

UNITED STATES DEPARTMENT OF AGRICULTURE  
BEFORE THE SECRETARY OF AGRICULTURE

In re: ) [AO]  
 ) Docket No. 15-0071  
 )  
Milk in California )  
 )

VOLUME XVI

TRANSCRIPT OF PROCEEDINGS

October 15, 2015

Myra A. Pish CSR, CSR No. 11613  
397079



|                              |                               |                             |                              |
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Milk in California )  
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BEFORE U.S. ADMINISTRATIVE LAW JUDGE  
JILL S. CLIFTON

Thursday, October 15, 2015

9:01 a.m.

Clovis Veterans Memorial District  
808 4th Street  
Clovis, California 93613

TRANSCRIPT OF PROCEEDINGS

VOLUME 16

Reported by:  
Myra A. Pish CSR  
Certificate No. 11613

1 APPEARANCES:

2 U.S. DEPARTMENT OF Office of the General Counsel  
 3 AGRICULTURE: BY: BRIAN HILL, ESQ.  
 LAUREN BECKER, ESQ.

4

5 U.S. DEPARTMENT OF ERIN TAYLOR, Dairy  
 6 AGRICULTURE: Product Marketing Specialist  
 LAUREL MAY, Marketing Specialist  
 PAMELA ELLIOTT, Marketing Specialist

7

8 CALIFORNIA DAIRIES, Law Offices of Marvin Beshore  
 9 INC., DAIRY FARMERS BY: MARVIN BESHORE, ESQ.  
 OF AMERICA, INC., Hanson Bridgett, San Francisco  
 LAND O'LAKES, INC.: BY: JOHN VLAHOS, ESQ.

10

11 DAIRY INSTITUTE OF Davis Wright Tremaine  
 12 CALIFORNIA: BY: CHIP ENGLISH, ESQ.  
 ASHLEY VULIN, ESQ.

13

14 LEPRINO FOODS: JOHN ALBY, ESQ.  
 15 MIGUEL RAMIREZ

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17 HILMAR CHEESE JOHN VETNE  
 18 COMPANY: JAMES DEJONG

19

20 CALIFORNIA PRODUCER Stoel Rives  
 21 HANDLERS ASSOCIATION: BY: NICOLE HANCOCK, ESQ

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I N D E X - V O L U M E 16  
WITNESSES IN CHRONOLOGICAL ORDER

SIMON VANDER WOUDE:  
DIRECT EXAMINATION BY MR. BESHORE 3084  
CROSS-EXAMINATION BY MS. TAYLOR 3091

DENNIS SCHAD:  
(CONTINUED) DIRECT EXAMINATION BY MR. BESHORE 3093

STEPHEN MADDOX:  
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1 THURSDAY, OCTOBER 15, 2015 - - MORNING SESSION

2 JUDGE CLIFTON: We're back on record in the milk hearing.  
3 It is October 15th, that's 1-5, 2015. It's a Thursday. This  
4 is Day 16 of the milk hearing and we are in Clovis, California.  
5 It is approximately 9:01 in the morning.

6 I'm Jill Clifton. I'm the United States Administrative  
7 Law Judge that's been assigned to take in the evidence during  
8 this hearing, that would be exhibits and testimony. Then I  
9 complete my task with regard to the hearing when I certify the  
10 record, that is, I state what evidence there is. I refer to  
11 the transcripts, at that point they will have been subject to  
12 proposed corrections, and I will have chosen which corrections  
13 to make, and I'll identify what exhibits were accepted, and  
14 what exhibits were rejected. I would like now to take  
15 appearances of others who are appearing. I would like to begin  
16 with other USDA employees, please.

17 MS. TAYLOR: Good morning, my name is Erin Taylor,  
18 E-R-I-N, T-A-Y-L-O-R, I'm a Marketing Specialist with Dairy  
19 Programs at USDA.

20 MS. ELLIOTT: Pamela Elliott, E-L-L-I-O-T-T, USDA, AMS  
21 Dairy Program.

22 MR. CARMAN: Good morning, Clifford Carman, C-A-R-M-A-N  
23 Assistant to the Deputy Administrator, Dairy Programs.

24 MS. MAY: Good morning, Laurel May, L-A-U-R-E-L, M-A-Y,  
25 USDA, AMS Dairy Program.

1 MR. NIERMAN: Good morning, Jason Nierman, N-I-E-R-M-A-N,  
2 Assistant Market Administrator Federal Order 5 on detail with  
3 AMS Dairy Program.

