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BEFORE THE UNITED STATE 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**

**MARCH 1, 2023
Volume 4 of 6 Volumes**

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APPEARANCES:

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Also Present:

Dennis Tonak, Esq.
Prairie Farms

* *Reporter's Note: All names are spelled phonetically unless otherwise provided to the Reporter by the parties.

1 (Whereupon, Volume 4 begins).

2 THE COURT: Mr. Beshore, I think you were
3 standing up at least when I took the recess, I forget
4 where we are.

5 MR. BESHORE: I defer to Mr. Tonak with
6 one additional question for cross before redirect.

7 THE COURT: Very well, Mr. Tonak.

8 BY MR. TONAK:

9 Q. In your testimony, you had discussed the debt the
10 Market Administrator should make every effort to make
11 sure that no movements were efficient and that there was
12 nothing going on that would tend to make the
13 distributing plant delivery credits used incorrectly?

14 A. Do the very last sentence, the door slammed?

15 Q. And have the Market Administrator make analysis
16 that the delivery, the distributing plant delivery
17 credits were applied appropriately and so on, do you
18 recall those?

19 A. Yes.

20 Q. My particular question has to do, would that
21 cause from those distributed plants, normally most
22 plants have some excess cream that gets hauled back out
23 of the plant, and would you suggest that there should be
24 adjustments made to the distributing plant delivery
25 credit if the hauler is also back hauling the cream out

1 of the plant?

2 A. I don't think so.

3 Q. So it would be okay to pay the delivery, the
4 distributing plant delivery credit on one way using full
5 transportation dollars, even though there was a backhaul
6 by the same hauler coming out of the plant?

7 A. Yes. I think the instances there would be pretty
8 slim, you may have a pretty specialized observation, and
9 so, seems like that that's the exception rather than the
10 rule.

11 MR. TONAK: Thank you.

12 THE COURT: Questions by any other
13 parties, AMS or DCMA? Seeing none, let's hear redirect,
14 Mr. Beshore.

15 MR. BESHORE: Thank you, Your Honor.

16 **REDIRECT EXAMINATION**

17 BY MR. BESHORE:

18 Q. Couple of questions on redirect, Mr. Hollon,
19 primarily relating to the language of your proposals.
20 The DCMA proposals, let's go first to exhibit 73, which
21 is proposal number 1, language that starts the bottom of
22 the second page and goes to the top of page 3, which is
23 V-I-I-I, (d) (3) (viii)?

24 A. Correct.

25 Q. Okay. Now you were asked the intention of that

1 language related to market administrator may adjust the
2 mileage adjustment factor by as much as 10-percent up to
3 25 or decrease as much as 10-percent down to 5.

4 Question from Ms. Taylor, the question was what the
5 10-percent applies to, does it apply to the 15-percent
6 or -- okay, can you clarify for us what the intention of
7 that is?

8 A. The language in (d)(3)(viii) opens up with Market
9 Administrator may revise the factor described in (3)
10 (iii), if you look up and see (3)(iii), it is the
11 15-percent of the mile adjustment. You go over then to
12 the language as it spills onto the next page and you
13 look at the 10-percent and 25-percent, if you start at
14 15-percent, you can make an adjustment and it puts the
15 range around those adjustments, both up or down, and so
16 it's not multiplying the two adjustments together, it's
17 saying 15-percent up 10 to 25 or down, and so, all of
18 the language refers to the 15-percent calculation and,
19 in (3)(iii).

20 Q. So it's 15-percent, 10-percent, 25-percent, all
21 of those apply to the mileage to which the distributing
22 plant delivery credit might apply?

23 A. Correct.

24 Q. Now you were also asked by Ms. Taylor whether
25 some of the qualifications for the distributing plant

1 credit might be considered to be automatic from time to
2 time or from month-to-month, do you recall that?

3 A. Yes.

4 Q. Can you talk about that a little bit with respect
5 to the reporting requirements, which are, reporting
6 language, which is parts 30 and 32 in all three, all
7 three orders, exhibit 75, 76, 77 for Orders 5, 6 and 7?

8 A. The idea of automatic sounds good and is still
9 good, but there still needs to be the need to make sure
10 that the entity that's automatically supplied to is
11 eligible for the credit. So if I report all of my
12 information on my market report, and as an example,
13 maybe have milk that came from an eligible county and I
14 have may have milk that came from an ineligible county,
15 I still have to make that distinction before I do the
16 Math to apply the credit. So, I don't know if instant
17 automatic is maybe the right, you know, the right way to
18 go.

19 Q. In other words, you feel it's probably necessary
20 for the reporting of eligible versus ineligible milk to
21 be done monthly as in the report, proposed language?

22 A. Correct.

23 Q. Okay. Now let's look at again in the
24 distributing plant delivery credit language, if you go
25 to part 84, go to part 84(g), there was question, that's

1 on page 5 of exhibit 75, 76, 77, just look at 75, page
2 5, subpart (4)(g), there's a question of what in (f)(1)
3 and (f)(6)6 references in the third to the last line of
4 that paragraph reference?

5 A. Paragraph G is talking about calculation
6 adjustments that would apply to (f)(1), and instead of
7 (f)(6), that should be (f)(2), so the things that are
8 being calculated or applied would be either with respect
9 to milk delivered directly to a distributing plant,
10 which is (f)(1), or with respect to milk delivered from
11 pool supply plant to a distributing plant, that's
12 (f)(2).

13 MR. HILL: Could we have one moment Your
14 Honor, to approach?

15 THE COURT: Yes, off the record.

16 (Whereupon, a brief discussion was held off
17 the record.

18 BY MR. BESHORE:

19 Q. Okay. So I think you said that the (f)(6)
20 references in 84(g) should be (f)(2), that's a
21 typographical error, correct?

22 A. I didn't --

23 Q. I'm sorry, that the reference to (f)(6) in 84(g)
24 should be (f)(2), that there's basically a typo there,
25 the 6 should be 2?

1 A. Yes, that is correct.

2 Q. Okay. And I could have one final question on
3 redirect; in calculating the mileage from farm to plant,
4 the -- the way to make that calculation has been
5 referenced as from the farm to the plant, and in
6 determining the farm I think in the Market
7 Administrator's farm location, I think the Market
8 Administrator's exhibits the county seat of the farm
9 county may have been utilized?

10 A. That is correct.

11 Q. And I'm not sure whether the language is
12 absolutely clear with respect to what your thought is,
13 what the proponent's thought is with respect to locating
14 the mileage point for the farms, can you talk about that
15 a little?

16 A. Yes. Yes. We would be okay if we continue to
17 use the county seat method, which is I think a little
18 easier calculating. On the other hand, if the Market
19 Administrator wants to drill down to the plant level, I
20 mean, to the farm level, that's also okay, but either
21 judgment is fine. In the long run, it doesn't seem to
22 make a big difference, one is certainly easier than the
23 other.

24 Q. So are there any other items that you'd like to
25 touch on now in redirect, Mr. Hollon?

1 A. There are none.

2 MR. BESHORE: Then I have no further
3 questions.

4 THE COURT: Hold on anyone want to
5 recross? Have any recross? Okay, with that, we'll
6 dismiss the witness. Now is the time I'm sure to offer
7 this witness's exhibits into the record.

8 MR. BESHORE: Yes, I would offer
9 exhibits through number 77 that have not yet been
10 received.

11 THE COURT: Did we receive anything into
12 record previously?

13 MR. BESHORE: 13 through 77, with
14 exception of 55 and 56, which were other witness'
15 statements.

16 THE COURT: Any objection to exhibits 12
17 through 77, with the exception of 55 and 56 --

18 MR. HILL: No objections.

19 THE COURT: Good, 12 through 77 are
20 admitted into the record, 55 and 56 have already been.

21 (Whereupon, Exhibits 12 through 77 were
22 introduced into the record.)

23 THE COURT: Call the next witness.

24 MR. BESHORE: Yes, DCMA calls as its
25 next witness Emma Downing Reynolds.

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Whereupon,

EMMA DOWNING REYNOLDS,

having been first duly sworn, was
examined and testified as follows:

DIRECT EXAMINATION

BY MR. BESHORE:

Q. Ms. Reynolds, if you'd state your name, give us
your address, just the town is sufficient, mailing, post
office address is sufficient.

BY MS. REYNOLDS:

A. Emma Downing Reynolds, E-M-M-A, D-O-W-N-I-N-G.
R-E-Y-N-O-L-D-S, address is 1405 North 98th Street,
Kansas City, Kansas, 66111.

Q. Have you ever been to a federal milk order
hearing before this one?

A. I have not.

Q. You ever testified at a hearing similar to this
before?

A. I have not.

Q. Have you nevertheless prepared a statement to
present for this hearing?

A. I have.

Q. And is it a five-page document with a cover page,
two pages of texts and two-page exhibit or table behind?

A. That is correct.

1 Q. I would like to ask that Ms. Reynolds testimony
2 Ms. Reynolds her prepared testimony be marked as exhibit
3 78.

4 THE COURT: Yes. We're not going to
5 mark the table separately?

6 MR. BESHORE: I do not propose to mark
7 the table separately, no just mark the document as one
8 exhibit for the hearing.

9 (Whereupon, Exhibit No. 78 was marked for
10 evidence.)

11 THE COURT: That works.

12 Q. Would you proceed, Ms. Reynolds, and present your
13 testimony as prepared in exhibit 78?

14 A. "Hello, my name is Emma Downing Reynolds, and I
15 work for Dairy Farmers of America, one of the nine
16 Capper Volstead farmer-owned milk-marketing cooperatives
17 that make up the Dairy Cooperative Marketing
18 Association. I first started as an intern with the
19 Cooperative in 2016, working in fluid milk marketing.
20 After receiving a Masters of Science in Agriculture and
21 Applied Economics with a Public Policy Analysis emphasis
22 from the University of Missouri, I transitioned into a
23 full-time position working on a multitude of projects
24 focused on policy, milk analytics and strategic
25 initiatives. Today, my role in dairy policy and

1 industry relations provides an opportunity to work
2 directly with our farmer owners, staff across the
3 Cooperative and a variety of others in the industry."

4 "I'm here today to testify regarding the
5 analysis surrounding point-to-point reefer
6 transportation rates between a variety of Class I milk
7 plants located primarily outside of the southeastern
8 Orders to Class I plants located within Federal Orders
9 5, 6 and 7's marketing areas. The information I will be
10 sharing today was utilized by Elvin Hollon in his
11 previous testimony. The results of this analysis, in
12 particular, found that packaged Class I milk products
13 processed in plants outside the southeastern marketing
14 areas will not have a cost advantage relative to Orders
15 5, 6 and 7's Class I pool plants due to the increased
16 assessments put forth by DCMA in proposals 1 through 5.
17 In conjunction with the previous testimony, I am here to
18 provide greater background regarding data sources and
19 processes on the transportation component of that
20 testimony. To this analysis, the information utilized
21 was provided by DAT Solutions, D-A-T., a U.S. based
22 provider of transportation information and freight
23 exchange services, founded in 1987 and originally known
24 as "Dial a truck." DAT began in a truck stop. There,
25 displayed on a corkboard haulers would post their

1 services, routes and pricing. As the information
2 exhibited on this physical board grew, interested
3 transport companies and individuals began to call into
4 the truck stop solely to ask what was posted on the
5 board that day. Today, DAT has around 120,000 carrier
6 customers representing 2 million trucks, 10,000 broker
7 customers and 13,000 shipping customers, representing
8 the largest truckload freight marketplace in North
9 America. With more than 536 million loads and trucks
10 posted annually, it is the trucking industry's largest
11 on-demand network. DAT services are separated into two
12 product segments, DAT One Freight and DAT IQ Analytics.
13 DAT One Freight serves as a marketplace where haulers
14 can quote loaded rates at which they're willing to
15 provide services for specific routes and provides the
16 ability to match buyers a sellers into the platform.
17 DAT IQ Analytics compiles the data realized by that
18 internal marketplace and other users, aggregates the
19 information, and shares to subscribers seeking price
20 realization and current trends. Currently DFA Dairy
21 Brands, a division within DFA consisting of regionally
22 branded dairy products, including packaged milk that
23 coordinates transportation for around 68,000 trucks
24 annually, is an active subscriber and frequently out
25 utilizes information provided by DAT."

1 "Given DAT's widespread scope and
2 well-known reputation within the hauling industry, their
3 services provided a key input to the transportation
4 costs within the analysis. A subsection of around 60
5 possible routes was evaluated between locations of Class
6 I processing facilities within the southeast Orders and
7 surrounding areas. The research question was: Does the
8 DCMA proposal of an increasing the out-of-area
9 assessments and establishments of an in-area assessment
10 unintentionally disadvantage these Class I processing
11 plants within the Southeast Orders, all else equal? My
12 table, as referenced, breakdown of DAT transportation
13 calculation, lists the selected routes and calculated
14 outcomes."

15 "For each of the selected routes, a
16 transportation cost of a loaded truck reefer, a heavily
17 insulated refrigerated trailer was calculated using the
18 average line haul rate, the base cost of reefer
19 transportation for early 2023 and the fuel surcharge
20 provided to DAT to approximate the number of miles
21 between the selected two Class I processing facilities.
22 Through this, a loaded haul cost for that specific route
23 was calculated. Applying the DAT provided data within
24 each specific route allow the ability to factor in
25 differing marketplace dynamics by location such, as

1 possibility for back hauls regional differences in labor
2 costs and localized hauling competitiveness. Given the
3 longer hauls of these scenarios, the DAT data provided a
4 better account of the actual transportation costs that
5 any internal information accessible given the
6 transportation of packaged milk remains more local in
7 nature."

8 "In the table mentioned, breakdown of
9 DAT transportation calculation, the city, state and
10 Federal Order of the designation city and origin city
11 are listed. Following the locations, the approximate
12 number of miles between the two are included. The DAT
13 average contract rate is represented on a per mile basis
14 for each specific route. This data is representative of
15 average actual quotes for this hypothetical route for
16 January 2023. When the information provided by DAT was
17 pulled, the January 2023 time period was a selected
18 point in time as it provided updated information
19 surrounding line haul rates. There was a desire to
20 pressure test transportation costs of these routes with
21 differing diesel prices. Upon additional analysis, the
22 fuel surcharge was adjusted to be a variable dependent
23 upon diesel prices by utilizing the DAT fuel surcharge
24 calculated ranges. As diesel prizes change, so do
25 something surcharges. The results within the table

1 equate to a fuel surcharge of \$0.55 per mile. This
2 applies a U.S. energy information's administration's
3 February 2023 average diesel price of \$4.428, this
4 diesel price is also employed in the USDA Announcement
5 of that Advanced Class Price and Pricing Factors by the
6 Southeast Federal Orders."

7 "Referring again to the table, the DAT
8 average contract line haul rates and fuel surcharge were
9 some to calculate the DAT total contracts line haul
10 rates on a per mile and aggregate basis. This total
11 haul cost was then applied to the typical weight of a
12 packaged -- of packaged milk that a standard reefer
13 trailer would haul. Given the length of miles between
14 our collected scenarios, it was assumed this entire load
15 would be gallons. Typically, a reefer trailer can fit
16 around 216 gallons on 22 pallets, equating to 40,860
17 pounds of packaged milk, therefore, 408.6 hundredweights
18 were divided by the aggregate contract haul rate to
19 calculate a quotient representing transportation costs
20 on a per hundredweight basis for each scenario."

