

BEFORE THE SECRETARY OF AGRICULTURE

)	
Milk in the Upper)	Docket No. AO-361-A39;
Midwest Marketing)	DA-04-03
Area; Hearing on)	
Proposed Amendments)	HEARING TRANSCRIPT
to Tentative Marketing)	
Agreement and Order.)	Before Judge
)	Victor W. Palmer

DAY ONE OF THE FEDERAL ORDER 30 HEARING

The following is day one of the Federal Order 30 Hearing, taken before Kelly E. Hanna, Court Reporter, Notary Public, pursuant to Notice of Taking Hearing, at the Sofitel Hotel, 5601 West 78th Street, Bloomington, Minnesota, commencing at approximately 1:08 p.m., August 16th, 2004.

* * * * *

1 APPEARANCES:

2 On Behalf of Mid-West Dairymen's Company, et al.:

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16 On Behalf of Agricultural Marketing Service:

17 Sharlene Deskins, Esquire
U.S. DEPARTMENT OF AGRICULTURE
18 OFFICE OF THE GENERAL COUNSEL
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Washington, D.C. 20250-1400

20 Present for USDA, AMS Dairy Programs:

21 H. Paul Kyburz
22 Gino Tosi
Carol S. Warlick
23 Erin Feuillet
Henry Schaefer
24 Harold Ferguson
25

1 APPEARANCES:

2

Also Present:

3

Doug Peterson - Minnesota Farmers Union

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Sue Beitlich - Wisconsin Farmers Union

Robert Carlson - North Dakota Farmers Union

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Michael Brown - Northwest Dairy Association

Evan Kinser - Dean Foods

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Paul Christ - Dean Foods

James D. Oberweis - Oberweis Dairy

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Neil Gulden - Associated Milk Producers

Richard Lamers - Lamers Dairy

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Ryan Miltner - Continental Dairy Products

Michael Reinke - Kraft Foods, Global Inc.

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18

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20	NO. 1A	6	14	14
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21	NO. 2A	6	14	14
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22	NO. 3A	6	14	14
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23	NO. 4A	6	14	14
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24	NO. 5	13	24	24
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	EXHIBIT	MARKED	OFFERED	RECEIVED
1				
2	NO. 7	22	24	24
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3	NO. 9	28	41	41
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4	NO. 11	36	41	41
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Whereupon, day one of the Federal Order 30 Hearing was commenced at 1:08 p.m. as follows:

(Whereupon, Exhibit Nos. 1A, 1B, 2A, 2B, 3A, 3B, 4A, and 4B were marked for identification.)

THE COURT: On the record. We've had a short off-the-record discussion, and we've decided that the Judge will not try to be funny anymore, that's the first thing we decided.

We are here today pursuant to two notices, actually, published in the Federal Register. The first one was published on June 23rd, 2004, and is contained in Volume 69, No. 120. It's pages 34963 through 34966, and then the second one appeared on June -- the second one appeared on July 21st, 2004, and basically all that said, that was that Volume 69, No. 139, page 43538, that just basically stated that the hearing had been postponed from the original date to today's date, but the notice about which we're appearing under tells us that we're having a public hearing here to consider proposals to amend the Upper Midwest Federal Milk Marketing Order, Order 30.

There's a proposal to limit the volume

1 of distant milk pooled on Order 30 by changing the
2 requirements for producer milk originating outside of
3 the Upper Midwest.

4 There's another proposal that would
5 limit the pooling of producer milk normally associated
6 with the market that was not pooled in prior months,
7 while also changing the pooling requirements for
8 producer milk originating outside of the Upper
9 Midwest.

10 There's a proposal that would establish
11 a Dairy Farmer for Other Markets provision and would
12 amend a touch-base requirements and diversion limits
13 for Order No. 30.

14 Also, there's a proposal that we change
15 the maximum rate the Market Administrator may charge
16 for the expense of administration of the Order, from 5
17 cents per hundredweight up to 8 cents.

18 This hearing is being called pursuant
19 to provisions of the Agricultural Marketing Agreement
20 Act of 1937 as amended, (7 U.S.C. 601 through 674),
21 and the applicable rules of practice and procedure
22 governing the formulation of marketing agreements and
23 marketing orders, which are found in 7 CFR, part 900.

24 The purpose of the hearing is to
25 receive evidence with respect to the economic and

1 marketing conditions that relate to the proposed
2 amendments, and any appropriate modifications to the
3 market agreement and to the Order.

4 Evidence also will be taken to
5 determine whether emergency marketing conditions exist
6 that warrant an omission of a recommended decision
7 under the Rules of Practice and Procedure, and that
8 special provision is contained in 7 CFR 900.12(d).

9 There's a number of Federal provisions
10 that apply when we have a marketing order hearing,
11 flexibility, Regulatory Flexibility Act, etc, etc.
12 I'm not going to go through all of those. They're all
13 found in the notice that's found in the Federal
14 Register as are the exact proposals themselves.

15 All the evidence today will be evidence
16 that's either sworn or by affirmation, they'll be
17 subject to cross-examination. The Rules of Practice,
18 which I identified before, will apply.

19 At the end of the hearing we'll set a
20 date for filing recommended recommendations, etc.
21 Proprietary to a recommended decision or a final
22 decision, whichever, you'll have time for exceptions
23 to those documents as well, and if you're going to
24 introduce any exhibits today, we need four copies for
25 the reporter, plus one, or as many as you happen to

1 have for other interested parties, but we hope you do
2 have enough so that everybody can stay with the gist
3 of your proposals.

4 That's basically it, and at this point
5 I will turn to Ms. Deskins and start taking
6 appearances. First for the Government.

7 MS. DESKINS: Good afternoon, Judge
8 Palmer. My name is Sharlene Deskins. I'm an attorney
9 at the Office of General Counsel, United States
10 Department of Agriculture. I'm representing the
11 Agricultural Marketing Service in this, and my office
12 address is 1400 Independence Avenue Southwest,
13 Washington, D.C. The zip code is 20250.

14 MR. TOSI: Good afternoon, Judge. My
15 name is Gino Tosi, G-i-n-o, last name T-o-s-i, T, as
16 in Tom, o-s-i. I'm with the Dairy Programs of the
17 Agricultural Marketing Service, Washington, D.C.

18 MS. WARLICK: My name is Carol Warlick,
19 C-a-r-o-l, W-a-r-l-i-c-k, and I'm also with Dairy
20 Programs Agricultural Marketing Services in
21 Washington, D.C.

22 MS. FEUILLET: Good morning. My name
23 is Erin Feuillet, F, as in Frank, e-u-i-l-l-e-t, with
24 Dairy Programs, Ag Marketing Service in D.C.

25 THE COURT: Thank you, and thank you

1 for helping me find a hotel too.

2 MS. FEUILLET: You're welcome.

3 THE COURT: All right. Well, we don't
4 have anybody here as yet for Proposal 1. Let's hear
5 -- Let's just go by table. What about this first
6 table over here? Yes.

7 MR. PETERSON: Doug Peterson, Minnesota
8 Farmers Union.

9 MS. BEITLICH: Sue Beitlich, Wisconsin
10 Farmers Union.

11 THE COURT: All right, I should have
12 your name up here, I wrote it down. Yes, sir.

13 MR. CARLSON: Robert Carlson, North
14 Dakota Farmers Union.

15 THE COURT: Okay. Next table.

16 MR. BESHORE: Marvin Beshore,
17 B-e-s-h-o-r-e. I'm an attorney at 130 State Street
18 Harrisburg, Pennsylvania. I'm appearing today on
19 behalf of Mid-West Dairymen's Company, Cass-Clay
20 Creamery, Inc., Dairy Farmers of America, Inc., Land
21 O'Lakes, Inc., Manitowoc Milk Producers Cooperative,
22 Milwaukee Cooperative Milk Producers, Swiss Valley
23 Farms, Company, and Woodstock Progressive Milk
24 Producers Association.

25 THE COURT: Anyone else at that table?

1 We've covered the whole table, good. How about over
2 here. Mr. Vetne?

3 MR. VETNE: My name is John Vetne, V,
4 as in Victor, e-t-n-e. I'm an attorney. My address
5 is 103 State Street, Newburyport, Massachusetts. I'm
6 appearing here, making a limited appearance, on behalf
7 of Alto Dairy Cooperatives, Bongards' Creameries,
8 Ellsworth Cooperative Creamery, Family Dairies, First
9 District Association, Davisco Foods, Valley Queen
10 Cheese Company, Wisconsin Cheesemakers, and Associated
11 Milk Producers. My appearance on behalf of these
12 parties is in opposition to Proposal No. 2, Part 1,
13 and Proposals 3 through 6.

14 THE COURT: All right. Mr. English?

15 MR. ENGLISH: My name is Charles
16 English, E-n-g-l-i-s-h. I am here on behalf of Dean
17 Foods Company. My address is Suite 800, 701
18 Pennsylvania Avenue Northwest, Washington, D.C. Dean
19 Foods Company appears in support of Proposals 3
20 through 6, and I'll have three witnesses during the
21 course of the hearing.

22 THE COURT: All right. Other
23 appearances? Nobody else wants to make an -- yes,
24 sir.

25 MR. BROWN: Michael Brown with

1 Northwest Dairy Association.

2 THE COURT: Any other appearances?

3 Okay. Well, we'll get a group of people coming for
4 Proposal 1, I presume, in awhile. In the meanwhile,
5 let's start the Government's statistics.

6 MS. DESKINS: Judge Palmer, my first
7 witness is Henry Schaefer.

8 THE COURT: All right. Mr. Schaefer?
9 Mr. Schaefer, just stand and rise your right hand.

10

11

HENRY SCHAEFER,

12

after having been first duly sworn by

13

the Court, says under oath as follows:

14

15

16

THE WITNESS: Yes, I do.

17

THE COURT: The witness can take the

18

stand.

19

DIRECT EXAMINATION

20

BY MS. DESKINS:

21

Q. Could you just spell your name for the

22

record.

23

A. My name is Henry Schaefer, H-e-n-r-y,

24

S-c-h-a-e-f-e-r.

25

Q. And just as a preliminary matter, you

1 have an exhibit that you're going to pass out;
2 correct?

3 A. That is correct.

4 MS. DESKINS: Okay. I would like to
5 give a copy to the Judge and the court reporter right
6 now.

7 THE COURT: You're going to be running
8 around a lot here. Thank you. We'll mark
9 Mr. Schaefer's proposed exhibit as Exhibit 5.

10 (Whereupon, Exhibit No. 5 was
11 marked for identification.)

12 BY MS. DESKINS:

13 Q. And just for the record, could you tell
14 people what Exhibit 5 is, incase they want to go to
15 get a copy of it from the back.

16 A. Exhibit 5 is an approximately 80-page
17 document with a gray cover on it. It looks like this.
18 It says "Compilation of Statistical Material."

19 THE COURT: Incidentally, let me --
20 just before you speak, I forgot to, I'm a little
21 rusty, I haven't done this that much. I forgot to
22 introduce some exhibits earlier. I had mentioned this
23 before we started the hearing, but let the record show
24 that we have received in evidence, Exhibit No. 1A,
25 which is the Notice of Hearing, Exhibit 1B, which is a

1 Change of Hearing Date Notice, Exhibit 2A, which is an
2 AMS News Release telling us that there's going to be a
3 hearing, Exhibit 2B, which tells us that -- it's a
4 news release telling us that the hearing is delayed,
5 3A, a Certificate of Notice to Governors about the
6 hearing, 3B is a second Certificate of Notice to
7 Governors about the delayed hearing, 4A, which is a
8 First Notice to Interested Persons, 4B, which is a
9 revision, again, of the hearing date, and now, of
10 course, this one is just being marked for
11 identification. Number 5, Mr. Schaefer's exhibit.
12 The others are all received, 1 through 4 are received.

13 (Whereupon, Exhibit Nos. 1A, 1B,
14 2A, 2B, 3A, 3B, 4A, and 4B were
15 offered and received into evidence.)

16 THE COURT: Thank you. Go ahead, sir.

17 BY MS. DESKINS:

18 Q. I understand you have a statement you
19 would like to read to us.

20 A. That is correct.

21 Q. Okay.

22 A. My name is Henry Schaefer, and I am
23 Supervisory Agricultural Economist with the Upper
24 Midwest Federal Milk Order No. 30. The Market
25 Administrator's Office has compiled three exhibits

1 containing statistical material for this proceeding.
2 This statistical information was compiled and is
3 presented neither in support of, nor in opposition to
4 any proposals. The information is presented solely as
5 a matter of information for those persons having an
6 interest in this proceeding.

7 All of the data were obtained from
8 records in the Upper Midwest Market Administrator's
9 Office, except where indicated otherwise.

10 Exhibit No. 5, entitled "Compilation of
11 Statistical Material," contains 20 tables and five
12 figures in a 78-page booklet. In addition, there is a
13 two-page Table of Contents and a front and back cover.

14 Table 1, Page 1 contains a list of
15 handlers, plants, and cooperative associations for
16 December 2003. The table is broken into six parts;
17 handlers operating pool plants, Pages 1 through 6;
18 handlers operating partially regulated distributing
19 plants, Page 7; producer-handlers, Page 8; handlers as
20 brokers, Page 9; cooperative associations acting as
21 handlers, page 9; and qualified cooperative
22 associations, Pages 10 through 12.

23 The first column contains the name and
24 the mailing address of the handler, the second column
25 contains the city and state in which the handler's

1 plant is located, the third column contains the county
2 in which the plant is located, the fourth column
3 contains the Class I differential rate associated with
4 the particular county, and the last column contains
5 the plant type. Plant type is not listed for
6 partially regulated distributing plants or
7 producer-handlers, as these plants are all
8 distributing plants. The sections containing brokers,
9 cooperatives acting as handlers, and qualified
10 cooperative associations show only the name and
11 mailing address of the organization.

12 Figure 1 on Page 13 contains a map of
13 the Upper Midwest marking area. The map identifies
14 the location of the pool plants by type of plant for
15 December 2003. Plant type is shown by the respective
16 symbols shown in the legend. Some partially regulated
17 distributing plants located outside the marking area
18 are listed separately on the map.

19 Table 2, Pages 14 and 15, contain a
20 list of the plants shown in Figure 1, with the state,
21 county, and applicable Class I differential rates.
22 These are the same plants that are listed in Table 1.

23 Table 3, beginning on Page 16, contains
24 Upper Midwest Order announced producer prices for
25 January 2000 through June of 2004. All of these

1 prices and the class prices in the next several tables
2 are announced in monthly Market Administrator
3 publications called "Announcement of Class Prices and
4 Related Data and/or Computation of Producer Price
5 Differential," except for the last column on Table 3
6 that lists the Upper Midwest Producer Mailbox Price.

7 Table 4, Pages 19 through 21, contains
8 the Upper Midwest Order Class I prices for January
9 2000 through July 2004, at the base zone, Cook County,
10 Illinois.

11 Table 5, beginning on Page 22, contains
12 the Upper Midwest Order Class II price information for
13 January 2000 through January (sic) 2004. The skim
14 price and nonfat solids price are also listed for July
15 2004.

16 Table 6, beginning on Page 25, contains
17 Upper Midwest Order Class III prices for January 2000
18 through June 2004.

19 Table 7, beginning on Page 28, contains
20 Upper Midwest Order Class IV prices for January 2000
21 through June 2004.

22 Tables 5, 6, and 7 contain the class
23 prices at 3.5 percent butterfat, and the skim value or
24 value of 100 pounds of skim milk in each class. Each
25 table also contains the individual component values

1 per pound for the components priced in each class.

2 Table 8 on Pages 31 through 33 contains
3 various market statistics for the Upper Midwest Order
4 for January 2000 through June of 2004. The data are
5 derived from handlers' reports of receipts and
6 utilization. The first column of data contains the
7 number of fully regulated pool distributing plants,
8 while the second column contains the number of fully
9 regulated pool supply plants. The third column
10 contains the number of cooperatives filing 9(c)
11 reports or cooperative as a handler report. The
12 fourth column is the number of producers whose milk
13 was pooled during the month, and the fifth column is
14 an estimate of the daily average delivery per producer
15 for the month. The sixth column lists the total
16 pounds of producer milk in millions of pounds. The
17 seventh column contains the average butterfat test of
18 the producer milk, the eighth column contains the
19 average protein test of the producer milk, and the
20 ninth column contains the average other solids test of
21 the producer milk. The last column contains the
22 weighted average somatic cell count of producer milk.
23 These last four columns are computed from the pounds
24 of the respective components or the value of the
25 somatic cell count adjustments reported by handlers.

1 Table 9 on Pages 34 through 36 contains
2 the pounds of producer milk by class and in total for
3 January 2000 through June of 2004.

4 Table 10 on Pages 37 to 39 contains
5 pounds of components, pounds of producer milk, and
6 weighted average SCC, or somatic cell count, by month
7 for January of 2000 through June of 2004.

8 Table 11, Pages 40 through 41, contains
9 the Upper Midwest Order total utilization and
10 classification of milk for the years 2000, 2001, 2002,
11 and 2003.

12 The data contained in the following
13 tables and figures were obtained from handler producer
14 payrolls submitted to the Upper Midwest marketing area
15 Market Administrator.

16 Table 12, Page 42, contains pounds of
17 producer milk and the number of producers by state for
18 2000. The capital letter R in the table signifies
19 where data are restricted. Data are restricted if the
20 milk of fewer than three producers from that state was
21 pooled on the Upper Midwest Marketing Area during the
22 respective month. Table 14 on Page 50, Table 16 on
23 Page 59, and Table 18 on Page 68 contain similar data
24 for the years 2001, 2002, and 2003, respectively.
25 Table 20 on Page 78 contains similar data for the

1 first four months of 2004.

2 Figure 2, Page 43, shows a map of the
3 United States with the Upper Midwest marketing area
4 outlined in black. The gray shaded areas on the map
5 indicate the procurement area or are counties from
6 which the milk of producers was pooled on the Upper
7 Midwest Order in December of 2000. Figure 3 on Page
8 51, Figure 4 on Page 60, and Figure 5 on Page 69 show
9 similar information for December 2001, December 2002,
10 and December 2003, respectively.