4 MR. HILL: Good morning, Brian Hill, B-R-I-A-N, H-I-L-L,  
5 Attorney with the Office of the General Counsel.

6 MS. BECKER: Good morning, Lauren Becker, B-E-C-K-E-R, USDA  
7 Office of the General Counsel.

8 MR. BESHORE: Marvin Beshore, M-A-R-V-I-N, B-E-S-H-O-R-E,  
9 counsel to the proponents of Proposal 1, California Dairies,  
10 Inc., Dairy Farmers of America, Inc., and Land O'Lakes, Inc.

11 MR. VLAHOS: John Vlahos, J-O-H-N, V-L-A-H-O-S, Counsel for  
12 the same parties that Mr. Beshore represents.

13 JUDGE CLIFTON: Mr. Vlahos, I didn't take your appearance  
14 at 9:00 yesterday morning, but you did participate in  
15 yesterday's hearing.

16 MR. VLAHOS: I did indeed, your Honor.

17 JUDGE CLIFTON: Thank you.

18 MR. SCHAD: Good morning, Dennis Schad, S-C-H-A-D,  
19 Land O'Lakes.

20 DR. ERBA: Good morning, Eric Erba, E-R-I-C, E-R-B-A, I'm  
21 with California Dairies, Inc.

22 MR. ENGLISH: Good morning, your Honor. Chip English,  
23 C-H-I-P, E-N-G-L-I-S-H, appearing for the Dairy Institute of  
24 California and I'm with the law firm of Davis, Wright,  
25 Tremaine, with my office in Washington DC.

1 MS. VULIN: Ashley Vulin, A-S-H-L-E-Y, V-U-L-I-N, also with  
2 Davis, Wright, Tremaine, representing the Dairy Institute of  
3 California.

4 DR. SCHIEK: Good morning, William Schiek, S-C-H-I-E-K,  
5 Economist with Dairy Institute of California.

6 MS. KALDOR: Good morning, Rachel Kaldor, R-A-C-H-E-L,  
7 K-A-L-D-O-R, Executive Director of the Dairy Institute of  
8 California.

9 MR. RAMIREZ: Good morning, Miguel Ramirez, M-I-G-U-E-L,  
10 R-A-M-I-R-E-Z, with Leprino Foods, Denver, Colorado.

11 MR. ALBY: Good morning, Jon Alby, J-O-N, A-L-B-Y, I'm  
12 Associate General Counsel with Leprino Foods Company in Denver.

13 MR. DeJONG: James DeJong, J-A-M-E-S, D-e-J-O-N-G, I'm with  
14 Hilmar Cheese, a dairy-farmer owned manufacturer of cheese,  
15 whey and milk products.

16 MR. ZOLIN: Good morning, my name is Alan Zolin, A-L-A-N,  
17 Z-O-L-I-N, I'm a Consultant here representing Hilmar Cheese.

18 MR. VETNE: John Vetne also a representative for Hilmar  
19 Cheese. V-E-T-N-E. Thank you.

20 MS. HANCOCK: Good morning, Nicole Hancock, H-A-N-C-O-C-K,  
21 with Stoel Rives, S-T-O-E-L, R-I-V-E-S, representing the  
22 California Producer Handlers Association and Ponderosa Dairy.

23 MR. LAI: Good morning, Victor Lai, L-A-I, with Producers  
24 Dairy Foods.

25 JUDGE CLIFTON: I'd like now to take appearances of others

1 who are here and expect to participate, even though you may not  
2 be associated with one of the proposals.

3 MR. VANDER WOUDE: Good morning, my name is Simon,  
4 S-I-M-O-N, Vander Woude, V-A-N-D-E-R W-O-U-D-E. And I'm a  
5 producer from Merced County.

6 MS. AcMOODY: Good morning, Annie AcMoody, A-c-M-O-O-D-Y,  
7 I'm with Western United Dairymen.

8 MR. MILTNER: Good morning, Ryan Miltner, M-I-L-T-N-E-R,  
9 with Miltner Law Firm, representing the Select Milk Producers.

10 JUDGE CLIFTON: Is there anyone else who has not yet come  
11 to the podium who expects to participate, perhaps by testifying  
12 or in some other way today? All right.