21 "In closing, the transportation cost
22 assessments of these specific routes help support the
23 findings shared within the previous testimony.
24 Potential unintended consequences the DCMA proposals had
25 on the relative competitiveness of Class I plants in and

1 out of the Southeast marketing areas in reference to
2 transportation costs were evaluated, all else equal.
3 Again, this particular analysis didn't not find there to
4 be any unfair competitive advantages given these
5 specific factors. Thank you for allowing me to testify
6 today.

7 Q. Okay, Ms. Reynolds, just a few additional
8 questions I would have for you. In your, in your
9 testimony when you referred to the table mentioned or
10 the table, you were referring to the table that's the
11 last two pages of what's been marked as exhibit 78,
12 correct?

13 A. Correct.

14 Q. Now, I think your testimony, based, essentially
15 indicated that the table was referencing costs
16 calculated from one class, one plant to another,
17 correct?

18 A. In general.

19 Q. In general. But as -- as was pointed out in
20 Mr. Hollon's testimony by Mr. Tonak, in a few cases the
21 locations are not locations of currently operating
22 plants, they may be just a destination point?

23 A. Correct.

24 Q. Okay. Let me just ask you one thing -- and
25 actually here, your table has the same pairs as on

1 Mr. Hollon's exhibit 70, correct?

2 A. That is correct.

3 Q. Okay. Basically you're providing a breakdown of
4 how the calculations for some of the numbers on his
5 table were made?

6 A. Correct.

7 Q. Okay. One final question that you can I think
8 help the record with, Mr. Hollon was asked about milk
9 PAP, and provided some limited information, can you
10 provide some more precise information about milk PAP,
11 what that program is and how what the reference to it in
12 this record means?

13 A. Sure.

14 Q. Would you do that? Go ahead.

15 A. So pulling a description from the USDA AMS
16 websites titled the National Fluid Milk Processor
17 Promotion Board. The description follows the National
18 Fluid Milk Processor Promotion Program or fluid milk
19 check-off program conducts business as the milk
20 processor education program or milk PAP. The program
21 develops and finances generic advertising programs
22 designed to maintain and expand markets and use
23 essentials for fluid milk products produced in the U.S.
24 Processors marketing more than 3 million pounds of fluid
25 milk per month pay a 20 cents per hundredweight

1 assessment on fluid milk processed and marketed in
2 consumer-type packages in the US.

3 Q. So the publication or the information that
4 Mr. Hollon referenced as being sourced from milk PAP was
5 information that was generated by the board mentioned
6 with the handler assessment?

7 A. Correct.

8 MR. BESHORE: Thank you. No further
9 questions on direct for Ms. Reynolds.

10 THE COURT: AMS cross?

11 **CROSS EXAMINATION**

12 BY MS. TAYLOR:

13 Q. Good afternoon.

14 A. Good afternoon.

15 Q. I think I want to start, if you would walk me
16 through the table. When it comes to the numbers, I
17 tried to match up the columns as you were talking about
18 them in your testimony, but it would be helpful to walk
19 through so I can understand what you used to calculate
20 what and what is perhaps a number that was calculated in
21 this table, but came from other things?

22 A. Understandable. Would you like to -- what column
23 would you like to start with? Would you like to start
24 with column one?

25 Q. I got column one through seven, so let's start

1 with 8.

2 A. Got it.

3 Q. I'm all about efficiency.

4 A. So starting with column 8. DAT averaged contract
5 line haul rates, dollars per mile, so this was directly
6 provided by DATS, specific to the route within this row.
7 So, for example, you know, DAT provided early 2023
8 origin, city, Indianapolis for the destination city. As
9 you move into column 9, "DAT contract fuel surcharge
10 dollars per mile," that is the fuel surcharge I stated
11 within my previous testimony, and that fuel surcharge,
12 as stated, is referenced within that, the February 2023
13 announced diesel price of \$4.428. So, essentially what
14 we did was DAT provided a range of when diesel prices
15 are from here to here, this is the fuel surcharge. And
16 so, we were able to match using this \$4.428, plug it
17 into that range, and were able to get a \$0.55 fuel
18 surcharge.

19 Q. So the \$0.55 came from DAT based on the --

20 A. The range came from DAT, yes. Yes. The \$0.55
21 fuel surcharge was based off a --

22 Q. Fuel price of \$4 --

23 A. Yes. It was based off a DAT equation.

24 Q. Okay.

25 A. And then moving into column 10, as referenced in

1 my testimony, you know, it's the sum of 8 and 8. Moving
2 into column 11, it's similar to that sum, but it's
3 multiplying column 10, so the DAT total contract line
4 haul rate by the listed miles in column 7. So the table
5 is showing it on a per mile -- the total a per mile
6 basis and the total on an aggregate basis.

7 Q. Okay.

8 A. Additionally, in column 12, as referenced in my
9 testimony, the 408.6 hundredweights is representative of
10 a reefer load of packaged milk.

11 Q. Is that a number you got from DAT or is that a
12 number of USDA's experience, you said it's
13 representative, but?

14 A. Correct. And so we surveyed internally.

15 Q. Okay.

16 A. And given the widespread experience we have
17 initially, it, that was an industry standard we settled
18 on. Finishing up in column 13, it's that per
19 hundredweight load divided by that total haul charge.
20 So the transportation costs mentioned in the prior
21 testimony is dollars per hundredweight.

22 Q. I just need to you say that for me again. What
23 columns I would use --

24 A. So if you're looking at the numbers listed in
25 column 13.

1 Q. Uh-huh (affirmative).

2 A. It's 12, it's 11 divided by 12, so this example,
3 it would be in the first row 1,638.49 divided by 408.6,
4 these are approximates.

5 Q. Okay. Helpful to go through, seems kind of
6 redundant, but when we go back and you're not here to
7 ask these questions to sometimes we forget?

8 A. Understandable.

9 Q. Different kind of question, since you pulled this
10 data from DAT, I'm curious if similar data is available
11 on raw milk deliveries since there is some discussion of
12 what the haul rate should be in the transportation
13 credit provisions, I know the DCMA survey members and
14 their rates was 3.67, I'm just curious if there's
15 additional data sources out there that would provide
16 another reference point on when --

17 A. I did not investigate that.

18 Q. I think that's all I have at this time.

19 THE COURT: Does anyone else have any
20 cross for this witness?

21 THE COURT: Mr. Beshore, any redirect?

22 MR. BESHORE: I have no questions for
23 redirect. I would move the admission of exhibit 78.

24 THE COURT: Any objection?

25 Exhibit 78, the testimony and tables for Ms. Reynolds is

1 entered into the record.

2 (Whereupon, Exhibit No. 78 was introduced
3 into evidence.)

4 THE COURT: Next witness .

5 MR. BESHORE: DCMA calls, as the next
6 witness, Sarah Vanadia.

7 Whereupon,

8 **SARAH VANADIA,**

9 having been first duly sworn, was
10 examined and testified as follows:

11 **DIRECT EXAMINATION**

12 MR. BESHORE: Your witness, Mr. Beshore.

13 BY MR. BESHORE:

14 Q. Would you state your name and address for the
15 record, please?

16 BY MS. VANADIA:

17 A. I am Sarah Vanadia, S-A-R-A-H, V-A-N-A-D-I-A. My
18 business address is 1405 North 98th Street, Kansas City,
19 Kansas, 66111.

20 Q. Ms. Vanadia, have you ever been to a Federal
21 Order hearing before and testified?

22 A. I have not.

23 Q. Have you prepared a three-page statement for
24 presentation at this hearing?

25 A. I have.

1 MR. BESHORE: And Your Honor, I'd like
2 Ms. Vanadia's statement to be marked for identification
3 purposes as exhibit 79.

4 THE COURT: So marked.

5 (Whereupon, Exhibit No. 79 was marked for
6 evidence.)

7 Q. Would you proceed to present your prepared
8 statement, Ms. Vanadia?

9 A. Well, as stated, I am Sarah Vanadia, I am a
10 Commodity Risk Management Analyst for Dairy Farmers of
11 America on the DFA Risk Management Team. I started as
12 an intern at DFA in 2019, working in the fluid milk
13 marketing and logistics department out of the Mideast
14 area office in Medina, Ohio."

15 "After receiving a bachelors in
16 Agricultural Economics from Virginia Tech and my Masters
17 in Applied Economics from the Ohio State University, I
18 started full-time working with the DFA Risk Management
19 Team in Kansas City. I work with our farmer owners,
20 customers, internal business units, utilizing tools to
21 manage price risk across both agricultural and industry
22 commodities. My focus is on educating and informing
23 stakeholders, strategy, development, execution, position
24 management and market research. As part of my work, I
25 support DFA's Areas and other business units in hedging

1 their future diesel fuel prices."

2 "I appear here today to provide
3 perspective on historical diesel fuel prices and by
4 using futures markets, a view of the marketplace's
5 expectation for diesel fuel prices through 2025."

6 "The U.S. energy information
7 administration, which I will refer to as EIA released a
8 detailed gasoline and diesel price report broken down by
9 Petroleum Administration for Defense District, which I
10 will refer to as PADD.

11 MR. BESHORE: I'm sorry to interrupt
12 you, but in your, in exhibit 79, on the first page,
13 there's a graph that you've prepared called "Figure 1,
14 Monthly Retail On-Highway Diesel Fuel Price," are you
15 now going to discuss that graph?

16 A. In the next paragraph I was.

17 Q. Okay. Very good.

18 MR. BESHORE: Your Honor, since the
19 exhibit will presumably be part of the record, we'll
20 proceed as if it is part of the record without her
21 having verbally recite it.

22 THE COURT: Just as we've done with the
23 other witnesses, thank you, Mr. Beshore.

24 MR. BESHORE: Thank you.

25 A. Okay, so broken down by Petroleum Administration

1 for Defense District, which I will refer to as PADD.
2 So, for this analysis, specifically we are using the
3 on-highway diesel fuel price for the whole U.S., along
4 with PADD 1C, PADD 1C includes Georgia, Florida, North
5 Carolina, South Carolina, Virginia and West Virginia.
6 In my exhibit, figure one, the monthly retail on-highway
7 diesel fuel price, both the U.S. diesel and PADD 1C
8 price history are charted since January of 2006,
9 alongside the projection for the February 2023 through
10 December 2025, PADD 1C retail on-highway diesel fuel
11 price. The projection is a calculation based on the New
12 York Mercantile Exchange, or NYMEX, New York Harbor
13 ultra-low sulfur or ULSD future as of February 15, 2023,
14 plus the two-year average historical basis between the
15 New York Harbor ULSD futures contract settlements and
16 the PADD 1C monthly retail diesel price. Over the last
17 24 months, the basis has fluctuated from a dollar to a
18 \$1.73, averaging \$1.27 per gallon. Based on the NYMEX
19 futures market and historical basis, an average diesel
20 fuel price can be projected around \$4.05 for the
21 remainder of 2023, \$3.87 for 2024 and \$2.77 for 2025."

22 "The most recent average for use February 18
23 through January 2023, retail diesel price for PADD 1C
24 was \$3.35 per gallon. Within that timeframe, the range
25 of prices was \$3.40, with the lowest price you

1 experienced being \$2.32 per gallon and the highest being
2 \$5.73 per gallon. In that same 5-year average, retail
3 diesel price for all U.S. was \$3.44 per gallon. Within
4 that timeframe, the range of prices was \$3.36, and the
5 lowest price experienced being \$2.35 per gallon and the
6 highest being \$5.75 per gallon. Since January 1st of
7 2006, the average retail diesel price was \$3.19 per
8 gallon. Within that timeframe, the range of prices was
9 \$3.77. The lowest price experienced in February of
10 2016, being \$1.96 per gallon and the highest price being
11 \$5.73 per gallon, experienced in June of 2022, diesel
12 fuel prices have demonstrated volatility and experience
13 a large range due to multiple factors."

14 "First factor to consider is the current
15 supply environment. The EIA releases a weekly petroleum
16 status reports, which indicates U.S. inventories for
17 crude oil and distillate fuel oil. Distillate fuel oil
18 is defined by the EIA as a general classification for
19 one of the petroleum fractions produced in conventional
20 distillation operations. It includes diesel fuels and
21 fuel oils. Products known as number 1, number 2, and
22 number 4 diesel fuel are used in on-highway diesel
23 engines, such as those in trucks and automobiles, as
24 well as off-highway engines, such as those in railroad
25 locomotives and agriculture machinery. Products known

1 as number one, number two and number four, fuel oils are
2 used primarily for space heating and electric power
3 generation. For the week ending February 11, U.S.
4 distillate fuel inventories are at about 15-percent
5 below the five-year average for this time of year. The
6 U.S. is currently experiencing one of the lowest supply
7 periods in history; in May of 2022, the U.S. stock of
8 distillate fuel oils were at their lowest point since
9 May of 2005."

10 "Highlighting current production
11 volatility, considering data back to 2010, U.S.
12 production of distillate fuel oils peaked in January of
13 2019 and bottomed out in March of 2021. Since 2020,
14 approximately one million barrels per day of refining
15 capacity has have removed from the United States as
16 around eight refineries have either closed their doors
17 or are begin converted to a renewable fuel production
18 facility. Also, in March of 2022, the U.S. announced a
19 ban on the import of Russian crude oil ad certain
20 petroleum products. In 2021, the U.S. imported nearly
21 700,000 barrels per day of Russian petroleum products.
22 The U.S. also imports crude oil and refined products
23 from 72 other countries. Record low inventories, along
24 with uncertain production and current geopolitical
25 events have provided price support to diesel fuel over

1 the last couple of years and will most likely do so
2 moving forward."

3 "On the other side of supply is demand.
4 The EIA releases how much production is supplied to the
5 U.S. market, and therefore is used as a proxy for
6 consumption. The components of petroleum supply are
7 field production, refinery production, imports, and net
8 receipts when calculated on a PADD basis. Distillate
9 fuel oil supplied reached its highest level in February
10 of 2022 since March of 2007, and has backed off since.
11 Currently distillate fuel product supplied is down 15.6
12 percent from the same time last year. Domestic demand
13 for distillate fuel is highly correlated with the health
14 of the U.S. economy as it's the main fuel source for
15 trucks, tractors, trains, and much more that keep our
16 country moving and manufacturing. Demand decreased in
17 2022 as the U. S. Economy struggled and experienced
18 negative GDP growth rates in the first half of the year.
19 As the economy rebounds and manufacturing, freight and
20 services that utilize mobility fuels picks up, we can
21 easily find ourselves in a shortage situation,
22 supporting prices. On the other hand, we must consider
23 an economic downturn in the U.S. that would decrease the
24 demand for diesel fuel, potentially pressuring prices.
25 Another factor to consider is how China rebounds from

1 COVID19, as they relax policies and increase activities,
2 the United States export demand to China can quickly
3 pick up; in 2021 China was in the top 3 destination
4 countries for U.S. petroleum exports, behind only Mexico
5 and Canada."

6 "In summary, supply and demand are
7 currently close to being in balance, but prices for fuel
8 are already elevated when compared to historical values.
9 With stocks, production, and imports at their current
10 levels, there is significant risk of upward price
11 movement. Meanwhile the U.S. and global demand is still
12 uncertain, but at this time demand is down and partially
13 offsetting the record low inventories. With the fragile
14 nature of the current supply and demand balance, we
15 anticipate greater pricing volatility as the markets
16 reacts to various supply and demand changes and
17 indicators of such change." Thank you.