11 Table 13, Page 44, contains the number
12 of producers and pounds of producer milk by state and
13 county for December 2000. The letter R in the last
14 two columns indicates where data for a county are
15 restricted. Again, data are restricted when there are
16 fewer than three producers from a county with milk
17 pooled on the Upper Midwest Order. In most cases, the
18 restricted data are accumulated and listed as one
19 restricted total for that state. Table 15, beginning
20 on page 52, Table 17, beginning on Page 61, and Table
21 19, beginning on Page 70 contain similar data for
22 December 2001, December 2002, and December 2003,
23 respectively.

24 Okay, and that concludes that Exhibit
25 No. 5.

1 Q. Did you -- Okay. Now, for Exhibit No.
2 5, was this prepared under your direction and control?

3 A. Yes.

4 Q. And is it accurate, to the best of your
5 knowledge?

6 A. Yes, it is.

7 Q. Have you prepared any other exhibits
8 for this hearing?

9 A. Yes, we have.

10 Q. Okay. What's the next one that you
11 have?

12 A. The next exhibit is a single piece of
13 paper that says "Table S1" at the top, and it's
14 labeled "Upper Midwest Order. Estimated Eligible
15 Producer Milk Not Pooled."

16 Q. Okay, and that's available at the back
17 of the room?

18 A. Yes, it is.

19 THE COURT: We'll mark this one for
20 identification as Exhibit No. 6.

21 (Whereupon, Exhibit No. 6 was
22 marked for identification.)

23 BY MS. DESKINS:

24 Q. If you could go ahead and explain to us
25 what Exhibit 6 is.

1 A. Okay. Exhibit No. 6 is a one-page
2 document showing, in millions of pounds, estimated
3 eligible milk not pooled for January 2000 through
4 January 2004 on the Upper Midwest Milk Marketing
5 Order. Milk of producers not associated with the
6 market, and milk of producers pooled on other Federal
7 Orders is not included. The statistical information
8 on this exhibit was compiled and is presented neither
9 in support of, nor in opposition to, any proposal.
10 The information is presented solely as a matter of
11 information for those persons having an interest in
12 this proceeding.

13 Q. Okay. Have you prepared any other
14 exhibits for this hearing?

15 A. Yes, we have. We have another one-page
16 document that says "Table S-2" at the top, "Upper
17 Midwest Order. Summary of Transportation Credits for
18 2003."

19 THE COURT: We'll mark that as Exhibit
20 7 for identification.

21 (Whereupon, Exhibit No. 7 was
22 marked for identification.)

23 BY MS. DESKINS:

24 Q. Could you please explain Exhibit 7 to
25 us.

1 A. Exhibit 7 is a one-page document
2 summarizing the transportation credits paid in 2003 to
3 handlers eligible to receive such credit. This credit
4 is provided for in Section 1030.55 of the Order.
5 Column 1 contains a range of mileage from the shipping
6 plant to the pool distributing plant. Column 2
7 contains the pounds of milk that moved within the
8 respective mileage range. Column 3 shows the value
9 that was paid on the pounds of milk moved. In 2003,
10 there were no shipments from supply plants to pool
11 distributing plants greater than 399 miles that
12 received a transportation credit. The statistical
13 information in this exhibit was compiled and is
14 presented neither in support of, nor in opposition to,
15 any proposal. The information is presented solely as
16 a matter of information for those persons having an
17 interest in this proceeding.

18 Q. Have you prepared another exhibit?

19 A. Yes, we have.

20 Q. Can you tell us what it is.

21 A. This is a one-page document. At the
22 top it says, "Upper Midwest Order. Pounds of Producer
23 Milk and Number of Producers by State, May and June
24 2004."

25 THE COURT: We'll mark this one as

1 Exhibit 8 for identification.

2 (Whereupon, Exhibit No. 8 was
3 marked for identification.)

4 BY MS. DESKINS:

5 Q. If you could just please explain to us
6 Exhibit 8.

7 A. Okay. Exhibit 8 contains the pounds of
8 producer milk and the number of producers by state for
9 May and June of 2004. As indicted in Exhibit 8, the
10 June information is preliminary, and that concludes my
11 statement.

12 Q. Okay. At this time, Judge Palmer, I
13 would like to move for the admissions of Exhibits 5,
14 6, 7, and 8?

15 THE COURT: Any objections to their
16 admission, or do you want to voir dire as part of the
17 cross? No objections, they're all received.

18 (Whereupon, Exhibit Nos. 5, 6, 7, and 8
19 were offered and received into evidence.)

20 THE COURT: All right. I guess we're
21 open for cross.

22 BY MS. DESKINS:

23 Q. I have one more question. Now, you
24 have prepared some other exhibits in relationship to
25 the hearing; correct?

1 A. That is correct.

2 Q. Have you prepared those at the request
3 of various people from the public?

4 A. That is correct.

5 MS. DESKINS: I have no further
6 questions, Your Honor.

7 THE COURT: Very well. Who wishes to
8 question first? Mr. English?

9 MR. ENGLISH: Procedural question.

10 THE COURT: Yeah, sure.

11 MR. ENGLISH: Does it make sense, given
12 the answer to the last question, that there are
13 materials such as requests from Dean Foods that
14 responded to, requests from Mr. Beshore and his
15 clients -- he was there a second ago -- requests from
16 Mr. Vetne, and I think requests from proponents of No.
17 1, Proposal 1. Would it make sense --

18 THE COURT: Would you like to have your
19 material come in now --

20 MR. ENGLISH: Yeah, I would like to
21 have -- it makes sense to have them all in and then
22 ask questions --

23 THE COURT: How do you feel about that,
24 Mr. Vetne, since you are also -- you also have some
25 material that was requested? Would you like it to

1 come in now?

2 MR. VETNE: That's what I thought was
3 going to happen.

4 THE COURT: Well, let's do that, then.
5 Do you have it with you, sir?

6 THE WITNESS: Yes, I do.

7 THE COURT: Okay. Could you move on
8 with that, Ms. Deskins?

9 MS. DESKINS: I think the problem is,
10 we don't necessarily know everything that they want
11 in, because he got many requests.

12 THE COURT: Ah, all right. Well, there
13 we go.

14 MR. VETNE: Let me suggest something
15 here. We requested several bits of data, as did
16 others. As part of the effort to expedite this
17 hearing and to remove just a bit of trial by ambush --
18 we haven't gotten there yet -- but we exchanged that
19 material. I think all of us who are going to
20 participate and who had laid their cards on the table,
21 we exchanged, so there's nothing that can be withdrawn
22 or not disclosed that's been shared.

23 THE COURT: Why don't we have sort of
24 an off-the-record working recess, where counsel will
25 go up with the witness and go over what materials they

1 feel should be brought in, and Ms. Deskins, you can
2 sort of moderate that. Let's just go off the record
3 for awhile, and we'll see what other exhibits should
4 be going in and make sure they're all here.

5 THE WITNESS: Thank you, Judge.

6 (Recess taken from 1:33 to 1:38 p.m.)

7 THE COURT: We're back on the record,
8 then.

9 BY MS. DESKINS:

10 Q. Mr. Schaefer, you testified you
11 prepared some additional materials for this hearing;
12 correct?

13 A. That is correct.

14 Q. Could you start out with something that
15 you prepared for Mid-West Dairymen's Company?

16 A. Yes, we can. What we've got is a
17 multi-table document entitled, "Compilation of
18 Statistical Material," prepared at the request of
19 Mid-West Dairymen's Company, and then it has their
20 address on the front cover.

21 MS. DESKINS: Judge Palmer, could we
22 have that exhibit marked?

23 THE COURT: As 9. Marked for
24 identification as Exhibit 9. That's the one with the
25 yellow cover.

1 (Whereupon, Exhibit No. 9 was
2 marked for identification.)

3 BY MS. DESKINS:

4 Q. Why don't you describe for us what's on
5 the inside of Exhibit 9.

6 A. Exhibit 9 contains twelve tables and 41
7 pages. These tables were prepared at the request of
8 Mid-West Dairymen's Company.

9 Q. And were they prepared under your
10 direction and control?

11 A. Yes, they were.

12 Q. Are they correct, to the best of your
13 knowledge?

14 A. Yes, they are.

15 Q. In terms of the material that's in
16 here, you did these in response to a request; correct?

17 A. That is correct.

18 Q. Do any of these require you to make
19 certain assumptions?

20 A. Yes, they do.

21 Q. Maybe you could go through the tables,
22 and tell us where you made the assumptions.

23 A. Okay. We'll start with Table 1A, and
24 I'll just go through these as I did our Government
25 exhibits.

1 Table 1A is entitled "Mileage Matrix
2 with Distances Between Specified Locations," and this
3 table contains various cities in Idaho, and the
4 location of the various plants in the Upper Midwest
5 marketing area and the respective mileages.

6 Table 1B is a similar table. It
7 contains, again, plants located in our marketing area
8 and supply plants located in our marketing area, and
9 the respective mileages. These mileages are computed
10 based on the language in 1030.55, That is our
11 transportation credit calculation.

12 Table 2 is "Deliveries of Idaho
13 Producer Milk to Federal Order 30 Distributing Plants
14 and Pool Plants," and then the total "Idaho Producer
15 Milk." As was the case with our previous exhibits,
16 the letter R indicates restricted information. Fewer
17 than two handlers are there, so we have to restrict
18 that information.

19 Table 3A is the "Class Prices and
20 Producer Price Differential" for the Old Chicago
21 Regional Order, starting with 1997 and covering 1997,
22 1998, and 1999.

23 Table 3B are the "Component Prices and
24 Somatic Cell Adjustment Rate" for the Old Chicago
25 Regional Order. Again, 1997, 1998, and 1999.

1 3C contains the "Producer Milk by
2 Class" for the Chicago Regional Order, 1997, 1998, and
3 1999.

4 Table 3D contains the "Percentage of
5 Producer Milk by Class" for the Chicago Regional
6 Order, 1997, 1998, and 1999.

7 Table 3E contains and "Estimated
8 Eligible Producer Milk Not Pooled" under the Chicago
9 Regional Order. Again, for 1997, 1998, and 1999.

10 Table 3F contains "Class Prices and
11 Producer Price Differential" for the Old Upper Midwest
12 Milk Order No. 68, 1997, 1998, and 1999.

13 Table 3G contains the "Component Prices
14 and Somatic Cell Adjustment Rate" for the Old Upper
15 Midwest Order No. 68, 1997, 1998, and 1999.

16 Table 3H contains "Producer Milk by
17 Class" for the Upper Midwest Order, Order 68, 1997,
18 1998, and 1999.

19 Table 3I is the "Percentage of Producer
20 Milk by Class," for the Upper Midwest Order No. 68,
21 1997, 1998, and 1999.

22 Table 3J is the "Estimated Eligible
23 producer Milk Not Pooled" for the Upper Midwest Order
24 No. 68, 1997, 1998, and 1999.

25 Table 3K contains the "Utilization of

1 Producer Milk by Class" for the current Upper Midwest
2 Milk Order, 2000 through June of 2004.

3 Table 4 contains the "Federal Order
4 Class" -- "Federal Order 30 Class III and Class IV
5 Producer Milk Diverted to Idaho Nonpool Plants."
6 Again, with the R in there, it indicates restricted
7 data.

8 Table 5A contains "Producer Price
9 Differential." Actual producer price differential for
10 the Upper Midwest marketing area, 2000 through 2004,
11 and contains an estimate of the producer price
12 differential if milk that was pooled from Idaho was
13 not included in the calculation of the producer price
14 differential.

15 Table 5B is the "Class IV Contribution
16 to the Producer Price Differential" for March 2004 and
17 April of 2004.

18 Table 5C is a computation of producer
19 price differentials, showing the actual producer price
20 differential for January, February, and March of 2003,
21 October, November, and December of 2003, and an
22 estimate of the producer price differential if various
23 levels of eligible Class IV milk had been included in
24 the pool.

25 Table 5D is, again, a producer price

1 differential computation showing the actual producer
2 price differential July, August, September, October,
3 November of 2003, January through May of 2004, and an
4 estimate using estimated eligible Class III producer
5 milk in the pool.

6 5E, again, is a producer price
7 differential computations, showing the actual producer
8 price differential, April 2001 through June of 2004,
9 and the estimated computation of the producer price
10 differential by removing Idaho producer milk and
11 including various levels of estimated Class III
12 producer milk for the same time period.

13 Table 6 is an estimate of volume of --
14 or the maximum milk allowed to be not pooled or
15 depooled at the 125 percent depooling limit with a
16 three-month time lag.

17 Table 7 is the same information.
18 However, in this case we're using a 115 percent
19 time-lag -- or 115 percent depooling limit, excuse me.

20 Table 8 is a "Summary of Transportation
21 Credits for 2003. That would be -- this table is the
22 same as Exhibit No. 7.

23 Table No. 9 is "Producer Milk and
24 Percentage that Current Month Represents of the
25 Previous Month" on the Upper Midwest Order.

1 Table 10 is "Combined Minnesota and
2 Wisconsin Milk Production and Percentage that Current
3 Month Represents of Previous Month," January of 2000
4 through June of 2004.

5 Table 11A represents the "Net Class I
6 Contribution to the Producer Price differential,"
7 January of 2000 through June 2004.

8 Table 11B is "Net Class I obligation to
9 the Pool" for January 2000 through June of 2004.

10 And Table 12 is the list of
11 "Producer-Handlers for December 2003." This is the
12 same table as was shown on Page 8 of Exhibit 5, and
13 that concludes that compilation.

14 Q. Did you make any other tables for -- at
15 someone's request?

16 A. Yes, we did.

17 Q. Okay. What's the next one that you
18 did?

19 A. The next one is a request by Dean
20 Foods.

21 MS. DESKINS: Your Honor, can we have
22 that marked as Exhibit 10?

23 THE COURT: Yes. It will be so marked.
24 (Whereupon, Exhibit No. 10 was
25 marked for identification.)

1 BY MS. DESKINS:

2 Q. Could you please continue,
3 Mr. Schaefer.

4 A. Okay. The next series of tables, nine
5 tables are requested by Dean Foods.

6 Table 1 shows the "Producer Price
7 Differential for the Upper Midwest, Central, and
8 Pacific Northwest Orders" at their base zone and at
9 \$1.60 zone, January 2000 through June of 2004.

10 Table 2A shows the "Producer Milk by
11 Class" for the Old Chicago Regional Order No. 30,
12 1997, 1998, and 1999.

13 Table 2B shows the "Percentage of
14 Producer Milk by Class" for the Old Chicago Regional
15 Order No. 30, 1997, 1998, and 1999.

16 Table 2C contains the "Producer Milk by
17 Class" for the Upper Midwest Milk Order No. 68, 1997,
18 1998, and 1999.

19 Table 2D contains the "Percentage of
20 Producer Milk by Class" for the Upper Midwest Federal
21 Milk Order No. 68, 1997, 1998, and 1999.

22 Table 2E contains "Producer Milk by
23 Class" for the current Upper Midwest Federal Milk
24 Order, 2001 -- January 2000 -- I'm sorry, January 2000
25 through June of 2004.

1 Table 2F contains the "Utilization of
2 Producer Milk by Class" for Upper Midwest Order,
3 Federal Milk Order 30, January 2000 through June 2004.

4 Table 3 contains the producer price
5 differential. It contains the actual producer price
6 differential, January through December of 2003, and
7 then January through June of 2004. It also contains
8 an estimate of the producer price differential if you
9 would had included all of the milk that was -- all of
10 the eligible estimated milk that was not pooled.

11 Table 4 is, again, a producer price
12 differential giving the actual, January 2003 through
13 June 2004, and an estimate by excluding certain milk
14 volumes.

15 Table 5 is, again, a producer price
16 differential, and in this case we have Class I, II, IV
17 contribution to the producer price differential, and a
18 miscellaneous contribution to the producer price
19 differential, and that's January 2000 through June of
20 2004.

21 Table 6 is the "Contribution by Class
22 to the Producer Price Differential." It's a very
23 similar table to the previous table, except in this
24 case it's at a 3.5 percentage basis. Same time
25 period, January 2000 through June of 2004.

1 Table 7 is the "Class IV Contribution
2 to the Producer Price Differential," January 2000
3 through June 2004.

4 And then there is no Table 8, and we go
5 to Table 9, "Pounds of Milk that Would have Received a
6 Transportation Pool Payment that was Hauled More Than
7 400 Miles" in the time period May 2000 through June
8 2004, and there were none.

9 That concludes that preparation of
10 data.

11 Q. Mr. Schaefer, did you prepare anything
12 else at the request of interested parties?

13 A. Yes, we did.

14 Q. Okay. What's the next one that you
15 had?

16 A. The next request is three tables at the
17 request of Associated Milk Producers, Incorporated.

18 Q. Okay.

19 THE COURT: We'll mark this one as
20 Exhibit 11 for identification.

21 (Whereupon, Exhibit No. 11 was
22 marked for identification.)

23 BY MS. DESKINS:

24 Q. Could you please proceed.

25 A. Yes. These tables were produced at the

1 request of Associated Milk Producers, Incorporated.

2 Table 1 is, again, a producer price
3 differential computation showing the actual producer
4 price differential from April of 2001 through June of
5 2004, and an estimate of the producer price
6 differential if the Idaho milk had not been included.

7 Table 2 is, again, a producer price
8 differential. Again, we have the actual producer
9 price differential, April of 2001 through June of
10 2004, and an estimate of producer price differential
11 if we had included the eligible producer milk that was
12 not pooled and excluded milk that was there from
13 Idaho.

14 Table 3, producer price differential
15 again. In this case we're going April 2001 through
16 June of 2004 for the actual, and an estimate by
17 including all eligible producer milk, and that
18 concludes the exhibits for Associated Milk Producers.