13 I would like now to go to preliminary matters,  
14 beginning with any from the United States Department of  
15 Agriculture.

16 MS. MAY: Good morning, Laurel May. Welcome once again to  
17 the hearing. We're glad to have all of you here this morning  
18 and hope that you will enjoy your time with us, and feel free  
19 to participate, either by offering testimony or by asking  
20 questions of any witness.

21 We are broadcasting this session of the hearing live,  
22 and if you want to let your people know where to tune in, it is  
23 at [www.ams.usda.gov/live](http://www.ams.usda.gov/live).

24 The court reporter is recording official transcripts of  
25 this hearing and those are posted at the end of every week,



1 approximately two weeks after the end of each hearing week.

2 And you can see those on our AMS Dairy website.

3 One of the little things I have to tell you today is  
4 that we found this little teeny-weeny USB thing. I think it's  
5 for attaching a wireless mouse, so if anybody lost it, let me  
6 know. Otherwise I'll turn it into the front office.

7 We do have a few copies of some of our past exhibits in  
8 the back on those two tables, if you would like to pick some of  
9 those up, and of course you are welcome to enjoy the  
10 refreshments that we have at the back.

11 At the end of the day yesterday Dennis Schad was  
12 testifying, and we will be hearing from him later today, but  
13 first I believe Mr. Vander Woude is going to testify for us,  
14 and so that's kind of where we'll start.

15 JUDGE CLIFTON: Thank you. Are there any other preliminary  
16 matters? I see no one indicating that there are.

17 I would just repeat the designation by which the  
18 Hearing Clerk in the United States Department of Agriculture  
19 knows this case, and that is in brackets [A0] and then docket  
20 number 15-0071.

21 All right. Mr. Vander Woude, I know I didn't say it  
22 right, but if you would come forward, I'll ask you to pronounce  
23 your name again once you are in the witness stand.

24 Please be seated and make yourself comfortable. I will  
25 swear you in in a seated position. Would you raise your right

1 hand, please?

2 Do you solemnly swear or affirm under penalty of  
3 perjury that the evidence you will present will be the truth?

4 MR. VANDER WOUDE: Yes.

5 JUDGE CLIFTON: Thank you. Please state, slowly, your  
6 name, and spell it again for us.

7 MR. VANDER WOUDE: Simon Vander Woude, V-A-N-D-E-R,  
8 W-O-U-D-E.

9 JUDGE CLIFTON: Is it Vander Woude?

10 MR. VANDER WOUDE: Yes.

11 JUDGE CLIFTON: All right. Mr. Beshore, if you would  
12 identify yourself and you may proceed.

13 MR. BESHORE: Marvin Beshore.

14 DIRECT EXAMINATION

15 BY MR. BESHORE:

16 Q. Okay. So Mr. Vander Woude, thank you for coming today  
17 to the hearing to present your perspective as a dairy producer  
18 here in California. Do you have some notes that you have  
19 prepared and would like to present for the hearing?

20 A. Yes.

21 Q. Okay. Could you just go ahead and present those,  
22 please?

23 A. Just read them?

24 Q. Yes.

25 A. Yes. Good morning. My name is Simon Vander Woude and

1 my business address is 2022 Rahilly Road, Merced, California,  
2 95341. I appreciate the opportunity to take part in this  
3 historic hearing and want to thank USDA for granting it at the  
4 request of the majority of the California producer community.

5 My wife Chris and I have a very unique story to tell.  
6 My grandparents emigrated here in the late 1940's and early  
7 1950's from Holland. Both families worked hard, saved hard,  
8 and started their own dairy operations in Southern California,  
9 all in the San Diego area, within five years of their arrival.

10 In 1971, my parents, William and Willie, started their  
11 own operation, also in San Diego County. This was a new dairy  
12 operation that required many personal loans. It also took lots  
13 of hard work and integrity to establish Valley View Dairy. At  
14 its peak, this dairy milked approximately 600 cows.

15 In 1994, Chris and I set out on our own to establish  
16 S and C Vander Woude Dairy, also in San Diego County. We  
17 rented the facility my grandparents had built 30 years earlier.  
18 It was a 200-cow dairy and we bought 150 cows from my parents  
19 to get started. We ended up milking 300 hundred cows on that  
20 dairy after we added some more corrals. Often we are asked  
21 what generation of the farm we represent. In our case, that  
22 depends on how you define it. Each generation did its own  
23 thing, but continued in the same business with the support and  
24 blessing of the previous generation, so we're sort of third  
25 generation, but sort of first generation of our business.

