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BEFORE THE UNITED STATES DEPARTMENT  
OF AGRICULTURE  
AGRICULTURAL MARKETING SERVICE

IN RE: ) 7 CFR Parts 1005,  
) 1006, and 1007  
Milk in the Appalachian, )  
Southeast, and Florida ) Docket No. 23-J-0019  
Marketing Areas )  
) AMS-DA-23-0003

RULEMAKING HEARING BEFORE  
CHIEF PRESIDING ADMINISTRATIVE LAW JUDGE  
CHANNING D. STROTHER, JUDGE

February 28, 2023

Volume 1 of 6

**ORIGINAL**

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4

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1 P R O C E E D I N G S

2 THE COURT: Okay. Good  
3 morning, everyone. Thanks for joining me here in  
4 Franklin, Tennessee, today. I'm Channing  
5 Strother. I'm Chief Administrative Law Judge for  
6 the United States Department of Agriculture. In  
7 this capacity I will be presiding over today's  
8 in-person hearing in Franklin, Tennessee.

9 We are gathered to conduct a  
10 mandatory hearing of recommended changes to the  
11 orders regulating the handling of milk in the  
12 Appalachian, Southeast, and Florida marketing  
13 areas.

14 This proceeding has been reassigned  
15 the following docket or case numbers. For my  
16 office it's 23-J-0019. And then there's an  
17 AMS-DA-23-0003.

18 The United States Department of  
19 Agriculture's Agricultural Marketing Service is  
20 AMS. It receives federal marketing orders as part  
21 of its dairy program. The regulations applicable  
22 to the Appalachian, Southeast, and Florida  
23 marketing orders are contained in Title 7 of the  
24 Code of Federal Regulations, Parts 1005, 1006, and  
25 1007. Federal Register Notice containing the

1 proposed amendments will be entered into the  
2 record.

3           The purpose of this hearing is to  
4 receive evidence regarding economic and marketing  
5 conditions that relate to the proposed amendments  
6 to the marketing order. Evidence will also be  
7 taken to determine whether an emergency condition  
8 exists that would warrant omission of a  
9 recommended decision.

10           My role as presiding administrative  
11 law judge is to ensure the hearing adheres to the  
12 procedures prescribed in Title 7 of the Code of  
13 Federal Regulations, Part 900, titled General  
14 Regulations, Procedural Requirements Governing the  
15 Proceedings Related to Marketing Agreements and  
16 Marketing Orders.

17           Additionally, it's my responsibility  
18 to ensure the information gathered during this  
19 hearing is pertinent to the subject matter of the  
20 aforementioned Federal Register Notice.

21           If the witness makes comments or  
22 testifies in a manner -- subject matter outside  
23 the scope of the contents of the Federal Register  
24 notice, I have the authority to interrupt and not  
25 allow the witness to continue. However, I will

1 not be issuing a decision at the conclusion of  
2 this hearing.

3           USDA will confer to the information  
4 gathered during this hearing to determine whether  
5 or not to move forward with the proposed  
6 recommendations.

7           I will administer the hearing to  
8 allow the testimony from or on behalf of  
9 interested parties, cross-examination of those  
10 witnesses by interested parties and their  
11 representative, and submission of supporting  
12 documents as evidence.

13           As initial step, we have notices of  
14 appearances of all participants, including the  
15 USDA personnel, technical support people, and  
16 industry proponents. Each will be asked to state  
17 and spell their name, give their professional  
18 title, and describe their role during the hearing,  
19 including identifying on whose behalf they are  
20 speaking.

21           Shall we do this now? Okay. Let's  
22 have some notices of appearances.

23           Again, folks that are going to be  
24 participating here today, stand up, give your  
25 name, professional affiliation, title of, and



1 describe your role for the hearing reporter.

2           Shall we start with the agency.

3                   MR. HILL: My name is Brian  
4 Hill, Senior Counsel at the USDA, Office of the  
5 General Counsel, Marketing, Regulatory, and Food  
6 Safety Programs Division. I'm here on behalf of  
7 the Agricultural Marketing Service Dairy Programs.

8                   MS. MCMURTRAY: Good morning.  
9 Michelle McMurtray, Attorney Advisor with the  
10 Office of the General Counsel for USDA. I'm here  
11 on behalf of the Agricultural Marketing Service  
12 Dairy Programs.

13                   THE COURT: Good morning.

14                   MS. TAYLOR: Hi, I'm Erin  
15 Taylor. E-R-I-N T-A-Y-L-O-R. I'm the Director of  
16 Order Formulation and Enforcement Division with  
17 USDA Dairy Program.

18                   THE COURT: Good morning.

19                   MS. BECKER: Good morning.  
20 Lauren Becker, Order Formulation and Enforcement  
21 Division with AMS Dairy Program.

22                   THE COURT: Good morning.

23                   MS. DICKERSON: Good morning.  
24 Rebecca Dickerson. R-E-B-E-C-C-A. Dairy  
25 Marketing Specialist, Order Formulation and

1 Enforcement Division, Dairy Program.

2 THE COURT: Okay. Industry  
3 proponents.

4 MR. BESHORE: Good morning.  
5 Marvin Beshore. B-E-S-H-O-R-E. Attorney with the  
6 Law Offices of Johnson, Duffie, Stewart & Weidner  
7 in Lemoyne, Pennsylvania. I am counsel for  
8 proponent Dairy Cooperative Marketing Association.

9 THE COURT: Good morning,  
10 Mr. Beshore.

11 MR. MILTNER: Good morning,  
12 Your Honor. My name is Ryan Miltner,  
13 M-I-L-T-N-E-R, with the firm of Miltner Reed, and  
14 I am counsel for Select Milk Producers.

15 THE COURT: Good morning,  
16 Mr. Miltner.

17 MR. TONAK: Dennis Tonak,  
18 T-O-N-A-K, with Prairie Farms. I am not an  
19 attorney as those that preceded me were.

20 THE COURT: Good morning,  
21 Mr. Tonak.

22 Anyone else?

23 (No verbal response.)

24 THE COURT: Okay. Seeing no  
25 one.

1           AMS, as I understand it, has a list  
2 of witnesses desiring to testify. I will call  
3 those witnesses in order as they appear on the  
4 list as been presented to me, or I may just look  
5 over to the AMS table and they'll tell me who's up  
6 next.

7           Prior to testifying, each witness  
8 will be sworn in and asked to state and spell  
9 their name for the hearing record. A lot of that  
10 going on here.

11           The regulations also require the  
12 witness provide their occupation and address.  
13 However, I'll point out that in deference that  
14 concerns that public disclosure of personal  
15 protected information, I'm going to ask that the  
16 witnesses not divulge an address that is a  
17 personal residence, but I'd ask that he -- to make  
18 sure that the reporter has a working regular  
19 mailing address for you, whatever that address is.

20           At the beginning of each witness's  
21 statement, the witness shall identify all exhibits  
22 they will refer to during their testimony. Once a  
23 witness has finished making his or her statement,  
24 I will officially enter those exhibits into the  
25 record, subject to any objections made by other

1 participants at that time. By the way, an  
2 objection could be -- I'll just wait until the end  
3 of that witness's testimony before officially  
4 entering an exhibit.

5 As I noted, part of my duties are to  
6 exclude irrelevant and immaterial testimony on  
7 exhibits, and it will also preclude any dually  
8 repetitious testimony and questioning. And, of  
9 course, I may do this in response to an objection  
10 from some interested party. Participants and  
11 witnesses are to address each other through me.

12 The terms of direct and  
13 cross-examination after a witness has completed  
14 delivering his or her prepared materials, the  
15 party offering the witness, either members of the  
16 USDA or proponent industry, will be given first  
17 opportunity to ask the witness questions.

18 Once finished, I will give the  
19 parties not offering the witness an opportunity to  
20 ask questions of the witness. That would be  
21 either USDA or proponents from the industry first.  
22 After those entities have been given a shot at  
23 cross-examination, I will open the floor for the  
24 opportunity of other people to ask questions.

25 Court reporter is transcribing the

1 entire hearing. I encourage all participants to  
2 speak clearly and slowly to ensure that the court  
3 reporter is able to transcribe everything.

4 If you have any trouble hearing or  
5 understanding a witness, Ms. Reporter, you may  
6 point that out to me.

7 We can take up some of this towards  
8 the end of the hearing, but I understand that the  
9 USDA expects to be able to post the entire  
10 transcript to its website, something like two  
11 weeks after the close of the hearing.

12 I think towards the end of the  
13 hearing, that we'll set a time for transcript  
14 corrections and objections to the transcript  
15 corrections. Corrections are to go to what was  
16 actually said. It's not an opportunity to add  
17 testimony or to change testimony. I would also  
18 expect, depending what -- the parties can decide  
19 and tell us, too, it would be an opportunity for  
20 objections to the proposed transcript corrections.

21 We'll also set a briefing schedule.  
22 I recommend that the parties confer with  
23 themselves about what that briefing schedule will  
24 be, what style of briefs, whether there's one  
25 that -- initial reply briefs or step briefs or --

1 step briefs being an opening brief by the  
2 proponent of a particular matter and answering  
3 briefs the folks posed, and then reply briefs.  
4 However you-all want to do it works for me.

5 I am here to serve the public, the  
6 USDA in this regard. Again, I'm not the one that  
7 writes the decision. I'm doing the best I can for  
8 the person that has to.

9 We will be taking periodic breaks and  
10 lunch breaks. I'm thinking to get started at  
11 9:00, and probably around 10:30, but if the  
12 hearing reporter needs something before then -- if  
13 the hearing reporting needs anything at all -- the  
14 hearing reporter is the most important person in  
15 this hearing; certainly not me.

16 And then we'll have a lunch break,  
17 I'm thinking, around 12:00 for an hour and a half.  
18 If people think it needs to be shorter or --  
19 depending on how the time is going. And if I go  
20 over because I'm obsessed with this, somebody  
21 point that out to me.

22 We have four days scheduled for this  
23 hearing. If we finish in advance of the closing  
24 of the fourth day, I expect to close the hearing  
25 at that time.

1 I would ask the USDA, are we under  
2 the emergency hearing? We waited around to see if  
3 other people came in during the course. I don't  
4 think that's necessary here, is it?

5 MR. HILL: No, I don't believe  
6 so.

7 THE COURT: Not an emergency  
8 situation there. Okay.

9 Cell phones on mute, if you can  
10 figure out how to do it. I'm not sure I have.  
11 You may have to forgive me for that.

12 There's coffee and water in the  
13 back -- I got a new phone right at the end of last  
14 week. I have no idea what it does. It's got an  
15 AI of its own that I'm not a party to. There's  
16 coffee and water at the back of the room, I think,  
17 and some snacks.

18 Let me see. I think that's all I  
19 have.

20 Does anyone else have any preliminary  
21 matters?

22 (No verbal response.)

23 THE COURT: Seeing none, are  
24 we ready for the first witness?

25 MR. HILL: Well, prior to the

1 first witness, we do have some documents that we  
2 would like to place on the record.

3 THE COURT: Okay. These are  
4 documents -- these are USDA exhibits but they are  
5 not sponsored by any witness but they're -- among  
6 other things, there's the hearing Federal Register  
7 notice, things that the regulations would require  
8 to be put into the record --

9 MR. HILL: That would be  
10 correct.

11 THE COURT: -- and don't  
12 require sponsors.

13 MR. HILL: That would be  
14 correct.

15 THE COURT: Okay, Counsel.

16 By the way, we will be numbering  
17 exhibits. We're not identifying initials for each  
18 one, just one right after the other.

19 MR. HILL: Okay. Again, my  
20 name is Brian Hill. I didn't spell it before. So  
21 I'll spell it for you now. B-R-I-A-N. Last name  
22 Hill, H-I-L-L.

23 The first document I would like to  
24 mark for evidence is the hearing notice. It shows  
25 at the top, Proposed Rules. I would like to mark



1 that as Exhibit Number 1.

2 (Whereupon, Exhibit Number 1 was  
3 marked for identification.)

4 MR. HILL: And it is just the  
5 hearing notice published in the Federal Register.

6 THE COURT: This is basically  
7 titled Proposed Rules at the top. In the corner,  
8 Federal Register, 88, Number 19, Monday,  
9 January 30.

10 MR. HILL: I would like to  
11 mark into evidence as Exhibit Number 2 a document  
12 that is titled Certificate of Parties Notified.

13 And that just affirms that interested  
14 parties were supplied, electronically, with the  
15 hearing notice.

16 (Whereupon, Exhibit Number 2 was  
17 marked for identification.)

18 MR. HILL: I would like to  
19 mark into evidence as Exhibit Number 3 a copy of  
20 the press release which contains a summary of the  
21 contents of the notice of hearing.

22 It is entitled at the top, USDA Sets  
23 Hearing on Proposed Amendments to the Appalachian,  
24 Southeast, Florida Federal Milk Marketing Orders.  
25 Again, Number 3.

1                   (Whereupon, Exhibit Number 3 was  
2 marked for identification.)

3                   THE COURT: Very well.

4                   MR. HILL: I would like to  
5 mark for evidence as Number 4, Exhibit Number 4,  
6 the Certificate of Officials Notified.

7                   And that affirms that the governors  
8 of various states that may be of interest were  
9 supplied with the hearing notice.

10                   (Whereupon, Exhibit Number 4 was  
11 marked for identification.)

12                   MR. HILL: In addition to  
13 those four documents, two further documents were  
14 created.

15                   I would like to mark into evidence as  
16 Number 5 a document that's titled Milk in the  
17 Appalachian, Southeast, and Florida Areas; Notice  
18 of Hearing on Proposed Amendments to Marketing  
19 Agreements and Orders.

20                   That was a document created by us, by  
21 the Agricultural Marketing Service. And that  
22 would be Number 5.

23                   (Whereupon, Exhibit Number 5 was  
24 marked for identification.)

25                   MR. HILL: I would like to

1 also mark into evidence as Exhibit Number 6 a  
2 document titled Hearing Notice Reference Table:  
3 Proposed Regulatory Changes.

4 (Whereupon, Exhibit Number 6 was  
5 marked for identification.)

6 MR. HILL: The final two  
7 documents, Number 5 and 6 that I just mentioned,  
8 were created because of some confusion. Usually  
9 when these things are placed in the hearing  
10 notice, the proposals are aggregated by proposal.

11 In the hearing notice this time,  
12 because of some changes due to the office of the  
13 Federal Register, the proposals were not done by  
14 proposal but by regulatory text where they fade  
15 into the regulatory text. So it's difficult to  
16 tell who is making the proposal and where they're  
17 supposed to go.

18 So these last, final two documents  
19 are to clear that up by giving you a road map of  
20 who is proposing what and where it's being  
21 proposed. So I think I should go through these  
22 just a little bit to make this clear.

23 If you take Number 6, the Hearing  
24 Notice Reference Table, in the first column it  
25 says Federal Register HN Change Number. Those

1 change numbers relate to the numbers that appear  
2 in the changes in regulatory text in the hearing  
3 notice. So they begin on page 5802 of what is  
4 marked into evidence as Exhibit Number 1.

5 I'm not sure if you have it, Your  
6 Honor, but if you do, if you look in the third  
7 column of 5802, you'll see Part 1005, Milk in the  
8 Appalachian Marketing Area. Right under it you  
9 will see a box, and it says Number 1. So the HN  
10 change numbers are akin to those numbers.

