In The Matter Of:

Agricultural Marketing Service, USDA Proposed Rule
Supplemental Notification of Public Hearing

December 12, 2017

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1   UNITED STATES DEPARTMENT OF AGRICULTURE
            MILK IN THE FLORIDA MARKETING AREA
2

3 AGENCY: Agricultural Marketing Service, USDA
   ACTION: Proposed rule; supplemental notification of
4   public hearing

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                 BEFORE:
7   JUDICIAL OFFICER WILLIAM JENSON
                AND
8 ADMINISTRATIVE LAW JUDGE BOBBIE J. McCARTNEY

9   DATE: December 12, 2017
    TIME: 9:10 a.m. to 12:11 p.m.
10   1:21 p.m. to 3:23 p.m.

11   DATE: December 13, 2017
    TIME: 9:03 a.m. to 12:01 p.m.
12
    DATE: December 14, 2017
13   TIME: 9:04 a.m. to 12:00 p.m.

14   PLACE: Embassy Suites
               513 South Florida Avenue
15   Tampa, Florida

16

   PURSUANT TO: 7 CFR Part 1006
17   AMS-DA-17-0068; AO-18-0008

18

   REPORTED BY: LISA A. SIMONS-CLARK, RMR, CRR
19   Notary Public, State of
               Florida at Large
20

21   DAY 1:   Pages 1 to 212
       DAY 2:   Pages 213 to 219
22   DAY 3:   Pages 220 to 226

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 1   APPEARANCES:

 2       BRIAN T. HILL, ESQUIRE
         United States Department of Agriculture
 3       Office of the General Counsel
         1400 Independence Avenue, SW
 4       South Building, Room 2325
         Washington, DC 20250
 5       (202) 720-9237
              Attorney for USDA
 6
         ERIN TAYLOR
 7       United States Department of Agriculture
         Agricultural Marketing Service
 8       Dairy Program
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         Washington, DC 20250
10       (202) 720-7311
              Acting Director Order Formulation and
11            Enforcement

12       MARVIN BESHORE, ESQUIRE
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         Harrisburg, Pennsylvania 17101-1026
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              Attorney for Cooperative Proponents
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1   P R O C E E D I N G S

2   JUDGE McCARTNEY: All right. The hearing is

3   now called to order.

4   JUDGE JENSON: Let's go on the record. This

5   record is being made in a public hearing to

6   consider two proposals regarding an order entitled

7   Milk in the Florida Milk Marketing Area which can

8   be found -- that order can be found at Title 7,

9   Code of Federal Regulations Part 1006.

10   Today is Tuesday, December the 12th, 2017, and

11   we're meeting at the Embassy Suites by Hilton

12   Tampa Downtown Convention Center, 513 South

13   Florida Avenue, Tampa, Florida.

14   My name is William Jenson. That's

15   J-e-n-s-o-n. I'm the Judicial Officer for the

16   United States Department of Agriculture, and I

17   have been asked today to preside at this hearing

18   over the taking of both testimonial and

19   documentary evidence.

20   With me on the podium is USDA's Chief

21   Administrative Law Judge, Bobbie J. McCartney,

22   M-c capital C-a-r-t-n-e-y, who is an expert with

23   regard to formal rule-making proceedings on whom I

24   will rely greatly during this proceeding.

25   Now, Proposal No. 1 was submitted by Southeast

1   Milk, Incorporated; Dairy Farmers of America,

2   Incorporated; Premier Milk, Incorporated; Maryland

3   and Virginia Milk Producers Cooperative

4   Association, Incorporated; and Lone Star Milk

5   Producers, L.C.

6   The proponents of Proposal No. 1 seek a

7   temporary supplemental charge on Class I -- and

8   that's Roman numeral I -- milk to provide

9   emergency reimbursement to handlers and producers

10   for costs incurred as a result of market

11   disruption stemming from Hurricane Irma in

12   September 2017.

13   The payments, as proposed, would be through a

14   temporary 9-cent per hundredweight increase in the

15   Class I price under the order. Proposal No. 2 was

16   submitted by the Dairy Program Agricultural

17   Marketing Service, USDA.

18   The proponent of Proposal No. 2 seeks to make

19   changes as may be necessary to conform the entire

20   marketing agreement and order to amendments that

21   may result from this hearing.

22   The record in this proceeding is on file with

23   the Office of Administrative Law Judges, Hearing

24   Clerk's Office, Room 1031 South Building,

25   Washington, DC 20250. The proceeding is

1   identified as AO Docket No. 18-0008.

2   Before we start taking evidence in this

3   proceeding, there are a couple preliminary matters

4   that I think we ought to address; and the first

5   being the availability of transcripts and exhibits

6   and the briefing schedule for filing briefs in

7   this proceeding and correction, proposed

8   corrections, to the transcript.

9   Now, Ms. Taylor, a USDA representative with

10   AMS, Agriculture Marketing Service, will inform us

11   regarding both the availability of transcripts and

12   the briefing schedule that was discussed prior to

13   this hearing with Mr. Brian Hill and

14   Mr. Marvin Beshore.

15   MS. TAYLOR: Good morning. This is

16   Erin Taylor. I think the schedule we agreed upon

17   would be that the transcripts will be posted on

18   our website, the Dairy Program's website, no later

19   than December 22nd.

20   At that time I will also make sure that the

21   proponent's attorney will be notified so he knows

22   exactly when that they go up, along with the

23   exhibits that all will be PDF searchable files;

24   and given if those go up by the 22nd, briefs and

25   transcript corrections will be due on January 5th

1   to the hearing clerk's office, and they can be

2   filed electronically on the 5th and then later

3   mailed into the office.

4   JUDGE JENSON: Now, people who wish to order a

5   transcript of this hearing directly from the court

6   reporter can do so. Her name is Ms. Simons-Clark,

7   and she's with Michael Musetta & Associates, Inc.,

8   in Tampa, Florida; and you can approach the court

9   reporter during a recess to order that transcript.

10   Now --

11   JUDGE McCARTNEY: Just one matter. Cell

12   phones off. Okay? We have water and coffee in

13   the back. No food, please. No extraneous

14   materials in the hearing room while a witness is

15   on the stand. It's very disruptive.

16   If you need to vacate the room, you may do so

17   quietly through the back door so you don't

18   disturb, you know, the witness on the stand and,

19   of course, professional conduct at all times.

20   Any questions, issues, or concerns before we

21   get started with testimony? All right. Thank

22   you.

23   JUDGE JENSON: Are there any other preliminary

24   matters before we get started? Now, Mr. Hill and

25   Mr. Beshore both indicated to me that they would

1   like to make brief opening statements. Maybe we

2   should start with Mr. Beshore.

3   MR. BESHORE: Thank you, Judge Jenson and

4   Judge McCartney, and I will be very, very brief.

5   This hearing has been called because the

6   proponents, the requesters, represent 90

7   percent-plus of the dairy farmers supplying the

8   milk to the Florida Milk Marketing Order,

9   experienced extreme losses in their marketing

10   operations during the events of Hurricane Irma in

11   September, and they've requested emergent -- on an

12   emergency basis or an expedited basis, amendments

13   to the Federal Milk Order which would allow the

14   recovery of some of the extraordinary costs that

15   they recover.

16   We'll have four witnesses to present our case.

17   First of all, Mr. Jeffrey Sims, who is a

18   consultant to the dairy industry and specifically

19   on behalf of Lone Star Milk Producers. He will

20   present the proposed order amendment language and

21   its operation, as well as testify to the specific

22   losses experienced by Lone Star Milk Producers.

23   Ms. Shana Wooten of Southeast Milk will

24   testify second -- Southeast Milk, Incorporated,

25   will testify second. Southeast Milk is the

1   largest supplier representative of dairy farmers

2   and supplier of milk to the Florida market; and

3   she will describe in significant detail the

4   hurricane events, how they affected Southeast

5   marketing and the losses suffered by Southeast

6   Milk and its dairy farmers.

7   Tom Pittman will testify on behalf of Premier

8   Milk, Inc. He's its general manager. It's

9   another cooperative supply in the market, and he

10   will describe their operations and the losses

11   suffered by their dairy farmers.

12   Finally, Mr. Elvin Hollon of Dairy Farmers of

13   America, which also is a supplier to the market,

14   will testify to the events that they have

15   experienced and its losses.

16   That will -- that will present our -- that

17   will be our case. Thank you.

18   MR. HILL: Good morning. Brian Hill. I think

19   Mr. Beshore basically stole my thunder, so I don't

20   have much to say here; but very briefly, we're

21   here upon the proposal from several dairy industry

22   members. They seek an amendment to the Milk

23   Marketing Order for the state of Florida.

24   The stated reason for the request is for

25   emergency relief. It's because of Hurricane Irma,

1   which struck just after Labor Day of this year in

2   the state of Florida, and the reason that this is

3   necessary, they say, is because it is costing

4   significant disruptions to the marketplace.

5   Now, this is not the first time that we've had

6   this type of relief. In 2004 there was a similar

7   situation in the Southeast of the United States in

8   which not only this Marketing Order Part 1006 but

9   also Part 1005, the Appalachian Marketing Order,

10   and Part 1007, the Southeast Marketing Order, were

11   implicated; and, if you look at the five

12   proponents Southeast Milk, Incorporated, Dairy

13   Farmers of America, Incorporated, Premier Milk,

14   Incorporated, Maryland and Virginia Milk Producers

15   Cooperative Association, Incorporated, and Lone

16   Star Milk Producers, L.C., four of those five

17   entities were also proponents in the 2004 milk

18   order proposal.

19   So at this time, the USDA, we're only looking

20   to make conforming changes to whatever happens at

21   the end of this hearing. If there is going to be

22   an actual rule making, we're proposing for the

23   conforming changes to make whatever is necessary,

24   if that's where the testimony takes us; and we

25   only have one witness. His name is Steven Duprey,

1   and he will be up first. Thank you.

2   JUDGE McCARTNEY: Are you prepared to call

3   your first witness?

4   MR. HILL: Yes.

5   JUDGE McCARTNEY: Please do so.

6   MR. HILL: I think first we're going to go

7   ahead and enter a few documents that we need for

8   the record. I don't know if you have all of those

9   documents in front of you. Does Marv have them?

10   MR. BESHORE: I think I do.

11   MR. HILL: These are in conformance with

12   notice.

13   MS. TAYLOR: I have two complete sets.

14   They're in order.

15   JUDGE JENSON: We're ready.

16   MR. HILL: Thank you. Okay. So first, the

17   first document which I'd like to mark 1 is Exhibit

18   No. 1. It should be the Notice in the Federal

19   Register.

20   JUDGE JENSON: Would the court reporter please

21   mark the notice in the Federal Register as Exhibit

22   No. 1?

23   JUDGE McCARTNEY: Is it correct, counsel, that

24   the court reporter has been provided two copies of

25   the exhibits?

1   MR. HILL: I believe so, and they should be in

2   order.

3   (Exhibit No. 1 was marked for identification.)

4   MR. HILL: The second document, which is

5   entitled USDA Sets Hearing on Emergency Aid for

6   Florida Milk Handlers and Producers, that is the

7   press release, I would like to have that marked

8   Exhibit 2 for the record, please.

9   JUDGE JENSON: Will the court reporter please

10   mark that as Exhibit 2?

11   (Exhibit No. 2 was marked for identification.)

12   MR. HILL: The next document, Certificate of

13   Officials Notified, is the certificate of mailing

14   to the governor. I would like that marked Exhibit

15   No. 3 for the record.

16   JUDGE JENSON: Will the court reporter please

17   mark the Certificate of Officials Notified as

18   Exhibit No. 3?

19   (Exhibit No. 3 was marked for identification.)

20   MR. HILL: The next document, Determination

21   Regarding Electronic Mailing of Notice of Hearing,

22   this is the notice of electronic mailing to

23   interested persons. I would like that marked

24   Exhibit 4 for the record, and I do want to make

25   just one slight correction.

1   If you look at the title, we kind of had a

2   spelling issue with "Mailing." I apologize for

3   that. So if we could make that correction.

4   JUDGE JENSON: Would you describe that

5   correction again?

6   MR. HILL: Determination Regarding Electronic

7   Mailing. We spelled "Mailing" in an --

8   JUDGE JENSON: I see that.

9   MR. HILL: -- unorthodox way.

10   JUDGE McCARTNEY: Literally.

11   JUDGE JENSON: Would the court reporter please

12   mark the Determination Regarding Electronic

13   Mailing of Notice of Hearing as Exhibit 4 and make

14   the correction as described by Mr. Hill on the

15   record copy?

16   (Exhibit No. 4 was marked for identification.)

17   MR. HILL: And finally, there is another

18   Determination Regarding Mailing of Notice of

19   Hearing. It's basically the same type of document

20   but just regular mailings of electronic mailing.

21   I would like to mark that as Exhibit No. 5, are we

22   on, for the record?

23   JUDGE JENSON: Yes. Would the court reporter

24   please mark the second Determination Regarding

25   Mailing of Notice of Hearing as Exhibit No. 5?

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 1                (Exhibit No. 5 was marked for identification.)

 2           MR. HILL:  Okay.  I think I'm ready to call

 3      the first witness.

 4           JUDGE McCARTNEY:  Are you offering --

 5           JUDGE JENSON:  Do you wish to --

 6           MR. HILL:  I was going to do that later, but

 7      we can do that now on the record.

 8           JUDGE McCARTNEY:  Any objections to Exhibits 1

 9      through 5?

10           MR. BESHORE:  No objection.

11           JUDGE McCARTNEY:  There being none.

12           JUDGE JENSON:  There being none, Exhibits 1,

13      2, 3, 4, and 5 are admitted into evidence.  All

14      right.  Mr. Hill, would you call your first

15      witness?

16           MR. HILL:  Yes.  I'd like to call

17      Steven Duprey.

18           JUDGE JENSON:  Mr. Duprey, please state your

19      name and spell your name.

20           THE WITNESS:  Steven Duprey.  Steven with a V.

21      Duprey, D-u-p-r-e-y.

22           JUDGE JENSON:  Okay.  Please have your right

23      hand raised.

24                      STEVEN DUPREY,

25    having been first duly sworn by the Court, was examined
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1 and testified as follows:

2   THE WITNESS: I do.

3   JUDGE JENSON: Okay. You may be seated.

4   DIRECT EXAMINATION

5 BY MR. HILL:

6   Q.   Good morning, Mr. Duprey.

7   A.   Good morning.

8   Q.   Could you please state your name and spell it

9 for the record?

10   A.   Steven Duprey, D-u-p-r-e-y.

11   Q.   Okay. Mr. Duprey, can you tell us a little

12 bit about yourself, where you work?

13   A.   I'm a supervisor economist with the Market

14 Administrator's office in Atlanta, Georgia, for Federal

15 Orders 6 and 7.

16   Q.   And how long have you been doing that?

17   A.   Approximately 17 years.

18   Q.   And before that, were you with the Department

19 of Agriculture in another capacity?

20   A.   I was at Michigan State University.

21   Q.   Okay. Okay. What are your responsibilities

22 at your current employment?

23   A.   I have two main duties. One is a sort of

24 market information function, providing publicly

25 releasable statistics regarding these two orders, and

1   then an economic analysis portion, preparing data,

2   responding to requests, offering support to the

3   industry in those -- in those forums.

4   Q.   And did you do any of that for this hearing?

5   A.   I did.

6   Q.   Okay. Did you receive a request for any

7   analysis for this hearing?

8   A.   Yes.

9   Q.   Can you please look at the next document, a

10   document called Response to Cooperatives Request

11   (11-20-17) #1. Is this something that you prepared?

12   A.   It is.

13   Q.   Can you tell us what this is, please?

14   A.   In response to the Request No. 1, I prepared

15   for, January through October of 2017, the milk -- the

16   producer milk on Federal Order 6 that was classified

17   for Other Uses and Farm Dumps. In the case of Other

18   Uses, that's generally related to plant-related

19   accidental losses and animal feeds and dumps; and, as

20   you can see in September, there were actually farm

21   dumps that didn't actually reach a plant.

22   Q.   Okay. I would like to mark that document as

23   Exhibit No. 6 for evidence.

24   JUDGE JENSON: Would the court reporter please

25   mark the Response to Cooperatives Request as

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 1        Exhibit No. 6?

 2            (Exhibit No. 6 was marked for identification.)

 3   BY MR. HILL:

 4      Q.   Okay.  Could you please look at the next

 5   document, which is entitled Response to Cooperatives

 6   Request (11-20-17) #2?  Do you see that?

 7      A.   I do.

 8      Q.   And did you prepare this, or was it prepared

 9   under your direction?

10      A.   I prepared this.

11      Q.   Okay.  Could you please tell us what this

12   shows?

13      A.   It shows all of the plants, both pool and

14   nonpool, for Federal Order 6 that received milk,

15   Producer Milk, in September of 2017.  It lists the

16   plants by name and location with the entire class

17   differential, which includes both the stated Class I

18   differential in Part 1000.52 and the adjustments to the

19   differentials in 1005.51(b), 1006.51(b) and 1007.51(b).

20   I think that describes it.

21            MS. TAYLOR:  I just want to make the record

22         clear for the court reporter that when the witness

23         said 1000.51, it's 1000.51.

24            JUDGE McCARTNEY:  Can the witness verify the

25         accuracy of that?
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 1            THE WITNESS:  That's correct.  I apologize.
 2   BY MR. HILL:
 3        Q.   Okay.  I'm looking at the bottom of that copy.
 4   On my copy, I have something added in that's written,
 5   "Georgia SSD" under the Plant Name column; under the
 6   City, "Decatur"; under the State, "Georgia"; under the
 7   Class I Differential, "$3.80"; and under Plant Status,
 8   "Nonpool"; is that correct?
 9        A.   That is correct.  It was inadvertently left
10   off the typed copy and added later by hand.
11        Q.   So you -- right.  So you do want that added to
12   the copies?
13        A.   Definitely.
14        Q.   Okay.  I'm going to repeat for the record:
15   Under Plant name, there is a -- can you explain one
16   more time, Mr. Duprey?
17        A.   Certainly.  There was one plant left off.  The
18   plant was -- the plant name is Georgia SSD.  The city
19   is Decatur; the state is Georgia; the Class I
20   Differential is $3.80; and the plant status is Nonpool.
21            JUDGE McCARTNEY:  Is that your handwriting
22         that reflects that entry, Mr. Duprey?  Who made
23         the entry?
24            THE WITNESS:  One of the -- one of the
25         assistants.
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 1              JUDGE McCARTNEY:  All right.  So subject to

 2         your verification; is that correct?

 3              THE WITNESS:  Yes.

 4              JUDGE McCARTNEY:  Okay.

 5              MR. HILL:  I would like that marked as Exhibit

 6         No. 17 for evidence.

 7              MS. TAYLOR:  7.

 8              MR. HILL:  7.  7.  I'm getting way ahead of

 9         myself.

10              JUDGE JENSON:  Would the court reporter please

11         mark the Response to Cooperatives Request just

12         described as Exhibit No. 7?

13              (Exhibit No. 7 was marked for identification.)

14    BY MR. HILL:

15         Q.   Okay.  Can we move to the next document, which

16    is Response to Cooperatives Request No. 3?  Do you

17    recognize that document?

18         A.   Yes.  It is one I prepared.

19         Q.   Okay.  And could you explain what this

20    document shows?

21         A.   Well, it's the Miles Between the Federal Order

22    6 Pool Plants and Nonpool Plants located outside of the

23    state of Florida for the month of September.  I used a

24    mapping software program called MileCharter.  It's an

25    add-on to Microsoft Map Point, and it essentially
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1   allowed me to calculate the distances between these

2   cities in the column labeled Pool Plant and all the

3   nonpool plants located outside the state of Florida

4   that received producer milk.

5   MR. HILL: And I would like to have that

6   marked as Exhibit No. 8 for evidence, Your Honor.

7   JUDGE JENSON: Would the court reporter please

8   mark Response to Cooperatives Request No. 3 as

9   Exhibit 8?

10   (Exhibit No. 8 was marked for identification.)

11   BY MR. HILL:

12   Q.   And one more document, Response to

13   Cooperatives Request (11-20-17) #4. Do you recognize

14   that document, sir?

15   A.   I do. I prepared this.

16   Q.   And could you tell us what that shows?

17   A.   This is the Daily Deliveries to Federal Order

18   6 Pool Distributing Plants by Day during the month of

19   September. It's collected through the normal course of

20   business and presented here as requested.

21   One item on Day No. 10, that information is

22   restricted because there are fewer than three pool

23   distributing plants or three handlers, rather, involved

24   in those transactions.

25   However, for the record, I -- I was able to

1   add together pool and nonpool plants to exceed the

2   number of handlers to publish the information, and that

3   was approximately 846,000 pounds during that day.

4   MR. HILL: And I would like that marked as

5   Exhibit No. 9 for evidence, Your Honor.

6   JUDGE JENSON: Would the court reporter please

7   mark Response to Cooperatives Request No. 4 as

8   Exhibit No. 9?

9   (Exhibit No. 9 was marked for identification.)

10 BY MR. HILL:

11   Q.   So, Mr. Duprey, I believe that you said that

12 these were -- and it shows, according to the

13 documents -- that these were responsive to cooperatives

14 request; is that correct?

15   A.   That's correct.

16   Q.   Now, although you put this together at their

17 request, this is for use by all of the parties; is that

18 correct?

19   A.   That's correct.

20   Q.   And you are not taking any stand on these

21 amendments by preparing these documents; is that

22 correct?

23   A.   No, I'm not.

24   Q.   Thank you. Can we turn to the next document,

25 which is Federal -- titled Federal Order 6 - Florida:

1 Class and Uniform Prices? Do you see that document?

2   A.   I do.

3   Q.   And did you put this document together, or was

4 it put together at your direction?

5   A.   Yes, both.

6   Q.   Okay. And could you explain this document to

7 us?

8   A.   This is an excerpt of our routine publication

9 called the Fluid Milk Report for the month of October

10 2017. It's page 5 of a document that goes out to

11 nonmember producers and interested parties. The top

12 portion Labeled Class and Uniform Prices shows just

13 that for August '16 through October.

14   It shows the class prices by skim and fat and

15 the uniform price as well. The lower portion of the

16 table labeled Pool Receipts and Utilization of Producer

17 Milk, it shows for that same time period the amount of

18 pounds by class and the class percentage, the class

19 utilization for each class.

20   It was to show the utilization in September of

21 this year and compare it to September of the prior

22 year.

23   Q.   And I'd like to have that marked as Exhibit

24 No. 10 for evidence.

25   JUDGE JENSON: Would the court reporter please

 1   mark the document headed Federal Order 6 - Florida

 2   Class and Uniform Prices as Exhibit No. 6 --

 3   excuse me -- Exhibit No. 10?

 4   (Exhibit No. 10 was marked for

 5   identification.)

 6   BY MR. HILL:

 7   Q.   Turning to the next page, it's entitled

 8   Estimated Impact of Cooperative's Proposed Order

 9   Language. Let me know when you've -- you have that in

10   front of you.

11   A.   I do.

12   Q.   And did you put this document together as

13   well, sir?

14   A.   Yes.

15   Q.   Could you tell us what this shows?

16   A.   This is my attempt to estimate the total

17   reimbursable value according to the proposed language

18   that I was receipt -- that was received, I guess, on

19   11/20 of 2017 along with the cooperative's request for

20   data.

21   Based upon that order language that was

22   provided, I was able to estimate for each section of

23   1000.60(g) 1 through 6, my best guess as to the

24   reimbursable amounts for each of those items.

25   Q.   And one question. This is for how it would

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 1  work under the proposed amendments?

 2      A.    That I received on the 11-20-17 document,

 3  correct.

 4      Q.    Okay.  And I'm looking at the bottom.  We have

 5  an Estimated Range of Impact.  Could you just briefly

 6  explain how you come to that?

 7      A.    Well, it's the summation of all of the

 8  underlined items in 1 through 6.  The -- one of the

 9  main variables is in Part No. 6.  I really didn't know

10  what the distress milk value would be.

11          So I just took a guess that it was potentially

12  $5 under class.  The value would be $80,000.  If it was

13  $10 under class, the value would be $160,000.  So

14  that's the real reason why you have that estimated

15  range.

16      Q.    So in 6 you kind of took an estimate of what

17  it could be --

18      A.    Exactly.

19      Q.    -- to get a range?

20      A.    Exactly.

21      Q.    All right.  Thank you.  I would like to mark

22  this as Exhibit No. 11 in evidence.

23          JUDGE JENSON:  Would the court reporter please

24      mark Estimated Impact of Cooperative's Proposed

25      Order Language as Exhibit No. 11?
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         1   (Exhibit No. 11 was marked for

         2 identification.)

         3 BY MR. HILL:

         4   Q.   The document is entitled Estimated Revenue

         5 Raised From Assessment on FO 6 Class I Producer Milk.

         6 Do you see that document, sir?

         7   A.   I do.

         8   Q.   And did you put that document together as

         9 well?

        10   A.   Yes.

        11   Q.   Could you tell us what it shows?

        12   A.   Well, given Exhibit No. 11 and the totals,

        13 reimbursable values, my next logical thought was, well,

        14 how are we going to raise those assessments, those

        15 funds to cover the reimbursable costs?

        16   And so this is just various assessment rates

        17 at various lengths of time estimated based upon a

        18 projection of 180 million pounds of Class I milk per

        19 month upon which you apply the assessment.

        20   MR. HILL: And I would like to enter this

        21   into -- I would like to mark this for evidence as

        22   Exhibit No. 12, Your Honor.

        23   JUDGE JENSON: Would the court reporter please

        24   mark Estimated Revenue Raised From Assessment on

        25   FO 6 Class I Producer Milk as Exhibit No. 12?

1   (Exhibit No. 12 was marked for

2   identification.)

3   BY MR. HILL:

4   Q.   So, Mr. Duprey, Exhibits 10, 11, and 12, they

5   were not requested by the cooperatives, to your

6   knowledge; is that correct?

7   A.   That's correct.

8   Q.   But they are the type of documents that you

9   routinely put together in the course of your duties?

10   A.   Yeah. Number 10 explicitly is. Number 11

11   is -- 11 and 12 were explicitly produced for this, for

12   this proceeding; but it's generally the type of thing

13   that would fall under economic analysis.

14   Q.   In putting that together, you did that just

15   for the use of the parties and not to promote any

16   particular view; is that correct?

17   A.   That's correct.

18   Q.   All right. We do have some follow-up

19   statements here.

20   CROSS-EXAMINATION

21   BY MS. TAYLOR:

22   Q.   Good morning. This is Erin Taylor. Steven, I

23   just want to ask you a couple of questions so the

24   record is clear on where some of the numbers came from,

25   particularly on Exhibit 11. I just want to work

 1 through and make sure we are clear on where you got

 2 your assumptions.

 3   So on No. 1, a maximum of -- you assumed a

 4 maximum of 3.66 million pounds of producer milk was

 5 delivered to plants outside of the state of Florida.

 6 Can you just explain your assumption of 3.66 million

 7 pounds and where that came from?

 8   A.   Well, it's actually not an assumption. It's

 9 actually derived from the reports that handlers

10 provide, and they have reported that 3.6 million --

11 3.66 million pounds, excuse me, of producer milk was

12 delivered to plants outside the state of Florida. They

13 could have been farms located in Florida or outside of

14 Florida.

15   Q.   Okay. And that's information that you get at

16 pool time?

17   A.   That's correct.

18   Q.   And in the equation that you have under that,

19 you have your 36,000 hundredweights of milk divided by

20 480. Can you just explain what the 480 represents?

21   A.   The 480 is the conversion of one load of milk,

22 48,000 pounds, to a hundredweight value, 480

23 hundredweights.

24   Q.   On a tanker?

25   A.   On one -- on one load, yes, on one tanker.

1   Q.   Okay. And for this equation, you actually

2 knew the farm to plant miles. So while they're not

3 listed here, you used actual farm to plant miles?

4   A.   Actual farm to plant miles.

5   Q.   To come up with your 97, almost $98,000?

6   A.   That's correct.

7   Q.   Okay.

8   A.   And that's at the maximum $3.75 per loaded

9 mile in (g)(1).

10   Q.   And that was -- the 3.75 was in the proposed?

11   A.   That is the proposed language, yes.

12   Q.   Okay. On No. 3, you have 2.27 million pounds

13 of producer milk reported as farm dumps. Can you just

14 explain where the 2.27 assumption came from?

15   A.   That's not an assumption. Those were actual

16 reports filed by handlers. That's the total amount

17 that they've claimed was dumped at the farm in

18 September.

19   Q.   And that milk was pooled?

20   A.   That's correct.

21   Q.   Okay. Number 4 and 5, you say it's restricted

22 data. Can you just explain why it's restricted for the

23 record?

24   A.   Yeah. In one of those categories there were

25 fewer than three entities, three handlers involved, and

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 1   so I combined them into one category to give a

 2   reasonable estimate.

 3        Q.   Okay.  And I think the last one, you might

 4   have said this before, but just in case, in No. 6, the

 5   1.6 million pounds of distress milk?

 6        A.   Those were actual deliveries that I was able

 7   to identify through handler reports that went to a

 8   manufacturing outlet --

 9        Q.   Okay.

10        A.   -- during September.

11        Q.   During the -- is it during September, or it's

12   in the nine -- or the nine-day window?