19 Q. And did you make any exhibits at the
20 request of Mr. John Vetne?

21 A. Yes, we did.

22 MS. DESKINS: Your Honor, if we could
23 have that marked as Exhibit 12?

24 THE COURT: Yes, so marked.

25 (Whereupon, Exhibit No. 12 was

1 marked for identification.)

2 BY MS. DESKINS:

3 Q. Could you please identify for us what
4 Exhibit 12 is.

5 A. Exhibit 12 contains 13 tables prepared
6 at the request of John Vetne.

7 Table No. 1 is a breakdown of pool
8 distributing plants for December 2003 on the Upper
9 Midwest Order by size range and their bulk receipts.
10 In the first column we have the respective size
11 ranges. For instance, the first number there, 25, is
12 greater than 25 million pounds of bulk receipts. In
13 the second column we have the number of plants or
14 units that make up that number. The third column is
15 the total receipts of bulk fluid milk products, and
16 the fourth column is their total Class I route
17 disposition.

18 Table 2 is a breakdown of pool
19 distributing plants by utilization for December 2003.
20 The first column is Class I utilization of the
21 respective plants. The second column is the number of
22 plants that are within that particular breakdown. The
23 third column is the Class I route disposition. The
24 fourth column is the percentage of the total Class I
25 route disposition. This is a percentage of the total

1 Class I route disposition for December 2003, and the
2 last column is milk that was used to produce in
3 Classes II, III, and IV.

4 Table 3 is one column of numbers from
5 July 2003 through June of 2004 that contains the
6 quantity of milk that went to used to produce Class
7 II, III, and IV products at pool distributing plants.

8 Table 4 is the milk that was physically
9 received at pool distributing plants by region. These
10 regions are listed in the footnote at the bottom
11 there. The regions are defined as: Region 1,
12 Illinois; Region 2, Eastern Wisconsin and Michigan
13 Upper Peninsula; Region 3, Southwestern Wisconsin and
14 Iowa; Region 4, Greater Minneapolis/St.
15 Paul-Rochester; Region 5, Northern Minnesota. These
16 regions were given to us by Mr. Vetne.

17 Table 5 is producer milk at pool
18 distributing plants for which the distributing plant
19 is the handler, and the respective pounds, July 2003
20 through June 2004.

21 Table 6 is the producer milk at pool
22 supply plants by class and the total for the month,
23 July 2003 through June of 2004.

24 Table 7 is the producer milk at pool
25 supply plants, in this case, by region, by class, July

1 2003 through June of 2004.

2 Table 8 is transfers and diversions to
3 pool distributing plants by pool supply plants by
4 region. The regions are listed for July 2003 through
5 June of 2004. The regions are listed in the
6 footnotes: Region 1, North Dakota, Minnesota, and the
7 western Wisconsin Counties of Pepin, Pierce, and St.
8 Croix; Region 2, Central and Eastern Wisconsin; Region
9 3, Iowa, lower Wisconsin, and Illinois. Again, these
10 regions were given to us by Mr. Vetne.

11 Table 9 is the classified producer milk
12 reported on 9(c) reports by Class I percentage
13 groupings. On this particular table, the first column
14 is the group. They were broken into four groups by
15 size. The next five columns are the respective pounds
16 in each class with the total, and at the last column
17 is the weighted average Class I percent of that group
18 of plants -- or of that group of reports, and that is
19 July of 2003 through June of 2004.

20 Number 10, the information is not
21 available, table 10.

22 Table 11 is the estimated volume of
23 producer milk that handlers would need to not pool to
24 meet the proposed diversion limits of 65 percent or 75
25 percent.

1 And Table 12 is the estimated total
2 producer milk to be pooled by handlers that filed 9(c)
3 reports, and we have a size grouping, and that size
4 grouping is listed in the footnote. We have the
5 number of handlers in each group, the estimated total
6 eligible milk to be pooled, estimated milk not pooled,
7 and the estimated percentage not pooled, December 2003
8 through May of 2004.

9 And Table 13 is the estimated total
10 producer milk eligible to be pooled by handlers that
11 did not file 9(c) reports. Again, we have the group
12 on the left-hand column, the number of handlers in
13 each group, estimated total milk eligible to be
14 pooled, estimated milk not pooled, and the estimated
15 percentage not pooled, and that is for December 2003
16 through May of 2004, and that concludes Mr. Vetne's
17 request.

18 MS. DESKINS: Your Honor, I move for
19 the admissions of Exhibits 9, 10, 11, and 12.

20 THE COURT: Any objection? They're all
21 received.

22 (Whereupon, Exhibit Nos. 9, 10, 11, and 12
23 were offered and received into evidence.)

24

25 BY MS. DESKINS:

1 Q. Mr. Schaefer, did you prepare any other
2 exhibits beyond what we've put in the record at this
3 point?

4 A. No, I did not.

5 MS. DESKINS: I have no further
6 questions, Your Honor.

7 THE COURT: All right. Questions?
8 Mr. English?

9 CROSS-EXAMINATION

10 BY MR. ENGLISH:

11 Q. Charles English for Dean Foods.
12 Mr. Schaefer, first let me -- certainly on behalf of
13 Dean Foods, though I think everybody that's
14 participating, thank you so much for this wealth of
15 information. I mean, it was hard work.

16 In a number of instances in these
17 tables, there is reference to eligible producer milk
18 not pooled. Could you tell us, for the record, I
19 think all of us in the room know what that means, but
20 for the record, what does that term mean to you?

21 A. That term is -- What we've done is
22 estimate the quantity of producer milk that could have
23 been pooled or would have been pooled under quote,
24 unquote, normal circumstances. It does not include
25 milk that was pooled on other Orders that may at one

1 time or another have been pooled on our market. It
2 does not include producers who are not eligible to be
3 pooled, Grade B, for instance.

4 Q. And now you've used the term under
5 normal circumstances. Pooled under normal
6 circumstances, would it be fair to say that is when
7 for the month the Class I price is higher than the
8 Class II price, and the Class II price is higher than
9 the Class III price, and the Class I and II are both
10 higher than III an IV, would those be normal
11 circumstances?

12 A. I would say normal circumstances would
13 occur when a handler feels that he either must pool,
14 because of the requirements of the Order, or there was
15 an economic incentive to participate in the pool.

16 Q. And the handlers that must pool, those
17 are generally Class I processors; correct?

18 A. Those are Class I plants, as well as
19 those plants and/or 9(c) handlers who supply milk to
20 those Class I plants.

21 Q. And those are the operations that must
22 pool; correct?

23 A. That is correct.

24 Q. For everyone else it's an economic
25 choice?

1 A. That is correct.

2 Q. And it's fair to say that at various
3 times economic choice is such that people choose not
4 to pool all the milk; correct?

5 A. That is correct.

6 Q. And citing an extreme example for a
7 moment, that would be a month in which the Class III
8 price was higher than the Class I and II price, that
9 would create an economic incentive for someone with
10 Class III milk not to pool; correct?

11 A. That would be correct.

12 Q. Okay, and when you say that in these
13 various tables you have made estimates, let me first
14 ask, to the extent you made estimates for all the
15 different participants, did you use the same
16 methodology for making those estimates?

17 A. Yes, we did.

18 Q. And are those estimates based upon
19 information that is available to you, based upon the
20 Market Administrator's position in the marketplace?

21 A. That is correct.

22 Q. Based upon the collection of records on
23 a normal basis?

24 A. Our estimate is based on one of two
25 factors. One is we asked the handler what milk they

1 did not pool for the particular month. If that is not
2 available, then we based our estimate on what the
3 handler has traditionally pooled in the past.

4 Q. And you've taken it upon -- your office
5 has taken it upon itself in the normal course of
6 business to ask handlers these questions?

7 A. That is correct.

8 Q. What percentage of the handlers, I
9 don't want to know names, what percentage of the
10 handlers would you estimate answered the question for
11 you?

12 A. 75, 80 percent.

13 Q. And if they answer the question, do you
14 nonetheless look at your books and records to make
15 sure that the answer you've been given is within the
16 ballpark that looks right to you, or do you just take
17 their word for it?

18 A. We look at what they've done in the
19 past, so we historically have an idea of what they
20 could amount to.

21 Q. And then you say for the 20 or 25
22 percent who don't respond, you nonetheless have books
23 and records, and you look at that and make estimates
24 based upon that?

25 A. That is correct.

1 Q. And based upon your years of experience
2 in this office, do you believe those estimates to be
3 reasonable?

4 A. Yes, I do.

5 MR. ENGLISH: Okay. That's all I have.
6 Thank you.

7 THE COURT: Other questions? Are there
8 any other questions? Mr. Beshore?

9 MR. BESHORE: Thank you, your honor.

10 CROSS-EXAMINATION

11 BY MR. BESHORE:

12 Q. Mr. Schaefer, I would also like to
13 thank you for the -- and your staff for the Gillman's
14 job that you've done in preparation for the hearing.
15 Let me turn first to Exhibit 5. Now, I want to look
16 at a couple of tables and see what we can learn about
17 changes in the utilization and the market between 2000
18 and the current time relating to Class IV utilization.
19 On Table 9 of Exhibit 5, the year 2000, is it correct
20 that there was no milk from the State of Idaho pooled
21 on Order 30 in the calendar year 2000?

22 A. That is correct.

23 Q. So that the 194 million pounds of Class
24 IV utilization in the Order for that year would have
25 been milk originating and processed in other locations

1 in the market?

2 A. Correct.

3 Q. Now, if you, just from the same page,
4 look at 2003 information. In the year 2003, total
5 Class IV utilization was 1 billion, 275 million
6 pounds, and additional particular pounds there, I
7 didn't spell it all out; is that correct?

8 A. Correct.

9 Q. Now, and as your information shows,
10 there was a substantial volume of milk from Idaho
11 pooled in Order 30 in 2003; correct?

12 A. That is correct.

13 Q. Now. I think we asked you, we being
14 the Mid-West Dairymen's Company, for whom you've
15 prepared Exhibit 9, we requested information with
16 respect to the percentage of milk diverted to
17 nonpooled plants in Idaho, Class III versus Class IV,
18 do you recall that?

19 A. Yes.

20 Q. And, in fact, if you look at Exhibit 9,
21 Table 4.

22 A. Okay.

23 Q. Okay. Does that indicate where we made
24 the request and what your response was?

25 A. Yes.

1 Q. And what was your response in that
2 case?

3 A. For Class IV?

4 Q. Yes.

5 A. We've got in the total of April 2001
6 through June 2004, 1,283,449,156.

7 Q. For the other shorter periods of time,
8 were you able to break out the volumes? For April of
9 2001 through December 2002, there was a restricted
10 volume, I think?

11 A. It was restricted.

12 Q. Okay. Now, have there been any new
13 nonfat, dry milk, powder plants constructed in the
14 States of Wisconsin or Minnesota in the last couple of
15 years, to your knowledge?

16 A. To my knowledge, there have been no new
17 butter-powder plants constructed.

18 Q. If we go back to Exhibit 5 again, one
19 of these tables shows the utilization by -- or broken
20 down between utilization at test for milk in Class IV.
21 Now, let's look at Table 11. If you look at Class IV
22 producer milk, the same 194 million pounds in the year
23 2000, 54,864,151 of those pounds was butterfat; is
24 that correct?

25 A. That is correct.

1 Q. Now, roughly what's the percentage of
2 product pounds of this butterfat there in 2000?

3 A. The pool as of a whole would be about
4 3.6, 3.7 --

5 Q. I'm sorry, I meant the Class IV
6 utilization. Milk that was -- producer milk used to
7 produce Class IV products during the year.

8 A. Just looking at that, about, what, 20
9 percent.

10 Q. 25 maybe?

11 A. 25, okay.

12 Q. Okay. Would that -- Now, that's much
13 higher than producer milk in the pool?

14 A. That is correct.

15 Q. Obviously. Now, would that indicate
16 that a lot of -- there was a lot of butter production,
17 high butterfat product production in that Class IV
18 utilization?

19 A. Certainly with a higher butterfat test
20 in there, it would indicate that more milk -- that a
21 higher fat milk went to -- or a higher allocation of
22 fat, than what was in producer milk went into Class
23 IV.

24 Q. Okay. Well, if you've got 25 percent
25 butterfat in the product pounds used to produce Class

1 IV, what products, besides butter, are more than 25
2 percent butterfat? Are there many Class IV products?

3 A. No.

4 Q. Now, if you go on to Table 11, to the
5 2003 figures, utilization for the year in Class IV,
6 can you calculate or estimate approximately the
7 percentage of butterfat in the 1.275 billion pounds of
8 producer milk used to produce Class IV in 2003?

9 A. Well, 3 to 4 percent.

10 Q. Okay. Which indicates quite a
11 different product mix for Class IV in 2003 versus
12 2000; correct?

13 A. That is correct.

14 Q. Okay. Now, let's talk about the PPD in
15 effect, and the PPD a little bit. First of all, maybe
16 I can ask you to explain or just break out, perhaps,
17 in, you know, in a couple sentences, if it's possible,
18 for this record, since we're going to be talking about
19 the PPD a lot, we already have negative PPD's and that
20 sort of thing, what the PPD is and how it's
21 calculated.

22 A. The PPD, in brief terms, is the
23 producer share of the market above or below the Class
24 III price for each of the respective classes.

25 Q. So when the PPD -- you talked a little

1 bit with Mr. English about, I think you called it
2 normal price scenarios, Class I and II higher than
3 Class III and IV. In those cases the PPD in that
4 scenario, the PPD is a positive number, generally
5 speaking?

6 A. Generally speaking.

7 Q. Okay, and if, again, referring to your
8 colloquy with Mr. English, when we have a situation
9 where the Class III price is higher than the Class I
10 price, the PPD can be a negative number?

11 A. That is correct.

12 Q. In fact, it has to be a negative
13 number, I guess?

14 A. Generally speaking, yes.

15 Q. Okay. Now, breaking it down a little
16 bit further, when -- is it not correct that butterfat
17 has almost the same value for its utilization in every
18 class, I, II, III and IV?

19 A. Class III and IV, butterfat is the same
20 price. Class II butterfat is 70 cents greater than
21 that.

22 Q. Per?

23 A. Per 100.

24 Q. Per 100 pounds?

25 A. Per 100 pounds, and Class IV can vary

1 -- or excuse me. Class I can vary considerably,
2 because it is forward priced versus the II, III, and
3 IV butterfat, and so there can be a significant
4 difference between Class I and the other classes.

5 Q. Okay. Now, let's just talk about Class
6 III and IV. I think you said the price of butterfat
7 in those classes is exactly the same; correct?

8 A. That is correct.

9 Q. So, then, if we're talking about the
10 affect on PPD, utilization of butterfat to produce
11 Class IV products and Class III products is exactly
12 the same, so there's no affect, in essence?

13 A. That is correct.

14 Q. But, when we're talking about protein
15 or other solids used to produce Class IV, it's priced
16 differently than Class III; correct?

17 A. That is correct.

18 Q. So that in 2003, when, you know,
19 roughly 95 percent plus of the producer milk in Order
20 30 used to produce Class IV product was nonfat solids
21 or protein, not butterfat, you had a situation where
22 there could be significant affects on the PPD, is that
23 correct?

24 A. That is correct.

25 Q. And, in fact, there were significant

1 affects?

2 A. Yes.

3 THE COURT: Did you get an answer to
4 that?

5 THE WITNESS: Did you get it? Yes.

6 BY MR. BESHORE:

7 Q. If you turn to Table 5B, page 27 of
8 Exhibit 9, this is another calculation that the
9 producers who I represent requested. If you look at
10 April 2004, does that indicate that in that month the
11 Class IV contribution to the producer price
12 differential was negative \$1.01?

13 A. That is correct.

14 Q. Now, that's quite different than the
15 figure for March, which is March 2004, on the top half
16 of that table, which is 8 cents; correct?

17 A. Correct.

18 Q. Did that relate to the change in
19 basically the price of cheese from month to month
20 there, so that there was a bigger difference in the
21 producer protein value in April than in March?

22 A. The price spread would have had -- the
23 volume of the price spread really has two parts. The
24 volume, number one, and number two, the difference in
25 the Class III price versus the Class IV price, and in

1 particular the Class III skim versus the Class IV
2 skim.

3 Q. Now, if you look at Table 9 of Exhibit
4 5, and you see that for March and April 2004, the
5 pounds of producer milk in Class IV were within 2
6 million pounds of each other. Do you see that, 120
7 million and 118 million?

8 A. Yes.

9 Q. Okay, so with the volumes being
10 similar, the difference, in effect, on the PPD on
11 Table 5B of Exhibit 9 would be tilted towards the
12 difference in the skim value of III versus IV, I would
13 assume?

14 A. I would agree with that.

15 Q. Let me turn back to a few other
16 questions on Exhibit 5. In Table 1, which has a
17 couple of subsets of lists, I have noted that there
18 are some cooperative associations that appear on the
19 qualified cooperative associations list, but not on
20 the other lists for handlers operating plants or
21 cooperative associations acting as handlers; is that
22 true?

23 A. That is true.

24 Q. And one of those would appear to be
25 Northwest Dairy Association of Seattle, Washington; is

1 that correct?

2 A. That is correct.

3 Q. What is -- Tell us how that works.

4 A. In the Upper Midwest Order, we do have
5 various cooperatives who market their milk through
6 another cooperative, and so they do not show up as a
7 filing, if they do not file a 9(c) report and they do
8 not have a plant on our market.

9 Q. But they, nevertheless, are a qualified
10 cooperative association, because members of the
11 association are pooling their milk on Order 30?

12 A. That is correct.

13 Q. With respect to table -- the tables of
14 producers, producer locations, and starting with Table
15 13, I guess, in Exhibit 5. Are there, under present
16 configurations, all milk is eligible to be pooled, are
17 there, what, roughly 15,000 producers in supplying
18 Order 30?

19 A. We have between 15 and 16,000.

20 Q. Okay. Now, when milk comes on and off
21 the pool in Order 30, what is required under present
22 circumstances once it's depooled in order to be
23 repooled?