18 Q. I have just one, one question additional dialect.
19 You used the term basis, of historical basis, could you
20 define "basis" in your field?

21 A. Yea, so "basis" is the difference. So it's the
22 difference between, in this scenario, the New York
23 Harbor ultra-low sulphur diesel fuel future settlements
24 and the retail diesel price for PADD 1C.

25 Q. How is that factored into the projections showing

1 because, I don't know if it's fair to call projections,
2 the blue line showing for the time period from February
3 '23 through December 2025?

4 A. Yea. So I took the two-year average, so the last
5 two years of that basis, which came out to be \$1.27, and
6 I added that to the NYMEX ULSD futures as of February
7 15, 2023 to calculate a projection.

8 Q. Very good.

9 MR. BESHORE: I have no further
10 questions for Ms. Vanadia on direct. She's available
11 for cross.

12 THE COURT: AMS have any cross?

13 MS. TAYLOR: Yes, we do.

14 **CROSS EXAMINATION**

15 BY MS. TAYLOR:

16 Q. Good afternoon.

17 A. Good afternoon.

18 Q. I wanted to piggy-back off what Mr. Beshore was
19 just asking you about, I had similar questions. So you
20 added the \$1.27 to the price as of February 15, but I
21 don't think in your testimony you say what that is?

22 A. Because I add it to the monthly price. So the
23 futures contract is a contract for each month that the
24 NYMEX offers, so I added it to each month. Each month
25 is different. I don't have the average noted here. I

1 could provide that for you, if needed.

2 Q. So when it comes to futures, this isn't something
3 that the department's had a lot of, hasn't been
4 necessary in the past to think about futures and risk
5 management to a large extent because back when we
6 changed these things in the early 2000's, it wasn't
7 utilized a lot.

8 A. Yep.

9 Q. So I was just trying to, for the record, make
10 sure we understood how we got to 4.05 --

11 A. Yea, so --

12 Q. -- et cetera.

13 A. I took the monthly NYMEX ULSD futures contracts
14 settlement as of February 15th.

15 Q. Which was a specific number?

16 A. For each month.

17 Q. Each month of?

18 A. From February 2023 through December 2025. Each
19 month a has different price.

20 Q. I understand.

21 A. I add the same \$1.27 to each month though.

22 Q. Okay. And then you averaged for the year to come
23 up with these numbers?

24 A. Correct.

25 Q. Okay. Perfect, thank you. On the last page of

1 your statement, right at the very top, and I only ask
2 this question for clarity, it starts page two, "Record
3 low inventories along with uncertain production and
4 current geopolitical events have provided price support
5 to diesel fuel," etc., as a government person, when I
6 think price support, I probably think of that term
7 different than what you are intending.

8 A. Correct. Price support here is elevated price,
9 increasing, yea.

10 Q. Okay. Then I had another question. So, does DFA
11 hedge their fuel prices as much as they can?

12 A. Yes, we participate in diesel fuel hedging for
13 several areas and then our internal business units.

14 Q. Okay. So you're able to try to withstand some of
15 the fuel volatility, fuel price volatility that exists
16 in the market if you hedged correctly?

17 A. We try to.

18 Q. Not sure if you're the right person to ask this
19 question to, but I'll ask it anyways; if that's the case
20 that you're hedging fuel costs, the transportation
21 credit calculation transmits that volatility in the
22 equation we use to come up with that, no accounting for
23 an entity's ability to hedge fuel cost, so maybe you're
24 not experiencing that volatility in the fuel cost
25 because you've been able to hedge your risk some, and

1 I'm just trying to square kind of that thought of if
2 it's or how we account for that in our transportation
3 cost to reimbursement, so I'm not sure you're the person
4 to ask, but?

5 A. I don't think I am.

6 Q. Since talk about fuel cost, I thought I'd throw
7 that question out there.

8 A. Yes, I do not think I'm the person to answer that
9 question.

10 Q. Maybe that can be addressed by a future witness.
11 Nothing more. That's all I have for the moment.

12 A. Awesome. Thank you. Am I good?

13 THE COURT: Any cross by any other party
14 representatives other than AMS? Seeing none,
15 Mr. Beshore, redirect?

16 MR. BESHORE: Yes.

17 **REDIRECT EXAMINATION**

18 BY MR. BESHORE:

19 Q. Just a couple of questions that are in response
20 to questions Ms. Taylor asked you. Okay. When you
21 talked about DFA hedging fuel prices, you're talk about
22 for DFA's fleet of vehicles it's operating?

23 A. Correct, DFA owned operating fleets.

24 Q. You're not hedging for contract milk haulers?

25 A. No.

1 Q. Transport DFA members raw milk or haul DFA
2 members milk from farming plant?

3 A. No, sir.

4 Q. Okay. With respect to the projection of prices,
5 I mean, when I look at this, and you described how you
6 calculated that and all, it stands out to me that the
7 projection line is much smoother than the line of
8 reality, okay.

9 A. Right.

10 Q. So is that likely to be the case in the future?

11 A. No, sir. So, that is where market participants
12 deemed that fuel is worth in that point in time on that
13 specific day.

14 Q. Okay.

15 A. So it's based on the information they had that
16 day, react off of.

17 Q. Right. So those projections are just a
18 representation of what the participants in the
19 marketplace are thinking that day?

20 A. Correct. They are willing to buy and sell
21 financial fuel at whatever future month that day.

22 Q. So, when -- when the period of that projection is
23 in our rear view mirror as opposed to our forecast
24 mirror, would it be fair to assume that that line would
25 look more like the rear view on this chart than the

1 forecast on this chart?

2 A. It would have lot more highs and lows, instead of
3 a flat line, correct.

4 Q. In other words, volatility is going to be with us
5 in diesel prices for the future?

6 A. As it has been in 2006 and before.

7 Q. As you documented. Thank you. That's all I have
8 in redirect?

9 THE COURT: Recross? Okay, I think we
10 can let this witness step down. Thank you. Are you
11 going to move 79 into evidence?

12 MR. BESHORE: Yes, I would offer for the
13 admission of 79.

14 THE COURT: Any objections?

15 MR. HILL: No objections.

16 THE COURT: Exhibit 79 is received into
17 the record.

18 (Whereupon, Exhibit No. 79 was introduced
19 into evidence.)

20 MR. BESHORE: DCMA calls as its next
21 witness, Jason Smith.

22 Whereupon,

23 **JASON SMITH,**

24 having been first duly sworn, was
25 examined and testified as follows:

DIRECT EXAMINATION

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BY MR. BESHORE:

Q. Would you state your name and address, please, sir?

BY MR. SMITH:

A. Jason Smith, J-A-S-O-N. S-M-I-T-H/ my working address is 10115 Kinsey Avenue, Huntersville, North Carolina.

Q. Now, is it fair to say you've been to Federal Order hearings before today?

A. I have not.

Q. Have not?

A. No, I have not.

Q. Bet you've never testified at one before?

A. I have not.

Q. Nevertheless, have you prepared a six-page statement to present as your testimony here today?

A. Yes, sir, I have.

MR. BESHORE: Your Honor, I would like Mr. Smith's statement to be marked a exhibit 80.

(Whereupon, Exhibit No. 80 was marked for evidence.)

Whereupon,

JASON SMITH,

having been first duly sworn, was

1 examined and testified as follows:

2 **DIRECT EXAMINATION**

3 BY MR. BESHORE:

4 Q. Would you present your statement now?

5 BY MR. SMITH:

6 A. Yes, sir.

7 Q. Proceed with that.

8 A. Yes, Thank you. "Good afternoon. I'm Jason
9 Smith, Director of Sales and Logistics for Maryland and
10 Virginia Milk Producers Cooperative. Maryland and
11 Virginia's corporate office is located at 13921 Park
12 Central Road, Herndon, Maryland and Virginia is a
13 Capper-Volstead cooperative association that has
14 approximately 930 dairy farmer members located in 10
15 states, Maryland and Virginia's team markets our
16 members' milk on the Appalachian, Southeast, Northeast
17 and Mideast orders. Maryland and Virginia is a member
18 of Dairy Cooperative Marketing Association, Inc., also
19 known as DCMA."

20 "My responsibilities at Maryland and
21 Virginia includes overseeing the raw milk dispatch team,
22 which manages the movement of approximately 180 loads
23 per day of member milk and partner supply milk
24 procurement of supplemental milk supplies, manages
25 relationships with our raw milk customers and monitoring

1 the monthly Federal Order requirements. I've spent a
2 good portion of my 20-plus year tenure with Maryland and
3 Virginia focused on milk movements within our southeast
4 area. "

5 "I'm here today to express Maryland and
6 Virginia's support of proposals 1, 2, 3, 4 and 5. I
7 will testify on the marketing conditions within the
8 Appalachian market order based on my experience. It is
9 critical and urgent to Maryland and Virginia's
10 membership that the Federal Order's Transportation
11 Credit provision continues to exist and improvements are
12 made due to the current conditions in the market."

13 "Maryland and Virginia owns and operates
14 two fluids processing facilities within the Appalachian
15 Order and is the contract milk supplier to several other
16 processors in the region. Securing a sustainable milk
17 supply for our plants and third party customers is a top
18 priority for my team. "

19 "As illustrated in DCMA's testimony,
20 milk production has sharply declined in the southeast
21 states, down 32.4 percent over the last 15 years,
22 creating challenges to maintain a secure milk supply.
23 With that said, Maryland and Virginia relies heavily on
24 supplemental milk from other regions, predominantly the
25 Northeast order to meet our year-around obligation.

1 During the peak supplemental season, late Summer, early
2 Fall, approximately 25 loads per day of supplemental
3 milk is required to fulfill our demand."

4 "The average distance to the market for
5 our Northeast supply is approximately 450 miles. The
6 transportation cost ranges between \$4.90 to \$5.25 on a
7 per mile rate based on the current input cost for
8 trucking and diesel fuel price. That equates to roughly
9 \$4.43 per hundredweight using the low end of the per
10 mile rate range. In a typical month, the pricing delta
11 available to handlers between the Appalachian and
12 Northeast Orders range between a dollar and \$1.50 per
13 hundredweight, taking the high side of that range, the
14 difference in the two orders provides an offset to the
15 transportation cost, but still leaves \$2.93 per
16 hundredweight of uncovered costs to move the
17 supplemental milk to the market."

18 "The Transportation Credit provision
19 provides some relief in covering the outstanding cost of
20 transportation supplemental milk to the market, but fall
21 short in relation to the current transportation cost.
22 Over the last several years, milk haulers have been
23 facing increased costs in all aspects of their business,
24 equipment, parts, oil, labor, insurance and fuel all
25 have seen double digits, in some cases, triple-digit

1 percentage increase. With no updates to the
2 Transportation Credit provisions mileage rate
3 calculation components since 2006, the percentage of the
4 cost covered by Transportation Credits continues to
5 decrease. At the end of the day, haulers expect to get
6 paid for transporting supplemental milk to the market,
7 so the current imbalance is covered through over-order
8 premiums or as a deduction from our dairy farmer's milk
9 checks."

10 "Proposal 1 and 2 will align the
11 components factors of the mileage rate within the
12 current Transportation Credit system with the current
13 freight rates, making this change is imperative to
14 maintaining a readily available milk supply to meet the
15 ever-changing demand of the Class I markets. Without
16 these updates, supplemental suppliers will be less
17 willing to commit raw milk volumes to the Appalachian
18 Order during high deficit periods. This will negatively
19 impact process capacity in the Appalachian Order, with a
20 likely outcome of less capacity in the Appalachian area
21 to provides local dairy products to the end consumers."

22 "Since early 2000, 11 pool distributing
23 plants closed within Maryland and Virginia's core area
24 of the Appalachian Order. As these plants shuttered
25 their doors, the distance of the next closest plant

1 increased, and the cost of balancing the daily ebb and
2 flow of the Class I demand has increased substantially.
3 As customers' orders for the milk shift at the remaining
4 pool distributing plants, raw milk loads are shuffled in
5 and out of those facilities to ensure adequate supplies
6 are available without raw milk inventories exceeding
7 silo capacity. With fewer plants in the network, there
8 is less opportunities to utilize the next plant's silo
9 capacity, therefore, the ability to stairstep milk
10 throughout the region to align supply and demand is more
11 difficult. With more miles between plants, the steps
12 are taller, driving up the cost to land the milk at the
13 next plant. A prime example being when Pet Dairy of
14 Richmond, Virginia closed, milk from North Central
15 Virginia was forced to move to Southeastern Virginia or
16 the Carolinas, an increase in mileage to the market of
17 51-percent and 67-percent respectively. If and when
18 plant production in either region declines, milk is
19 forced to travel north to a balancing plant. Both moves
20 increase the total cost to dairy farmers in the
21 marketing area."

22 "As milk moves farther distances with
23 the Order and total cost of transportation increases,
24 the Class I location differentials are not adequately
25 compensating dairy farmers for milk movements within the

1 order. Producer milk located in Harrisonburg, Virginia
2 often delivers to Newport News Virginia, which is
3 approximately 207 miles from Harrisonburg. The milk
4 originated in a \$2.90 Class I location differential zone
5 and Newport News, Virginia is at \$3.20 Class I location
6 differential zone, a \$0.30 difference in the location
7 differential. Based on the per mile rate discussed
8 earlier, the \$0.30 per hundredweight delta in the Class
9 I location differentials between the origin point and
10 the delivery location covers approximately 15-percent of
11 the cost of moving the milk within the market. As
12 transportation costs have increased over the years, the
13 percentage of transportation cost covered by the Class I
14 differentials has dramatically decreased. DCMA's
15 proposal 3 provides additional compensations and
16 incentives to move milk within the order offsetting a
17 portion of the deficiencies in a Class I location
18 differentials. By adopting this proposal, dairy farmers
19 will be compensated more fairly for getting their milk
20 to market."

21 "Another challenge facing the
22 Appalachian Order is the fluctuation of Class I demand
23 based on seasonal and weather-related events. Snow
24 storms and filling the school pipeline often are the
25 times I dread the most from a logistic standpoint, as

1 these events tax our milk marketing and transportation
2 systems. Each year we face the challenge of filling the
3 school pipeline and we see an exponential increase in
4 order for a four to five-week period. During this time,
5 all available reserve supplies are fully deployed to the
6 Appalachian area. The transportation credit system
7 allows us to tap into the reserve supplies and offset
8 some of the transportation cost, but we need the
9 proposed improvements to continue to have supplemental
10 supplies available. Without these proper tools to
11 incentivize the supplemental suppliers, these supplies
12 could very well stay home for a greater return. "

13 "Last year, during the period of August
14 20th through September 27th, school pipeline filling
15 season, Maryland and Virginia reloaded and then
16 transferred to Class I plants approximately 80 loads of
17 milk from our pool supply plant, Valley Milk Strasburg,
18 Virginia, to meet the increased demand during this
19 period. To be honest, this was a last resort as
20 Maryland and Virginia was desperate to get supplemental
21 milk to the market."