11 So Number 1 on Exhibit Number 6, in  
12 the left-hand column, shows you the Change  
13 Number 1 on Exhibit Number 1. And that continues  
14 throughout the document.

15 So for example, if you go to  
16 page 5806 of Exhibit Number 1, at the very top you  
17 will see the number 14.

18 So if you look at the reference table  
19 in Exhibit Number 6 and you look down to 14, it  
20 shows you that that proposal is coming from DCMA.  
21 It also tells you what CFR section it is. That  
22 continues throughout the document.

23 This is just, as I said, a reference  
24 table to help people understand who is making what  
25 proposal because it's unclear in the actual

1 hearing notice.

2           So those are the six preliminary  
3 documents that we have to put on the record. And  
4 if there are no objections, I would like to enter  
5 them into evidence as Exhibit 1 through Exhibit 6.

6           THE COURT: Okay. Are there  
7 any objections from anyone to entering into the  
8 record Exhibit Numbers 1 through 6, as identified  
9 by Mr. Hill?

10           (No verbal response.)

11           THE COURT: Seeing none.

12           Exhibit Numbers 1 through 6 are  
13 entered into evidence, into the record.

14           Let's go off the record.

15           (Whereupon, a discussion off the  
16 record occurred.)

17           THE COURT: Okay. Back on the  
18 record.

19           Exhibits 1 through 6 have been  
20 entered into the record.

21           It's time for the first witness.

22           MR. HILL: It would be time  
23 for our first witness. Our first witness is John  
24 Herbert.

25           THE COURT: Good morning.

1 THE WITNESS: Good morning.

2 THE COURT: I guess I'll swear  
3 you in first.

4 **JOHN HERBERT**

5 was called as a witness, and after having been  
6 first duly sworn, testified as follows:

7 **DIRECT EXAMINATION**

8 THE COURT: Please identify  
9 yourself. Spell your name and give your  
10 professional affiliation and address, I guess you  
11 would say.

12 THE WITNESS: Yes, Your Honor.

13 John Herbert. J-O-H-N H-E-R-B-E-R-T.  
14 I'm an Associate Market Administrator for the  
15 Federal Order 5, Federal Order 6, and Federal  
16 Order 7 marketing areas. Address of our office is  
17 10301 Brookridge Village Boulevard in Louisville,  
18 Kentucky 40291.

19 THE COURT: Okay. I guess we  
20 don't have an official direct examination. The  
21 witness simply gives a statement, if I recall.

22 MR. HILL: Well, I will ask  
23 him a couple of questions.

24 BY MR. HILL:

25 Q. How long have you been with your current

1 position?

2 A. I've been in my current position a  
3 little over two years.

4 Q. Okay. And for what purpose are you here  
5 to testify?

6 A. I'm here to enter information into the  
7 record that was prepared at the request of the  
8 proponent of the hearing.

9 Q. And in preparing these documents, do you  
10 take any position -- or does the USDA take any  
11 position or market administrator's office take any  
12 position on -- for or against any proposals?

13 A. No. The USDA and the market  
14 administrator's office does not take a position on  
15 the proposals.

16 Q. So I think we have a document that's  
17 called Pool Data and Market Information. Is that  
18 one of the documents that you prepared?

19 A. Yes, that's correct.

20 MR. HILL: Okay. I would like  
21 to mark that as Exhibit Number 7.

22 THE COURT: So identified and  
23 marked.

24 (Whereupon, Exhibit Number 7 was  
25 marked for identification.)

1 BY MR. HILL:

2 Q. This is a document that you prepared,  
3 correct, or helped prepare?

4 A. That's correct.

5 Q. Okay. So I'm going to give you some  
6 leeway. Let's move forward and you can tell us  
7 and explain these documents, explain to us what  
8 these documents are intended to show.

9 A. Okay. So obviously, the first page is  
10 the Table of Contents.

11 Turn to the page marked page 1. It is a  
12 map that represents the Federal Order 5 pool  
13 plants for the month of December 2022. The shaded  
14 area represents the Federal Order 5 marketing  
15 area. The stars with the plant names identify the  
16 pool plants on the Federal Order 5 marketing area  
17 in December of 2022, December 2022.

18 Page 2 is a similar map that represents  
19 the Federal Order 6 marketing area. The shaded  
20 region represents the Federal Order 6 marketing  
21 area. The stars and plant names are identified  
22 based on plant location. Again, those are pool  
23 plants for December 2022.

24 Page 3 is a similar map that represents  
25 the Federal Order 7 marketing area and pool plants



1 for December 2022. The shaded area represents the  
2 Federal Order 7 marketing area. The stars and  
3 names represent the pool plants on the Federal  
4 Order 7 marketing area for December of 2022.

5 Page 4 represents producer milk by state  
6 and county for Federal Order 5 for May 2022. The  
7 red outline identifies the Federal Order 5  
8 marketing area. The blue highlighted counties  
9 represent counties where producer milk -- with  
10 producer milk production that was pooled on  
11 Federal Order 5 in the month of May 2022.

12 On the left-hand side, there's a list of  
13 the total pounds by state, producer milk pooled on  
14 Federal Order 5.

15 At the bottom of the state list, it  
16 notes Other. That represents a combination of  
17 restricted states. So those states are listed in  
18 aggregate at the bottom. Those restricted states  
19 include Alabama, Florida, Illinois, Kansas, and  
20 Texas.

21 Page 5 is a similar map. It represents  
22 producer milk by state and county, also Federal  
23 Order 5, but this map represents December of 2022.

24 Again, the red outline represents the  
25 Federal Order 5 marketing area. The blue shaded

1 counties represent counties with producer milk  
2 pooled on Federal Order 5 in that month.

3 And again, the states are listed on the  
4 left-hand side with the producer milk pooled by  
5 state, and the Other, again, represents the  
6 restricted states that are aggregated and those  
7 are listed below the list.

8 Q. And my question is, why are some states  
9 restricted?

10 A. Right. So the market administrator's  
11 office restricts data if there are less than three  
12 handlers in that state due to confidentiality  
13 reasons, so we list those in aggregate in order to  
14 avoid releasing confidential information.

15 Page 6 is a similar map for Federal  
16 Order 6. The blue outline represents the Federal  
17 Order 6 marketing area. The blue counties  
18 represent counties with milk pooled on Federal  
19 Order 6 in May of 2022.

20 Again, on the right-hand side here, it  
21 lists the production milk pooled on Federal  
22 Order 6 by state. And the other states  
23 represented there include Alabama, Georgia,  
24 Louisiana, and Mississippi. And again, those are  
25 aggregated due to confidentiality reasons.

1                   Page 7 is a similar map for  
2 December 2022 for Federal Order 6. Again, the  
3 blue outline represents the Federal Order 6  
4 marketing area. The blue highlighted counties are  
5 counties where they had milk production pooled on  
6 Federal Order 6 in the month of December 2022, and  
7 the states with production are listed on the  
8 right-hand side again.

9                   Similarly, for Federal Order 7, page 8  
10 is a producer milk by state and county for May  
11 2022, pooled on Federal Order 7. The green  
12 outline represents the Federal Order 7 marketing  
13 area, and the blue counties represent counties  
14 with milk production pooled on Federal Order 7 in  
15 the month of May 2022.

16                   The total pounds by state are, again,  
17 listed on the right-hand side. And again, Other  
18 represents the restricted states. They are  
19 aggregated together, and those restricted states  
20 are listed at the bottom right-hand side.

21                   Page 9 is the producer milk by state and  
22 county for December 2022 for Federal Order 7.  
23 Again, the green outline represents the Federal  
24 Order 7 marketing area. The blue counties  
25 represent counties with producer milk pooled on

1 Federal Order 7 in December 2022. And the pounds  
2 by state are listed to the right-hand side.

3 Page 10 is just a general list of  
4 information that is available on the Federal  
5 Order 5, Federal Order 6, and Federal Order 7  
6 market administrator websites.

7 That list includes the Computation of  
8 Uniform Prices, which, on those uniform price  
9 announcements, there are Uniform Prices, Total  
10 Producer Milk Receipts, and Producer Milk  
11 Utilization by Class.

12 Advanced Class Price Announcements,  
13 which include the Class I Price, the Diesel Fuel  
14 Price, and Mileage Rate Factor.

15 Class Price Announcements, which include  
16 the Class I, II, III, and IV Prices as well as  
17 Monthly Product Price Averages.

18 Plant and Handler Lists, which include  
19 Regulated Plants Pooled on the Respective Federal  
20 Order, by Month.

21 Producer Milk by State and County, which  
22 includes the Total Pounds and Number of Producers  
23 Pooled on the Respective Federal Order, by State  
24 and County of Origin.

25 And Statistical Material and Statistical

1 Summaries, which include Utilization by Class,  
2 Class I Route Dispositions, and Average Butterfat  
3 Test of Producer Milk.

4 Page 11 represents the Federal Order 5  
5 transportation credit balancing fund history for  
6 2018 through 2022.

7 The first two columns are the year and  
8 month.

9 The third column represents the  
10 transportation credit assessment in that month.

11 The fourth column, Total Assessment,  
12 represents the total value of the assessment for  
13 the month.

14 The next two columns show the average  
15 diesel fuel price per gallon and the mileage rate  
16 factor.

17 The seventh column, Total Pounds  
18 Requested, represents the total pounds of  
19 transportation credit requested for the month in  
20 Federal Order 5.

21 The next column, Total Payments  
22 Requested, would be the value of those requests  
23 for the month.

24 The second to last column represents the  
25 total transportation credits paid in the month.

1           And the final column represents  
2 proration amount.

3           It's worth noting that in the  
4 transportation credit assessment for Federal Order  
5 5, the assessment started at \$0.15 per  
6 hundredweight. It was lowered to \$0.10 per  
7 hundredweight in July of 2018.

8           And then on page 12, which is the  
9 continuation of this table, it dropped to \$0.07  
10 per hundredweight in May of 2021.

11           Also, for clarification purposes, the  
12 months of March through June, there are no  
13 payments out of the transportation credit fund.  
14 So there's still an assessment collected every  
15 month, but in the months of March through June,  
16 there is no transportation credit payment.

17           Q.     One question, Mr. Herbert.

18           A.     Yes, sir.

19           Q.     Could you explain the proration of  
20 payment numbers?

21           A.     Yes. So the Proration of Payment column  
22 represents the percent of the payments claimed  
23 that were actually able to be made out of the  
24 fund.

25           In the case of Federal Order 5, for the

1 entire five-year history represented here, the  
2 balance in the transportation credit fund was  
3 enough to cover the full value of the requests.

4           However, as we go to the next table,  
5 you'll see that that is not the case for Federal  
6 Order 7.

7           Q.     So where I see 0, that's the proration  
8 of payment, would you say?

9           A.     Yes.    So the 0 is just there because  
10 there is no payment in the months of March through  
11 June.

12          Q.     Okay.   Thank you.

13          A.     So the next table begins on page 13, as  
14 page 12 is the continuation of the previous table.

15                 Page 13 represents the Federal Order 7  
16 transportation credit balancing fund history for  
17 2018 through 2022.

18                 The first two columns, again, represent  
19 year and month.

20                 The transportation credit assessment,  
21 which, for Federal Order 7, was \$0.30 for the  
22 entire period.

23                 The next column is the total assessment.

24                 Still moving left to right, the Average  
25 Diesel Fuel Price per gallon and Mileage Rate

1 Factor are the next two columns.

2 The next column is total pounds of  
3 transportation credit requested by month followed  
4 by the total value of the transportation credit  
5 payments requested, the total transportation  
6 credit payments paid and the proration percent.

7 So when a proration percent is less than  
8 100 percent, it represents that the transportation  
9 credits in the fund were not enough to cover the  
10 requested payments, so the payments were prorated  
11 at a percent less than 100 percent.

12 Q. And I think the last page, page 14, is  
13 just a continuation of that same table?

14 A. That's correct. Page 14 is a  
15 continuation of the same table.

16 MR. HILL: So I would like to  
17 move forward to the next document. It's called  
18 Exhibit Prepared by the Market Administrator,  
19 Federal Orders 5, 6, and 7, at the Request of  
20 Dairy Cooperative Marketing Association,  
21 Incorporated.

22 I would like to mark that document  
23 into evidence as Exhibit Number 8.

24 (Whereupon, Exhibit Number 8 was  
25 marked for identification.)



1                   THE COURT: I don't think I  
2 need to say it, but unless someone objects --  
3 well, I don't think anyone is going to object to  
4 marking it. They will have the chance to object  
5 on the entry into the --

6                   MR. HILL: Sure.

7                   THE COURT: -- evidence later.  
8                   Thank you, Counsel.

9                   MR. HILL: Thank you.

10 BY MR. HILL:

11           Q.     Can you explain this document to us,  
12 Mr. Herbert?

13           A.     Yes. This document was requested by  
14 Dairy Cooperative Marketing Association. They  
15 requested we put together information in  
16 preparation for this hearing in relation to their  
17 proposals.

18                   After the Table of Contents, the first  
19 11 pages are a reproduction of some tables we  
20 provided in the past. The market administrator  
21 who attended various dairy meetings throughout the  
22 Southeast over the last two years provided  
23 information at those meetings, and the first 11  
24 tables were a request from Dairy Cooperative  
25 Marketing Association to update the information in

1 those tables that we had previously presented.

2 The tables after that are just various  
3 tables they requested as part of the hearing.

4 I'll go ahead and start with page 1.  
5 The first page is producer milk receipts for the  
6 year 2000. It represents the monthly average by  
7 order. This table represents for all federal  
8 orders, the monthly average producer milk receipts  
9 in the year 2000 in billions of pounds.

10 Page 2 represents producer milk receipts  
11 for the year 2021. The monthly average by order,  
12 again, is for all federal orders and is in billion  
13 pounds.

14 Page 3 is the Federal Order 5 milkshed  
15 for 2021. So this is for milk pooled on Federal  
16 Order 5. So the milkshed represents where the  
17 milk was received from, where the milk was  
18 produced.

19 So in this case, 54 percent of the milk  
20 was produced on farms in the Appalachian marketing  
21 area, 14 percent from the Southeast marketing  
22 area, 16 percent from the Mideast, 8 percent from  
23 unregulated areas, 5 percent from the Northeast  
24 marketing area, and 3 percent from other Federal  
25 Order marketing areas.

1 Q. One question about the Other.

2 Is it the same reason that we had Other  
3 in the previous tables?

4 A. It is not. It is just aggregated  
5 together. In some cases it can be, but it is also  
6 just aggregated together instead of trying to  
7 slice out very thin breakouts of other federal  
8 orders.

9 Q. Thank you very much.

10 A. So similarly, the Federal Order 6  
11 milkshed is on page 4. It represents the Federal  
12 Order 6 milkshed for 2021, Florida marketing area.

13 In this case, 82 percent of the milk  
14 pooled on the Florida order was produced in the  
15 Florida marketing area. 18 percent came from  
16 Other Federal Order marketing areas.

17 Page 5 is the Federal Order 7 milkshed  
18 for 2021. The table is similar to the tables for  
19 Federal Order 5 and Federal Order 6. Again, Other  
20 represents milk from other federal orders.