13        A.   Yeah.  That's correct.  It's during the 6th

14   through the 15th of September, and that -- it had --

15   the 6th through the 15th holds for all six items.

16        Q.   And why did you choose the 6th through the

17   15th?

18        A.   That was the proposed order language that I

19   received.

20        Q.   Okay.  And on Exhibit No. 12 -- I think I'm

21   done with 11 and 12.  Just to be clear, the 180 million

22   pounds a month that you used to calculate the revenue,

23   where did you get that assumption from?

24        A.   Well, it's based upon historical Class I

25   pounds that were pooled essentially in 2017; and what I
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 1   needed to do was project forward into 2018, if this

 2   proposal were to go through.  The problem is, I don't

 3   know when the proposal -- or the order amendment would

 4   go through.  Would it be in February or March?  And I

 5   didn't know how long it would extend itself, so I just

 6   combined several months of data there to come up with a

 7   best guess of 180.

 8        Q.   Okay.  And the Exhibit No. 10 actually shows

 9   actual cost, 1 pound.  So anyone can look at that and

10   look and see that it was a reasonable assumption to

11   make?

12        A.   That's correct.

13        Q.   Okay.  I think that's all the questions I

14   have.  Thank you.

15             MR. HILL:  Your Honor, I would like to move

16         exhibits marked No. 6 through 12 into evidence if

17         it's proper at this time.

18             JUDGE JENSON:  Is there any objection to the

19         admission of Exhibits 6, 7, 8, 9, 10, 11, or 12?

20             MR. BESHORE:  We have no objection.

21             JUDGE JENSON:  None being heard, Exhibits 6,

22         7, 8, 9, 10, 11, and 12 are hereby admitted into

23         evidence.  Does that conclude your examination?

24             MR. HILL:  That concludes our direct

25         examination, Your Honor.
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 1              JUDGE JENSON:  Is there any cross-examination?
 2        Yes, Mr. Beshore.
 3                   CROSS-EXAMINATION
 4   BY MR. BESHORE:
 5        Q.   Thank you.  Good morning, Mr. Duprey.
 6        A.   Good morning.
 7        Q.   First of all, I want to thank you on behalf of
 8   the cooperatives that I'm representing today for
 9   providing the information that we requested and on an
10   extremely timely basis in this proceeding.  So thank
11   you very much for that.
12        A.   You're welcome.
13        Q.   I have, you know, just a few questions with
14   respect to the documents.  Let me -- would you first go
15   to Exhibit 7?  And the footnote to Exhibit 7 includes a
16   citation to Section 1007.51(b), which is the
17   Southeastern order as opposed to the Florida order.
18   Can you tell me why that -- why the Southeastern
19   order --
20        A.   Well --
21        Q.   -- was noted there?
22        A.   Excuse me.  The plants that are listed are
23   located in Orders No. 5, No. 6, and No. 7.  So
24   including that language covers, for example, the first
25   line, Barber, Birmingham.
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1   Q.   Okay. So that's a plant. You have -- let's

2 just look at that one. You said the plant status is

3 nonpool. Does that mean nonpool as to Federal Order 6

4 but it's actually a pool plant under Federal Order 7?

5   A.   That's correct.

6   Q.   Okay. So because some of these are pool

7 plants under Federal Order 7, that's why you used the

8 Federal Order, the 1007 information?

9   A.   That's correct.

10   Q.   Okay. Now, so that leads me -- that leads me

11 to this question. When -- the title for the -- for

12 Exhibit 7 is Class I Differential for Plants Receiving

13 Federal Order 6 Producer Milk. When producer milk

14 under Federal Order 6 or what would be produced for

15 milk under Federal Order 6 is delivered to a Federal

16 Order 7 pool plant, is it possible that some of that

17 milk loses its pool status under Order 6 and becomes

18 producer milk under Order 7?

19   A.   Yes, that's possible.

20   Q.   Okay. Do you know whether that may have

21 occurred in the month of September with some of these

22 deliveries?

23   A.   No. I -- I did not review that data.

24   Q.   Okay. But it could have occurred. For

25 instance -- let me just explore this -- under -- under

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 1    Federal Order 6 we have what's called -- what are
 2    called diversion limits?
 3         A.   Correct.
 4         Q.   Can you explain for the record what that --
 5    how that works, what that is under Federal Order 6?
 6         A.   Well, a handler is allowed a certain
 7    percentage of the milk delivered to pool distributing
 8    plants.  On Order 6 in this case, they're allowed to
 9    deliver or divert to nonpool plants and still
10    participate in the Federal Order 6 pool.  Those limits
11    are, I think, between 10 and 20 percent on Florida.
12         Q.   Okay.  And one of the circumstances during
13    September in which milk delivered to an Order 7 plant,
14    for instance, that would have otherwise been delivered
15    to Order 6 might become pool milk under Order 7 could
16    be in a circumstance where the diversion limit under
17    Order 6 for the pooling handler had been exceeded and
18    it could no longer be pooled because of the diversion
19    limit on Order 6?
20         A.   Theoretically.
21         Q.   Okay.  So that could happen.  We'll have
22    testimony about that; but I just -- under the way the
23    orders function, that's a possibility?
24         A.   Yes.
25         Q.   Okay.  Let me -- would you turn then to
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1 Exhibit 9? And I'm just interested in clarifying the

2 846,970 pound figure for the 10th of September. When

3 you say it's deliveries to the pool and nonpool plants,

4 what are the nonpool plants or -- that would be -- that

5 were included there?

6 Are they nonpool plants in the state of

7 Florida, nonpool plants outside the state of Florida,

8 or -- or what can you tell me more about those nonpool

9 deliveries?

10 A.   They could be nonpool plants located anywhere

11 relative -- nonpool plants relative to Federal Order 6

12 because this is Federal Order 6 producer milk.

13 Q.   Yes.

14 A.   They were delivered to either pool plants or

15 nonpool plants relative to Order 6.

16 Q.   Okay. And were they nonpool distributing

17 plants as distributing plants is in the title of the

18 exhibits, distributing plants only?

19 A.   No. I believe there were deliveries to both

20 the traditionals or manufacturing nonpool plants --

21 Q.   Okay.

22 A.   -- as well as to other distributing plants on

23 other orders.

24 Q.   So does the 846,970 pound number represent the

25 total deliveries on September 10th of producer milk in

1 Order 6 to all plants?

2   A.   Yes.

3   Q.   Okay. So on that day, that's all the milk

4 that got delivered anywhere for Order 6?

5   A.   Order 6 producer milk.

6   Q.   Order 6 producer milk. Okay. Thank you. Let

7 me turn to order -- to Exhibit 11 then. In Part 1, I

8 just want to clarify or be certain that I understood

9 your testimony in response to Ms. Taylor. The farm to

10 plant miles that were used in that equation were the --

11 were actual -- actual farm to plant miles that you

12 calculated by looking at the milk that was -- that was

13 delivered to plants outside the state of Florida, the

14 farm from which it originated and the plant

15 destination?

16   A.   Technically, it was the city of the farm, not

17 the actual farm address.

18   Q.   Okay.

19   A.   But in the emergency's nature, I went with the

20 generic farm city to actual plant --

21   Q.   Okay.

22   A.   -- destination.

23   Q.   And the volume represented milk that was

24 producer milk that is pooled on Order 6 during

25 September, correct?

          1   A.   The 6th through the 15th of September.

          2   Q.   During the 6th through the 15th of September.

          3   And if there happened to be transactions, as we

          4   referred to earlier in my questions, milk from farms

          5   that would ordinarily be pooled on Order 6 but got

          6   delivered to Order 7 pool plants and got pooled on

          7   Order 7, that would not be reflected in your

          8   calculations here, correct?

          9   A.   That is correct.

         10   Q.   Okay. Thank you. Then on No. 7 -- on No. 2,

         11   page (sic) 11, when you say actual location

         12   differentials observed, do you have a weighted average?

         13   Is there a weighted average number on that? I guess we

         14   could calculate it if we worked that from what you have

         15   here, but do you happen to know what it was?

         16   A.   It was approximately 3.50 or 3.60, as I

         17   recall.

         18   Q.   Okay. So it's roughly at $2 per a

         19   hundredweight difference in differential?

         20   A.   Yeah, but since I was able to get the actual,

         21   I used the actual.

         22   Q.   Correct.

         23   A.   The real -- the real weighted average for the

         24   state of Florida is the real guess there. Because I do

         25   not know the actual -- the intended destination --

1   Q.   Right.

2   A.   -- I went with the weighted average.

3   Q.   Okay. Of the?

4   A.   Actual deliveries of producer milk in the

5 state of Florida, and I examined --

6   Q.   For the month of September?

7   A.   I examined September, and then I examined all

8 of 2017 year-to-date, and they both were essentially

9 the same number at 557 per hundredweight.

10   Q.   Very good. I have just one -- one final

11 question, I think. With respect to -- going back to

12 Exhibit 6, the footnotes may clarify this, but the

13 difference between Other Uses and Farm Dumps is -- you

14 know, there are dumps in the footnote from Other Uses.

15 Can you just -- in other words, Other Uses includes

16 dumps, according to the first asterisk?

17   A.   The intention was to keep plant-related with

18 all of those items. So plant-related accidental loss,

19 plant-related animal feed, and plant-related dumps.

20   Q.   Okay. And that's all aggregated to the Other

21 Uses column?

22   A.   That's correct.

23   Q.   So if there were during -- during September

24 dumps of skim milk after the butterfat had been skimmed

25 and was used by a plant but the skim was -- there was

 1 no home for the skim milk, if there were dumps of that

 2 nature that occurred during September, would you --

 3 would they be reflected in these numbers under the

 4 Other Uses?

 5   A.   If they were claimed by the handler and they

 6 filed the appropriate notice of dumps, then yes, it

 7 would be included in Other Uses.

 8   Q.   Okay. So would they need to be -- if a -- if

 9 a plant does that, if it dumps skim milk after -- after

10 the skimming process, to pool that, do they have to

11 claim it, or would it be pooled because it's received

12 at the plant?

13   A.   The skimmed -- the dumped portion would have

14 to be claimed through a dump notice, through the Market

15 Administrator's office.

16   Q.   Okay. So if there were any of those in

17 September, the volumes are reflected in the -- in the

18 Other Uses column on Exhibit 6?

19   A.   That's correct.

20   Q.   Thank you very much, Mr. Duprey.

21   JUDGE JENSON: Does that conclude your

22   cross-examination of this witness?

23   MR. BESHORE: That does, Your Honor.

24   JUDGE JENSON: Thank you. Is there any other

25   cross-examination? Mr. Hill, any redirect?

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 1          MS. TAYLOR:  One -- this is Erin Taylor.  I
 2       have one question on Exhibit 6, Steven, just to
 3        add some clarity.
 4                    REDIRECT EXAMINATION
 5    BY MS. TAYLOR:
 6       Q.   The Other Uses category does not include farm
 7    dumps.  Why is that?
 8       A.   Generally, farm dumps are exceedingly rare.
 9    They were allowed in this -- September because of the
10    circumstances of the weather events.
11       Q.   Okay.  So that's why you could pool that out
12    into a different column?
13       A.   That's correct.
14       Q.   Okay.
15          MR. HILL:  I have no further questions,
16       Your Honor.
17          JUDGE JENSON:  Thank you, Mr. Hill.  Is there
18       any objection to this witness being excused?
19          MR. BESHORE:  No objection.
20          JUDGE JENSON:  None being heard, the witness
21       may be excused.
22          THE WITNESS:  Thank you.
23          JUDGE JENSON:  So please step down.  Mr. Hill,
24       are you prepared to call any further witnesses?
25          MR. HILL:  We have no further witnesses.
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1   JUDGE JENSON: All right. Mr. Beshore, are

2   you prepared to call your next -- your first

3   witness?

4   MR. BESHORE: Yes, we are, Your Honor. Thank

5   you. Our first witness is Mr. Jeffrey Sims, and

6   with -- I would like to request, with Your Honor's

7   permission, that Mr. Sims present his direct

8   testimony in two parts. He has two discrete sets

9   of testimony.

10   I'd like to present the first set first, have

11   him cross-examined, and then present the second

12   set. The first set relates to the proposed order

13   language itself, and the second set talks about

14   Lone Star and its operations and losses.

15   JUDGE JENSON: That's -- any objections?

16   MR. HILL: There are no objections,

17   Your Honor.

18   JUDGE JENSON: All right. You may proceed in

19   that manner.

20   MR. BESHORE: Okay. And as Mr. Sims is taking

21   the stand, I would like to ask the court reporter

22   and Your Honors, if I might, to have two exhibits

23   marked that relate to this testimony.

24   The first one is a 13-page exhibit titled

25   Cooperative Association Proponents Hurricane Cost

1   Emergency Hearing Testimony, and then it recites

2   the order and the date and the docket numbers.

3   JUDGE JENSON: All right. Would the court

4   reporter please mark Cooperative Association

5   Proponents Hurricane Cost Emergency Hearing

6   Testimony as Exhibit No. 13?

7   (Exhibit No. 13 was marked for

8   identification.)

9   MR. BESHORE: The second exhibit for this part

10   of Mr. Sims' testimony is titled Section 1006.60

11   Handler's Value of Milk. It is a three-page

12   document, and I would ask that that be marked as

13   Exhibit 14.

14   JUDGE JENSON: Would the court reporter please

15   mark a document, three-page document, entitled

16   1006.60 Handler's Value of Milk as Exhibit No. 14?

17   (Exhibit No. 14 was marked for

18   identification.)

19   JUDGE JENSON: Mr. Sims, would you please

20   state your name and spell your name for the

21   record?

22   THE WITNESS: Jeffrey Sims. J-e-f-f-r-e-y.

23   Sims, S-i-m-s.

24   JUDGE JENSON: Okay. Raise your right hand,

25   please.

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 1                    JEFFREY SIMS,
 2  having been first duly sworn by the Court, was examined
 3  and testified as follows:
 4            THE WITNESS:  I do.
 5            JUDGE JENSON:  Thank you, sir.  You may be
 6       seated.
 7                 DIRECT EXAMINATION
 8  BY MR. BESHORE:
 9       Q.   Thank you, Mr. Sims.  Before you proceed with
10  your prepared testimony, I'd like you to relate for the
11  record your professional, educational, and occupational
12  background.
13       A.   Yes.  I was raised on a farm in West Central
14  Alabama.  I attended Auburn University, where I
15  received a Bachelor's and Master's Degree in
16  Agricultural Economics.  Out of graduate school I
17  joined the Market Administrator's office in Atlanta,
18  Georgia, as an agricultural economist.
19            I worked my way up through the ranks in the
20  Market Administrator's office.  In 1991 I transferred
21  to the Market Administrator's office in Louisville,
22  Kentucky, as assistant Market Administrator, where I
23  remained for about five years.
24            In the middle of 1996 I left the Market
25  Administrator's office and became a consultant in the
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     1   dairy industry, working principally with dairy farmer

     2   cooperatives and dairy farmer cooperative marketing

     3   agencies in common largely in the Southeast and

     4   Southwest.

     5   I have experience in marketing agency

     6   administration, marketing agency pools, over order

     7   pricing, Federal milk order pricing, logistics, and

     8   economics.

     9   Q.   Okay. Have you testified previously at

    10   Federal milk order hearings?

    11   A.   I have.

    12   Q.   On how many occasions?

    13   A.   I don't think I can count that high. Several.

    14   Q.   Thank you. Did you testify and play a role in

    15   the 2004 hearings which Mr. Hill referred to which were

    16   the -- sometimes referred to as the hurricane --

    17   hurricane hearing which amended the Southeastern orders

    18   at that time?

    19   A.   Yes. The hearing -- the actual physical

    20   hearing was held in 2003. I was the -- the lead

    21   witness at that hearing and the author of the order

    22   language as it currently exists in Order 6 and, for

    23   that matter, Orders 5 and 7.

    24   Q.   Very good. With that background, would you

    25   present your hearing testimony relating to -- which is

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 1   Exhibit 13, please?

 2        A.   Yes.  My name is Jeffrey Sims.  I'm a

 3   consultant in the dairy industry.  My business address

 4   is 6680 North Alvernon Way, Tucson, Arizona 85718.  I'm

 5   here today -- I am here first today representing the

 6   cooperative associations who are noticed proponents of

 7   Proposal No. 1.

 8             Later I will provide testimony in regard to

 9   the particular impacts of the hurricane on one of the

10   proponent cooperatives.  On behalf of the proponents, I

11   will review the proposed order language and describe

12   the intent of each segment of the provisions and offer

13   commentary on how the proponents envision each

14   provision to work.

15             All of the amendments proposed today deal with

16   Section 0.60, Handler's Value of Milk, and simply

17   update, modify, and expand language already existing in

18   the Florida Order related to reimbursement of certain

19   milk marketing losses occurring during the hurricane

20   emergency which occurred in 2003.

21             In general, the Order language and the intent

22   of the language is fairly straightforward.  The basic

23   effect of the proposed provisions is for the Market

24   Administrator of the Florida Order to establish, or

25   perhaps more correctly, to re-establish a process by
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1   which handlers are reimbursed for certain defined

2   marketing losses directly attributable to extraordinary

3   milk movements and milk dispositions which were caused

4   by Hurricane Irma in September 2017.

5   These special short-term hurricane cost

6   reimbursements are funded through a temporary increase

7   in the minimum Class I prices as announced under the

8   Order. Once all the extraordinary costs as defined in

9   the Order language are paid, the increase in the Class

10   I price goes away.

11   I will now go through each subsection of the

12   Order language in the sequence listed in the

13   Notification of Hearing, which is the outline sequence

14   the Order language appears in Section 0.60.

15   The Order's current Section 60 -- .60(a) is

16   proposed to be amended first by updating the months

17   during which the temporary increase in Class I prices

18   is to be effective, presumably some range of sequential

19   months in calendar year 2018.

20   Proponents are not offering any modifications

21   to this proposal, saving -- save filling in the blank

22   regarding the adjustment to the butterfat price with

23   the value of 0.0009 dollars per pound.

24   The particular beginning and ending months of

25   the temporary increase in Class I prices have been left

1 blank in the submitted and noticed Order language

2 because the proponents could not foretell either how

3 quickly these amendments could be put in place and made

4 effective, nor could they foretell the dollar total of

5 extraordinary marketing costs which would be eligible

6 to be paid from the hurricane emergency Class I price

7 increase, nor could they foretell the actual monthly

8 volume of Class I milk pool on Order 6 subject to the

9 temporary increase in Class I prices.

10   As was the case in the 2004 hurricane

11 emergency provisions, the rate of increase in the

12 Class I price is proposed to be limited to 9 cents per

13 hundredweight per month. It should be noted that an

14 increase in the minimum Class I price of 9 cents per

15 hundredweight translates to less than 1 cent per gallon

16 on finished Class I products.

17   JUDGE McCARTNEY: Could you slow down just a

18   little bit for the court reporter?

19   THE WITNESS: Yes. I'm sorry.

20   JUDGE McCARTNEY: You know this by heart, and

21   this is her first time.

22   THE WITNESS: Sorry. Your Honor, that's the

23   first time people have accused me of speaking too

24   fast.

25   MR. BESHORE: You're under oath, Mr. Sims.

    1   THE WITNESS: It is almost the first time.

    2   JUDGE McCARTNEY: Well, let me clarify. So

    3   the court reporter does have your written copy of

    4   Exhibit No. 13, which is what you're referring to,

    5   but she can't look at it and type at the same

    6   time. So that -- that's the issue.

    7   THE WITNESS: Very well.

    8   JUDGE McCARTNEY: Thank you.

    9   THE WITNESS: I'll start with the paragraph --

   10   restart with the paragraph, As was the case. As

   11   was the case in the 2004 hurricane emergency

   12   provision, the rate of increase in the Class I

   13   price is proposed to be limited to 9 cents per

   14   hundredweight per month.

   15   It should be noted that an increase in the

   16   minimum Class I price of 9 cents per hundredweight

   17   translates to less than 1 cent per gallon on

   18   finished Class I products.

   19   Also akin to the 2004 provisions, the 9 cents

   20   per hundredweight monthly limit is applied in the

   21   form of a 9 cent per hundredweight increase in the

   22   Order's announced Class I skim milk price and an

   23   increase of 0.0009 dollars per pound to the

   24   announced Class I butterfat price.

   25   Further, as was applied in 2004, we would

1   expect that the Market Administrator will show a

2   separate line item on the monthly Announcement of

3   Advanced Class Prices and monthly Announcement of

4   Class Prices detailing the exact amount of the

5   monthly hurricane add-on to the Class I skim milk

6   and butterfat prices.

7   While the Secretary may very well be better

8   than the proponents at forecasting the total

9   dollars of extraordinary milk marketing losses

10   which would be reimbursable under the proposal --

11   proposed hurricane emergency language and

12   certainly may be better at forecasting the monthly

13   volume of Class I producer milk regulated under

14   the Order, some educated guessing of the total

15   dollars will need -- which will need to be

16   generated under the temporary increase in Class I

17   prices is necessary.

18   Consequently, the proposed Order language

19   leaves two ways for the Market Administrator to

20   balance the amount -- and there should be an

21   insertion of funds, I believe -- amount of funds

22   available for payment of hurricane costs with the

23   actual final amount of those costs.

24   After the Secretary has determined which

25   months during which the temporary increase in

1   Class I prices will apply, the Market

2   Administrator will begin announcing the temporary

3   Class I price increase for such month.

4   Presumably, the first, and some number of

5   subsequent months thereafter, the Class I price

6   will be announced including the maximum increase

7   of 9 cents per hundredweight.

8   Each of those initial months the Market

9   Administrator will then pay out to eligible

10   handlers verified and accumulated

11   hurricane-reimbursable costs up to the amount of

12   funds collected under the temporary Class I price

13   increase for that month.

14   For example, had the temporary Class I price

15   increase been in effect in October 2017, the

16   Market Administrator would have had funds

17   available to pay hurricane cost reimbursements

18   totaling $165,299.93, which was the total volume

19   of Class I producer milk in the Order 6 pool for

20   the month of October of 183,665,952 pounds,

21   multiplied by the maximum Class I price adjustment

22   rate of 9 cents per hundredweight.

23   The Market Administrator would then make

24   reimbursements of hurricane milk marketing costs

25   verified to date up to that monthly limit of

1   dollars available, uniformly prorating

2   reimbursements if the accumulated verified costs

3   exceeded the funds available to pay in that month.

4   This process would proceed each month through

5   the period the Secretary defined for the temporary

6   increase in the Class I price. Presuming the

7   total dollars which could be collected under the

8   temporary increase in Class I prices across all

9   months applicable exceeds the total dollars of

10   reimbursable hurricane costs, the Market

11   Administrator could reduce the 9 cents per

12   hundredweight increase in the final month down to

13   an amount equal to the expected yet un-reimbursed

14   costs.

15   Proponents recognize that due to the advanced

16   nature of announcing the Class I prices, there

17   exists in the last month of operation of the

18   hurricane provisions the possibility that there

19   could be some difference in the amount of money

20   available generated from the Class I price

21   increase and the final reimbursement of hurricane

22   costs.

23   If the additional Class I funds exceed the

24   final hurricane costs to be paid, the extra funds

25   will fall into the Order's monthly blend price.

1   Proponents have absolutely no interest in seeing

2   the Order blend price enhanced as a result of

3   these provisions and hope the Market Administrator

4   can match the expected Class I revenues with the

5   reimbursable marketing costs, and if an

6   enhancement to the blend occurs, it is, at most,

7   negligible; and by "negligible," we hope less than

8   1 cent -- a 1 cent per hundredweight increase in

9   the Order uniform price.

10   The alternate could also be true. The Market

11   Administrator collects in temporary Class I price

12   increases less than the total due to handlers to

13   reimburse hurricane marketing costs. In this

14   case, the Market Administrator would prorate

15   available funds to reimburse handlers pro rata to

16   the total dollars of reimbursable claims by such

17   handlers.

18   Proponents have every confidence that the

19   Market Administrator will attempt to collect funds

20   under the temporary Class I price increase as

21   nearly equal to the total reimbursable costs as

22   possible.

23   However, there exists a real possibility that

24   despite the best efforts to forecast revenues and

25   costs, differences in the end may exist and the

 1   proposed Order language gives the Market

 2   Administrator the tools necessary to balance any

 3   remaining differences.

 4   We have defined how the money to reimburse

 5   handlers for the extraordinary marketing costs is

 6   generated under Proposal No. 1. Now we will

 7   describe the extraordinary marketing costs

 8   proposed to be reimbursed.

 9   But first, a general comment on how these

10   extraordinary marketing costs came into being.

11   Witnesses to follow will describe in harrowing

12   detail the impact of the hurricane on people,

13   commerce, and logistics and the chaotic marketing

14   conditions that resulted.

15   To sum up the problem in the simplest of

16   terms, we can make these two overarching

17   observations: People can move to get out of the

18   way of the storm, while milk cows cannot move, and

19   milk processing plants can shut down their

20   receiving of raw milk and production of finished

21   dairy products in anticipation of severe weather,

22   but cows don't stop giving milk.

23   The extraordinary milk marketing costs

24   experienced by handlers of milk for which the

25   proponents seek reimbursement during Hurricane

1   Irma fall into four general categories. These

2   losses are for extra transportation costs; revenue

3   lost due to the location of plants to which

4   rerouted milk was delivered, as opposed to the

5   location of the Florida plants to which it would

6   have been delivered; costs on milk which had to be

7   dumped due to the lack of available plants or

8   because of logistical delays; and revenue losses

9   due to sales to unregulated manufacturing plants

10   at less than the announced Class prices.

11   For clarity, the losses ought to -- due to

12   dumping milk are separated into three

13   subcategories. After a review of the records and

14   information regarding the ways milk moved and was

15   disposed of during the Hurricane Irma emergency,

16   proponents are offering a few clarifying

17   modifications to the noticed language in Proposal

18   No. 1.

19   These small modifications are made in order to

20   make the proposed reimbursements fit with the

21   reality of milk movements and dispositions, as

22   well as adapting the proposal to the regulatory

23   impact on the pricing and pooling of the milk due

24   to certain Order 6 provisions.

25   Section 0.60 (g)(1) provides the proposed

1   reimbursement for extraordinary transportation

2   costs on milk moved during the Hurricane Irma

3   emergency. Proponents offer three modifications

4   to the noticed language.

5   The proposed modifications are: The insertion

6   of the word "additional" between the first and

7   second words of the subsection; delete the word

8   "producer" in the only place it appears; and

9   insert the phrase "and the additional cost of

10   transportation on loads of milk moved and then

11   dumped" at the end of the -- to be inserted at the

12   end of the introductory sentence.

13   The proposed language is now modified to read:

14   (g)(1) The additional cost of transportation on

15   loads of milk rerouted from pool distributing

16   plants to plants outside the state of Florida

17   which were rerouted as a result of Hurricane Irma,

18   and the additional cost of transportation on loads

19   of milk moved and then dumped.

20   The reimbursement of transportation costs

21   pursuant to this section shall be the actual

22   demonstrated cost of such transportation of bulk

23   milk or the miles of transportation on such loads

24   of bulk milk multiplied by $3.75 per loaded mile,

25   whichever is less.

1   The basic intent of the (g)(1) language is to

2   reimburse handlers who incurred extra costs of

3   hauling resulting from the hurricane when milk was

4   delivered to plants located outside the state of

5   Florida or moved from farms or from milk plants

6   and then dumped.

7   The insertion of the word "additional" is to

8   make clear that the proponents wish reimbursement

9   only when their total cost of moving milk during

10   Hurricane Irma exceeded what the handler would

11   have paid in hauling costs had there been no

12   hurricane disrupting the normal flow of milk.

13   After reviewing the data on milk movements, it

14   became clear that some milk was delivered to pool

15   plants fully regulated on other Orders. Much of

16   this milk was pooled as producer milk on such

17   other Orders and consequently would have been

18   excluded from receiving any reimbursement for

19   additional transportation because the milk was not

20   producer milk on Order 6.

21   Due to the reduced deliveries of milk to Order

22   6 pool distributing plants, since all of the Order

23   6 plants were closed at some point during the

24   hurricane emergency, allowable diversions to

25   nonpool plants became limited, and handlers were

1   unable to qualify milk by diversion off of Order

2   6.

3   The deletion of the word "producer" makes

4   clear that the milk which is -- which was rerouted

5   to plants outside of Florida can be eligible for

6   additional hauling cost reimbursement, even if the

7   milk was not producer milk on the Florida Order in

8   September.

9   Further review of the hurricane-induced milk

10   movements revealed that there were substantial

11   volumes of milk which were picked up at farms and

12   moved to some point and then dumped, or were

13   picked up at farms, delivered to a plant or

14   plants, the cream skimmed off, and the skim milk

15   was dumped.

16   The inclusion of the final phrase in the

17   opening sentence makes clear that any additional

18   hauling costs associated with the eventual dumping

19   of milk are eligible for transportation cost

20   reimbursement.

21   The (g)(1) language directs the Market

22   Administrator to use each handler's actual cost of

23   transportation when determining the additional

24   cost of transportation, if any, for reimbursement.

25   However, an upper limit of $3.75 per loaded mile

1   is imposed.