22 "Our team reached out to several of our
23 local milk haulers from Maryland and Pennsylvania
24 requesting they deliver farm direct milk to the
25 Appalachian market, As these haulers declined for a

1 multitude of reasons. Most of these haulers in Maryland
2 and Pennsylvania pick up multiple producer routes on
3 farm pick-up tankers, which are not equipped to travel
4 long distances. There is also a timing issue by picking
5 up multiple stop routes and delivering a longer
6 distance. The driver cannot legally make the turn
7 within the driver's available hours of service.
8 Delivering milk further distance also ties up additional
9 equipment, which the local haulers do not carry in their
10 fleet. It's hard for the haulers to justify carrying
11 additional equipment to only utilize that equipment in a
12 short period of year. So, our best alternative was to
13 have the Maryland and Pennsylvania haulers deliver loads
14 to Valley Milk, a pool supply plant on the Appalachian
15 Order, and then transfer that milk out of Valley Milk
16 silos on to transport tankers. This allowed us to
17 utilize over-the-road hauling companies that are
18 accustomed to delivering longer distances."

19 "Maryland and Virginia was successful at
20 moving additional loads to the Appalachian Order to meet
21 the demands of the market. However, the expense of
22 covering all the transportation costs to move the
23 supplemental milk to the market was absorbed by dairy
24 farmers."

25 "Based on this example, Maryland and

1 Virginia fully supports DCMA's request to allow milk
2 originating from a pool supply plant within the
3 Appalachian Order to qualify for the Distributing Plant
4 Delivery Credit. This allows a hauler to assemble milk
5 from smaller farms, deliver that milk to a central
6 location, and then transfer those loads to a pool
7 distributing plant to fulfill the Class I demand,
8 reducing the burden to dairy farmers with unintended
9 cost of supplying the market."

10 "The current market conditions in the
11 Appalachian Order demand that milk within the Order move
12 further distance, at a higher transportation cost. It
13 is also critical that supplemental supplies are readily
14 available to meet the demand of the Order. Based on
15 these facts, improvements in the Order's transportation
16 system are absolutely necessary to maintain orderly
17 markets while also maintaining an adequate raw milk
18 supply for the in-area processors that provide local
19 dairy products to the end consumer."

20 "Maryland and Virginia supports
21 proposals 1, 2, 3, 4 and 5, and request a timely
22 decision. Thank you for the opportunity to present this
23 testimony."

24 THE COURT: Questions Mr. Beshore?

25 MR. BESHORE: Yes, thank you, Your

1 Honor.

2 BY MR. BESHORE:

3 Q. Mr. Smith, I have a few additional questions for
4 you. First of all, let's talk about the area in
5 Virginia, which is not currently part of the federal,
6 any federal government marketing area. The Newport News
7 plant of Maryland and Virginia is located in that area,
8 correct?

9 A. That is correct, yes.

10 Q. It is a pool distributing plant for Order 5,
11 correct?

12 A. That is correct, yes.

13 Q. So is that, it's pool distributing plant
14 year-around, Order 5?

15 A. That is correct, yes.

16 Q. Is that pool distributing plant primarily
17 supplied with milk supplies from the, or at least, is it
18 regularly supplied with milk supplies from the
19 unregulated counties, non-federally regulated counties
20 in Virginia?

21 A. Yes, sir. The counties there in Virginia are the
22 producers that are located in those non-regulated
23 counties, typically flow down to that plant and other
24 Federal Order 5 plants to do it on a consistent
25 year-around basis.

1 Q. Okay. And those are the counties that DCMA has
2 identified in its request the, included as farms that
3 were eligible for the distributing plant delivery
4 credit?

5 A. Yes.

6 Q. Now, with respect, let's talk about the pool
7 supply plant. I believe it's correct that the Strasburg
8 plant in Maryland and Virginia is the only pool supply
9 plant currently functioning, primarily functioning in
10 recent years in the Southeastern United States for Order
11 5, 6 and 7, is that true to the best of your knowledge?

12 A. To the best of my knowledge, yes.

13 Q. Okay. And that plant functions, as you've
14 described it, as a pool supply plant, and at certain
15 times delivers milk, makes milk available to the Class I
16 market in Order 5, correct?

17 A. That is correct.

18 Q. Okay. From what sources are the supplies that
19 come into that plant that you've indicated come from, in
20 some cases, from Maryland and Pennsylvania farms are
21 they primarily from small farms?

22 A. I would say they're predominantly from small
23 farms. I'd say if you look at the statistics for milk
24 out of Pennsylvania in 2021 from the Northeast annual
25 report, I think the average farm size or average pick-up

1 was 5600 pounds a day, that kind of in my mind
2 stipulates the smaller farms and I'll say even some of
3 the milk we supply are Amish farms, Amish producers, but
4 they're a bit smaller, probably shipping about 3,000
5 pounds a day, so.

6 Q. So many of the farms whose milk is collected or
7 received at Strasburg and then re-shipped, as you've
8 indicated, reloaded off the marker or over-the-road.
9 Trucks come from the smaller Amish and Mennonite Farms
10 in Pennsylvania and Maryland perhaps?

11 A. Yes.

12 Q. It's your request that those shipments from the
13 supply plant into Federal Order 5 or 7 distributing
14 plants, they be eligible for distributing plant credit
15 for the mileage from the supply plant to the
16 distributing plant, correct?

17 A. Yes, that's correct.

18 Q. Okay. Now, one of your responsibilities you've
19 indicated is supervising, overseeing the raw milk
20 dispatch team of Maryland and Virginia, 180 loads or so
21 per day, in that capacity, I take it you're familiar
22 with the costs of over-the-road deliveries?

23 A. Yes, sir.

24 Q. And with your contract haulers?

25 A. Uh-huh (affirmative).

1 Q. Okay. The proposals in this hearing are based on
2 the costs of those, the update of the market rate
3 factor, the MRF, as Mr. Hollon described it, is based on
4 the survey of those costs during September and October
5 of 2020, you're aware of that, you've heard that
6 testimony, you're familiar with that, correct?

7 A. Yes, sir.

8 Q. Okay. In your opinion, based on your experience,
9 that's supervising those shipments during that period of
10 time for Maryland and Virginia, being knowledgeable of
11 the cost of the supplies, are those costs shown in the
12 DCMA survey representative of the costs during that
13 period of time?

14 A. Yes, during that period of time, yes, they would
15 be.

16 Q. Maryland and Virginia participate in providing
17 its information to DCMA for that survey?

18 A. Yes, sir.

19 Q. Were you personally involved in aggregating some
20 of that information?

21 A. I indeed did do some of that work and put some of
22 that together, so.

23 Q. Was it all -- did you do it, provide complete and
24 accurate information for that survey?

25 A. Yes.

1 Q. Okay. You've talked about, on page 2 of your
2 testimony, the difference between the cost of providing
3 supplemental milk into the market and the over-order
4 charges that you're able -- able to collect in between
5 the dollar and \$1.50 per hundredweight, am I correct
6 about that?

7 A. That is not correct. That's more to deal with
8 the delta between the Appalachian and Northeast Orders
9 that you maintain, you typically have a variance between
10 those orders.

11 Q. The blend price?

12 A. From the blend price, yes.

13 Q. Okay. So the blend price provides dollar to a
14 dollar-fifty difference --

15 A. Right.

16 Q. -- and with respect to those deliveries. Now,
17 are you able to recover the additional cost in
18 over-order charges?

19 A. Minimum cost in over-order charges.

20 Q. Why can't you recover it? Is it more difficult
21 to get -- is it difficult to get those full costs out of
22 the market in over-order charges in your experience?

23 A. In our experience, yes, it's hard to get all the
24 customers kind of (unintelligible).

25 (Court reporter asked for repeat.)

1 A. I'm sorry. I said, yes, it is hard to get those
2 costs recovered in the marketplace just because it's
3 hard to get all of the customers within the marketplace
4 consensus in the past that have struggled to be able to
5 increase as overall.

6 Q. What's the difference in customers' reactions to
7 pay those charges and regulated federal prices versus
8 over-order negotiated prices?

9 A. We've had a lot of customers, as we've negotiated
10 and talked through, trying to get, I'll say passed
11 through cost back to customers have mentioned that it's
12 a whole lot easier for them to pass regulated costs back
13 to their end customers because they can see it on there,
14 it's mandatory and they always ask us, well, we can do
15 it as long as we are held on a level playing field with
16 all the rest of the processors out there, so it's a
17 whole lot easier to do it on the regulated side of it
18 than it is on the over-order premium. There's two
19 things in my mind that does, one it guarantees the
20 handler payment because if it's in the regulated
21 portion, we've got the guaranteed part there, but also
22 gives the processor some comfort that everybody is on
23 that level playing field and they're all getting charged
24 equally throughout the deal.

25 Q. One final area; you talked about the PET milk

1 plant in Richmond closing, and the impact that had on
2 the supplies, supplies to that plant and costs of moving
3 that milk. Were you here when Mr. Hollon testified
4 about disruption in local market relationships that
5 occur when plants close and with the declining, what the
6 market conditions in the southeast, you heard that
7 testimony?

8 A. Yes.

9 Q. Would you consider the Pet Richmond experience
10 that you've described, an example, maybe a good example
11 of how those local relationships can be disrupted at a
12 cost to farmers' cooperatives supply in the market?

13 A. I would agree that was a disruption for the local
14 the farmers as milk had to move further distances, push
15 to different relationships, so.

16 Q. Okay. And are there other examples, situations
17 in the markets that you service where there have been
18 similar kinds of disruptions with plants closing and
19 such?

20 A. Yes, there's been other plants, some of our South
21 Carolina milk used to be dedicated to the Charleston
22 plant that recently closed down, and that milk had to
23 move to another facility, kind of across grain,
24 so-to-speak, about against location differential to move
25 to the next market that impacted the dairy farmers of

1 that region, so.

2 Q. Did it increase the cost of supply, of that milk
3 being supplied to distributing plants?

4 A. Yes.

5 MR. BESHORE: I think that's all the
6 questions I have for you at this time, thank you. He's
7 available for cross.

8 THE COURT: Any cross by AMS?

9 **CROSS EXAMINATION**

10 BY MS. TAYLOR:

11 Q. Good afternoon.

12 A. Good afternoon.

13 Q. Thanks For testifying today. On the second page
14 of your statement, you talk about in the first full
15 paragraph, second full paragraph, supplying the
16 Northeast and those supplemental loads come about 450
17 miles.

18 A. Uh-huh (affirmative).

19 Q. And your cost range is from 4.90 to 5.25. So is
20 it safe to say that those types of loads are what the
21 loads that were included in your survey data that you
22 provided to DCMA?

23 A. That would be -- yes, those loads would have been
24 included. I would say those rates are reflective of
25 probably more recent rates as opposed to the rates we

1 submitted in 2020.

2 Q. Good point. Fair enough. Thank you. And then,
3 going into the next page, you talk about, you know, the
4 cost of supplying this milk, the extra transportation
5 costs, and you either get it, the over-order premiums to
6 cover that cost, you get it either through over-order
7 premiums that you get out of the marketplace, which you
8 just discussed with Mr. Beshore or deduction from your
9 dairy farmer milk checks because money's got to come
10 from somewhere?

11 A. Correct.

12 Q. Can you talk a little bit about the deductions
13 that you experience in order to cover those costs?

14 A. I would say the imbalance that we have on
15 bringing that supplemental milk back is pretty much laid
16 across our dairy farmers and the Appalachian Order
17 predominantly, even through our entire milk shed, so
18 those costs they absorb through their milk shed, it's
19 typically a line item deduction on some or through the
20 hauling subsidies built into their prices, so they'll
21 see a reduction in their base price or their blend price
22 due to some of these costs, these additional
23 transportation costs that are included in there to pull
24 that supplemental milk into the market and just balance
25 and maintain that market and provide that service for

1 the market.

2 Q. And that's shared amongst all your members?

3 A. Yes.

4 Q. On page 4, in that first full paragraph, you talk
5 about the difference in zone was \$0.30, and based on the
6 mile rate discussed earlier, \$0.30 is only about
7 15-percent -- \$0.30 you get for cost differential really
8 only covers 15-percent of the transportation credit
9 cost?

10 A. Correct.

11 Q. And I, just for the record, wanted to know what,
12 because there's few numbers previously, what number
13 you're talking about, mileage --

14 A. The 4.90 number, using the low end, 4.90 mileage
15 rate.

16 Q. Okay. And just to clear, I want to be clear on
17 the pool supply plant provision, so I think what I heard
18 was, in Maryland and Virginia experience, the tankers
19 that haul your local milk are smaller, for example, and
20 they don't have the ability to get a larger load and
21 ship it a longer distance for a Class I plant for a
22 variety of reasons, they don't do that, so instead
23 you've had to in the past assemble that milk at the pool
24 supply plant, ship it in a silo, then pump it out again
25 into a larger tanker that could supply that milk?

1 A. Tanker-size is probably irrelevant because some
2 of that milk comes in on farm pick-ups more so, size of
3 the tanker is a little irrelevant but comes on on
4 equipment that doesn't necessarily have the ability to
5 travel longer distance over-the-road, they pick it up,
6 they've got to get those farm pick-ups back, they've got
7 pumps on there that they've got to get back and pick up
8 the next route, and they can't have them gone for the
9 extended period of time, so we've got to get them to the
10 pool supply plant somewhere assembled so they can unload
11 it and then we can get other tankers in there to be able
12 to transport that. And there's more of those transport
13 tankers down there available to take that milk further,
14 it takes longer to do that, so that's the reason why we
15 can't, can't have the local haulers make that turn.

16 Q. Got you, okay. Back to the data that you put
17 into the survey. On your supplemental milk loads, do
18 you find a difference in haul cost between your
19 supplemental load you have to bring in a longer distance
20 versus normal, closer hauls where they're relatively
21 similar?

22 A. I think there is some difference in the
23 over-the-road hauls compared to the local, and some of
24 that is they're doing different jobs to assist. They're
25 covering, the local guys tend to be covering less

1 mileage, so their per mile rate sometimes has to be
2 higher because they've got more -- they have got to
3 cover the overhead cost regardless, and to travel those
4 fewer distances, that rate has got to be higher as some
5 folks go longer distances, those per mile rates can be
6 less because they've got more miles to cover the
7 overhead cost.

8 Q. Okay. Does Maryland and Virginia haul its own
9 milk or do you use contractors?

10 A. We use third-party contractors.

11 Q. Do you know about what their normal tanker size
12 is?

13 A. It depends. I'd say transport tankers are 6200
14 gallons to 6500 gallons, comparing that to some Maryland
15 and Pennsylvania, those haulers, some of those folks are
16 running 7500 gallon tankers just because the different
17 states have weight differences that you can -- and not
18 all of the States have the same weight requirements, so
19 some states allow heavier takers, some don't. So,
20 Pennsylvania is one that you can haul for a payload
21 size, they seem to have the bigger tanker sizes.

22 Q. There's been a lot of discussion about needing to
23 bring this milk in, the supplemental milk to meet the
24 demand. I just want you, if you could, from your
25 experience, talk about what happens if that doesn't get

1 met, what's the consequence if you don't get all the
2 supplemental milk in to --

3 A. If we don't get enough supplemental milk, then
4 the plant don't have milk to run that to get out to
5 consumers, prime example and this is extreme, but snow
6 storms, we see demands spike exponentially, and we can't
7 necessarily always get enough demand or supply back into
8 the system, and you do that, you go to the grocery
9 stores, you see empty shelves across the board where
10 there's no milk in the grocery stores, things like that.
11 If we don't get that supplemental milk into the system,
12 in my opinion, you see end consumers not have product or
13 not have dairy products to be able to consume, and then,
14 I also think at the end of the day that puts pressure on
15 the processors that are within the system because some
16 of those retailers may go outside of the order to
17 purchase milk or bring packaged milk.