1           In 1997, Chris and I decided to move our operation to  
2 the Central Valley because of the lack of resources and  
3 opportunity in San Diego, and the abundance of those in the  
4 valley. My parents expressed an interest in doing something  
5 together, which was music to our ears, because we had lots of  
6 energy and drive but lacked a little in equity still at that  
7 point. We intended to move to Bakersfield, but God placed us  
8 in Merced after several years of looking for property or an  
9 existing facility.

10           In 1999, we bought a large parcel of land and worked to  
11 negotiate a conditional use permit to build a new dairy on that  
12 land. We succeeded in that but were then sued by an  
13 environmental group based in San Francisco due to the unknown  
14 impact of our dairy on air quality. We decided to withdraw the  
15 permit until more scientific research was done.

16           In January of 2001, Chris and I moved S and C  
17 Vander Woude Dairy from San Diego to Merced, about 400 miles  
18 North. Our quest began about December 15, 2000. We looked at  
19 a 500-calve dairy in Merced County, which my parents then  
20 purchased, and Chris and I then bought the cows and equipment  
21 on that dairy. And we were, again, in expansion mode. All of  
22 this occurred within a 45-day window, with two young children.

23           In 2004, our family was finally successful in obtaining  
24 another conditional use permit, which was supported by an  
25 Environmental Impact Report to build our Vander Woude Dairy,

1 which started operation in 2005. This was a partnership that  
2 included my dad, brother and me. We started out milking just  
3 over the 1,000 cows from the two dairies we had combined. We  
4 did not sell any real estate to build the dairy. In fact, my  
5 mom still owns the dairy facility in San Diego County where  
6 they started in 1971.

7 We did things a little differently. As my dad and I  
8 did most of the construction on the new Merced Dairy ourselves.  
9 We poured the concrete, put up the barns, fences, expansions,  
10 stalls, etcetera. It was a great time as father, son and  
11 family.

12 In 2010, we finished the construction of our 3,200-cow  
13 dairy. In 2011, my dad was killed in an accident on the farm.  
14 It hurt, but we had our faith to pull the family through and  
15 his fingerprints are all over our dairy.

16 In 2014, my brother and his family left our partnership  
17 to start their own dairy. Today, Chris and I own 98 percent of  
18 Vander Woude Dairy and 57 percent of our 2,100-acre farm. Over  
19 the years we have been blessed with six healthy children as  
20 well. As you can tell, we don't stand still too often. We  
21 learn from the past but are always looking to the future.

22 I have been very involved with the community and dairy  
23 industry over the years as well. I served on the Dairy  
24 Subcommittee of the San Joaquin Valley Air Pollution Control  
25 District as the dairy rules were developed. I served on the

1 Merced County Dairy Advisory Committee as the county rules were  
2 developed as well.

3 I was appointed by Secretary of Agriculture Karen Ross  
4 to serve on the Dairy Future Task Force, whose purpose was to  
5 try to find a solution to the milk pricing dilemmas in  
6 California. Today I serve on the Board of Directors of  
7 California Dairies, Inc., and am in my fourth year as one of 16  
8 directors. I am also in my seventh year of service on the  
9 Board of Directors for Western United Dairymen. I also am a  
10 lead member of the building committee for an 800-student  
11 Christian school in Merced and have served on our church board  
12 several times.

13 I hope I can put a face to those that will be impacted  
14 by the proposal that USDA will be developing. We may seem like  
15 a factory farm or a corporate operation, but we are just a  
16 hard-working family who appreciates the opportunities afforded  
17 us by this great country in which we live. We anticipate a  
18 bright future for our great industry, of which our children may  
19 potentially want to be a part.

20 As I said earlier, I have learned from the past, but  
21 look eagerly toward the future in anticipation of this  
22 proposal. As I sit on the Board of California Dairies, Inc., I  
23 fully support the proposal put forth by the Cooperatives, as it  
24 brings us back into the fold of milk pricing that exists in  
25 most of the rest of the country.

1           The drought in California is even more real than most  
2 people realize. I nearly ran out of water for my cows a few  
3 weeks ago. We were able to avoid that, however, by getting a  
4 new well drilled within a week of asking our well driller. We  
5 did not run out of water, but our well casing cracked and  
6 allowed sand to enter into the pressure bowls. The abrasive  
7 material accelerated the wear. When we tried to pull it out  
8 for repairs, the cracked casing snagged the pump so we could  
9 not repair it. It was definitely a scary point in my  
10 operation.

