examination.

8 JUDGE DAVENPORT: Very well. Mr.

9 Beshore?

10 EXAMINATION

11 BY MR. BESHORE:

12 Q. Good afternoon, Mr. Robey. Marvin  
13 Beshore. Thank you for taking the time as, you  
14 know, some of the dairymen have, to come and  
15 participate in the hearing. I'm interested a little  
16 bit more about your -- your operation and your  
17 supply arrangement.

18 Which Dean plant in Nashville do you deliver  
19 to?

20 A. My milk is delivered to the Purity plant or  
21 the Country Delite plant.

22 Q. Okay. And who -- do you haul it yourself,  
23 or do you hire a hauler to take the milk to  
24 Nashville?

25 A. I have a contract hauler.

1 Q. Okay. Who actually pays you for your  
2 milk? Who do your checks come from?

3 A. My check is stamped Purity Dairies.

4 Q. Okay. Do you have a written contract  
5 with -- with Purity Dairies to supply them all the  
6 milk from your farm?

7 A. I haven't had a written contract with  
8 anyone since the early '90s.

9 Q. Your check comes from Purity. How do you  
10 know whether to go to Purity or to Country Delite?

11 A. The driver that's hauling the milk, if I  
12 question him, will tell me which plant that he  
13 unloads the milk.

14 Q. Okay. Does -- and who tells him where to  
15 take it? Do you know? Do you know how he -- how  
16 does he know where to take it?

17 A. Mr. Gerbin [phonetic], his employer, my  
18 milk hauler.

19 Q. Now, do you know anything about the --  
20 the total supply to -- to Purity Dairies or to Country  
21 Delite at Nashville?

22 A. Do I know. . .

23 Q. Do you know -- what do you -- tell me what  
24 you know about how Purity Dairies in Nashville or  
25 Country Delite obtains the total supply of milk that



1 they need?

2 A. I know nothing of how -- of how they  
3 obtain their supply of milk.

4 Q. Okay. Did you -- did you hear Mr. Darr's  
5 testimony about this exhibit with the red dots and  
6 blue dots?

7 A. Was that today or yesterday? Mr. . . .

8 Q. Yesterday.

9 A. I don't believe I was here when he gave  
10 that testimony. I -- I was here late yesterday  
11 afternoon.

12 Q. Okay. Well, if you assume with -- you've  
13 seen the map, though; right?

14 A. Yes, sir.

15 Q. Okay. And your -- your dairies in  
16 Nashville have -- are a red dot there; correct?

17 A. Yes, sir.

18 Q. Okay. And that indicates that they -- if  
19 they got all of the milk in the counties surrounding  
20 them to which they are the closest plant, that  
21 would be less than 50 percent of their supply;  
22 okay? Do -- do you understand that?

23 A. It's my understanding that if they're a red  
24 dot, they receive less than 50 percent of their  
25 supply from local producers. That's my

1 understanding. Is that not correct?

2 Q. Well, let me -- let's be a little more  
3 precise about that.

4 MR. STEVENS: Do you want to testify?

5 BY MR. BESHORE:

6 Q. Okay. Let's -- it -- it -- it means this:  
7 That if they received -- that if those plants  
8 received all of the milk in their nearby counties, as  
9 indicated by the fine red lines on the map, they  
10 would not have gotten 50 percent of what they need  
11 if they got all of the milk; okay?

12 A. Yes, sir.

13 Q. Okay. Now -- so for them to be fully  
14 supplied, they're going to have to go -- somebody's  
15 going to have to go some distance to get the milk  
16 into those plants.

17 Do you agree with that?

18 A. Yes. Yes, sir.

19 Q. Okay. Let's go -- what does it cost you,  
20 by the way, to -- what do you pay to haul your milk  
21 45 miles to Nashville?

22 A. \$0.60/hundredweight.

23 Q. Okay. Do you suppose if somebody was --  
24 if you were going 90 miles out, it would be a buck  
25 20, perhaps?

1 A. Perhaps, yes

2 Q. Okay. And perhaps the same increments  
3 for the increments of mileage, or something near to  
4 that?

5 A. Yes, sir; that's very reasonable.

6 Q. Okay. And so somebody is going to have  
7 to pay quite a little bit to get all the milk that  
8 those plants need delivered into the plants.

9 That stands to reason; does it not?

10 A. Someone is going to have to pay the  
11 transportation cost for that milk to arrive at those  
12 plants; yes, sir.

13 Q. Okay. And it's your testimony that if  
14 that -- some of that cost is paid by transportation  
15 credits funded by the handlers, that that devalues  
16 your milk.

17 Is that -- did I understand you correctly?

18 A. It is my belief that milk comes in outside  
19 the order, the transportation costs are paid, and  
20 that the dairy farmers that produce that milk net  
21 more money than I do 45 miles from that plant.

22 Q. Okay. Have you -- who are you com --  
23 have you compared milk checks with those farmers  
24 that you feel like net more than you do?

25 A. Not in the recent past.

1 Q. Okay.

2 A. I do see charts and information that are  
3 provided by the industry and dairy publications.

4 Q. Okay. Are there --

5 A. Information that's available publicly.

6 Q. Are there particular areas you have in  
7 mind, that you feel are -- farmers are getting more  
8 to ship milk in than you're getting from there  
9 locally?

10 A. I have no particular region that I feel  
11 like --

12 Q. Okay. Is there any --

13 A. -- has a big advantage; no, sir.

14 Q. Is there any -- any region, that you can  
15 cite to me, where you've seen data that you feel  
16 like it shows that they're getting more than you're  
17 getting when they ship milk in?

18 A. No, sir.

19 MR. BESHORE: Okay. Thank you very  
20 much

21 JUDGE DAVENPORT: Other examination?

22 Thank you, Mr. Robey. Oh, excuse me.

23 MR. TOSI: I'm sorry, your Honor. I was  
24 looking to see if there were other folks that wanted  
25 to ask

1 JUDGE DAVENPORT: Mr. Tosi?

2 EXAMINATION

3 BY MR. TOSI:

4 Q. Okay. Thank you for coming today, Mr.  
5 Robey.

6 A. Thank you.

7 Q. Appreciate your participation. I have  
8 some questions for you.

9 A. You're welcome.

10 Q. There are others who were here today that  
11 testified, other -- other dairy farmers like yourself  
12 that testified, that if we increase the current  
13 transportation credit, in -- increase that rate, and  
14 also establish an Intra-market Transportation  
15 Credit, that it would increase dairy farmer income  
16 here in the southeastern region of the country.  
17 Why do you -- did you agree with that, or -- or -- or  
18 don't you?

19 A. No, sir; I don't agree with that.

20 Q. Okay. Why is it -- why do you disagree  
21 with that?

22 A. I view it as more of the same of the way  
23 the market is functioning today and has functioned  
24 since the Federal Orders have been combined. It  
25 has been stated here today the milk shed, the

1 production of the milk, is leaving the southeast.  
2 There are already transportation credits and  
3 devices in the marketing order system to transport  
4 that milk into the southeast. It's -- a lot of  
5 people's belief, for one reason or another, that this  
6 [sic] milk can't be produced in the southeast  
7 efficiently.

8 I'll maintain that our dairy, our family  
9 business, supports the concept that the milk can be  
10 produced here in the southeast; and that we should  
11 receive adequate compensation for that production  
12 here locally; and that these transportation credits  
13 are giving people price advantages over local  
14 production.

15 Q. Okay. Would -- would -- would you, as a  
16 dairy farmer, supply a plant that was not properly  
17 compensating you for your milk, such that you were  
18 able to make a -- a living and a profit for your --  
19 for your farm?

20 A. My bank wouldn't let me.

21 Q. Okay. Does -- does -- does Purity pay you  
22 an over-order premium? Or do you receive an  
23 order -- excuse me. I shouldn't ask it that way.

24 Do you -- do you receive order -- over-order  
25 premium from -- from -- from the people that sign

1 your milk check?