18 Q. So it can affect not just consumers, but
19 cooperative's ability to operate based on what customers
20 you have?

21 A. Correct. Yes.

22 Q. And you spoke a little bit about the over-order
23 premiums. So, is Maryland and Virginia able to get some
24 over-order premiums from the market (inaudible)?

25 A. Right. We've been able to get of those

1 over-order premiums through DCMA, and back in 2019, we
2 were able to increase or put some over-order premiums in
3 place, but we continue to push and continue to try to
4 increase and pass those costs through over-order
5 premiums, but like I mentioned, just getting consensus
6 from customers is very difficult and we've gotten a lot
7 of pushback from time to time saying, all right, you can
8 as those over-order premiums, but we're not going to pay
9 it, we'll short you on the invoice, and it doesn't do us
10 any good at that point in time, that creates more havoc
11 throughout our system.

12 Q. So you can bill them, but they may not pay you?

13 A. Correct, yes.

14 Q. That's the story?

15 A. Right.

16 Q. And then I think lastly is we've been DCMA has
17 asked us to consider this on an emergency basis,
18 rule-making proceeding, which essentially means the
19 timeframe is a little bit shortened, then you just
20 talked about in your perspective why this can be
21 considered on an emergency basis and right now with the
22 market conditions are right now is why we should be
23 doing that?

24 A. I think it's critical. I think we've heard
25 testimony from several dairy farmers yesterday of just

1 the conditions out there for the dairy farmers, and if
2 we don't get some help back to the dairy farmers in the
3 Southeast, I think we're going to see more, more
4 producers exit the business and there again not having
5 some of that local supply, have a negative impact on the
6 local processors and we'll continue to see that downward
7 trajectory of dairy farmers in the area and milk process
8 in the area to provide the local dairy products to
9 consumers.

10 MS. TAYLOR: I think that's all we
11 have at the moment, thank you so much.

12 THE COURT: Cross by anyone other
13 than AMS? Seeing none. Any redirect, Mr. Beshore?

14 **CROSS EXAMINATION**

15 BY MR. TONAK:

16 Q. That Richmond Plant you mentioned that closed,
17 was that a pool distributing plant on Order 5?

18 A. There were times it was a pool distributing plant
19 on 5, so it kind of went on and off, and I think towards
20 the end when right before it closed down, it was indeed
21 a pool supply plant Order 5, per my regulation.

22 Q. Okay. Now the Marva Maid Plant at Newport News,
23 Virginia, how long had that been a regulated Order 5
24 distributing plant, if you know?

25 A. I don't know exactly how long that's been, so I

1 don't know the exact dates of when it's been, how long
2 it's been, so.

3 Q. Do you have any idea, 5 years, 10 years?

4 A. If I had to guess, I would say, I could count for
5 the record, the last six or seven years it's been a pool
6 supply plant on Order 5.

7 Q. Now, on the producers that are closely associated
8 with supplying that Order 5 plant in Newport News, is
9 all the milk going into that plant coming from the
10 unregulated counties?

11 A. No.

12 Q. There's milk coming from the counties in the
13 regulated Order 5 area then?

14 A. Yes.

15 Q. And in those unregulated counties, the milk that
16 delivers to Newport News is then regulated by Order 5,
17 is that correct?

18 A. That would be correct, yes.

19 MR. TONAK: Okay, thank you.

20 THE COURT: Anyone else have any cross?
21 Mr. Beshore, do you actually have redirect or just offer
22 the exhibit?

23 MR. BESHORE: I have no redirect, I'd
24 offer exhibit 80.

25 THE COURT: Any objection? Exhibit 80

1 is entered into the evidentiary record.

2 (Whereupon, Exhibit No. 80 was entered into
3 evidence.)

4 THE COURT: Should we do an afternoon
5 break or --

6 MR. BESHORE: I think that's
7 appropriate.

8 THE COURT: Fifteen minutes? All right,
9 let's go back at 25 after.

10 (Whereupon, a recess was taken.)

11 THE COURT: Mr. Beshore, the floor is
12 yours.

13 MR. BESHORE: Your Honor, DCMA calls as
14 its next witness, Calvin Covington.

15 Whereupon,

16 **CALVIN COVINGTON,**

17 having been first duly sworn, was
18 examined and testified as follows:

19 **DIRECT EXAMINATION**

20 BY MR. BESHORE:

21 Q. Please state your name and address,
22 Mr. Covington.

23 BY MR. COVINGTON:

24 A. Calvin Covington, C-O-V-I-N-G-T-O-N, Covington
25 Road, King, North Carolina, 27021.

1 Q. Have you prepared a six-page statement for
2 presentation at this hearing, Mr. Covington?

3 A. Yes, I have.

4 MR. BESHORE: I would like to have
5 Mr. Covington's statement marked as exhibit 81,

6 THE COURT: So marked and identified.

7 MR. BESHORE: Thank you

8 (Whereupon, Exhibit No. 81 was marked for
9 evidence.)

10 Q. And I would note that in exhibit 81, there is
11 several tables and charts or sets of data, and as
12 Mr. Covington presents his testimony, I would just like
13 him to, since the exhibit hopefully will be part of the
14 record, I would just ask you to talk about those data
15 sets in the way that is convenient to you, for the
16 record -- would you please proceed then to present your
17 testimony in exhibit 81?

18 A. "My name is Calvin Covington. This testimony is
19 presented on behalf of Southeast Milk, Incorporated,
20 SMI, PO Box 3790, probation officer box three seven nine
21 oh Belleview, Florida, 34421. I started working in the
22 dairy industry which is approaching 50 years, including
23 preparing for --

24 THE COURT: Hold up, I'm not sure.

25 MR. HILL: I'm not sure if this witness

1 has been sworn in.

2 MR. SMITH: Yes, sir, I've been sworn
3 in.

4 THE COURT: Thanks for back-checking me.
5 Sorry for the interruption.

6 A. "My time working in the dairy industry, which is
7 approaching 50 years, includes preparing proposals for
8 and presenting testimonies in many federal milk order
9 hearings. I retired from SMI as their CEO in 2010, but
10 have remained involved in several areas, including milk
11 pricing and Federal Order regulations. Since leaving
12 full-time employment with SMI, my Association with the
13 Cooperative has continued, including serving as their
14 interim CEO most recently in 2022."

15 "Southeast Milk Incorporated is a
16 Capper-Volstead cooperative. SMI is responsible for
17 supplying all of the raw milk needs for five pool
18 distributing plants located in the Florida and Southeast
19 Orders. In January 2023, SMI pooled the following
20 volume of milk on the three Southeastern Federal
21 Orders."

22 "Table one shows Southeast Milk January
23 of 2023 producer milk by the three Federal Orders, the
24 Appalachian Order, Florida, the Southeast Order, along
25 with a number of producers pooled there on each order.

1 SMI is a member of Dairy Cooperative Marketing
2 Association, DCMA, SMI supports all five DCMA proposals,
3 proposals 1 through 5 as contained in the hearing
4 notice. SMI's testimony are focused on proposal 4, the
5 establishment of distributing plant delivery credits or
6 intra-market Transportation Credits in the Florida
7 marketing order. SMI's support for intra-market
8 Transportation Credits is based upon the following
9 reasons: Reason number one, declining Florida milk
10 production. The Florida marketing area comprises all of
11 the State of Florida except the four most western
12 counties, and there's little or no milk in these four
13 counties. As shown in table two, Florida order producer
14 milk produced in the State of Florida has steadily
15 declined. Only 76-percent of the order's milk was
16 produced in Florida in 2022 compared to 87.1-percent
17 three years ago in 2019. Let me interject, the Florida
18 Order producer milk numbers track National Agricultural
19 Statistics Service (NASS), milk production numbers for
20 the State of Florida. Of the 24 states in NASS's
21 monthly milk production report, Florida had the larges
22 year-over-year milk production decline in 2022, down
23 10.9 percent. In 2022, the State of Florida reported
24 its lowest milk volume since 1984."

25 Table two there shows the Florida

1 Federal Milk Order producer milk by State, 2016 through
2 2022 for the State of Florida and the percent of total
3 producer milk. And then the other state category shows
4 that volume percent of the total.

5 "Higher milk production expenses
6 including higher freight costs, a high percent of
7 Florida's dairy feed, supplies and fertilizer are
8 imported into the State from some distances, ongoing
9 environmental challenges and related expenses,
10 opportunity costs, urbanization and lower margins are
11 reasons for declining Florida milk production. The
12 implementation of proposal 4 on an expedited basis is a
13 step towards slowing the decline of Florida milk
14 production.

15 "Reason number two, more milk from
16 outside of Florida. Less milk produced in the State of
17 Florida means more milk from outside the State of
18 Florida is needed to supply Florida fluid milk needs in
19 the Florida Order. As depicted in table two, 24-percent
20 of Florida Order producer milk in 2022 was produced
21 outside the State of Florida. This percent has
22 increased in recent years."

23 "Due to market administrator
24 restrictions on publishing milk production volumes by
25 county or state with a limited number of producers

1 and/or volume, actual milk volume for each state in the
2 other states category is not available. However, based
3 on SMI marketings and personal knowledge, I can
4 confidently state a very high percentage of other states
5 producer milk comes from the other 49 South Georgia
6 counties including in proposal 4."

7 I'll go off my written testimony right
8 here and state that the exhibits presented by the market
9 administrator's office yesterday backs up the statement
10 that I have just made about the volume of milk in
11 Georgia coming into Florida.

12 "Historically South Georgia reserved as
13 a milk supply for the Florida market. Due to declining
14 Florida milk production and increased milk production in
15 Georgia, South Georgia is now a regular milk supplier to
16 the Florida Order. Unlike the State of Florida, NASS
17 reports Georgia had the second highest milk production
18 increase in 2022, up 12.7 percent."

19 "Forty-nine South Georgia counties are
20 included in proposal 4, due to these counties now
21 serving as a regular source of producer milk for the
22 Florida Order. Proposal four is needed to provide some
23 reimbursement of milk hauling expense due to the
24 distance this milk is from Florida pool distributing
25 plants. It's 225 miles from the Florida-Georgia border

1 on Interstate 75 to the closest Florida pool
2 distributing plant."

3 "Georgia milk production has increased
4 in recent years. In discussions with Georgia dairy
5 farmers, most expanded due to lower margins per unit.
6 More units of production are needed to cover fixed
7 expenses. South Georgia is more conducive to dairy
8 farming and dairy expansion compared to other parts of
9 the Southeast. However, distance to fluid milk plant
10 and associated milk hauling cost is a major concern to
11 these dairy farms and will weigh heavily on future
12 expansion. The acceptance of proposal 4 will assist
13 these dairy farmers in transporting milk to distributing
14 plants and help ensure adequate milk supply for the
15 Florida market. "

16 "Reason number three, increased Class I
17 disposition. From 2006 to 2021, Florida Order Class I
18 disposition declined. In 2022, the reverse happened and
19 Class I disposition increased 2.3-percent from 2021 to
20 2.042 billion pounds, this is shown in table 3. The
21 increase in continuing 2023. January 2023, Class 1
22 disposition is 187.544 million pounds, 3-percent higher
23 than January 2022. Table three shows Florida Class 1
24 disposition 2016 to 2022, by those years."

25 "Even though Class I disposition

1 increased 2.3% in 2022, packaged fluid milk sales in the
2 Florida marketing area declined 0.1% om 2022.
3 Disposition up and fluid sales basically flat, indicates
4 Florida pool distributing plants are marketing more
5 packaged fluid milk outside of the Florida marketing
6 area. Based on my interactions with Florida pool
7 distributing plants, this is the case, especially in
8 regards to school milk."

9 "The number of pool distributing plants
10 in the three Southeastern Orders continues to diminish.
11 The three Southeastern Orders started 2022 with 44 pool
12 distributing plants and ended the year with 39. Many of
13 the closed plants historically packaged and distributed
14 milk to schools. Today there are fewer plants in the
15 three Southeaster Orders processing, packaging and
16 distributing school milk. Those that continue providing
17 school milk serve a greater geographical area. Florida
18 has a pool distributing plant specializing in packaging
19 fluid milk for institutions, especially schools. This
20 pant not only supplies a high percent of Florida school
21 milk, but the plant now supplies milk to schools outside
22 of Florida. Due to the demand for school milk, less
23 plants packaging school milk, this Florida-based plant
24 is expanding. This means additional raw milk will be
25 needed to meet the increased demand for school milk from

1 this plant. Looking ahead, I project more milk
2 processed and packaged in Florida, especially school
3 milk will be distributed outside of the Florida
4 marketing area."

5 "Reason number four; more farm milk
6 moving west and north to pool distributing plants.
7 Historically, most farm milk was delivered to pool
8 distributing plants located in a county with the same or
9 a higher Class I differential than the dairy farm.
10 Moving to a location with a higher differential helped
11 cover some of the milk hauling expense needed to
12 transport the milk, one of the purposes of Class I
13 differentials. Due to less pool distribute plants and
14 the location of a plant versus the most accessible milk
15 supply, this has changed. Today, SMI markets producer
16 milk to pool distributing plants located both west and
17 north of the dairy farm's location."

18 "In January 2023, all of SMI's
19 Appalachian Order milk moved from a higher \$4.00 to a
20 lower 3.60 zone. In the past, this milk was marketed
21 East to the Charleston, South Carolina area or South to
22 the Jacksonville, Florida area, today there are no
23 longer fluid milk plants in these areas."

24 "Approximately 44-percent of the milk
25 delivered by SMI to Southeast Order pool distributing

1 plant moved from a higher \$4.00 to a lower 3.80 zone.
2 The milk located South of the plant is the most
3 accessible milk for the plant."

4 "Almost 14-percent of SMI's Florida
5 producer milk, delivered to Florida order pool
6 distributing plants was transported from a higher 5.80
7 to a lower 5.40 zone, this is because of less pool
8 distributing plants located in the Miami market. "

9 "The implementation of Proposal 4 will
10 allow the above milk to milk to receive some
11 reimbursement of milk hauling expense incurred, from
12 moving milk from a higher to a lower priced location."

13 "Reason 5, higher milk hauling expense.
14 Since the formation of SMI 25 years ago, the cooperative
15 has owned and operated its own milk hauling fleet. To
16 support the testimony of the primary DCMA witness in
17 regards to increased milk hauling cost, the following
18 are annual changes in four milk hauling related expenses
19 incurred by SMI. Average diesel fuel cost expressed in
20 dollars per gallon; in 2020, it was a \$1.9239 per
21 gallon. In 2021, it was \$2.7785 per gallon. And last
22 year, 2022, it was \$4.4117 per gallon. Average milk
23 hauler wages, these do not include benefits, dollars per
24 hour. In fiscal 2018, 22.60 per hour; fiscal '22, 28.70
25 per hour. And so far here in fiscal 2023, 31.24 per

1 hour. Quoted prices to SMI for a Peterbilt truck, the
2 day cab, not including taxes. The 2020 model quoted
3 July 31, 2019, \$118,102. A 2021 model, quoted October
4 6th, 2020, \$119,678; a 2022 model, quoted October 14,
5 2021, \$144,309. SMI has not asked for quotes on trucks
6 since October 14, 2021. The truck person SMI deals with
7 reports current quotes about 18-percent higher than the
8 last quote, putting the truck price over \$170,000."