11           Another issue related to the drought is the ability to  
12 grow feed. We must freight in a high percentage of our  
13 concentrates from the Midwest, which causes us to pay more for  
14 our milk production costs.

15           The pressure from increased competition for land and  
16 water from permanent crops, particularly nuts, has also become  
17 a reality for the dairy industry. I firmly believe California  
18 has hit its peak in milk production and we are now in decline.  
19 We have seen thousands of acres near our dairy that were in  
20 dairy forage production ten years ago, now going to orchards  
21 and vineyards.

22           Dairymen had a good year last year. In the past, that  
23 would have meant that dairies were adding cows and barns. Most  
24 dairies looking to invest some extra profit last year decided  
25 instead to diversify by planting part of their ranch into nut

1 trees or grapevines. From my point of view, a regulatory  
2 structure that results in a slightly higher milk price will not  
3 automatically stimulate rapid growth in milk production. It  
4 does not seem likely, due to the some of the other  
5 circumstances I mentioned.

6 On the topic of quota, I do have my opinions as well.  
7 I am a large quota holder and greatly appreciate what that does  
8 for my bottom line. At the same time, I realize it may have  
9 run its course and we should review how our quota system works.  
10 I appreciate the fact that it is discussed in this hearing, but  
11 respectfully request that the California dairy industry be  
12 allowed to determine the fate of quota, instead of the  
13 processor community or USDA. A removal or threat of removal  
14 could be the difference of voting yes or no on this final  
15 proposal for many producers, and I would hate to see quota once  
16 again stall progress in our California dairy industry.

17 I believe there is a bright future for dairy in  
18 California, just not one that will see the sustained growth  
19 that happened here over the last 30 years. But that's just  
20 some industry analysis by a guy who has his boots on the ground  
21 each and everyday and no degree in economics.

22 Thank you for allowing me to present a dairy producer  
23 point of view and I'm happy to try to answer any questions you  
24 might have.

25 Q. Thank you, Mr. Vander Woude. I just have one question



1 for clarification. Your comments on quota are those of you  
2 personally and not of the CDI board?

3 A. That's correct. Those are my personal opinions.

4 Q. Thank you very much and I don't have any other  
5 questions.

6 JUDGE CLIFTON: I know now how to remember how to pronounce  
7 your name. It has "wow" in it.

8 MR. VANDER WOUDE: Yes. And as my 8, 10 year-old son  
9 sitting next to his 8 year-old sister would say, "I'm the wow,  
10 she's the duh."

11 JUDGE CLIFTON: How do you spell the name of the road?

12 MR. VANDER WOUDE: R-A-H-I-L-L-Y.

13 JUDGE CLIFTON: And how does your wife Chris spell her  
14 name?

15 MR. VANDER WOUDE: C-H-R-I-S. Christine on legal  
16 documents.

17 JUDGE CLIFTON: I'm so glad you came here to testify. I'm  
18 going to invite other others to ask you questions now. Who  
19 would like to begin?

20 CROSS-EXAMINATION

21 BY MS. TAYLOR:

22 Q. Good morning, this is Erin Taylor with USDA. I want to  
23 thank you for coming and joining us today and taking time out  
24 of your schedule to testify at this hearing. We're very  
25 appreciative at USDA when any of the producers come out to

1 speak.

2 Part of the process here for USDA to consider is the  
3 impact on small businesses, and the way we define a small  
4 business is a revenue of, annual revenue of \$750,000, which is,  
5 we computed down to about 315,000 pounds per month production.  
6 Would you fall under this the small business definition?

7 A. No.

8 Q. And you talked about your dairy, 2,100 acres, I  
9 believe, is your farm, but about how many cows do you milk?

10 A. 3,200.

11 Q. I believe that's it. Thank you very much.

12 JUDGE CLIFTON: Who else has questions for  
13 Mr. Vander Woude? What else would you like to add, if  
14 anything?

15 MR. VANDER WOUDE: Just thanks for doing this, and have  
16 fun. This is a long process.

17 JUDGE CLIFTON: Yes, it is. And we appreciate your  
18 viewpoint especially, since it gives us both your personal  
19 insight and your perspective having served in community  
20 interests within the dairy industry. That's very, very  
21 helpful.