2 A. I wished [sic] I did.

3 Q. So as far as you know, you're just getting  
4 the blend, then?

5 A. I'm getting the Federal Order blend plus  
6 volume and quality premiums.

7 Q. Volume and quality?

8 A. Yes.

9 MR. TOSI: Okay. Okay. That's all I  
10 have. Thank you.

11 THE WITNESS: Yes, sir.

12 JUDGE DAVENPORT: Other questions?  
13 Mr. Robey, thank you.

14 THE WITNESS: Thank you, sir.

15 MR. ENGLISH: Thank you, Mr. Robey;  
16 thank you, your Honor; and thank you, Mr. Beshore  
17 and Mr. Sims.

18 JUDGE DAVENPORT: Mr. Beshore, before  
19 Mr. Sims takes on -- take, comes back up, is Mr.  
20 Nierman here? Do you want to take him?  
21 [WHEREUPON, off-the-record remarks are  
22 made.]

23 JUDGE DAVENPORT: Mr. Nierman, you  
24 were previously sworn. You're --you're considered  
25 still under oath.

1 Mr. Stevens?

2 MR. STEVENS: Thank you, your Honor.

3 JUDGE DAVENPORT: Mr. Nierman's

4 exhibit will be marked as Exhibit 33.

5 [WHEREUPON, document referred to is marked

6 Exhibit 33 for identification.]

7 EXAMINATION

8 BY MR. STEVENS:

9 Q. Good afternoon, Jason. We've had an  
10 exhibit marked as 33.

11 Why don't you tell -- tell us what's contained  
12 there -- well, why you prepared it and what's  
13 contained in it?

14 A. Mr. English requested similar tables  
15 presented as in Exhibit 8, Page 10; but to calculate  
16 the transportation credits. Exhibit 8, Page 10 is at  
17 the current \$0.35; and in Exhibit 33, there's four  
18 tables. The first table is calculated at \$0.42; the  
19 second at 0.44 -- at \$0.44; the third at \$0.46; and  
20 the final at \$0.48.

21 Q. All right. And -- and the title of the  
22 document, [reads] Monthly Transportation Credit  
23 fund Balance Assuming -- those mileage rates --  
24 Assuming 0.42 mileage rate, current 0.095 per  
25 hundredweight assessment and implementation of



1 Proposal 4 for the Appalachian marketing area  
2 Federal Order Number 5, January 2004 through  
3 November 2005?

4 A. Correct.

5 Q. And -- and you prepared this at the  
6 request of Mr. English?

7 A. Correct.

8 Q. And it comes from official records of -- of  
9 your office?

10 A. It's based off.

11 Q. Okay. And -- and -- and certain -- certain  
12 operations were then done, based on -- on that  
13 information?

14 A. Correct.

15 Q. Prepared by you or pursuant to your  
16 supervision?

17 A. Correct.

18 Q. You --you're not offering it for or against  
19 any proposal?

20 A. No, I am not.

21 Q. And it's -- and it's for the use of the  
22 parties at the hearing?

23 A. Correct.

24 MR. STEVENS: That's all I have on  
25 direct. I'm sure somebody's going to ask him a

1 question or two about it, and I may -- may come  
2 back with him; but I offer him.

3 JUDGE DAVENPORT: Mr. English?

4 MR. ENGLISH: Thank you, your Honor.

5 EXAMINATION

6 BY MR. ENGLISH:

7 Q. Charles English, and thank you for -- for  
8 getting this done, Jason. Just a couple of  
9 questions.

10 For briefing purposes, if -- for the column  
11 that's labeled Assessment at nine and a half cents  
12 in the center of the page --

13 A. Yes.

14 Q. -- if I wanted to adjust that column for a  
15 proposal, say, at 13, 14, or \$0.15, I would divide  
16 any of those numbers by nine and a half cents and  
17 multiply by the number I wanted, 13, 14, or 15, to  
18 come up with what would be collected at a different  
19 rate?

20 A. Yes. Those numbers are calculated by  
21 taking Class I pounds for each month multiplied by  
22 the assessment.

23 Q. So if I divide the assessment out and  
24 multiply it by another --

25 A. It should --

1 Q. -- "X" factor, I should be able to recreate  
2 the chart to show what it would look like at  
3 different price levels?

4 A. Correct.

5 Q. And then -- again, I thank you for this  
6 chart. And that's all the questions I have about  
7 this.

8 I think you also told me there was that one  
9 number we had a question about in the exhibit,  
10 where it went down and came back up. Can you  
11 give me the exhibit number so I can have it in front  
12 of me?

13 A. Yes. Exhibit 7, Page 15 --

14 Q. Okay.

15 A. -- the -- those numbers are correct as was  
16 presented. It was just due to rounding and the  
17 impact on the uniform price and on the -- the new  
18 calculated location adjustments, that made it -- it's  
19 roughly those ranges, between 15.79 and 15.80 and  
20 how it rounds.

21 Q. What's the location, again, for that?

22 A. It's based on the miles and the --

23 JUDGE DAVENPORT: I think he's asking  
24 for the --

25 A. -- the calculated --

1 JUDGE DAVENPORT: -- exhibit and page.

2 BY MR. ENGLISH:

3 Q. But -- but what's the -- what's the --

4 A. Oh, Exhibit 7, Page 15. Sorry.

5 MR. ENGLISH: Okay. That's fine. All  
6 right. That's all I have. Thank you. And I  
7 appreciate, again, you getting this done.

8 JUDGE DAVENPORT: Other questions of  
9 Mr. Nierman? Excuse me. Mr. Schad?

10 EXAMINATION

11 BY MR. SCHAD:

12 Q. I'm Dennis Schad, Land O' Lakes.

13 Just trying to understand, when I'm going  
14 across from left to right, the assessment is the --  
15 the assessment at the current rate? I'm looking at  
16 annual 2004, just so -- so I'm looking at a full --  
17 full 12 months.

18 A. Yes. Yes, it follows the same exhi --  
19 that's the same outline as Exhibit 8, Page 10. So  
20 the first four columns were actual numbers.

21 Q. Okay. And that -- and that would be a --  
22 credits at 3.5 cents?

23 A. The actual assessments would be at six  
24 and a half cents --

25 Q. Okay.

1 A. -- up through October 2005; then effective  
2 November 1st, 2005, the assessment increased to  
3 nine and a half cents.

4 Q. Okay. And the credits -- the actual  
5 credits paid were based on three and a half cents?

6 A. Correct, \$0.35 per mile.

7 Q. Okay. Then going over, we -- we have  
8 now a new assessment, and that is reflective of a  
9 nine and a half cent rate?

10 A. Correct.

11 Q. Is that for every month?

12 A. Yes. How -- how I was requested it to be  
13 calculated, it was for -- to assume that the nine  
14 and a half cents was implemented for every month  
15 beginning --

16 Q. Okay.

17 A. -- January 2004.

18 Q. Got it. Okay. Thank you.

19 The next column, we talked about total re --  
20 credits requested. And that would -- that would be  
21 at the 4. 2 cents on -- on Page 1? The 4 -- 4.2  
22 cents rate?

23 A. Yes, that would be a combination of the  
24 point -- \$0.42 rate and Proposal 4.

25 Q. Okay. So then you have an idea of the

1 mechanics of Proposal 4 now, so that your -- you  
2 know, in Proposal 4, it talks about a "Z"  
3 percentage?

4 A. De -- yes. Dean Foods requested us to  
5 look at -- to provide data on their Proposal 4.

6 Q. And so are we using 30 percent rather  
7 than "Z"?

8 A. Yes, we assumed -- in their language,  
9 they, I believe, had 30 percent in there. They said  
10 they may change that at the hearing, but we  
11 assumed 30 percent when we calculated this  
12 information.

13 MR. SCHAD: Thank you.

14 JUDGE DAVENPORT: Thank you, Mr.  
15 Nierman. You may step down.

16 MR. STEVENS: Your Honor, if -- if it  
17 hasn't been admitted, I ask that it be admitted.

18 JUDGE DAVENPORT: Very well. Exhibit  
19 33 at this time. Let's also go ahead and -- if -- to  
20 the extent I haven't already done so, we'll admit  
21 the Exhibits 27 through 33.

22 [WHEREUPON, Exhibit 27 through Exhibit 33 are  
23 admitted into evidence as marked.]

24 MR. BESHORE: Thank you.

25 JUDGE DAVENPORT: Mr. Beshore, I

1 guess Mr. Sims is back up?