24 A. If the producer did not lose Grade A
25 status for a calendar month or was not pooled on

1 another Order, all the handler has to do is report
2 that producer on their report, they do not have to
3 touch base.

4 Q. Okay, so to make sure we understand
5 that completely, take 2004, and I'm looking at Table
6 20, and you've got in January, 15,902 producers pooled
7 on the Order, and then April you have 6,131 -- by the
8 way, do you know what the numbers are for May and
9 June? It's probably in another table here somewhere.

10 A. Yes. Those were contained in Exhibit
11 8.

12 Q. How many producers are back on in June?

13 A. June we have 15,387, and that is a
14 preliminary number, as we pointed out earlier.

15 Q. Okay. Was April the low point with
16 6,000?

17 A. I would say so far this year, that is
18 correct.

19 Q. Okay, so to go from 15.9 down to 6,000,
20 back up to 15.8 or .9 preliminary for June, is it your
21 testimony that under present regulations in Order 30,
22 this requires nothing more than the changing of the
23 milk on the monthly reports by the handler off the
24 pool and then back on it?

25 A. Based on the -- if the producer was not

1 degraded for the calendar month, as I mentioned, and
2 was not pooled on another order, than the handler may
3 put that producer on their report in the month of
4 June, and that milk will be pooled.

5 Q. By the same token, in order to take
6 them off in April or March from February, they would
7 simply remove them from their report?

8 A. That is correct, as long as the
9 producer did not go into a pool plant.

10 Q. And that's the case, irrespective of
11 the producer's location in Idaho or Wisconsin or Iowa,
12 or wherever they may be?

13 A. That is correct.

14 Q. In order to be initially pooled
15 presently in Order 30, would I be correct to say that
16 you must deliver, what, one day's production to a pool
17 plant; is that --

18 A. During the first month that you are a
19 participant in the order, that's correct.

20 Q. And after that one day's delivery
21 during the first month, as long as you're not degraded
22 or don't ship to another Federal Order, whether you're
23 pooled or not is subject to your handler's reporting
24 you as pooled or not pooled?

25 A. That is correct, unless for some reason

1 the handler puts you into a pool plant, and then you
2 would be pooled.

3 Q. And those are the plants that
4 Mr. English inquired about that are -- must be pooled?

5 A. For the most part, yes.

6 Q. Let me turn to Table 2 of Exhibit 9.
7 Let's go there, Mr. Schaefer. Okay. The total line
8 here, would I interpret this correctly that that is
9 the total deliveries since January of 2000 of Idaho
10 producer milk to Order 30, the total universe of Idaho
11 producer milk pooled on Order 30, January 2000 through
12 May 2004?

13 A. Yes.

14 Q. And of that 4.725 billion pounds of
15 milk, only 3,186,515 pounds were delivered to Order 30
16 distributing plants?

17 A. That is correct.

18 Q. They're the Class I plants in the
19 Order, basically. Another, just less than 10 million
20 were delivered to pool plants. What -- Pool plants
21 that are not distributing plants, what would they be
22 in Order 30?

23 A. In this case, the delivery to pool
24 plants includes both deliveries to the distributing
25 plants and the supply plants.

1 Q. Gotch' ya. So the deliveries to pool
2 plants, not distributing plants, was less than 7
3 million pounds?

4 A. Correct.

5 Q. And what types of facilities might they
6 be?

7 A. Those would be pool supply plants.
8 Plants that ship to the Class I marketplace, but do
9 not have packaging, Class I packaging at their plants.

10 Q. Okay. In order to be pool plants, they
11 must ship -- pool supply plants, they must ship a
12 designated percentage of their receipts at each month?

13 A. They must ship 10 percent of their bulk
14 receipts to a distributing plant each month, unless
15 they are in a supply plant system, in which the supply
16 plant system must ship 10 percent of the bulk receipts
17 of the system. Individual supply plants within a
18 supply plant system do not have to ship.

19 Q. Are there any other Order 30 pool
20 supply plants in the state of Idaho?

21 A. There are not.

22 Q. Were there during the period from
23 January 2000 through May of 2004 depicted on Table 2
24 of Exhibit 9?

25 A. No, there were not.

1 Q. Now, the single day's delivery to
2 qualify a producer for pooling on the Order maybe to a
3 supply plant -- to any pool plant; right?

4 A. To any pool plant, that is correct.

5 Q. So, of the Idaho producer milk, less
6 than 10 million pounds was delivered to pool -- to
7 Order 30 plants out -- which were somewhere outside
8 the State of Idaho?

9 A. Correct.

10 Q. And the other 4.7 billion was processed
11 at nonpool plants, you know, wherever the handlers
12 diverted it?

13 A. That is correct.

14 Q. Is there any exhibit that shows how
15 much that was processed right at home in Idaho?

16 A. I don't believe there is. I take that
17 back. Table 4 in Exhibit 9 is milk diverted to Idaho
18 nonpool plants.

19 Q. And is this -- This is Order 30
20 producer milk diverted to Idaho nonpool plants;
21 correct?

22 A. Correct.

23 Q. That would be milk, regardless of state
24 of origin?

25 A. That is correct.

1 Q. So when the total number of Table 4 is
2 slightly greater than the total number on Table 2, it
3 would appear that there is Order 30 pooled milk that
4 gets to some of those Idaho manufacturing plants from
5 outside the State of Idaho?

6 A. That is correct.

7 Q. Let's turn to 5A, the next page of
8 Exhibit 9. Can you tell us how you estimated the
9 producer price differential without Idaho milk?

10 A. We took the blend price computations
11 for each of the respective months in an aggregate. We
12 took the Idaho milk from our state numbers that are in
13 the Table 5, subtracted those out from the respective
14 classes that they were pooled in, and reran the PPD
15 computation, the producer price differential
16 computation.

17 Q. Now, if you look at the average for
18 each year, the impact on the PPD in 2001 and 2002 was
19 minimal, but in 2003 and 2004, it's a little
20 different. Is that a product of both volume and class
21 values of the Idaho milk?

22 A. I would agree with volume and class
23 values, and, of course, the class, respective class
24 prices.

25 Q. If you look at May 2004, the difference

1 between the actual PPD and the estimated PPD without
2 the Idaho milk is, if my arithmetic's right, 82 cents?

3 A. Correct.

4 Q. Now, May 2004 was a month when most of
5 the Class III milk in the Order, regardless of where
6 it was located, was depooled; correct?

7 A. Correct.

8 Q. So in that month the PPD affect is
9 going to be primarily the impact of volume of Class IV
10 utilization, and since it wasn't -- there was very
11 little Class III volume and Class IV and the
12 relationship with the Class IV skim milk value to the
13 Class III skim milk value; correct?

14 A. Correct.

15 Q. Let's turn to the next page, Tables 5C
16 and D. Now, you were asked to do so many charts and
17 so many calculations, I think we forgot to ask for
18 zero on these. Is that a number that can be readily
19 calculated, the zero column on, say, 2003 on 5D? Or
20 maybe you've got it on another table already, and I'm
21 not aware of it.

22 A. There are, I believe there's another
23 exhibit that contains a table that has none of the
24 eligible milk on it, but it's not by class.

25 Q. Would it be possible for you to extend

1 these tables by class to a zero column, 5C and D?

2 A. Yes, it would.

3 Q. Could I ask you to do that?

4 A. Yeah, I can do that.

5 Q. Thank you. Now, let's turn to Table 6
6 and 7 on Exhibit 9. If you look at Table 6, and
7 actually I just want to talk about 6, not 7, but if
8 you look at Table 6.

9 A. Yes. Okay.

10 Q. Okay. In month 4, would -- if there
11 was a number on there for month 4 and the same
12 methodology from month 1, month 2, month 3, would
13 month 4 be zero, all the milk back in the pool?

14 A. In this particular example, at the end
15 of month 3, all of the milk would be, yes, the 4th
16 month, then, so if let's say months were January,
17 February, March, and then April would be 100 percent.

18 Q. Okay. So, if someone was interested in
19 knowing how much milk could continue to be depooled
20 and how long it would take to repool it under Proposal
21 2 with 125 percent limit on repooling, does this
22 basically show that you can depool 49 percent the 1st
23 month, and by the 4th month you're 100 percent back on
24 the pool?

25 A. That is correct.

1 MR. BESHORE: I think those are all the
2 questions I have at the moment, Your Honor.

3 THE COURT: Very good. Other
4 questions? Are there any other questions out there?
5 Yes, Mr. English.

6 RECROSS-EXAMINATION

7 BY MR. ENGLISH:

8 Q. Charles English for Dean Foods. I want
9 to first follow-up with the last set of questions by
10 Mr. Beshore, and I don't mean to play word games, but
11 I want to see if I understand it correctly. Looking
12 at Exhibit 9, Table 6 and 7, and the heading is
13 "Estimated Volume of Maximum Milk Allowed to be
14 Depooled at each Percentage Depooling Limit." Would
15 it be fair to think of that as a repooling limit?
16 Because this really is, you bring the milk back on --
17 I'm just trying to --

18 A. In this particular instance, what it's
19 saying is that in month 3 you could select to not pool
20 20 percent of your milk, if in the next month you
21 think that you want to pool at all.

22 Q. Right, so it's really a 20 percent
23 depooling limit, flip side 125 percent repool? I'm
24 just trying to be clear for myself when I argue this
25 on brief, because I think it's more of a repooling

1 limit, not a depooling limit, does that make since?

2 A. I guess I would have to agree with
3 that.

4 Q. Going back to some of the questions by
5 Mr. Beshore, and your answer that as long as the milk
6 goes into a pool plant, is it the case in Order 30, as
7 in some other Orders, that supply plants can be split
8 plants?

9 A. That is correct.

10 Q. And by that we mean that a supply plant
11 can have a pool plant side and a nonpool plant side?

12 A. That is correct.

13 Q. Do many supply plants in the Order 30
14 market have split plants?

15 A. Many of them do, yes.

16 Q. So going back to Mr. Beshore's
17 questions about just moving it off on the paper, they
18 could still put it in the same plant, but they just
19 put it in the other side of the plant for the month
20 they want to not pool it; correct?

21 A. They could put it into their nonpool
22 plant, that is correct.

23 Q. And the nonpool plant happens to be in
24 the same facilities, it just has a separate side;
25 correct?

1 A. That is correct.

2 Q. And as you say, many supply plants in
3 Order 30 have split plants; correct?

4 A. That is correct.

5 Q. Turning to Exhibit 10, Table 5, and I'm
6 sorry, I meant to ask you these questions earlier.
7 This is your calculation for us of producer Price
8 differential, Class I, II, IV, and miscellaneous
9 contribution for the producer price differential.
10 Could you please describe for the record what you mean
11 by miscellaneous miscontribution.

12 A. Okay. Miscellaneous contribution
13 includes a number of things that are included in the
14 computation of the producer price differential, among
15 these are overage, inventory reclassification,
16 transportation and assembly credits, producer location
17 adjustment, other source values, and one-half the
18 unobligated balance of the PSF and the PSF user
19 computation.

20 Q. PSF, meaning producer settlement fund.

21 A. Producer settlement fund, correct.

22 Q. Now, I note that -- Would you agree
23 with me that in years 2000, 2001, and 2002, not only
24 is the average relatively the same, but the range
25 within that average does not change very much within

1 those, by about a penny or two. For instance, in 2002
2 it's from 6 cents to 8 cents; correct?

3 A. Oh, on the miscellaneous contribution?

4 Q. The miscellaneous contribution, yes.

5 A. Yes.

6 Q. Can you tell me what would explain the
7 larger range of, say, in 2003 rising to 11 cents in
8 July, down to 1 cent in November of 2003, rising back
9 to 11 cents in March of 2004?

10 A. Certainly some of the factors that go
11 into this thing change very little from month to
12 month. Transportation and assembly credits are based
13 on the Class I utilization, and so are relatively
14 constant from month to month. Overage and inventory
15 reclassification changes month to month, so that could
16 be part of it. One of the other things that changes
17 significantly when you have not pooling is the
18 one-half unobligated balance in the producer
19 settlement fund. I believe it has ranged as high as
20 almost a \$1 million down to \$250,000.

21 Q. That is to say, in a month when
22 suddenly the milk isn't pooled, the remaining
23 producers, in order to keep the reserve, have to make
24 a miscellaneous contribution, effectively?

25 A. No. What I'm saying is, when you go

1 from a large pool month to a small pool month, you
2 carry the one-half unobligated from the large month
3 into the next month, but then when you go to the
4 second month of those three months, or actually the
5 third month of those three months, that one-half
6 unobligated balance has gotten considerably smaller,
7 because in month 2 you only put -- you put a
8 relatively small amount of money back into the
9 producer settlement fund reserves, and so it has
10 gotten smaller, and as you pool less and less milk,
11 that has a tendency to get smaller and smaller. When
12 you start to pool greater quantities of milk, then it
13 grows larger.

14 Q. But nonetheless, the fact that the two
15 months in which it was 11 cents, the miscellaneous
16 contribution, is the same month in which we had
17 significant depooling; correct?

18 A. That is correct.

19 MR. ENGLISH: That's all I have. Thank
20 you.

21 THE COURT: Any other questions?
22 Mr. Vetne?

23 CROSS-EXAMINATION

24 BY MR. VETNE:

25 Q. Good afternoon. John Vetne, V-e-t-n-e.

1 If you'll turn with me for a moment to Exhibit 6,
2 estimated eligible producer milk not pooled. My
3 recollection, sir, is you previously described
4 eligible milk not pooled in terms of something that
5 happens when class prices are out of ordinary sync,
6 something like that; is that correct?

7 A. Okay. That's correct.

8 Q. And I'm observing in 2001 through --
9 2000 through 2002, there is milk depooled every month,
10 actually not that much different from month to month.
11 Are there other factors that you're aware of that
12 enter into a depooling decision?

13 A. I believe that handlers will elect to
14 not pool if there is no economic incentive to
15 participate in the pool.

16 Q. Let me dissect that. Are there, in
17 your view, economic factors, other than differences
18 between class prices or between class prices and blend
19 prices that contribute to that decision?

20 A. That is correct. Well, let me back up.
21 In most of these cases, I would say that it is a class
22 price relationship. It is not necessarily an
23 inversion of class prices, but it is such that there
24 is no economic incentive because of the relative class
25 prices and the makeup of the handler's usage of that

1 milk that warrants them to not -- to elect to not
2 pool.

3 Q. So, for example, the cost of doing what
4 is necessary to pool might contribute to a decision
5 not to pool?

6 A. That is a possibility.

7 Q. The cost of nonprice assessments might
8 contribute to a decision not to pool?

9 A. That is correct.

10 Q. In your estimate -- In your estimates
11 of eligible producer milk not pooled, did you
12 essentially include all Grade A milk produced in the
13 Upper Midwest area?

14 A. No, we did not.

15 Q. Did you -- Did you exclude from
16 eligible milk not pooled Grade A milk that is
17 voluntarily not pooled anywhere?

18 A. If it is -- If the milk was not a part
19 of the Federal Order, at this point in time we did not
20 include it, so if milk had not been voluntarily pooled
21 for a period of time, we would not have included it.

22 Q. Okay. In looking at the Class IV
23 utilization, I think in response to questions by
24 Mr. Beshore, for 2000 you and he agreed that there
25 wasn't any Idaho milk included in that Class IV

1 number, and Mr. Beshore said, "So this would be Class
2 IV milk pooled at other locations in the market," to
3 which your answer was in the affirmative. Do you
4 recall that colloquy?

5 A. Yes.

6 Q. Would it not also be the case that if
7 milk is classified as Class IV in Order 30, it could
8 have been diverted to a plant with Class IV use
9 anywhere in the United States, it didn't necessarily
10 have to be used in the market?

11 A. That is correct.

12 Q. So we don't know where the Class IV
13 milk went during the months of 2000 from the exhibits
14 that have been prepared so far?

15 A. That is correct.

16 Q. Okay. In various exhibits, I'm looking
17 now at Exhibit 9, Table 3A, Page 4, there's reference
18 to a producer price differential, which is what we've
19 been referring to as PPD; correct?

20 A. Correct.

21 Q. And there's data concerning PPD from
22 1997, 1998, and 1999. Were producer prices announced
23 the same way during those years as they have been
24 since 2000?

25 A. No, they are not.

1 Q. How were producer prices announced
2 differently prior to 2000?

3 A. Prior to 2000, first of all, the Class
4 I price was announced two months prior, rather than
5 one month prior that we're doing currently, and the
6 Class III price component levels were computed
7 differently.

8 Q. Okay, so the Class I prices here are
9 actual as announced two months -- from the second
10 preceding month?

11 A. That's correct.

12 Q. Not necessarily two full months in
13 advance, but the second preceding month?

14 A. That's correct.

15 Q. And prior to the year 2000, how long
16 had the term producer price differential or PPD been
17 in use by the system?

18 A. In the Upper Midwest area, since the --
19 I believe it was in '96 when we went to component
20 pricing. I don't remember the exact month. Prior to
21 that, we talked about blend price or a uniform price.

22 Q. The producer price differential, or
23 PPD, for the pre-2000 period as well as the post-2000
24 period in your exhibits, would it be correct to say
25 that that is an arithmetic calculation of the

1 difference between the average blend price and the
2 Class III price?

3 A. On a gross basis, I would agree with
4 that.

5 Q. Okay, so if we wanted to compare apples
6 to apple as much as possible, and go back a bit
7 further, back when we used the term uniform price or
8 blend price, we could look at the difference between
9 the blend price and the Class III price and use the
10 same term, PPD, to apply to it?

11 A. I would believe so.

12 Q. And in each of these cases, we are --
13 in using a calculated -- a PPD, we're not comparing
14 the Class I price to the Class III price which drove
15 or defined the Class I price, are we?

16 A. That is correct.

17 Q. We're comparing the Class I price to a
18 Class III price that will move the market in the
19 future?

20 A. We are comparing it to a Class III
21 price of a different month than what was used to
22 calculate the Class I price.