9 "Quoted prices to SMI for 6,200-gallon
10 milk tankers, first quarter of each year when the quote
11 was given. 2021, \$69,400; 2022, \$74,656; 2023, \$8,256.
12 Let me emphasize, there are more milk hauling expenses
13 than just fuel, wages and equipment that have increased.
14 Other expenses include employee benefits, insurance
15 premiums, tractor tanker maintenance, tires, repairs,
16 taxes, permits and highway tolls. SMI has and continues
17 to work to improve the efficiency of its milk hauling
18 and control expenses. These efforts include moving to
19 larger milk tankers, direct farm milk loading, closing
20 of truck terminals, improved fuel efficiency and driver
21 safety. However, efforts to control costs, only offsets
22 a portion of higher milk hauling expenses."

23 "Let me state confidently, SMI's actual
24 expense to haul milk from its members' farms to pool
25 distributing plants greatly exceeds the intra-market

1 transportation credit being requested."

2 "Reason number six, meets the primary
3 purposes of federal milk marketing orders. The two
4 primary purposes of federal milk marketing orders are,
5 one, help ensure consumers have an adequate supply of
6 fresh, wholesome milk for drinking purposes; and two,
7 promote and maintaining orderly marketing conditions."

8 "Intra-market Transportation Credits
9 provide an incentive to produce and deliver raw milk to
10 Florida pool distributing plants, thus helping ensure
11 fluid milk plants can provide consumers, including
12 school children, with an adequate supply of fresh and
13 wholesome fluid milk. It's important to remember
14 Florida is the nation's third most-populated state and
15 is consistently one of the fastest growing states in the
16 nation. Proposal 4 is urgently needed to help meet the
17 fluid milk demand of Florida consumers, whose numbers
18 increase everyday."

19 "Due to raw milk being a higher
20 percentage of the cost of packaged milk at fluid milk
21 plant's dock, it is important to have equitable raw milk
22 cost to help maintain orderly marketing of milk. The
23 proposed intra-market Transportation Credits provide
24 another tool towards more orderly marketing. The
25 proposed intra-market Transportation Credit requires all

1 regulated Class I processors to contribute an equal
2 amount per hundredweight to offset a portion of farm to
3 market milk hauling costs. Just as market-wide pooling
4 promotes orderly marketing by preventing a handler with
5 a higher Class I utilization having a producer price
6 advantage. Intra-market Transportation Credits reduce
7 the potential of a handler having a price advantage due
8 to the location of its milk supply."

9 "Southeast Milk, Incorporated, expresses
10 its appreciation to the Secretary of Agricultural and to
11 the Dairy Division for holding this hearing to consider
12 these important proposals. We encourage the Secretary
13 to recommend the adoption of Proposals 1 through 5 as
14 presented, and to do so on an expedited basis.
15 Respectfully submitted on behalf of Southeast Milk,
16 Incorporated."

17 Q. Thank you, Mr. Covington. Your testimony is
18 prepared to enter as exhibit 81, just a couple of
19 additional questions for you. With respect to the cost
20 from hauling from farm to market, does Southeast charge
21 its farms for that service on a -- can you talk about
22 how it's charged and how that relates to the
23 reimbursement request for the intra-market distributing
24 plant delivery credits here?

25 A. Yes, I can. Southeast Milk is going through a

1 lot of transformations, and one of those it's updating,
2 it's farm to market hauling rate that the producers pay,
3 and effective here this year is composed of three
4 components, and a mileage rate per mile, per loaded mile
5 from the farm to its assigned pool distributing plant, a
6 flat hundredweight per hundredweight to cover the fixed
7 cost, regardless of how many miles it goes. And if a
8 farm is not direct load, if it has a pick-up charge and
9 just on taking an average mileage for a producer with a,
10 not a direct load, the milk hauler has to load the milk,
11 a full load of milk, that current charge is a little
12 over 1.3 cents per hundredweight per mile. And if you
13 look at the testimony that's been presented with
14 proposals for the new mileage factor rate, you can see
15 that was in January, just based on January on the
16 proposal, that's not quite twice what's being proposed,
17 plus what's being proposed doesn't start until after
18 15-percent of the miles.

19 Q. So, on the basis of Southeast Milk's actual cost
20 because it owns the fleets and owns the trucks and
21 employees, drivers, et cetera, the reimbursement
22 requested for distributing plant delivery credits in
23 this hearing is significantly less than the actual cost?

24 A. Yes, that's correct.

25 Q. Okay. With respect to the question, your 50

1 years in the industry and you're involvement as CEO for
2 Southeast Milk and other capacities in the industry, is
3 it correct that you've had substantial experience with
4 negotiating with processors over premiums and selling
5 raw milk?

6 A. Yes, I have.

7 Q. Okay. Could you talk about the capability of
8 recovering these hauling costs that have been discussed
9 in this hiring over order charges versus having them
10 incorporated into the Federal Order system through the
11 proposals?

12 A. On a regular basis Southeast Milk, and again,
13 I've done it for many, many times in our regular
14 conversations with a customers, our milk buyers, we're
15 always trying, we share with them what our expenses are
16 in getting milk to them, increased hauling costs,
17 balancing costs, those type of things, especially, you
18 know, holidays and so forth when they can't take milk,
19 and we keep explaining to them how we need to be able to
20 recover those costs, and one way we can do that is
21 through over-order premiums, and we are able to get some
22 over-order premiums, but what I've noticed over the
23 years and as I talked with processors, major milk buyers
24 is that they're concerned that hey, if I as a milk buyer
25 pay for over-order premium, how do I know that my

1 competitor is going to pay that same over-order premium?
2 I want to ensure that we have equal raw product cost, as
3 I mentioned, that's the key to having orally marketing
4 when it comes to dealing with a commodity like milk.
5 And those conversations lead to that the processor will
6 say, and this is more than just one, we're a lot more
7 comfortable if you could get it through the Federal
8 Order system because if it goes through the Federal
9 Order system, we have a high degree of assurance that
10 everybody's going to be on an equal playing field, and
11 that's the, you know, they know the price of the milk
12 might go up, but equally, if not more so, concerned that
13 they're going to be on equal footing with their
14 competitors, and that's one of the reasons why we were
15 coming here today through this proposal, to treat all
16 milk buyers the same.

17 Q. So, is it fair to say that you're involved with
18 DCMA and attempting to extract over-order premiums from
19 the marketplace the past few years, correct?

20 A. Yes.

21 Q. Has DCMA been able to obtain the increased costs
22 that you've reported here from the marketplace in
23 over-order premiums?

24 A. DCMA has some over-order premiums, but it has by
25 no means been able to keep up with what the increased

1 costs are of servicing the fluid market.

2 Q. Okay. Now, question here in terms of marketing
3 under the Florida order and over-orders and the proposed
4 distributing plant delivery credit, how do diversions of
5 milk, if there are any, marketing in Florida, how do you
6 see that working into the program here with respect to
7 whether they -- whether -- to distributing plant
8 delivery credit program?

9 A. We're not talking about changing the diversions
10 whatsoever. Diversion requirement orders stay the same.
11 Proposals being presented here today have nothing to do
12 whatsoever with diversions, but there will be some milk
13 that needs to be diverted as a part of balancing the
14 market, especially spring flush, holidays and those
15 things. So any milk that is diverted, diverted to a
16 manufacture plant, non-pool plant, that diverted milk
17 would not be eligible to receive the intra-market
18 receiving credit. It would only be that producer milk
19 that actually went to a pool distributing plant, but I
20 will emphasize, Florida Order has the tightest pooling
21 requirements, most stringent diverse requirements of any
22 order, but we still have to have them because, unlike
23 cows, pool distributing plants don't operate 365 days a
24 year and consumers don't drink the same amount of milk
25 everyday, so we need them.

1 Also going back to diversions, it would
2 be rare, but it could happen if economics tell us so,
3 that it's possible that we could divert milk that is
4 pooled on Federal Order 6 to a pool distributing plant
5 in Federal Order 7, it would be rare, and you have to
6 look at what the utilization of that particular plant,
7 but again, if that milk was diverted, again, no
8 distributing plant credits on diverted milk.

9 Q. If it remained pooled on Order 6?

10 A. Yes, on Order 6. Now, Federal Order 7, like the
11 proposal says, it would be eligible for distributing
12 plant credits.

13 Q. Order 7?

14 A. Yes, sir.

15 Q. One final question, now Mr. Covington, at the end
16 of your testimony, you've asked the Department to
17 consider the issues in this hearing and act on them on
18 an expedited basis, are there any, in your experience in
19 the past order of proceedings, are there any particulars
20 with respect to how you would recommend that it might
21 be, the proposals might be handled in this hearing?

22 A. If my memory serves me correct, and other people
23 here in this room have been involved in it, but go back
24 to 2006 when we had a hearing to consider increased
25 Class I differentials in the three Southeastern Orders,

1 the Appalachian, the Southeast and the Florida Order,
2 that was done on an expedited basis, if I remember,
3 through offering an interim rule. It was needed at that
4 time to keep on supplying milk, milk to the market,
5 again, I think it was several years later before it was
6 actually a final rule, so people could be able to
7 comment, so forth, I don't know all the particulars, but
8 again, it's been done in the past.

9 Q. And in fact it may have been done in the past
10 with respect to the outside of the market, the
11 supplemental milk Transportation Credit Balancing Fund
12 on these Orders when an interim rule promptly filed at
13 the hearing, but it was not finalized until some years
14 later.

15 A. Yea, on that same hearing, I made reference to
16 Class I differentials, but also in the Appalachian,
17 Southeast Order, it was a modification to the in current
18 order Transportation Credits and it was also on an
19 interim basis.

20 MR. BESHORE: Thank you, I have no
21 further questions on direct for Mr. Covington.

22 THE COURT: Does AMS have any cross?

23 MS. TAYLOR: I do, Your Honor.

24 **CROSS EXAMINATION**

25 BY MS. TAYLOR:

1 Q. Good afternoon, Mr. Covington.

2 A. Good afternoon, Ms. Taylor.

3 Q. Thanks for testifying today.

4 A. Thank you, glad to be here.

5 Q. Just a couple questions about Southeast Milk, I
6 don't see it in your statement, I don't know if I asked
7 this of the last witness of their cooperative, but how
8 many members does SMI have, producer members? Maybe I
9 missed it.

10 A. Okay. On the first page of my testimony, again,
11 I didn't read it, it was in the table, but on table one,
12 this was on January 2023, it had 13 members pooled on
13 Appalachian Order, 80 producers on the Florida Order and
14 58 on the Southeast Order.

15 Q. So, if I added that up, that's the total number
16 of SMI --

17 A. It could have been a few duplicates.

18 Q. Right.

19 A. Somewhere it's around, again, don't hold me to
20 this since I'm not there on a regular basis, somewhere
21 around 135, but I will tell you that Southeast does
22 market organic milk, and some organic milk, it takes
23 several producers to get on the truck, and that inflates
24 the numbers some.

25 Q. They're included in this?

1 A. They're included in that, yes.

2 Q. They may not be members?

3 A. Yea, they're all members.

4 Q. All members?

5 A. Yes, they're all members, yes. SMI purchased
6 milk from some other cooperatives, but all the milk it
7 actually markets, it's members.

8 Q. Okay. I had a question on, it's around page 3,
9 talking about the Georgia counties that would be
10 eligible to get credits in Order 6.

11 A. Yes.

12 Q. I asked this question of an earlier witness, but
13 as it's written, because those counties are within a
14 Federal Order to begin with, no other Georgia county
15 could later ask to be included, to be eligible for an
16 order -- eligible to receive a distributing plant
17 delivery credit, unlike unregulated counties in
18 Virginia, for example?

19 A. Reason we include these counties, these counties
20 we know have milk production in them, and based upon the
21 farms, they're probably going to, hopefully they're
22 going to be there for some time. Again, if you look at
23 the map, there's going to be some counties in between
24 where there's no milk production, but just to tie them
25 in together and make the map. And, again, just based

1 upon knowing that geographical area, there's some other
2 counties in Georgia, to be perfectly honest with you,
3 they have to drain a lot of swamps to do this, that and
4 the other, there's going to be some dairy farms there,
5 but if something were to happen down the road, who knows
6 what's going to happen in the future milk supply, I
7 assume more if counties need to be included could go
8 through an order hearing like this and add them, but we
9 feel pretty comfortable on these counties now.

10 Q. On the bottom of that page, you talked about
11 dispositions up or fluid milk sales in Florida are flat.
12 And then on the next page you talk about that Florida
13 plant that does school milk.

14 A. Yes, ma'am.

15 Q. So, I'm taking from that whole part of your
16 testimony, a lot of that increased disposition that's
17 going out is probably that school milk?

18 A. Yes. Based upon personal knowledge, you know,
19 packaged milk sales in Florida are just like it is
20 throughout the country, have been declining for a number
21 of years. Now, last year was the lowest decline in
22 Florida in quite some time, but it's declining, but on
23 disposition that was a nice increase, 2.3 percent, and
24 again, based upon personal knowledge, you know, that one
25 plant and, again, it's mostly all school milk, and he's

1 going to neighboring states because just people, I mean,
2 he has a waiting list, a waiting list of counties that
3 are coming to him wanting school milk because they just
4 can't get it. And he's trying -- he's committed to it,
5 that's what his plant gears up for, and the thing about
6 school milk, you know, he's down in the Summer, but
7 Southeast Milk is willing to work with him because he's
8 geared to that and he's trying to do expansions so he
9 can supply more schools because it's needed, nobody else
10 is doing it.

11 Q. On page 5, you entered a lot of great information
12 on an actual cost from SMI, so I do appreciate that.
13 When you talk about your, well you mentioned that SMI
14 operates its own milk hauling fleet. Do you guys hedge
15 your fuel?

16 A. All my time when I was a CEO and when I've gone
17 back twice as interim CEO, we never hedged fuel. We
18 looked into it and we couldn't see it was going to be
19 profitable for us, best of my knowledge, unless they've
20 started over the past month, still not hedging.

21 Q. Probably a pretty safe guess then.

22 A. Uh-huh (affirmative).

23 Q. On the 3.67 base haul rate that's proposed, SMI
24 contributed to that survey, would you say that your cost
25 to bring in supplemental milk is similar to your cause

1 for your local cause or different as the previous
2 witness has testified?

3 A. On that survey, Southeast Milk data was not used
4 in that survey because that data was only used for
5 intra-order Transportation Credit, and so, since
6 Southeast Milk was not involved in Florida in the
7 intra-order, its data was not included in that. But in
8 getting to your question, it varies. On the average,
9 based upon my experience, you know, the bringing in
10 supplemental milk, it depends where we're getting it at
11 and what kind of freight lines we can find. For
12 example, if we can, back when we were bringing some more
13 milk in from the Northeast, if we can get on a freight
14 line that we knew there was still going to be some fresh
15 orange juice going back, we could do a better rate on
16 that, but if we were going to be on a freight line where
17 it wasn't going to be hardly backhaul, it got expensive.
18 If I were to present to you what our haul cost for the
19 supplemental milk we get purchased, it's going to be a
20 wide variation, wide variation.