2 MR. BESHORE: He is back up and  
3 prepared for further questions on cross.

4 JUDGE DAVENPORT: Excuse me. I'm --  
5 I'm sorry.

6 MR. STEVENS: I don't want to -- I -- we  
7 had -- we -- we have had some requests for some  
8 further information from Steven DuPrey. I don't  
9 know if this is the appropriate time to do that. I  
10 don't even know if he's here and ready to go. If  
11 he's ready to go, we certainly can do that at this  
12 point, if -- if you'd like? Or not. Or we can wait.

13 MR. BESHORE: Do it

14 JUDGE DAVENPORT: Mr. DuPrey, come  
15 on up.

16 MR. STEVENS: Thank you, Marvin.

17 JUDGE DAVENPORT: Mr. DuPrey's  
18 exhibit will be marked as Exhibit 34.

19 [WHEREUPON, document referred to is marked  
20 Exhibit 34 for identification.]

21 JUDGE DAVENPORT: Mr. DuPrey, you're  
22 still under oath.

23 EXAMINATION

24 BY MR. STEVENS:

25 Q. Steven, you were asked to prepare some

1 additional information?

2 A. I was. Dean Food [sic] requested that I  
3 calculate the average distance that eligible  
4 transportation credit milk traveled. And I did that  
5 from 2000 to 2005 through November.

6 Q. Now, do you have -- do you have some  
7 copies available just for the -- for the parties in  
8 here?

9 A. I do. I've -- I've set them out.

10 Q. All right. So they're over on the table on  
11 the side of the room for people to use?

12 A. Correct.

13 Q. Similar to your colleague -- to Jason's  
14 testimony, this was prepared at this request of --  
15 of Dean Foods, this --

16 A. That's -- that's correct.

17 Q. And -- and you prepared this from -- from  
18 documents in the market administrator's office?

19 A. Correct.

20 Q. Official records of the Department?

21 A. Exactly.

22 Q. And you're not here presenting this in  
23 favor or against any proposal, are you?

24 A. I am not.

25 Q. And it's -- and it's here for the use of the



1 parties during the course of the hearing as they  
2 choose?

3 A. That's correct.

4 Q. All right. Could you just briefly describe  
5 what you've prepared, and -- and go through the --  
6 go through the exhibit?

7 A. As I stated before, for each transportation  
8 credit month July through December of -- of 2000,  
9 2001, 2002, 2003, 2004, and 2005 through  
10 November, I prepared -- I summarized the  
11 weighted-average distance that milk traveled that  
12 was eligible for the trans -- for a transportation  
13 credit under the current transportation credit fund.  
14 So, for example, in July of 2000, the first line of  
15 data, it was 31,000,000 pounds that were eligible  
16 to receive a credit. On a weighted-average basis,  
17 that milk moved 581 miles from the farm to the  
18 actual plant that received it.

19 Q. Okay. And that information is similar for  
20 all the -- all the months and years listed there?

21 A. Correct.

22 Q. And the footnote gives some further  
23 explanation?

24 A. Yes.

25 Q. Is there anything else you'd like to tell us

1 about that?

2 A. I have nothing else.

3 MR. STEVENS: I offer the witness

4 JUDGE DAVENPORT: Mr. English? Mr.

5 Beshore?

6 EXAMINATION

7 BY MR. BESHORE:

8 Q. Just one question, Mr. DuPrey, in the

9 context of -- of this exhibit.

10 Is it not correct that, in order for milk to be  
11 eligible to receive a transportation credit under --  
12 under these orders, it is prohibited from being  
13 pooled on the market on a year-round basis?

14 A. That would be correct.

15 Q. Okay. So that the order requires that it  
16 not be on the pool for -- what, a certain number of  
17 months during the preceding spring season?

18 A. Yes. There are some certain regulations;  
19 specifically can't be pooled more than I believe it's  
20 two months during the preceding January through  
21 June portion of -- of the year.

22 Q. So we've heard a lot of innuendo about  
23 this credit, you know, causing milk to be pooled on  
24 the order. In fact, the milk is prohibited from  
25 being pooled for four of six months -- for the six

1 months when it's -- during -- for the six months  
2 January through June?

3 A. Those are the eligibility requirements laid  
4 out in the order; correct.

5 MR. BESHORE: Yeah. Okay.

6 JUDGE DAVENPORT: Other examination  
7 of this witness? Very well, Mr. DuPrey. Thank  
8 you.

9 THE WITNESS: Thank you.

10 MR. STEVENS: I move the admission of  
11 Exhibit 34.

12 JUDGE DAVENPORT: Unless there's  
13 objection, so -- so admitted.

14 MR. STEVENS: Thank you.

15 [WHEREUPON, Exhibit 34 is admitted into  
16 evidence as marked.]

17 JUDGE DAVENPORT: Mr. Sims, you're  
18 still under oath.

19 Do we have examination of this witness?

20 MR. TOSI: I do

21 JUDGE DAVENPORT: Very well. Mr.  
22 Tosi?

23 EXAMINATION

24 BY MR. TOSI:

25 Q. Thanks for coming back to the stand, Jeff.

1 Excuse me. I dropped a piece of paper.

2 Jeff, I have a couple of technical questions  
3 about the proposals.

4 A. Yes, sir.

5 Q. How do you -- how --how are you  
6 imagining that a -- how a pool distributing plant  
7 should be defined for the purposes of eligibility for  
8 the Intra-market Transportation Credit? In -- in  
9 other words, should it include unit-pooled plants,  
10 or not?

11 A. It would be our intent that all plants  
12 qualifying as a pool distributing plant, including  
13 plants as part of a unit, would be included.

14 Q. Okay. And as -- as I understand the -- the  
15 workings of the Southeast Order, that currently it's  
16 the -- the -- the payout on the intermarket is based  
17 on the lower of the market-wide estimate of the  
18 Class I utilization for all handlers, or the Class I  
19 utilization of the pool plants receiving the milk.

20 Why would your pro -- why does your proposal  
21 propose to pay out the Intra-market Transportation  
22 Credits on the Class I utilization average for pool  
23 distributing plants?

24 A. The proposal pro -- provides it since only  
25 deliveries to pool distributing plants would be

1 eligible for the credit, then that is the appropriate  
2 Class I utilization of those plants to use. The  
3 current transportation credit balancing fund, any  
4 delivery to Class I at any pool plant, be it a supply  
5 plant or not, could carry a credit. These are  
6 limited to pool distributing plants; therefore, we  
7 felt the utilization of pool distributing plants was  
8 the appropriate utilization.

9 Q. Okay. So the -- the basis of the pay outs  
10 of -- because of those reasons, justify why they  
11 should be different?

12 A. That's -- yeah, that's our testimony; yes.

13 Q. Okay. Thank you. I have some more.

14 I -- I -- I notice that -- that you're not  
15 proposing any cap on the distance for the -- the  
16 intra-market transportation; correct?

17 A. Yes.

18 Q. Are -- are you wanting to keep it open-  
19 ended in that regard?

20 A. I think there would be an effective cap, in  
21 that the -- the -- the area which -- for which  
22 producers are eligible for an Intra-market  
23 Transportation Credit is limited to the size of the  
24 marketing area. So the cap would be the breadth  
25 of the marketing area, I guess you could say.

1 Q. All right. What -- what portion of the cost  
2 of transporting milk do you think should be  
3 reflected in the level of a Class I differential?

4 A. I beg your pardon?

5 Q. What portion of the cost of transporting  
6 milk for Class I use should be reflected in the level  
7 of the Class I differential?

8 A. I have -- I don't know that I have an  
9 opinion on that per se, or that we have reached any  
10 -- or that the organizations have reached any  
11 consensus opinion as to that. That -- I -- that  
12 seems to me a question which begs a broader  
13 discussion than simply the Southeast Orders, and  
14 our proposal is a targeted proposal for the  
15 southeast only.

16 Q. All right. Thank you.

17 Of the list of distributing plants that are in the  
18 MA exhibits, how many of those were -- how many  
19 of those plants do you or your member  
20 organizations have full supply contracts with?

21 A. I do not know.

22 Q. Would you -- would you agree that it's --  
23 would you agree that the Federal Order program  
24 here to date has not determined -- excuse me, has  
25 not pooled cost of production?

1       A.    Cost of production items like feed, energy  
2 use at the farm, veterinary bills, et cetera, are not  
3 pooled.