23 Q. By definition -- Well, first of all, in
24 recent months, the Class III price has been the Class
25 I price?

1 A. That is correct.

2 Q. And in the first year to reform the
3 Class IV price?

4 A. I believe for the most part that is
5 correct.

6 Q. And by definition, the Class I price,
7 whatever the mover is, is a differential above the
8 mover?

9 A. That is correct.

10 Q. And negative PPD's appear
11 arithmetically when the Class III survey price moves
12 up within a month to a degree that is higher than the
13 differential between the Class I price and the Class
14 III price?

15 A. In most cases, that is correct.

16 Q. Okay. In Table 2 of Exhibit 9,
17 referring to Idaho milk, is that exclusively milk
18 originating in the Idaho farms, all of it?

19 A. Yes.

20 Q. So there would be no Oregon milk or
21 Montana milk included in those numbers, even though
22 there was some milk from those two states?

23 A. That is correct.

24 Q. You referred to the mailbox price in
25 your testimony, and I think it was Exhibit 5. How's

1 the -- what is the mailbox price, and how is it
2 calculated?

3 A. Okay. The mailbox price is defined as
4 the net price received by dairy farmers for milk,
5 including all payments received for milk sold and
6 deducting costs associated with marketing the milk.
7 All payments for milk sold include, where applicable:
8 Over-order premiums; quality, component, breed, and
9 volume premiums; payouts from state-run over-order
10 pricing pools; payments from superpool organizations
11 or marketing agents; payouts from programs offering
12 seasonal production bonuses; and monthly distributions
13 of cooperative earnings.

14 Costs associated with marketing milk
15 include, where applicable: hauling charges,
16 cooperative dues, assessments, equity deduction,
17 capital retains, and reblends.

18 Q. Okay. If the deduction for hauling is
19 less than the cost of hauling, is there an attribution
20 of income or additional mailbox priced to the
21 producer?

22 A. The cost of hauling that they -- is
23 used in the calculation of mailbox price is the cost
24 of hauling that reported by the handler for that milk.
25 It does not include an estimate or some other cost

1 figure of what actual hauling costs might be, relative
2 to what was charged the producer.

3 Q. So if the cost of a haul were -- if the
4 actual cost of a hall were a dollar, and the producer
5 was charged 50 cents, you would not show in the
6 mailbox price a 50 cent premium?

7 A. That is correct.

8 Q. In Table 9 of Exhibit 9, you report
9 milk as a percentage of the prior month?

10 A. Correct.

11 Q. Are the percentage figures unadjusted
12 for differences in number of days?

13 A. That is correct. They're just taking
14 the volume of milk that is there and dividing it.
15 There is no adjustment for days.

16 Q. All right. Looking at, briefly at
17 Table 6 and Table 7.

18 A. Same exhibit?

19 Q. Same exhibit, yes, Exhibit 9. I think
20 -- I thought I understood it, and then there was some
21 questioning, and then I came confused. Let me work
22 backwards here. Table 6, I'm looking at month 3, all
23 right?

24 A. Okay.

25 Q. Which is what's confusing to me. Table

1 6, Month 3. Exhibit 9, Table 6. If I'm a handler and
2 I depool 20 percent of my milk, I can have all my milk
3 repooled one month later?

4 A. The next month, that is correct.

5 Q. And if I'm a handler and depool 36
6 percent of my milk, I can have all my milk repooled
7 two months later?

8 A. That is correct.

9 Q. And then they also calculated for 49
10 percent. I could have all my milk repooled three
11 months later?

12 A. That is correct.

13 Q. During this past spring there have been
14 some handlers that depooled in excess of 90 percent of
15 their Class III milk; is that correct?

16 A. I believe so.

17 Q. Have you calculated, or do you have an
18 opinion on how many months it would take to bring back
19 all of the producer milk under either of these
20 proposals, if 90 percent were depooled in a month?

21 A. We have not calculated it.

22 Q. And am I correct that if a handler
23 depools 100 percent of milk, that for the rest of
24 eternity milk could not be repooled under these
25 proposals?

1 A. I don't believe that's correct, but I
2 think that proponents of those proposals need to
3 answer that.

4 Q. Okay. Are you going to be present and
5 available during the next few days incase we have more
6 questions as these exhibits are placed in context in
7 people's testimony?

8 A. Yes, I will.

9 MR. VETNE: Thank you.

10 THE COURT: Any other questions? I
11 think not. I thank you very much, sir. Why don't we
12 take a quick -- did you have one question?

13 MR. BESHORE: Yeah.

14 THE COURT: All right. Back up there.
15 Okay, Mr. Beshore.

16 REXCROSS-EXAMINATION

17 BY MR. BESHORE:

18 Q. Mr. Schaefer, Exhibit 6.

19 A. Exhibit 6, okay.

20 Q. In 2000 and 2001 --

21 A. Yes.

22 Q. -- in that time period when there were
23 relatively steady amounts of estimated eligible milk
24 not pooled in Order 30, do you know if that related at
25 all to -- we haven't talked about Class II depooling,

1 but when would Class II depooling occur? When the
2 Class IV price is high relative to Class III?

3 A. That is correct. Class II is priced
4 directly at -- or the skim fraction of Class II is
5 priced directly off of Class IV, the mover, and so IF
6 there was no economic incentive for the Class II
7 handlers to participate, they would elect to not pool
8 in all likelihood.

9 Q. Speaking generally, during 2000 and
10 2001, was the class IV price relatively -- well, was
11 it the mover most of that time period, for Class I?

12 A. Yes, it was.

13 Q. So it was higher than Class III most of
14 that time?

15 A. That is correct.

16 Q. And do you know, or can you testify
17 that in, you know, in Order 30 there are a number of
18 dedicated Class II nonpool plants, which may, when
19 there's an economic reason, not pool their plant?

20 A. That is correct.

21 Q. Okay. If you turn to Exhibit 9, I want
22 to get back to Table 5C. I asked a couple of
23 questions about this, but I think I have a couple
24 more. In both your methodology, both 5C and 5D, how
25 did you estimate the contribution or the affect on the

1 PPD of these various levels of pooling Class IV or
2 Class III milk?

3 A. We determined the eligible quantity of
4 the respective class and then applied the percentages
5 to that quantity.

6 Q. So if you take the actual PPD, I'm
7 looking at 5C now, for Class IV, the first column to
8 the right of that, which is 100 percent, generates a
9 PPD number that's different than actual. What's
10 reflected there? Help me with that a little bit.

11 A. Well, one of the things in this
12 particular table is we're only applying eligible Class
13 IV producer milk, and so we're not doing anything to
14 the Class III in this particular case, so we've taken
15 the producer price differential computation and looked
16 at the eligible Class IV milk only and applied the
17 respective percentages to that.

18 Q. And so if 100 percent of the Class IV
19 that was eligible had been pooled, the PPD would have
20 been reduced, in January of 2003 would have been
21 reduced slightly?

22 A. Correct.

23 Q. 3 cents. Now, and the reduction is
24 less as less of that milk is pooled?

25 A. That is correct.

1 Q. And for 5D, was the same methodology
2 used with respect to Class III?

3 A. That is correct.

4 Q. And, again, it was just Class III
5 producer milk?

6 A. That is correct.

7 Q. So if you look at April 2004 in Table
8 5D, the actual PPD for the month was negative \$4.11;
9 correct?

10 A. Correct.

11 Q. But if all the Class III milk had been
12 pooled, it would have been a negative \$1.14?

13 A. That is our estimate, correct.

14 Q. Your estimate. Okay. In Exhibit 9, I
15 would like to turn to Tables 11A and 11B. What's the
16 difference between net Class I contribution to the PPD
17 and net Class I obligation to the pool?

18 A. Okay. In the net Class I contribution
19 to the PPD, we're basically taking the Class I value
20 of the milk and subtracting the Class III value of the
21 milk, or the producer value of that milk. In 11B,
22 we're taking the Class I value of the milk and
23 subtracting off the producer value of the milk, plus
24 the PPD. In essence, 11B is what is commonly called
25 the draw, and certainly on Class I in most instances

1 the draw is a pay-in for Class I.

2 Q. Okay, so 11B is the handler's
3 obligation to either pay in or draw from the pool in
4 order to pay its producers the minimum pool values?

5 A. That is correct.

6 Q. And, of course, for Class I handler's,
7 it's a pay-in figure in all cases?

8 A. I believe in every month it is a
9 pay-in, that is correct.

10 Q. Now, I'd like to turn to Table 5 of
11 Exhibit 10 for a minute, and this is the table in
12 which at Dean Foods' request you broke out the various
13 contributions to the producer price differential.
14 Talk about the miscellaneous contribution for the
15 moment. If you've got a steady -- the add back of
16 one-half the unobligated balance, if you have a steady
17 volume of milk in the pool, is that usually, what, 4
18 cents a hundredweight, or?

19 A. If I recall correctly, on a
20 hundredweight basis, I'm not sure. It runs in the
21 neighborhood of, oh, 850 to \$950,000.

22 Q. Okay, so that if you're pooling --
23 what's the -- if eligible milk is pooled year round,
24 you average something less than 2 billion per month?

25 A. We have been, yes.

1 Q. So it's maybe 4 to 5 cents --

2 A. Yes.

3 Q. -- or maybe a little more than 5 cents?

4 A. Yes.

5 Q. Somewhere in that area?

6 A. Yes.

7 Q. Okay. So with, you know, with constant
8 pool volumes, miscellaneous contributions, it's just a
9 sort of an in and out every month of the -- on the
10 blend price that reserve gets added to the price on
11 one hand and maintained with it being backed out on
12 the other hand?

13 A. That is correct.

14 Q. But when pool volumes fluctuate with
15 depooling, the equation, or the fraction, I guess I
16 should say, the new denominator gets all -- the
17 numerator and denominator just gyrate all over the
18 place, and you get different results?

19 A. Yes.

20 Q. Now, the other elements of contribution
21 to the PPD on Table 5, are they -- basically, if you
22 just look at the class prices and -- can you come
23 close to figuring those things out, or is it a little
24 more complicated than that?

25 A. It's actually a little more complicated

1 than that, because you also, one of the issues you
2 have is you do not have comparable tests between
3 producer milk and the various classes. For instance,
4 in Class I we average approximately 1.5 percent
5 butterfat. The producer milk is about 3.6 to 3.7, and
6 so it's more complicated than just using the 3.5.

7 Q. Basically you've got to look at the
8 skim utilization in each class, which is one of the
9 biggest differences in the PPD value?

10 A. You have to look at that, that's one of
11 them, correct.

12 Q. Okay. Now, on Table -- on Exhibit 5, I
13 asked you about the roles of handlers on various parts
14 of the listing. I probably didn't elicit that as
15 fully as I need to. The cooperative associations,
16 which do not act as handlers, what's their function in
17 the Order? What are the things they do for the
18 producers in order to be recognized here?

19 A. They have to test producers' milk, they
20 have to supply market information for those producers,
21 and market their producer's milk.

22 Q. And all of those functions, regardless
23 of whether they file a pool report or don't, they have
24 to do all those things?

25 A. I believe that's correct.

1 Q. Okay, and those are representation
2 functions which are, you know, overseen by Dairy
3 Program staff, by your Market Administrator's staff?

4 A. That is correct.

5 MR. BESHORE: Thank you, Mr. Schaefer.
6 Thank you, Your Honor.

7 THE COURT: Your welcome. Is there
8 anything further for this witness? Okay. Now, we'll
9 make it official. Let's take a 5-minute recess, and
10 when we come back, who should we start with? Do you
11 have one more question?

12 MR. ENGLISH: No. There's another
13 Market Administrative witness, I believe.

14 THE COURT: Oh, we have another Market
15 Administrative witness?

16 MS. DESKINS: Yes. I guess Dean Foods
17 is going to call them.

18 THE COURT: Oh, you're going to call.
19 Okay. Well, do want to go with them first --

20 MR. ENGLISH: Well, it just makes sense
21 to have -- even though we're the one calling, it makes
22 sense, just like with this --

23 THE COURT: Sure, yeah, sure. Okay,
24 we'll start with them when we come back. Let's take a
25 10-minute recess.

1 (Recess taken from 3:15 to 3:30 p.m.)

2 THE COURT: Back on the record. Yes.
3 Let's get your full name. Would you face me and raise
4 your right hand.

5 SHARON UTHER,
6 after having been first duly sworn by
7 the Court, says under oath as follows:

8 ***

9 THE WITNESS: I do.

10 DIRECT EXAMINATION

11 BY MR. ENGLISH:

12 Q. Would you state your full name for the
13 record.

14 A. Okay. Sharon Uther, S-h-a-r-o-n,
15 U-t-h-e-r.

16 Q. And by whom are you employed?

17 A. The Market Administrator's Office in
18 Cleveland, Ohio, Federal Order 33.

19 Q. And Dean Foods has asked you prepare
20 certain information for this record?

21 A. Yes.

22 Q. And that information was not requested,
23 other than by Dean Foods; correct?

24 A. No, it is not.

25 Q. And what have you brought with you

1 today?

2 A. I have a two-page document. There are
3 some copies in the back, and I believe they just made
4 some more copies. It is the "Mideast Marketing Area.
5 Federal Order 33. Pounds of Milk Pooled by State for
6 June 2003 and 2004," and also for February of 2003 and
7 2004.

8 MR. ENGLISH: Could we have these
9 marked, Your Honor?

10 THE COURT: We're going to mark these
11 as Exhibit 13.

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

14 THE COURT: Incidentally, I understand
15 there was some copies of other exhibits that weren't
16 available, and I think that they had handed out from
17 before, and they're in the back of the room, if you
18 didn't get some of the exhibits earlier today. All
19 right. I'm sorry, go ahead, Mr. English.

20 MR. ENGLISH: That's quite all right.
21 We'll have more in a few minutes.

22 BY MR. ENGLISH:

23 Q. Is this information taken from the
24 books and records of the Order 33, Market
25 Administrator's Office?

1 A. Yes.

2 Q. And could you briefly describe, you've
3 mentioned the month, but could you briefly describe
4 what it shows in each instance for June and February?

5 A. It is the pounds of milk pooled by
6 state, and we have shown Michigan, Ohio, Wisconsin,
7 New York, Indiana, Pennsylvania, Illinois. In June we
8 also had Vermont, West Virginia, and then a group of
9 other states, which includes the states of Maryland
10 Kentucky, Iowa, Minnesota, and New Jersey.

11 Q. And was this prepared under your
12 direction and control?

13 A. Yes, it was.

14 Q. Prior to June of 2004, have you ever
15 had milk pooled on Order 33 from Vermont?

16 A. Not to my knowledge.

17 Q. Would it be logical to conclude that
18 milk, if it's pooled, would normally be pooled on
19 Order 1?

20 A. I can't say that it was for sure, but
21 we have never had it in our market before, so, because
22 Vermont is located in that area, I would imagine you
23 could surmise that.

24 Q. Does Order 33 have what is known as a
25 Dairy Market for Other -- a Dairy Farmer for Other

1 Markets Provision?

2 A. No, they don't.

3 Q. And what is that provision, to your
4 understanding?

5 A. I'm not real familiar with it. I know
6 Order 1 does have such a provision, that if milk was
7 pooled on another market, it can't return to that
8 market for a certain time.

9 MR. ENGLISH: That's all I have. I
10 would move for admission of Exhibit 13.

11 THE COURT: Any objection? It's
12 received.

13 (Whereupon, Exhibit No. 13 was offered
14 and received into evidence.)

15 THE COURT: Other questions? Other
16 questions? Beshore, do you have any questions? Mr.
17 Vetne, questions on Exhibit 13? Anybody else?
18 Anybody else have any questions on Exhibit 13? We're
19 going to wait just a minute, just to make sure there
20 aren't any. Do you have a couple?

21 MR. VETNE: Yeah.

22 THE COURT: Okay.

23 CROSS-EXAMINATION

24 BY MR. VETNE:

25 Q. This, as you know, is a hearing that is

1 considering whether to limit depooling or repooling in
2 Order 30, which is a centerpiece proposal, and there's
3 another similar proposal that's been submitted in
4 Order 32, which is the Central market.

5 A. Yes.

6 Q. Are you aware of any similar proposal
7 under consideration in Order 33?

8 A. Not to my knowledge.

9 Q. Do you have any opinion on whether the
10 data shown here on the exhibit would be different in
11 the future if depooling were limited in Order 30 and
12 33, but not in Order 32?

13 A. I'm sorry, I'm not sure what you're
14 asking.

15 Q. Okay. If milk could not be
16 reassociated readily in a pool market in Order 30 in
17 the future and could not be reassociated readily in
18 Order 32 -- or let's just leave it at Order 30.

19 A. Okay.

20 Q. Would you expect to see, do you have an
21 opinion on whether the data on milk coming from
22 Wisconsin, for example, into Order 33 would be
23 different in the future if there were not access to
24 the Order 30 market?

25 A. I -- Just going by what the provisions

1 for Order 33 are now, any milk that would be qualified
2 under our provisions as they are, you know, could be
3 pooled there. I can't really say what would come
4 there and would not.

5 Q. Okay. Would you agree that the Order
6 provisions and whatever it costs to associate with the
7 market, that there would be an economic incentive to
8 seek a market in Order 33 if repooling were restricted
9 in Order 30 and 32?

10 A. I don't know.

11 Q. Okay. Do you have an opinion on
12 whether it's important to know that?

13 A. I -- I mean at that point, if we would
14 have a hearing, then, you know, we would give the
15 statistics as they were, and as a representative of
16 the Market Administrator's Office, I feel that's my
17 job to present the statistics and not offer an opinion
18 at this time.

19 MR. VETNE: Yeah, okay. That's all.
20 Thank you.

21 THE COURT: Are there any other
22 questions? Thank you very much. All right. We're
23 going to call Sue Beitlich. My eyes are going double
24 there, I didn't put my glasses on. Would you face me
25 and raise your right hand.