2   Based on the proponents' industry knowledge,

3    $3.75 per loaded mile should provide a reasonable

4   limit to the cost of transportation which could be

5   reimbursed.

6   There is one proposed modification to the

7   noticed language in .60(g)(2), and that is the

8   deletion of the word "producer." Just as was the

9   case described in regard to Subsection (g)(1),

10   this modification makes clear that losses on milk

11   rerouted to plants outside of Florida are eligible

12   for location loss reimbursement, even if the milk

13   was pooled on another Order.

14   As the plants located in Florida closed or

15   slowed their milk receiving in anticipation of the

16   hurricane, handlers of milk began seeking

17   alternative plant outlets for outside milk -- for

18   milk outside the state which were up and

19   operating.

20   A number of the proponents' milk was -- moved

21   milk to plants outside the state during the

22   hurricane period. Any plant outside the state of

23   Florida has an effective Class I differential

24   which is less than the Class I differential

25   applicable to any of the plants within Florida.

1   Consequently, handlers delivering to plants

2   located outside of Florida experienced a loss in

3   revenue versus a delivery to a plant located

4   within the state, whether the outside plants were

5   fully regulated on another Order or were

6   unregulated.

7   These location value losses represent a

8   significant loss to the handlers of milk making

9   such dispositions.

10   After additional review of the marketing data,

11   it became apparent that some marketers of milk did

12   not experience increase -- increases in the cost

13   of hauling but did -- did experience location

14   value losses.

15   It is the desire of the proponents that in

16   such a case, the Market Administrator would offset

17   any losses in location value by any achieved

18   savings on transportation costs. The

19   administrative result of this would be that on a

20   load-by-load basis, the Market Administrator

21   should ascertain whether there was a hauling cost

22   increase, a location loss, or both or neither.

23   If a handler on a load experienced a gain or

24   savings under one of these two cost reimbursement

25   items, the losses on the other items should be

1   reduced by the gain on the other. This avoids any

2   unwarranted payments and, in effect,

3   double-dipping.

4   The third kind of losses which occurred during

5   the hurricane -- during Hurricane Irma was dumped

6   milk. Witnesses to follow will describe the

7   conditions which led to milk having to be dumped.

8   It should be noted that dumping milk is, on a per

9   hundredweight basis, the most costly of the items

10   proposed to be reimbursed.

11   For clarity, proponents are asking for three

12   distinct types of dumped milk dispositions to be

13   eligible for reimbursement under Proposal No. 1,

14   and these are contained in Subsections (g)(3),

15   (g)(4), and (g)(5). The proponents offer no

16   modifications to the noticed language in this

17   subsection.

18   Dumped milk which is pooled on a handler's

19   Report of Receipts and Utilization is classified

20   in the lowest price class for the month, and in

21   September 2017, that was Class IV -- Roman numeral

22   IV. Dumped milk which is pooled would be

23   accounted for to the pool at the Class IV skim and

24   butterfat prices, and the handler pooling the milk

25   would receive payment from the producer settlement

1 fund at the difference between the announced

2 uniform skim milk and butterfat prices and the

3 Class IV skim milk and butterfat prices, on the

4 respective pounds of each component dumped.

5 However, dumped milk is, by definition, milk

6 which is not sold in commercial channels and,

7 therefore, handlers having to dump milk lost the

8 Class IV value on all of the skim milk and/or

9 butterfat they had to dump.

10 Dumping milk is always a last resort

11 disposition of milk, and proponents seek

12 reimbursement for these losses on milk which had

13 to be dumped due to Hurricane Irma. Additional

14 transportation costs associated with dumped milk

15 would be reimbursable as provided in Subsection

16 (g)(1), as previously discussed.

17 As an aftereffect of the hurricane, a number

18 of handlers have discovered that they dumped loads

19 of milk which did not at the time get included in

20 their September 2017 Report of Receipts and

21 Utilization. We ask the Market Administrator's --

22 and that should be singular possessive --

23 indulgence in allowing such handlers to revise

24 their Report of Receipts and Utilization so that

25 these handlers can receive settlement with the

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 1       Order 6 pool.

 2            The final marketing cost which is proposed to

 3       be reimbursable as an extraordinary marketing cost

 4       caused by Hurricane Irma is revenue lost when milk

 5       was sold to unregulated manufacturing plants at

 6       less than the announced Class prices.

 7            Reimbursement for these losses are provided in

 8       Subsection .60(g)(6).  Unlike Federal

 9       Order-regulated pool plants who must pay the

10       minimum Order announced class and uniform prices,

11       unregulated plants are free to pay whatever the

12       market will bear.

13            More correctly, they pay as little as the

14       market will bear.  In times of extreme shortages

15       of available processing capacity, like during a

16       hurricane, handlers desperate for a place to sell

17       their milk can be forced to accept a very deeply

18       discounted price for distressed milk.

19            These price discounts on milk sold to

20       unregulated manufacturing plants during Hurricane

21       Irma were substantial and represent a major

22       portion of the marketing losses experienced by

23       handlers during Hurricane Irma.

24            Proponents offer two modifications to the

25       noticed language in (g)(6), and these are:
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1   Replace the word "lowest" with the word

2   "announced," and insert the phrase "applicable to

3   the milk as classified by the Market

4   Administrator" after the words "class price."

5   The proposed (g)(6) language is now proposed

6   to read: "(6) The difference between the

7   announced class price applicable to the milk as

8   classified by the Market Administrator for the

9   month of September 2017 and the actual price

10   received for distress milk moved to nonpool plants

11   as a result of Hurricane Irma."

12   The purpose of this modification is to direct

13   the Market Administrator to calculate losses on

14   distressed milk sale -- distressed sales of milk

15   to unregulated plants at the true classification

16   of the milk, rather than presuming that all of the

17   milk sold at distressed prices was Class IV use.

18   It should be noted that the (g)(6) language as

19   noticed does not include any requirement that the

20   costs for potential reimbursement be limited to

21   producer milk. The modifications deleting the

22   word "producer" as previously discussed for (g)(1)

23   and (g)(2) harmonizes these provisions with the

24   noticed language in (g)(6).

25   The final Subsection 0.60(h) and (i) provide

1   the Market Administrator with the processes for

2   monthly payment of reimbursable costs, and the

3   proration of payments if a month's funds available

4   generated from the temporary increase in the

5   Class I price are insufficient to cover the

6   accumulated monthly claims, as we've previously

7   discussed.

8   This concludes our review of the Order

9   language on behalf of the noticed proponents. The

10   entire Order language as proposed to be modified

11   is included in Exhibit -- which I think has been

12   marked 14.

13   JUDGE McCARTNEY: Before we continue, I just

14   want to clarify Exhibit 13 and make sure everyone

15   has the correct copy of this important exhibit.

16   So the two exhibits to the court reporter, how was

17   that document identified?

18   MR. BESHORE: The -- it's a 13-page document

19   which is identified as Cooperative Association

20   Proponents Hurricane Cost Emergency Hearing

21   Testimony, Florida Federal Milk Marketing Order

22   No. 1006, 7 CFR Part 1006, December 12, 2017,

23   Tampa, Florida, Docket Nos. AMS-DA-17-0068 and

24   AO-18-0008, and that title and caption is on page

25   1 of Exhibit 13 before the testimony itself.

1   JUDGE McCARTNEY: All right. The reason that

2   I seek clarification for the record is, the judges

3   are having a difficult time locating that exhibit.

4   Do you have an extra copy for us?

5   THE WITNESS: They were -- I'm sorry,

6   Your Honors. They were put on your desk.

7   JUDGE McCARTNEY: They were? And, you know,

8   the mices have gotten them.

9   THE WITNESS: That's it.

10   JUDGE McCARTNEY: All right. I want to be

11   sure I have the right one.

12   THE WITNESS: No, no. I'm sorry. There is

13   another one that has the same one. Here it is.

14   Nope, that's the same one as this one.

15   JUDGE JENSON: Yes, we were given two of the

16   same thing.

17   THE WITNESS: Well --

18   JUDGE McCARTNEY: Off the record.

19   (Discussion off the record.)

20   JUDGE McCARTNEY: All right. Back on the

21   record.

22 BY MR. BESHORE:

23   Q.   Thank you. And just a few additional

24 questions, Mr. Sims. Just to pick up where you left

25 off and just to confirm or reconfirm, Exhibit -- the

1   three-page document that's been marked as Exhibit 14

2   now is the presentation of the proposed and requested

3   order amendment language with the modifications which

4   you have explained -- just explained in your direct

5   testimony, correct?

6   A.   That is correct.

7   Q.   Okay. Now, you have -- you've indicated,

8   you've testified that you were instrumental in the

9   prior hearing that occurred in 2003 that -- which

10   amendments were adopted in 2004 to the Southeast order

11   regarding the hurricanes?

12   A.   Yes.

13   Q.   Okay. One of the questions that came up in

14   that hearing I'd like you to, you know, address here

15   because it could come up, and that is, why is it that

16   the proponents are requesting regulatory relief for

17   these costs? Why can't they be recovered outside of

18   regulatory framework in the marketplace?

19   A.   The -- of course, the proponent cooperatives

20   have the -- at least the opportunity to charge over

21   Order prices, prices in excess of the Federal minimums

22   to their plant customers. However, there are real

23   limitations to the effectiveness of that method for

24   generating funds for use in the type we are proposing.

25   First off, when the Class I price increase is

 1   included in the Order language, there is absolute

 2   guarantee, if you will, that each handler of Class I

 3   milk will, indeed, pay that 9-cent increase.

 4   When left to the industry to charge those

 5   prices over and above, there is always the question of,

 6   Did everyone get charged, and did everyone get charged

 7   a lot? Under the -- under a regulatory scheme, under

 8   the Market Administrator's -- under the Federal Order,

 9   we have absolute surety across the entire industry that

10   all Class I handlers are treated exactly the same in

11   terms of their pricing.

12   On the flip side, there is no real process

13   available in this marketing area for, in essence,

14   re-pooling those reimbursable costs. As an example,

15   one of the cooperatives may be able to, indeed, charge

16   a -- an over order price to generate some additional

17   funds, and they might charge 9 cents, but that doesn't

18   mean that their costs are 9 cents.

19   If they have costs of, for them individually

20   that equal 10 cents, they're not going to be fully

21   reimbursed. Another cooperative handler who might be

22   able to charge 9 cents but had 7 cents in real cost,

23   reimbursable cost, they would receive a windfall gain.

24   They'd charge more than they really do under these

25   definitions.

1   Also, under the regulatory scheme, the costs

2   are transaction based. The Market Administrator has

3   every authority and every ability to determine

4   accurately which of these costs should be reimbursed

5   and to make sure that they are, indeed, reimbursable as

6   provided in the language.

7   Left to the industry on their own, there could

8   be differing definitions about that, how's that, about

9   what would be a reimbursable cost. The Market

10   Administrator will provide a surer and confident way of

11   making sure that those reimbursable costs are, indeed,

12   the costs that existed and are reimbursed equally and

13   equitably across the industry.

14   Q.   Okay. Thank you. And just to perhaps

15   elaborate a bit on the dynamics and the appropriateness

16   of these recoveries being handled through the market

17   order system, is the passing on of these costs to the

18   entire marketplace through the Class I price, why is

19   that an appropriate way for these costs to be

20   reimbursed?

21   A.   If you consider the way that Federal Orders

22   work and their intent and their operation, the -- if we

23   kind of separate the Class II, III, and IV prices from

24   Class I, Class II, III, and IV prices are largely --

25   they're generated by market activity, the wholesale

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 1   prices of the underlying products which these translate

 2   into Class II, III, and IV, and they're rather direct.

 3          You have a wholesale price and a series of

 4   formulas, and those drive Class II and III -- II, III,

 5   and IV prices.  Class I is a little different.  It

 6   carries a differential over and above the Class II,

 7   III, and IV prices; and that differential has a number

 8   of impacts and goals and objectives, I guess.

 9          One of them, of course, is to build a blend

10   price which is sufficient to attract a sufficient

11   quantity of milk for that marketing area.  Another is

12   to compensate producers, if you will, for carrying the

13   reserve necessary for the Class I marketplace.

14          We operate under the basic belief that in

15   order to have enough, you always have to have a little

16   too much.  The only way you can know you have enough is

17   to have a little bit too much, and so it is fair for

18   those who are carrying the little bit too much to share

19   like all those who are daily supplying Class I.

20          Now we hit -- and for the Class I prices to

21   generate those dollars to pay those -- compensate those

22   producers for carrying those reserves, in addition to

23   tracking the milk to the marketplace.

24          Then we get to a time like a hurricane,

25   particularly Hurricane Irma which is as bad as any of
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1 them and we have a point in the middle of the month of

2 September when every Class I plant was shut down, and

3 there was one day when they were all shut down, and

4 they all were shut down for various periods of time.

5   So we really don't have any Class I sales to

6 generate the Class I dollars to compensate the

7 producers for holding the reserve; and since they

8 didn't have any Class I sales, all the milk, if you

9 will, assigned or associated with this Order became

10 instantly a hundred percent reserve almost.

11   All the milk was waiting for Class I sales to

12 come back and had to sit and be parked someplace or put

13 on the ground, unfortunately, in anticipation of the

14 Class I demand coming back. So we have this ultimate

15 irony that we need the Class I dollars in the pool to

16 compensate handlers and producers for holding this

17 reserve but we don't have any Class I sales to generate

18 the dollars.

19   So I think -- believe it's appropriate to

20 maybe use hindsight and say, okay, we go into the

21 future and say that we know now what those costs were.

22 We know the -- that they weren't compensated because

23 the Class I sales faltered when the plants were closed.

24 So it's appropriate to then re -- to compensate those

25 handlers who did hold those reserves, who did dispose

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 1   of the milk during an emergency with Class I dollars.

 2       Q.    Thank you.   I have no further questions for

 3   you, Mr. Sims.   Do you have anything you would like to

 4   add at this point?

 5       A.    I think not.

 6       Q.    Thank you.

 7            MR. BESHORE:   I would move the admission of

 8        Exhibits 13 and 14 and conclude my direct

 9        examination and make Mr. Sims available for

10        cross-examination of Your Honors.

11            JUDGE JENSON:   Is there any objection to the

12        admission of Exhibit 13 or 14 into evidence?

13            MR. HILL:   No objection.

14            JUDGE JENSON:   There being none, Exhibits 13

15        and 14 are hereby admitted into evidence.  Now, as

16        I understand it, that was the first portion of

17        Mr. Sims' direct testimony?

18            MR. BESHORE:   That is correct.

19            JUDGE JENSON:   Is there any cross-examination

20        with respect to this first portion of Mr. Sims'

21        testimony?  Ms. Taylor.

22            JUDGE McCARTNEY:   I'm trying to ascertain when

23        an appropriate break would be.  Is now a good

24        time --

25            MS. TAYLOR:   Sure.
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1	JUDGE McCARTNEY: -- for us? And then 15
2	minutes and then we'll reconvene.
3	MR. HILL: That's fine, Your Honor.
4	JUDGE McCARTNEY: Any objections to that?
5	That works for everyone?
6	MR. BESHORE: That's good.
7	JUDGE McCARTNEY: Okay. 15 minutes, back to
8	the hearing room; and, of course, the witness
9	remains under oath.
10	(Brief recess was taken.)
11	JUDGE JENSON: Okay. We're back on the
12	record. The first portion of the direct
13	testimony -- of the direct examination of Mr. Sims
14	is concluded, and I've asked for anyone that wants
15	to cross-examine Mr. Sims on the first portion of
16	his direct examination.
17	CROSS-EXAMINATION
18	BY MS. TAYLOR:
19	Q. Good morning, Mr. Sims.
20	A. Good morning.
21	Q. This is Erin Taylor. I want to first thank
22	you for testifying today on behalf of the Department.
23	A. Certainly.
24	Q. If you will indulge me, I have questions on,
25	like, five different sheets paper, and you-all changed

1   your Order language, so now I have questions on old

2   Order language, so we're going to try to work through

3   it all.

4   Okay. I think, big picture, from the changes

5   you made today, is that you're requesting that -- to

6   get reimbursement for what would have been producer

7   milk on Federal Order 6 normally. So what remained on

8   Federal Order 6 is producer milk or perhaps milk that

9   went to a different Order and, because of diversion

10   limits, became producer milk on that Order?

11   A.   Precisely.

12   Q.   Okay. Let's see here. I want to work through

13   the Order language and just ask some technical

14   questions first.

15   A.   Yes.

16   Q.   So on paragraph A, you have the months blank,

17   and paragraph A is kind of how we raised the revenue to

18   pay out what's in G?

19   A.   Correct.

20   Q.   Okay. And the months are blank because

21   you-all are going to leave -- you would ask the

22   Department -- leave it up to the Department to

23   determine the range of months?

24   A.   Yes.

25   Q.   Would you like for the record to state whether

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 1   it would be perhaps a reasonable range that you

 2   would --

 3       A.   I'm --

 4       Q.   -- request?

 5       A.   Please repeat that question.  I don't think --

 6       Q.   Would you like for the record to state what

 7   may be a reasonable range?  Maybe four months, six

 8   months, 12 months?  I mean --

 9       A.   Six or seven probably --

10       Q.   Okay.

11       A.   -- would cover the costs, but we would ask the

12   Secretary's indulgence to make that range wide enough

13   to make sure that there's plenty of months to collect

14   enough money to pay the reimbursable costs.

15       Q.   Because you're not asking for the assessment

16   maybe to be different than what you've proposed?

17       A.   Correct.  We --

18       Q.   You want --

19       A.   The only way you can vary the dollars received

20   is by varying the months, the number of months, not

21   the -- or downward varying the 9 cents.  You can't

22   raise the 9 cents.

23       Q.   Yes.  Okay.  And speaking of the 9 cents, can

24   you explain why you think 9 cents is an appropriate

25   assessment?
```

        A.   First, that was the -- what the Department

approved in the 2004 provisions. I don't believe that

language has changed. 9 cents represents an increase

of less than 1 cent per gallon. 9 cents, you know,

it's not going to appreciably change anyone's

product -- processing patterns or a change appreciably

to the price alignment between Order 6 and Orders 5 and

7 to the north.

        9 cents is small -- is enough to generate some

money but not so much as to cause any kind of marketing

disruption.

        Q.   Okay. Thank you. For the payout period

starting in paragraph G, you have it for the periods of

September 6th through September 15th, and that's nine

days.

        A.   I believe it's 10.

        Q.   10 days. Thank you. Can you state why that

particular 10 days is appropriate?

        A.   Yes. Other witnesses will speak to that more

specifically; but in looking at the data -- and

particularly you can start -- look in the government's

document that describes distributing plant deliveries

by day, you can start seeing how plants are starting to

ramp down, if you will, and that -- and as plants ramp

down, the reserve gets bigger, and it's got to go

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1   someplace.
2           So in advance of the storm, plants started
3   reducing their receiving.  They started shutting down,
4   not processing.  So there was a period of time there
5   when Class I sales were reduced, milk production
6   continued.  So we limited this to the number of days
7   where basically these unusual movements and unusual
8   carrying of this outrageous, almost, reserve
9   requirement were fitting.
10      Q.   Okay.  And when you refer to the government's
11  docket -- document, I assume -- or should I assume that
12  that is Exhibit No. 9, Deliveries to Federal Order 6
13  Distributing Plants By Day, and from that you're saying
14  you can look at the deliveries on a day and notice the
15  sharp decline in deliveries when the hurricane
16  occurred?
17      A.   Yes.
18      Q.   Okay.  And in all of these things, the
19  reimbursement for -- the reimbursement for
20  transportation costs, is that on just bulk milk or also
21  packaged milk?  I'm asking.  I'm -- it just says "milk"
22  now.
23      A.   Bulk.  I believe our intent is bulk.
24      Q.   Okay.  On (g)(2) --
25      A.   Excuse me.  At the very end of paragraph 1, it
```

1 defines transportation on such loads of bulk milk.

2   Q.   Okay. Thank you very much. And I'll go back

3 to -- I'll stick with paragraph 1 now. The 3.75 per

4 loaded mile, in your testimony, you said based on your

5 industry knowledge, you know, we -- that's why we

6 picked 3.75. Could you expand a little bit on the

7 industry knowledge from which you made that assumption?

8   A.   Yes. All of the participants and -- or the

9 proponents are well, well versed in what it costs to

10 move milk. They all, either in their own operations or

11 by using contract, outside contract business haulers,

12 pay for hauling. It's industry convention that

13 producers or their cooperatives pay for the cost of

14 hauling from the farm to the first plant of receipt.

15   We regularly look at those costs and know at

16 any point in time pretty good what the going rate is.

17 Our best belief is that 3.75, that represents the upper

18 limit of a reasonable hauling price in, you know, cost

19 per loaded mile. 3.75 should be -- you shouldn't have

20 very many loads hauled at more than 3.75 per loaded

21 mile.

22   Q.   Okay. On paragraph 2, which is providing

23 transportation cost reimbursement for milk moving

24 outside of Florida --

25   A.   I'm sorry?

```
 1        Q.    Paragraph (g)(2) --
 2        A.    Yes.
 3        Q.    And that, I think, is the --
 4        A.    Location loss.  (g)(2) is location loss on
 5   milk delivery outside of Florida.
 6        Q.    Yes.  Sorry.  I'm looking at the wrong
 7   paragraph.  It's one of those days.  Okay.  Yes.  I'm
 8   at the right one.  I have two different versions;
 9   that's my problem right now.  The paragraph (g)(2),
10   that is the one I want to talk about, and in it you
11   refer to part 1000.52.  Did you also mean to include
12   1006.52?
13        A.    Yes.
14        Q.    So the location value would be whatever is in
15   part 1000 plus the adjustment to Class I differential
16   as found in Parts 1006, 1005, 1007?
17        A.    The additional Class I adjustment, which is
18   special to Orders 5, 6, and 7, should be included when
19   determining the effective Class I differential at the
20   Order 6 plant --
21        Q.    Okay.
22        A.    -- and the plant, if it's pooled -- located in
23   one of those three Orders for determining the location
24   adjustment at the plant to which it was delivered.
25        Q.    So on both sides?
```

 1   A.   Correct.

 2   Q.   Okay. Paragraph 3 is on farm dumps, and

 3 essentially I believe, as you read your testimony, if

 4 the milk had already been pooled on the Federal Order,

 5 it's already received a draw from whatever the blend

 6 price was to the lowest price class?

 7   A.   If it was pooled, yes.

 8   Q.   And so you're asking here to also -- to

 9 then -- and under this amendment would get the Class IV

10 value to be made whole?

11   A.   Yes.

12   Q.   Since you didn't sell it in the market?

13   A.   Yes.

14   Q.   Under paragraph (g)(5), which is

15 reimbursements for skim dumps, a similar assumption

16 then, that the milk moved from the farm to the plant

17 was skimmed. The fat was sold already at some value in

18 the market, and you dumped the skim, and so you're

19 asking for the Class IV skim value for that dumped

20 milk?

21   A.   Correct.

22   Q.   Class VI (sic) on the distressed milk, you

23 changed the Order language from what was in the hearing

24 notice to what you proposed today from the lowest class

25 price to whatever the announced class was -- price was

 1 for the applicable -- for that load?

 2   A.   Yes.

 3   Q.   Okay. So if the milk got, instead of -- if

 4 the milk goes to a cheese plant, it would get the

 5 Class III value?

 6   A.   The Market Administrator would compare the

 7 actual amount received for the milk to the Class III

 8 price in the case of a, if it went to a cheese plant,

 9 as opposed to the initial Order -- the original Order

10 language, which presumed it was all Class IV.

11   So this makes everyone work out the same.

12 Whatever the real classification was, whether II, III,

13 or IV, they will settle back to the actual class price.

14 Then there's no unusual loss or gain versus the

15 presumed Class IV.

16   Q.   Okay. And so we documented -- there could

17 be -- obviously documentation has to go to the Market

18 Administrator to demonstrate what they actually

19 received?

20   A.   In every one of these proposals for

21 reimbursement, the -- obviously the onus will be on the

22 handler to prove to the Market Administrator's

23 satisfaction about things like where the milk would

24 have gone, where it actually went, what it received

25 when it got there. All those things would be the

1 responsibility of the requesting handler to prove up

2 their request.

3   Q.   Okay. Would your change today on milk -- milk

4 could be reimbursed for transportation costs, not just

5 producer milk?

6   A.   Yes.

7   Q.   How about what are the implications for that

8 for milk that becomes pooled on the Southeast order and

9 would be -- and perhaps receive transportation credits

10 from that Order because as producer milk on that Order

11 they would be eligible?

12   A.   It would only be -- I'm sorry. Please repeat

13 the question and the assumption.

14   Q.   Sure. So the Southeast order and the

15 Appalachian order have transportation credit provisions

16 which provide for milk coming from outside of the

17 Orders into the Orders?

18   A.   Milk originating outside the marketing area,

19 yes.

20   Q.   Yes. And September is a month when those

21 transportation credits are applicable in those -- in

22 the Southeast and Appalachian orders?

23   A.   Correct.

24   Q.   So if milk, because of moving it from Florida

25 into, say, the Southeast order, so it's moving from

1   outside the Southeast marketing area to inside the

2   Southeast marketing area, could it have received a

3   transportation credit in September?

4   A.   If the handler who made that movement

5   requested a transportation credit, it could have been

6   paid. I will say unequivocally that the proponents

7   have absolutely no interest in double-dipping. If

8   the -- if the -- if a transportation credit under

9   Orders 5 or 7 was requested, then the handler should be

10 asked whether they want the reimbursement under the

11 Order 6 hurricane emergency provisions or want the

12 transportation credit but not both.

13   Q.   So one or the other, not both, and not netting

14 the difference?

15   A.   Well, if you decline one and take the other,

16 don't you get to the same answer as netting them?

17   Q.   Well, they probably have already received the

18 one.

19   A.   Well, then that -- the math works out that

20 they would only get one --

21   Q.   Okay.

22   A.   -- whichever one they felt would suit them

23 better, but they should not get both.

24   Q.   Okay. In the 2003 and '4 emergency hearing we

25 had down here, those excess collections, so in your

 1 proposal now, if money is left over in the last month,

 2 you propose that it would go into the market wide pool

 3 essentially and go into the producer's blend price; is

 4 that correct?

 5   A.   Yes.

 6   Q.   In the 2003 and '4 hearing, that money was

 7 actually returned to handlers and did not go to the

 8 pool. Is there a reason for that difference?

 9   A.   The proponents would have absolutely no --

10 would not be opposed to that process in the final month

11 if there are excess funds collected under the Class I

12 increase over and above what's necessary to reimburse

13 these costs. We would have absolutely no opposition

14 whatsoever to returning those pro rata to the handlers

15 that paid into the fund.

16   Q.   Okay. And would the proponents object if

17 the -- if the Market Administrator gets all the claims

18 in and, say, there's just a few really small ones --

19 I'm not quite sure how to define "small," but pretty

20 de minimis ones -- would you object to just letting the

21 Market Administrator pay those out in full and then

22 prorating the rest for administrative ease?

23   A.   We -- we would trust that the Market

24 Administrator would have the proper and appropriate

25 definition of de minimis. Therefore, we would have no

1 objection to that.

2   Q.   Okay. So I want to -- let me go back here.

3 Bear with me for a minute. I wrote it on the top of

4 some page. I just have to find the page.

5   JUDGE McCARTNEY: Do you need a few minutes

6   off the record, counsel?

7   MS. TAYLOR: No. I've got it. Here we go.

8 BY MS. TAYLOR:

9   Q.   On (g)(1) and 2, so this is the changes

10 you-all made to the language that allowed for --

11 essentially you removed the reference to producer, and

12 it deals with transportation costs and location values.

13   A.   Yes.

14   Q.   And what I gathered from what you want is

15 essentially the Market Administrator can look at

16 everything and net everything out into one final

17 number?

18   A.   Yes.

19   Q.   So they would look at actual transportation

20 costs versus what would normally be transportation

21 costs from documentation that was provided, determine

22 whether or not there would be a payout --

23   A.   Yes.

24   Q.   -- or not?

25   A.   I can say this. There will be some additional

1   testimony regarding that very kind of example shortly.

2   Q.   Okay. Maybe I'll hold my questions for that.

3   So your proposal essentially looks to reimburse cost

4   almost at a hundred percent of whatever the expenses

5   were capped at for transportation 3.75; is that

6   correct?

7   A.   Yes.

8   Q.   Can you elaborate why that's appropriate and

9   why, given that we do minimum order pricing and we are

10   adding a cost -- well, minimal, still a cost to

11   consumers, that's appropriate?

12   A.   This is an extraordinary case; and given that

13   every one of these transactions, save perhaps the

14   dumping of milk, and the dumping of milk can take two

15   or three -- or three different methods that we have

16   described in the order language, dumped at the farm,

17   picked up at the farm and then moved and dumped, taken

18   to a plant, the butterfat skimmed off and the skim milk

19   dumped, all these handlers are going to experience

20   different costs.

21   Those -- other than the skim milk price on

22   Class IV, they -- all these things can be different

23   handler to handler to handler; and so equity would

24   require that we use, to the best of our knowledge or

25   the best of our belief, the actual numbers so that

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 1   there are no unintended windfall gains or unintended

 2   failures to reimburse.

 3            Someone could get reimbursed a hundred

 4   percent; someone might not if we put some sort of cap

 5   on it, other than the mileage cap.