4       Q.    Okay.  What makes transportation so  
5 special, then?

6       A.    I think that the tran -- the difference  
7 between those items and transportation -- Number  
8 1, I don't necessarily agree that transportation is a  
9 cost of production.  I would -- with that caveat or  
10 that exclusion, I don't -- you know, I don't  
11 necessarily agree that transportation is directly a  
12 cost of production.

13       I believe that the difference, though, if -- if --  
14 if I may offer an opinion regarding your question,  
15 the -- the cost of transportation is one which is not  
16 evenly borne throughout the -- the marketing area.  
17 And since transportation and the distance milk  
18 moves is such an important part of the equity and  
19 the price received fact [phonetic], rather than a  
20 cost of production, which a dairy farmer controls,  
21 then that transportation cost and the distance milk  
22 may -- has to move results in inequities among  
23 producers; and then threatens the minimum-order  
24 pricing provisions and the equity aspects of the  
25 minimum-order pricing provisions.

1 Q. Would -- would you agree that Federal  
2 Order doesn't assign a value to milk 'til it's  
3 delivered somewhere?

4 A. Yes, but --

5 Q. So then all farmers delivering --

6 A. Wait, wait.

7 Q. -- milk to the same location -- I'm sorry. I  
8 interrupt -- did I interrupt you? I apologize.

9 A. I would say that the -- I would agree with  
10 you, yes, that -- that milk has no assigned Federal  
11 Order value until such time as received at a plant.

12 Q. So all farmers delivering milk to the same  
13 location are treated equitably because milk is  
14 priced at that location?

15 A. They receive the same price. I don't  
16 agree necessarily that they are all treated  
17 equitably if some producers have to deliver farther  
18 than others because of the imperfections in the  
19 location of demand and supply

20 Q. Well, is -- isn't that the choice of the  
21 producer, to -- to decide whether or not they want  
22 to deliver to a location?

23 A. I don't know that it always is. If a pro -- I  
24 think our testimony indicated that, left to their own  
25 devices, producers will tend to deliver to the



1 closest place if they -- if they have that  
2 opportunity.

3 And the problem, though, is that if you allow  
4 that kind of competition to occur, such that dairy  
5 farmers are going to start competing to deliver to  
6 their closest plant, that's going to have a  
7 deleterious impact on -- on over-order prices,  
8 because producers are going to bid down the price  
9 such that they could get to their local plant.  
10 You're -- it's going to -- it's -- the circular problem  
11 is going to -- the -- the problem of moving milk the  
12 shortest distance is going to do what -- what we  
13 don't want to do, which is erode over-order prices.

14 Q. One of the DFA board members testified  
15 that -- I -- I -- I -- I don't remember his name  
16 exactly. He was one of the recent -- you -- you  
17 heard all of the testimony of the DFA witnesses?

18 A. I did.

19 Q. Okay. One expressed concern as -- when  
20 I asked, "Why would you deliver milk to a location  
21 that you can't -- that you wouldn't make money on  
22 or that you would at least break even?" And if -- if  
23 I could paraphrase for a moment, hang with -- hang  
24 in here with me, that his -- his -- his statement  
25 wa -- or his reply was words to the effect, that

1 there was a concern, then, that if -- if I didn't  
2 supply that plant, somebody else would.

3 Would -- would you think, then, that -- that --  
4 that in that response, that the notion of having  
5 control over who your customers are, are more  
6 important than profitability?

7 A. I don't think I understood the question.

8 Q. Okay. Let me just withdraw that, then.

9 That's okay. It'll take too long.

10 Regarding the general decline of milk  
11 production in the southeast Appalachia, do -- do  
12 you attribute the -- the cause of that mostly to  
13 insufficient price level?

14 A. I would -- the -- the economist in me  
15 would say -- say -- would say that if prices to dairy  
16 farmers in the southeast were better, that the  
17 declines in productions might not be as bad. There  
18 may certainly be other economic factors, such as  
19 the cost of, you know, other inputs or -- or urban  
20 pressures or any number of things which may have  
21 forced production out or just -- or higher  
22 production costs in the southeast. But all things  
23 being equal, more money in dairy farmer milk sheds  
24 would tend to preserve production.

25 Q. Other than coming to -- other to [sic] the

1 secretary or to the government to ask for the relief  
2 that you seek here, what oth -- what other  
3 measures have -- have you taken to -- to help  
4 return a -- a higher price to your producers?

5 A. As the record indicates, the over-order  
6 price on Class I has increased substantially or, by  
7 my definition, substantially during calendar year  
8 2005 in the southeast. Most cities on the order of  
9 \$0.99 higher in December 2005 versus January  
10 2005, I believe the record will refec -- reflect. I  
11 think most people would agree with me that that is  
12 a substantial improvement.

13 The a -- the members of the marketing  
14 agencies, in addition to the -- the kind of thing  
15 which Mr. Darr presented, which is hypothetical,  
16 with regard to milk movements, we have used that  
17 kind of study to -- to find ways to -- to minimize  
18 hauling costs and deliver more efficiently. The  
19 agency members seek to lower the cost of  
20 supplemental supplies by re -- negotiating with  
21 those suppliers. All -- you know, more money for  
22 the milk when you sell it; if you have to buy  
23 supplemental, pay less for it and haul it as short a  
24 distance as you can. That are [sic] the -- those  
25 are kind of three pillars of milk market efficiency.

1 Q. With regard to a level of over -- over-  
2 order premiums that you're able to negotiate and --  
3 are -- would you be of the opinion that there's a  
4 price surface -- excuse me, a surface that would  
5 indicate varying levels of over-order premiums  
6 across the country that would be more or less price  
7 surface in the way that we -- we often refer to the  
8 Class I price surface?

9 A. I would agree with that; yes.

10 Q. Okay. And to the extent that the map  
11 there on Exhibit 22 can show areas where you've  
12 got a whole lot more milk and -- and where the  
13 deficits are, do -- do you have a varying over-order  
14 premium structure to help provide more equity to  
15 the members that -- that the -- maybe the current  
16 Class I price surface is unable to achieve?

17 A. There is somewhat -- there is some  
18 variation in over-order pricing. The over-order  
19 prices generally increase west to east throughout  
20 the southeast, so that the eastern area which  
21 exhibits, as we've kind of referred -- a lot red  
22 dots --

23 Q. Right, uh-huh.

24 A. -- has a higher over-order price than the  
25 area to the -- to the west side of the southeast.

1 Q. Do your over-order premiums increase or  
2 decrease when Federal Order prices rise?

3 A. There is a -- there is a small element of  
4 price adjustment when Federal Order prices move,  
5 but it's a relatively small range. Order prices,  
6 where they are now, are based on the -- they --  
7 they would own -- based on the schedule, they  
8 would only go up from where we -- where they are  
9 now. So even at the relatively --

10 Q. I -- I --

11 A. -- substantial prices we have now, the  
12 schedule would call for increases from here.

13 Q. But the over-order premium would  
14 increase when Federal Order --

15 A. When Federal Order prices decline.

16 Q. When -- when they decline?

17 A. Yes. We -- we are at -- based on that  
18 kind of schedule, the prices are at their low level.  
19 So if they -- if prices decline -- if Federal Order  
20 prices decline, the over-order price could rise.

21 Q. As -- as an economist, is that a -- is that  
22 rational? I understand that may be what you have  
23 negotiated, but is that rational as an economist?

24 A. I could see a value to that rationally; that  
25 re -- that the total value of milk needs to be

1 reflective -- the -- the -- the various elements of  
2 the total value of milk need to be reflective of each  
3 other, and that they're -- you know, that as prices  
4 go down, that over-order prices could increase.  
5 Again, they move in a relatively small range, only  
6 \$0.40 high to low. So it's not like we're giving up a  
7 great deal one way or another.

8 But at -- you know, I think I find some  
9 rationality to that, that some leveling of that -- that  
10 income stream to dairy farmers, when prices crater  
11 substantially, since -- but they -- they now are --  
12 again, if they -- they -- if they go up from where we  
13 are now, we -- we will be no worse off in terms of  
14 over-order prices. So I -- I see some rationality to  
15 that.

16 Q. Do you have any concern that the  
17 intermarket transportation credit increase that's  
18 being proposed would -- may worsen prices to  
19 southeastern dairy farmers?