22 MR. VANDER WOUDE: Thank you.

23 JUDGE CLIFTON: Thank you. Mr. Schad, you may come back to  
24 the witness stand.

25 I not that Mr. Hollon is here. I didn't take his

1 appearance earlier, I was afraid we had worn him out. I'm  
2 delighted that he is here.

3 Mr. Schad, you remain sworn. I would like you again to  
4 state and spell your name.

5 MR. SCHAD: My name is Dennis Schad, S-C-H-A-D.

6 JUDGE CLIFTON: Mr. Beshore, would you remind us where and  
7 which exhibit we should turn?

8 MR. BESHORE: After we make one addition, sort of  
9 addition/correction to Mr. Schad's testimony. In Exhibit 70,  
10 on page 5, he will resume at the bottom of page 12 with the  
11 subheading C, uniformity in prices for Class II.

12 CONTINUED DIRECT EXAMINATION

13 BY MR. BESHORE:

14 Q. Would you turn to page 5 of Exhibit 70. In the first  
15 full paragraph at the top of the page, was there a section of  
16 uniform provisions which should have been referenced in that  
17 paragraph and was inadvertently omitted, and would you like to  
18 add, or like to read the language of that paragraph as it  
19 should have read, or more properly, reads, I guess.

20 A. The answer to the first question is, yes. And I'm  
21 reading on page 5 of my testimony, first full paragraph. It  
22 should correctly be read:

23 Sections 1000.43 and 1000.44, and Sections 1051.43 and  
24 1051.44 define the general classification rules, including  
25 classification of shrinkage, overages, and producer milk under

1 the order. These provisions and the rationale of this section  
2 are the subject of testimony by an AMS witness, Mr. Mykrantz at  
3 the start of the hearing. The Cooperatives recommend the  
4 adoption of these provisions.

5 Q. Okay. Thank you.

6 JUDGE CLIFTON: Now, in order to correct those on the  
7 record copy, because it's more than just adding the two section  
8 numbers, there are also some words, I'm going to suggest that  
9 Ms. Elliott make an arrow to the backside of the page and  
10 rewrite that accordingly. So you may just want to take this  
11 down in draft form at this point before trying to put it on the  
12 two record copies. So again, Mr. Schad, read it again slowly  
13 enough that she can take it as you go and write it down.

14 MR. BESHORE: I might note, Mr. Schad has a typed  
15 substitute paragraph if that were helpful for Ms. Elliott.

16 JUDGE CLIFTON: That would be wonderful. Is that what you  
17 were reading from, Mr. Schad?

18 MR. SCHAD: Yes. Do you also have a copy of that?

19 MR. BESHORE: I do. We can read it again, and I will  
20 supply Ms. Elliott with the copy of the substitute language.

21 JUDGE CLIFTON: Excellent.

22 MR. SCHAD: Sections 1000.43 and 1000.44 and Sections  
23 1051.43 and 1051.44, define the general classification rules,  
24 including classification of shrinkage, overages, and producer  
25 milk under the order. The provisions and the rationale of this

1 section were the subject of testimony by an AMS witness,  
2 Mr. Mykrantz, at the start of the hearing. The Cooperatives  
3 recommend the adoption of these provisions.

4 JUDGE CLIFTON: Now, the second two sentences were already  
5 here, so those, of course, won't have to be written by  
6 Ms. Elliott. When you read that, Mr. Schad, does it say  
7 shrinkage and overages plural?

8 MR. SCHAD: No. Shrinkage, overage, and producer milk.

9 JUDGE CLIFTON: All right. So that also is already there.  
10 So it will be very minimal that Ms. Elliott will actually have  
11 to add to the backside.

12 Ms. Elliott, if you prefer, rather than going to the  
13 backside, and have room above that line, you are welcome to do  
14 it that way. All right.

15 Thank you, Mr. Beshore, I appreciate that and I  
16 appreciate the way you presented it. Those changes will be  
17 made on the record copies.