 6       Q.   Okay.  And speaking of the mileage cap, you

 7   put a cap on the rate, but you didn't put a cap on the

 8   miles?

 9       A.   Correct.

10       Q.   Can you explain why we shouldn't put a cap on

11   the miles?  Is it the same logic, I suppose?

12       A.   Yes.  No one is going to move milk one mile

13   farther than they really have to; and obviously when

14   they -- during this chaotic disorderly period, people

15   were scrambling to find anyplace they could.  They

16   really weren't in a position of picking and choosing

17   their places to take milk.  So if it had to move a long

18   way, it had to move a long way.

19       Q.   Okay.  You changed the Order language on

20   dumps -- I believe it was dumps -- to allow for,

21   perhaps, milk that has not yet been reported as dumped

22   to still qualify for reimbursement; is that correct?

23       A.   We did not alter the language.  We simply have

24   found that at least a couple of the handlers had milk

25   which was dumped at the farm but did not report it.
```

1 So -- and probably because they weren't aware they

2 could and pool it. So our -- we simply -- a matter of

3 commentary that it would, in that case, if a handler

4 was in that circumstance, perhaps the Market

5 Administrator could see it in their wisdom to allow

6 someone to revise their Reports of Receipts and

7 Utilization and pool farm dump milk, in essence, on

8 audit; but we haven't -- we did not change the language

9 to handle that, per se.

10   It's just a matter of allowing a handler to

11 revise their report such that they could now pool it

12 after the fact, but we haven't -- that's not addressed

13 specifically in the Order language.

14   Q. Okay. Okay. So that's milk that still

15 probably hasn't been reported to the Market

16 Administrator as dump -- dump milk. You were supposed

17 to file separate information --

18   A. Yes.

19   Q. -- to let the MA know that that's what's

20 happened?

21   A. Yes.

22   Q. And so the MA still probably hasn't been

23 notified of those particular loads?

24   A. I would say that's -- there's some likelihood

25 they have not been notified, yes.

1   Q.   Okay. And just to note a change from what was

2 in the hearing notice from your proposed language on

3 transportation costs, you are just looking to reimburse

4 for expenses outside of what would have been normal?

5 Whereas, I think in the hearing notice, it just

6 reimbursed -- it would have reimbursed for whatever

7 that transportation expense was?

8   A.   Yes. Our intent was absolutely that only

9 additional costs would be reimbursed. If a handler

10 moved -- was fortunate enough to move to find a plant

11 to take their milk that was 50 miles away when they

12 normally would haul 125 miles, they shouldn't be

13 reimbursed 125 miles when they, in fact, saved hauling.

14   So the Market Administrator should look, in

15 essence, load by load or milk shed by milk shed,

16 handler by handler, and determine where the milk would

17 have gone and then only reimburse any additional miles

18 that would have traveled; and, if the handler saved

19 money, had a shorter haul, to use that to offset that

20 gain against any location losses which might occur and

21 be provided for in (g)(2).

22   Q.   A bigger picture question. Excuse me. What

23 happens if -- what would happen if the Department

24 doesn't grant this proposal?

25   A.   Those producers and handlers which experienced

 1 these losses -- and they are real -- would have to eat

 2 them. They've already eaten them. This was an

 3 extraordinary period. We -- none -- I've been in this

 4 industry a long time, and I can't remember ever a whole

 5 state shutting down all their plants. That's just

 6 unheard of.

 7   Those costs, like I said, are real. They're

 8 substantial. This was recognized as a -- an emergency

 9 at the time. The Market Administrator sanctioned farm

10 dumps, which are unusual, according to Mr. Duprey's --

11 in fact, almost unheard of in his testimony, and there

12 was substantial ones of them.

13   So those costs would be borne by the producers

14 generally and, to a lesser extent, proprietary handlers

15 who had some of these costs. They wouldn't be borne by

16 the consumers who actually really needed to be paying

17 for the cost of carrying these reserves at a chaotic

18 time. The costs would be applied to the wrong people.

19   It's not -- the producers did what they had to

20 do, and now is the time to say, Okay, consumers, you

21 benefited, you should have to pay your little tiny

22 share of this; and, you know, there's a lot of costs

23 that are not included in here obviously.

24   So we believe that these are limited, we

25 believe they're fair, and that the costs would be

1 apportioned properly to who received the benefit.

2   Q.   Okay. And one last question. Although costs

3 are being reimbursed back to the handlers, is it true,

4 in the Florida market most of the milk is actually

5 pooled by the cooperative handlers, so the money would

6 go back to the producer in that way?

7   A.   In general, yes.

8   Q.   In general?

9   A.   Yes.

10   Q.   One more question. So paragraph (g)(6) was

11 changed to include milk that is not producer milk. How

12 does the Market Administrator get a classification on

13 that nonpool milk in order to -- so you changed

14 paragraph -- you amended paragraph (g)(6), which -- to

15 include milk that is not producer milk?

16   A.   No, we did not change that paragraph. The

17 initial -- the original Order language specified milk,

18 not producer milk. We changed 1 and 2, and that

19 harmonized with the provision in 6, which it originally

20 said milk.

21   Q.   Okay. So in -- (g)(6) is on distress milk?

22   A.   Yes.

23   Q.   Okay. So if the milk goes to a nonpool plant

24 because it's -- hold on for one second. Okay. So

25 yeah. In your testimony on page 12, it talks about --

1 you summarized what you previously stated, that you did

2 amend (g)(1) and (g)(2) to be for milk, not just

3 producer milk?

4   A.   Correct.

5   Q.   Which makes it the same as paragraph (g)(6)?

6   A.   Yes.

7   Q.   Okay. So for that milk, if it's not producer

8 milk on the Federal Order, how will the MA determine

9 the appropriate classification because we audit

10 producer milk?

11   A.   There's -- the same audit procedures and the

12 same classification provisions would apply. We would

13 ask the Market Administrator to determine a

14 classification as if it were producer milk. If the

15 milk somehow was not producer milk and was delivered to

16 a nonpool plant, determine the classification in the

17 same manner as the Market Administrator would determine

18 had it been producer milk.

19   The co-op, the handlers can certainly prove

20 the movement. They can prove the delivery. They can

21 prove the amount that they received when they sold the

22 milk. The classification would be a generally fairly

23 easy process thereafter.

24   Let me add just something to that statement.

25 I suspect that the vast majority of the plants to which

```
 1   milk was delivered and would be reimbursable under G

 2   may have received already producer milk under one or

 3   more orders, and that milk -- the use of those -- that

 4   milk in those plants would be known to the market

 5   administrators.

 6        Q.   Okay.  Essentially they would have gone to a

 7   plant that would have been audited --

 8        A.   Yes.

 9        Q.   -- by somebody else?

10        A.   Yes.

11        Q.   Okay.  And lastly -- we might have covered it,

12   but I feel like it's been a long morning already, so

13   let me re-ask.  Milk that is not producer milk on

14   Federal Order 6 but is producer milk on, say, 5 or 7

15   got a pool draw.  So we -- you would like the Market

16   Administrator to take that draw into account when

17   determining reimbursement for any value?

18        A.   Our proposal simply says that if it were

19   delivered to -- okay.  Let's use an example, an easy

20   one.  Milk which normally is -- milk produced in

21   South Carolina, which normally goes to one of the three

22   or four plants located in the base zone of the Florida

23   order, which is the 5.40 differential zone, Tampa,

24   Orlando, Winter Haven, et cetera, normally would flow

25   south to a 5.40 zone.
```

1 　　　　During the hurricane, it moved its -- it moved

2 north to find a home back to one of the pool

3 distributing plants in the Atlanta Metro area, a --

4 which is a 3.60 effective Class I differential. All

5 we're asking is that the reimbursable cost would be the

6 difference between the 5.40, which it would have

7 received had it been delivered to Orlando, Tampa,

8 et cetera, versus the 3.80 effective price that it

9 delivered based on delivery to the Atlanta Metro area.

10 　　Q.　　Okay. I believe that's it for the Department.

11 Thank you, Mr. Sims.

12 　　A.　　Thank you.

13 　　　　JUDGE JENSON: Does that conclude your

14 　　cross-examination of this witness with respect to

15 　　Part 1 of his direct testimony?

16 　　　　MS. TAYLOR: It does.

17 　　　　JUDGE JENSON: Is there any other

18 　　cross-examination? Any redirect examination?

19 　　　　　　　　REDIRECT EXAMINATION

20 BY MR. BESHORE:

21 　　Q.　　I have just one question on redirect, and this

22 is with respect to the last or nearly the last subject

23 of Ms. Taylor's cross-examination, the ability of the

24 Market Administrator to obtain the correct

25 classification on milk, that it was not pooled under

   1   Order 6 during this period.

   2   Is it -- first of all, is it your

   3   understanding, Mr. Sims, that basically all of the

   4   milk, other than dumps that have not been reported, all

   5   of the milk that was transported for which

   6   transportation costs and/or -- and/or distressed values

   7   might be requested under the proposal, all of it is

   8   either pooled on Order 6 or Order 7?

   9   A.   Perhaps Order 5 also.

  10   Q.   Or Order 5?

  11   A.   My suspicion is that it represents the vast,

  12   vast majority of it. A few loads might not have gotten

  13   pooled in anyplace, delivered to an unregulated

  14   manufacturing plant and not pooled on any of those

  15   orders, but it would be my belief that the Market

  16   Administrator would not have any particular problem

  17   determining the classification on that milk.

  18   Q.   Okay. That's all I have on redirect for

  19   Mr. Sims, and we would then go to his second set.

  20   JUDGE JENSON: All right. You may proceed

  21   with the second part of direct examination of

  22   Mr. Sims.

  23   MS. TAYLOR: Can we go off the record for a

  24   second?

  25   JUDGE McCARTNEY: Off the record.

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 1                  (Discussion off the record.)
 2                  DIRECT EXAMINATION
 3  BY MR. BESHORE:
 4     Q.    Mr. Sims, do you have -- well, I've asked and
 5  I think we did this off the record -- make sure it's on
 6  the record -- that we mark as Exhibit 15, an eight-page
 7  document which is titled on page 1 Lone Star Milk
 8  Producers, Inc., Hurricane Cost Emergency Hearing
 9  Testimony, and then the caption, date, place, and
10  docket numbers.  I'd ask that that be marked as exhibit
11  15, eight pages.
12          JUDGE JENSON:  Court reporter, would you mark
13       the exhibit called Lone Star Milk Producers, Inc.,
14       Hurricane Cost Emergency Hearing Testimony,
15       Florida Federal Milk Marketing Order No. 1006 as
16       Exhibit 15?
17          (Exhibit No. 15 was marked for
18  identification.)
19          MR. BESHORE:  Thank you Your Honor.  And then
20       I'd ask that a three-page document titled Lone
21       Star Milk Producers, Inc., Calculation of
22       Marketing Losses on Rerouted Movements of Milk,
23       September 6 through September 15, 2017, Hurricane
24       Irma, three pages, be marked as Exhibit 16.
25          JUDGE JENSON:  And I'd ask the court reporter
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1   to mark the document -- the three-page document

2   titled Lone Star Milk Producers, Inc., Calculation

3   of Marketing Losses on Rerouted Movement of Milk

4   as Exhibit 16.

5   (Exhibit No. 16 was marked for

6 identification.)

7   MR. BESHORE: Thank you, Your Honor.

8 BY MR. BESHORE:

9   Q.   Mr. Sims, is Exhibit 16 the testimony that you

10 are prepared to present on behalf of Lone Star Milk

11 Producers, Inc.?

12   A.   It is.

13   Q.   Would you please proceed with that testimony?

14   A.   I'm here today representing Lone Star Milk

15 Producers, Incorporated, a Capper-Volstead cooperative

16 association qualified to market milk on Federal Milk

17 Marketing Orders and a listed proponent of Proposal

18 No. 1 as identified in the Notification of Hearing.

19   Lone Star markets milk of its producer members

20 every month on the Florida Milk Marketing

21 Order No. 1006 and also the Southeast Milk Marketing

22 Order No. 1007 and the Southwest Milk Marketing Order

23 No. 1126.

24   Lone Star Milk Producers, Inc., is here today

25 to provide testimony in support of Proposal No. 1 as

1   listed in the Notice of Hearing and, as proposed to be

2   modified, a request to install temporary emergency

3   provisions in the Florida Federal Milk Marketing Order

4   which would offer reimbursement to handlers of milk

5   regulated under the Order who experienced certain

6   defined extraordinary milk marketing costs before,

7   during, and immediately after Hurricane Irma in

8   September 2017.

9   Along with the other listed proponents, Lone

10   Star thanks the Secretary for holding this hearing and

11   considering the temporary installation in Order 6 of a

12   fair process for apportioning costs and reimbursing

13   milk marketing losses incurred at a time of severe

14   stress due to Hurricane Irma.

15   Lone Star will not overburden this proceeding

16   with a detailed description of the day-to-day and

17   hour-to-hour types and examples of chaos and unruly

18   marketing of milk which existed as Hurricane Irma moved

19   through Florida and Georgia.

20   Suffice it to say that Lone Star experienced

21   many of the same kinds of stresses and losses that will

22   be described by later witnesses in this hearing, and

23   that Lone Star truly believes that disorderly marketing

24   conditions existed during the period of time that

25   Hurricane Irma moved through and impacted the marketing

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 1   of milk in the area.

 2             Lone Star is most likely, in terms of volume

 3   of milk marketed, one of the smallest marketers of milk

 4   on the Florida Order represented here today.  It may

 5   also be true that simply in terms of total dollars lost

 6   as a result of the hurricane, Lone Star's losses may be

 7   also on the lower end of the scale.

 8             However, on a per hundredweight basis of the

 9   milk marketed on the Order, Lone Star's members had

10   their pay prices significantly impacted due to the

11   devastating extra costs associated with rerouting milk

12   during the Hurricane Irma disaster.

13             Exhibit 16 shows the extraordinary losses

14   incurred by Lone Star as a result of Hurricane Irma.

15   In compiling these data, Lone Star actually had an easy

16   time identifying the milk marketing losses caused by

17   the hurricane.

18             In the month of September, a traditional low

19   point in the Florida Order milk shed's annual milk

20   production seasonal cycle, 100 percent of Lone Star's

21   Federal Order 6 milk would have been delivered to its

22   only pool distributing plant customer in Order 6, the

23   Borden Dairy Company plant located in Winter Haven,

24   Florida.

25             Consequently, any milk movement to an
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 1 alternate plant location outside of Florida during the

 2 hurricane emergency period of September 6 through 15

 3 was directly attributable to the hurricane. There was

 4 no need to make any kind of judgment calls as to where

 5 a particular load of milk might have gone but for the

 6 hurricane; it would have gone to Winter Haven.

 7   JUDGE McCARTNEY: Mr. Sims, can I ask you to

 8   slow down just a little bit?

 9   THE WITNESS: All of Lone Star's member milk

10   pooled on the Florida Order is produced within the

11   state of Georgia; and, as we mentioned, the milk

12   would ordinarily in September all be delivered to

13   its one Order 6 plant customer.

14   Accordingly, Lone Star has excellent data

15   supporting the hauling costs that would have been

16   paid had the milk been delivered to Winter Haven

17   and the hauling costs which were actually paid for

18   delivery of the milk rerouted to the various

19   alternate locations as a result of the hurricane.

20   Because of the location of Lone Star's milk

21   supply dedicated to the Florida Order and the

22   location of the alternate plants to which

23   delivered instead of Winter Haven, Lone Star did

24   not experience an overall increase in milk hauling

25   cost on the milk which was rerouted as a result of

1   the hurricane.

2   To be honest, in total, Lone Star paid less

3   for hauling on the milk rerouted to the

4   alternative locations than it would have paid if

5   the milk had been delivered to Winter Haven. In

6   fact, on the volume of milk rerouted to the

7   alternative plant locations, Lone Star paid about

8   66 cents per hundredweight less than it would have

9   paid had the milk all been delivered as typical.

10   Consequently, Lone Star does not believe it is

11   due reimbursement for its extraordinary hauling

12   costs, because Lone Star didn't, in total,

13   experience a net increase in its cost of milk

14   hauling on the rerouted milk.

15   Getting money from the proposed increase in

16   Class I prices when Lone Star did not experience

17   an increase in hauling costs would create a

18   windfall gain, and that wouldn't be right. Lone

19   Star, like all the marketers of milk here today,

20   is seeking only the justifiable reimbursement of

21   their actual identifiable net losses; no more, no

22   less.

23   This is not to say that Lone Star experienced

24   no marketing losses as a result of Hurricane Irma.

25   Lone Star most certainly did have marketing

1   losses. Lone Star's marketing losses, at least as

2   defined and proposed for reimbursement in this

3   proceeding, include losses in the location value

4   of milk.

5   Lone Star's location losses on its hurricane

6   induced rerouted milk exceed the savings it

7   experienced in hauling and seeks only to be

8   reimbursed to the extent that the location losses

9   are greater than the hauling savings.

10   In order words, if Proposal No. 1, as

11   modified, is adopted by the Secretary, we support

12   the idea that the Market Administrator should

13   offset Lone Star's location losses by its savings

14   on hauling. To ask for full reimbursement of the

15   location losses without offsetting the hauling

16   savings would result in an undeserved gain, and

17   Lone Star does not think that is right or fair.

18   Lone Star, therefore, supports the clarifying

19   modification offered to Proposal No. 1 as

20   previously detailed at this hearing, adding the

21   word "additional" to the language in Section .60,

22   paragraph G, subparagraph 1, making it clear that

23   any hauling cost savings experienced by a handler

24   on a rerouted load should be applied against

25   location losses claimed by such handler in Section

1   .60, paragraph G, subparagraph 2.

2   As can be seen from Exhibit 16, Lone Star

3   delivered 13 loads of milk to locations outside of

4   Florida during the September 6 to 15 period,

5   totaling approximately 621,000 pounds of milk.

6   During the hurricane emergency period, milk was

7   delivered to alternative plants fully regulated by

8   other Orders and located outside of Florida in

9   Lafayette, Louisiana; Braselton, Georgia; and

10   Spartanburg, South Carolina, as well as

11   unregulated manufacturing plants located outside

12   of Florida.

13   All of these plants have an effective Class I

14   differential which is less than Winter Haven. The

15   weighted average Class I differential of all the

16   alternative plants outside of Florida to which

17   Lone Star delivered rerouted milk during the

18   hurricane period is approximately $3.60 per

19   hundredweight.

20   Compared to the Order 6 base zone differential

21   of $5.40, which is the zone where Winter Haven is

22   located, Lone Star lost $1.80 per hundredweight on

23   the volume of milk rerouted to the alternative

24   plant locations outside the state of Florida.

25   Due to its reduced deliveries to pool

1   distributing plants in September resulting from

2   the Winter Haven plant not receiving milk during

3   the hurricane period, Lone Star was unable to pool

4   all of its rerouted milk on the Florida Order.

5   Consequently, the rerouted milk which was

6   delivered to the plants regulated as pool

7   distributing plants on Orders 5 and 7 was

8   delivered as producer milk on those two Orders.

9   This milk would have been pooled as Producer

10   Milk on Order 6 but for Hurricane Irma, and thus,

11   Lone Star supports modifying Proposal No. 1 by

12   deleting the word "producer" where it appears in

13   Section .60, paragraph G, subparagraph 1 and

14   subparagraph 2.

15   As is the case with a number of other

16   proponents, Lone Star dumped milk during the

17   Hurricane Irma period and also sold milk at

18   distressed prices; and by "distressed prices," we

19   mean sales to unregulated plants at less than the

20   minimum Order class prices.

21   Fortunately, Lone Star was able to find homes

22   for all but one load of milk, and that one load

23   was dumped. This one load of milk was dumped at a

24   location away from the farm where it was produced.

25   Compared to the Class IV skim milk and

1   butterfat prices as established and announced for

2   September 2017, Lone Star lost almost $8,800 on

3   this single load of dumped milk. In addition, six

4   loads of milk were sold to unregulated plants at

5   substantial discounts to the minimum Order Class

6   prices.

7   The weighted average loss on this milk was

8      $7.69 per hundredweight, in addition to the

9   location value losses already enumerated. On the

10   288,000 pounds delivered to unregulated plants and

11   sold at a discount to the class prices, Lone

12   Star's distressed milk sales price loss totaled

13   more than $22,000.

14   Lone Star sees the issues of compensation for

15   losses due to dumped milk and losses due to

16   distressed sales as related and even inextricably

17   linked. Fairness dictates that if one form of

18   these losses is compensated, both forms should be

19   compensated.

20   For example, if the Secretary were to decide

21   that the Class IV value, the lowest price class in

22   September 2017, was reimbursable to handlers who

23   dumped milk due to the hurricane but the Secretary

24   elected not to sanction reimbursement for

25   below-Class price sales values, handlers who did

1   scramble around and find plant outlets, even

2   though the returns were abysmal, would actually be

3   penalized for delivering distressed milk to a

4   plant, versus a handler who dumped milk and then

5   was made whole back to the classified use value.

6   This would not be appropriate.

7   Further, such a decision by the Secretary

8   could create the impression that in future natural

9   disasters, dumping milk might be more lucrative

10   than finding a plant to receive the distressed

11   milk, thus incentivizing milk to be dumped.

12   Lone Star recognizes that sometimes milk has

13   to be dumped when economically and logistically

14   reachable surplus outlets are simply unavailable.

15   As we mentioned, Lone Star had to dump a load of

16   milk during this period, too.

17   However, there should never be Order

18   provisions installed that suggest or even give

19   tacit approval to dumping milk as a preferable

20   option over trying to find a plant to take the

21   milk.

22   In summary, as can be seen from Exhibit 16,

23   Lone Star experienced a total net loss of more

24   than $38,000 on the rerouted milk, after

25   offsetting its savings on hauling against its

 1   various milk value losses during the Hurricane

 2   Irma disaster.

 3   On the 671,940 pounds of milk that was moved

 4   out of its normal marketing channel or was dumped,

 5   Lone Star lost the equivalent of approximately

 6     $5.66 -- $5.66 per hundredweight.

 7   As detailed in Proposal No. 1, Lone Star

 8   supports using, when reasonable, each marketing

 9   entity's actual hauling cost data to determine the

10   net losses or savings on rerouted milk experienced

11   by that marketer of the milk.

12   The Market Administrator is in the unique

13   position and has more than sufficient data and

14   expertise to evaluate the accuracy and

15   appropriateness of the hauling costs and hauling

16   cost rates submitted by the marketers seeking cost

17   reimbursement, and Lone Star supports limiting the

18   per mile rate for hauling to the actual rate paid

19   or $3.75 per loaded mile, whichever is less.

20   Further, the Market Administrator has all the

21   tools, proficiency, and information necessary to

22   ascertain where a redirected load of milk would

23   have gone and, thus, the extra miles traveled on

24   the rerouted milk, if any, but for Hurricane

25   Irma's impact.

1   The losses to marketers of milk in the Florida

2   Order marketing area and its milk shed which arose

3   from the devastation of Hurricane Irma are real

4   and are a significant blow to the industry and, in

5   particular, the dairy farmer producer suppliers to

6   the consumers in the marketing area.

7   The reimbursement of these costs, if Proposal

8   No. 1 as modified is adopted by the Secretary,

9   should be made as soon as practicable. Therefore,

10   Lone Star supports the Department exercising its

11   authority to make these amendments to the Florida

12   Order as an emergency action, omitting the

13   issuance of a recommended decision.

14   Lone Star Milk Producers, Incorporated, very

15   much appreciates the Secretary's willingness to

16   hear these proposals and is pleased to be able to

17   offer this testimony in support of a temporary

18   provision much needed in the Florida Order.

19   It is appropriate for the Department to act in

20   the -- the Department under the Act's authority to

21   establish provisions which compensate handlers for

22   providing services of market wide benefit to use

23   these proposed temporary Federal Order provisions

24   to address the reimbursement of extraordinary

25   costs incurred in supplying milk to the consumers

1   in the marketing area at a very difficult and

2   chaotic time.

3   This ends my prepared testimony. I'll be

4   happy to ask -- answer any questions.

5   BY MR. BESHORE:

6   Q.   Thank you, Mr. Sims. I have just a couple of

7   additional questions on direct. Could you turn to

8   Exhibit 16, please?

9   A.   Yes, sir.

10   Q.   And you've referenced that in describing

11 generally in your testimony from Exhibit 15, but could

12 you just walk us all through the three pages and the

13 information that you've prepared on Exhibit 16 also?

14   A.   Yes. The first page, page 1 of 3, basically

15 calculates the change in the hauling cost that Lone

16 Star experienced on milk which was rerouted as a result

17 of Hurricane Irma and during the Hurricane Irma period.

18 Approximately 621,000 pounds of milk was delivered to

19 those plants listed there on the left-hand side of the

20 page, which I also mentioned at least three of them in

21 the testimony.

22   The column in the second -- basically the

23 middle column, Cost of Hauling to plant of Delivery,

24 was just shy of $15,000. However, had the milk made --

25 moved all the way to Winter Haven, Lone Star would have

1 experienced a hauling cost of about $19,000. So while

2 they paid a touch more to go to Lafayette than

3 Winter Haven, they actually saved a little money going

4 to Braselton, Spartanburg, and the nonpooled

5 manufacturing plants located outside of Florida.

6   So actually, in toto, Lone Star paid less to

7 haul milk during the hurricane period because their

8 milk stopped short of going all the way to Florida, and

9 that totaled about $4100, roughly 66 cents a

10 hundredweight on those rerouted movements.

11   Q.   Okay. Now, when you're identifying Lone

12 Star's costs incurred and costs not incurred on this

13 exhibit, are those contract hauling rates, or is Lone

14 Star using its own equipment in that case?

15   A.   Lone Star uses a contract hauler in this case.

16   Q.   Okay. Is it your testimony that the -- if one

17 of the cooperatives or any handler that were to be

18 claiming additional transportation costs under the

19 proposals if they were adopted, if they were using

20 their own trucks, that it should be the costs that they

21 incur as an entity in that operation as opposed to the

22 cost invoiced by a contract hauler?

23   A.   If a handler is basically operating their own

24 fleet of trucks, their own rolling stock, they may very

25 well not have the -- a point-to-point internal document

1 that says it costs so many dollars to move from one --

2 from a farm to a plant; but they would have overall

3 internal documents which support how much it cost them

4 to move milk.

5   We would support using those costs that they

6 accumulate in their day-to-day operations to value the

7 additional miles that they may have moved them.

8   Q.   Okay. So go on then to page 2 of Exhibit 16.

9   A.   Right. This represents the exact same pounds

10 as page 1. It's deliveries to exactly the same plants

11 that we described in the hauling costs, in Lone Star's

12 case, savings. However, by going -- while they saved

13 money not going all the way to Florida with their milk,

14 they experienced lower prices for the delivery to those

15 plants than they would have received had the milk gone

16 all the way to Winter Haven.

17   In this case, the weighted average location

18 value, if you will, location differential for those

19 various plants to which delivered, averaged about $3.66

20 per hundredweight compared to the Winter Haven Class I

21 differential, effective Class I differential of $5.40

22 per hundredweight.

23   So by stopping short of Florida, Lone Star

24 saved money on hauling, but they cost themselves

25 $11,190 because they didn't give the full additional

 1   location value moving the milk on down to Florida.

 2   So they saved money on hauling stopping short

 3   of Florida on their rerouted milk, but it cost them --

 4   but it cost more than that, more than the hauling

 5   savings, on the location value that they lost by

 6   stopping short of Florida.

 7   Q.   Okay. Then proceed then to page 3 of Exhibit

 8   16.

 9   A.   And -- oh, and just as a matter of

10   clarification, page 1, that computation is

11   demonstrative of the calculation in (g)(1). Page 2

12   would be demonstrative of the calculation in the Order

13   language in subparagraph (g)(2), 60 (g)(2).

14   The one load of milk I referenced in

15   Lone Star's testimony which was dumped was moved from

16   a -- from the farm to a location in Baxley, Georgia.

17   That load contained approximately 50,000 pounds, 50,480

18   to be exact, and they lost the Class IV value on that

19   of about 80 -- just shy of $8800, representing on that

20   single load a loss of $17.40 a hundredweight; and this

21   calculation here on that single load is demonstrative

22   of the language listed in 60 (g)(4).

23   Finally, losses due to member milk sold at

24   less than minimum class price, there were sales to

25   unregulated manufacturing plants located outside of

Florida. As we indicated earlier, the location loss

and the hauling cost savings for deliveries to those

plants was already captured.

        This $7.69 per hundredweight represents the

amount per hundredweight beneath the classified value

on the -- that this manufacturing plant paid to

Lone Star less than the classified value, and that

total is over $22,000, and this would be a calculation

demonstrative of the language in (g)(6), for a total

loss of approximately 38,000. They moved

670-some-odd-thousand pounds of milk and lost $5.66 on

those rerouted and dumped loads.

    Q.   Okay. So one -- one final question. On page

8 of your Exhibit 15, the first full paragraph, you

referred to the request that the Department exercise

its authority to act without going through the

recommended decision process --

    A.   Yes.

    Q.   -- on this hearing. Could you just walk us --

walk us through that process a little bit and why you

think it's -- it's particularly appropriate in this

case?

    A.   The proponents experienced a marketing

condition unlike anything they had ever experienced,

and they experienced costs of holding reserve supplies

 1 for the Class I marketplace unlike they ever

 2 experienced before.

 3   The fact that the Market Administrator

 4 sanctioned, you know, the farm dumping of milk is

 5 demonstrative -- it says a great deal about the

 6 emergency conditions. Those costs have been paid.

 7 They're already -- we already discussed that. They've

 8 all -- all these costs have been absorbed by somebody,

 9 most of them the lion's share obviously by cooperative

10 associations and, therefore, by the member producers of

11 those cooperative associations.

12   Cooperatives don't always pass every cost item

13 in a month on to their members in their paychecks.

14 Sometimes the cooperatives smooth their pay prices a

15 little bit or might hold on the co-op's books the

16 losses, and they don't pass on a hundred percent of the

17 loss.

18   Nonetheless, the losses are still real. The

19 producers, in their produced pay prices, will have

20 experienced those losses or the co-op will be carrying

21 a loss versus what they would have received had they --

22 had the milk been marketed normally.

23   Those -- these costs are not going to change.

24 They are what they are. They're not going to get

25 bigger as we move forward. They're not going to get

1   little. So reimbursing those costs and getting the

2   money back to the people who experienced the losses,

3   who paid those costs, applying them to the Class I

4   marketplace as soon as practicable is the appropriate

5   and the right thing to do.

6   Q.   Thank you.

7   MR. BESHORE: I have no further questions on

8   Mr. Sims' second set of direct testimony.

9   JUDGE JENSON: Do you want to move to admit --

10   MR. BESHORE: I do want to move to admission

11   of Exhibits 15 and 16.

12   JUDGE JENSON: Is there any objection to the

13   admission of Exhibits 15 or 16?

14   MR. HILL: There are no objections here.

15   JUDGE JENSON: There being no objections,

16   Exhibit 15 and Exhibit 16 are admitted into

17   evidence. Is there any cross-examination of

18   Mr. Sims' second portion of his direct testimony?

19   JUDGE McCARTNEY: Let's go off the record for

20   just a moment.

21   (Discussion off the record.)

22   JUDGE JENSON: Back on the record. Do the

23   parties want to break for lunch at this point or

24   finish this witness?

25   MR. BESHORE: Finish the witness.

          1   MR. HILL: I think we prefer to finish this

          2   witness, Your Honor.

          3   JUDGE JENSON: All right. Proceed with

          4   cross-examination.

          5   CROSS-EXAMINATION

          6 BY MS. TAYLOR:

          7   Q.   Okay. This is Erin Taylor again. Good

          8 morning for two more minutes. First, some general

          9 questions about Lone Star. How many producer members

         10 does Lone Star have?

         11   A.   Something over a hundred in total, I believe.

         12   Q.   And do you know about how many of those get

         13 pooled on the Federal Order 6?

         14   A.   It's a -- I do not know specifically, no.

         15   Q.   And part of the decision-making process is to

         16 look at the impact on small businesses. Would you

         17 classify your members as small businesses, which is

         18 around $750,000 in gross farm revenue a year?

         19   A.   It would be my belief that the majority of the

         20 producers, of Lone Star Milk Producers, which are pool

         21 Order 6, would likely qualify as small businesses under

         22 that definition.

         23   Q.   So of the producers on Order 6, not

         24 necessarily of Lone Star --

         25   A.   Yes.

1   Q.   -- in general?

2   Okay. Can we turn to page 7 of your

3   statement, which is Exhibit 15? And I think some of

4   this is outlined in Exhibit 16. Let's see. On the

5   third paragraph down that starts, In summary, you talk

6   about a net loss of more than $38,000, and I believe

7   that's the number, exact number, that can be found on

8   page 3 of Exhibit 16?

9   A.   That's correct.

10   Q.   Okay. And so that means -- that's net losses

11   for all the paragraphs that you computed for?

12   A.   Correct.

13   Q.   Okay. And that, on a hundredweight basis, is

14   around 560 -- excuse me -- $5.66 a hundredweight?

15   A. $5.66 on the milk rerouted or dumped.

16   Q.   Okay. Including milk that was producer milk

17   on another Order for that month?

18   A.   Correct.

19   Q.   Okay. On page 2 of Exhibit 16, I just want to

20   clarify for the record, this talks about (g)(2), which

21   is milk delivered outside of Florida location

22   difference, and you talk about the $3.60 is the

23   weighted average Class I differentials of all plants

24   outside of Florida to which milk was delivered, and

25   those specific locations, I believe, are listed in your

1 direct testimony?

2   A.   Yeah. The three Order 5 or Order 7 plants are

3 delivered, we did not directly name the manufacturing

4 plants to which delivered.

5   Q.   Okay. Did Lone Star, and if so, how did Lone

6 Star pay its affected producers for September? Did you

7 pay them differently because of the hurricane? Were

8 their payments adjusted?

9   A.   They certainly would have had some amount of

10 hurricane cost reflected in their pay price.

11   Q.   And did their payments differ depending on

12 whether they were pooled -- remained pooled on Order 6

13 or perhaps became pooled on Order 5 and 7?

14   A.   There would be no difference whatsoever, based

15 on what Order they were pooled on, to the producer.

16   Q.   To the producer. So there was no impact in

17 the actual, for lack of a better term, the blend price

18 that was reflected on their paycheck?

19   A.   Well, when the -- when the revenues are

20 accumulated to work a co-op pay price, those

21 differences in revenues, based on where the milk is

22 pooled, obviously would impact how much money a

23 cooperative has available to pay. So to say they

24 didn't impact their pay price is not correct.

25   What I'm saying is that any particular

1   producer whose milk may or may not have been pooled on

2   any one of those three Orders did not receive anything

3   different than they would have, had it all been

4   delivered on Order 6.

5   Q. Okay. But the -- I'm trying to think about

6   the blend price differences so, then the draw that the

7   co-op would have gotten based on where the milk was

8   pooled and how that should be or if that should be

9   accounted for in this reimbursement proposal.

10   So if milk was pooled on Federal Order 5 or

11   Federal Order 7, there was a uniform price for that

12   month to which the co-op, if the milk was pooled, got a

13   draw, say, on that milk of whatever the difference is.

14   Am I correct?

15   A. They would have. If it was pooled on -- if it

16   were delivered -- let's just -- delivered to Borden

17   Lafayette or Mayfield Braselton as producer milk on

18   Order 7, that's where those two plants are regulated

19   and they both happened to be in the 3.80 zone, the

20   amount that those plants would have paid could be no

21   less than the Order 7 uniform prices for skim milk and

22   butterfat.

23   Q. Right. And so there's just some -- there's

24   blend prices differences between 7 and 5 --

25   A. Yes.

1   Q.   -- for that month -- or 7 and 6?

2   A.   Yes.

3   Q.   So is that difference accounted for in netting

4 out what they should receive for reimbursement cost?

5   A.   Lone Star did not account for any -- I guess

6 what I refer to as zone adjusted blend price.

7   Q.   Okay.

8   A.   In fact, I believe that the -- for the month

9 of September, the Order 7 price may have been a very,

10 very few cents higher at a comparable zone than Order

11 6. Order 5 probably was less. So those -- any of

12 those differences which might exist, probably are

13 negligible; but if, in the Secretary's wisdom, they

14 feel like that needs to be adjusted, I believe that the

15 proponents would -- would not oppose that.

16   Q.   Okay. And you did -- I think this is my last

17 question. You did say that producer paid prices for

18 Lone Star in that month were obviously affected by the

19 hurricane?

20   A.   Undoubtedly.

21   Q.   And those, I assume, will be reflections --

22 were their hauling deductions affected?

23   A.   No. The producer hauling deduction?

24   Q.   Yes.

25   A.   No.

1   MS. TAYLOR: Okay. I think that's it for the

2   Department. Thank you.

3   JUDGE JENSON: Any further cross-examination?

4   Any redirect, Mr. Beshore?

5   REDIRECT EXAMINATION

6   BY MR. BESHORE:

7   Q.   I have one, hopefully, clarification question

8   on redirect. If I heard your response correctly, in

9   response to one of Ms. Taylor's questions correctly,

10 you -- the transcript may -- will reflect that you

11 literally said that there would be no difference in pay

12 price to the Lone Star producers -- no difference in

13 what they were paid, whether their milk was pooled on

14 Order 6 without the hurricane versus what they were

15 paid by virtue of the hurricane events, and I don't

16 think you meant that they were paid the same but that

17 the manner of payment by Lone Star was, in essence, the

18 same?

19   A.   The question I believe she asked was, was any

20 individual producer's price made different by -- based

21 on whether that producer individually was pooled on

22 Order 5 -- Order 7 or Order 6, and the answer to that

23 is no. There is no doubt that Lone Star experienced

24 substantial losses as a result of this hurricane event,

25 and that would have been reflected in a substantially

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 1   lower pay price to those dairy farmers, but the dairy
 2   farmers individually would not have their pay price
 3   adjusted vis-a-vis anyone else based on where that
 4   individual member's milk was pooled.
 5       Q.   So there's another way to say that, that all
 6   those Lone Star producers are paid one uniform
 7   cooperative pay price irrespective of the particular
 8   plant to which each producer's --
 9       A.   Yeah.
10       Q.   -- milk goes?
11       A.   That's a fair way to say it, yes, sir.
12            MR. BESHORE:  Okay.  Thank you.  No further
13        questions on redirect, and that's all we have for
14        Mr. Sims.
15            JUDGE JENSON:  Thank you.  Is there any
16        objection to this witness being excused?
17            MR. HILL:  No objections.
18            JUDGE JENSON:  All right.  If there's none,
19        the witness is excused.  Thank you, Mr. Sims.
20            JUDGE McCARTNEY:  All right.  So off the
21        record a minute.
22               (Discussion off the record.)
23            JUDGE McCARTNEY:  All right.  We're back on
24        the record.  We're in recess until 1:15.  Thank
25        you.
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 1              (Luncheon recess.)

 2              (Exhibit Nos. 17, 18, 19, 20, 21, 22, 23, 24,

 3     25, 26, 27, 28, 29, and 30 were marked for

 4     identification.)

 5              JUDGE McCARTNEY:  All right.  Call to order.

 6              JUDGE JENSON:  Back on the record.

 7         Mr. Beshore, are you prepared to proceed with your

 8         next witness?

 9              MR. BESHORE:  Yes, we are, Your Honor.  Our

10         next witness is Shana Wooten, and I would like to,

11         before she testifies, have -- to identify for the

12         record -- and we've had the stenographer, court

13         reporter already mark these exhibits; but for

14         everybody's benefit, I'd like to go through them.

15              We have her statement as Exhibit No. 17, which

16         is a 10-page statement titled Southeast Milk,

17         Inc., Emergency Hearing Testimony Caused By

18         Hurricane Irma, Florida Federal Milk Marketing

19         Order 1006, et cetera, and we have 10 additional

20         exhibits to be numbered consecutively 18 through

21         27.

22              They have been distributed as a pack, a

23         packet, and hopefully in the order I'm going to

24         recite the numbers.  Exhibit 18 is a four-page

25         document which is a set of maps and other data
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1   from NOAA, National Oceanic Atmospheric

2   Administration.

3   Exhibit 19 is a document from the Office of

4   the Commissioner, Florida Department of

5   Agriculture and Consumer Services, eight pages.

6   Exhibit 20 is a one-page map of Florida titled

7   Florida Counties with SMI Members.

8   Exhibit -- Exhibit 21 is titled FEMA-4337-DR,

9   Florida Disaster Declaration as of 10/12/2017, a

10   one-page map. Exhibit 22, a one-page map of

11   Florida titled 3,787,676 accounts (36.1%) are

12   without power in Florida, All Data as of

13   Wednesday, September 13.

14   Exhibit 23, a one-page map of Florida, Florida

15   power outages by county as of Wednesday, September

16   20. Exhibit 24 is a one-page chart or table

17   titled Florida Plant Closing Schedule. Exhibit 25

18   is a one-page table titled Dumped Milk - Hurricane

19   Irma.

20   Exhibit 26 is South -- a one-page chart or

21   table, Southeast Milk, Inc., Milk to Southeastern

22   Cheese - Hurricane Irma. In the right -- the

23   furthest right column is titled Lost Revenue, and

24   that's to distinguish it from Exhibit 27, which is

25   also a one-page table titled Southeast Milk, Inc.,

1   Milk to Southeastern Cheese - Hurricane Irma with

2   the furthest column to the right titled

3   Difference.

4   JUDGE JENSON: At this time, I would ask the

5   court reporter to mark Exhibit 17 through Exhibit

6   27 as described by Mr. Beshore.

7   THE REPORTER: They're done.

8   JUDGE JENSON: Wonderful. I didn't have to

9   ask.

10   JUDGE McCARTNEY: For expediency sake, are you

11   in a position to proffer those at this time?

12   MR. BESHORE: I am.

13   JUDGE McCARTNEY: All right. Any objections?

14   MR. HILL: No.

15   JUDGE McCARTNEY: In light of the fact that

16   they were made available earlier, and thank you

17   for taking the time during the recess to review

18   that.

19   MR. HILL: That's correct.

20   JUDGE McCARTNEY: All right. You may proceed,

21   counsel.

22   MR. BESHORE: And I appreciate that. We had

23   the opportunity to mark them consecutively, have

24   the court reporter mark them consecutively so that

25   Ms. Wooten, as she presents her testimony, will be

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1        able to fill in the blanks with the exhibit

2        numbers.  So that was very helpful, Your Honors.

3             JUDGE JENSON:  As there is no objection,

4        Exhibits 18 -- 17 through 27 are admitted into

5        evidence.

6             MR. BESHORE:  And Ms. Wooten is prepared to be

7        sworn and proceed.

8             JUDGE JENSON:  Would you please state your

9        name and spell your name for the record?

10            THE WITNESS:  Shana Wooten, S-h-a-n-a,

11       W-o-o-t-e-n.

12            JUDGE JENSON:  And raise your right hand.

13                      SHANA WOOTEN,

14   having been first duly sworn by the Court, was examined

15   and testified as follows:

16            THE WITNESS:  I do.

17            JUDGE JENSON:  You may be seated.

18                    DIRECT EXAMINATION

19   BY MR. BESHORE:

20       Q.   Now, Ms. Wooten, have you prepared testimony

21   to be presented for this hearing today?

22       A.   Yes.

23       Q.   And is that the -- is that testimony

24   represented in the document that's been marked Exhibit

25   17?
```