20 A. Inter?

21 Q. Yes, sir. Inter. Paying for -- paying for  
22 the milk that's going to come from outside the  
23 area, the credit on that?

24 A. My -- my opinion is that that -- that the --  
25 the increase in the -- in an assessment for that

1 credit would alleviate costs which are borne by  
2 dairy farmers.

3 Q. Who -- who receives that money?

4 A. Beg your pardon?

5 Q. The transportation credit, who's receiving  
6 that money?

7 A. The technical provisions provide that the  
8 market administrator pays that money to the entity  
9 who -- who, in essence, delivered the milk. And if  
10 in -- in the case of a cooperative association, that  
11 becomes part of their general revenue pool, and  
12 would be available to -- to pay costs of hauling or  
13 to return to dairy farmers.

14 MR. TOSI: That's all I've got, Jeff.  
15 Thank you for your patience with me.

16 JUDGE DAVENPORT: Mr. English?

17 EXAMINATION

18 BY MR. ENGLISH:

19 Q. Charles English, Mr. Sims.

20 You -- you say "be available" to pay for  
21 hauling costs or other costs; but, of course, there's  
22 no requirement, is there, that -- that the  
23 cooperatives, as handlers, share that money with  
24 the producers in this market; correct?

25 A. The order would make no such

1 requirement.

2 Q. I want to explore just a few things, and --  
3 and one I'm just confused on, so it may be simply  
4 fixed.

5 But looking at Exhibit 25, exhibit -- or Page Q1  
6 and Q2? I -- I think -- assuming my confusion can  
7 be fixed, I think it makes no difference in the  
8 ultimate chart; but let me just see if I can  
9 understand it. Mt. Crawford to Winston-Salem, you  
10 have a location value adjustment of 2.80 because  
11 Mr. Crawford's in the 2.80 zone; correct?

12 A. Mt. Crawford to Winston-Salem? Yes.

13 Q. And the -- Winston-Salem's in the 3.10  
14 zone?

15 A. Yes.

16 Q. Okay. And so that's a \$0.30 difference?

17 A. Yes.

18 Q. Okay. Then you have Statesville to  
19 Charles -- Charleston. And if I'm right, I think your  
20 difference is correct, but I wonder if the underlying  
21 numbers may not be.

22 Location value of 2.80 versus 3.10, I think  
23 you've duplicated the 2.80/3.10 from above. But  
24 wouldn't Statesville actually be 3.10 and  
25 Charleston be 3.30?



1 A. You are correct. Those numbers should  
2 be 3.10 and 3.30, three point --

3 Q. And that -- yeah.

4 A. Three-ten at Statesville or Winston-Salem  
5 to 3.30 at Charleston, but it is the 20 -- the \$0.20  
6 is correct. The --

7 Q. The -- the calculation is correct; it's just  
8 in the parentheses?

9 A. That could -- the parenthetical is  
10 incorrect; that -- you're right.

11 Q. And -- and similarly on the next page, Q2,  
12 again, just to carry over, I don't think it -- well, it  
13 doesn't look like the calculation is zero [phonetic],  
14 anyway; but -- but 3.10 and 3.30 for the clarity in  
15 the record; correct?

16 A. At Mt. Crawford at Charleston --

17 Q. Is still 2.80 to -- well, that should be --

18 A. Well, that should be -- it should be two --  
19 it should be 2.80 to 3.30.

20 Q. Right.

21 A. And if so, the \$0.50 is correct on that  
22 chart; yes. And you are correct; Statesville to  
23 Winston-Salem should be 3.10 to 31.0 for a zero.

24 Q. Correct. Thank you.

25 A. I'm sor -- I apologize.

1 Q. No, no. Again, I don't think it affects the  
2 calculations, but it would have confused me later.

3 One of the -- one of the complaints or  
4 comments or concerns in '95/'96, as I remember,  
5 about these potential credits in that case, the  
6 supplemental, and in that case, having to do with  
7 the subject of whether or not we would allow the  
8 credits on supplemental move -- milk moving from  
9 one of the four or five orders that were left at  
10 that time, which, in my mind, as least, is an  
11 intermarket -- it's -- it's not that different from  
12 intra-market credit going from 7 to 5 or 5 to 7.

13 Would you accept that; tha t-- that the idea of  
14 a credit in 1996 on supplemental milk, admittedly  
15 not everyday milk; but nonetheless, milk that would  
16 be moving from what was then Order 46 to Order 7  
17 or from 46 to 5, that's not that different from the  
18 intra-market credit you're now proposing, at least  
19 as to milk moving from 5 to 7 or 7 to 5?

20 A. I -- at least in theory, yes.

21 Q. Okay. One -- one of the concerns  
22 expressed at that time, by one or more of the  
23 predecessor entity that's now Dean Foods, was that  
24 if you stair-stepped milk, if you moved milk  
25 between the two orders, in one of the calculations,

1 it could affect the pool in the other. So let me see  
2 if I can, having set that as a stage, ask you  
3 whether you've done anything to deal with the  
4 following scenario.

5 Let's say milk in the 2.95 zone, near Milco  
6 [phonetic], is instead moved back to Mayfield in the  
7 2.80 zone, and draws a credit admittedly reduced  
8 by the \$0.15 difference; okay? An inter -- an intra-  
9 market credit?

10 A. Yes.

11 Q. And on the same day, milk is moved from  
12 New Mexico past the Mayfield plant into Milco and  
13 draws a supplemental credit at the 2.95 rate,  
14 assuming that occurs, hasn't the outside milk now  
15 displaced the inside milk at the 2.95 rate, and  
16 effectively drawn that extra \$0.15 out the pool for  
17 the benefit of that movement?

18 A. No, because the -- the in -- the -- the  
19 payment from the -- the transportation credit  
20 balancing fund would negate the -- or would  
21 account -- would -- would use the \$0.15  
22 difference -- the additional \$0.15 to Asheville in  
23 reducing the credit. So you'd -- you would gain  
24 nothing by going on to Asheville, because the  
25 credit is reduced by that additional \$0.15.

1 Q. Okay. So let's take it the reverse. Let's  
2 say that milk nearer to Mayfield, presently in the  
3 2.80 zone and going to Mayfield, is moved instead  
4 to Milco, you would tell me that that would reduce  
5 the lo -- the -- the credit by \$0.15 and, therefore,  
6 bringing milk, say, into Mayfield from outside  
7 wouldn't affect the pool draw? Would not affect the  
8 transportation credit?

9 A. I -- I simply would point out that both  
10 transportation credits account for the relative  
11 destination price of the -- of the point of delivery,  
12 such that if you move between zones and you --  
13 and you garner a higher-priced zone, that amount  
14 is -- is ne -- is offset against the credit amount.

15 Q. And if you run as many calculations as you  
16 can to see whether there's actually a calculation  
17 where it works the other way, that somebody could  
18 draw out effectively more money than it would be  
19 intended?

20 A. I have not --

21 Q. Okay. Even if that's the case -- and it  
22 may not be, but assuming it is the case, would you  
23 agree that the secretary should at least limit for  
24 that kind of potential abuse?

25 A. If there is a circumstance where

1 uneconomic movements of milk are encouraged,  
2 those should not be.

3 Q. One final set of questions. And I assume  
4 you still have Exhibit 22 in front of you? And I  
5 really do appreciate Exhibit 22, for any number of  
6 reasons; not the least of which is if we'd had it two  
7 years ago, I think it pictorially shows why there  
8 was no need for a merger, but -- but anyway.

9 If as a result of adopting transportation  
10 credits [laughter] --

11 [WHEREUPON, an off-the-record remark is  
12 made.]

13 BY MR. ENGLISH:

14 Q. Well, I -- I sort of note very few lines of --  
15 of the linear design that would cross the -- the  
16 border of the two markets for -- for -- for  
17 production. But -- but be that as it may, if, in the  
18 future, as a result of adopting transportation  
19 credits and notwithstanding your view that  
20 uneconomic movements of milk or other economic  
21 movements will not change the pattern, suddenly  
22 this map showed dramatic changes in what was or  
23 is the -- the -- the linear design for -- for how the  
24 milk should move.

25 Are you going to use that as a mechanism for

1 asking for a merger again?