21 The table on page 6 is producer milk  
22 originating in the Federal Order 5 marketing area  
23 by pooling order.

24 So the blue bar represents milk that was  
25 produced in the Federal Order 5 marketing area and

1 pooled on Federal Order 5. The orange represents  
2 milk produced in the Federal Order 5 marketing  
3 area, pooled on Federal Order 7. The gray  
4 represents milk produced in the Federal Order 5  
5 marketing area and pooled on Other Federal Orders.  
6 In this case, that data is aggregated due to  
7 potential issues of restricted data.

8 Page 7 is a similar chart to page 6. In  
9 this case, it represents producer milk originating  
10 in the Federal Order 6 marketing area by pooling  
11 order for 2019, 2020, and 2021.

12 The blue represents milk produced in the  
13 Federal Order 6 marketing area, pooled on Federal  
14 Order 6. Orange represents milk produced in the  
15 Federal Order 6 marketing area, pooled on Federal  
16 Order 5 and Federal Order 7.

17 Page 8 is the same information as page 6  
18 and 7, only representing Federal Order 7 marketing  
19 area. So this is producer milk originating in the  
20 Federal Order 7 marketing area by pooling order.

21 The blue represents milk produced in the  
22 Federal Order 7 marketing area, pooled on Federal  
23 Order 7. Orange represents milk produced in the  
24 Federal Order 7 marketing area, pooled on Federal  
25 Order 5. Gray is milk produced in the Federal

1 Order 7 marketing area, pooled on Federal Order 6.  
2 And yellow is milk pooled on Other Federal Orders.

3 Page 9 is the Federal Order 5 daily  
4 average in-area producer milk and pool  
5 distributing plant demand for 2019 through 2021.

6 The orange bars represent the daily  
7 average in-area producer milk by month. So that  
8 would be milk produced in Federal Order 5, pooled  
9 on Federal Order 5. The blue line represents the  
10 daily average pool distributing plant demand for  
11 producer milk. The spread between the blue line  
12 and the orange bar represent the deficit between  
13 the pool distributing plant demand and in-area  
14 producer milk.

15 The lines highlighted for May and  
16 October show the spread from the least deficit  
17 month of 3.3-million-pound deficit per day to the  
18 most deficit month of October of 4.9-million-pound  
19 deficit per day. And it is a 48 percent increase  
20 in the volume of deficit.

21 Page 10 is the Federal Order 6 daily  
22 average in-area producer milk and pool  
23 distributing plant demand for 2019 through 2021.  
24 It is similar to the table provided on page 9 for  
25 Federal Order 5.

1           The orange bars represent in-area  
2 producer milk. The blue represents pool  
3 distributing plant demand for Federal Order 6.

4           The spread represents the deficit  
5 between in-area producer milk and pool  
6 distributing plant demand. The highlighted months  
7 there of April is the least deficit month and  
8 November is the most deficit month.

9           Similar information is provided on  
10 page 11 for Federal Order 7. Federal Order 7  
11 daily average in-area producer milk and pool  
12 distributing plant demand, 2019 through 2021.

13           The orange bars, again, represent  
14 in-area producer milk. The blue represents pool  
15 distributing plant demand.

16           Here highlighted is April as the least  
17 deficit month, in its time period of  
18 3.8-million-pound deficit per day. September is  
19 the most deficit month, 6.5-million-pound deficit  
20 per day. And it is noted there that is a  
21 71 percent increase in volume of deficit.

22           Page 12 is a map of pool distributing  
23 plants for January 2000 for Federal Order 5, 6,  
24 and 7.

25           The pink highlighted area represents the

1 Federal Order 5 marketing area. The green  
2 highlighted area represents the Federal Order 6  
3 marketing area. The blue highlight represents the  
4 Federal Order 7 marketing area.

5 In this case, the plants are identified  
6 with the pinpoints and numbers. The blue dots  
7 represent plants that were pool distributing  
8 plants in January of 2000 and also still pool  
9 distributing plants in December 2022.

10 The red dots represent plants that were  
11 pool distributing plants in January 2000, but were  
12 closed prior to December 2022.

13 And the green dots were pool  
14 distributing plants in January 2000 and no longer  
15 pool distributing plants in December 2022, but not  
16 necessarily closed facilities.

17 Page 13 is just a legend that identifies  
18 each plant and a description of the plant status.

19 A similar map is page 14. It's pool  
20 distributing plants for December 2022, Federal  
21 Order 5, 6, and 7.

22 Federal Order 5 marketing area is shaded  
23 pink. The Federal Order 6 marketing area is  
24 shaded green. The Federal Order 7 marketing area  
25 is shaded blue.

1           Again, the plant locations are  
2 identified with the pinpoint and a number. The  
3 blue pinpoints represent plants that were pool  
4 distributing plants in January 2000 and also in  
5 December 2022. The orange dots represent the  
6 plant is a pool distributing plant in  
7 December 2022 and was not a pool distributing  
8 plant in January 2000.

9           And page 15 is just a legend that  
10 identifies each plant on the previous map as well  
11 as the plant status.

12           Page 16 is a map that represents in-area  
13 producer milk and pool distributing plants for  
14 Federal Order 5, 6, and 7 for October 2022.

15           The pink-shaded area is the Federal  
16 Order 5 marketing area. The green-shaded area  
17 represents the Federal Order 6 marketing area.  
18 The blue-shaded area represents the Federal Order  
19 7 marketing area. The counties that are shaded  
20 darker represent counties that had producer milk  
21 pooled on one of the three orders during the month  
22 of October of 2022.

23           In this map, what we were asked to  
24 provide is an estimate of if all producer milk  
25 from the in marketing area were delivered to the



1 nearest pool distributing plant, what percent of  
2 that plant's volume of their producer milk demand  
3 would be met by the volume from the closest  
4 in-area counties.

5 So the dots on the map represent the  
6 locations of the pool distributing plants for  
7 October of 2022 for Federal Order 5, 6, and 7.

8 The red dot would represent that if all  
9 in-area producer milk went to the nearest pool  
10 distributing plant, that plant would receive less  
11 than 50 percent of its producer milk demand for  
12 the month.

13 The yellow dots represent those pool  
14 distributing plants, if all producer milk went to  
15 the nearest plant, those plants would receive  
16 between 50 and 100 percent of their producer milk  
17 demand for the month of October, 2022.

18 The light blue dots represent the plant  
19 that would receive between 100 and 200 percent of  
20 their producer milk demand for the month.

21 And a dark blue dot identifies that the  
22 plant would receive more than 200 percent of their  
23 producer milk demand for the month of October  
24 2022, had all in-area producer milk been delivered  
25 to the nearest pool distributing plant.

1           Page 17 is a legend that identifies each  
2 plant in the list and the federal order they would  
3 pool on.

4           The table on page 18 represents in-area  
5 producer milk pooled on Federal Orders 5, 6, and 7  
6 for the years 2015, 2020 and 2022.

7           The year and month are in the first two  
8 columns. The third column, Federal Order 5  
9 In-Area Producer Milk, represents milk that was  
10 produced in the Federal Order 5 marketing area and  
11 pooled on Federal Order 5 for the given month.  
12 The same is true for the next two columns, Federal  
13 Order 6 and Federal Order 7.

14           Page 19 represents Federal Order 5  
15 transportation credit estimates. These scenarios  
16 are based on mileage rate factors as requested by  
17 Dairy Cooperative Marketing Association.

18           The first two columns represent year and  
19 month.

20           The next three columns represent the  
21 actual pounds claimed and mileage rate factors and  
22 total transportation credits claimed for the  
23 Federal Order 5 transportation credit balancing  
24 fund for those three years.

25           Then the next group of columns represent

1 the change in claims had the mileage rate factor  
2 been .00642, as requested by DCMA.

3 So the column titled FO 5 Claim using  
4 MRF equal .00642. We calculated what the  
5 transportation credit claim -- an estimate of what  
6 the transportation credit claim would have been  
7 using the mileage rate factor proposed by DCMA as  
8 well as the change to the mileage calculation.

9 Currently, Federal Order 5 calculates  
10 the adjusted mileage on transportation credits at  
11 the miles from farm to plant minus 85 miles. In  
12 the proposal, they asked us to calculate that  
13 based on miles minus 15 percent. So the  
14 calculations there are based on those proposals as  
15 they requested, using a mileage rate factor of  
16 .00642.

17 The final three columns are similar  
18 calculations using a mileage rate factor of  
19 .00754, per their request.

20 Page 20 includes similar calculations to  
21 the previous page. It represents Federal Order 7  
22 transportation credit estimates. Again, these  
23 scenarios are based on mileage rate factors as  
24 requested by Dairy Cooperative Marketing  
25 Association.

1           The first two columns are year and  
2 month.

3           The third, fourth and fifth columns show  
4 the actual Federal Order 7 transportation credit,  
5 pounds claimed, mileage rate factors, and actual  
6 transportation credit dollars claimed.

7           And same as the previous chart. We used  
8 the proposed adjusted miles and mileage rate  
9 factors at the request of DCMA for the next group  
10 of columns.

11           For page 21, we have the Federal Order 5  
12 Transportation Credit Balancing Fund Proration  
13 Estimates at Maximum Proposed Assessment. Again,  
14 these scenarios are based on mileage rate factors  
15 as requested by DCMA.

16           The first two columns are year and  
17 month.

18           The next column represents the Class I  
19 pounds for Federal Order 5.

20           The fourth column will be the total  
21 assessments at an assessment rate of \$0.30 per  
22 hundredweight, as requested by DCMA. So that  
23 would be \$0.30 per hundredweight on all Class I  
24 milk.

25           The next group of columns look at the

1 mileage rate factor of .00642 and, again, the  
2 adjusted mileage calculation using the distance  
3 from farm to plant minus 15 percent.

4           So the fifth column, Federal Order 5  
5 TC Claims using MRF equal .00642, shows what the  
6 estimated claims would be using the new proposal.

7           The next column represents payment with  
8 February payment month. So that shows what the  
9 payment from the transportation credit balancing  
10 fund would be using the proposed mileage rate  
11 factor and adjusted mileage, including February as  
12 a payment month for transportation credits.

13           And then the proration percent, which is  
14 a percent of the -- request for payment to be made  
15 out of the fund is the next column.

16           The next two columns represent similar  
17 calculations; however, are done considering  
18 February not being a payment month. So the way  
19 they proposed it currently, I believe they  
20 proposed that February could be a requested month  
21 for payment on transportation credits. So they  
22 asked us to run an analysis showing the difference  
23 if February were a paying month and were not a  
24 paying month. That is what is represented in  
25 those columns.

1           Further to the right are similar  
2 calculations using a different mileage rate  
3 factor, .00754, per their request.

4           In this table, for the year 2020 through  
5 2022, the proration amount, both for February  
6 payment months and nonpayment months, with both  
7 mileage rate factors, shows a proration amount of  
8 100 percent. So that would mean that all -- you  
9 know, an estimate would be all requests claimed to  
10 be paid out of the transportation credit balancing  
11 fund for Federal Order 5.

12           Q.    So looking at page 22, which you're  
13 about to turn to, would it be fair to say that  
14 these are the same exact calculations for just a  
15 different federal order?

16           A.    That's correct.

17           Q.    So this would be Federal Order 7, I  
18 believe, as opposed to Federal Order 5?

19           A.    That's correct.

20                   And the difference maybe worth  
21 highlighting would be the proration percentages in  
22 Federal Order 5. The proration percentage was  
23 100 percent for each month. In Federal Order 7,  
24 there were a number of months with a prorated  
25 payment.

1 Q. Thank you.

2 A. So I will move forward to page 23.

3 Page 23 represents Federal Order 5 distributing  
4 plant delivery credit estimates.

5 The first two columns represent year and  
6 month.

7 The third column represents the  
8 assessments to be collected on Class I producer  
9 milk at an assessment of \$0.55 per hundredweight.

10 The fourth column represents the total  
11 pounds that would be eligible for the proposed  
12 distributing plant delivery credits.

13 Then the final two columns represent a  
14 total value of credits based on a mileage rate  
15 factor of .00642 or .00754, as requested by Dairy  
16 Cooperative Market Association.

17 Q. So again, moving forward on pages 24 and  
18 25, they are the same type of calculations just  
19 for Federal Order 6 and Federal Order 7; is that  
20 correct?

21 A. That's correct. Page 24 is the same  
22 calculation for Federal Order 6 using an  
23 assessment of \$0.80 per hundredweight, as  
24 requested by DCMA. And page 25 is the same table  
25 for Federal Order 7, which is a \$0.45 per

1 hundredweight assessment, as again requested by  
2 DCMA.

3 Q. So unless there's something else you  
4 want to point out, I think we can move on to  
5 page 26?

6 A. There's not.

7 Page 26 represents the Federal Order 5  
8 distributing plant delivery credit proration  
9 estimates. Again, using the same calculations  
10 that we were showing on the previous tables, we  
11 calculated an estimated proration percentage for a  
12 payout from the proposed distributing plant  
13 delivery credit fund.

14 So again, the assessments and the total  
15 value at a mileage rate factor of .00754, the same  
16 as calculated on the previous page, the difference  
17 in the second to last column represents the  
18 difference between the assessments and the total  
19 value of claims.

20 The proration percent represents the  
21 estimated percent of payment that will be  
22 available from the fund.

23 It's worth noting the way we calculated  
24 this. If there was a balance in the fund from the  
25 previous month -- so for example, in January 2020,



1 the assessments exceeded the claims. The  
2 difference of 66,000 will be carried forward to  
3 the next month, so we kept that proration  
4 percentage. We added that to the assessment value  
5 in order to calculate proration percentage.

6 That same calculation is carried forward  
7 for page 27 and page 28 for Federal Order 6 and  
8 Federal Order 7.

9 MR. HILL: So there is one  
10 more document. I would like to mark it as Exhibit  
11 Number 9. It's titled Exhibits Prepared by the  
12 Market Administrator, Federal Orders 5, 6, and 7,  
13 at the Request of Prairie Farms Dairy,  
14 Incorporated.

15 (Whereupon, Exhibit Number 9 was  
16 marked for identification.)

17 BY MR. HILL:

18 Q. So if you look at that document,  
19 Mr. Herbert, can you begin to explain what it's  
20 meant to --

21 A. Yes.

22 Q. -- convey?

23 A. So I will start with page 1, at the  
24 Table of Contents.

25 So on page 1, this table represents

1 Federal Order 5 producer milk originating from  
2 adjacent states outside of the Federal Order 5  
3 marketing area and delivered to Federal Order 5  
4 pool distributing plants.

5 The first two columns represent the year  
6 and month.

7 Then the next columns are the states  
8 adjacent to the Federal Order 5 marketing area.  
9 So the state name and the state FIPS code is  
10 listed there at the top.

11 For states like Kentucky, for example,  
12 where part of the state is located in the Federal  
13 Order 5 marketing area and part of the state is  
14 not in the Federal Order 5 marketing area, the  
15 pounds listed would be from the counties not in  
16 the Federal Order 5 marketing area.

17 And again, this table represents  
18 deliveries to Federal Order 5 pool distributing  
19 plants by month.

20 Q. Yes. Can you explain what the FIPS code  
21 is?

22 A. Yes.

23 Q. Like under Georgia I see 13.

24 A. Yes. A FIPS code is a Federal  
25 Information Processing Standard. It is basically

1 used to identify each U.S. state and county with a  
2 unique numerical code.