1   A.   Yes.

2   Q.   And with it, you've assembled exhibits that

3 have been marked and admitted as Exhibits 18 through

4 27, correct?

5   A.   Correct.

6   Q.   Okay. Would you please proceed with your

7 testimony?

8   A.   Sure. My name is Shana Wooten. I serve as

9 the Director of Milk Marketing of Southeast Milk,

10 Incorporated, also known as SMI, located at 1950

11 Southeast Highway 484, Belleview, Florida 34420. I

12 have worked for Southeast Milk, Inc., since January of

13 1999.

14   My past experience with SMI started with data

15 entry in the Producer Payroll Department. I now

16 oversee the Producer Payroll, Producer Lab, Member

17 Field Services, and Milk Movement (dispatching)

18 departments.

19   During my time at Southeast Milk, Inc., I have

20 worked directly with several Market Administrator's

21 offices with regards to SMI's pooling requirements on a

22 regular basis.

23   SMI is a dairy marketing cooperative with

24 approximately 150 dairy farmer members located in six

25 different states throughout the Southeast.

1   Approximately 70 percent of SMI's milk production is in

2   Florida, 28 percent in Georgia, and the remaining 2

3   percent in Mississippi, Alabama, Louisiana, and

4   South Carolina.

5   SMI has producer milk pooled in Federal Orders

6   5, 6, and 7 on a regular basis. During the month of

7   September 2017, SMI delivered nearly 148 million pounds

8   of producer milk to Federal Order 6 pool plants. SMI

9   member milk accounted for approximately 73 percent of

10 all producer milk pooled on Federal Order 6 during

11 September 2017.

12   SMI has a Hurricane Preparedness Plan that

13 provides instructions on what should be done pre,

14 during, and post hurricane. Our hurricane plan

15 dictates we must -- we meet 36 hours before a hurricane

16 affects our marketing area and again 24 hours prior and

17 12 hours prior.

18   The plan ensures we have proper communication

19 lines for our drivers and terminals, transportation

20 plans for our drivers, a building and equipment plan

21 for our corporate office for our lab and IT resources,

22 ensuring proper levels of fuel at terminals, and tree

23 removal plans, as well as a plan for moving milk.

24   SMI supports Proposals 1 and 2. These

25 proposals will reimburse handlers for only a portion of

1   the total costs associated with multiple plants

2   shutting down during Hurricane Irma in September.

3   Hurricane Irma traveled straight up the entire

4   peninsula of Florida as seen in Exhibit 18, causing

5   every plant to shut down at some point, many doing so

6   for multiple days, leaving a market normally importing

7   milk during the fall completely saturated.

8   I am confident that every SMI Florida dairy

9   farmer and many SMI Georgia dairy farmers were directly

10   or indirectly impacted by Hurricane Irma. This

11   testimony is offered in support of both proposals.

12   In the second week of September 2017,

13   Hurricane Irma hit the entire state of Florida. The

14   Florida Department of Agriculture and Consumer

15   Services, FDACS, estimates agriculture losses from

16   Hurricane Irma exceeded $2.5 billion. For comparison,

17   FDACS estimated the damages from Hurricanes Charley and

18   Frances in 2004 in excess of $2.1 billion.

19   Exhibit 18 shows weather reports during Irma.

20   Nearly the entire peninsula of Florida saw at least 5

21   inches of rainfall, with some areas seeing as much as

22   11.75 inches of rainfall, according to the National

23   Oceanic and Atmospheric Administration.

24   In isolated areas in which some of our

25   members' farms were located, we heard rainfall volumes

 1 from the storm exceeded 25 inches of rainfall. We know

 2 for a fact through photos sent by our members, many of

 3 our farms looked like giant "lakes," whereby nearly all

 4 of their farm operations were covered in water.

 5   It should also be noted that most of the area

 6 of South Florida experienced more than normal rainfall

 7 this past summer, which meant the ground was already

 8 saturated prior to Irma. All of this rainfall resulted

 9 in mass flooding, causing road closures on top of

10 damages to infrastructure.

11   The same report shows wind speeds ranging from

12 50 to 90 miles per hour. In the extreme southern

13 section of Florida where Irma hit landfall and not that

14 far from our lowest -- our largest milk supply, wind

15 gust speeds were in excess of a hundred miles per hour.

16 In several locations throughout the state, many

17 tornadoes were found to wreak havoc as well.

18   Again, through photos shared by our members, I

19 personally saw many roofs blown off of cow shading

20 areas and/or milk housing barns, torn milking parlors

21 and cow cooling equipment, especially fans, totally

22 decimated. Many of our members experienced shortages

23 on fuel to run their generators, along with generators

24 simply not working at all.

25   Keeping the cows cooled was a major obstacle

1   for many of our members for several days after the

2   storm. Furthermore, SMI has testing facilities where

3   we test for milk quality and components for our

4   members.

5   Immediately after Irma, we saw both milk

6   components and quality result reading -- readings that

7   were extremely abnormal, again reflecting the stress

8   that was put on the milk supply chain.

9   FDACS confirmed that Hurricane Irma was the

10 largest, most powerful hurricane recorded on the

11 Atlantic Ocean, making landfall in South Florida as a

12 Category 3 hurricane in their report on damages to

13 Florida's agricultural industries, and that can also be

14 found in Exhibit 19.

15   Exhibit 20 shows counties with SMI milk

16 production. This shows -- this table shows the

17 widespread impact of Hurricane Irma on Florida's dairy

18 industry, such as: Exhibit 21 shows every county in

19 Florida was declared eligible for assistance by FEMA,

20 with 48 eligible for individual assistance.

21   Over 700,000 individual assistance

22 applications have been approved, per release DR-4337.

23 USDA declared 19 counties Primary Natural Disaster

24 Areas, with another 25 available for assistance,

25 according to Release No. 0126.17.

1   Of the 64 SMI dairy farms, 57, or 89 percent,

2 are located in counties declared disaster areas. These

3 57 farms produce 91 percent of all SMI Florida milk

4 production.

5   To put Hurricane Irma in perspective, please

6 allow me to provide the following statistics: In an

7 effort to avoid the worst of Hurricane Irma, an

8 estimated 6.3 million people (of Florida's 20 million

9 residents) fled their homes in search of safer housing,

10 according to the Federal (sic) Division of Emergency

11 Management.

12   Many got as far as they could, slowly

13 traveling along the state's congested highways.

14 Because of time, many were forced to take refuge in

15 shelters, homes of friends or relatives, or, if they

16 were lucky, hotels.

17   More than 54,000 residents were in 320

18 shelters across Florida, according to the governor's

19 office. Governor Rick Scott declared the entire state

20 into a State of Emergency, with local officials in

21 South Florida issuing evacuation orders.

22   These mandatory evacuation orders covered

23 parts of Miami-Dade County, part of Broward County, and

24 Palm Beach County, alone of which are home to nearly 6

25 million people combined. The evacuation of Miami-Dade

 1 County was the largest in its history, with an

 2 estimated 660,000 people asked to leave,

 3 Mayor Carlos Gimenez said in a CNN news article.

 4   MR. BESHORE: At this point, Your Honors, I

 5   would like to ask that the court reporter type

 6   into the transcript, as if read, the URL, which is

 7   a long --

 8   JUDGE McCARTNEY: Could you just refer her to

 9   the document? Do you have that?

10   THE REPORTER: I have it right in front of me,

11   yes.

12   JUDGE McCARTNEY: So he's asking you to type

13   the URL into the transcript from the original

14   document.

15   MR. BESHORE: Without the witness reading it.

16   JUDGE McCARTNEY: Right.

17   MR. BESHORE: There are a couple of subsequent

18   URLs that we'd like to have handled the same way.

19   http://www.cnn.com/2017/09/08/us/hurricane-

20   irma-evacuation-florida/index.html.

21   THE REPORTER: Okay.

22   JUDGE McCARTNEY: You may continue.

23   THE WITNESS: After the storms passed, crews

24   worked tirelessly to get back to normal -- to get

25   life back to normal. Excuse me. At one point,

 1   Chris Krebs, Assistant Secretary for

 2   Infrastructure Protection at the Department of

 3   Homeland Security, reported that nearly 15 million

 4   people were without power as a result of Hurricane

 5   Irma.

 6   Estimates from the State agency

 7   FloridaDisaster.org pointed to nearly 3.8 million

 8   accounts not having power as of September 30th --

 9   September 13th (two days after the storm passed

10   through much of the state) - around 36 percent of

11   the state's total, and that can be found -- you

12   can see Exhibit 22.

13   In Georgia, more than 500,000 electricity

14   accounts were still out of service during the same

15   time frame, Georgia Public Broadcasting reported.

16   However, even a week after the storm, nearly

17   90,000 homes were still without power.

18   For example, in Exhibit 23, it shows what

19   counties were most affected by power outages as of

20   a week later, which is Wednesday, September 20th,

21   according to the Florida Division of Emergency

22   Management. Without power, plants were unable to

23   process milk, stores were unable to store milk,

24   and customers were unwilling (or unable) to

25   purchase milk, leaving dairy farmers with no

1   market for their milk for several days, and

2   there's another URL to be added.

3   http://www.orlandosentinel.com/weather/

4   hurricane/os-hurricane-irma-power-outage-map-

5   20170912-htmlstory.html.

6   THE REPORTER: Okay.

7   THE WITNESS: With media coverage starting and

8   public awareness at an all-time high following the

9   devastation of Hurricane Harvey in Texas shortly

10   before Hurricane Irma, many Floridians began

11   "panic buying" fuel for their vehicles, preparing

12   for the worst.

13   As the storm approached, many gas stations

14   across the state ran out of fuel. As of September

15   11th, at least 60 percent of the gas station in

16   Miami-Fort Lauderdale and Gainesville were without

17   fuel, according to the estimates from

18   crowdsourcing platform GasBuddy.

19   Roughly half of the gas stations in

20   Jacksonville, Tampa, West Palm Beach, and

21   Fort Myers were also empty after Floridians took

22   to their cars to flee the path of the storm. With

23   fuel scarce, many were unable to drive any

24   further, leaving drivers abandoned on the side of

25   the road or at rest stops, which were teeming with

1   refugees. And again, we have another URL.

2   http://money.cnn.com/2017/09/11/investing/gas-

3   station-shortage-florida-hurricane-irma/index.

4   html.

5   THE REPORTER: Okay.

6   THE WITNESS: Structural damage to dairy farms

7   is estimated in the millions of dollars - barns

8   and milking parlors damaged or destroyed,

9   commodity sheds blown away, roofs blown off,

10   fences torn down, and cropland and pastures

11   flooded.

12   Many dairy farmers missed an entire day or

13   more of milking due to power outages, dangerous

14   wind speeds, and malfunctioning generators. Some

15   dairies were milking on generators for as long as

16   a week or more.

17   Because cooling systems were either without

18   power or damaged, milk production fell well below

19   normal levels due to heat stress. During the

20   first 48 hours of the event, some of our South

21   Florida farms lost 25 percent of their daily milk

22   production as a result.

23   FDACS estimates the value of all lost

24   production to be at least $7.5 million. With many

25   milk processing plants in Florida shutting down

1   operations before, during, and after Hurricane

2   Irma, there were no markets for milk for several

3   days.

4   SMI lost revenue and sales because of dumped

5   milk and milk being sold at lower prices in other

6   milk markets. This issue will continue to impact

7   the prices farmers receive for months to come.

8   Normal milk marketing activities were disrupted by

9   Hurricane Irma, due to its enormous size, slow

10   moving speed, and extra precautions taken and

11   warnings given as a result of Hurricane Harvey,

12   which had just passed through and devastated the

13   state of Texas.

14   Hurricane Irma caused all fluid milk

15   processing plants located in Florida to close from

16   one to as many as five days. Three plants

17   received no milk for four days, two other plants

18   for three days, one plant for two days, and one

19   plant received no milk one day. Even on

20   Christmas, there are only one or two plants that

21   actually close.

22   See Exhibit 24 for a full schedule of when

23   plants closed during the week of the hurricane.

24   What made Irma more disruptive than past

25   hurricanes in that -- is that past hurricanes

1   affected only one part of the state. If a

2   hurricane hit South Florida, the Central Florida

3   plants would continue to operate or vice versa.

4   Hurricane Irma disrupted the entire state.

5   In other words, during the time of the year

6   when significant volumes of milk are being

7   imported into Florida, the Florida market turned

8   from a deficit milk market to a surplus milk

9   market overnight.

10   A portion of this "temporary" surplus milk was

11   shipped out of the Florida market. Under normal

12   conditions, this milk would have been marketed in

13   the Florida market at the Class I price.

14   Referring to the data provided by the Market

15   Administrator's office, one can see the

16   significant increase in milk demand following

17   Hurricane Irma. This increased demand came from

18   the plants being closed from one to five days,

19   many retail outlets out of power, thus losing all

20   perishables and thousands of homes losing all

21   perishable food products.

22   This created a significant challenge in

23   filling the pipeline with dairy products once

24   power was restored. Most supermarkets have

25   generators, but very few have generators large

1   enough to power their entire store, much like our

2   members' farms.

3   Others had generators fail due to mechanical

4   issues or simply had no fuel to power them, as it

5   became scarce. As a result, many perishables in

6   the frozen and refrigerated sections of the stores

7   had to be disposed of.

8   Many stores were without milk for several days

9   following the hurricane as they hurriedly tried to

10   get milk back onto store shelves. Making the

11   matter worse is the decreasing milk production as

12   a result of the hurricanes.

13   In Florida, September milk production was 3

14   percent or 4 million pounds less than September a

15   year ago. This decrease is after showing several

16   months of increased production. We anticipate

17   further declines in milk production as more cows

18   are culled due to hurricane-related injuries and

19   stress.

20   Dairy farmers were unable to add cows, which

21   normally happens in the Florida market this time

22   of the year. This is due to barns -- barns and

23   feed damaged and drain on cash flow.

24   During the requested time period of

25   reimbursement, SMI dumped 2 million pounds of milk

1   at the farm or from trailers due to age during

2   Hurricane Irma. The value of this loss of

3    $327,917 is shown in Exhibit 25.

4   Milk was dumped due to several reasons: Milk

5   trucks not able to get to farms due to high winds;

6   down power lines and trees blocking roads and farm

7   lanes; law enforcement officials limiting traffic

8   to only emergency vehicles; lack of drivers,

9   including outside haulers and equipment; and all

10   of SMI's milk tankers filled. SMI had no empty

11   trailers to store additional milk.

12   In addition to the milk being dumped on the

13   ground, we were able to capture some value on the

14   milk by shipping it directly to Southeastern

15   Cheese in Uniontown, Alabama. However, this milk

16   would normally receive Class I price in the

17   Florida market; by shipping it to Southeastern

18   Cheese, we lost abundant value on transportation

19   and lower price.

20   See Exhibit 26 that shows a loss of $73,000

21   for the lower value received and Exhibit 27 that

22   shows a loss of $19,340 for the lower differential

23   (not including net transportation) based on where

24   the milk was received.

25   As indicated above, SMI incurred additional

1   transportation expense in moving milk outside the

2   Florida market and dumping milk, which we have not

3   quantified at this time.