2 A. Number 1, I would -- I would hold out to  
3 you that this Exhibit 22 does not necessarily point  
4 out to the way milk ought to move. It simply  
5 graphically depicts how milk would move if it could  
6 move to its closest plant. The whole dynamic of  
7 supplying a market of this size results in many,  
8 many movements of milk, and not every load of milk  
9 will always go its shortest distance when  
10 minimizing total miles in the supplying the market.

11 Q. Well, okay. I -- I thank you for that.

12 And -- and using that as a springboard, then,  
13 and turning the page over, and -- and following up  
14 on the questions from Mr. Tosi, when you look at  
15 the availability of milk in South Carolina a second,  
16 the second lowest, I guess, for the product-to-  
17 sales ratio of 0.24, can you, as an economist,  
18 explain why a dairy farmer would be afraid of  
19 losing its market and having no outlet for its milk  
20 in a pool distributing plant in a circumstance where  
21 there is less than 25 percent of the milk available  
22 for South Carolina plants and in the deficit that  
23 you've been talking about?

24 A. My response to that would be that as an  
25 individual business entity, one of the worst things

1 that can happen to a dairy farmer is the loss of  
2 their most near plant. So that the -- to the -- as an  
3 individual decision maker, as an individual  
4 business person, the desire to make sure that my  
5 best alternative use of my milk is someplace closer  
6 than someplace farther away, they -- they would  
7 have a valid concern that they -- that -- about the  
8 perpetuation of a local sup -- local market for their  
9 milk.

10 Q. So rather than dealing with the fact it's a  
11 deficit market and they have co-ops that can deal  
12 with this, we're instead going to encourage them to  
13 move the milk farther than to the nearest plant;  
14 correct?

15 A. The milk already moves to those plants.  
16 The issue is the equity of the allocation of those  
17 costs of those additional movements.

18 Q. Well, going back again to Mr. Tosi's  
19 questions, if a dairy farmer is in South Carolina in  
20 the middle of the state, and the closest plant is the  
21 Coburg operation, and they have to move their  
22 milk, say, 150 miles to get to Coburg, and that's  
23 their closest plant, and they get no credit because  
24 they go to Coburg; but another dairy farmer gets a  
25 credit because they move the milk and they happen

1 to be closer to, say, the other Land of Sun  
2 operation, doesn't that result in unequal payments  
3 to the producers for the milk? Nonuniform pricing?

4 A. I think I didn't follow your question.

5 Q. Well, going back to the question that we  
6 first value milk at the plant of receipt, isn't the  
7 value of the milk at the plant of receipt different  
8 now, under your proposal, based upon where a  
9 producer is located rather than where they deliver?

10 A. Only to the extent -- well, if -- the equity  
11 of the difference to the local -- the nearest plant  
12 would be the difference. The -- the -- the sharing  
13 of that additional cost would be equitably  
14 distributed.

15 Q. And as a result, we no longer have  
16 uniform prices paid by handlers like Morning Star  
17 and to dairy farmers, do we?

18 A. The -- the price received at the plant at  
19 Coburg would be identical for every producer that  
20 delivered in there --

21 Q. Except --

22 A. -- that -- that the cost of delivering to that  
23 plant will be equitably distributed.

24 Q. And -- and cost effectively impacts the  
25 price they receive. That's what you're talking



1 about. You're concerned about the price they're  
2 receiving; right?

3 A. The net price, yes.

4 MR. ENGLISH: Okay. Thank you.

5 JUDGE DAVENPORT: Additional  
6 questions?

7 MR. SUMNERS: The -- the --

8 JUDGE DAVENPORT: Please identify  
9 yourself again?

10 MR. SUMNERS: Mike Sumners.

11 EXAMINATION

12 BY MR. SUMNERS:

13 Q. Right -- right now you're charging over-  
14 order premium, and you're asking for additional  
15 monies in the Class I price. If you -- if you lost  
16 equal amount of money in the -- in the Class I  
17 over-order premium, that you're asking for to be in  
18 the -- regulated into the orders, what -- what would  
19 change? You'd have the same amount of money.

20 A. I -- I wouldn't necessarily agree with that  
21 since -- num -- Number 1, I don't -- I don't agree  
22 with your premise that there would be an equal --  
23 necessarily an equal adjustment in over-order  
24 prices and the regulated price. I -- I don't  
25 necessarily agree with that. But if we take your

1 premise that there would be a penny-for-penny  
2 adjustment, if -- I don't -- again, I don't  
3 necessarily agree with that; but if on that premise,  
4 the -- the difference is that the over-order price is  
5 not necessarily applied to all the Class I milk in  
6 the -- in the market, where the -- a regulated price  
7 would.

8 Q. How much of that over-order is not  
9 applied?

10 A. I don't -- I don't know; but not every plant  
11 has -- there's not assurance in the marketplace  
12 that every plant is paying those over-order prices.  
13 They may receive their supply from someplace that  
14 doesn't charge the -- the going premium for -- if  
15 they -- but -- or whatever. But there is -- it's -- it's  
16 not assured that that amount is charged uniformly  
17 when there's available milk that could -- on --  
18 especially from outside.

19 Q. Could you give examples of somebody that  
20 supplies milk that don't [sic] charge over-order  
21 premiums?

22 A. There par -- there -- there are, perhaps --  
23 I'm sorry. Don't charge over-order premiums?

24 Q. Yes.

25 A. There could be circumstances where

1 producer milk is delivered to plants in the  
2 southeast that -- where the effective over-order  
3 price is not the same as the co-ops announced.  
4 And the issue is "could," so -- because we -- under  
5 the order, we would know. There's assurance  
6 under the order.

7 Q. Right now you're asking for, say, in the  
8 southeast, 25 more cents a month to be charged to  
9 the plants?

10 A. In the Southeast Order?

11 Q. In the Southeast Order. You asked for  
12 \$0.25 additional money for the intra and -- and out-  
13 of-state trans --

14 A. The sum of the maximum rates to which  
15 the proposal speaks would be an additional \$0.25;  
16 yes.

17 Q. And have co-op members been within  
18 \$0.25 of the blend price for some time now?

19 A. I don't know what cooperative members  
20 are paid.

21 Q. Well, I'm just trying to figure out how --  
22 how you figure this is going to help in a pay price  
23 when -- when -- when they come up here and they  
24 say that the over-order premium that should be in  
25 their checks plus this money that's going to be

1 regulated from the plants, how -- how -- how is  
2 somebody going to benefit?

3 A. If you increase the val -- the -- the price  
4 or the amount of cost which is covered out of Class  
5 I marketplace, and those revenues were -- offset  
6 costs which are being borne by dairy farmers,  
7 those dairy farmers' income goes up.

8 Q. But why -- why -- if -- if the co-op  
9 receive -- receive Federal Order minimum, plus  
10 they're receiving over-order charges, plus the  
11 transportation breaks that they got in '96 or '97,  
12 why are members pay price so low?

13 A. There's a substantial cost of supplying  
14 milk to the market.

15 Q. So is it the co-op losing money --

16 A. I beg your pardon?

17 Q. -- and pass -- is the co-op losing money in  
18 doing what they're trying to do?

19 A. I would say that the over-order prices are  
20 insufficient to cover all those costs in certain  
21 cases.

22 Q. And -- and \$0.25 is going to fix the  
23 problem?

24 A. \$0.25 in Order 7 is what we propose to  
25 increase be -- between the current transportation

1 credit assessment and the -- the proposed Intra-  
2 market Transportation Credits.

3 MR. SUMNERS: Thank you

4 JUDGE DAVENPORT: Other questions?

5 Very well. Let's call a recess for today. We'll be  
6 off the record.

7 [WHEREUPON, an -off-the-record discussion is  
8 held.]

9 JUDGE DAVENPORT: Let's reconvene,  
10 then. And Mr. Sims, we'll see you tomorrow again.

11 Would you raise your right hand?

12 THOMAS PITTMAN, after having been duly sworn,  
13 is examined and testifies as follows:

14 JUDGE DAVENPORT: Please be seated.

15 Mr. Pitman, would you tell us your full name,  
16 and the, if you would, spell it for the hearing  
17 reporter?

18 THE WITNESS: Thomas Pittman, T-h-o-m-  
19 a-s P-i-t-t-m-a-n.

20 JUDGE DAVENPORT: Mr. Pittman, you  
21 have a statement which you've passed out to us at  
22 this time. I'm going to mark this statement Exhibit  
23 35.