3           And that is what the numbers listed  
4 below each state represent. For example, Georgia,  
5 the FIPS state code for Georgia is 13.

6           Page 2 represents all producer milk  
7 pooled on Federal Order 5 originating from  
8 adjacent states outside the marketing area.

9           So in the previous table, it represented  
10 milk delivered to pool distributing plants only.  
11 This table represents producer milk at pool  
12 distributing plants, pool supply plants and  
13 diversions pooled on Federal Order 5.

14           Again, the numbers represent the pounds  
15 of milk pooled from adjacent states to the  
16 marketing area. And as in the previous table, for  
17 states like Kentucky that are partially in the  
18 marketing area, the pounds represent milk from  
19 counties not inside the Federal Order 5 marketing  
20 area.

21           Page 3 is Federal Order 6 producer milk  
22 originating from adjacent states outside the  
23 Federal Order 6 marketing area delivered to  
24 Federal Order 6 pool distributing plants.

25           Again, the year and month are in the

1 first column.

2 The state name and state FIPS code are  
3 in the columns following.

4 In the case of Alabama, beginning in May  
5 2022, the data is restricted, which is why the  
6 pounds are not listed. In Georgia, the pounds are  
7 listed to the right-hand side, in the right-hand  
8 column.

9 Page 4 is all producer milk pooled on  
10 Federal Order 6 originating from adjacent states  
11 outside the Federal Order 6 marketing area. So  
12 again, this is producer milk pooled at Federal  
13 Order 6 pool distributing plants and diversions.

14 So that would be, again, the year and  
15 month are in the first two columns.

16 The third and fourth columns represent  
17 the states and a state FIPS code is listed below  
18 the state name.

19 Q. I do have one question.

20 I see that on both page 3 and 4 there,  
21 some are deemed restricted and there are other  
22 columns that are just blank. What is the  
23 significance of that?

24 A. Yes. So for example, on page 4, the  
25 blank would be zero. There were no pounds pooled

1 on Federal Order 6 from that state. A restricted  
2 would mean that there are not enough handlers that  
3 can release that information.

4 Similarly, on page 5, we have the  
5 Federal Order 7 producer milk originating from  
6 adjacent states outside of the Federal Order 7  
7 marketing area delivered to Federal Order 7 pool  
8 distributing plants.

9 The first two columns represent year and  
10 month.

11 Then the columns following that have the  
12 state name and the state FIPS code.

13 Again, for a state like Kentucky, the  
14 pounds represented identify the pounds produced in  
15 the counties not located in the Federal Order 7  
16 marketing area that were delivered to pool  
17 distributing plants in the state of Kentucky.

18 The far right-hand column represents  
19 restricted states, and those states's FIPS codes  
20 are listed below the "Restricted State" label.  
21 Those states are included at the bottom in  
22 footnote 2. And again, those states are  
23 restricted due to the issues of releasing  
24 confidential information. So we aggregate those  
25 states and release the numbers in total.

1           Page 6 is all pooled Federal Order 7  
2 producer milk originating from adjacent states  
3 outside the Federal Order 7 marketing area. So in  
4 this case, it would be producer milk pooled at  
5 pool distributing plants, pool supply plants and  
6 diversions pooled on Federal Order 7.

7           And once again, the first two columns  
8 represent year and month.

9           The next columns represent the states  
10 where the milk originated. The state name and  
11 FIPS code is listed in the column.

12           And again, in the case of Kentucky, that  
13 would represent the counties not in the Federal  
14 Order 7 marketing area with production pooled on  
15 Federal Order 7.

16           And then in the far-right column, again,  
17 we have the restricted states where we aggregated  
18 the pounds from those restricted states, and the  
19 states are listed in the footnote.

20           Page 7 is a table on Federal Order 5  
21 assembly performance credits.

22           The first two columns represent the year  
23 and month.

24           The third column is the Federal Order 5  
25 Class I Producer Milk.

1           The next column represents the assembly  
2 performance credit assessment rate of \$0.50 per  
3 hundredweight, as proposed by Prairie Farms.

4           The next column is a calculation of the  
5 FO 5 assembly performance credit assessment,  
6 followed by the Federal Order 5 producer milk  
7 receipts at pool plants, and then the FO 5  
8 assembly performance credit payment rate, which is  
9 the total producer milk receipts at pool plants.  
10 You divide that into the total value of the  
11 assessment in the previous column.

12           In footnote 2, you can see that it says  
13 this analysis is based on producer milk receipts  
14 at all Federal Order 5 pool plants, which would be  
15 pool distributing plants and pool supply plants,  
16 rather than producer milk receipts at pool  
17 distributing plants, as requested by Prairie  
18 Farms.

19           Prairie Farms requested -- the way  
20 Prairie Farms proposed the language, the producer  
21 milk receipts at pool distributing plants, we  
22 cannot release that information because we are a  
23 published producer milk receipts at all pool  
24 plants. On Federal Order 5, we only have one pool  
25 supply plant. So releasing the information on

1 pool distributing plants only would release  
2 confidential information on that Federal Order 5  
3 pool supply plant.

4           So in this case, the producer milk  
5 receipts at pool plants would be technically  
6 overstating the numbers for if you only included  
7 pool distributing plants, for example.

8           On page 8 and page 9, it includes  
9 similar calculations for the assembly performance  
10 credit. The assembly performance credits just  
11 representing Federal Order 6 and Federal Order 7,  
12 but the calculations were done the same way as the  
13 Federal Order 5 calculations.

14           Page 10 is the packaged transfers into  
15 Federal Order 5, Federal Order 6, and Federal  
16 Order 7 pool distributing plants from other  
17 federal order pool distributing plants.

18           So the year and month are the first  
19 two columns.

20           The third column represents package  
21 milk receipts received at Federal Order 5, Federal  
22 Order 6, and Federal Order 7 pool distributing  
23 plants in aggregate from pool distributing plants  
24 in any other federal order. So any federal order  
25 not 5, 6, and 7.



1 Q. So I think that completes that document?

2 A. That is correct.

3 Q. So before I move forward, were there any  
4 other -- are there any other data requests made?

5 A. Yes. We did receive one additional data  
6 request for some information on mailbox prices  
7 that we were unable to provide.

8 Q. And why is that?

9 A. The data was requested -- the data  
10 requested for mailbox prices were requested error.  
11 The USDA does not collect and distribute.

12 Q. That being said, also, I want to state  
13 one more time, you were a part of the preparation  
14 of all of these documents, 7, 8, and 9; is that  
15 correct?

16 A. Yes. I was involved in the preparation  
17 of every page in Exhibits 7, 8, and 9.

18 MR. HILL: So unless there are  
19 objections, I would like to enter into evidence  
20 Exhibits marked as 7, 8, and 9.

21 THE COURT: Any objections?

22 (No verbal response.)

23 THE COURT: I will say, if  
24 someone brings up something on cross, questions  
25 one of the exhibits and they want to reopen the

1 question of it and so be admitted, we can do that.  
2 But I think it helps the order of the proceeding  
3 to enter Exhibits 7, 8, and 9 into the record at  
4 this time.

5 Does that complete your examination,  
6 Counsel?

7 MR. HILL: Yes, that completes  
8 our direct.

9 THE COURT: And no further  
10 statement from the witness, correct?

11 (No verbal response.)

12 THE COURT: Okay. Who would  
13 like to cross-examine this witness, if anybody?

14 MR. BESHORE: (Indicating.)

15 THE COURT: Mr. Beshore, go  
16 ahead and identify yourself again for the record.

17 MR. BESHORE: Marvin Beshore  
18 representing DCMA.

19 **CROSS-EXAMINATION**

20 BY MR. BESHORE:

21 Q. Good morning, Mr. Herbert. And thank  
22 you for all the work you did with -- you and your  
23 staff did at our request. It's greatly  
24 appreciated and extremely useful for this record.

25 A. You're welcome.

1 Q. I have just two questions, I think, on  
2 Exhibit 8. Go to page 6.

3 A. You said Exhibit 8? I'm sorry.

4 Q. Yes.

5 A. Okay.

6 Q. Page 6 of Exhibit 8. The data prepared  
7 for DCMA.

8 I think I know the answer here, but on  
9 page 6, you've got an indication that there would  
10 be four components to each bar: blue, pooled on  
11 Order 7; red, pooled on Order 5; gray, pooled on  
12 Order 6; and then there's a yellow, pooled on  
13 Other Federal Orders.

14 A. I believe --

15 MR. HILL: Is this page 6? I  
16 don't see the yellow on page 6.

17 MR. BESHORE: Page 8. I'm  
18 sorry. My aged eyesight.

19 BY MR. BESHORE:

20 Q. Sorry, John.

21 A. Can you repeat the question? I'm sorry.

22 Q. Yeah. Okay. So on page 8, there's bars  
23 that show producer milk originating in Federal  
24 Order 7 and where it was pooled. And the blue  
25 shows it was pooled on Order 7, the blue portion

1 of the bar. Orange or red shows pooled on  
2 Order 5. Gray shows pooled on Order 6. Your box  
3 says there's yellow, pooled on Other Federal  
4 Orders. But I'm not sure I see any yellow.

5 Was there any milk originating in  
6 Order 7 that was pooled on Other Federal Orders?

7 A. Yes. If you look very closely at the  
8 very top of the bar, there is a very thin yellow  
9 that would represent milk originating in Federal  
10 Order 7 for the federal orders.

11 Q. Basically, what the bar shows, that all  
12 the milk pooled on Order 7 stays in the region, on  
13 one of the three orders, for pooling purposes.

14 A. It's almost all of the milk, yes, that  
15 originated in Federal Order 7 stay in those three  
16 marketing areas.

17 Q. Okay. If you would, then, turn to  
18 page 12, which is the map showing pool  
19 distributing plants, January 2000. Federal  
20 Order 5, 6, and 7.

21 My question is, when you talked about  
22 the depiction of plants marked with a green  
23 marker, if I heard you correctly, they were pool  
24 distributing plants in -- I'm sorry. Blue, I  
25 guess. Pool distributing plants in January of

1 2022 but not -- you said something like not a  
2 pool -- in operation but not a pool distributing  
3 plant in December? Did I understand you  
4 correctly?

5 A. So the green dot would represent a plant  
6 that was a pool distributing plant in January of  
7 2000, but is not a pool distributing plant in  
8 December of 2022. So the plant is in some  
9 operational -- the plant is still operational, but  
10 it may be a partially regulated plant or it may  
11 not do Class I milk at all.

12 Q. It's still operational. It's just not a  
13 pool distributing plant.

14 A. That's correct.

15 Q. Okay. And then I have one question on  
16 Exhibit 9, page 7.

17 So this is data requested by Prairie  
18 Farms with respect to their proposal for assembly  
19 performance credits, as I understand; is that  
20 correct?

21 A. That is correct.

22 Q. When you determine the payment credit  
23 rate, the final column to the right, that would be  
24 the payment that would be made on all of the  
25 volumes of milk in the second column from the

1 right, the Federal Order 5 Producer Milk Receipts  
2 at Pool Plants; is that correct?

3 A. That would be -- yes. From the second  
4 column from the right, correct.

5 Q. Okay. Now, during the months indicated,  
6 when -- under the current Federal Order 5  
7 regulations, when transportation credit payments  
8 are made from the transportation credit balancing  
9 fund, would those volumes of milk be included in  
10 the volumes identified in the second column from  
11 the right?

12 A. In these calculations, we made no  
13 distinction between milk -- requesting  
14 transportation credits or not. We calculated  
15 based on just the Federal Order 5 Class I producer  
16 milk and the producer milk receipts at pool  
17 plants.

18 Q. Okay. So if this includes volumes on  
19 which transportation credit payments were made and  
20 it also includes -- and those volumes would also  
21 receive assembly credits, they'd get both credits?

22 A. Based on the way this is calculated,  
23 yes.

24 MR. BESHORE: Okay. Thank  
25 you. That's all I have.

1 I believe Mr. Hollon has a couple of  
2 questions for you, John. Thank you.

3 **CROSS-EXAMINATION**

4 BY MR. HOLLAND:

5 Q. Good morning, John.

6 A. Good morning.

7 Q. I'm Elvin, E-L-V-I-N, Hollon,  
8 H-O-L-L-O-N. And I am representing Dairy  
9 Cooperative Marketing Association today.

10 And I hope I don't talk too fast, so  
11 give me the signal if I'm going too fast.

12 John, two questions on the exhibit  
13 prepared for DCMA, and on page 9.

14 MR. HILL: So for the record,  
15 you're talking about Exhibit 8?

16 MR. HOLLON: Am I? Yes.

17 BY MR. HOLLON:

18 Q. So in the October column -- I'm on the  
19 wrong page.

20 Page 11. This data represents months  
21 and monthly averages. And then it was moved down  
22 to a day when you talked about that 6.5 million  
23 pounds. So that's a daily number.

24 A. I just want to make sure I'm looking at  
25 the same table. You said page 11.

1 Q. Page 11.

2 A. The Federal Order 7 daily average.

3 Q. Yeah.

4 A. Okay. Can you repeat the question?

5 Q. Yep. So that 6.5-million-pound deficit  
6 is a daily number for something that would have  
7 happened in September, the month of September?

8 A. Yes. The 6.5-million-pound deficit  
9 would be the average daily deficit for the month  
10 of September for that three-year period, 2019  
11 through 2021.

12 Q. Thanks. So if I were to ask you, which  
13 I'm not, but if I were to ask you to peel out  
14 September and do this chart similarly on a daily  
15 basis, I'm assuming that there would be several  
16 days that it would be significantly more than that  
17 loads per day and several days it would be  
18 significantly less.

19 A. With that being the average, there would  
20 be days where it's higher and days that it's lower  
21 than 6.5, correct.

22 Q. Granted. And if I were to ask you to do  
23 April, same thing. There would be a number of  
24 days that would be possibly higher and a number of  
25 days that would possibly be lower.



1           A.     Yes, sir. 3.8 million being the  
2 average, there would be days in the month of April  
3 that are higher and lower than 3.8.

4           Q.     And so if it wasn't your purpose for  
5 making this, but looking at this chart, you  
6 couldn't necessarily conclude that you were short  
7 all the time or long all the time. That number is  
8 just a daily number.

9           A.     That's correct.

10          Q.     Okay. The other question is on page --  
11 it's the last map.

12                   Thank you for producing this map, by the  
13 way.

14          A.     Are you referring to the map on page 16?

15          Q.     The map on page 16.

16                   Would it be possible, before the hearing  
17 is over, that you could come back to each of those  
18 dots and say what was the percentage of their  
19 needs that they got?

20          A.     We intentionally did not release the  
21 percentage of those needs because you could go  
22 back and figure out what each county produced and  
23 figure out what the closest county to each plant  
24 is and, therefore, back into the number that  
25 plants produce milk demand.

1 MR. HOLLON: Okay. Thank you  
2 very much.

3 THE COURT: Any further  
4 cross-examination of this witness?

5 (No verbal response.)

6 THE COURT: Any redirect,  
7 Mr. Hill?

8 Oh, I'm sorry. We do have further  
9 cross-examination. Sorry.

10 **CROSS-EXAMINATION**

11 BY MR. TONAK:

12 Q. This is in reference to the market --  
13 pardon me. I'm Dennis Tonak, T-O-N-A-K, with  
14 Prairie Farms. This is in reference to an exhibit  
15 prepared by you in the market administrator  
16 exhibit package where it references statistical  
17 summaries, particularly for Federal Order 7. And  
18 I just wanted to discuss one of those pages, if we  
19 could.