4   A major purpose of the FMMO program is to

5   ensure an orderly market supply of pure and

6   wholesome fluid milk to consumers. When that

7   supply is disrupted by extraordinary acts of God,

8   it is important that the Federal Orders

9   appropriately reflect those events and their costs

10   in the regulations.

11   SMI's dairy farmer members strongly encourage

12   the Secretary of Agriculture to ensure (sic) an

13   expedited decision for Federal Order 6, which

14   includes Proposals 1 and 2. Emergency marketing

15   conditions exist that warrant omission of a

16   recommended decision -- decision under the rules

17   of practice and procedure.

18   Please note that the examples provided in my

19   testimony are used for the purpose of

20   understanding how Southeast Milk has valued the

21   cost of each load (sic) and is not the final

22   calculation that SMI will be submitting for

23   potential reimbursement.

24   We truly appreciate the Secretary of

25   Agriculture providing us this opportunity. I have

1   concluded my testimony, and I will now answer any

2   questions.

3   BY MR. BESHORE:

4   Q.   Thank you, Ms. Wooten. I have just a few

5   additional questions for you on direct. First of all,

6   let's go to the Exhibits 18 through 27, and I want to

7   just walk through them briefly for you to have the

8   opportunity to explain their preparation, whether you

9   prepared them or just further identify them, although

10   you referred to them all correctly with the number in

11   your testimony.

12   So Exhibit 18 is the four-page document from

13   the National Oceanic and Atmospheric Administration.

14   Do you have anything to add to that?

15   A.   No.

16   Q.   Okay. How about Exhibit 19, the statement you

17   called FDACS --

18   A.   Yes.

19   Q.   -- the Florida Department of Agriculture and

20   Consumer Services, anything to add to that?

21   A.   No.

22   Q.   It speaks for itself. Turn then to Exhibit

23   20. Let's just look at that one a minute. The blue

24   counties on this map are counties where your member

25   farms in Florida are located; is that correct?

1   A.   That's correct.

2   Q.   Okay. And you have approximately how many --

3 how many member farms in Florida, members in Florida?

4 Maybe you -- maybe you provided that.

5   A.   No, I don't believe that I did. I gave how

6 much production we have in Florida.

7   Q.   Okay. So rough -- roughly what percentage?

8   A.   A hundred.

9   Q.   Roughly a hundred farms in Florida?

10   A.   No. May I answer that at a later time?

11   Q.   Sure. What was the percent, the percentage of

12 your production that's in Florida?

13   A.   70 percent --

14   Q.   Okay.

15   A.   -- is in Florida.

16   Q.   Okay. And you have roughly 150 members?

17   A.   Correct.

18   Q.   So it may be roughly proportional?

19   A.   We have a lot of large farms in the state of

20 Florida, so I don't know if it would be.

21   Q.   Okay.

22   A.   Yeah.

23   Q.   Very good.

24   JUDGE McCARTNEY: I believe we have a lifeline

25   support back there.

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 1              UNIDENTIFIED SPEAKER:  Yeah.  64.

 2              JUDGE McCARTNEY:  Pardon me?

 3              UNIDENTIFIED SPEAKER:  64 is the Florida dairy

 4        farms.

 5              JUDGE McCARTNEY:  Subject to check, does that

 6        sound accurate to you?

 7              THE WITNESS:  Yes.  If I said that in my

 8        testimony, I'm sure it's fine.

 9   BY MR. BESHORE:

10        Q.   So you had it in your testimony and I

11   shouldn't have -- I shouldn't have asked for a --

12        A.   I should have remembered.  I read it.

13              JUDGE McCARTNEY:  You've used your last

14        lifeline.

15   BY MR. BESHORE:

16        Q.   Okay.  I took an unnecessary trail there.

17        A.   That's fine.

18        Q.   Let's look at Exhibit 21 then, which is a FEMA

19   declaration.  Do you have anything to add to that

20   exhibit?

21        A.   No, I do not.

22        Q.   Okay.  Exhibit 22 is a map of power outages as

23   of September 13.  Anything to add to that?

24        A.   No.

25        Q.   Did you, in fact, have farms that were without
```

  1 power for a substantial period of time?

  2   A.   Yes. Absolutely.

  3   Q.   So there's a fairly -- I think the blue

  4 areas -- you had blue areas in Central Florida, and the

  5 Orlando area, there seems to be a substantial

  6 concentration of power outages on 22, if I'm looking at

  7 it right. There's a big circle around Orlando?

  8   A.   Yes. We don't have a lot of farms -- we don't

  9 have any farms in Orlando but --

 10   Q.   In that --

 11   A.   In that area. There's -- there are some in --

 12 northeast of Orlando. So there's a good section of

 13 them in the area, yes.

 14   Q.   Turning now to Exhibit 23, which is a

 15 depiction of power outages a week later, do you have

 16 anything to add to that?

 17   A.   No.

 18   Q.   Okay. Now, let's get to the last four

 19 exhibits, 24 through 27. Did you prepare all these

 20 exhibits -- these four exhibits, or were they prepared

 21 under your supervision?

 22   A.   Yes.

 23   Q.   Okay. So let's look at 24 then first. And

 24 let's just walk -- walk through this, if you would,

 25 please, Ms. Wooten.

1   A.   Okay. So this is a list of all the plants

2   located in the state of Florida. These are pool

3   plants. So to the left, Orlando, that's the location

4   of the plant, but there's a plant in Orlando,

5   Winter Haven. McArthur is the name of a plant which is

6   located in Miami. Borden Miami, Deerfield, which is in

7   South Florida. Lakeland is in Central Florida. M&B is

8   in the Tampa area, and then SSDF is in Plant City.

9   So this is just a list of all the plants, when

10   they closed, and how long they were closed. So we have

11   a list of -- as you can see, the 10th is the day that

12   the storm actually hit the state of Florida. So, as

13   you can see, all of the plants were closed on the 10th.

14   Some of those were closed before that, and some of them

15   remained closed through the 13th, Wednesday the 13th.

16   So off to the right we have a -- it's a

17   summary of how long, how many hours each of the plants

18   were closed, and it's also how many days that they were

19   closed as well.

20   Q.   Okay. So on the line to the right of each

21   plant name or plant location, it shows for each day,

22   from September 8 through September 14, whether the

23   plant was open or closed?

24   A.   That's correct.

25   Q.   Okay. And then on the right-hand two columns,

 1 you have aggregated, added that up or broken it down to

 2 the number of hours each plant was closed. Is the 6 --

 3 so on the hours closed column, 604 at the bottom, is

 4 that the sum of all the hours closed?

 5   A.   Yes.

 6   Q.   Okay. And then the Days Closed column, is

 7 that just the, what, hours divided by --

 8   A.   I think it's the average.

 9   Q.   -- 24?

10   A.   I think it's probably an average.

11   Q.   So on the first line, if the Orlando plant was

12 closed for 72 hours, you've indicated that's three

13 days, which is 72 divided by 24, I believe?

14   A.   Okay. Yes.

15   Q.   Okay. And that would be the way they were all

16 calculated?

17   A.   Correct.

18   Q.   With the bottom number being an average number

19 of days that the plants were closed?

20   A.   Right.

21   Q.   Okay. So there's a couple of lines to the

22 left below the table. Can you just tell us what those

23 are so there's no question?

24   A.   Yes. Those are number of days. So we had a

25 total of seven plants that were closed for two days; we

1 had a total of four plants that were closed for three

2 or more days; and we have a total -- had a total of

3 three plants that were closed for four or more days.

4 So it's just an accumulative total.

5   Q.   Okay. Very good. Let's turn then to Exhibit

6 25, Dumped Milk - Hurricane Irma. Did you prepare that

7 exhibit?

8   A.   Yes, I did.

9   Q.   Okay. Walk us through it then, please.

10   A.   Okay. So the first column where it indicates

11 location of dump, this is where the load was when it

12 was dumped. So as you can see, some of them were

13 dumped at Belleview Terminal, and some were dumped at

14 the farm.

15   Q.   Okay. So tell us what Belleview Terminal is.

16   A.   SMI owns their own fleet, and we have multiple

17 terminals throughout the state of Florida, and this is

18 where we actually stage loads. They could be full

19 tanks from producers, the load being picked up and then

20 brought to the terminal. We have empty tankers at the

21 terminal. So this is where our drivers come to the

22 terminal to pick up and deliver empty or full tanks.

23   Q.   Okay. So when you say SMI has its own fleet,

24 that means that you own your own milk trucks?

25   A.   That is correct. And tankers.

1   Q.   Tankers and --

2   A.   Correct.

3   Q.   -- the tractor?

4   A.   Right.

5   Q.   So Mr. Sims -- you were here during his

6 testimony this morning -- when he referred to -- with

7 respect to transportation cost reimbursements that are

8 being requested here, that some handlers would contract

9 with other entities and have an invoice for

10 transportation costs, that in the case of SMI, you have

11 your own internal transportation costs?

12   A.   That's correct.

13   JUDGE McCARTNEY: Counsel, could you have the

14   witness verify that she was, in fact, in the

15   hearing room during the previous witness's

16   testimony?

17   MR. BESHORE: Yes.

18 BY MR. BESHORE:

19   Q.   Have you been here during the --

20   A.   Yes.

21   Q.   -- entirety of the hearing so far today?

22   A.   I have, yes. Do you want me to keep going?

23   Q.   Yes, please, with Exhibit 25.

24   A.   Okay. So the next column is just -- the next

25 two columns, the ticket number and the trailer number,

1   is just identification for these loads for us to be

2   able to track them. We have the pickup date. Then

3   product pounds is the total pounds on the tanker or the

4   trailer, and then we have our -- the skim pounds.

5   The next column is your butterfat. We did

6   test these loads prior to them being dumped, and we --

7   I've done the calculation, the Class IV, as the Market

8   Administrator allocated, when we -- when they did the

9   September pool, the uniform calculation on those pounds

10 and the draw that Southeast Milk received for this

11 milk.

12   Q.   Okay. Now, the shaded column headed Class IV,

13 Roman numeral IV, MA Allocate, shows a number at the

14 bottom, $327,916.91. You referred to that total in

15 your testimony, correct?

16   A.   Yes.

17   Q.   And that is the lost class value that SMI

18 experienced -- class price value that SMI experienced

19 because of the dumping of these loads of milk?

20   A.   That is correct.

21   Q.   Okay. So let me just go back to the location

22 of the dump a minute and talk about that just another

23 question or two. The ones that were dumped on the

24 farm, I guess that's self-explanatory, but it was never

25 hauled -- those tanker loads were never hauled from the

     1 farm, correct?

     2   A.   That is correct.

     3   Q.   However, the ones that were dumped at the

     4 terminal, those were tankers that were brought to the

     5 terminal location from the farms; is that correct?

     6   A.   That is correct.

     7   Q.   And then physically dumped into a lagoon or a

     8 sewer at the Belleview location?

     9   A.   Yes.

    10   Q.   Now, just for further clarification so there's

    11 no question about the Belleview location, there's no

    12 milk processing facilities at Belleview. It's just a

    13 trailer -- truck and trailer staging facility, correct?

    14   A.   That's correct. Yes.

    15   Q.   Okay. Let's turn then to Exhibit 26, if you

    16 would, Ms. Wooten. And tell us about Exhibit 26. Did

    17 you prepare this?

    18   A.   Yes, I did.

    19   Q.   Okay. Tell us about it.

    20   A.   Okay. So this is -- the first column is just

    21 the ticket number, which is the identifier for us on

    22 the individual loads. The pickup date, delivery date

    23 is self-explanatory. The product pounds is the total

    24 pounds on each of these tickets, our tankers. The

    25 butterfat that goes with the pounds.

1   The Southeast (sic) Cheese value is the actual

2   value that we collected from Southeast Cheese because

3   these are the loads that we were able to deliver to

4   Southeastern Cheese in September.

5   Q.   That's what you were paid for the milk?

6   A.   That is correct.

7   Q.   Thank you.

8   A.   Class III MA Allocate is how the Market

9   Administrator -- it was allocated in the pool. So the

10   Lost Revenue is the difference between the class price

11   and what we actually received.

12   Q.   The Lost Revenue is the last column, the

13   shaded column, correct?

14   A.   That's correct.

15   Q.   And the negative figures there indicate a loss

16   to SMI, which is the lost value on that milk, the

17   difference between what you were able to sell it for

18   and the minimum class value under the Order?

19   A.   Correct.

20   Q.   Class III being milk used to produce cheese,

21   correct?

22   A.   Yes.

23   Q.   Okay. Let's turn then to your final exhibit,

24   Exhibit 27. Did you prepare this?

25   A.   I did.

1   Q.   And tell us about it.

2   A.   All right. This is the first -- the first

3 four or five columns, four columns is the same as

4 Exhibit 26, with the information for each ticket; and

5 here we are just providing the detail of the loss of

6 location value.

7   This milk would have come to Florida but

8 because it was sent to Southeast Cheese, it would have

9 been -- the location adjustment would have been

10 accounted for -- or this is lost revenue, more lost

11 revenue for Southeast Milk because it was pooled at

12 Southeast Cheese's differential of 3.40.

13   Q.   Okay. Was -- to the best of your knowledge,

14 was all this milk pooled on Order 6?

15   A.   I believe that it was, but before anything is

16 submitted, that's one of the things that we will be

17 doing, is making sure where it was pooled so we are

18 requesting the appropriate dollars.

19   Q.   Okay. So in the event that you didn't -- that

20 you couldn't pool it on Order 6 because of the

21 diversion limits, as Mr. Duprey referenced this morning

22 and Mr. Sims talked about --

23   A.   Uh-huh. (Indicates affirmatively).

24   Q.   -- it may have been pooled on Order 5?

25   A.   7.

1   Q.   Or 7, I'm sorry.

2   A.   Correct.

3   Q.   If you were able to pool it there?

4   A.   Correct.

5   Q.   Okay. Okay. Now, you do not show here any

6   lost -- any additional transportation costs on these

7   deliveries to Southeastern Cheese, for instance; but,

8   if I understood your testimony correctly, you do have

9   additional transportation expenses which, if the Order

10   is amended to allow for reimbursement of any of those

11   costs, you will -- you would intend to prepare those

12   expenses and submit them to the Market Administrator at

13   that time?

14   A.   Yes.

15   Q.   But they have not been -- you have not

16   attempted to calculate them for the hearing, rather,

17   today?

18   A.   Right. Correct.

19   Q.   Okay. Let me ask one or two more additional

20   questions, and then I think I've completed direct

21   examination. Are any of -- first of all, did these

22   extraordinary marketing conditions of Hurricane Irma,

23   the dumped milk, the losses of sales to Southeastern

24   Cheese, did they impact the pay price that you paid

25   your dairy farmers for the months -- their milk in the

 1 month of September?

 2   A.   Absolutely.

 3   Q.   Okay.

 4   A.   Yes.

 5   Q.   And are any of those producers small

 6 businesses?

 7   A.   Yes. We do have -- I would say about 10

 8 percent of our total producers --

 9   Q.   Okay.

10   A.   -- are small farms.

11   Q.   Within that definition of small farms as set

12 by the S -- Small Business Administration, which

13 Mr. Sims, I think, referred to as gross annual revenues

14 of roughly $750,000?

15   A.   Correct. Yes.

16   Q.   Okay. And I have one final question. You

17 referred in the earlier part of your testimony, I think

18 on page 2, to some -- to hurricane planning that SMI

19 has, a Hurricane Preparedness Plan; and is that

20 something that SMI, as a prudent cooperative business,

21 has in place to attempt to handle in every possible

22 proactive way, these types of events?

23   A.   Yes.

24   Q.   And did you execute and implement that plan

25 for Hurricane Irma?

1   A.   Absolutely.

2   Q.   Okay. And did it help mitigate expenses to

3   the extent possible, costs?

4   A.   I believe that it did, yes.

5   Q.   Okay. But nevertheless, the losses that you

6   have reported -- testified to here were suffered by the

7   SMI producers?

8   A.   That's correct.

9   Q.   Okay.

10   MR. BESHORE: I have no further questions on

11   direct examination. I think the exhibits have

12   been admitted, and Ms. Wooten is available for

13   cross-examination.

14   JUDGE JENSON: Thank you. Any

15   cross-examination? Ms. Taylor.

16   CROSS-EXAMINATION

17   BY MS. TAYLOR:

18   Q.   Erin Taylor. Thank you, Ms. Wooten, for

19   testifying today on behalf of the Department. I want

20   to extend our thanks. I do have a few questions. You

21   just said about 10 percent of your producers are small

22   businesses, but that's of the 150?

23   A.   That's correct.

24   Q.   Not of the 64 in Florida necessarily?

25   A.   That is -- no, that is correct. Yes.

1   Q.   Okay. On page 4 of your testimony and I think

2 in Exhibit 21 also, you had examples of different

3 government assistance programs that were available to

4 producers in the impacted areas.

5   A.   Yes.

6   Q.   Did the cooperative or handlers in Florida,

7 were they eligible for any other government assistance

8 for reimbursement for costs that perhaps would be the

9 same as what we're considering here today?

10   A.   I'm unaware of the cooperatives being

11 eligible, and I'm unaware of the farm for what we are

12 requesting that, yes.

13   Q.   It would be different?

14   A.   Yes.

15   Q.   Okay. On page 6 of your testimony towards the

16 bottom, you say that -- I think it's FDACS. FDACS, I'm

17 not quite sure how you said it. But the Florida

18 Department of Agriculture estimated the value of all

19 loss production to be around $7.5 million?

20   A.   Uh-huh. (Indicates affirmatively).

21   Q.   Is that number in the exhibit that you

22 provided with --

23   A.   Yes. It's in Exhibit 19.

24   Q.   In Exhibit 19. Okay. And would you consider

25 that 7.5 million to include the costs that we're

```
 1   discussing today or just on the producer side at the

 2   farm level?

 3        A.   I would think it would just be on the

 4   producers, the actual farm level --

 5        Q.   Okay.

 6        A.   -- their infrastructure and --

 7        Q.   To barns, et cetera?

 8        A.   Exactly.

 9        Q.   Okay.  On page 8 at the bottom you discussed

10   dumped milk.  I just want to first clarify for the

11   record, you talk about milk -- about 2 million pounds

12   of milk was dumped on the farm or from trailers due to

13   age.  Can you just clarify what you mean by that?

14        A.   Yes.

15        Q.   There's --

16        A.   When we had our Hurricane Preparedness Plan,

17   we attempted to pick up milk as much as we could, if we

18   could; and, when the storm -- because we did not know

19   exactly when the storm would hit, the milk that we had

20   on tankers may have sat on the lot until we could have

21   either moved them or if a plant could have received

22   them.

23             So because of milk requirements, we can only

24   hold it in our tanker for so long.  So it got past that

25   point, so the age came into play, that we had no choice
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1 but to dump it.

2   Q.   You're talking about health and sanitation

3 requirements?

4   A.   Yeah.

5   Q.   Okay. The dumps that you discussed here, were

6 these dumps reported to the MA?

7   A.   Yes.

8   Q.   So Mr. Sims talked about other dumps that

9 perhaps were dumped on the farm not reported to the MA

10 yet. Do you have any of those, to your knowledge?

11   A.   No. All of ours have been reported.

12   Q.   Okay. On page 9 -- and we're talking about

13 milk that moved to Southeastern Cheese -- you say,

14 However, you were able to sell -- ship it to

15 Southeastern Cheese, but that milk would normally

16 receive a Class I price at the Florida market.

17   Do you mean the blend or uniform price or that

18 it would be accounted to the pool at the Class I price?

19   A.   It would have -- well, we would have sold it

20 as Class I instead of it being sold as cheese -- to

21 cheese, so Class III.

22   Q.   Okay. And then it would have been pooled and

23 the handler would have accounted at the Class I price?

24   A.   Correct. Correct.

25   Q.   I want to move to your Exhibit No. 24. I

1   think that's the first one I have a question. You

2   have, for example, in the top left row or cell, Closed

3   2200. My assumption is that's military time for 10:00

4   p.m. --

5   A.   Yes.

6   Q.   -- but I want to clarify that's what the

7   numbers mean next to each --

8   A.   That's correct. Yes.

9   Q.   Okay. And on the dumped milk exhibit, Exhibit

10 25, and also Exhibit 26 and 27, when you have the dates

11 associated, we'll note -- I wanted to note that none of

12 these have dates for the 10th. Everything happened

13 before the 10th or after the 10th, but actual loads say

14 dumped. None happened on the 10th?

15   A.   That's correct.

16   Q.   Is that because the storm was coming up the

17 state?

18   A.   Yes.

19   Q.   In Exhibit 26, this is the milk that you sold

20 to Southeastern Cheese, and so in the column labeled at

21 the Southeastern Cheese Value, they paid you-all, in

22 aggregate, around $90,000 for those loads?

23   A.   Uh-huh. (Indicates affirmatively).

24   Q.   It was allocated a Class III. If it had been

25 paid at the Class III price, you would have gotten

1   $163,000 for it. So you lost the $73,000?

2   A.   Yes.

3   Q.   In the Order language as noted in the hearing,

4   if I'm understanding correctly, this milk would have

5   been allocated to Class IV, but the change that you're

6   seeking didn't have the reimbursement be a Class III

7   value. Does that make sense? You can say no.

8   A.   No, because it did go to cheese, and it was

9   allocated to III. So maybe I'm not understanding your

10 question. Can you ask it again?

11   Q.   Well, I'm trying -- I'm still trying to make

12 sure I have all changes straight from this morning.

13   A.   Uh-huh. (Indicates affirmatively).

14   Q.   And so there was a change where something

15 would be allocated for price of the lowest class price,

16 which, for September, was Class IV?

17   A.   Yeah, and that was dumped. I think they were

18 referring to dumped milk because dumped milk, it wasn't

19 used, so it had no class. There was no allocation of

20 how it was used. So they used the -- their -- their

21 request is to use the -- I'm sorry.

22   It's the lowest class under dumped milk; but,

23 if it is sold somewhere and there is a -- it's been

24 assigned a class, then that's the class to be used for

25 that milk.

1   Q.   Okay.

2   A.   In the case of Southeast Cheese, it was sold

3 to a cheese plant, so it could be priced at Class III.

4   Q.   Okay. So the prices that you received on the

5 milk to Southeastern Cheese -- oh, I guess it's --

6 you're saying these loads you don't normally sell to

7 Southeast Cheese?

8   A.   These loads --

9   Q.   The distressed milk would normally have been

10 pooled or sold to Class I plants?

11   A.   No. Distressed milk would have normally gone

12 to Southeast Cheese, to a cheese -- a manufacturing

13 plant, distress milk.

14   Q.   Okay.

15   A.   Yes.

16   Q.   And so would you normally have gotten the

17 Class III value on nonhurricane-related days?

18   A.   No.

19   Q.   You would have sold it at a different price?

20   A.   It would have -- whatever -- well, we would

21 have sold it at the Southeast Cheese price, and it

22 would have been allocated as Class III. The difference

23 is the hurricane caused this milk to go to a

24 manufacturing plant. It wasn't necessarily -- no. It

25 was distressed because of the hurricane.

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 1            The hurricane caused this milk, because of
 2   age, to be distressed.  Does that answer your question?
 3       Q.   Sort of.  But in the normal -- I'm just -- in
 4   the normal course of business for SMI, you would
 5   normally have sold some loads to Southeast Cheese?
 6       A.   That's correct.
 7       Q.   At some price you've all agreed upon?
 8       A.   That's correct.
 9       Q.   And it would be -- it would be allocated to
10   Class III if the milk was pooled?
11       A.   That's correct.
12       Q.   So this proposal seeks to get the Class III
13   value reimbursed, the difference between --
14       A.   The difference --
15       Q.   -- between what you got?
16       A.   That is correct.
17       Q.   So what I'm trying to say is, is that -- is
18   that different than on what a normal day would have
19   been?
20       A.   Yes, because of the hurricane.
21       Q.   Okay.  I think that's it.  Thank you very
22   much.
23            JUDGE JENSON:  Any further cross-examination?
24        None.  Mr. Beshore, any redirect?
25            MR. BESHORE:  Yes.
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1	REDIRECT EXAMINATION
2	BY MR. BESHORE:
3	Q. Okay. I think we have a little bit of
4	confusion on the milk to Southeastern Cheese in
5	September, the volumes that are shown on Exhibit 26 and
6	27. So let me see if we can understand this. If there
7	had been no Hurricane Irma --
8	A. Uh-huh. (Indicates affirmatively).
9	Q. -- in September of 2017, where would those
10	deliveries of milk have gone?
11	A. To a Class I pool distributing plant.
12	Q. All of those deliveries?
13	A. Yes.
14	Q. Okay. So while -- you may have sales, you
15	know, in the spring of the year perhaps to Southeastern
16	Cheese on occasion; is that correct?
17	A. Uh-huh. (Indicates affirmatively).
18	Q. And are those the kind of sales that you were
19	referring to when you were responding to Ms. Taylor
20	with respect to possibly ordinary sales to Southeastern
21	Cheese?
22	A. Yes. Or other distressed loads. There could
23	have been distressed loads that could have went to
24	Southeast Cheese.
25	Q. In the ordinary course of business during any

1 time of the year?

2   A.   Correct. Correct.

3   Q.   Okay. But in September of 2017, if there had

4 not been Hurricane Irma, all of those loads would have

5 been -- would have been sold to and delivered to your

6 Class I customers in Florida?

7   A.   Yes.

8   Q.   I have one final question. How many times

9 before today have you testified in a Federal Order

10 hearing?

11   A.   None.

12   Q.   You did a great job. Thank you.

13   JUDGE McCARTNEY: Congratulations.

14   JUDGE JENSON: Is there any objection to

15   excusing this witness?

16   MR. HILL: There are none.

17   JUDGE JENSON: The witness is excused. Thank

18   you very much.

19   THE WITNESS: Thank you.

20   JUDGE McCARTNEY: Let's take a five-minute

21   stretch break while we get prepared for the next

22   witness, unless, of course, there's an objection.

23   I don't see any.

24   JUDGE JENSON: I don't see any.

25   (Brief recess was taken.)

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1              JUDGE JENSON:  All right.  Let's go back on
2       the record.
3              MR. BESHORE:  Okay.  Thank you, Your Honor --
4       Your Honors.  Next, I'd like to mark as our next
5       two exhibits, Exhibit 28, a document of four
6       unnumbered pages, which is titled Premier Milk,
7       Inc., Emergency Hearing Testimony caused by
8       Hurricane Irma, Federal -- Florida Federal Milk
9       Marketing Order 1006, et cetera, and as Exhibit
10      29, a two-page document titled Premier Milk, Inc.,
11      Hurricane Irma Loss Calculations, and we call the
12      next witness, Mr. Thomas Pittman.
13             JUDGE JENSON:  First, would the court reporter
14      please mark the exhibits described by Mr. Beshore
15      as Exhibit 28 and Exhibit 29.
16             THE REPORTER:  They're marked.
17             JUDGE JENSON:  Would you please state your
18      name and spell your name for the record?
19             THE WITNESS:  Thomas Pittman.  T-h-o-m-a-s,
20      P-i-t-t-m-a-n.
21             JUDGE JENSON:  All right.  Please raise your
22      right hand.
23                      THOMAS PITTMAN,
24  having been first duly sworn by the Court, was examined
25  and testified as follows:
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1   THE WITNESS: Yes, I do.

2   JUDGE JENSON: You may be seated.

3   DIRECT EXAMINATION

4 BY MR. BESHORE:

5   Q.   Thank you. Mr. Pittman, before you present

6 your prepared statement, Exhibit 28, you've been around

7 the dairy industry for a period of time. Can you just

8 tell us a little bit about your professional background

9 prior to being in your current capacity for which

10 you're going to testify today?

11   A.   Okay. Yes. I grew up on a dairy farm in

12 Wisconsin. Hoping to get away from it, I went to

13 college, got a Bachelor's and Master's degree in

14 Agricultural Marketing.

15   Fortunately, right after that I started with

16 the Federal Milk Marketing Orders up in North Meridian,

17 Chicago. I worked there for seven years. After there,

18 I went to Wells Dairy out in Iowa, a privately owned

19 dairy processor, and then from there to Unilever, which

20 is a big European conglomerate, a food processor, and

21 then I've been down here in Florida for the last 12

22 years working for the dairy cooperatives and was the

23 one that helped start Premier Milk about nine years

24 ago.

25   Q.   Very good. And you have testified before in

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 1   Federal Order hearings?

 2        A.   Yes, I have.

 3        Q.   Very good.  And would you then please present

 4   your testimony in Exhibit 28?

 5        A.   Okay.  Thank you.  My name is Thomas Pittman.

 6   I am the general manager and treasurer of Premier Milk,

 7   Incorporated.  My business address is 1531 Southeast

 8   36th Avenue, in Ocala, Florida 34471.

 9            Premier Milk is a Capper-Volstead cooperative

10   association qualified to market milk on the Federal

11   Milk Marketing Orders.  Premier Milk markets almost all

12   of its milk on the Florida Federal Milk Marketing Order

13   1006 every month, with occasional sales in the

14   Southeast Milk Marketing Order 1007.

15            Premier Milk is here today to provide

16   testimony in support of Proposal 1 and 2 as listed in

17   the Notice of Hearing, a request to install temporary

18   emergency provisions in the Florida Federal Milk

19   Marketing Order which would offer reimbursement to

20   handlers of milk regulated under the Order who

21   experienced abnormal milk marketing costs because of

22   the effect of Hurricane Irma in the state of Florida.