21 Q. So would you say the 3.67 is reasonable in your
22 eyes on the cost you've experienced and --

23 A. Based upon today's load, it's costing more than
24 that, yea, and again, I don't mind, you know, again,
25 because we just, this changes, and I don't mind sharing

1 this because we want you to have the data, you know, I
2 gave you the 1.3 cents.

3 Q. Yes.

4 A. Right now on our new program, we charge dairy
5 farmers, SMI dairy farmers, we're charging them 4.98 a
6 loaded mile from their farm to their sign pool
7 distributing plant, plus \$0.50 a hundredweight, plus if
8 plus if it is not direct load, \$50 stop charge, and so I
9 think if you add all those up, you're going to be over
10 \$6.00 a mile, if you do the math.

11 Q. Thank you. Could you talk a little bit about,
12 and you did touch on this about what happens when
13 consumers don't get the milk they need and the impact of
14 that, but what happens to you as a Co-op if you're not
15 able move the milk to the plants to meet that plant
16 demand?

17 A. Well, I can give you example having lived through
18 several hurricanes, and I'll go back to 2004 when we had
19 three hurricanes hit Florida three weeks in a row. And
20 we hadn't had a major hurricane in Florida in quite
21 some, in quite some time, and to be honest with you, we
22 got too lackadaisical and we really weren't planned, so
23 we had one of our major customers, we weren't able to
24 get them milk, and I won't repeat the words that were
25 used at me of what, we almost lost a customer over it by

1 not having milk we were not prepared, so after then,
2 we've been very prepared, and then, at times, because
3 you don't know when a hurricane hits, you got milk, you
4 got to dump, and then everybody and their brother wants
5 it as soon as the store opens. And so we learn to do a
6 lot of things, for example, we fill up every silo and
7 milk plant in Florida full of milk before a hurricane
8 hits and the cooperative takes responsibility of that.
9 We lock up more milk now than we need. We actually take
10 reservation fees, or I call it insurance on it, because
11 we know it's important not to let those shelves go
12 empty, we want to make sure we supply our customer. We
13 might be late on some or whatever, but there's expense
14 in doing that, but we know how important it is to keep
15 customers, but it's getting harder, I mean, you've gotta
16 go begging sometimes, especially in a hurricane, you got
17 to beg for trucks, just beg for it. I couldn't tell you
18 how many we've dead-headed out of Florida to go get
19 milk.

20 Q. I remember that conversation from the hurricane
21 hearings.

22 A. Yes.

23 Q. On the over-order premium discussion, you had
24 some of that with Mr. Beshore, but do you have a similar
25 -- has SMI had similar experiences where they've tried

1 to charge customers over-order premiums, but you can
2 charge them, but they won't pay?

3 A. Yea, I'll just give you a prime example.
4 Southeast Milk, about a year ago, went through some
5 transitions, and it was without a CEO there for about
6 two or three weeks. And, again, the farmers are
7 hurting, so the farmers said, well, we just got to have
8 some more premium. So the farmer leadership just put a
9 letter out to the customers and said "Hey, we're just
10 going to charge this premium." And then I came back as
11 interim CEO about two weeks and pretty much those
12 customers said "Hey, you can bill us for it, but we're
13 not going to pay it," or "we're going to go somewhere
14 else," I mean, I feel for the dairy farmers, because
15 they're hurting, they're hurting bad, but we just had to
16 have a conversation, well, you got to maintain your
17 market, so let's just try to work through DCMA and all
18 the cooperatives to try to do something, then we started
19 having these conversations that led to this hearing here
20 today because customers were coming to us just being
21 concerned about, you know, increasing over a premium,
22 whether it's going to be on a level playing cost, and
23 they were saying hey, if it's in the order, well we can
24 show it and pass it on to our customers, for example,
25 the school milk, they can show that, they got to show

1 documentation, we just want to know we're on an evil --
2 equal playing field.

3 Q. Okay. And that kind of brings another question,
4 you know, intuitively, if someone would say, if you're
5 taking a loss on every load, why on heck are you doing
6 this in the first place, right? I think you just spoke
7 to that, maybe you can speak to why you choose to do
8 that instead of, you know, the alternative?

9 A. Yea. Yes, you look at individual loads, you
10 don't want to lose money on anything.

11 Q. Sure.

12 A. But you've got to look at the total picture,
13 total picture. We might lose money on five loads of
14 milk or 10 loads of milk, but by losing money on that,
15 we're making money for the dairy farmers on that other
16 hundred loads by keep the customers, it's important, you
17 got to look at the big picture.

18 Q. Thank you for that point.

19 A. Uh-huh (affirmative).

20 Q. My last question is just in regards to the
21 request to handle this on an emergency basis, you could
22 touch or, you know, touch a little bit or reemphasize a
23 little bit on why the Department should consider this on
24 an emergency basis? Why the market conditions exist
25 right now and this is why you're requesting that?

1 A. If you could go out and talk to them, you've got
2 several large dairy farmers, I'm talking about dairy
3 farmers, second and third generation dairy farmers in
4 Florida, especially South Florida, are right on a
5 teetering point of whether they're going to stay in
6 business or not. A lot of them are putting their hope
7 on this hearing. And again, it might not sound like a
8 lot of money to some, but you know on a per
9 hundredweight basis where margins are tight, it means a
10 lot. And so on an expedited basis, and we're again
11 encouraging it be a positive decision, it can't be on an
12 expedited basis, it's going to give these producers hope
13 of staying in business.

14 MS. TAYLOR: That's all the questions I
15 have, thank you.

16 THE COURT: Cross of this witness by any
17 other participant? Don't see any. Oh yes. Come on up
18 to the lector.

19 **CROSS EXAMINATION**

20 BY MR. SUMMERS:

21 Q. My name Mike Summers. Over-order work premiums,
22 you say you need to raise them and they say you go
23 somewhere else to get the milk, where else are they
24 going to get the milk?

25 BY MR. COVINGTON:

1 A. Well, in my, in my experience, the case I
2 responded to Ms. Taylor, that particular customer who
3 got very, very strong with me had already had
4 conversations with another milk supplier and that
5 supplier was going to supply that plant with milk unless
6 we kept them at an equal raw product cost, so other
7 places out there willing to supply the milk.

8 Q. And they have the same cost as SMI does is
9 supplying the milk, I would assume?

10 A. I don't know their books or so forth, but I just
11 know what that customer told me.

12 Q. But that same supplier is here today in agreement
13 with SMI today?

14 A. Again, you know, that happened about a year ago
15 with Ms. Taylor, and I just know what that customer told
16 me, and we didn't want to lose that customer.

17 Q. Okay.

18 THE COURT: Does that complete your
19 examination? Anyone else? Mr. Beshore, redirect?

20 MR. BESHORE: I have no questions on
21 redirect, I would move for the admission of exhibit 81.

22 THE COURT: Any objection?

23 MR. HILL: No objection.

24 THE COURT: Exhibit 81 is entered into
25 the evidentiary record.

1 (Whereupon, Exhibit No. 81 was introduced
2 into evidence.)

3 MR. BESHORE: DCMA's witness is Mike
4 Herting.

5 Whereupon,

6 **MIKE HERTING,**

7 having been first duly sworn, was
8 examined and testified as follows:

9
10 MR. BESHORE: As Mr. Herting approaches
11 the stand, he will be asked to present two sets of
12 testimony, which hopefully have been available to Your
13 Honor, AMS and other folks here. The first is a
14 document with a cover sheet, two pages of statement
15 testimony, and four exhibits with it. And as we did
16 with the prior witness, I would like to have the entire
17 document marked as one exhibit for this record exhibit
18 82.

19 (Whereupon, Exhibit No. 82 was marked for
20 evidence.)

21 THE COURT: Very well.

22 MR. BESHORE: Second is the pre-prepared
23 testimony of Jeffery Sims, which is a cover page, a
24 total of 12 pages of testimony that I would ask to be
25 marked as exhibit 83.

1 MR. HILL: I object to the admission of
2 83.

3 MR. BESHORE: I didn't offer it for
4 admission yet.

5 MR. HILL: We're going to object to 83.

6 MR. BESHORE: After we get to that,
7 after we complete examination of the presentation on 82,
8 I would be just up front, say that both, he's going to
9 present both or we would hope to have him present both,
10 and we would ask to have him present both, I'll talk
11 about his knowledge base for the statement in 83 at the
12 time prior to that, and address the concerns that the
13 Federal Government may have.

14 MR. HILL: I believe that we should
15 address 83 before it is presented.

16 MR. BESHORE: Yes, I understand. We
17 will talk about it before he presents it, that's just
18 how I would propose to proceed.

19 THE COURT: We will mark the cover sheet
20 that describes the testimony of Jeffrey Sims, it states
21 "the testimony of Jeffrey Sims," we'll mark that as 83
22 for identification.

23 (Whereupon, Exhibit No. 83 was marked for **ID**
24 **ONLY.**)

25 MR. BESHORE: We'll do 82 fully first.

1 THE COURT: Including cross?

2 MR. BESHORE: Including cross.

3 (Inaudible).

4 THE COURT: Take care of all of 82
5 first, see if that goes, and we'll take up.

6 MR. HILL: That's fine with me as long
7 as --

8 THE COURT: Then we'll take up 83, we
9 may not have time today. Your witness, Mr. Beshore.

10 Whereupon,

11 **MIKE HERTING,**

12 having been first duly sworn, was

13 examined and testified as follows:

14 **DIRECT EXAMINATION**

15 BY MR. BESHORE:

16 Q. State your name and address, please, Mr. Herting.

17 BY MR. HERTING:

18 A. Mike Herting, M-I-K-E, H-E-R-T-I-N-G.

19 Q. Your business address?

20 A. 1405 North 98th Street, Kansas City, Kansas.

21 Q. Okay. And now would you proceed with the
22 prepared testimony that you have provided, exhibit 82,
23 including the exhibits, and as you reference exhibits,
24 any description of them that you'd like to present at
25 that time, please offer, and we would be -- the entire

1 exhibit has been marked as one exhibit. Please proceed.

2 A. "My name is Mike Herting. I'm the Director of
3 Operations and Accounting for the Southeast area of
4 Dairy Farmers of America, who I will refer to as "DFA."
5 I've worked for DFA for over 30 years in a variety of
6 positions within accounting, dispatching, and
7 information technology analytics. My work experiences
8 during this time have allowed me to work with marketing
9 of raw milk, including the analytics, planning and
10 execution of efficient milk movements."

11 "DFA is a global farmer-owned milk
12 marketing cooperative with more than 11,500 family farm
13 owners throughout the United States. Through a strong
14 grassroots governance process, DFA is owned and governed
15 by dairy farmers. Our farmers are invested in 84 dairy
16 manufacturing facilities nationwide, including seven
17 Class I distributing plants within Federal Orders 5, 6
18 and 7."

19 "The structure of DFA is separated into
20 seven distinct operating areas, and the proposals being
21 brought forth today fall within the DFA's Southeast
22 Area. The majority of DFA Southeast Area farms are in
23 Federal Orders 5, 6 and 7, are considered small
24 businesses using the Regulatory Flexibility Act
25 guidelines, which are relevant for this hearing.

1 Approximately 95-percent of DFA Southeast Area family
2 farms are counted as a small business."

3 "Most dairy farms in this region would
4 be considered relatively small in comparison to other
5 marketing areas in the U.S. And the dairy farm families
6 in the Southeast operate on slim margins and have had to
7 contend with rising on-farm input costs. These
8 challenges have contributed to dairy farm number
9 declines in most regions of the Southeast.

10 Exhibit entitled "Farm Input Costs Indices, 2019 through
11 2022," displays the stark rate of increase for selected
12 input costs over the past few years." And on that, it
13 shows the increase in feed price, fertilizer price,
14 chemical price, machinery price and wage rates.

15 "Declining milk production combined with
16 close processing plants forces milk to move further to
17 market at a greater expense. The farmers that continue
18 to supply these markets through their milk marketing
19 cooperatives bear the majority of these costs. This
20 causes additional economic pressures to family farms
21 within the region and along with these headwinds, the
22 growing population of the southeast is compounding the
23 problem."

24 "DFA supports both proposal 1 and 2, the
25 in quotes "updating" of the existing Transportation

1 Credit Balancing Fund components, which partially fund
2 milk deliveries originating from outside the
3 southeastern Orders and proposals 3 through 5, the
4 implementation of a similar program, the distributing
5 plant delivery credit, which applies to milk deliveries
6 originating with limited exception from inside the
7 Orders. My primary focus here today will focus on
8 proposals 3 through 5. I will be specifically focusing
9 on why raw milk produced in the state of Georgia, and
10 transported throughout the Southeast Federal Orders,
11 should be eligible for the proposed new distributing
12 plant delivery credits across Federal Orders 5, 6 and
13 7."

14 "In the Southeastern U.S., the majority
15 of raw milk is sold to Class I processing plants, which
16 package fluid milk for the consuming public throughout
17 the area. While the growing population of Southeast
18 promotes healthy consumer demand, this same region
19 currently operates as the most significant milk deficit
20 region of the country. Due to the imbalance of local
21 supply and demand, the marketing dynamics require
22 importing milk from outside the marketing areas to
23 supplement the local supply."

24 "Referring to the exhibit titled "U.S.
25 Milk Production, 2022 versus 2021," shows a map of the

1 U.S. production and this was provided by NASS data with
2 a chart or index on the left hand side showing the
3 different colors for the states. You will see the only
4 state with significant growth in the dairy production in
5 the Southeast and Georgia, yet the growth of milk
6 production in Georgia does not cover the decline in milk
7 production in Florida alone. While the region is facing
8 milk deficit, Florida and Georgia experiencing record
9 population growth, increase in demand for this fluid
10 milk products."

11 "DFA Southeast areas milk supply in
12 Georgia's southern counties are called upon everyday to
13 deliver to the pool distributing plants, and by
14 extension, fluid milk drinking consumers located in
15 Florida. In 2022, 31-percent of the DFA milk in these
16 southern Georgia counties shipped to Florida processors.
17 This milk movement is displayed in the exhibit titled
18 "Georgia milk production by Counties delivered to
19 Florida market in 2022."

20 And it is a map showing the southern
21 part of Georgia and Florida with that green highlight of
22 the proposed Federal Order 6, proposed counties in
23 Georgia that would be part of the Federal Order 6
24 proposal. And then the blue highlighted counties are
25 where DFA has production that ship to Florida in 2022.

1 "This demonstrates that this milk is
2 actively servicing the needs of the Florida Order 6
3 market, even if the boundary for that is at the state
4 line. Due to this, it is important to treat these
5 deliveries on equal footing with deliveries in current
6 Federal Order 6 boundaries. "

7 "In addition to supplying the state of
8 Florida, you'll see Georgia's milk production helps to
9 supply the deficits across much of the Southeast within
10 the exhibit titled "Georgia milk production by County,
11 all deliveries in 2022," and this map on the very end
12 shows again all of Georgia, basically all of the
13 southeast, and the red dots or plants that Georgia
14 counties shipped to in 2022, all of Federal Orders 5, 6
15 and 7. "Portions of Georgia milk production not only
16 serve local needs in Federal Order 7, but also are
17 utilized daily for supplying several Federal Order 5
18 Class 1 processors. Georgia milk production is needed
19 and used daily in meeting the demand needs of the
20 Federal Order 5 distributing plants."