20 MR. TONAK: And I'd like to be  
21 able to approach the witness and give him this  
22 page to reference.

23 THE COURT: Is this something  
24 we have as an Exhibit or what --

25 MR. TONAK: It's listed as a

1 resource material, and I just want to make sure  
2 I'm understanding it correctly.

3 THE COURT: Mr. Hill?

4 MR. HILL: Yeah. We would  
5 like to see copies of these if he's going to  
6 reference it.

7 MS. TAYLOR: Would you like  
8 this marked as an exhibit? Probably, if we're  
9 going to refer to it?

10 MR. TONAK: Probably.

11 THE COURT: Can I just ask?  
12 Maybe you can address this, either of you can.  
13 What is the status of a resource material for  
14 purposes of this evidentiary hearing?

15 What is the status of a resource  
16 material? I mean, there is a concept of, you  
17 know, item by reference, I suppose. My question  
18 is whether we really should be putting this into  
19 the record as an exhibit.

20 AMS is the one that writes the  
21 decision, so I don't want the writer to be  
22 confused or there be any question about what  
23 evidence there is. But maybe we should hear the  
24 examination first and see what difference it  
25 makes.

1 MS. TAYLOR: Sure, Judge.

2 This is Erin Taylor with AMS.

3 If this is -- and it looks to be, but  
4 John will speak to this. But if this is data we  
5 put together normally and it's on our website,  
6 which he did link to a bunch of available tables  
7 in Exhibit 7 on page 10, resources, we don't have  
8 a problem putting that kind of data that's already  
9 public data on the record. A lot of times we can  
10 un-notice it later, but if he wants to ask  
11 questions about it, that's fine.

12 THE COURT: Do we think it  
13 should go in as an exhibit, then?

14 MS. TAYLOR: Yeah. If he's  
15 going to ask questions, I think we prefer to have  
16 an exhibit so we can reference that directly later  
17 on.

18 THE COURT: Okay. Unless  
19 someone has got an objection, I think my  
20 recommendation would be that we go ahead and hear  
21 the examination on this and come back and mark it  
22 as an exhibit and stipulate to that.

23 MR. HILL: I think that's a  
24 good idea.

25 THE COURT: Counsel, your

1 witness.

2 BY MR. TONAK:

3 Q. I had put a tab there, Mr. Herbert, in  
4 the Market Utilization section, Class I  
5 Utilization. In prior exhibits, it was indicated  
6 that you could not reveal the total distributing  
7 plant volume because of confidentiality issues.

8 If we look at the total Class I  
9 utilization, would that volume indicated there be  
10 more or less, in your opinion, than the total  
11 distributing plant volume for Order 7 for any of  
12 the given months?

13 A. Is your question asking about the total  
14 distributing plants Class I volume or the total  
15 producer milk volume receipt at pool distributing  
16 plants?

17 Q. Total distributing plant volume, which  
18 Class I volume is a portion. At the upper part of  
19 the table, there is a producer Class I volume.  
20 The total distributing plant volume is not shown  
21 on any of the exhibits.

22 The total Class I utilization is shown  
23 here, and I'm just wondering if the total Class I  
24 utilization -- or the Class I market utilization  
25 gives us a truer picture of the distributing plant

1 volume than the producer milk Class I does.

2 A. To be honest, I would probably need to  
3 examine the data before I can answer that, and I  
4 don't have that in front of me.

5 Q. And then the other question I have on  
6 this is the daily average utilization, and that's  
7 just a calculation of the total market utilization  
8 divided by days of the month, correct?

9 A. Correct.

10 Q. Okay. Thank you.

11 THE COURT: Let's go ahead and  
12 mark this now, just so the record doesn't get  
13 confused, as Exhibit 10. And we'll get copies.

14 MR. HILL: Your Honor, we do  
15 want to have a chance to verify this at the next  
16 break, to make sure that these are the numbers  
17 that are correct on the website.

18 THE COURT: Okay. We'll  
19 identify it now, and remind me later to actually  
20 receive it into the record.

21 Can someone identify this for the  
22 record?

23 MS. TAYLOR: Sure. I'll ask  
24 some questions.

25 John, does this table look like

1 something that comes off your website, on your  
2 statistical materials and statistical summaries  
3 section?

4 THE WITNESS: Yes, this table  
5 does look like something that comes off the  
6 statistical summaries for Federal Order 7.

7 MS. TAYLOR: And it would be a  
8 summary for all of 2022?

9 THE WITNESS: That is correct.

10 MS. TAYLOR: Okay. And I  
11 think what we'll do, Judge, is, we'll verify that  
12 this is exact as what's up on the website for the  
13 year summary, and after the break we can address  
14 it to be entered into the record.

15 THE COURT: Okay. The short  
16 form identification of this would be what?  
17 Statistical Summary of Pool Handlers for 2022?

18 MS. TAYLOR: Yes, for Federal  
19 Order 7.

20 THE COURT: Okay.

21 (Whereupon, Exhibit Number 10 was  
22 marked for identification.)

23 THE COURT: We had someone  
24 approach the lecturn.

25 Do you have an objection?

1 MR. MILTNER: No. I just have  
2 a question. I think it might help.

3 THE COURT: Oh, okay. We have  
4 an additional -- for purposes of this, we'll make  
5 a -- I'm not sure there is a difference between  
6 direct or cross-examination.

7 Identify yourself, sir.

8 MR. MILTNER: Sure. Ryan  
9 Miltner with Select Milk Producers.

10 **CROSS-EXAMINATION**

11 BY MR. MILTNER:

12 Q. I'm looking at Exhibit 7 on page 10, and  
13 there's a whole list of several websites and  
14 documents with data from Federal Orders 5, 6, and  
15 7.

16 And I'm looking at Item 6 on there,  
17 which is the statistical material and summaries.

18 This particular document we're talking  
19 about, would that be on that website there?

20 A. On that website, there are -- this  
21 document would come from a website that -- but as  
22 Erin was mentioning, it probably would be worth  
23 verifying that this is printed exactly from the  
24 Federal Order 7 website.

25 Q. Sure.



1 MR. MILTNER: Your Honor, if  
2 it's appropriate, is it possible that we take  
3 official notice of all the data on these USDA  
4 websites as government publications prepared by  
5 the market administrator's offices?

6 THE COURT: I don't know.

7 What do you think, Mr. Hill?

8 MR. HILL: We don't object,  
9 but it is a lot of information.

10 MR. MILTNER: Yeah. Not that  
11 it goes in the record, but we can obviously refer  
12 to it, then, on brief and things like that.

13 THE COURT: The terminology  
14 I'm used to is items by reference. I guess there  
15 are items that are on the official USDA/AMS/Dairy  
16 website, and what you want to be able to do is  
17 refer to them in briefing and anything else as if  
18 they were entered into the record?

19 MR. MILTNER: Correct.

20 THE COURT: Acceptable,  
21 Mr. Hill?

22 MR. HILL: That's fine.

23 THE COURT: That's acceptable.

24 MR. MILTNER: Thank you.

25 THE COURT: I rule that that's

1 a good approach.

2 Does that avoid the problem with what  
3 I had marked as Exhibit 10?

4 MR. HILL: We still want it as  
5 an exhibit by itself, Your Honor.

6 THE COURT: Very well. And  
7 the hearing reporter has a copy. I've got a copy,  
8 marked it. You are going to check it and remind  
9 me that it has been marked and not received into  
10 evidence.

11 I said we'd take a break at 10:30.  
12 It's 10:32. Any preliminary matters before we go  
13 on break?

14 Actually, is this witness -- do we  
15 have anything else for this witness?

16 MR. HILL: We do not.

17 THE COURT: Anyone else have  
18 anything for this witness?

19 (No verbal response.)

20 THE COURT: We'll take a  
21 break.

22 You may step down. Thank you for  
23 your testimony.

24 Do we need as much as 15 minutes?

25 MR. HILL: 10:45 will be fine,

1 Your Honor.

2 THE COURT: Okay. We'll  
3 reconvene at 10:45. We're in recess until then.

4 (Recess observed.)

5 THE COURT: Okay. We are back  
6 on the record after a short break.

7 We have a new witness?

8 MR. BESHORE: We do.

9 THE COURT: Okay.

10 MR. BESHORE: If I may, Your  
11 Honor. Marvin Beshore for DCMA. DCMA calls as  
12 its first witness Matt Johnson.

13 THE COURT: Thank you,  
14 Mr. Beshore. Let's swear in the witness.

15 (Whereupon, the witness was duly  
16 sworn.)

17 MR. BESHORE: So for  
18 Mr. Johnson's testimony, we would like to have  
19 marked as the next exhibit, which I think is 11.  
20 11?

21 THE COURT: Yes. That's what  
22 I have.

23 MR. BESHORE: Okay. It's a  
24 statement which is a four-page document.

25 (Whereupon, Exhibit Number 11 was

1 marked for identification.)

2 THE COURT: Is that the only  
3 exhibit?

4 MR. BESHORE: That is the only  
5 exhibit for Mr. Johnson.

6 And with that, I would ask you to  
7 proceed with your testimony, please, Mr. Johnson.

8 THE WITNESS: Thank you.

9 THE COURT: You're not going  
10 to have direct examination, is what you're saying,  
11 of the witness?

12 MR. BESHORE: I may have a  
13 question or two at the end of his -- his reading  
14 his prepared testimony.

15 THE COURT: Yes. That's an  
16 acceptable procedure. Thank you.

17 MR. BESHORE: Thank you.

18 THE COURT: Mr. Johnson, you  
19 may present your statement.

20 **MATT JOHNSON**

21 was called as a witness, and after having been  
22 first duly sworn, testified as follows:

23 **DIRECT EXAMINATION**

24 THE WITNESS: My name is Matt  
25 Johnson, and I am a first-generation dairy farmer

1 from Southwest Georgia. In May 1999, my father,  
2 uncle, and I purchased the farm from one of my  
3 dad's veterinary clients. The day we took  
4 ownership, we were milking 350 cows and farming  
5 250 acres. Today, the farm consists of 28  
6 employees milking 1,400 cows, raising 1,250  
7 replacement animals, and growing multiple crops on  
8 approximately 1,000 acres, primarily forage for  
9 our farm.

10 I am blessed to serve the dairy farm  
11 families of Georgia and the Dairy Farmers of  
12 America through several leadership positions.

13 Currently, I reside on DFA's  
14 Southeast Area Council, and pending approval by  
15 DFA's delegates this March, I will also serve on  
16 the DFA Corporate Board. In my capacity on the  
17 DFA Southeast Council, I represent the Cooperative  
18 on the Board of Directors of the Dairy Cooperative  
19 Marketing Association, where I currently serve as  
20 President.

21 Additionally, I also have the honor  
22 to serve as the President of the Georgia Milk  
23 Producers Association, representing the dairy farm  
24 families in Georgia.

25 I am also involved with the U.S.

1 Dairy Export Council's Dairy Trade Envoy, a cohort  
2 of farmers and industry staff working together to  
3 help educate legislators on the importance of  
4 dairy exports.

5 I appear here today to testify in  
6 support of updating Orders 5 and 7's out-of-area  
7 transportation credit program and implementing a  
8 similar program for locally produced milk in  
9 Orders 5, 6, and 7.

10 In the last three years, there has  
11 been an unprecedented rise in on-farm input costs,  
12 from feed, labor, and diesel fuel, to fertilizer,  
13 medicine, and interest rates. The following chart  
14 identifies some of the input price increases  
15 actually experienced on my farm that have  
16 negatively impacted my farm's bottom line over the  
17 last two years. All of these increases have made  
18 margins tight and strained our ability to grow.

19 MR. BESHORE: Your Honor, if I  
20 might at this point. I would ask that the table  
21 which appears at the bottom of page 1 of  
22 Exhibit 11 be placed in the record as if the  
23 numbers had been read by Mr. Johnson, but he would  
24 not go through the process of reading them and he  
25 would continue with his statement at the top of

1 page 2.

2 THE COURT: Actually, the  
3 bottom of page 1 of the copy I have.

4 MR. BESHORE: Bottom of  
5 page 1, yes. It's the table and --

6 THE COURT: The table at the  
7 bottom, yes. They're part of Exhibit 11.

8 MR. BESHORE: Yes.

9 THE COURT: Anyway, and that's  
10 what -- you're asking if that's sufficient for the  
11 record.

12 MR. BESHORE: Thank you.

13 THE COURT: It is. It is,  
14 Counsel. Thank you.

15 BY MR. BESHORE:

16 Q. Okay. Please proceed, then,  
17 Mr. Johnson, starting at the top of page 2 of  
18 Exhibit 11.

19 A. Not only have costs and inputs increased  
20 on my farm, but the costs to haul my milk have  
21 risen as well. Labor, tires, and diesel fuel are  
22 a few examples of the increased input costs of  
23 transporting milk over the last two years.

24 Additionally, in the last 18 months, the  
25 two plants closest to my farm, Borden's plant in

1 Dothan, Alabama, 59 miles, and Southeast Milk  
2 plant in Baconton, Georgia, 52 miles, have both  
3 closed.

4 Today, my milk travels 292 miles to the  
5 T.G. Lee plant in Orlando, Florida. In 2021, the  
6 cost to haul my milk was \$1.32 per hundredweight.  
7 Today, with fuel surcharges, that amount is  
8 between \$2.37 and \$2.45 per hundredweight, close  
9 to an 80 percent increase.

10 The purpose of the federal order system  
11 is to assure an adequate supply of milk to the  
12 consuming public. The Southeast orders have  
13 relied on Class I differentials and  
14 processor-funded transportation credits to support  
15 the program's goals. However, I believe more must  
16 be done.

17 The Southeastern United States  
18 represents the most significant milk-deficit  
19 region in the United States. The deficit seems to  
20 be worsening as the area's population is growing,  
21 and its dairy farm numbers and milk production are  
22 declining.

23 The region is faced with significant  
24 challenges obtaining enough farm-fresh milk to  
25 meet its needs. It's Class I handlers, and their



1 supplying cooperatives, have been required to  
2 import significant quantities of milk from outside  
3 the marketing areas to fulfill demand.

4 This nutrient-rich beverage is  
5 particularly vital to support growing, healthy  
6 schoolchildren and nourish the region's aging  
7 population.

8 The existing transportation credit  
9 programs in Orders 5 and 7 have supported  
10 obtaining needed milk supplies to supplement the  
11 shortfall in the region's production. While the  
12 programs have shifted a portion of the financial  
13 burden away from the farmer, they don't do enough.

14 Unfortunately, the Order 7 program does  
15 not fully cover all costs of milk imports for the  
16 region. Since the implementation of this program  
17 in 2006, the markets have changed significantly.  
18 Importantly: the Southeast's milk production has  
19 declined, and population increased, requiring more  
20 milk to be imported now than in 2006; weakening  
21 numbers of dairy farms in adjoining regions have  
22 resulted in the average distance to travel to  
23 obtain the supplemental milk supplies to increase;  
24 and diesel fuel prices, haulers' driver wages,  
25 cost of hauling equipment, and other cost factors

1 have increased substantially.