24 [WHEREUPON, document referred to is marked  
25 Exhibit 35 for identification.]

1           JUDGE DAVENPORT: Do you want to  
2 read your statement into the record at this time?

3           THE WITNESS: My name is Thomas  
4 Pitman. I am employed by Southeast Milk,  
5 Incorporated as director of milk accounting and  
6 economic analysis. My office is located at 1950  
7 Southeast Highway 484, Belleview, Florida 34420.

8           Southeast Milk is a dairy cooperative and  
9 markets milk for dairy producers located in Florida,  
10 Georgia, Tennessee, and Alabama. One hundred  
11 fifty-four of SMI producers reside in the Southeast  
12 Milk Marketing Order, and they market over  
13 500,000,000 pounds in the Southeast Milk  
14 Marketing Order.

15          SMI is opposed to the inter-order  
16 transportation credits in the southeast Federal  
17 Order. Subsidizing the transportation of milk  
18 produced outside of the marketing area contributes  
19 to decreasing local milk production and encourages  
20 additional outside milk to replacing local supplies.  
21 When transportation credits were first implemented  
22 during August of 1996, the decision was based on  
23 historical data where the Class I utilization in the  
24 southeast averaged in the mid 80 percent range.  
25 Since the merger of the individual orders in the

1 southeast, the Class I utilization has held steady in  
2 the low to mid 60 percent range. If the remaining  
3 35 to 40 percent of the milk associated with the  
4 southeast milk -- milk market is truly surplus, as  
5 classified by the Federal Order, then these local  
6 milk supplies can be moved from manufacturing  
7 into Class I when needed.

8 As demonstrated in the data drafts which are  
9 attached, supplied by the Mark -- Milk market  
10 administrator from Atlanta, Georgia, the southeast  
11 dairy production continues to spiral downward as  
12 national production trends continue to increase  
13 annually. Clearly, the transportation credit  
14 provisions that have been in effect since August  
15 1996 have not slowed or stopped the decline in  
16 production in the southeast. If the current Class I  
17 pricing structure does not support or accommodate  
18 the movement of milk from the surplus market to  
19 the deficit market when needed, as testified by the  
20 proponents when these credits were initially  
21 implemented, other provisions in the Federal Order  
22 should be modified to address these challenges  
23 directly. SMI would rather assist the Department  
24 and the southeast dairy industry in focusing on  
25 longer-term solutions for the entire region.

1       The fundamental challenge, as provided by the  
2       AMA, is to ensure a sufficient quantity of pure and  
3       wholesome milk in dealing with the public interest.  
4       SMI believes that the southeast must focus on  
5       maintaining a long-term, local supply to meet the  
6       stated objectives.

7       Some possible solutions may include  
8       establishing a Class I mover based on more  
9       regional conditions of supply, demands, energy,  
10      and production costs; more differential zones  
11      within the existing orders; a base-excess plan;  
12      adjustments to the current differentials; or other  
13      provisions that would encourage local production.  
14      An alternative to the transportation credits in a  
15      market that has 35 to 40 percent of its production  
16      going into uses other than Class I may be called  
17      provisions in lieu of bringing in milk from other  
18      regions of the United States.

19      If credits are approved and amended as  
20      proposed, SMI will support the concept of use --  
21      introducing and using national indexes provided by  
22      agencies outside of -- of USDA, such as the  
23      Department of Energy district diesel prices.  
24      Metrics derived on a national scale are not subject  
25      to manipulation by any given industry.



1 In summary, Southeast Milk does not support  
2 the Proposal Number 1. In fact, would support the  
3 position that all inter-order transportation credits  
4 be eliminated.

5 Southeast Milk supports Proposal Number 2,  
6 the use of inter-order credits had for milk moving  
7 within the order is good. It will help keep milk  
8 from outside the order coming into it.

9 Southeast Milk does support Proposal Number  
10 3, using the national indexes derived from outside  
11 USDA less subject to manipulation by any given  
12 industry. If the inter-order credits are adopted by  
13 the Department, SMI will support Proposals Number  
14 4 and 5 as submitted by Dean Foods.

15 This concludes my statement.

16 JUDGE DAVENPORT: Examination of this  
17 witness? Mr. Beshore?

18 EXAMINATION

19 BY MR. BESHORE:

20 Q. Marvin Beshore.

21 Mr. Pittman, does Southeast Milk operate a --  
22 own a manufacturing plant in Georgia?

23 A. Yes, we do, on a seasonal basis.

24 Q. Where is the plant, and what do you --  
25 what does it produce?

1       A.    The plant is located in Baconton, Georgia,  
2       which is the southwest part of Georgia; and it  
3       produces all the filtered milk during the surplus  
4       time of the year, which is the spring months.

5       Q.    How many months was it operated during  
6       2005?

7       A.    It operated about seven months, six and a  
8       half months out of the year.

9       Q.    Okay.  The -- what -- what months were  
10      those?

11      A.    January through the middle of July.

12      Q.    And on what order was the milk pooled  
13      that was processed at that plant?

14      A.    Some of that milk was pooled on Federal  
15      Order 7, and some of it was pooled on Federal  
16      Order 6.

17      Q.    Okay.  So some of that milk -- some of the  
18      milk at your plant is the 35 or 40 percent of the  
19      milk on Federal Order 7 that you are siting as  
20      being associated with the order, but not,  
21      apparently, being made available for Class I; is  
22      that correct?

23      A.    That is correct.

24      Q.    But why are you processing manufactured  
25      products at your plant in Georgia, when your --

1 we've got this huge deficit market in the  
2 southeast?

3 A. If the -- we have not received a call for  
4 milk to go into the fluid bottles plant, then we put  
5 it into that plant. The plant strictly operates as a  
6 surplus only. Our customers call for fluid, and we  
7 will ship -- then we will ship that fluid milk to them.

8 Q. Okay. Now, you're -- you're opposed  
9 totally to intermarket transportation credits.

10 What share of Order 6 does SMI represent?

11 A. We represent probably about 90, 95  
12 percent of the producers in the order.

13 Q. In -- okay.

14 And the -- and the producer milk in Order 6 --

15 A. Right.

16 Q. -- correct?

17 Is Order 6 supplied 100 percent by -- by your  
18 production?

19 A. No. We will import milk five to six months  
20 of the year to Federal Order 6 for our customers.

21 Q. Okay. And when you -- when you import  
22 that milk, do you have to pay for it to get it down  
23 there?

24 A. Yeah, we have to pay the transportation  
25 costs; yes.

1 Q. Okay. In fact, you -- you -- you leap frog  
2 over milk in -- in Georgia and some of these other  
3 areas to get milk in Michigan and Pennsylvania on  
4 a regular basis for Florida; do you not?

5 A. Yes, we -- we follow the Southeast Order;  
6 yes.

7 Q. You're put -- you -- you support Order 5 --  
8 I mean Proposal 5 if they're intermarket credits.  
9 By the way, there's no -- is that how you -- the --  
10 the milk in -- in Michigan and -- the milk in  
11 Michigan and in Pennsylvania that you buy for  
12 Florida, do you pay your suppliers up there a  
13 zoned-out price that's equivalent to what they'd get  
14 if Order 5 was applied to -- or Proposal 5 was  
15 applied to supplemental milk?

16 A. I guess I don't fully understand that part  
17 of it.

18 Q. Well, you're buying supplemental milk for  
19 Florida from large -- from distances, you know.

20 A. Right.

21 Q. How far is it to the supplies in  
22 Pennsylvania and Michigan you need to supply  
23 Florida?

24 A. We will pull the milk out of there and pay  
25 them a negotiated premium based on -- because it's

1 coming out of their plants, so it's plant milk.

2 Q. Okay. But what's the distance?

3 A. The distance? The distance in  
4 Pennsylvania, 1,200 miles maybe.

5 Q. Okay. Now, do you pool -- is any of that  
6 milk pooled in Order 6?

7 A. That milk is not pooled in Order 6.

8 Q. Is any of the milk in -- in Michigan pooled  
9 in Order 6?

10 A. No, it is not.

11 Q. Okay. Do you pool any milk outside of the  
12 state of Florida on Order 6?

13 A. Pool some milk based on our purchasing  
14 arrangements on Order 6.

15 Q. Well, your producers in -- in Tennessee,  
16 for instance, you pool them on Order 6?

17 A. No, they are pooled -- pooled on Federal  
18 Order 7.

19 Q. Okay. When you -- when you buy  
20 supplemental milk for Order 6, I mean, from --  
21 from Pennsylvania, do you pay a price that would  
22 be the zoned-out price returned the way Proposal 5  
23 prices -- proposes to price milk under Order 7?