21 "During 2022, 24-percent of DFA Georgia
22 milk was delivered to Federal Order 5 Class I
23 processors, thus minimizing the need for additional
24 long-distance loads coming into the Southeast milk shed
25 at additional costs. The demand for the milk across the

1 region and the mileage it is transported drives the need
2 for this milk to be eligible for the new intra-order
3 distributing plant delivery credits being proposed.
4 These credits will provide much needed relief to the
5 local dairy farmers producing milk for use throughout
6 the year."

7 "In closing, I urge the USDA to
8 recognize the burden currently being placed on the local
9 dairy farm families in the Southeast and to implement
10 DCMA proposal's 1 through 5, adoption will support many
11 small business owners that produce farm fresh milk vital
12 to these marketing areas. Thank you for the time in
13 letting me testify today. This issue is of the highest
14 importance to the family farm owners of DFA."

15 Q. Just a couple of additional questions,
16 Mr. Herting. Can you tell us, not sure it was
17 explicitly laid out, in your statement, Southeast Region
18 of DFA for which you have operational responsibility,
19 how is that defined geographically? What states and
20 what regulatory, what orders are encompassed in your
21 area of responsibility?

22 A. So, all of areas, Orders 5, 6 and 7, small
23 portion of 126 in East Texas, and a small portion of
24 Federal Order 32 in Eastern Oklahoma. So it runs from
25 Eastern Oklahoma to Eastern Texas, all the way to

1 Florida, north to the southern part of Missouri, all of
2 Virginia, and a small portion of West Virginia, and the
3 western two-thirds of Kentucky, so it's -- I didn't
4 bring a DFA map.

5 Q. Tennessee is included?

6 A. Tennessee is totally included. Portions of 17
7 states, that doesn't help, but.

8 Q. Eastern Kentucky included?

9 A. Eastern Kentucky is actually in the mid-east
10 area.

11 Q. Okay. How many dairy farm members of DFA are
12 under your operational area, included in your operation?

13 A. Most recent count is around 830.

14 Q. Okay. Going to the first chart in exhibit 82,
15 which you've testified to, but the graph, first exhibit,
16 it's a graph I guess as opposed to a chart, it shows the
17 farm input cost indices 2019 to 2022, I don't know that
18 you referenced the source, but the source is noted on
19 the exhibit and could you tell us where you got that
20 information, the information in the graphs?

21 A. The individual specifically?

22 Q. Well all --

23 A. Internal DFA corporate access to the USDA agg
24 prices website.

25 Q. Okay. So, if I understand it then, these indices

1 of farm input costs are government numbers?

2 A. Correct.

3 Q. From USDA?

4 A. (Nodded affirmative).

5 Q. You've been her for this hearing, correct?

6 You've heard the testimony of the farmer witnesses --

7 A. Yes.

8 Q. -- in this hearing? Do these indices and their
9 trajectory, their increase in recent times, confirm or
10 verify the testimony regarding farm level costs that you
11 heard from the dairy farmers?

12 A. Yes, it does.

13 Q. Going to the final page of exhibit 82, where you
14 have, which is titled "Georgia Milk Production by County
15 All Deliveries 2022," as I understood your testimony,
16 the red dots are plants to which milk produced in
17 Georgia was delivered in 2022, correct?

18 A. Correct.

19 Q. What's the -- what's the source of the
20 information in exhibit 2022 (sic)?

21 A. DFA based southeast area milk tracking.

22 Q. So, this is based on your personal knowledge,
23 DFA?

24 A. Correct. That's DFA deliveries? I'm sorry, my
25 title didn't say that.

1 Q. But that is the title?

2 A. It is DFA.

3 Q. Okay. So, I want to -- I want to talk about what
4 this shows then, the deliveries from Georgia to the
5 plants, to the West of Georgia, and Alabama,
6 Mississippi, Louisiana, Arkansas and the Western portion
7 of Tennessee, would it be correct to say that all of
8 those deliveries, there's no differential value in
9 Federal Order system to compensate for the movement of
10 raw milk in those directions?

11 A. No, it's a loss.

12 Q. And with respect to the red dots to the North of
13 Georgia, and Tennessee, North Carolina and South
14 Carolina to the northeast, is there any differential
15 value of the Federal Order system for those deliveries?

16 A. All substantial losses.

17 Q. And even within the state of Georgia, do you have
18 deliveries from South to North?

19 A. Yes.

20 Q. And are those also at a loss in terms of
21 differential value?

22 A. Yes, comparison to the producer county to the
23 processor county, yea.

24 Q. Yes.

25 A. Most of the milk delivering to Atlanta comes from

1 south of Atlanta.

2 Q. Okay. And would it be correct to say the
3 distributing plant delivery credits in this hearing
4 proposed by DCMA are designed to provide some
5 compensation for all of these milk deliveries from
6 supply point to demand point for which, which the
7 Federal Order system presently makes a loss transaction?

8 A. That is correct, to present a small compensation
9 for that cost.

10 Q. To get hyper-technical now, there's been some
11 discussion about how diversions would or would not --
12 how milk diversions would or would not come into play
13 with respect to the proposed, to the DCMA proposals for
14 distributing plant delivery credits, can you speak to
15 that, your understanding of how, whether they would come
16 into play or how they would or would not come into play?

17 A. I would be of the understanding that diversions
18 would still be allowed on pounds that were requested for
19 the distributing plant delivery credit, contrary to the
20 process used with the transportation credit fund
21 calculations.

22 Q. Okay. So, the proposed -- the DCMA proposals do
23 not change pooling provisions of the Orders at all?

24 A. Correct.

25 Q. And the terms, whereas the Transportation Credit

1 Balancing Fund has provisions which offset volumes of
2 diversion against volumes of deliveries determining what
3 credits are payable. Distributing plant delivery
4 credits do not have that provision?

5 A. Correct.

6 Q. And do you think that's appropriate, they should
7 not have any offsets or diversions?

8 A. It's definitely appropriate.

9 Q. Why so?

10 A. Because there are many times of the year, as been
11 attested by previous witnesses that, and weekends
12 holidays, as the cycle changes, milk production that
13 milk isn't going to the distributing plants within their
14 local milk shed, they need to be shipped out and
15 sometimes that ends you up at non-pool plants where it
16 otherwise wouldn't be pooled, but those producers still
17 want that pool delivery price from the marketplace.

18 Q. So even though southeast orders in-area are
19 deficit, there year-around needs, there are times during
20 the week or during the month or during the year when the
21 only -- when it's necessary to divert some of that
22 production to non-pool plants?

23 A. Yes, sir.

24 Q. Okay. So, are you in your experience, both in
25 your current capacity and previous work with DFA, are

1 you experienced in negotiating over-order prices with
2 handlers?

3 A. I personally haven't negotiated, but I'm aware of
4 all the negotiations that occur and aware that at times
5 of the pushback that occurs.

6 Q. So, what is your view then of the viability of
7 recovering the cost to which you've testified here in
8 over-order charges as opposed through the Federal Order
9 system?

10 A. Very, very difficult. As been noticed, mentioned
11 by prior testimony, DFA has also experienced the times
12 where we have attempted to raise premiums and then been
13 told, you know, they won't be paid, and so we've had to
14 make last-minute changes to change what we're going to
15 be billed, you know, to make the decision whether we're
16 going to get paid or not.

17 Q. Okay. So, would it be fair to say that it's
18 your, your opinion and your experience that if these
19 costs that the farmers are experiencing, as you've
20 depicted, are to be recovered, the Federal Order system
21 in these proposals provide the best --

22 A. That is the recurring comment that I've heard,
23 many with communications from customers that in order to
24 have transparency of the cost for everybody, they're
25 being assured that they're getting treated the same,

1 they prefer it being come through the Federal Order
2 system, Federal Order prices.

3 Q. Might not pay if it's charged otherwise?

4 A. Correct.

5 Q. Okay. What's your -- what can you offer,
6 Mr. Herting, with respect to the urgency of the cost
7 recoveries addressed in this hearing and the
8 appropriateness request for an expedited consideration
9 of the hearing?

10 A. The emergency status, talking with dairy farmers
11 when we meet at Co-ops or on the phone all the time, and
12 there's more and more of them going out of business
13 everyday, and there is many of them relying upon the
14 possibility of some additional dollars coming and just
15 paying it on, and any delay in that at all is going to
16 be that many more farmers that just say, you know, "I
17 can't do it, somebody come get the cows," and then that
18 puts the burden more on those farms in that area to pick
19 up the cost supplying the milk for their local milk
20 shed. It's just a, you know --

21 Q. So, the sooner the better?

22 A. The sooner the better.

23 Q. Okay. Thank you.

24 A. It's taken a long time to get to here too.

25 MR. BESHORE: Okay, I have no further

1 questions for Mr. Herting on direct. He's available for
2 further examination.

3 THE COURT: AMS have any cross on
4 exhibit 82?

5 MS. TAYLOR: I do, Your Honor

6 **CROSS EXAMINATION**

7 BY MS. TAYLOR:

8 Q. Good afternoon.

9 A. Good afternoon.

10 Q. Thank you for coming today.

11 A. Thank you.

12 Q. Just a quick note on the map before your last
13 map, the one that says "Georgia milk production by
14 county delivered to Florida markets in 2022," did that
15 also --

16 A. That also should be labeled DFA. I apologize, I
17 believe I fixed my notes and I forgot to fix the maps.

18 Q. You said at the beginning you had about, DFA
19 Southeast has about 130 producer members?

20 A. Yes.

21 Q. Can you just talk a little bit about recent
22 experience and production, we're talking about farm
23 losses that have happened recently, and I'm sure DFA's
24 experienced that just like every other Co-op, can you
25 just speak a little bit about that?

1 A. Well, it's -- it's -- many farms more going out
2 of business right now, even with the high milk prices
3 that we've had in 2022, there are still farms going out
4 of business, and now, as the milk price is expected to
5 drop, even more than already dropped for January, going
6 down for '23, unfortunately, I would expect that there's
7 going to be as many going out in '23 as there were in
8 2022, I hope not more, but.

9 Q. And that speaks to maybe the emergency --

10 A. Correct.

11 Q. -- piece you were talking about?

12 A. Right. The sooner the better.

13 Q. On your second page of your exhibit, in parts of
14 it you talk about for DFA, "about 31 percent of DFA milk
15 in Georgia?"

16 A. Southern Georgia.

17 Q. "Southern Georgia, those highlighted counties, go
18 to Florida, 24-percent of the milk in that area --

19 A. No, the 24-percent is Georgia entirely.
20 31-percent is just those southern counties, so there's a
21 slight difference.

22 Q. Okay. Slight different. Okay. But I do think,
23 as I read through this, one of your points, and then one
24 of the reasons for including those Georgia counties and
25 the ability to get intra-credits for Florida, because

1 basically those counties supply 5, 6 and 7 in some
2 fashion, right, because they would be eligible to get a
3 credit in any of those counties, wherever their milk
4 landed?

5 A. Correct.

6 Q. Okay. I want to talk about the base haul rate
7 that's being proposed to use in the distributing plant
8 delivery credits, and I'm taking it, is it correct to
9 say that obviously your local intra-movements of milk
10 were not part of that survey, only supplemental milk?

11 A. Yes.

12 Q. But can you speak to how is that number
13 representative of the cost you do incur for your local
14 hauls?

15 A. It was representative at that time. The cost is
16 significantly higher now, but at the time that we
17 prepared the documents, it was representative.

18 Q. And it's significantly higher now because of?

19 A. Fuel costs and truck costs, hauling costs, all of
20 the above.

21 Q. Does DFA families haul their own milk?

22 A. No we do not. We all use third-party contract
23 haulers.

24 Q. Okay. And can you talk a little bit about what
25 happens when you can't meet plant demand to you as a

1 cooperative?

2 A. The dispatch team gets very unhappy with all the
3 calls that they get and we start scrambling where can we
4 find milk, and we'll be calling folks up in the
5 Northeast, calling Mid-East, calling Central, calling
6 Western, we've tried getting milk out of Mountain area,
7 see if we can call Colorado milk into Arkansas. We get
8 a lot of milk out of Texas and New Mexico. And then the
9 last few Falls, we've we had to ration and not everybody
10 got everything that they needed.

11 Q. Okay.

12 A. So it happens just about every Fall these days.

13 Q. Have you ever lost customers because you weren't
14 able to meet their demand?

15 A. We haven't, that I'm aware of.

16 Q. And can you talk a little bit about the loads
17 that you're taking losses on, why you still choose to do
18 that, from your Co-op's perspective?

19 A. Sure. Well, in each milk shed, you've got local
20 supply, and then in a lot of cases, majority of the
21 cases that local supply isn't enough for the processors,
22 but in order to keep that marketplace alive for the
23 local supply, you need to supply everything to the
24 plant. Mostly our customers are full supply contracts,
25 so we got to supply them everything they need with the

1 local supply and then supplemental milk, and so you can
2 make some money on the local supply and then lose money
3 on bringing in the supplemental, but if you don't keep
4 the whole supply, now you're going to be shipping the
5 local supply somewhere else.

6 Q. Okay. I think that's all I have, thank you.

7 THE COURT: Is there cross by any other
8 parties? No one? Mr. Beshore?

9 MR. BESHORE: I have no questions on
10 redirect for Mr. Herting. I would move for the
11 admission of exhibit 82.

12 THE COURT: Any objection?

13 MR. HILL: No objections.

14 THE COURT: Exhibit 82 is accepted into
15 the evidentiary record.

16 (Whereupon, Exhibit No. 82 was introduced
17 into evidence.)

18 THE COURT: Okay. Should we talk about
19 exhibit 82?

20 MR. BESHORE: Could we possibly go off
21 the record, talk about procedures of exhibit 83?

22 THE COURT: Sure, we may want to
23 describe what we did off the record on the record after
24 we talk about it, but let's go ahead off the record.

25 (Whereupon, discussion was held off the

1 record.)

2

3 (Whereupon, Exhibit No. 83 was marked for
4 evidence.)

5 THE COURT: Okay, in a discussion
6 off-the-record, we basically, the story is, Mr. Sims,
7 the original proposed witness on this testimony that's
8 been marked as exhibit 83, was in contact with
9 individuals that had COVID and, under I guess the CDC
10 Guidelines, cannot travel to be here. I agree that
11 under, among other things, there's a case GH Gary, 71
12 agg decisions 1, 2012, it's a judicial officer decision
13 that interprets the regs to say that the witnesses have
14 to be here in person to be cross-examined, and so we're
15 stuck with Mr. Sims can't come and Mr. Herting appears
16 to me to be qualified to testify as to portions of
17 exhibit 83, but not portions that were specific to Lone
18 Star Milk Producers, Inc., which is the outfit that
19 Mr. Sims is, I guess, is an officer of. So, what we're
20 going to do is Mr. Beshore and Mr. Hill and his
21 colleagues from AMS, if they choose to, are going to
22 work on what in exhibit 83 would look like if it were
23 limited to what Mr. Herting's competent to testify to.
24 Mr. Hill and AMS reserve their objections to this and
25 we'll take it up in the morning.

1 MR. BESHORE: Very good

2 THE COURT: Thank you gentlemen. Good
3 lawyering. With that, any other business before we
4 adjourn for the evening?

5 MR. HILL: Just about time, is it 9:00
6 a.m. tomorrow as well?

7 THE COURT: I think so.

8 (Whereupon, these proceedings were adjourned
9 for the day.)

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