2           The Transportation Credit Balancing Fund  
3 has experienced increased shortfalls of revenue to  
4 cover the rising costs of importing supplemental  
5 milk. Unfortunately, the financial burden of this  
6 decline in cost coverage has fallen back to the  
7 farmer owners of the milk marketing cooperatives  
8 servicing the fluid milk market needs.

9           This has resulted in the Southeastern  
10 dairy farmers shouldering a bigger financial  
11 burden of costs that should be shared downstream.  
12 This situation has led to less profitable dairy  
13 farms, contributing to further decline in the  
14 region's milk production.

15           Although the Order 5 transportation  
16 credit fund has faired better, it too should be  
17 modernized with similar adjustments. Over the  
18 next few years, this marketing area will continue  
19 to face obstacles in attracting adequate supplies  
20 of fluid milk for the growing population. The  
21 proposals laid out by DCMA will help address the  
22 current and future challenges within this market.

23           In addition to issues in sourcing milk,  
24 there are fewer Class I plants in the region today  
25 than in 2006. We also see fewer dairy farms near

1 the remaining milk plants, as development to serve  
2 growing urban and suburban populations absorb  
3 agricultural lands.

4           On my farm, this has resulted in  
5 increased distances for my local milk to be  
6 transported, resulting in additional costs to my  
7 farm. I anticipate these challenges to continue  
8 and the milk delivery miles to grow, along with  
9 the costs. The current situation applies even  
10 more pressure to the hard business of dairy  
11 farming I and other producers in the Southeast  
12 face.

13           Different from the importation of  
14 supplemental milk, these financial costs are  
15 primarily the burden of the region's dairy  
16 producers through their cooperatives. To correct  
17 this and better share these costs, I support a  
18 transportation credit program that helps offset  
19 the expense of moving milk from milksheds within  
20 the region to Class I processors. Given milk is  
21 forced to travel further and further within the  
22 Order, this is a necessary addition.

23           In closing, I urge USDA to implement  
24 updates to Orders 5 and 7 out-of-area  
25 transportation credit programs and implement

1 in-area transportation credit programs in  
2 Orders 5, 6, and 7. Due to the significant  
3 financial burden Southeast dairy farmers bear in  
4 supplying the Class I needs of its growing  
5 population, I ask you to make these changes  
6 expediently.

7           Since December, Class III and IV milk  
8 futures for February and March have declined by  
9 more than \$4.00 per hundredweight. This weakening  
10 in projected price means my milk check's blend  
11 price will be that much lower. The input costs on  
12 my dairy farm have not decreased anywhere near the  
13 declines I will be seeing in my milk prices.

14           Immediate implementation of these  
15 proposals will help buffer some of the stubbornly  
16 high hauling costs and moderate some of the cash  
17 crunch I will be facing this year.

18           Thank you for letting me appear here  
19 today and testify about this matter that is of  
20 great importance to me, my family, my dairy  
21 cooperative, DCMA and the dairy farm families of  
22 the Southeast.

23           Q.     Thank you. Mr. Johnson, as president of  
24 DCMA, you've presided over the process that has  
25 led to proposals requested and being addressed in

1 this hearing.

2           Could you just briefly describe for us  
3 the process that you led the DCMA cooperatives  
4 through to get to the point of requesting and  
5 having this hearing?

6           A.     So DCMA is a marketing agency that is  
7 made up of the nine co-ops that serve the  
8 Southeast area. Its board is made up of dairy  
9 farmers from each of the member cooperatives. The  
10 organization is broken up between the board and an  
11 operations committee.

12           The operations committee is the co-op  
13 managers and their associated staff. So the board  
14 brings to the operations committee the items we  
15 would like to see implemented, and we leave it to  
16 them to figure out how to implement those  
17 programs.

18           Q.     And who has the final say on what  
19 proposals are presented on behalf of DCMA?

20           A.     So the board has the final say-so. So  
21 as a board, we vote on should we move forward or  
22 not.

23           Q.     And the board being dairy farmers who  
24 are elected representatives for all the co-op  
25 members?

1 A. Correct.

2 Q. Thank you very much.

3 MR. BESHORE: That's all I  
4 have for Mr. Johnson. He's available for  
5 cross-examination, Your Honor.

6 THE COURT: An examination by  
7 USDA?

8 **CROSS-EXAMINATION**

9 BY MS. TAYLOR:

10 Q. Good morning.

11 A. Good morning.

12 Q. This is Erin Taylor.

13 A. Yes, ma'am.

14 Q. Thanks for coming here to testify this  
15 morning. I just really have one question, and I'm  
16 not sure if you're the witness on behalf of --  
17 well, DFA, I'll ask specifically to talk about  
18 this.

19 But in your statement, you talk about  
20 the additional costs that you guys are facing  
21 because of hauling costs and the -- and I'll  
22 quote, the burdens of these costs should be shared  
23 downstream.

24 So I just wondered if you could speak to  
25 your co-op's efforts to try to recoup some of

1 those costs through the marketplace and whether  
2 you've been successful or not and how that relates  
3 to coming here to ask for a change in the federal  
4 orders.

5 A. (No verbal response.)

6 Q. And you might not -- perhaps somebody  
7 else can speak to that a little.

8 A. I think somebody else might be better  
9 able to speak to that.

10 MS. TAYLOR: Okay. That was  
11 my only question. Thank you.

12 THE WITNESS: Okay.

13 THE COURT: Anyone else have  
14 examination of this witness?

15 Redirect, Mr. Beshore?

16 MR. BESHORE: No questions.

17 THE COURT: Mr. Beshore, I  
18 have in my hand DCMA Index of Exhibits,  
19 Proposals 1 and 2.

20 Is there another witness that's going  
21 to sponsor this or something we should take up  
22 now?

23 MR. BESHORE: There is. Our  
24 next witness will sponsor that as well as some  
25 testimony statements.

1 THE COURT: Very well. Okay.

2 Seeing no more requests for  
3 examination, you may step down. Thank you,  
4 Mr. Johnson.

5 THE WITNESS: Thank you.

6 MR. BESHORE: Okay. DCMA  
7 calls as its next witness Elvin Hollon.

8 As he's approaching the stand, we  
9 have, and have pre-distributed hopefully, three  
10 document sets or -- two statements. Elvin Hollon,  
11 Part 1. Elvin Hollon, Part 2.

12 And a list of exhibits with the  
13 exhibits attached. They're unnumbered but there  
14 are, by my count, 62 exhibits to be presented as  
15 part of Mr. Hollon's testimony.

16 THE COURT: I'll swear in the  
17 witness.

18 (Whereupon, the witness was duly  
19 sworn.)

20 THE COURT: Your witness,  
21 Mr. Beshore.

22 MR. BESHORE: Could I ask that  
23 Mr. Hollon's statement, Part 1, be marked as the  
24 next consecutive exhibit number, which would be  
25 12, I believe.



1 THE COURT: Yes, 12.

2 (Whereupon, Exhibit Number 12 was  
3 marked for identification.)

4 MR. BESHORE: Okay. And his  
5 statement, Part 2, be marked as 13.

6 (Whereupon, Exhibit Number 13 was  
7 marked for identification.)

8 MR. BESHORE: And the set of  
9 exhibits, the first two pages of which is a list,  
10 will be marked as -- we'll identify those exhibits  
11 with consecutive numbers. We'll have the list as  
12 14, and then we'll consecutively number the  
13 exhibits as he reaches them in his statement.

14 THE COURT: Shall we go  
15 through them individually, you think?

16 MR. BESHORE: They will all be  
17 mentioned within the statement, and we will mark  
18 them at that time if that --

19 THE COURT: Okay.

20 MR. BESHORE: -- is  
21 satisfactory.

22 THE COURT: With that, the  
23 list of DCMA exhibit -- start over. DCMA Index of  
24 Exhibits is marked as Exhibit 14.

25 (Whereupon, Exhibit Number 14 was

1 marked for identification.)

2 (Whereupon, a discussion off the  
3 record occurred.)

4 THE COURT: Back on the  
5 record.

6 **ELVIN HOLLON**

7 was called as a witness, and after having been  
8 previously duly sworn, testified as follows:

9 **DIRECT EXAMINATION**

10 BY MR. BESHORE:

11 Q. Okay. Could you --

12 THE COURT: Your witness.

13 BY MR. BESHORE:

14 Q. -- just initially state your name and  
15 address and current professional status?

16 A. My name is Elvin Hollon. My business  
17 address is Post Office Box 131, Liberty, Missouri  
18 64069.

19 And I am retired from the dairy industry  
20 and doing some consulting work for Dairy  
21 Cooperative Marketing Association, specifically  
22 for this hearing. And I've been employed by them  
23 for the better part of a year, studying, looking  
24 at the alternatives, putting information together,  
25 working with the market administrators.

1 I'm here today. I've testified in this  
2 similar role for many, many years and many, many  
3 hearings, and so this will be the next one.

4 Q. Okay. And just for the record, so  
5 you're completely identified, what's your  
6 educational background, Mr. Hollon?

7 A. I have a bachelor's degree in dairy  
8 manufacturing management, commonly known as making  
9 cheese and ice cream, and a master's degree in  
10 agricultural economics, both from Louisiana State  
11 University.

12 Q. Very good. And you've testified in --  
13 do you know how many federal order hearings?

14 A. I do not.

15 MR. BESHORE: Okay. Your  
16 Honor, Mr. Hollon has previously testified as an  
17 expert witness in a number of hearings, and I  
18 would ask that he be recognized as an expert  
19 witness today in agricultural economics and milk  
20 marketing.

21 THE COURT: Any objection,  
22 challenges to that designation?

23 (No verbal response.)

24 THE COURT: So ruled.

25 //

1 BY MR. BESHORE:

2 Q. With that, would you proceed,  
3 Mr. Hollon, with your statement that's been marked  
4 as Exhibit 12, Part 1.

5 A. I am Elvin Hollon. My business address  
6 is Post Office Box 131, Liberty, Missouri 64069.  
7 I am here today representing the nine  
8 Capper-Volstead cooperatives who are members of  
9 the common marketing agency Dairy Cooperative  
10 Marketing Association, Inc., in paren, DCMA,  
11 closed paren.

12 The members of DCMA are all recognized  
13 by the Department as qualified cooperatives. The  
14 complete list of DCMA members is shown in  
15 Exhibit --

16 MR. HILL: I believe that  
17 would be 14.

18 THE COURT: Yes. The list of  
19 exhibits, 14.

20 MR. BESHORE: Could we have  
21 the document you referred to marked as -- which is  
22 the first document after Exhibit 14, the first  
23 document on the list, as Exhibit 15.

24 THE COURT: Okay.

25 MR. BESHORE: Thank you.

1 THE COURT: Marked. I'm not  
2 going to read everything on there. Members Dairy  
3 Cooperative Marketing Association.

4 (Whereupon, Exhibit Number 15 was  
5 marked for identification.)

6 THE COURT: You may continue.

7 THE WITNESS: Unless noted  
8 differently, we will use the term "DCMA" to  
9 represent all nine of the agency members  
10 throughout this statement, as all nine members  
11 support Proposals 1 through 5 and oppose  
12 Proposals 6 and 7.

13 DCMA supports federal order  
14 regulation and knows that the regulations are  
15 beneficial to its individual members' business  
16 operations as well as the dairy industry as a  
17 whole. DCMA members together market and pool milk  
18 in the Appalachian Order, Federal Order 5, the  
19 Florida Order, Federal Order 6, and the Southeast  
20 Order, Federal Order 7.

21 DCMA Producer Milk Volumes, Orders 5,  
22 6, and 7 for October 2021.

23 For comparison purposes, we have  
24 compiled producer milk data for Orders 5, 6, and 7  
25 to show the relative position of DCMA milk

1 production on the orders.

2           Using October 2021 as a proxy for a  
3 typical month, the total pounds of producer milk  
4 on the three orders, as reported by the market  
5 administrator, was 1,024,617,582 pounds. Of this  
6 total, DCMA poolings were 823,427,739 pounds or  
7 80.4 percent of the total producer milk pooled  
8 that month. Exhibit 16 compares DCMA Members'  
9 Total Milk Pooled on Orders 5, 6, and 7,  
10 October 2021 and Comparison of DCMA Member Farms  
11 Meeting the Definition of Small Business  
12 October 2021, details this information.

13           (Whereupon, Exhibit Number 16 was  
14 marked for identification.)

15                           THE WITNESS: Small Business  
16 Information Represented by DCMA.

17           The Small Business Act defines a  
18 small business as a business concern that is  
19 organized for profit; has a place of business in  
20 the U.S.; operates primarily within the U.S. or  
21 makes a significant contribution to the U.S.  
22 economy through payment of taxes or use of  
23 American products, materials or labor; is  
24 independently owned and operated; and is not  
25 dominant in its field on a national basis. The

1 business may be a sole proprietorship,  
2 partnership, corporation, or any other legal form.

3           The Office of Small and Disadvantaged  
4 Business Utilization provides definitions of small  
5 businesses for U.S. businesses that fit a  
6 specific -- I'm sorry -- that fit a specified  
7 North American Industry Classification System,  
8 open paren, NAICS, closed paren, business  
9 definition.

10           A dairy farm is a NAICS Code 112120,  
11 Dairy Cattle and Milk Production. It is  
12 classified as a small business if it has annual  
13 receipts of less than \$3,750,000. Based on this  
14 definition, of the 2,628 farms pooled on Orders 5  
15 and 7 in October 2021, DCMA members pooled 1,258  
16 farms that were small businesses.

17           These small business farms represent  
18 48 percent of all the farms pooled on the orders.  
19 It is likely that the proportion of DCMA member  
20 farms pooled on Orders 5, 6, and 7, which would  
21 qualify as a small business, is actually greater  
22 than 48 percent since some farms can be pooled on  
23 both orders in the same month.

24           We have requested this hearing to  
25 address the urgent need for assistance in

1 providing adequate supplies of fresh fluid milk to  
2 distributing plants in the southeastern United  
3 States. Specifically, DCMA requested that the  
4 Department convene a hearing for the purpose of  
5 amending Federal Milk Orders 5, 6, and 7 pursuant  
6 to the five proposals for amendments which we have  
7 detailed and submitted.

8           Since its implementation, the  
9 existing transportation credit system has worked  
10 to help defray milk import costs from out-of-area  
11 farms. However, cost components have changed and  
12 are eroding the effectiveness of the existing  
13 program.

14           We are here today to recommend needed  
15 updates to keep the provisions in place which have  
16 worked very well since the 1990s. To increase  
17 returns and sustainability to Southeast dairy  
18 farms, we propose to update and modernize the  
19 existing transportation credit provisions already  
20 in Orders 5 and 7.

21           Implementation of the updating  
22 changes in Proposals 1 and 2 will allow the  
23 Transportation Balancing Credit Fund, open paren,  
24 TCBF, closed paren, program to return nearer to  
25 its effectiveness as originally designed.



1 Moreover, Proposals 3 and 4 and 5 will adopt near  
2 identical provisions, as the TCBF program, but  
3 will apply to milk deliveries that take place,  
4 with limited exception, from farms located inside  
5 the order to pool distributing plants of the  
6 order.