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SUE BEITLICH,
after having been first duly sworn by
the Court, says under oath as follows:

THE WITNESS: I do.

THE COURT: All right. Would you state
your full name and affiliation.

THE WITNESS: My name is Sue Beitlich,
and it's spelled S-u-e, B, as in boy, e-i-t-l-i-c-h,
and I'm President of the Wisconsin Farmers Union.

Your Honor, thank you for the
opportunity to present this testimony today. Not only
am I President of the Wisconsin Farmers Union, I'm
also a family farm dairy producer in Stoddard,
Wisconsin.

THE COURT: Let me stop you for just a
moment. I understand you're actually giving testimony
on behalf of your organization and several others?

THE WITNESS: Yes.

THE COURT: And the other people are
here, and they could answer questions if necessary?

THE WITNESS: Absolutely.

THE COURT: But I said, well, why don't

1 we just see if yours is sufficient, but if anybody
2 else wants to, the other folks are here. Would you
3 give their names and identifications too.

4 THE WITNESS: Yes. I'm here today on
5 behalf of producer-members of Wisconsin Farmers Union,
6 Minnesota Farmers Union, Doug Peterson is the
7 President, and North Dakota Farmers Union, Robert
8 Carlson is the President.

9 I'm not here today to provide a
10 detailed economic analysis of the multiple proposed
11 amendments to the order, but will share with you the
12 voice of dairy producers in my respective states that
13 have been under severe economic hardship over the past
14 few years due to a number of controllable and
15 uncontrollable factors. Unfortunately, producers in
16 my state and others have had to face economic hardship
17 due to a loophole in our marketing order.

18 The request for this hearing and
19 proposed amendments to the order came from a coalition
20 of dairy companies and cooperatives that represent
21 over 40 percent of the milk pooled on the Order and
22 nearly 60 percent of the milk delivered to the
23 distributing plants within the Order. It was a
24 consensus agreement among these companies and
25 cooperatives that milk originating from outside the

1 marketing area is having an adverse economic effect on
2 the producers who regularly supply milk into the
3 order.

4 A provision within Federal Milk
5 Marketing Order 30 allows handlers of distant milk to
6 pick and choose when to participate in a pool, thus
7 drawing revenue funds from the marketing area.
8 Unfortunately, this provision has placed undue
9 hardship on the many dairy farmers who provide a
10 continuous supply of milk into the Order. The levels
11 of distant milk drawing revenue from Order 30 have
12 overwhelmingly increased at a time when dairy
13 producers have just begun to recover from 25-year
14 market lows.

15 Over twenty counties in Idaho delivered
16 milk into the Upper Midwest Milk Marketing Order in
17 December of 2003, with one particular county in that
18 state ranking number one overall in delivery into the
19 Order. More than 180 producers from Idaho delivered
20 more than 260 million pounds of producer milk,
21 representing 12 percent of the Order's market during
22 the same period. Due to the administrative loophole
23 in these Orders, handlers determine whether or not
24 they will receive an economic benefit from being a
25 participant in the pool, regardless of the effect it

1 will have on the other producers who consistently
2 provide a supply of milk into the Order.

3 Our members simply want to receive an
4 equitable price for their milk. I encourage you, the
5 Department of Agriculture, to closely review the
6 statistical data provided to you this week and close
7 the loophole that permits distant milk from being a
8 part of our marketing Order.

9 I would like to address the economic
10 affects depooling has had on producers in my
11 organization. When a cooperative engages in depooling
12 a large portion of milk, the proceeds are often not
13 reflected in dividend payments back to the producers.
14 While we recognize this as a cooperative governance
15 issue, not a Federal Order administrative issue, it is
16 of concern that our producers are not sharing in the
17 profits of this marketing practice. While it is not
18 common for Class III prices to rise so rapidly that
19 they exceed Class I, resulting in negative producer
20 price differentials and consequently depooling, it has
21 clearly been demonstrated this year that more often
22 than not, it is the producer who is left holding the
23 short end of the stick. A long-term solution must be
24 found to address this sometimes short-term problem.

25 I must stress the importance of finding

1 reasonable solutions to the many issues you will be
2 hearing over the course of this week. Dairy producers
3 are the heart of the Upper Midwest, and the number one
4 goal of this hearing should be to ensure that
5 producers have profitability and to stay on the land.

6 Finally, I would urge the USDA to
7 review -- in reviewing the testimony from this
8 hearing, to strictly follow the law. Specifically,
9 I'm referring to the amended Agriculture Marketing
10 Agreement Act of 1937, Section 608(c)(7), which lays
11 out the policies for USDA to follow in administering
12 Federal Milk Orders. This specific section directs
13 USDA to, quote, Prohibit unfair methods of competition
14 and unfair trade practices in the handling thereof,
15 end quote.

16 We all know that pooling requirements
17 and Class I performance rules have been used by some
18 cooperatives and cooperative marketing associations to
19 take advantage of other raw milk marketers. In recent
20 days we have read about a nationwide federal antitrust
21 investigation by the U.S. Department of Justice
22 against the nation's largest dairy cooperative that
23 may also involve superpools, common marketing
24 agencies. It is USDA's job, among many other
25 difficult considerations, to consider the competitive

1 aspects of any rule changes it makes based upon
2 testimony at this hearing. Honest competition is not
3 only a good idea, it is the law.

4 And we're adding another sentence, that
5 we know from our other Farmers Union states these
6 issues are a concern around the United States.
7 Perhaps USDA should call for a national hearing,
8 rather than separate Order hearing. We won't solve
9 what's a national issue in one Order, and we thank you
10 for this opportunity and look forward to working with
11 the Department in implementing any of the necessary
12 amendments to ensure the viability of dairy producers
13 in the Upper Midwest.

14 THE COURT: All right, fine. I'm going
15 to mark your statement as Exhibit 14, just so that we
16 have it as part of the record, in addition to your
17 testimony, and other than that extra sentence you've
18 just put in, I believe we've marked the statement
19 itself to control over it; is that correct?

20 THE WITNESS: Yes.

21 THE COURT: All right, fine. That's
22 what we will do.

23 (Whereupon, Exhibit No. 14 was
24 marked for identification.)

25 THE COURT: Are there any questions?

1 Mr. English?

2 EXAMINATION

3 BY MR. ENGLISH:

4 Q. Thank you, ma'am, for appearing. I
5 just have a couple questions. Do you know how many
6 dairy farmers are member of the various federations
7 that you've spoken for today?

8 A. How many are dairy farmers?

9 Q. How many dairy farmer members are
10 there?

11 A. You know, I don't have it exact.
12 Wisconsin Farmers Union has 1,600, you know, core
13 members, and then we also -- I know North Dakota has a
14 very large membership, of those it's a smaller number.
15 Ours are not total dairy producers, but I would have
16 to get back to you on that.

17 MR. ENGLISH: Thank you.

18 THE COURT: Other questions?

19 Mr. Beshore?

20 EXAMINATION

21 BY MR. BESHORE:

22 Q. Thank you for coming and presenting
23 your statement today. Can you, as a producer, you're
24 a dairy producer?

25 A. Yes.

1 Q. Do you -- How do you market your milk,
2 through a proprietary, through an organization, or a
3 marketing cooperative?

4 A. Our milk goes to Westby Co-op Creamery
5 where it's made into cheese.

6 Q. What's been your experience from the
7 producer's side when there are negative PPD's in the
8 Order? You had some comments about that. Can you
9 break that down a little more?

10 A. Sure. In fact, our co-op creamery sent
11 us a letter explaining in April, because of the minus
12 \$4.16 PPD, and they really -- with the uniform price
13 of \$15.75, whatever it was, they were going to split
14 the difference, so we had -- we were able to receive a
15 base of \$17.75, and then we'd have our added premiums
16 onto that, so, and they were hopeful, then, in the
17 subsequent months that they could make it up to us
18 again, so they gave us a good explanation of what was
19 going on.

20 I'm still not sure why they chose to
21 depool, and I have a call out to my manager to find
22 out exactly why they chose to do this, so, but they
23 did try to make it up to us, but we feel that they
24 held the money so long, but, of course, they needed to
25 stay competitive, and they're a small creamery. When

1 other large co-ops can do this, they need to be
2 following suit so they stay in business. We need our
3 co-ops to be viable. We're all so connected, the
4 farmers and the cooperatives.

5 Q. Okay, so it's your understanding that
6 Westby depooled some or much of its milk?

7 A. They must have, we had a negative.

8 Q. Okay. Do you know whether they were
9 unable to -- whether they had milk that they were
10 unable to depool, because they were supplying to, you
11 know, the fluid market --

12 A. No, I do not, but I could certainly get
13 back to you. Like I say, I have a call out to Peter
14 Condra (phonetic) our general manager, and I didn't
15 hear back from him last week.

16 Q. Okay, so were you familiar with any
17 producers in your vicinity -- what county are you in?

18 A. I'm in Vernon County.

19 Q. In Vernon County. Producers in Vernon
20 County, perhaps, who weren't able to be 100 percent
21 depooled, and have the full, you know, Class III value
22 for their milk?

23 A. No, I don't, I don't.

24 Q. Were you familiar with any producers
25 who weren't able to depool at all, because they were

1 supplying Class I markets and had to, either they or
2 their handler had to absorb the lower return?

3 A. I don't personally. I just know that
4 farmers would hear the cheese price, the milk price,
5 and were disappointed in their checks, because it was
6 much less than we anticipated.

7 MR. BESHORE: Okay. Thank you.

8 THE WITNESS: Uh-huh. You're welcome.

9 THE COURT: Any other questions?

10 Mr. Vetne or Ms. Deskins?

11 EXAMINATION

12 BY MR. VETNE:

13 Q. And I do thank you for coming, it was
14 eloquent. I just have a couple of questions. You
15 made reference to proponents, I believe, when you said
16 they represent 40 percent of the pool and 60 percent
17 of the shipping plant deliveries?

18 A. Uh-huh.

19 Q. That's DFA, et al.?

20 A. I think we just went, the National
21 Farmers Union staff helped me draft some of our
22 information, and I think she just received this from
23 some of the USDA statistics. I'm not certain who she
24 specifically was referred to.

25 Q. That was my question, is where did that

1 information come from?

2 A. Uh-huh. It's from USDA statistics,
3 according to our National Farmers Union staff.

4 Q. Your cooperative operates as a
5 nonprofit corporation?

6 A. Farmers Union?

7 Q. The cooperative that you sell milk to.

8 A. Oh. Yeah, it's a farm cooperative, a
9 creamery co-op.

10 Q. Yeah, and all the revenues go to the
11 producers, the revenues after expenses?

12 A. Well, yes, they have to have capital
13 inputs, things like that. You have to pay salaries,
14 just like any other business would.

15 Q. Okay. You refer to proceeds received
16 that were not paid to producers. How does a nonprofit
17 cooperative receive proceeds and not pay them? Where
18 does it go?

19 A. Well, that's a good question, because
20 when this money, as I talked about, the depooling for
21 our creamery, what we anticipated the price to be from
22 hearing the Class III price, \$21 a hundredweight,
23 whatever it was, and then we received \$17, that was
24 very disappointing. If you're a producer, you're
25 anticipating you're going to be getting this money, so

1 where does it go? That's a good question, and it
2 doesn't all filter back to the producer, but it's
3 helping our co-op stay in business, at the same time,
4 because, obviously, they can't take some of these hits
5 either, when they need to pay out.

6 Q. Does your cooperative make the cheese
7 or sell the milk for somebody else?

8 A. We make the cheese. We're a
9 manufacturer.

10 Q. Do you know whether some of that cheese
11 is sold at a contract price fixed in advance so if
12 they don't get a return equal to the current --

13 A. I'm not certain of that. I would need
14 to check for sure.

15 MR. VETNE: Okay. Thank you.

16 THE WITNESS: Uh-huh. Thank you.

17 THE COURT: Ms. Deskins?

18 EXAMINATION

19 BY MS. DESKINS:

20 Q. Yes. The Wisconsin Farmers Union, tell
21 us what that is, for the record.

22 A. Farmers Union is a general farm
23 organization that represents all commodities and
24 represents family farmers on many issues, any
25 commodity, and that's why we're here for a dairy

1 hearing, we have -- we advocate for cooperatives. We
2 believe in forming cooperatives and legislative issues
3 and education. We have an education program for not
4 only our youth, but our adult members, so we're a
5 general farm organization.

6 Q. Approximately how many members does
7 Wisconsin Farmers Union have?

8 A. We have 1,600 members.

9 Q. Okay, and I assume all of them are
10 within the State of Wisconsin?

11 A. They should be, a majority of them. We
12 may have a member or two that retained their
13 membership that have moved out of state.

14 THE WITNESS: North Dakota, what do you
15 have, 30,000 members?

16 MR. CARLSON: 37.

17 THE WITNESS: 37. Minnesota, what do
18 you have?

19 MR. PETERSON: 6,000.

20 THE WITNESS: 6,000 members.

21 THE COURT: We'll allow that.

22 BY MS. DESKINS:

23 Q. And also you referred to your
24 cooperative, so you also are a member of A
25 cooperative?

1 A. I'm a member of many cooperatives, but
2 the creamery I sell to is Westby Cooperative Creamery.

3 Q. Okay. Are you a member of any dairy
4 cooperatives?

5 A. That's the dairy cooperative I'm
6 personally a member of.

7 Q. Okay, and also just in terms of the
8 members of Wisconsin Farmers Union, do you know how
9 many of those would be dairy farmers?

10 A. I was asked that question in the very
11 beginning. I don't have it broken down, but it's
12 something I could easily get back to you, if you would
13 like me to.

14 Q. Well, can you give us an estimate?

15 A. I'd hate to do that and be wrong. I'm
16 sorry, but, you know, we represent many different
17 kinds of commodities, producers. It could be a niche
18 grower, they may just care about food issues, so, but
19 we do have a database where we're starting to track
20 that more and more, so I could try to do that for you,
21 if you would like.

22 Q. And then I had another question about
23 small businesses. The small business is defined as
24 making an annual gross revenue of less than \$750,000.
25 Would your operation qualify as a small business?

1 A. Yes, it would.

2 Q. And would you happen to know how many
3 members in Wisconsin Farmers Union would qualify as
4 small businesses?

5 A. Well, I would think the majority, then,
6 when we go through finding this percentage for you.
7 We represent farmers of all sizes. It's not an issue
8 of size for us. If they care about the issues that
9 we're advocating for us, they definitely, you know,
10 will join the Farmers Union.

11 MS. DESKINS: Thank you. I have no
12 further questions.

13 THE WITNESS: Uh-huh, you're welcome.

14 THE COURT: Any other questions?
15 Mr. Vetne again?

16 MR. VETNE: Yes, sorry.

17 RE-EXAMINATION

18 BY MR. VETNE:

19 Q. I asked you about cheese that may have
20 been priced in the future, but I didn't ask you about
21 the mix of products at Westby. Westby makes some
22 kinds of --

23 A. -- cottage cheese, they make butter,
24 cheddar cheeses, some sour cream.

25 Q. Do you know the mix of those products?

1 A. No, but I could find out for you. I
2 would love to do that.

3 Q. You understand that those products have
4 different regulated prices --

5 A. I do, uh-huh. I didn't realize I would
6 be needing specific Westby information when I came
7 here. I should have known better.

8 Q. Actually, I'm not asking you to get
9 back to me on that.

10 A. Well, I'm sure you are curious about
11 that.

12 MR. VETNE: Thank you.

13 RE-EXAMINATION

14 BY MS. DESKINS:

15 Q. Also, could you spell Westby for the
16 record?

17 A. W-e-s-t-b-y.

18 THE COURT: All right. Yes,
19 Mr. Beshore.

20 RE-EXAMINATION

21 BY MR. BESHORE:

22 Q. Some of the information that's been
23 presented by the Market Administrator with respect to
24 the out-of-area milk that's been pooled, such as from
25 Idaho, showed that, you know, the largest county in

1 Idaho, the average producer size was about 3 million
2 pounds per month during some periods. Can you tell us
3 how that compares to your operation and the dairy
4 farmers that you're familiar with in your area.

5 A. Well, we milk about 50 cows. We have
6 50 cows. Probably 40 to 45 are milking at all times,
7 and we average around 40 to 50,000 -- well, about
8 4,000 pounds every other day, so, yeah, we're much,
9 much smaller than that.

10 Q. Do you know of any 3 million pound per
11 month producers in Vernon County?

12 A. No, I do not.

13 MR. BESHORE: Thank you.

14 THE WITNESS: Uh-huh.

15 THE COURT: I think that does it.

16 Thank you very much.

17 THE WITNESS: Thank you.

18 THE COURT: Mr. Rozwadowski, is he
19 here? Yes. Do you have a written copy of your
20 statement?

21 MR. ROZWADOWSKI: Yes, I do.

22 THE COURT: Do you have more than one?

23 MR. ROZWADOWSKI: Yes, I do.

24 THE COURT: Okay. Give me one and one
25 to the court reporter.

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PAUL ROZWADOWSKI,
after having been first duly sworn by
the Court, says under oath as follows:

THE COURT: Incidentally, we're going
to receive that last statement as an exhibit. It's
received as Exhibit 14.

(Whereupon, Exhibit No. 14.
was received into evidence.)

THE COURT: And this will be marked as
Exhibit 15, and I think there's a few more copies of
that statement being distributed.

(Whereupon, Exhibit No. 15 was
marked for identification.)

THE COURT: Would you give your full
name and identification, sir.

THE WITNESS: My is Paul Rozwadowski.
I'm a dairy farmer from Stanley, Wisconsin, and
Chairman of the National Family Farm Coalition's Dairy
Subcommittee.

THE COURT: Go ahead.

THE WITNESS: I also am bringing a
dairy farmer's perspective to these hearings.

1 I am here on behalf of the National
2 Family Farm Coalition. We appreciate the opportunity
3 to address the issues associated with depooling, which
4 are important to the public, as well as to all those
5 involved in the dairy industry.