24 A. The milk that we buy from Pennsylvania  
25 we pool strictly into Florida. We do not put any of

1 that milk into Federal Order 7.

2 Q. Okay. But I guess what I'm -- what I'm  
3 trying to get at is: You support Order 5 for  
4 Order -- under -- Proposal 5 under Order 7 and --  
5 and Order 5, I assume; right?

6 A. Right.

7 Q. And that says that if there's milk  
8 supplying the market -- pooled on the market from  
9 a distant source, the price it gets should be zoned  
10 out; correct?

11 A. Correct.

12 Q. And greatly reduced from what it would  
13 otherwise get under the present regulations;  
14 correct?

15 A. Correct.

16 Q. And I'm wondering if you can -- if your  
17 experience in supplying milk from great distances  
18 to Florida tells you whether you can buy milk for  
19 that kind of price?

20 A. What -- well, I'll put it this way: On the  
21 milk we do bring in, we do lose money. You know,  
22 it does cost our producers money when we do bring  
23 it in from Florida.

24 Q. Okay.

25 A. We do have a supply that we put into our

1 plants that will supply the Georgia market. With  
2 the arrangements we've made with our  
3 transportation companies we're working with, it's  
4 more economical for them to bring it all straight to  
5 Florida because a lot of these transportation  
6 companies get home and then give us a better deal  
7 for home.

8 Q. Okay.

9 A. That's why we -- SMI has agree with  
10 Federal Order 7 on that matter.

11 Q. Okay. But a lot of it you buy and you lose  
12 money on it?

13 A. Correct.

14 Q. Okay. Why do you do that?

15 A. To supply our customers. We focus on  
16 what our customers need. And if we don't supply  
17 our customers, somebody else will step in and  
18 supply them or they'll take steps to supply  
19 themselves. So we make arrangements to keep  
20 supplying them.

21 Q. And that's a rational business plan from  
22 Southeast Milk's perspective?

23 A. Yes. If we don't supply them, like I said,  
24 somebody else will step in at surplus time of the  
25 year and put their milk into our spot.

1 Q. You suggested there are other solutions  
2 besides intermarket transportation credits to  
3 southeast supply situation. More differential  
4 zones.

5 What are you -- what are you talking about?

6 A. Well, actually, it may be better to  
7 increase the Class I differentials in some of the  
8 areas down south. And in the comments -- a lot of  
9 the comments here today, especially from the dairy  
10 farmers, that the price not high enough to -- to  
11 support milk moving into that area. So if milk  
12 cannot move naturally by zone adjustments that are  
13 there, maybe we need to increase some of the  
14 Class I differentials in those areas to entice milk  
15 to move in there without transportation credits.

16 Q. Now, they couldn't be changed with  
17 changing the differentials in Florida as well,  
18 though; wouldn't that be correct?

19 A. Florida may be impacted; yes.

20 Q. All right. And those differentials aren't  
21 subject to -- to this hearing; correct? Florida is  
22 not part of the hearing.

23 A. Florida is not part of the hearing, and --  
24 just -- Class I differentials are not part of this  
25 hearing either.



1 Q. Okay. How would base excess plan  
2 [phonetic] solve the surplus -- or the deficit  
3 situation in the southeast?

4 A. Well, we've got a number of producers,  
5 and we look in our markets that we're working with.  
6 Some of them, depending on seasonality, will  
7 adjust the production to the cows' comfort. I'm  
8 more referring to the summer heat and humidity,  
9 they'll dry off the cow. And then when  
10 temperatures calm down or cool down, the cows will  
11 freshen and they'll bring them down. You know,  
12 that summer heat and humidity hits that late August  
13 and September, when milk is really needed for  
14 product -- or for bottling.

15 Q. Well, you've got 95 percent of the Florida  
16 market.

17 Have you tried that in -- in Southeast Milk,  
18 to see in that supplies the market without these  
19 loss -- losses of -- on supplemental milk?

20 A. We have had some discussions internally.

21 Q. Okay. But you're recommending it for  
22 Order 7.

23 Has it worked in Order 6?

24 A. We haven't tried it in Order 6 yet.

25 MR. BESHORE: Okay. Thank you, Mr.

1 Pittman. I don't have any further questions.

2 JUDGE DAVENPORT: Mr. Tosi?

3 MR. TOSI: None. None, your Honor

4 JUDGE DAVENPORT: Mr. Schad?

5 EXAMINATION

6 BY MR. SCHAD:

7 Q. Good afternoon, Tom. Dennis Schad,  
8 Land O' Lakes. Just one question, Tom.

9 In your last paragraph on your front -- on your  
10 front page, you make the statement, the  
11 conclusion, "Clearly, the transportation credit  
12 provisions that have been in effect since August  
13 1996 have not slowed or stopped the decline in  
14 production in the southeast."

15 Was that the reason that the transportation  
16 credits were put into the Order 5 and Order 7?

17 A. I was not part of that hearing; but  
18 evidently, you know, when the transportation  
19 credits were put in, but production's still declining  
20 at a faster rate now than it was -- was back at that  
21 time.

22 Q. That may be the reason transportation  
23 credits were put in was because of the decline, and  
24 the secretary recognized there was deficit market;  
25 and this was a way to get milk to the deficit

1 market? And the -- there is -- you know, you imply  
2 a causal relationship. Do you see a causal  
3 relationship?

4 A. It -- it can have an affect on it if the  
5 transportation credits are implemented. And if  
6 they're not implemented adequately, there are  
7 going to be draws on the pool.

8 Q. Okay. If -- if -- you -- you also -- you also  
9 suggest that possibly -- that you would be in -- in  
10 favor of doing away with intra-market  
11 transportation credits completely.

12 If you did that, would -- would you expect that  
13 the result would be increased milk production in  
14 the southeast?

15 A. That won't alone fix the problem in the  
16 southeast. We need to do something else. I don't  
17 think transportation credits is a solution for trying  
18 to reverse the decline of milk production in the  
19 southeast. We need to do something else. Let's  
20 Class I differentials, or one of the other ideas.  
21 That's something we need to look at to really fix  
22 the problem. I think distance puts a Band-aid on  
23 it. For the time being it helps get milk to the  
24 market, to supply the market, but production is  
25 going to keep declining. The producer is still going

1 to go out of business, because they're not getting  
2 the adequate run in that area. You just put a  
3 Band-aid on it again.

4 Q. I -- I think we agree, that -- that the  
5 transportation credits are -- are just designed to  
6 bring in milk and help alleviate the cost for bringing  
7 milk into a deficit market. It's one the solutions  
8 that address the problem with -- do we agree?

9 A. Right.

10 MR. SCHAD: Thank you.

11 JUDGE DAVENPORT: Other examination?

12 Very well. Mr. Pittman, you may step down.

13 At this point we'll recess. We'll see you-all at  
14 8:30 in the morning.

15 [WHEREUPON, the Continued United States

16 Department of Agriculture Rulemaking Hearing

17 is recessed at 5:00 p.m., pursuant to reconvene

18 at 8:30 a.m. on January 12, 2006.]

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1 CERTIFICATE OF REPORTER

2 STATE OF KENTUCKY AT LARGE:

3 I, DANYIEL CARPENTER, Notary Public for the  
4 State of Kentucky at Large, do hereby certify that  
5 the foregoing was reported by stenographic and  
6 mechanical means, which matter was held on the  
7 date, and at the time and place set out in the  
8 caption hereof, and that the foregoing constitutes  
9 a true and accurate transcript of same.

10 I further certify that I am not related to any of  
11 the parties, nor am I an employee of or related to  
12 any of the attorneys representing the parties, and I  
13 have no financial interest in the outcome of this  
14 matter.

15 GIVEN under my hand and Notarial seal this

16 day of ,  
2006.

17 .

18 My Commission Expires: Notary Public

19 .

20 JANUARY 10, 2008

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