7           The data we will present supports the  
8 conclusion that operating dairy farms enterprise  
9 in the Southeast is difficult. While the most  
10 economical source of milk supplies for Southeast  
11 consumers is from Southeast dairy farms, the cost  
12 of delivering milk to pool distributing plants  
13 from both in-area and out-of-area farms has risen  
14 sharply due to the increase in diesel fuel and  
15 nonfuel costs.

16           The increase in nonfuel costs can be  
17 partially offset through our proposed updates to  
18 the base mileage rate in the credit formula.  
19 Likewise, the increase in diesel fuel costs, which  
20 is creating unprecedented increases in hauling  
21 costs which the transportation credit system is  
22 designed to address, can be mitigated if kept more  
23 current. The DCMA proposals will address hauling  
24 costs from both in-area and out-of-area sources of  
25 supply.

1 DCMA requested that this hearing be  
2 held on an expedited basis and that evidence be  
3 taken to allow the Secretary to implement these  
4 amendments at the earliest possible date.

5 While we will provide more detail  
6 about our proposals later in our testimony, two  
7 specific data points point to a reasonable summary  
8 of the basis of our request.

9 DCMA conducted a survey of its  
10 members to capture cost data -- I'm sorry, cost  
11 details about their supplemental milk purchases.  
12 Supplementing that data revealed for October --  
13 I'm sorry. Summarizing that data revealed for  
14 October 2020 the average transport distance for a  
15 supplemental milk haul was 774 miles.

16 The exhibits submitted for the 2006  
17 hearing, open paren, Exhibit Number 25, pages G1,  
18 dash, G3, closed paren, showed October 2003  
19 transport haul mileages that averaged 511 miles.  
20 This reveals an increase of 51 percent in the  
21 average miles necessary to procure a load of  
22 supplemental milk.

23 This extra distance reflects an  
24 increase in costs that the transportation credit  
25 system is not currently structured to reimburse

1 and is a significant issue to correct.

2           The most salient point we will  
3 present is perhaps best represented by the changes  
4 in diesel fuel costs. During the period chosen by  
5 the proponents to support the process of updating  
6 the existing transportation credit system,  
7 May 4th, 2020, through November 9th, 2020, diesel  
8 fuel averaged \$2.2617 per gallon.

9           The Federal Order 5 published  
10 "Announcement of Advanced Class Prices and Pricing  
11 Factors for February 2023" reports the EIA average  
12 diesel fuel price to be \$4.428 per gallon, an  
13 increase of \$2.1663 or 196 percent more per  
14 gallon. This increase consumes assessment dollars  
15 and pushes the payment rate for transported miles  
16 to be prorated severely, forcing milk suppliers to  
17 absorb much of the transport cost.

18           It is difficult, if not nearly  
19 impossible, for suppliers to pass on this increase  
20 as rapidly as it occurs and in some cases pass it  
21 on at all. This is counter to the intended policy  
22 underlying the transportation credit system and  
23 threatening to both the supply of and the  
24 orderliness of the marketing of milk in the  
25 region.

1           Proposals 1 and 2, colon, Modify the  
2 Existing Transportation Balancing Fund Programs in  
3 Federal Orders 5 and 7 and Create a New  
4 Distributing Plant Delivery Credit Program for  
5 Orders 5, 6, and 7.

6           The DCMA proposals are twofold. The  
7 initial focus of our effort is to update the  
8 existing transportation credit system designed to  
9 partially reimburse the cost to transport  
10 supplemental milk from dairy farms that are  
11 located -- I'm sorry, that are not located within  
12 the marketing area into the market to meet needs  
13 at pool distributing plants.

14           This system was first implemented in  
15 these orders in 1996, revised as the result of a  
16 hearing in 2006, and not implemented in -- not  
17 updated in 17 years. It is woefully inadequate in  
18 addressing the needs of the regional marketplace  
19 today.

20           Proposals 1 and 2 deal with DCMA's  
21 requested changes to the current transportation  
22 calculations in Federal Orders 5 and 7. The  
23 proposed changes apply to Section .81,  
24 Section .82, and Section .83 of both orders.

25           Our proposals request updates to the

1 calculation of the mileage rate factor; adjust the  
2 portion of the mileage that can be claimed for  
3 payment of a transportation credit by converting  
4 the flat mileage deduction to a percentage of the  
5 miles that can be claimed and make that percentage  
6 subject to adjustment by the market administrator;  
7 modification of transportation credit payments to  
8 handlers for the month of February, making it  
9 optional rather than mandatory; and increasing the  
10 assessment that funds the transportation credit  
11 functions. No changes are being proposed to the  
12 provisions defining what milk is eligible for  
13 transportation credits.

14           Proposals 3, 4, and 5 will create a  
15 new Section .84 in the three orders to provide for  
16 a Distributing Plant Delivery Credit program for  
17 milk generally produced inside the marketing areas  
18 of the three orders which is delivered to pool  
19 distributing plants of the orders. A provision  
20 will also be requested for farms located inside  
21 the Marketing Areas of 5, 6, and 7 --

22 BY MR. BESHORE:

23           Q.     Mr. Hollon, would you read that sentence  
24 again.

25           A.     Yep.   Beginning with?

1 Q. A provision.

2 A. A provision will also be requested for  
3 farms located outside the marketing areas of  
4 Orders 5, 6, and 7 that have historically been  
5 delivered to the market on a year-round basis.

6 The provisions and calculations for the  
7 new distributing plant transportation credit are  
8 much the same as the existing system. There are,  
9 however, additional provisions added to the  
10 proposed language which call for the market  
11 administrator to diligently examine requests for  
12 payments for the distributing plant delivery  
13 credit to ensure that uneconomic milk movements  
14 are not taking place on the credits applied for.

15 The significant need for updating the  
16 current order provisions is demonstrated in  
17 Exhibit --

18 Q. -- 17.

19 (Whereupon, Exhibit Number 17 was  
20 marked for identification.)

21 THE WITNESS: Comparison of  
22 Mileage Rate Factor Components Current and DCMA  
23 Proposed.

24 This is a summary of the key  
25 components of the mileage rate factor, open paren,

1 MRF, closed paren, as currently in the order  
2 language and calculations and those same  
3 components as proposed by DCMA with the percentage  
4 change for each. Note, the existing components  
5 were put in place in December 2006, and DCMA  
6 member cost survey was for 2020 data.

7           The base fuel rate has increased  
8 59 percent, and it is likely higher currently than  
9 for the period surveyed. The average miles per  
10 gallon achieved by milk transport equipment have  
11 improved by 13 percent.

12           The base haul rate, costs that are  
13 not fuel related, have increased by 92 percent and  
14 also are likely higher currently than for the  
15 period surveyed. In addition, the average tank  
16 load weight has increased by 4 percent.

17           With two key components, fuel and  
18 base cost haul rate, showing sizable increases, it  
19 is certainly time for USDA to review and increase  
20 the cost factors in the transportation credit  
21 system.

22           These proposed changes in the payment  
23 provisions of the transportation credit system  
24 will increase payments from the respective funds  
25 to handlers supplying the market. Consequently,

1 if increases in the credit are justified, then  
2 changes in the assessment rates will be necessary.

3 For the purpose of Proposals 1  
4 through 5, a transportation credit is a partial  
5 reimbursement of the transportation cost of milk  
6 purchased to meet fluid milk demand at  
7 distributing plants in Federal Orders 5, 6, and 7.

8 This activity, as proposed for  
9 Sections .81 through .84 of Orders 5, 6, and 7,  
10 continues to meet the definition of a marketwide  
11 service, as it benefits producers, handlers, and  
12 consumers, but the cost of the service is not  
13 borne equally by all producers and handlers in the  
14 market.

15 Previous Hearings in the Southeastern  
16 Orders Relative to Transportation Credits.

17 Since 1996, Orders 5 and 7 have  
18 compensated handlers providing the marketwide  
19 service of importing supplemental milk supplies  
20 through the orders' transportation credit  
21 balancing funds. These order provisions, funded  
22 by assessments on Class 1 pooled milk, have  
23 defrayed a portion of the transportation cost of  
24 bringing milk into the orders on a seasonal basis,  
25 as needed, to meet Class I demands.



1           In 2006, demonstrating the continuing  
2 need and justification, the transportation credit  
3 provisions were updated in several respects. A  
4 fuel cost adjuster was built into the system to  
5 provide current reflection of changes in diesel  
6 costs, and the maximum assessment rate was  
7 increased to compensate for increased volume and  
8 costs of required supplemental supplies.

9           The most recent review and updating  
10 of the payment components of the transportation  
11 credit system was done at a 2006 hearing,  
12 published as a Proposed Rule in 2014, cite 75 Fed.  
13 Reg. 12985, open paren, March 7, 2014, closed  
14 paren, open paren, Milk in the Appalachian and  
15 Southeast Marketing Areas; Final Partial Decision,  
16 closed paren.

17           Citations from the March '14 decision  
18 will be helpful to determine the fact that  
19 transportation credit provisions have a long  
20 history in the Southeastern orders, that the  
21 rationale for their inclusion in these orders then  
22 are still warranted now and updating them has been  
23 and now is again necessary and warranted.

24           The Hearing Summary section of  
25 Proposed Rule -- of the Proposed Rule notes the

1 following, open paren, emphasis added, closed  
2 paren, situations:

3           This final decision proposes to  
4 permanently adopt revised transportation credit  
5 balancing fund provisions for the Appalachian and  
6 Southeast milk marketing orders.

7           Specifically, this document  
8 establishes a variable rate factor using a fuel  
9 cost adjuster to determine the transportation  
10 credit provisions of both orders; increasing the  
11 transportation credit assessment rate for the  
12 Appalachian Order to \$0.15 per hundredweight; and  
13 establishes a zero-diversion limit standard on  
14 loads of milk requesting transportation credits.

15           Separate decisions will address the  
16 proposed adoption of an intra-market  
17 transportation credit provision for the  
18 Appalachian and Southeast Orders and for  
19 increasing the transportation credit rate  
20 assessment for the Southeast Order.

21           Cite --

22 BY MR. BESHORE:

23           Q.     Mr. Hollon, for these quotes, I'd ask  
24 you to just ignore the citations there in the  
25 exhibit. It can be noted in the record that it's

1 the 75 Federal Register stuff. Read the quotes  
2 but just ignore -- you don't have to read the  
3 cites.

4 A. Very good.

5 Q. Thank you.

6 A. The amendments that are recommended for  
7 permanent adoption in this decision revise the  
8 transportation credit system of the Appalachian  
9 and Southeast Orders.

10 The adopted amendments establish a  
11 variable mileage rate factor that would be  
12 adjusted monthly by changes in the price of diesel  
13 fuel, open paren, a fuel cost adjuster, closed  
14 paren, as reported by the Department of Energy for  
15 paying claims from the transportation credit  
16 balancing funds of the Appalachian and Southeast  
17 Orders. Prior to their interim adoption, the  
18 mileage rate of both orders was fixed at \$0.35 per  
19 hundredweight per mile.

20 The adopted amendments establish an  
21 increase of the transportation credit assessment  
22 rate for the Appalachian Order. Specifically, the  
23 maximum assessment rate for the Appalachian Order  
24 is increased to \$0.15 per hundredweight.

25 The higher assessment rate is intended

1 to minimize the proration and depletion of the  
2 order's transportation credit balancing fund  
3 during those months when supplemental milk is  
4 needed.

5           The higher assessment rate for the  
6 Appalachian Order adopted in this decision is  
7 necessary due to expected higher mileage  
8 reimbursement rates arising from escalating fuel  
9 costs, the transporting of milk over long  
10 distances, and the expected continuing need to  
11 rely on supplemental milk supplies from declining  
12 local milk production in the marketing area.

13           Findings/Discussion. The issue before  
14 USDA in this decision is the consideration of  
15 changes to the transportation credit and closely  
16 related provisions of the Appalachian and  
17 Southeast Milk Marketing Orders. Transportation  
18 credit provisions have been a feature of the  
19 current orders, and their predecessor orders,  
20 since 1996.

21           The record reveals that the Appalachian  
22 marketing area and, in particular, the Southeast  
23 marketing area are chronically unable to meet  
24 Class I demands. Local milk production relative  
25 to demand has declined and is expected to continue

1 declining.

2           Consequently, local milk production is  
3 not always able to fulfill the Class I needs of  
4 the markets, which necessitates the need for  
5 supplemental milk from distant locations. As  
6 local milk production has eroded, the volume of  
7 supplemental milk needed for fluid use has  
8 increased, while at the same time the distance  
9 from the marketing areas from which the supplies  
10 are obtained has increased.

11           This development is partially evident  
12 for the Southeast marketing area. Repeat that  
13 sentence. This development is particularly  
14 evident for the Southeast marketing area.

15           These combined factors have caused the  
16 transportation credit balancing fund, open paren,  
17 TCBF, closed paren, to be insufficient in covering  
18 requested transportation credit payments. The  
19 TCBF will likely not be able to cover future  
20 requested payments unless the amendments contained  
21 in this decision are adopted.

22           Evidence shows that the trend of  
23 declining production relative to demand will  
24 result in an increased need for supplemental milk  
25 supplies, and it is likely that this trend will

1 continue into the foreseeable future.

2           We have arrived at the foreseeable  
3 future. This brief review of the transportation  
4 credit history and findings based on prior  
5 decisions states the rationale for the provisions  
6 adopted in the previous hearing, which are the  
7 same for this hearing. The Secretary has  
8 continually upheld the transportation credits as  
9 necessary and allowable tools to assure orderly  
10 marketing in the two order marketing areas.

11           Unequal costs of handlers and returns to  
12 producers serving the Class I needs of a marketing  
13 area have consistently been held to be a source of  
14 market disorder. Today, as in prior years, the  
15 costs of acquiring supplemental milk for Orders 5  
16 and 7 are falling disproportionately on cooperative  
17 associations and their members.

18           The more transportation credit  
19 provisions fail in reflecting a fair portion of  
20 the real cost of hauling supplemental milk  
21 supplies, the more the costs of hauling those  
22 supplemental milk supplies fall unequally to  
23 market participants.

24           The more unequal the distribution of  
25 these costs, the more market disorder, and the

1 more likely the orderly flow of milk to the  
2 marketplace will be threatened.

3 Marketing Disorder in the Southeast  
4 Population Increase Possible Demand -- I'm going  
5 to start over again.

6 Marketing Disorder in the Southeast,  
7 colon, Population Increase, comma, Possible Demand  
8 Increase, comma, Loss of Dairy Farms, comma, Loss  
9 of Milk Production, comma, Seasonal Fluctuation in  
10 Supply and Demand Conditions, comma, and  
11 Significant Closures of Milk Processing Plants  
12 Increase Marketing Costs.

13 An overview of key marketing  
14 characteristics in the Southeast, at present and  
15 since the current order provisions for  
16 transportation credits were adopted, documents the  
17 challenging marketing conditions and supports the  
18 urgent need for the hearing. Exhibit --

19 Q. -- 18.

20 A. Population Data and US Census Bureau --

21 THE REPORTER: Excuse me. I  
22 just want to make sure these are for sure in  
23 order, so that I mark the right document.

24 THE COURT: Let's go off the  
25 record.

1                   (Whereupon, a discussion off the  
2 record occurred.)

3                   (Whereupon, Exhibit Number 18 was  
4 marked for identification.)

5                   THE COURT: All right. Back  
6 on the record.

7                   In the off-the-record discussion,  
8 some discussion took place on how to make sure  
9 that the exhibits were -- this witness had  
10 consistent numbering, and the parties will  
11 continue to work on that and I'm satisfied that  
12 that will happen.