6 Although the National Family Farm
7 Coalition is aware that the hearing today is limited
8 to the topics set forth by the Federal Register, we
9 would like the record to note that while addressing
10 depooling in today's hearing may seem to represent
11 some progress towards solving the problems of Order
12 Reform, it is quite likely that the solutions will
13 only be found in addressing the system as a whole.
14 The National Family Farm Coalition's Dairy
15 Subcommittee would request USDA to reopen the Federal
16 Orders for complete system reform.

17 Speaking before the International Dairy
18 Foods Association, Dairy Forum, about the proposed
19 Order Reform, E. Linnwood Tipton said in 1998, "We are
20 in a competitive world where price counts. Where
21 creativity counts. Where innovation counts. We need
22 less regulations and fewer marketing restraints to
23 compete more effectively."

24 Federal Order Reform has been around
25 for several years now, giving us ample data to judge

1 its effectiveness. Price has counted. Since Federal
2 Order Reform, farm milk prices, adjusted for
3 inflation, have fallen. The toll in farm loss has
4 fallen heaviest upon the traditional family farm. At
5 the same time, family farms were being forced out of
6 business, the public has been paying more for milk and
7 other dairy products.

8 Nothing in the Federal Agriculture
9 Improvement and Reform Act of 1996 gave any indication
10 the results would represent a form of legal plunder.
11 However, the creativity and innovation mentioned by
12 Mr. Tipton in 1998 resembles today the games that have
13 been played with the pooling provisions of Order
14 Reform.

15 It is worth noting at this point that
16 the public is not experiencing any shortage of milk at
17 this time. It is also important to note that the farm
18 mailbox price for the Upper Midwest stands as the
19 highest in the nation.

20 There's a very good reason why farm
21 mailbox prices in the Upper Midwest is comparatively
22 high. Although we have huge numbers of farms and huge
23 numbers of processors -- excuse me. Although we have
24 lost huge numbers of farms and huge numbers of
25 processors, the Upper Midwest still has the greatest

1 competition for milk in the nation. This is
2 coincidental to Federal Milk Orders, not the result of
3 Federal Milk Orders.

4 Looking at other parts of the country,
5 it appears that the 1938 Agricultural Act
6 608(c)(7)(a), which states: "Prohibiting unfair
7 methods of competition and unfair trade practices" was
8 forgotten as soon as it was written. All of the
9 issues regarding pooling and most of the problems in
10 dairy could be solved by rigorous enforcement of that
11 section.

12 If you consider those who have
13 submitted Proposal 2, whose members include:
14 Cass-Clay Creamery, Inc., Dairy Farmers of America,
15 Foremost Farms USA, Land O'Lakes, Mid-West Dairymen's
16 Company, Milwaukee Cooperative Milk Producers,
17 Manitowoc Milk Producers Cooperative, Swiss Valley
18 Farms, and Woodstock Progressive Milk Producers, what
19 do you see? You see a partial list of those who have
20 made pooling issues a problem.

21 And it is important to note what these
22 key players see as the problem to the Federal Orders.
23 They are asking for a correction of the problem. It
24 is a matter of fact that those players are perfectly
25 willing to play the game in other Orders, when it

1 works toward their benefit.

2 For example, Proposals 1 through 6 are
3 all made by organizations that either directly or by
4 association have reduced farm milk price to family
5 farmers elsewhere in the country. At the same time,
6 several have cut deals with bonuses to larger farms.
7 Is there any reason to think that proposals by those
8 who have benefited from depooling are sincerely
9 wishing to close all the loopholes?

10 The Upper Midwest is not an island.
11 The Upper Midwest does not stand alone. We are part
12 of a national system, which should be working for
13 everyone's benefit. Restrictions in place did not
14 prevent depooling in Federal Order 1 during April and
15 May. Proposals 1 through 6 appear to be nothing more
16 than a cease-fire of the powerful players in the dairy
17 industry.

18 Ken Bailey, dairy economist from Penn
19 State, writing in 2001 in the Journal of Dairy Science
20 said:

21 "It would be much more transparent than
22 the old system. Before the Order Reform it was
23 difficult to explain to farmers how their milk check
24 was determined if their milk was sold into multiple
25 orders in any given month. With Order consolidation,

1 the remaining Orders are much larger, reducing the
2 chance that dairy producer's milk will be shipped into
3 more than one or two Federal Orders."

4 Well, he was wrong. It is not at all
5 transparent. It is impossible to even follow the
6 money.

7 Proposal No. 7 would increase the
8 maximum administrative assessment rate for the Upper
9 Midwest Order from 5 to 8 cents per hundredweight.
10 This is symbolic of the irony we deal with. While
11 farmers in the Upper Midwest have, due to competition,
12 been paid as if depooling did not occur, depooling has
13 caused havoc to the system. As a result of depooling,
14 money has been siphoned away from the administration
15 of Order 30. Proposal 7 represents only a symptom of
16 the problem, not a solution.

17 The National Family Farm Coalition
18 respectfully submits to the record that depooling
19 problems are a national issue and must be dealt with
20 on a national level. We request additional hearings
21 in Federal Orders that the USDA is currently not
22 examining.

23 This nation experienced the unthinkable
24 in the year following Order Reform, 9/11. Our public
25 officials who instilled the components of the current

1 Order Reform could not possibly have anticipated
2 America as it is in 2004.

3 While it might be in the best
4 short-term interest of the key players in the milk
5 industry to continue with business as usual, that is
6 not where the public interest lies. National Family
7 Farm Coalition believes the entire Order Reform needs
8 to be revisited. The present system rewards the
9 powerful, but at the same time makes the system more
10 vulnerable. We feel the nation needs a healthy,
11 resilient milk supply system. This can only happen by
12 examining the entire system.

13 THE COURT: And you have an exhibit
14 attached to the back of your statement?

15 THE WITNESS: Yes. That shows the
16 mailbox prices for April.

17 THE COURT: "Mailbox Farm Milk Prices
18 in April of 2004" for various states. Are they all
19 the states that are in milk Orders? What's that list
20 of states running down there? You have one for all
21 Federal Orders, so I guess that's a composite, and you
22 have California. I see. It's the whole country
23 basically, isn't it?

24 THE WITNESS: Yeah. Basically it is.
25 Some of them are small enough that they get milk from

1 Minnesota.

2 THE COURT: All right. Well, I'm going
3 to receive Exhibit 15.

4 (Whereupon, Exhibit No. 15
5 was received into evidence.)

6 THE COURT: Now, are there questions?
7 Do you have any questions? Ms. Deskins?

8 EXAMINATION

9 BY MS. DESKINS:

10 Q. I just wanted to ask you for this --
11 you're the Chairman of the National Family Farm
12 Coalition Dairy Subcommittee?

13 A. Yes.

14 Q. How many members does the National
15 Family Farm Coalition have?

16 A. The National Family Farm Coalition is
17 made up of family farm organizations throughout the
18 country. We have currently 34 members in 32 states.

19 Q. Okay. Members, are those individual
20 members, or are those organizations?

21 A. Those are organizational members.

22 Q. Okay. How many of those organizations
23 would be located in the area covered by the Midwest
24 Marketing Order, do you know?

25 A. No. I wouldn't know that offhand.

1 Q. Do you know how many would be located
2 in, say, Wisconsin or Minnesota?

3 A. Let's see. In Wisconsin, there would
4 probably be three or four in Wisconsin. Minnesota,
5 probably about the same.

6 Q. Okay, and would those organizations all
7 be dairy organizations or just general farm
8 organizations?

9 A. No. They -- The National Family Farm
10 Coalition covers all aspects of agriculture, all
11 components.

12 Q. Okay. Do you know if any of those
13 organizations would be just dairy?

14 A. Just strictly dairy?

15 Q. Right.

16 A. No. I couldn't answer that offhand.

17 Q. Okay.

18 A. They do have that information at the
19 office.

20 Q. Okay. I had another question for you.
21 You said during your testimony that "As a result of
22 depooling, money has been siphoned away from the
23 Administration of Order 30?

24 A. Yes.

25 Q. Has that caused problems with the

1 ability of the Market Administrator's Office to
2 administer the Order?

3 A. Well, that's what we're assuming,
4 because where did Proposal 7 come from?

5 Q. Okay, so when milk is not pooled, that
6 means there's less money for the Market Administrator
7 to operate the office?

8 A. Yes.

9 Q. And that would affect the dairy farmers
10 regulated by the Order; right?

11 A. Right. That's how I understand it.

12 Q. Okay. Do you support Proposal No. 7,
13 then?

14 A. No.

15 Q. Okay.

16 THE COURT: My understanding is you
17 don't support any of the proposals?

18 THE WITNESS: That is correct. I don't
19 believe that Proposal 7 will help the administration,
20 because they're raising the price because they're
21 losing it on one end, and they're trying to raise it
22 on the other end. They need to correct the problem at
23 the first end.

24 MS. DESKINS: Okay. Okay. I have no
25 further questions.

1 THE COURT: Other questions? Anyone?
2 There doesn't appear to be any. Thank you very much,
3 sir.

4 We had one more witness that wanted to
5 get on -- no, we have two more, don't we? Why doesn't
6 Jim Hahn, are you here?

7 MR. HAHN: Yes.

8 THE COURT: Jim Hahn, yes. Sir, could
9 you raise your right hand.

10

11 JAMES HAHN,
12 after having been first duly sworn by
13 the Court, says under oath as follows:

14 ***

15

16 THE COURT: All right, sir, if you
17 could give your full name and affiliation.

18 THE WITNESS: My name is James E. Hahn.
19 I work for Land O'Lakes, Inc. My name is spelled
20 H-a-h-n. I worked for the U.S. Department of
21 Agriculture from 1972 until 2000 in a variety of
22 capacities. In the last ten years, I worked as, seven
23 as the Assistant Market Administrator, and the last
24 three as the Acting Marketing Administrator. Since
25 July of 2000, I've been employed by Land O'Lakes as

1 director of dairy policy.

2 THE COURT: Sir, you have a statement
3 which I'm marking for identification as Exhibit 16.

4 (Whereupon, Exhibit No. 16 was
5 marked for identification.)

6 THE COURT: I presume, like we've said
7 to everyone, you want the statement to control, but
8 you'll make changes and indicate them as you go along?

9 THE WITNESS: That is correct.

10 THE COURT: All right, sir. If you
11 would proceed.

12 THE WITNESS: Thank you. As I said, my
13 name is James E. Hahn. I'm employed by Land O'Lakes,
14 Inc., and my mailing address is Land O'Lakes, Inc.,
15 4001 Lexington Avenue North, Arden Hills, Minnesota
16 55112.

17 Land O'Lakes, Inc. is a dairy and
18 agricultural products cooperative. LOL Grade A dairy
19 members produce approximately 12 billion pounds of
20 milk annually. Approximately 1,400 of these dairy
21 members produce milk in the Midwest.

22 The majority of the LOL milk produced
23 in the Midwest is used for manufacturing. However,
24 LOL performs at a much higher level than the minimum
25 of 10 percent in which -- in meeting the shipping

1 requirements of Order 30.

2 As such, LOL has moderate impact from
3 the depooling issue resulting from negative PPD's.
4 There are some handlers who are impacted to a greater
5 degree due to shipping at a higher percentage level.
6 Most handlers, however, perform at a lesser level than
7 LOL and, consequently, are impacted to a much lesser
8 degree.

9 LOL supports Proposal 2, because it is
10 a moderate approach in addressing the negative PPD and
11 depooling issue. Proposal 2 allows the flexibility of
12 some depooling with no penalty. It may, however, have
13 significant consequences for those handlers who elect
14 to depool the majority of their milk. This moderate
15 approach will instill more equity amongst handlers
16 with differing levels of shipping performance than
17 occurs today, while allowing some degree of depooling.

18 Proposal 2 also places additional
19 pooling requirements on milk produced outside the
20 states in which Order 30 is located. LOL has gone on
21 record in previous hearings with the position that
22 pooling provisions should be performance oriented as
23 opposed to location base.

24 Since Order Reform, it appears that the
25 dairy division -- I'm sorry. Since Order Reform, it

1 appears the dairy industry is embarking on the second
2 round of individual hearings designed to tighten
3 pooling provisions for the purposes of restricting
4 access to milk originating across Order boundaries.
5 This is amazing, considering the Secretary in the
6 Reform process anticipated milk would cross Order
7 boundaries to become pooled and priced where the
8 greatest needs are exhibited for satisfying fluid
9 demand. This attempt to build higher fences is
10 designed to limit access to Class I markets.

11 LOL firmly believes that this issue
12 must be dealt with on a national level, because Class
13 I utilization continues to decline each year. In 2002
14 the national Class I utilization in Federal Orders was
15 less than 37 percent. The Class I utilization for
16 2003 is skewed upward due to massive depooling, as
17 will be the case in 2004. Fluid sales are down 2
18 percent year over year for the first half of 2004.
19 California Class I is now at 18 percent and falling
20 rapidly -- that should be California Class I
21 utilization is now at 18 percent and falling rapidly.

22 The following basic questions must be
23 addressed at some future point in time. What
24 mechanism should be used to pool surplus reserves not
25 needed by any Order? How will market reserves be

1 addressed? National Federal Order average is 63
2 percent and rising, and that 63 percent is just the
3 inverse or the reciprocal of the 37 percent Class I
4 utilization. Will we come to a point where someone
5 will be denied pooling because the reserves are too
6 high? If so, whose milk? Do all Federal Orders have
7 the burden of pooling excess national reserves?

8 This issue becomes all the more
9 relevant with the termination of the Western Order.
10 Putting additional pooling restrictions on distant
11 milk for Order 30 will only cause pressure to be
12 exerted on some other Federal Order for pooling
13 access. This will undoubtedly create a request for a
14 local hearing to tighten pooling provisions.

15 LOL is supporting Proposal 2 in regards
16 to distant milk, because of its negative impact on the
17 PPD.

18 LOL also supports the limit on
19 transportation credits to 400 miles as provided in
20 Proposal 2.

21 THE COURT: Does this conclude your
22 statement, sir?

23 THE WITNESS: Yes, it does.

24 THE COURT: All right. Let's receive
25 the statement.

1 (Whereupon, Exhibit No. 16
2 was received into evidence.)

3 THE COURT: And are there questions?
4 Mr. Vetne?

5 EXAMINATION

6 BY MR. VETNE:

7 Q. Good afternoon, Jim, John Vetne. Until
8 I got to the next-to-the-last sentence of your
9 testimony, I thought I knew where you stood on the
10 distant pooling, but now I'm not sure, so I'm going to
11 ask you to better characterize your position, and
12 maybe I can ask you if you will agree with me, that
13 you're philosophically opposed to the Proposal 2 on
14 distant milk pooling, but you're in practical support?

15 A. Good afternoon, John. We think this is
16 a bigger issue than just a local Order 30 issue, and
17 philosophically we think that there needs to be a
18 national consensus on the level of reserves in the
19 Federal Order system, because what's happening is,
20 with Federal Order Reform, we had a system that was
21 put in place where the Secretary indicated in the
22 recommended and in the final decision that the higher
23 Class I utilization markets would attract milk from
24 the lower utilization markets, and those blend prices
25 would tend to equilibrate over time, and that, in

1 effect, did happen in 2000 and 2001.

2 Consequently, the higher utilization
3 Class I markets began to recognize that their
4 utilization began to slip from what they had prior to
5 Federal Order Reform, and so we went through a first
6 round of Federal Order hearings to basically start to
7 build some fences. And we did that, and that pushed
8 milk from the higher utilization markets back onto the
9 lower utilization, Class I utilization markets, and
10 they were already carrying an inordinate volume of
11 reserve or level of reserve, much more than was
12 needed. And so what's happening with round two is
13 we're just going to build the fences a little bit
14 higher, and the higher utilization markets are those
15 that are losing milk production, so their Class I
16 utilization is automatically going up anyway. And as
17 they push milk away from the market, it just pushes
18 milk, again, on the lower Class I utilization markets,
19 so they're basically carrying excess national
20 reserves.

21 Now, I think that issue has to be
22 addressed. We don't have a venue today to address it,
23 so Land O'Lakes signed on with a group and developed a
24 consensus position, which is Proposal 2, and we're
25 supporting it.

1 Q. Huh? In the last --

2 A. Let me clarify for your benefit.

3 THE COURT: Well, wait for a question.
4 He's got a question. Go ahead.

5 BY MR. VETNE:

6 Q. Okay. My question is, will you state
7 your clarification.

8 A. Sure. The only venue we have here
9 today is this hearing. Land O'Lakes has a significant
10 number of dairy farmer members located in the Midwest,
11 and so the Idaho milk that's being pooled on the Upper
12 Midwest market is lowering the PPD, and that's
13 impacting Land O'Lakes' local producers. And so we
14 are in favor of limiting access to the Idaho milk to
15 the Upper Midwest, and that's our position today, but
16 that's not going to solve the problem. The problem is
17 still going to exist, it's just going to push it over
18 to some other market, and we think that needs to be
19 addressed, not local, area by area, but on a national
20 basis.

21 Q. Okay. Is it your testimony that you
22 believe it would be unwise to do it on a
23 market-by-market basis?

24 A. Yes, I do, because I don't believe that
25 will solve the problem.

1 Q. Is it your testimony that you're
2 generally opposed to fences, but accept the fence
3 being constructed here for the benefit of your local
4 producers?

5 A. Yes.

6 Q. Is it -- Does it continue to be LOL's
7 position, as stated at the last hearing in
8 Minneapolis, that LOL is not in favor of restricting
9 access to pooling in any market to benefit a select
10 few?

11 A. Generally, that's correct, on a
12 national basis.

13 MR. VETNE: Okay. Thanks.

14 THE WITNESS: You're welcome.

15 THE COURT: Mr. English.

16 EXAMINATION

17 BY MR. ENGLISH:

18 Q. Good afternoon, Mr. Hahn.

19 A. Good afternoon, Jim.

20 Q. Given your statement that you are
21 concerned about regulating the geographic -- using
22 geographic borders, but that the negative impact on
23 the PPD causes you to have a different position for
24 this consensus, does that mean that you agree that
25 when there's a negative impact on the PPD by

1 opportunistic pooling, that you think that's a bad
2 thing?