23            During the month of September, Premier Milk

24   was shipping almost all of their milk to TG Lee Dairy

25   in Orange City, Florida.  We have three members who
```

 1 | reside near Myakka City, Florida, which is just south

 2 | of Tampa. We have eight members who reside in

 3 | Lafayette and Suwannee Counties in North Central

 4 | Florida, and we have four members who reside in the

 5 | southeast part of Georgia.

 6 | All of the members' milk are shipped on a

 7 | daily basis and was marketed on the Florida Federal

 8 | Milk Marketing Order in the month of September 2017.

 9 | During the period of September 7th through the 9th, we

10 | start experiencing delays in delivering milk to TG Lee

11 | Orange City from the Myakka City, Florida, area.

12 | Trucks delivering milk had to travel on

13 | heavily congested roads while trying to make delivery

14 | times. The heavily congested roads were caused by

15 | people who were evacuating the southern part of Florida

16 | during this time.

17 | TG Lee Orange City announced that they would

18 | close their plant on Saturday, September 9th at 6:00

19 | a.m. and would not unload any more milk after that

20 | time. The plant would remain closed until late Tuesday

21 | afternoon on September 12th.

22 | The plant could only operate on generator

23 | power until Wednesday morning, so the only thing they

24 | could do was unload milk on late Tuesday, September

25 | 12th. They could not process any -- the milk any

1   further until the power was fully restored to the

2   plant, which occurred on Wednesday, September 13th.

3   When Premier Milk was given notice that TG Lee

4   Dairy was closing on Saturday morning, it took steps to

5   minimize any dumping of milk and tried to find other

6   outlets. All other processing plants in Florida were

7   closing down in Florida as well.

8   We were able to shift milk from our Georgia

9   dairy farms and some of our Florida dairy farms to

10 Southeastern Cheese in Uniontown, Alabama, during this

11 time. We were not able to move much milk from Myakka

12 City area due to the lack of drivers who wanted to be

13 home with their families to prepare for the storms

14 themselves.

15   We worked with Dakin Dairy Farms, a small

16 family-owned processor, to skim off the butterfat from

17 milk and dump the skim milk. They were limited in the

18 volume of milk they could process due to loss of power

19 at their plant and their plant size restrictions.

20   The marketing losses suffered by the members

21 of Premier Milk for those few days had a significant

22 impact on their pay prices. Couple those marketing

23 losses with the losses the farms had from the

24 structural damage and the loss of milk production, most

25 of the members have not been able to pay all of their

 1   bills over the last two months.

 2   Premier Milk had marketing losses in three

 3   different areas. Some milk was dumped; some milk was

 4   marketed to Southeastern Cheese in Uniontown, Alabama;

 5   and some milk was skimmed and the butterfat sold to

 6   private-owned processor.

 7   Exhibit 29 shows the losses in each of the

 8   different areas. Premier Milk marketed eight loads of

 9   milk to Southeastern Cheese during this time and

10   suffered losses of $33,408.88. Premier Milk had to

11   dump 188,176 pounds of milk, most of which this dump

12   was attributed to a road that led to one farm that was

13   washed out by a flooding river and was repaired three

14   days later.

15   The net loss of the dumped milk was

16   $31,976.70. Eleven loads were diverted to a small

17   family-owned processor who skimmed off the butterfat

18   and dumped the skim milk. The milk sold to Dakin Dairy

19   Farms was done in order to create some empty milk

20   trailers so that some of the Premier members could keep

21   milking their cows.

22   The net loss of this transaction was

23   $42,782.22. The total loss from Hurricane Irma for

24   Premier Milk was $108,167.79. One of the main purposes

25   of the Federal Milk Marketing Order program is to

 1   ensure a supply of milk for fluid consumption and to

 2   help provide orderly marketing of milk.

 3   Hurricane Irma and the aftereffects of the

 4   hurricane caused chaotic conditions because of the

 5   extended closure of milk processing plants throughout

 6   the state of Florida. The financial losses incurred by

 7   the dairy producers from the storm continue to plague

 8   them yet today.

 9   Premier Milk and its members first would like

10   to thank the Secretary of Agriculture to consider this

11   request and now would like the Secretary to issue an

12   expedited decision on Proposals 1 and 2 for Federal

13   Milk Marketing Order 1006.

14   This concludes my testimony, and I will now

15   answer any questions.

16   Q.   I have just a few additional questions,

17   Mr. Pittman. Could we -- let's look at Exhibit 29 --

18   A.   Okay.

19   Q.   -- if we could, please. Did you prepare this

20   exhibit?

21   A.   Yes, I did.

22   Q.   You referenced in your testimony, especially

23   some of the sums, but could you just -- let's just walk

24   through it and make sure that the calculations and the

25   basis for them are clear.

1   So if we look at the first part, extra cost

2   for milk sales to Southeastern Cheese, the first two

3   sets of calculations at the top of the first page, can

4   you just walk us through those?

5   A.   Sure. It gives the date of the milk when it

6   moved over there, the ticket number, and then also the

7   pounds of butterfat for each load, but then also the

8   Southeast value, that is the value of the money that we

9   received from Southeast -- Southeastern Cheese.

10   Q.   What you were actually paid for each load?

11   A.   Yes. The first column there, the Southeastern

12   Cheese value, that is what we received from them. The

13   next value is the Class III value.

14   Q.   Being the minimum Order value?

15   A.   The minimum Order price, yes, for skimming

16   butterfat. And then location differential loss,

17   because Southeastern Cheese is in the 3.40 zone versus

18   a 5.40 zone, that's a $2 hundredweight loss.

19   Q.   So the 5.40 zone, is that the zone in which TG

20   Lee, your customer, is located?

21   A.   Yes. And so in working the formulas, take the

22   Class III -- take the Southeast Cheese value, subtract

23   out the Class III and then add the differential loss,

24   gets to the total loss on the far left.

25   Q.   Very good. And then the next calculation on

1   the Southeastern sales relating to the transportation

2   cost?

3   A.   Yes.   For those eight loads we sent to

4   Southeastern Cheese, these were the freight numbers.

5   We had one farm that was actually in the Panhandle of

6   Florida, and so the cost of those to Southeast Cheese

7   was considerably less than to come to Central Florida.

8   So that was a savings; but the other ones, it was all

9   additional miles than what they normally would have

10 ran.   So these were the actual extra costs that we paid

11 to our trucking company.

12   Q.   And is that paid to a contract trucker, so

13 you've got invoices that reflect these charges?

14   A.   Yes.   Yes.

15   Q.   Very good.   The aggregate then of losses on

16 sales, losses plus extra costs on sales to Southeastern

17 Cheese is 33,408.88 --

18   A.   Yes.

19   Q.   -- for Premier?

20   Okay.   The next box shows your calculated

21 losses for dump milk.   Can you --

22   A.   Yes.   The first four entries are full loads,

23 and then that 223,800 came from the one farm where the

24 road was blocked of the farm where we could not get in

25 to pick up that milk.   So they, you know, they produce

 1 a tanker load a day pretty much; and so in order to

 2 keep milking, they had to dump their milk, and that was

 3 the value, the Class IV value, of that milk.

 4   And then the last part, that last little

 5 20,066 pounds, was milk that got too old that we had to

 6 end up dumping.

 7   Q.   When it got too old, you had it in a truck and

 8 just couldn't get it to market while it was still --

 9   A.   It was in the truck for six days. I told

10 them, I said, Southeast Cheese won't even take that

11 anymore.

12   Q.   So health requirements on that milk would

13 not --

14   A.   Yes.

15   Q.   -- would not allow it to be marketed?

16   A.   Right.

17   Q.   Okay. So the total cost, extra costs for dump

18 milk, were then $31,976.70?

19   A.   Yes.

20   Q.   Okay. Then on the second page, tell us about

21 those. Explain those costs.

22   A.   Okay. This is the milk that was sold to Dakin

23 Dairy Farms. We had agreed upon the price, which would

24 have been the Class IV butterfat less the $3

25 hundredweight allowance. So what we ended up doing

1   there was we sold them the milk. They took it into the

2   plant. They separated off the fat. They ended up

3   dumping the skim milk because they had nowhere to go

4   with it themselves, and they -- we're in charge of

5   marketing that fat from there on out.

6   So like I said -- and this was done, I mean,

7   either that or we dump all the milk. I was just trying

8   to find ways to minimize the cost because I didn't know

9   even this was going to happen. So it's like you try to

10   find ways to minimize the cost of -- of -- to your

11   members when doing this.

12   Q.   So this was an attempt to -- was the best --

13   was the way you could minimize the losses on these

14   transactions here, on these volumes of milk for your

15   members?

16   A.   Yes. Yes.

17   Q.   Okay. The line that says Savings on not

18   hauling milk to TG Lee, can you explain that?

19   A.   We pay our trucking company if we go -- we

20   have two farms located within a couple miles of this

21   plant. So if we take milk over for any reason, it's a

22   hundred dollar fee, and so that's why the hundred

23   dollar fee per load and those 11 loads is $1100; but

24   then if we were going to haul that milk to TG Lee in

25   Orange City, it would have cost us $1.30.

 1   So I made up that difference -- took the

 2   difference between the two, and that's actually savings

 3   for us; but figuring that in, you know, we don't want

 4   to be collecting on that.

 5   Q.   So have you been here the entire hearing

 6   today?

 7   A.   Yes, I have.

 8   Q.   And you've heard Mr. Sims' testimony?

 9   A.   Yes.

10   Q.   With respect to how the proponents, including

11   Premier, intend not to -- not to request amendments

12   that would allow any excessive recoveries but to net

13   out costs saved against costs incurred?

14   A.   Yes.

15   Q.   And that's what you've attempted to do here?

16   A.   Yes.

17   Q.   Okay. Very good. So that shows total losses

18   then to Premier from Hurricane Irma of $106,038.21,

19   correct?

20   A.   Correct.

21   Q.   Okay. So are any of -- are any of Premier's

22   farms small businesses?

23   A.   There are five of them that are considered

24   small businesses.

25   Q.   Okay. And you've testified that Premier's

1 members, some of the members, the losses were -- first

2 of all, the losses had to be reflected in their pay

3 price for September milk, I take it?

4   A.   Yes.

5   Q.   Okay. And those losses have been such that

6 they've been unable to pay their monthly bills, in some

7 cases at least?

8   A.   I get calls from a couple producers that are

9 struggling; and, you know, they weren't calling me

10 before the hurricane. They've been calling me

11 afterwards; and knowing how much this cost came out of

12 their price, yeah, I can understand that, yeah, they're

13 having a tough time paying their bills right now.

14   Q.   And you've testified that you support the

15 request of the proponents that the Secretary expedite

16 this decision by amending a recommended decision, if

17 possible, correct?

18   A.   Yes.

19   Q.   And is the fact that your members, some of

20 them, are suffering these financial distress because --

21 this financial distress because of the losses one of

22 the reasons that you would urgently request that the

23 decision be expedited?

24   A.   Yes.

25   Q.   One final question. Do you -- having been

1 here, do you recall seeing the Exhibit 24, which

2 Ms. Wooten testified to, the list of plants and when

3 they were closed?

4   A.   Yes.

5   Q.   Okay. Now, TG Lee, your customer, is not

6 reflected on that, correct?

7   A.   That is correct.

8   Q.   Okay. Because these were SMI customers,

9 correct?

10   A.   Correct.

11   Q.   But TG Lee, if it were added to that list, was

12 closed how many days did you testify?

13   A.   They closed on Saturday at 6:00 a.m. and

14 started unloading milk Tuesday evening about 8:00 p.m.

15 but actually were not able to run their entire plant

16 and process milk until Wednesday morning. So about

17 6:00 a.m. they actually got full power back to the

18 plant.

19   Q.   Okay. So three and a half days or so?

20   A.   Three, three and a half days, yes.

21   Q.   Very good. So to get a total picture, an

22 additional picture of the marketplace, TG Lee would

23 need to be added, too?

24   A.   Yes.

25   Q.   Okay. And TG Lee, by the way, is a Dean Foods

1 plant?

2   A.   It is a Dean Foods plant, yes.

3   Q.   Very good. I don't have any other questions.

4 Do you have anything more you'd like to add?

5   A.   No.

6   Q.   Thank you very much, Mr. Pittman.

7   JUDGE JENSON: Do you want to offer Exhibits

8   28 and 29?

9   MR. BESHORE: I do. Thank you for -- thank

10   you for making sure I didn't forget that,

11   Your Honor. I would like to. 28 and 29.

12   JUDGE JENSON: Any objections to the entry of

13   Exhibits 28 and 29 in evidence?

14   MR. HILL: There are no objections.

15   JUDGE JENSON: With that, Exhibits 28 and 29

16   are entered into evidence. Okay. Is there any

17   cross-examination for this witness?

18   CROSS-EXAMINATION

19 BY MS. TAYLOR:

20   Q.   Good afternoon, Mr. Pittman.

21   A.   Good afternoon.

22   Q.   I'd also like to thank you on behalf of the

23 Department for testifying today and taking time out of

24 your day to be here. On your testimony, you tell us

25 how many members you have where, but I added them up.

      1   So in total, there's 15 members?

      2   A.   Yes.

      3   Q.   Okay. And of which you -- five are -- would

      4   be considered small businesses?

      5   A.   Yes.

      6   Q.   Okay. Okay. On your breakdown of your

      7   losses, I just kind of want to go through that in

      8   conjunction with your Exhibit 29.

      9   A.   Okay.

     10   Q.   So your first loss is the milk that you sent

     11   to Southeast Cheese?

     12   A.   Yes.

     13   Q.   And on Exhibit 29 -- let me make sure my

     14   question is correct -- you've totaled those losses not

     15   only in the value -- the top of the first section, the

     16   value loss, because you got a distressed milk price as

     17   opposed to the Class III value, but under that is also

     18   additional freight cost that you paid to get it to

     19   Southeast Cheese that you would not have ordinarily

     20   paid; is that correct?

     21   A.   That is correct.

     22   Q.   For a total of $33,408.88?

     23   A.   Yes.

     24   Q.   Okay. On Exhibit 28, you say that Premier

     25   marketed eight loads of milk to Southeast Cheese, but I

 1 only see seven listed.

 2   A.   Yes.   There was -- originally I had a total of

 3 eight loads that went there, but there was one load

 4 that was rejected from the plant due to water added, so

 5 I could not include that one in my analysis.

 6   Q.   Okay.   So you only actually sold them seven

 7 loads?

 8   A.   Seven, yes.

 9   Q.   And then you had -- I want to make sure I have

10 this straight.   You dumped 188,000 pounds of milk?

11   A.   Yes.

12   Q.   It was dump milk, and that's the next -- the

13 bottom part of Exhibit 29, for a total loss at a

14 Class IV value of $31,976.70?

15   A.   Yes.

16   Q.   Were all those loads reported to the MA at the

17 time of dumped, or do you have some loads that have

18 never been reported as dumped to the MA?

19   A.   This was all reported to the MA.

20   Q.   Okay.

21   A.   So they have a hundred percent knowledge of

22 it.

23   Q.   Okay.   And the milk sold to Dakin Dairy, if I

24 understand your testimony correctly, you sold it to

25 them so you could have empty tankers from which to pick

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 1  up more milk from member farms so at least they didn't

 2  have to dump it right away on the farm because they

 3  didn't have anywhere to store it?

 4       A.   Correct.

 5       Q.   Okay.  And so I did want to get into that part

 6  of your table because I don't think the numbers -- the

 7  numbers I read in your testimony and the numbers on the

 8  table are different, and I'm not sure why that is.

 9  So --

10       A.   I can explain that.

11       Q.   Okay.  It would be helpful.

12       A.   Actually, when the group of us were reviewing

13  the testimony, I had a mathematical -- or a formula

14  error in my Excel spreadsheet on my analysis, which I

15  had corrected, but I forgot to correct my testimony on

16  Exhibit 28.

17       Q.   Okay.  So the numbers in Exhibit 29 are

18  correct?

19       A.   Yes.  Those are correct.

20       Q.   So just so the record is clear, on the last

21  page of your statement, the top number, which currently

22  reads $42,782.22 should instead be $40,652.63?

23       A.   Correct.

24       Q.   And then the number following that, which

25  currently reads $108,167.79 should read $106,038.21?
```

1   A.   Correct.

2   Q.   Okay. So I want to make sure I read this

3 table correctly. In the column marked Discount Given

4 to the Processor, is that -- I take -- is that, I take

5 it to mean, the skim value that they dumped?

6   A.   The skim value that they dumped and also their

7 manufacturing allowance that they took as well.

8   Q.   Okay. And they just paid you for the

9 butterfat?

10   A.   Yes.

11   Q.   And can you re-explain, because I might have

12 been writing while you were talking about this column,

13 so I want to make sure I understand it, what the

14 Location Differential Gain number represents?

15   A.   The Location Differential Gain number is Dakin

16 Dairy Farms is located in the 5.80 zone, and TG Lee

17 Orlando is located in the 5.40 zone. So there is a

18 gain of 40 cents a hundredweight, and so that's what

19 that accounts for, is that 40 cents a hundredweight on

20 that tanker amount that Premier would have received

21 because of milk that was pooled on the Order.

22   Q.   Okay.

23   A.   So I had to give that money back because

24 typically that milk would not have went there.

25   Q.   I want to make sure I understand the math on

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 1  how you got your total.

 2       A.   Okay.

 3       Q.   So you took the --

 4       A.   The Class IV value.

 5       Q.   Uh-huh.  (Indicates affirmatively).

 6       A.   -- is that Federal Order member pricing.  The

 7  discount given to the processor is the skim value plus

 8  $3 a hundredweight on the whole tanker of milk, and

 9  then the location differential is the tanker volume of

10  milk times 40 cents a hundredweight.

11            So that loss gets calculated -- actually, what

12  it is is just a discount given to a processor less the

13  location differential gain.

14       Q.   Okay.  So if I take $8,338, subtract off the

15  $4,456, is that how I want to read through the columns?

16       A.   No.

17       Q.   Okay.

18       A.   No.  What -- the Class IV value just shows

19  what the Class IV value is, the discount given to the

20  processor plus the location differential gain, which is

21  a negative number, so you're actually subtracting it,

22  and that gets you your total loss.

23       Q.   I think that's it.

24       A.   Okay.

25       Q.   Thank you very much.
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1	JUDGE JENSON: Any further cross-examination?
2	Mr. Beshore, redirect?
3	MR. BESHORE: I have no questions for
4	redirect.
5	JUDGE JENSON: Does anyone object to my
6	excusing this witness?
7	MR. HILL: There are no objections.
8	JUDGE JENSON: All right. You're excused.
9	Thank you very much.
10	THE WITNESS: Thank you.
11	MR. BESHORE: Our final witness is
12	Mr. Elvin Hollon. I'd like to ask that the
13	testimony, a six-page document, be marked as
14	Exhibit 30. The title is Cooperative Association
15	Proponents, Hurricane Cost Emergency Hearing
16	Testimony, Florida Federal Milk Marketing Order
17	No. 1006. The first line, I am Elvin Hollon,
18	et cetera.
19	JUDGE JENSON: Would the court reporter please
20	mark the document described by Mr. Beshore as
21	Exhibit 30?
22	THE REPORTER: It is marked.
23	JUDGE JENSON: Thank you. Mr. Hollon, would
24	you please stand? Would you state your name and
25	spell your name for the record, please?

1   THE WITNESS: I am Elvin, E-l-v-i-n. Hollon,

2   H-o-l-l-o-n.

3   JUDGE JENSON: All right. Would you please

4   raise your right hand?

5   ELVIN HOLLON,

6 having been first duly sworn by the Court, was examined

7 and testified as follows:

8   THE WITNESS: I do.

9   JUDGE JENSON: Please be seated.

10   DIRECT EXAMINATION

11 BY MR. BESHORE:

12   Q.   Mr. Hollon, before you present your testimony

13 in Exhibit 30, would you favor the (Inaudible) with a

14 summary of your professional background and experience

15 prior to today?

16   A.   I have a Bachelor of Science degree in how to

17 make cheese and ice cream, none of which I remember,

18 and a Master's degree in Agriculture Economics. I've

19 worked for Dairy Farmers of America or its predecessors

20 some 38 years.

21   During that time, one of my principal duties

22 has been the interface between the cooperative, its

23 marketing programs, and the regulatory system. So I

24 would -- I would guess I've been a witness in more than

25 40 hearings, I think more than a year's worth of days;

1 and, if you count calls and letters of intervention

2 that -- well, received nicely and -- well, they're all

3 received nicely, but received, it would be a lot.

4   Q.   Very good. And you're here today to testify

5 on behalf of the FDA in support of these proposals in

6 this hearing?

7   A.   I am.

8   Q.   And you have a statement that's premarked as

9 Exhibit 30?

10   A.   I do.

11   Q.   Would you please proceed to present it?

12   A.   Yes. I am Elvin Hollon, vice president of

13 Fluid Marketing and Economic Analysis for Dairy Farmers

14 of America, Inc. My office is located at 1405 North

15 98th, Kansas City, Kansas 66111. I am testifying today

16 in support of Proposal 1 as offered by Southeast Milk,

17 Inc., Dairy Farmers of America, Inc., Premier Milk,

18 Inc., Maryland and Virginia Producers Cooperative

19 Association, Inc., and Lone Star Milk Producers, Inc.

20 (the proponents) who together market in excess of 90

21 percent of the producer milk pooled on the Federal

22 Order (FO6).

23   The proponents requested that the Department

24 hold this emergency hearing for purposes of amending

25 Federal Order 6, to provide for temporary -- to provide

 1   for temporary amendments to the Order authorizing

 2   limited reimbursement to handlers who experienced

 3   extraordinary losses from Hurricane Irma during

 4   September 2017.

 5   Dairy Farmers of America, Inc. (DFA) is a

 6   qualified Capper-Volstead Cooperative. We market and

 7   pool milk in all Federal Milk Marketing Orders (FMMO)

 8   except the Arizona Order. We are strong supporters of

 9   the FMMO system and realize the benefits of orderly

10   marketing it provides to our member owners; their

11   customers and consumers are very important.

12   With regard to the Florida Order, we regularly

13   market and pool milk from DFA member owners on the

14   Order. Our members suffered marketing losses of the

15   type for which compensation is being requested in this

16   proceeding.

17   We support the modifications to the proposal

18   as outlined by Mr. Sims. Without them, many of the

19   claims of additional transportation costs and milk

20   value would not be able to be recouped.

21   We agree and support the information provided

22   by -- scratch "the" -- Ms. Wooten and Mr. Pittman with

23   regard to the extraordinary weather conditions caused

24   by Hurricane Irma and leading to this request and will

25   not duplicate some of the factual storm specific data.

1   With regard to the data supplied by the Market

2   Administrator we note that Exhibit -- I should have

3   looked up the number and didn't -- titled Federal Order

4   6, Other Uses and Farm Dumps clearly demonstrates that

5   farm dumps are unusual in Order 6 and the volumes

6   dumped on farms in September was substantial and would

7   represent an amount in the hundred-thousands of

8   dollars.

9   Exhibit -- and again, I don't have the

10   number -- deliveries to Federal Order 6 pool

11   distributing plants by day shows a disruption in the

12   delivery pattern to pool distributing plants. Prior to

13   the requested period, September 1 through September 4,

14   deliveries averaged 6.3 million pounds; ramped up

15   immediately ahead of the storm on 9/5 to 9/7 to 7.3

16   million pounds and began to decrease 9/8 to 5.8 million

17   pounds; fell during the heart of the storm 9/9 to --

18   I'm sorry -- 9/9 to 9/12 to 2.8 million pounds; ramped

19   up to near the more normal average from 9/13 to 9/15 of

20   6.8 million pounds and averaged 7.2 million pounds for

21   the balance of the month.

22   We would like to add the following "color"

23   from our own experience to further demonstrate the

24   situation. We have a regular daily supply of milk to

25   the Florida Order. Our procurement system was heavily

 1 stressed by adding extra loads into customers ahead of

 2 the storm during the period September 6 through

 3 September 8.

 4   The additional loads incurred extra hauling

 5 costs due to more miles to deliver, longer hours for

 6 drivers and, in some cases, the stress of finding

 7 additional drivers, as in some cases local area drivers

 8 were not available due to preparing for the storm

 9 situation for their own families.

10   Congested road conditions complicated the

11 longer hours of driving time due to Florida residents

12 trying to get out of the storm's path. For the

13 five-day period September 9 through September 13, our

14 Florida Order -- our Florida Order customers received

15 three out of 75 loads we would have delivered there.

16   This includes a three-day period of zero

17 deliveries, a day with a single delivery, and a day

18 with two deliveries. This level of delivery

19 performance is phenomenally unusual in our industry if

20 not related to a planned and noticed plant repair or a

21 maintenance or capital expenditure project.

22   Even emergency situations related to power or

23 water losses are rarely ever this lengthy. While the

24 retail and industrial dairy demand situation is varied,

25 it is rarely varied to this extent.

1   During this period, we moved milk out of the

2   marketing area to regulated and nonpool plants in other

3   FMMO marketing areas. For several days, there were

4   only a few places to sell milk inside the Order 6

5   marketing area, and on one day there was only -- there

6   was no place.

7   We also temporarily shut off supplemental milk

8   arrangements with long-distant suppliers. These types

9   of arrangements are normal for the Southeastern markets

10   in the fall. In addition to the negotiated base

11   premium, these arrangements have a maximum daily volume

12   the seller must ship if asked and a minimum daily

13   volume the buyer must take.

14   If the seller falls short, they pay some type

15   of penalty generally equal to the replacement cost;

16   and, if the buyer falls short, they pay some type of

17   penalty generally equal to balancing cost incurred by

18   the supplier.

19   During the requested period, we paid "take or

20   pay" fees on the minimum take volumes. Following this

21   extended period -- this extended "no delivery period,"

22   we then experienced a "fill the pipeline" situation

23   where more milk than usual was needed as plants began

24   to reopen and package milk to fill daily demand.

25   During this period, the same situation of more

        1   miles, longer driver hours, and congested roads was

        2   just as burdensome as the period before the storm. The

        3   Hearing Request noted -- and this is a quote -- "the

        4   cooperatives are requesting emergency relief in the

        5   form of amendments to Federal Milk Marketing Order 6.

        6   The requested amendments are set out on the attached

        7   proposed amendatory order language. The amendments are

        8   strictly limited and applicable only to milk movements

        9   during the hurricane period of September 6 to September

       10   15.

       11   "The categories of costs requested for

       12   recovery include: Number 1, the minimum class price

       13   value of whole and skim milk dumped due to the

       14   unavailability of market while plants were shut down;

       15   additional transportation costs associated with milk

       16   movements resulting from the storm; lost minimum

       17   location price value on milk movements out of market;

       18   and 4, price losses on distress sales of milk.

       19   "Reimbursement for handlers who incurred these

       20   limited costs, which would have to be proven to the

       21   satisfactory -- satisfaction of the Market

       22   Administrator, would be through a temporary 9 cents per

       23   hundredweight increase in the Class I price under the

       24   order. The increase would only be applicable for the

       25   number of months necessary to cover the documented

1   costs."

2   DFA's milk marketing losses due to the storm

3   can be detailed as outlined below. In the area of

4   transportation, DFA had multiple loads that were

5   rerouted due to the storm. In many, if not most, cases

6   these loads were directed to non-Order 6 plants.

7   This would include loads that were picked up

8   as early as September 6 and were delivered or in

9   transit on September 15th and ultimately delivered on

10 the 16th or 17th.

11   A few of those deliveries resulted in

12 transport savings and increased returns which will be

13 provided in the claims for compensation --

14   JUDGE McCARTNEY: Mr. Hollon, can I ask you to

15   slow down just a little bit for the court

16   reporter?

17   THE WITNESS: Yes. I'll try to talk slower.

18   I'm sorry.

19   JUDGE McCARTNEY: Well, she's typing and

20   listening.

21   THE WITNESS: Very good. -- but the majority

22   resulted in additional costs. With each load that

23   incurred a transport gain or loss, there may be a

24   corresponding gain or loss location value.

25   We will document for the Market Administrator

1   the gain or loss from each load by showing its

2   delivery point for days immediately prior to

3   September 6, its actual delivery point during the

4   requested period and also on the 16th or 17th if

5   the load was picked up and in transit before the

6   15th.

7   Additionally, we will demonstrate for the

8   Market Administrator, we will show delivery point

9   for deliveries made after September 15th.

10   Associated with each delivery will be the normal

11   pooling Order, the resulting pooling Order, the

12   difference (gain or loss) in the location value

13   and the change (gain or loss) in hauling cost.

14   Again, we support netting the gains and losses

15   as we do not expect a windfall gain, only a

16   compensation for the net marketing loss. DFA had

17   minimal instances of dumping milk, but in each

18   case, there is the loss which, in this special

19   situation, that's equal to the lowest Class value.

20   We will provide the normal documentation for

21   dumped milk of route, manifest, test data, and

22   dumped location. Regarding the cost associated to

23   distressed deliveries to manufacturing plants, we

24   experienced additional transportation costs on

25   loads that moved to distressed manufacturing

1   outlets in addition to a loss in milk value.