13                   In any event, all of the exhibits  
14 will be posted on the website. Those will have  
15 the correct numbers.

16                   Mr. Beshore, it's your witness but he  
17 was continuing to give his statement.

18 BY MR. BESHORE:

19                   Q. Yes. And begin with the sentence  
20 Exhibit 18.

21                   A. Which is?

22                   Q. Population Data.

23                   A. Okay.

24                   Q. US Census Bureau.

25                   A. Exhibit 18, Population Data US Census



1 Bureau, 2020 and 2021, points to a positive factor  
2 for the southeastern dairy industry, an increasing  
3 population, which means potentially more milk  
4 demand.

5           The Census Bureau divides the U.S. into  
6 four geographic areas: the Northeast, Midwest,  
7 South, and West regions. U.S. population as a  
8 whole is shown to have an increase of 0.12 percent  
9 for the period. While the Northeast, open paren,  
10 minus 0.64 percent, closed paren, and Midwest,  
11 open paren, minus 0.14 percent, closed paren, are  
12 showing declines, the Southeast, open paren,  
13 0.65 percent, closed paren, and the West, open  
14 paren, 0.05 percent, closed paren, show gains.

15           The Southeast subset of 11 states  
16 reveals population increases in 9 of the 11  
17 states.

18           Additionally, a review of data compiled  
19 by the MilkPEP organization --

20           Q.     Exhibit 19.

21           A.     Exhibit 19.

22           Q.     Which is titled -- yes, which is a map  
23 titled, on the exhibit itself, Milk Sales in 2020  
24 were 16.5 Gallons per Capita, minus 0.3 percent  
25 vs. 2019.

1 (Whereupon, Exhibit Number 19 was  
2 marked for identification.)

3 BY MR. BESHORE:

4 Q. That's Exhibit 19.

5 A. Exhibit 19, milk sales per capita, 2019  
6 versus 2020, shows in a tracking of all channel  
7 milk sales by region, an increasing trend in milk  
8 consumption in the Southeast, the largest  
9 population region, up 2.6 percent in 2020 versus  
10 2019. The study also indicates that the increase  
11 in consumption may well be partially fueled by  
12 older generations of retirees who are a lot higher  
13 imbibers of milk.

14 These two data points indicate a  
15 positive trend for fluid milk consumption in the  
16 Southeast. Unfortunately, these two data points  
17 are the end of possibly positive trends, and the  
18 erosion of the impact of the transportation credit  
19 program means reduced revenues for the milk  
20 producers who supply the market.

21 To the extent the reduction in farm  
22 numbers represent local farms, the milk necessary  
23 to fill consumer -- scratch. To fill customer and  
24 consumer demands will come from farther distances  
25 and at a higher transportation cost to serve the

1 market. The following tables and charts  
2 demonstrate the decline in both southeastern dairy  
3 farms and milk production.

4 Exhibit --

5 Q. 20.

6 A. Licensed --

7 Q. Titled Licensed Dairy Farms, Southeast  
8 States, 2017 to 2021.

9 (Whereupon, Exhibit Number 20 was  
10 marked for identification.)

11 THE WITNESS: Details the  
12 trends for licensed dairy farms in the  
13 11 Southeast states for the period 2017-2021, as  
14 published by USDA in the February issue of the  
15 USDA Natural Agricultural Statistics Service's  
16 Milk Production Report.

17 Over the five-year period, the total  
18 farm count decreased by 719 farms. Every  
19 southeastern state had fewer farms in 2021 than in  
20 2017. More recently, the 11 states -- scratch.  
21 More recently, of the 11 states, only Arkansas did  
22 not show a decrease in farm numbers between 2020  
23 and 2021, as it recorded 35 dairy farms in both  
24 periods. Exhibit --

25 //

1 BY MR. BESHORE:

2 Q. 21 is titled Trend in Farms in Southeast  
3 States 2017 to 2021, and it is a graph.

4 A. Is the graphical depiction of the  
5 licensed dairy farms data.

6 (Whereupon, Exhibit Number 21 was  
7 marked for identification.)

8 THE WITNESS: Exhibit --

9 BY MR. BESHORE:

10 Q. 22 is a chart titled -- a set of charts,  
11 titled Number of Total Farms and In Area Farms,  
12 Appalachian, Southeast and Florida Orders, 2000,  
13 2015 to 2022 -- 2000 and 2015 to 2022.

14 (Whereupon, Exhibit Number 22 was  
15 marked for identification.)

16 BY MR. BESHORE:

17 Q. So start and read the full sentence with  
18 the exhibit.

19 A. What was the number?

20 Q. 22.

21 A. Exhibit 22, Number of Total Farms and In  
22 Area Farms, Appalachian, Southeast and Florida  
23 Orders, 2000 and 2015 through 2022, provides  
24 additional detail into the farm structure of the  
25 southeastern orders by reviewing the number of

1 farms located within each of the three order  
2 boundaries.

3           Considering the five-year period of 2017  
4 through 2022, it was not unexpected that the  
5 number of farms had decreased, but the magnitude  
6 of the decline is perhaps more than might have  
7 been expected.

8           In October 2017, the Appalachian Order  
9 showed 1,040 dairy farms within the order area.  
10 By 2022, that number had declined to 650 or a  
11 decrease of 38 percent. A similar comparison for  
12 the Southeast Order showed 1,124 in-area farms in  
13 2017 and 4,089 in --

14           Q.     400.

15           A.     Oh, sorry. 489 in 2022 for a decline of  
16 56 percent. The Florida Order had a decline of  
17 45 percent for the same period with 89 farms in  
18 2017 and 49 in 2022.

19           Exhibit --

20                           MR. BESHORE: Next exhibit is  
21 Exhibit 23. Annual Milk Production Southeast  
22 States, Million Pounds, 2017-2021.

23                           (Whereupon, Exhibit Number 23 was  
24 marked for identification.)

25                           THE WITNESS: Exhibit 23,

1 Annual Milk Production Southeast States, Million  
2 Pounds, 2017 through 2021, is the near twin of the  
3 farm count data, as milk production data exhibits  
4 the same trend.

5 Total regional milk production over  
6 the period declined 12.8 percent or 1.214 billion  
7 pounds. Every state decreased production over the  
8 five-year period. Only two states, Georgia, open  
9 paren, 1.5 percent, closed paren, and North  
10 Carolina, open paren, 2.4 percent, closed paren,  
11 increased production in the most recent period,  
12 2020 through 2021.

13 MR. BESHORE: The next exhibit  
14 is Exhibit 24, titled Trend in Milk Production  
15 Southeast States 2017-2021, and it's a graph.

16 (Whereupon, Exhibit Number 24 was  
17 marked for identification.)

18 THE WITNESS: Exhibit 24,  
19 Trend in Milk Production in Southeast States, 2017  
20 through 2021, is the graphical presentation of the  
21 milk production data.

22 The dim plight of the Southeast dairy  
23 industry is starkly depicted in --

24 MR. BESHORE: The next exhibit  
25 is 25, titled Change in US Milk Production, 2011

1 to 2021, which is a map of the U.S., coded and  
2 identified and -- changes in milk production in  
3 each state.

4 (Whereupon, Exhibit Number 25 was  
5 marked for identification.)

6 THE WITNESS: Exhibit 25,  
7 Change in US Milk Production, 2011 through 2021,  
8 showing that the increase in milk production over  
9 the entire United States is certainly leaving out  
10 the Southeast region. This map shows the increase  
11 or decrease in milk production for each of the  
12 lower 48 states for the ten-year period 2011  
13 through 2021.

14 States colored by red and pink have  
15 decreased milk production, and those colored light  
16 and dark blue have increased. The darker the red  
17 color, the more the decrease. The darker the blue  
18 color, the greater the increase.

19 Of the 25 states showing decrease, 9  
20 are in the traditional Southeast states region.  
21 Of those 9, 6 are the darkest red with decreases  
22 more than 25 percent. They are South Carolina,  
23 Tennessee, Arkansas, Louisiana, Mississippi, and  
24 Alabama.

25 Kentucky, open paren, negative

1 16.8 percent, closed paren; Virginia, open paren,  
2 negative 14.4 percent, closed paren; and Florida,  
3 open paren, negative 4.4 percent, closed paren,  
4 were the remaining states with decreasing growth  
5 trend. Only two Southeast states, North Carolina  
6 and Georgia, show an increase over the five-year  
7 period.

8 Market Administrator data for monthly  
9 average producer receipts, as shown in Exhibit --

10 MR. BESHORE: Exhibit 26 is  
11 titled Producer Milk Receipts 2000, Monthly  
12 Average by Order. It's a bar graph.

13 (Whereupon, Exhibit Number 26 was  
14 marked for identification.)

15 MR. BESHORE: And Exhibit 27  
16 is Producer Milk Receipts 2021, Monthly Average by  
17 Order. It's also a bar graph.

18 And I would note that these are, I  
19 think, identical to exhibits that were in  
20 Mr. Herbert's document, which DCMA had requested  
21 from USDA and is relied upon as exhibits.

22 (Whereupon, Exhibit Number 27 was  
23 marked for identification.)

24 MR. BESHORE: 26, Producer  
25 Milk Receipts - 2000. 27, Producer Milk



1 Receipts - 2021.

2 THE COURT: You may continue,  
3 Mr. Johnson.

4 THE WITNESS: Exhibit 26,  
5 Producer Milk Receipts in -- scratch. Start  
6 again.

7 Exhibit 26, Producer Milk  
8 Receipts - 2000, Monthly Average by Order, and  
9 Exhibit 27, Producer Milk Receipts 2021, Monthly  
10 Average by Order, provide a deeper examination of  
11 milk production by federal order, as the orders'  
12 boundaries do not always coincide with state  
13 borders.

14 Of the ten-order comparison, note  
15 that the -- open paren, note that the 2021 data  
16 includes the California Order which was not in  
17 place in 2000, closed paren, six orders increased  
18 in producer receipts; the Northeast, Mideast,  
19 Upper Midwest, Southwest, Arizona, and Pacific  
20 Northwest, and four decreased; Central,  
21 Appalachian, Southeast, and Florida.

22 Quite likely, pooling strategies were  
23 the cause of reduced producer receipts in the  
24 Central Order. But pooling strategies are highly  
25 unlikely in the south -- sorry, highly unlikely to

1 impact the southeastern orders where depooling  
2 rarely occurs. The cause of the reduction here  
3 was attributable to producers exiting farming, as  
4 noted earlier.

5 MR. BESHORE: Exhibit 28 is a  
6 graph, a pie graph, a pie chart. Federal Order 5  
7 Milkshed 2021, Appalachian Marketing Area.

8 THE REPORTER: Federal  
9 Order 5?

10 MR. BESHORE: 28. Federal  
11 Order 5, yes.

12 THE REPORTER: Thank you.

13 (Whereupon, Exhibit Number 28 was  
14 marked for identification.)

15 THE WITNESS: Exhibit 28, FO 5  
16 Milkshed 2021, Appalachian Marketing Area, shows  
17 the percentage sources of milk for each of the  
18 southeastern orders for calendar year 2021.

19 For the Appalachian Order, 54 percent  
20 of the milk pooled on the order was produced in  
21 the marketing area of the order.

22 The remaining 46 percent of the total  
23 was produced predominantly in other orders. The  
24 sources were Mideast Order, open paren,  
25 16 percent, closed paren; Southeast Order, open

1 paren, 14 percent, closed paren; unregulated  
2 counties, open paren, 8 percent, closed paren;  
3 Northeast Order, open paren, 5 percent, closed  
4 paren; and the Other, open paren, 3 percent,  
5 closed paren, open paren, not detailed for reasons  
6 of confidentiality, closed paren.

7           Clearly, the Appalachian Order must  
8 depend on milk supplies from other orders to meet  
9 the demand of its pool distributing plants.

10           This situation is similar for the  
11 Southeast Order, but the reliance on outside  
12 marketing area milk supplies is much greater. As  
13 shown in Exhibit --

14           MR. BESHORE: 29, which is  
15 titled FO 7 Milkshed 2021, Southeast Marketing  
16 Area. And it is a pie chart.

17           (Whereupon, Exhibit Number 29 was  
18 marked for identification.)

19           THE WITNESS: As shown in  
20 Exhibit 29, FO 7 Milkshed 2021, Southeast  
21 Marketing Area, only 44 percent of the order's  
22 milk supplies originate from farms within the  
23 order marketing area while 56 percent of the  
24 supply originates outside.

25           The Central Order is the largest

1 outside supplier with 19 percent of the  
2 deliveries, while the Southwest supplies  
3 16 percent, the Mideast supplies 12 percent,  
4 Appalachian supplies 4 percent, Florida supplies  
5 4 percent, and 1 percent comes from other areas.

6           Clearly, the Appalachian Order and,  
7 to a greater extent, the Southeast Order are very  
8 dependent on distant supplemental milk supplies to  
9 meet demands from distributing plants.

10           The Florida Order also draws  
11 significant volume of supplies from outside  
12 sources -- start this sentence over again, please.

13           The Florida Order also draws  
14 significant volumes of supplies from sources  
15 outside Order 6.

16                           MR. BESHORE: Exhibit 30 is a  
17 pie chart. FO 6 Milkshed - 2021, Florida  
18 Marketing Area.

19                           (Whereupon, Exhibit Number 30 was  
20 marked for identification.)

21                           THE WITNESS: Exhibit 30, FO 6  
22 Milkshed - 2021, Florida Marketing Area. There,  
23 82 percent of milk supplies to meet fluid  
24 demands -- scratch. Meet fluid use demands  
25 originate inside the marketing area and 18 percent

1 from outside. The majority of the 18 percent  
2 comes from farms located in Georgia.

3 Due to proximity, the Georgia  
4 milkshed has been the most common source of  
5 supplemental milk supplies for the Florida Order  
6 for many years. Notably, in August 2022, the  
7 monthly milk production for Georgia surpassed that  
8 of Florida for the first time.

9 Local sources indicate this will be a  
10 continuing and increasing trend, and Georgia milk  
11 may well be a more integral part of the everyday  
12 milk supply for pool distributing plants in the  
13 Florida Order. We will discuss this further with  
14 our testimony for Proposals 3 through 5.

15 MR. HILL: Your Honor.

16 THE COURT: If I may  
17 interrupt. Off the record.

18 (Whereupon, a discussion off the  
19 record occurred.)

20 THE COURT: All right. Back  
21 on the record.

22 We will reconvene after the lunch  
23 break, at 1:15.

24 (Recess observed.)

25 END OF VOLUME 1.

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C E R T I F I C A T E

STATE OF TENNESSEE )  
COUNTY OF WILLIAMSON )

I, Cassandra M. Beiling, LCR# 371, a  
Notary Public in the State of Tennessee, do hereby  
certify:

That the within is a true and accurate  
transcript of the proceedings taken before the  
Chief Presiding Administrative Law Judge, Channing  
D. Strother on the 28th day of February, 2023.

I further certify that I am not related to  
any of the parties to this action, by blood or  
marriage, and that I am in no way interested in  
the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set my  
hand this 20th day of March, 2023.



-----  
Cassandra M. Beiling, LCR# 371  
Notary Public State at Large  
My commission expires: 3/10/2024