3 A. We think it causes this -- Land O'Lakes
4 thinks it causes disruption in the marketplace, that
5 is correct.

6 Q. Depooling also causes that disruption
7 in the marketplace?

8 A. Yes.

9 Q. So depooling is also a thing that you'd
10 like to see eliminated?

11 A. We have mixed feelings -- or we have
12 reservations about that. We take advantage, as an
13 organization, of the ability to depool when it's to
14 our advantage. We try to maximize our ability to do
15 that, but we also service the fluid market to a large
16 extent, and so we wear two hats, we're not biased one
17 way or the other to a great extent, and so we think
18 the market would be better off if there was some
19 moderation on the ability to depool milk, and that's
20 what Proposal 2 addresses. It doesn't eliminate it, but
21 it does create some level of orderliness within the
22 marketplace, in our opinion.

23 Q. Some level of orderliness. Your
24 statement says, "Proposal 2 allows the flexibility of
25 some depooling with no penalty." Would you agree that

1 under the present circumstances, there is effectively
2 unlimited depooling permitted by all marketing
3 participants, except for Class I handlers with the
4 milk going through their plant, that has no penalty?

5 A. That's correct, potentially.

6 Q. Other than the economic benefit that it
7 provides to individual organizations, which you
8 yourself said that you have to do to maximize for your
9 entity, depooling has no social benefit, does it?

10 A. Absolutely.

11 Q. Under the Federal Order system?

12 A. It benefits those to who are attached
13 to milk that's not being pooled.

14 Q. That doesn't create uniform pricing,
15 does it, sir?

16 A. No.

17 Q. And Federal Orders are all about
18 uniform pricing; correct?

19 A. As a minimum price, that's correct.

20 MR. ENGLISH: Thanks. I have no
21 further questions.

22 THE COURT: Mr. Beshore.

23 EXAMINATION

24 BY MR. BESHORE:

25 Q. Jim, I just have one question. Your

1 articulation of performance-based pooling has been,
2 you've stated it before and you stated it again, and
3 would it be fair to conclude that when you look at the
4 Market Administrator's information with respect to the
5 Idaho milk where you've had 3 million out of 4.7
6 billion pounds pooled, 3 million came to distributing
7 plants in Order 30, that that's not the kind of
8 performance you talked about when you look for
9 performance-based pooling?

10 A. I have to be careful in answering that,
11 because milk was moved to a distributing plant to
12 qualify that milk at some location, so the minimum
13 requirements were met under the Order to qualify milk
14 in total, but it's obvious, when you look at the
15 Federal Order statistics that that block of milk
16 that's being pooled and is really carried as an
17 excessive reserve on the Upper Midwest Market, is
18 performing very little or no performance in terms of
19 servicing the fluid market.

20 MR. BESHORE: Okay. Thanks.

21 THE WITNESS: You're welcome.

22 THE COURT: Yes. Yes, sir. Come
23 forward and state your name.

24 MR. LAMERS: My name is Richard J.
25 Lamers of Lamers Dairy in Appleton, Wisconsin.

1 EXAMINATION

2 BY MR. LAMERS:

3 Q. Jim, you referred to, in your
4 testimony, the inordinate reserve supply associated
5 with Order 30, and can you elaborate on that?

6 A. Well, certainly, Dick. In a typical
7 month when all the milk, or virtually all the milk is
8 being pooled, we have about, probably about 18 percent
9 Class I utilization, between 16 and 20, depending on
10 the month. 350 million pounds of Class I were
11 pooling -- the Market Administrator, through his
12 staff, is pooling probably 1.9 billion pounds of milk.
13 That's an excess reserve supply of milk. That's much
14 more than what would be needed to service the fluid
15 market and carry an adequate reserve in meeting that
16 requirement.

17 I can remember when in the Chicago
18 Regional Order, we had about 240 million pounds of
19 milk a month, and the total pool was 600 million.

20 Q. And this brings us to the next
21 question, then, Jim. What is considered an adequate
22 reserve for the Class I market, what percentage of the
23 Class I market?

24 A. It depends on the market and variation
25 on a seasonal basis, that type of thing, but I would

1 say between 25 and 40 percent would be an adequate
2 reserve in most cases.

3 Q. Are you familiar with Dr. Owen
4 Bartlett's paper of marketing facts in 1967 where he
5 spelled it out at 20 percent?

6 A. I don't recall that, but I'll accept
7 that.

8 MR. LAMERS: Okay. Thank you.

9 THE COURT: All right. Yes, other
10 questions? Yes, Mr. Tosi.

11 EXAMINATION

12 BY MR. TOSI:

13 Q. Hello, Jim. Thanks for appearing
14 today. I want to just make sure that I understand
15 what your position is. On the second page of your
16 written testimony, you're indicating support for
17 Proposal 2 with regard to distant milk because of its
18 negative impact on the PPD, and you're supporting the
19 limit on the transportation credit of 400 miles. With
20 respect to the consequences of depooling, is it -- are
21 you saying that it's Land O'Lakes' position, are you
22 supporting that feature?

23 A. Absolutely. I stated that on Page 1 --

24 Q. Okay.

25 A. -- the third paragraph from the bottom.

1 "LOL supports Proposal 2, because it is a moderate
2 approach in addressing the negative PPD and depooling
3 issue," so we support all aspects of Proposal 2.

4 MR. TOSI: Okay. Thank you very much.
5 That's all I have.

6 THE WITNESS: You're welcome.

7 THE COURT: Other questions? Yes,
8 Mr. Vetne.

9 RE-EXAMINATION

10 BY MR. VETNE:

11 Q. Just a follow-up to some questions that
12 Mr. Beshore asked. I think you agreed with
13 Mr. Beshore that there was a significant block of milk
14 in Idaho that wasn't performing, using his definition
15 of performing, correct, do you recall that?

16 A. Yes.

17 Q. Okay. Are there not blocks of LOL milk
18 that never sees a distributing plant?

19 A. Well, they can see it, but --

20 Q. That never goes to a contributing
21 plant?

22 A. Absolutely.

23 Q. And there are other blocks of milk by
24 other participants in the Upper Midwest market that
25 day after day, month after month, never go to a

1 distributing plant?

2 A. That's correct.

3 Q. When you testified about moderate
4 affect, because you have some sales to Class I, what
5 are LOL's Class I sales in the Upper Midwest,
6 percentage-wise?

7 A. Approximately 25 percent in Order 30.

8 Q. In Order 30, okay. If -- And what
9 percentage of the market of Class I would that
10 represent, do you know?

11 A. We're -- First of all, it's proprietary
12 information, but we're basically a third of the class
13 I of the Upper Midwest Marketing Agency Organization.

14 Q. The Upper Midwest Marketing Agency
15 Organization being CMPC?

16 A. No, UMMA.

17 Q. UMMA?

18 A. Yes.

19 Q. What does UMMA stand for?

20 A. Upper Midwest Marketing Agency.

21 Q. And how -- What relationship, if any,
22 does that have to do with the CMPC?

23 A. We -- UMMA represents former Order 68
24 in terms of sales area. CMPC represents former Order
25 30, the Chicago Regional Order, so we maintain two

1 separate pricing agencies within current Order 30, and
2 I can answer your question more definitively. UMMA is
3 about one-third of the total Class I sales in Order
4 30, and LOL is about one-third of UMMA, so about, is
5 that one-ninth?

6 MS. WARLICK: Yeah.

7 THE WITNESS: Thank you.

8 BY MR. VETNE:

9 Q. Does UMMA also run a system of supply
10 plants like CMPC?

11 A. Not formally, no. There is another
12 system of supply plants, but it has nothing to do with
13 UMMA.

14 Q. Does UMMA offer the service of
15 qualifying milk for supply plant operators or supply
16 plant systems?

17 A. No.

18 Q. Are there proprietary members of UMMA?

19 A. No.

20 Q. They're all cooperative members?

21 A. That's correct.

22 Q. Are they all capitals that qualify
23 cooperative members?

24 A. Absolutely.

25 Q. Okay. Are there members who are not

1 cooperative handlers, United States handlers?

2 A. No.

3 MR. VETNE: Okay. Thank you.

4 THE COURT: Let's go off the record for
5 a moment.

6 (Discussion had off the record.)

7 THE COURT: Back on the record. Any
8 other questions? There don't appear to be any. Thank
9 you very much, sir.

10 THE WITNESS: You're welcome.

11 THE COURT: My notes, my handwriting is
12 so bad sometimes. I don't know if there was another
13 witness who wanted to testify today. My handwriting
14 is that bad, I can't tell. All right. Fine. Off the
15 record for a moment.

16 (A discussion was held off the record.)

17

18 NEIL GULDEN,

19 after having been first duly sworn by
20 the Court, says under oath as follows:

21

22

23 THE COURT: Back on the record. We
24 first of all recognize Mr. Neil Gulden, who's director
25 of fluid marking for Associated Milk Producers, Inc.,

1 please enter his appearance, and he's here today in
2 support of Proposal No. 1, which his organization and
3 several others have proposed as Proposal 1. So, sir,
4 we're going to mark your written statement, which
5 you've just handed me, as Exhibit 17.

6 (Whereupon, Exhibit No. 17 was
7 marked for identification.)

8 THE COURT: And now, if you would state
9 for the record your name and identification, etc.

10 THE WITNESS: Yes. I'm Neil Gulden,
11 Director of Fluid Marketing for Associated Milk
12 Producers, Inc., AMPI. My office address is 315 North
13 Broadway, New Ulm, Minnesota 56073.

14 My testimony is in support of Proposal
15 No. 1. I am joined in that support by Bongards'
16 Creameries, Ellsworth Cooperative Creamery
17 Association, and First District Association.

18 Since Order Reform was implemented in
19 January of 2000, milk from California, Idaho, Utah,
20 Oregon, Colorado, Montana, Nebraska, Ohio, Indiana,
21 and Georgia has been pooled on the Upper Midwest Order
22 at various times and in various volumes. All have had
23 a negative effect on the Upper Midwest marketing area
24 and producer price differentials, PPD's, but the vast
25 majority of this milk has come from California and

1 Idaho.

2 Substantial volumes of California milk
3 began pooling on Order 1030 late in 2000. The hearing
4 was held in June 2001, and an interim final rule was
5 made effective May 1st of 2002, that prohibited the
6 ability to simultaneously pool the same milk on the
7 Upper Midwest Order and a state-operated milk order
8 that has market wide pooling. That was adopted as a
9 final rule in the fall of 2003.

10 Subsequent to the Upper Midwest
11 hearing, hearings were held in the Central and Mideast
12 Orders that tightened their pooling requirements,
13 including the same California issue as well as
14 addressing distant pooling from other states. These
15 two Orders about the Upper Midwest Order, and the
16 pooling requirement changes had the affect of moving
17 milk formally pooled there onto Order 30 and reducing
18 PPD's for Order 30 dairy farmers.

19 In the meantime, Idaho milk had been
20 and continues to pool large quantities of milk on
21 Order 1030. Exhibit 5, Page 68, shows that in
22 December of 2003, 12.4 percent of the producer milk on
23 Order 1030 was from Idaho. That same exhibit on page
24 71 shows Jerome County, Idaho, as having the most
25 producer milk of any county in the Upper Midwest

1 Order. The Upper Midwest marketing area seems to be
2 the dumping ground for milk from other areas -- or
3 from areas that either can't get pooled in their
4 geographic area because of lack of access, or they
5 find the pooling and diversion provisions on order 30
6 so liberal that it is economically advantageous. We
7 believe it is some of each, but mostly the latter.

8 Milk so distant from the market cannot
9 be logically thought of as a consistent supply for
10 distributing plants in the marketing area, or even as
11 a reserve supply for a market with 15 to 20 percent
12 Class I utilization. This milk is being pooled by
13 handlers in the marketing area that consistently ship
14 more than the Order 1030 required 10 percent to a
15 distributing plant. Under current order provisions,
16 the handler can pool 10 times the volume of milk
17 shipped to distributing plants and divert the milk not
18 shipped to nonpool plants inside or outside the
19 marketing area after the milk has been physically
20 received at a pool plant during the first month the
21 dairy farmer is a producer. Handlers using this
22 provision are pooling Idaho milk, for example,
23 shipping one day's production to an Order 30 pool
24 plant, either a supply plant or a distributing plant,
25 the first month the milk is eligible and diverting the

1 balance to an Idaho nonpool plant until the milk loses
2 association with the market.

3 This type of pooling has been
4 consistently happening with Idaho milk since April of
5 2001, and reached its highest volume level in December
6 of 2003 at 263 million pounds. These sham pooling
7 arrangements have caused considerable economic loss to
8 Upper Midwest dairy farmers. Exhibit 11, Table 1,
9 shows the actual producer price differential versus
10 the estimated PPD calculated by the Marketing
11 Administrator by not including Idaho milk in the Upper
12 Midwest Federal Order pool from April of 2001 through
13 June of 2004. The average loss in PPD value in 2001
14 and 2002 was 2 cents and 3 cents per hundredweight
15 respectively. The 2003 loss was 24 cents, and the
16 January 2004 through June 2004 six-month period was 25
17 cents. The dollar loss on just the 24 cents for 2003
18 on milk remaining in the pool was \$36.5 million to
19 Upper Midwest dairy farmers. As we have stated
20 earlier, this milk is not supplying the market and
21 never intended to.

22 There are obviously other local
23 problems that prevented Idaho milk from pooling in
24 their geographic area and causing that supply to seek
25 out pooling partners in some 1,500 miles from home.

1 Whatever they are, Midwest dairy farmers shouldn't be
2 paying for it. Adding fuel to the fire, the Western
3 Order was terminated effective April 1, 2004. This
4 means there is an even bigger milk shed no longer
5 regulated by a Federal Order, raising concerns that
6 even more Idaho milk will be pooled in the Upper
7 Midwest Order.

8 The first part of Proposal 1 would
9 limit certain activities to the states of Illinois,
10 Iowa, Minnesota, North Dakota, South Dakota, Wisconsin
11 and the Upper Peninsula of Michigan. These are all
12 states or areas that have counties in the Upper
13 Midwest marketing area.

14 Qualifying shipments by plants located
15 outside these states could only be made to
16 distributing plants inside the marketing area.

17 Operators of supply plants within these
18 states may use milk delivered directly from producers'
19 farms to distributing plants in the marketing area as
20 qualifying shipments.

21 Handlers could not use milk delivered
22 directly from producers' farms to qualify plants
23 located outside these states.

24 Handlers would be prevented from
25 diverting milk to nonpool plants located outside of

1 the states -- it should be of the states listed above.

2 The second part of Proposal 1 would
3 limit the transportation credit calculation to not
4 more than 400 miles between the shipping pool plant
5 and the receiving distributing plant. Exhibit 7,
6 Table S2, shows no milk in 2003 receiving a
7 transportation credit for milk shipped to a
8 distributing plant from supply plants outside this 400
9 mile distance, and, in fact, very little from 300 to
10 399 miles. Limiting the credit to 400 miles will not
11 disadvantage anyone currently shipping supply plant
12 milk to distributing plants.

13 Proposal No. 1 will not prohibit the
14 pooling of distant milk on the Upper Midwest Order.
15 Anyone who wants to ship the Order required 10 percent
16 to distributing plants in the Order 1030 can still do
17 so. This proposal will, however, weaken the incentive
18 to pool unneeded blocks of milk without serving the
19 market in any substantial manner.

20 That concludes my statement.

21 THE COURT: Then you have some exhibits
22 attached? I see some statistical data material.

23 THE WITNESS: Yes, sir.

24 THE COURT: Let's just keep this as
25 Exhibit, did we say 17, and make that 17A for the

1 first page, 17B for the second page.

2 (Whereupon, Exhibit Nos. 17A and
3 17B were marked for identification.)

4 THE COURT: All right. Are there
5 questions?

6 THE WITNESS: Those last two that are
7 attached are already marked as exhibits, and I'm just
8 referring to them.

9 THE COURT: Oh, okay. I'm sorry.
10 Well, we'll still put those numbers on them incase
11 anybody refers to the wrong one. All right,
12 questions? There has to be some questions. All
13 right. There doesn't appear to be any questions.
14 Thank you, sir. Is there anything else as to Proposal
15 1? Anybody want to pull any testimony of Proposal 1
16 or --

17 UNIDENTIFIED PERSON: Let's just
18 adjourn and go home.

19 THE COURT: You make that too easy.
20 Let's go off the record.

21 (A discussion was held off the record.)

22 THE COURT: Back on the record. We
23 will adjourn until 9 a.m. tomorrow morning.

24 (Whereupon, the Federal Order 30
25 Hearing was adjourned at 4:45 p.m.)

1 STATE OF MINNESOTA :

:

CERTIFICATE

2 COUNTY OF HENNEPIN :

3 BE IT KNOWN, that I, Kelly E. Hanna, Court
4 Reporter, took the foregoing Federal Order 30 Hearing;

5 That the witnesses, before testifying, were by
6 the Court first duly sworn to testify the whole truth
7 and nothing but the truth relative to said cause;

8 That the testimony of said witnesses were
9 recorded in shorthand by me and were reduced to
10 typewriting under my direction;

11 That the foregoing Federal Order 30 Hearing is a
12 true record of the testimony given by said witnesses;

13 That I am not related to any of the parties
14 hereto, nor an employee of them, nor interested in the
15 outcome of the action;

16 That the cost of the original has been charged to
17 the party who noticed the Federal Order 30 Hearing,
18 and that all parties who ordered copies have been
19 charged at the same rate for such copies;

20 WITNESS MY HAND AND SEAL this 31st day of August,
21 2004.

22

23 _____
Kelly E. Hanna, Court Reporter,
Notary Public

24

25