2   There are only a few manufacturing locations

3   in the Southeast. They generally operate only

4   seasonally, receive milk at a deeply discounted

5   price. For these loads, we will furnish the

6   normal and final delivery point and invoices

7   showing the prices received on the loads in order

8   to substantiate a request for payment to make the

9   return equal to the prevailing class price for the

10   use at the location.

11   Regarding the recovery of the cost

12   transportation, in all cases we support setting

13   the value at the lower of the actual cost or $3.70

14   (sic) per loaded mile.

15   Based on the data we have and our

16   interpretation of how the requested provisions

17   will work, we estimate our reimbursement amount to

18   be approximately $150,000.

19   As noted in the Hearing Request, we support

20   the reimbursement of these marketing losses

21   through a temporary increase in the Class I price

22   in Federal Order 6 of 9 cents her hundredweight

23   for the number of months necessary to cover all

24   claims made for which sufficient proof is provided

25   to the Market Administrator.

1   At the rate of 9 cents per hundredweight, the

2   price impact on a gallon of milk is less than 1

3   cent per gallon. Providing this vehicle for cost

4   recovery recognizes the extraordinary nature of

5   the situation, a method to derive the compensation

6   from the entire affected market and a method to

7   insure equal impact on milk producers, milk

8   processors, milk sellers, and consumers.

9   We encourage the Secretary of Agriculture to

10   utilize the procedures available to omit a

11   Recommended Decision and expedite reimbursement

12   for these extraordinary costs that have been

13   occurred.

14   We appreciate the efforts provided by USDA to

15   recover these costs caused by the severity of

16   Hurricane Irma. I will be glad to answer any

17   questions you may have.

18 BY MR. BESHORE:

19   Q.   Thank you, Mr. Hollon. I have just a few

20 additional questions on direct. In your testimony you

21 refer to DFA had minimum instances of dumping milk.

22 Did you actually have some -- some dumped milk?

23   A.   To my knowledge, we dumped a single load.

24   Q.   Do you know whether all of -- whether that

25 milk was pooled?

1   A.   I do not think it was pooled. I'm not

2   certain, but I don't think that it was.

3   Q.   Okay. So in the event it was not, are you --

4   you would request that it be treated in the manner that

5   Mr. Sims testified to earlier?

6   A.   Yes.

7   Q.   Okay. Have you been here during the entire

8   hearing today and heard all of Mr. Sims' testimony and

9   all -- in fact, all the testimony from the beginning,

10   including Mr. Duprey?

11   A.   Yes, I have.

12   Q.   Was some of DFA's milk that would have been

13   pooled in Order 6 actually pooled in Order 7 during

14   September?

15   A.   Yes.

16   Q.   Why was that? Does that relate to the

17   diversion limitation issue that was mentioned earlier?

18   A.   Yes, it would.

19   Q.   And is -- do you -- are you requesting that

20   that be, since it was milk that would have been pooled

21   and delivered to DFA customers in Order 6, be treated

22   within the universe of milk that qualifies for

23   reimbursement under these proposals?

24   A.   Yes, I am.

25   Q.   Now, Ms. Wooten presented an Exhibit 24 which

 1 detailed the plant closure times of SMI customers in

 2 order -- in Order 6. Do you recall that exhibit?

 3   A.   I do.

 4   Q.   Okay. Can you tell us whether DFA's

 5 customers, how that -- those closure days compared to

 6 closure days of DFI -- DFA customers in Order 6?

 7   A.   In general, it would, but it would not exactly

 8 compare. So there may have been customers that were

 9 open and received milk from SMI that perhaps, you know,

10 by the time our loads were scheduled there, did not

11 work, vice versa.

12   It may have been -- we may have been able to

13 get a load in early on the day before but not on the

14 day after. So the exact match, you know, wouldn't be

15 the case; but my count of three out of 75 represents

16 actual delivery attempts or deliveries that we would

17 have made.

18   Q.   Okay. And the 75, you may have this in your

19 direct, but that was for what period of days? So on

20 page 3, the first full -- well, the paragraph that

21 starts in the middle. I think this answers the

22 question.

23   A.   Yes.

24   Q.   That it was for the five-day period of

25 September 9 through 13?

1   A.   Correct.

2   Q.   You were only able to deliver three out of 75

3 loads that would ordinarily have been delivered during

4 that period if there wasn't a hurricane emergency?

5   A.   Correct.

6   Q.   Okay. Okay. Now, if we go to page 2 of

7 Exhibit 30, there were two blanks for exhibits

8 previously presented by Mr. Duprey, which you weren't

9 sure of the exhibit number. I'd like to show you what

10 have been marked and admitted as Exhibit 6 and Exhibit

11 9 earlier and ask you if those exhibits would be the

12 correct ones to fill in for the exhibits referenced on

13 page 2.

14   A.   The first blank on page 2 should be Exhibit 6,

15 and the second blank on page 2 should be Exhibit 9.

16   Q.   Very good. Thank you. Now, if you would turn

17 to page 5 of your testimony, the very -- the very last

18 sentence at the bottom of page 5, if I heard your

19 testimony correctly, I think you may have misread the

20 rate per loaded mile.

21   So would you read that sentence correctly and

22 as you wish it to be reflected in your testimony?

23   A.   Regarding the recovery of the cost of

24 transportation, in all cases, we support setting the

25 value at the lower of the actual cost or $3.75 per

1 loaded mile.

2   Q.   And if you said $3.70, that was incorrect?

3   A.   That would have been incorrect.

4   Q.   Thank you. With that, I do not have any

5 further questions. Do you have anything you'd like to

6 add further on direct at this time?

7   A.   I would say that the DFA is divided into seven

8 operational areas for day-to-day business, and so the

9 day-to-day business that would include the Florida

10 market, we have 1,367 farms in that block; and on a

11 typical month we would have 10 farms associated with

12 Order 6. That number varies, depending on customer

13 arrangements and delivery schedules.

14   Q.   Very good. Anything further?

15   A.   I would like to make a comment on why are we

16 here and the emergency nature of the situation; and

17 first I would say that, you know, in my view, this

18 hearing fits squarely into the definition of orderly

19 marketing, that this is a situation that disrupted that

20 greatly, and the corrective ability, if there's going

21 to be any, would almost have to be through the Order

22 system to collect reimbursement for those -- for those

23 costs, And so doing it through the order system

24 provides an equal application to farms, plants,

25 customers.

1   It also does it within any legal frameworks.

2   While co-ops are afforded a wide latitude of pricing

3   decisions, they're not afforded every latitude, and so

4   doing it within the framework of the Orders is

5   appropriate; and, as far as the emergency, I think we

6   have demonstrated that this situation was widespread

7   through the Order.

8   Just to give one example, Hurricane Harvey was

9   pretty disastrous in its path and its destruction, but

10 there were a significant number of processing plants

11 that were able to function outside the immediate area,

12 not like this.

13   Q.   And that's -- you're referencing operations in

14 the Southwestern Order --

15   A.   Yes.

16   Q.   -- where Hurricane Harvey impacted seriously

17 but only a small portion of the Order?

18   A.   Correct. And so also, the costs here have

19 been incurred; and in our case, producers' revenues

20 were impacted by the cost of dealing with the storm.

21 So the reimbursement would also accrue to, if approved,

22 would accrue to that same group of producers in our

23 case.

24   Q.   Very good. Anything further?

25   A.   Not yet.

1   Q.   Thank you. Thank you very much, Mr. Hollon.

2   JUDGE JENSON: Mr. Beshore, would you care to

3 make a motion to have Exhibit 30 entered --

4   MR. BESHORE: I would.

5   JUDGE JENSON: -- into evidence?

6   MR. BESHORE: I would move for the admission

7 of Exhibit 30 into the record.

8   JUDGE JENSON: Any objection?

9   MR. HILL: There are no objections.

10   JUDGE JENSON: No objection having been heard,

11   Exhibit 30 is admitted into evidence. Any

12   cross-examination for this witness? Ms. Taylor.

13   CROSS-EXAMINATION

14 BY MS. TAYLOR:

15   Q.   Good afternoon. Erin Taylor. Thank you,

16 Mr. Hollon, for testifying today.

17   A.   You're welcome.

18   Q.   I just have a few questions. On the numbers

19 you just talked about in your members, I think I wrote

20 down you have 1,367 farms?

21   A.   In the DFA Southeastern area, which includes

22 marketing operations in the -- in Florida Federal Order

23 6. Producers who are routinely pooled in Federal Order

24 6, again, the number varies over the course of a year,

25 but I would estimate 10 might be a typical number.

1   Q.   Okay. And would you consider most of those

2   small businesses, as we've previously defined?

3   A.   In the entire group which were impacted by the

4   storm's cause, yes. Directly involved with Order 6,

5   no.

6   Q.   Okay. So essentially the Order 6 ones are a

7   little bit bigger?

8   A.   Correct.

9   Q.   Okay. I want to ask you a few questions on

10   the delivery days, the 10-day period on the 6th to the

11   15th. So if I look at Exhibit 6, which was provided by

12   our USDA witness, that gives our other uses in farm

13   dumps on a monthly basis, our plant dumps don't seem, I

14   would proffer, they don't seem that out of the

15   ordinary; and then if I look at Exhibit 9, which says

16   deliveries to plants by day, you definitely see a

17   reduction in plant deliveries, but it -- would it be

18   your experience to say that the plants themselves

19   didn't necessarily have a lot of dump milk, that

20   you-all adjusted your delivery schedule so that that

21   did not occur?

22   A.   I think the first thing that I would say was,

23   going back to Schedule 6 and looking at the column that

24   says Other Uses, it is clear that there's a certain

25   amount of product that fits that definition in this

 1 | Order and every Order, and there is some variation; and

 2 | then the second part of your question, do you -- did we

 3 | adjust deliveries so that volumes in plants didn't get

 4 | dumped, and the answer would be yes, for a number of

 5 | reasons.

 6 | One is, they weren't open, you know; and then

 7 | 2, just with logistically getting them there, there

 8 | were days when you simply couldn't get to a location.

 9 | Q. And on your one load of milk that wasn't

10 | reported --

11 | A. To my knowledge, it wasn't reported. I don't

12 | think we knew at the time that we could have done that.

13 | Q. And it still hasn't been reported?

14 | A. No. We were waiting the outcome of today.

15 | Q. Okay.

16 | A. What we think the outcome of today will be.

17 | Q. Okay. I wanted to just take a second to talk

18 | a little bit about the pay and take fees --

19 | A. Uh-huh. (Indicates affirmatively).

20 | Q. -- that you have on page 3 and 4 of your

21 | testimony, just because you're the first witness to

22 | speak about that today.

23 | A. Okay.

24 | Q. Would you just expand on that a little bit

25 | more? That, from what I read, because you didn't

1 deliver as much milk as you had contracted, you had to

2 pay a fee, according to your contract? I just want to

3 make sure I understand all that correctly.

4   A.   Well, the first thing to understand is those

5 aren't included in any cost reimbursement we're looking

6 for.

7   Q.   Sure.

8   A.   So let's start from there.

9   Q.   Yes.

10   A.   It's not uncommon at all, when you have some

11 type of milk agreement, that there be some range of

12 deliveries. It's pretty rare to get somebody who will

13 say I will buy exactly five loads a day from you 365

14 days a year, and we would like all of those we could

15 get.

16   But typically, they have some range around

17 there, and then if there is a range, you know, we'll

18 average five, you know, we like a range of three to

19 eight, and then if we don't take three, you know, the

20 buyer says if we don't take three, we'll pay you

21 something because, you know, you had to balance that

22 difference for us; and, if we ask you for eight and you

23 don't deliver, you've got to pay us something because,

24 you know, we had to go out and get a replacement.

25   So that's the term "take or pay." There are

1   some or there were some supplemental agreements in --

2   for milk in the Southeast as well, and we participated

3   in those agreements; and in this particular case, you

4   know, we left that there because that was the cheapest

5   of the alternatives, but it did incur a cost.

6   Q.   Uh-huh. (Indicates affirmatively). Okay.

7   What would happen -- can you just speak to the impact

8   if no relief is granted by the Department?

9   A.   Well, if the Department chooses no relief,

10 clearly, September milk has been pooled and paid for,

11 and, dairy farmers have collected what they're going to

12 collect, and to the extent that the losses were a part

13 of their paycheck, then we're done, and so there's

14 not -- there won't be another source, you know, to

15 capture some of that reimbursement for the marketing

16 losses.

17   I can't speak directly to somebody who had

18 insurance on the roof of their barn, you know, or a

19 building. I don't remember perhaps even, you know,

20 loss of animals; but directly, these marketing losses

21 that we've outlined, transportation, milk value,

22 distressed milk sale, there's no other avenue that I'm

23 aware of that we would have a recovery or

24 reimbursement.

25   Q.   Okay. And I was writing during part of the

1 questioning from Mr. Beshore, but -- I know, shame. I

2 want to make sure if I heard you correctly. You did

3 have some milk that would normally be pooled on Federal

4 Order 6 that was pooled on Federal Order 7; is that

5 correct?

6   A.   Yes, and perhaps some on Federal Order 5.

7   Q.   Okay. And do you know if that milk was -- got

8 a transportation credit?

9   A.   If it did, we were sharper than I think. I

10 kind of doubt we moved quick enough to do that; but, if

11 it did, our position would be that that would get

12 netted back out.

13   Q.   Okay. I think that's it for the Department.

14 Thank you very much.

15   A.   You're welcome.

16   JUDGE JENSON: Any further cross-examination?

17   Mr. Beshore, any redirect?

18   REDIRECT EXAMINATION

19 BY MR. BESHORE:

20   Q.   Just one, one question for clarification. You

21 referenced, with respect to producer losses and what

22 their circumstances would be if there were no relief

23 for this hearing, with respect to property damage,

24 that's potentially recoverable by a commercial

25 insurance product, correct?

 1   A.   Correct.

 2   Q.   Okay. Is there any commercial insurance

 3   product available to dairy farmers to protect them and

 4   potentially get recoveries from the types of losses

 5   that are being -- reimbursement for which is being

 6   requested in this hearing?

 7   A.   I'm not aware of any.

 8   Q.   Okay. That's all. Thank you.

 9   JUDGE JENSON: Is there any objection to my

10   excusing this witness?

11   MR. HILL: There are no objections.

12   JUDGE JENSON: Okay. The witness is excused.

13   Thank you very much. Now, just to make sure we're

14   all on the same page here, my record, my notes

15   here indicate that there have been admitted into

16   evidence Exhibits 1 through 30.

17   MR. BESHORE: Correct.

18   JUDGE JENSON: Is that everybody's

19   understanding?

20   MR. HILL: That is correct.

21   JUDGE JENSON: Okay. Before we close, is

22   there anyone else that want -- wants to testify?

23   And I mean "close" for today. No? None. All

24   right. Any other issues that we should address?

25   MR. HILL: Yes. As per usual, the Department

1   of Agriculture has a proposal as well. If they

2   make such conforming changes, such changes as may

3   be necessary to make the entire marketing

4   agreement and the Order conform with any

5   amendments thereto that can be resolved from the

6   hearing. So it's just basically a conforming

7   changes argument that we'd make.

8   JUDGE JENSON: Do you have any witnesses or

9   evidence that you care to introduce to --

10   MR. HILL: No evidence. Maybe I'll come up

11   with someone tomorrow.

12   JUDGE JENSON: All right. I think we're --

13   we'll go off the record now and --

14   JUDGE McCARTNEY: Well, let the record reflect

15   that we are recessing for this afternoon, but we

16   will reconvene tomorrow at 9:00 a.m.; is that

17   correct?

18   JUDGE JENSON: Right. And one -- one question

19   for Ms. Taylor. We are -- we'll still be in this

20   room?

21   MS. TAYLOR: Yes.

22   JUDGE JENSON: All right.

23   MR. BESHORE: Before we recess, may I make

24   just one statement on behalf of the proponents?

25   JUDGE McCARTNEY: Do you want this on the

1   record or off the record?

2   MR. BESHORE: On the record.

3   JUDGE McCARTNEY: On the record.

4   MR. BESHORE: Okay. We've closed our case,

5   and I just want to say we sincerely appreciate the

6   presence of such a panel of presiding -- of

7   presiding officials, and I sincerely mean that,

8   that the Department has made available to us for

9   this hearing.

10   I don't know of any situation in Federal Order

11   hearings -- and I've been a part of many of them

12   for a few years, and I've read about many of them

13   before that. I don't know that the Judicial

14   Officer in the Department and the Chief

15   Administrative Law Judge have ever presided over

16   an Order hearing.

17   We sincerely appreciate that and appreciate

18   your presence and the Department's making you

19   available for this important hearing for us.

20   JUDGE JENSON: Thank you very much. All

21   right. We are recessed until 9:00 a.m. tomorrow

22   morning at this same location. Off the record.

23 (Proceedings recessed at 3:23 p.m.)

24

25

1   REPORTER'S CERTIFICATE

2

3   STATE OF FLORIDA

4   COUNTY OF HILLSBOROUGH

5

6   I, Lisa A. Simons-Clark, Registered Merit
     Reporter, Certified Realtime Reporter, certify that I
7   was authorized to and did stenographically report the
     foregoing proceedings and that the transcript is a true
8   and complete record of my stenographic notes.

9
             I further certify that I am not a relative,
10   employee, attorney, or counsel of any of the parties,
     nor am I a relative or employee of any of the parties'
11   attorney or counsel connected with the action, nor am I
     financially interested in the action.

12

13   Dated this _____ day of December, 2017.

14

15

16   _____
                     Lisa A. Simons-Clark, RMR, CRR
17

18

19

20

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22

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25

1   UNITED STATES DEPARTMENT OF AGRICULTURE
               MILK IN THE FLORIDA MARKETING AREA
2

3   AGENCY: Agricultural Marketing Service, USDA
    ACTION: Proposed rule; supplemental notification of
4   public hearing

5

6
                            BEFORE:
7   JUDICIAL OFFICER WILLIAM JENSON
                            AND
8   ADMINISTRATIVE LAW JUDGE BOBBIE J. McCARTNEY

9   DATE: December 13, 2017
        TIME: 9:03 a.m. to 12:01 p.m.
10

        PLACE: Embassy Suites
11   513 South Florida Avenue
                         Tampa, Florida
12

13   PURSUANT TO: 7 CFR Part 1006
                         AMS-DA-17-0068; AO-18-0008
14

15   REPORTED BY: LISA A. SIMONS-CLARK, RMR, CRR
                         Notary Public, State of
16   Florida at Large

17

18   Pages 213 to 219

19

20

21

22

23

24

25

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15

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

 2          JUDGE JENSON:  Let's come to order.  On the

 3     record.  This record is being made in a public

 4     hearing to consider two proposals regarding an

 5     order entitled Milk in the Florida Milk Marketing

 6     Area and which is found at Title 7 Code of Federal

 7     Regulations, Part 10006.

 8          The public hearing was commenced yesterday,

 9     that is Tuesday, December 12th, 2017, at Embassy

10     Suites by Hilton, Tampa Downtown Convention

11     Center, 513 South Florida Avenue, Tampa, Florida.

12     Today is Wednesday, December 13th, 2017.

13          Today's session of the public hearing is again

14     being held at the same location in Embassy Suites

15     by Hilton, Tampa Downtown Convention Center, 513

16     South Florida Avenue Tampa, Florida.

17          My name is William Jenson.  I am the Judicial

18     Officer for the United States Department of

19     Agriculture, and it is my job to preside over the

20     taking of evidence in this public hearing.

21          With me on the podium is the United States

22     Department of Agriculture's Chief Administrative

23     Law Judge Bobbie J. McCartney.

24          Are there any preliminary matters before we

25     begin taking evidence?
```

1   MR. HILL: There are none that we have,

2   Your Honor.

3   JUDGE JENSON: Mr. Beshore?

4   MR. BESHORE: I have none.

5   JUDGE JENSON: And is there evidence to be

6   taken that the proponents wish to present?

7   MR. BESHORE: We have no further evidence to

8   present.

9   JUDGE JENSON: Anyone else, other than USDA

10   representatives? None being heard. Any evidence

11   to be given by USDA representatives?

12   MR. HILL: There is none.

13   JUDGE JENSON: All right. In a few moments, I

14   intend to recess this proceeding until -- pending

15   the appearance of any person who wishes to present

16   evidence relevant to this public hearing or 11:55

17   a.m., whichever occurs first.

18   However, I first want to ensure that a USDA

19   representative will remain in the public hearing

20   room to receive any person who wishes to present

21   evidence in this proceeding.

22   Ms. Taylor, would you address the issue of the

23   availability of a USDA representative to perform

24   the task I have described?

25   MS. TAYLOR: Yes. There will be a USDA person

1   in this room from now until noon.

2   JUDGE JENSON: Thank you. Is there anything

3   further anyone would like to present on or off the

4   record?

5   MR. HILL: No, Your Honor.

6   JUDGE JENSON: None being heard, we are --

7   JUDGE McCARTNEY: I just want to clarify one

8   point, that the USDA -- the intent is the USDA

9   representative who will remain in the room will

10   contact the presiding officer,

11   Judicial Officer Jenson, William Jenson,

12   immediately if someone does come to testify.

13   So there will be a judge here, and we will be

14   fully prepared to proceed, and my understanding is

15   the court reporter will be in the room at all

16   times. She's nodding affirmatively. So we do

17   have the infrastructure available, ready, should

18   an individual appear who wishes to participate in

19   the public hearing.

20   JUDGE JENSON: Thank you, Chief Judge. We're

21   recessed then until either a person wishes to

22   present evidence in this public hearing appears or

23   11:55 a.m. today, whichever comes first.

24   (Brief recess was taken.)

25   JUDGE JENSON: All right. We'll come to

1   order. On the record. Ms. Taylor, during our

2   brief recess, were you or another USDA

3   representative present in this public hearing room

4   at all times?

5   MS. TAYLOR: Yes, we were.

6   JUDGE JENSON: And during our brief recess,

7   did anyone request to provide testimony or present

8   evidence in this public hearing?

9   MS. TAYLOR: No.

10   JUDGE JENSON: Is there anyone currently

11   present that wishes to testify or present

12   evidence?

13   MS. TAYLOR: No.

14   JUDGE JENSON: Are there any issues or

15   concerns to be addressed on the record or off the

16   record?

17   MR. HILL: There are none.

18   MR. BESHORE: We have none.

19   JUDGE JENSON: Okay. All right then. We are

20   recessed until 9:00 a.m., Thursday, December 14th,

21   2017, at which time we will reconvene at this same

22   location. Thank you.

23   (Proceedings recessed at 12:01 p.m.)

24

25

1   REPORTER'S CERTIFICATE

2

3 STATE OF FLORIDA

4 COUNTY OF HILLSBOROUGH

5

6   I, Lisa A. Simons-Clark, Registered Merit
   Reporter, Certified Realtime Reporter, certify that I
7 was authorized to and did stenographically report the
   foregoing proceedings and that the transcript is a true
8 and complete record of my stenographic notes.

9

          I further certify that I am not a relative,
10 employee, attorney, or counsel of any of the parties,
   nor am I a relative or employee of any of the parties'
11 attorney or counsel connected with the action, nor am I
   financially interested in the action.

12

13   Dated this _____ day of December, 2017.

14

15

16   _____
                   Lisa A. Simons-Clark, RMR, CRR
17

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1   UNITED STATES DEPARTMENT OF AGRICULTURE
              MILK IN THE FLORIDA MARKETING AREA
2

3   AGENCY: Agricultural Marketing Service, USDA
    ACTION: Proposed rule; supplemental notification of
4   public hearing

5

6

                         BEFORE:
7   JUDICIAL OFFICER WILLIAM JENSON
                          AND
8   ADMINISTRATIVE LAW JUDGE BOBBIE J. McCARTNEY

9

10   DATE: December 14, 2017
        TIME: 9:04 a.m. to 12:00 p.m.
11
        PLACE: Embassy Suites
12   513 South Florida Avenue
                         Tampa, Florida
13

14   PURSUANT TO: 7 CFR Part 1006
                         AMS-DA-17-0068; AO-18-0008
15

16   REPORTED BY: LISA A. SIMONS-CLARK, RMR, CRR
                         Notary Public, State of
17   Florida at Large

18
                         Pages 220 to 226
19

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21

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25

1   APPEARANCES:

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4   South Building, Room 2325
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5   (202) 720-9237
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6
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            Acting Director Order Formulation and
11   Enforcement

12

13
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1   P R O C E E D I N G S

2   JUDGE JENSON: On the record. This record is

3   being made in a public hearing to consider two

4   proposals regarding an order entitled Milk in the

5   Florida Milk Marketing Area and found at Title 7

6   Code of Federal Regulations Part 1006.

7   The public hearing was commenced on Tuesday,

8   December 12th, 2017, at the Embassy Suites by

9   Hilton, Tampa Downtown Convention Center, 513

10   South Florida Avenue, Tampa, Florida.

11   Today is Thursday, December 14th, 2017.

12   Today's session of the public hearing is again

13   being held at the Embassy Suites by Hilton at 513

14   South Florida Avenue, Tampa, Florida.

15   My name is William Jenson. I am the Judicial

16   Officer for the United States Department of

17   Agriculture, and it is my job to preside over the

18   taking of evidence in this public hearing.

19   With me on the podium is the United States

20   Department of Agriculture's Chief Administrative

21   Law Judge, Bobbie J. McCartney.

22   Now, before we begin, are there any

23   preliminary matters before we begin taking

24   evidence?

25   MR. HILL: There are none, Your Honor.

1   JUDGE JENSON: All right. Do the proponents

2   have any witnesses or evidence to present?

3   MR. HILL: It would appear not.

4   JUDGE JENSON: Anyone other than the USDA

5   representatives here that would care to present

6   witnesses or evidence in this public hearing?

7   MR. HILL: We have been here since 8:30, and

8   no one has shown up as of this time, Your Honor.

9   JUDGE JENSON: Do the United States Department

10   of Agriculture representatives have any witnesses

11   or evidence to present at this time?

12   MR. HILL: We have none.

13   JUDGE JENSON: In a few moments I intend to

14   recess this public hearing, pending the appearance

15   of any person who wishes to present evidence

16   relevant to the public hearing or 11:55 a.m.,

17   whichever occurs first.

18   However, I want to ensure that a USDA

19   representative will remain in the public hearing

20   room to receive any person who wishes to present

21   evidence in this proceeding.

22   Ms. Taylor, would you address the issue of the

23   availability of a USDA representative to perform

24   the task I have just described?

25   MS. TAYLOR: Yes. I will stay in the room,

1   the public hearing room, from now until noon in

2   case anyone arrives.

3   JUDGE JENSON: Thank you. And will you

4   contact me as soon as any person wishing to

5   present evidence arrives at this public hearing

6   room?

7   MS. TAYLOR: Yes.

8   JUDGE JENSON: All right. And then I will

9   immediately appear and take the evidence. And

10   will the court reporter be here during our recess?

11   THE REPORTER: Yes.

12   JUDGE JENSON: Is there anything further

13   anyone would like to address on or off the record?

14   MR. HILL: No, Your Honors.

15   JUDGE JENSON: We are then recessed until

16   either a person who wishes to present evidence in

17   this public hearing appears or 11:55 a.m.,

18   whichever comes first. We're off the record.

19   (Brief recess was taken.)

20   JUDGE JENSON: All right. Why don't we go on

21   the record then. Ms. Taylor, during our brief

22   recess, were you or another USDA representative

23   present in this public hearing room at all times?

24   MS. TAYLOR: Yes.

25   JUDGE JENSON: Ms. Taylor, during our brief

```
1        recess, did anyone request to provide testimony or

2        present evidence in this public hearing?

3             MS. TAYLOR:  No.

4             JUDGE JENSON:  Is there anyone currently

5        present that wishes to testify or present

6        evidence?

7             MR. HILL:  It does not appear that anyone else

8        is here, Your Honor.

9             JUDGE JENSON:  Are there any issues or

10       concerns to be addressed on the record or off the

11       record?

12            MR. HILL:  I don't think we have anything

13       else, Your Honor.

14            JUDGE JENSON:  Okay.  I want to thank everyone

15       who participated in this public hearing.  I

16       especially appreciate Chief Administrative Law

17       Judge McCartney's expert advice and guidance that

18       she gave me prior to and during this public

19       hearing.  The public hearing is now adjourned.

20            MR. HILL:  Thank you.

21            MS. TAYLOR:  Thank you very much.

22            JUDGE JENSON:  Thank you.

23  (Proceedings concluded at 12:00 p.m.)

24

25
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1   REPORTER'S CERTIFICATE

2

3   STATE OF FLORIDA

4   COUNTY OF HILLSBOROUGH

5

6   I, Lisa A. Simons-Clark, Registered Merit
    Reporter, Certified Realtime Reporter, certify that I
7   was authorized to and did stenographically report the
    foregoing proceedings and that the transcript is a true
8   and complete record of my stenographic notes.

9

          I further certify that I am not a relative,
10 employee, attorney, or counsel of any of the parties,
    nor am I a relative or employee of any of the parties'
11 attorney or counsel connected with the action, nor am I
    financially interested in the action.

12

13   Dated this _____ day of December, 2017.

14

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16   _____
                   Lisa A. Simons-Clark, RMR, CRR
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