18 BY MR. BESHORE:

19 Q. Mr. Schad, would you then proceed with your testimony  
20 in Exhibit 70, beginning the bottom of page 12?

21 A. Yes. Starting from page 12.

22 C. Uniformity of Prices for Class II.

23 As a result of a national hearing held in 1991, the  
24 Class II price was established in all Federal Orders as the  
25 Class III price, plus 30 cents per hundredweight. At the time

1 of Federal Order Reform, all Federal Orders except the  
2 New York-New Jersey Order charged the same price for milk used  
3 to produce Class II products. Only Order 2, which included  
4 farm-point pricing, maintained a location adjuster on Class II  
5 volumes. On average, the Order 2 price was 8 cents higher than  
6 other Federal Orders.

7 D. Uniformity of Class III Prices Under Federal Order  
8 Reform

9 Q. Read that again. Uniformity of Class III Prices?

10 A. Pre-Order Reform. I'll read it again.

11 D. Uniformity of Class III Prices Pre-Order Reform.

12 In 1999, all orders except the three Northeastern  
13 Orders, charged the same Class III price. The average  
14 Class III price for milk pooled on Order 2 was 9 cents higher  
15 than the national average price; Order 4, 3 cents higher; and  
16 Order 1, 1 cent higher. (Federal Order Market Statistics, 1999  
17 Annual Summary, Table 30). These deviations from the national  
18 price for milk used to produce Class III products were the  
19 result of each Order's seasonal adjuster. The final decision  
20 of Federal Order Reform noted these three adjusters had been a  
21 factor in the orders' pricing for 30 years and predated the  
22 national adoption of the M-W price series in all Orders.  
23 (64 Fed. Reg. 16026 and 16149 (1999)).

24 While seasonal adjusters were "grandfathered" into the  
25 Northeast orders, the Secretary declined an opportunity to

1 extend the provision to other orders. A Seasonal Adjuster was  
2 proposed for the hearing held to consolidate the Georgia,  
3 Alabama-West Florida, New Orleans-Mississippi, Greater  
4 Louisiana, Paducah, Kentucky, and Central Arkansas orders  
5 during 1993/1994. The Secretary rejected the proposal, citing  
6 that the Class III-A price provided adequate relief for the  
7 proponents' claimed balancing costs. (60 Fed. Reg. 25014 and  
8 25036, (1995)).

9 III. Federal Order Reform Results in Uniform National Pricing  
10 of Milk Used to Produce Class II, III, and IV products.

11 A. A New Uniform Set of National Class Prices

12 As noted earlier, the quest for price uniformity was ongoing  
13 in the Department.

14 Q. Could you read that sentence again, please, Mr. Schad,  
15 make sure you hit every word?

16 A. As noted earlier, the quest for milk price uniformity  
17 was ongoing at the Department. For instance, at a 1989  
18 Carolina Order Promulgation Hearing a proposal was made by  
19 three handlers to continue the butterfat pricing factor  
20 contained in both the North and South Carolina state orders and  
21 to establish for the new Federal Order, a butterfat  
22 differential formula of .1 times the Chicago Grade A butter  
23 price. At the time, the butterfat formula for the adjoining  
24 Federal Orders and all Federal Orders, was .115 times the  
25 Chicago butter price. Testimony was provided at the hearing

1 that the difference between the formulas would affect  
2 producers' pay price (not the butterfat price) by only 4 cents  
3 to 6 cents per hundredweight. Citing the difference between  
4 the States' orders and the Federal Orders' butterfat pricing as  
5 a factor in disorderly marketing, the Secretary ruled against  
6 the proposal. The Secretary said, "if such a modification were  
7 adopted, the value of butterfat and skimmed milk in the  
8 Carolina market would not be aligned with such values under the  
9 neighboring Federal Order markets."

10 (55 Fed. Reg. at 25623 and 25643)

11 Section 143 of the 1996 Farm Bill --

12 MR. ENGLISH: May I? Chip English.

13 I obviously read through this ahead of time and so I  
14 only have to stand up once, the following paragraph includes  
15 interpretations of what Farm Bills directed, authorized,  
16 instructed, and first line of the next one talks about  
17 instructing. This is improper legal conclusion and should not  
18 be admitted. So I object. And I know how this is going to go,  
19 but I only have to stand up once, Mr. Beshore.

20 So I object to those statements in that paragraph as  
21 the following he's about to read, and the first line of the  
22 carry-over paragraph that goes from 14 to 15.

23 JUDGE CLIFTON: Thank you, Mr. English, and I appreciate  
24 your objection very much and I note it. Nevertheless, the  
25 witness will be allowed to testify as his testimony has been



1 prepared.

2 MR. BESHORE: Since Mr. English made that, I'll take it  
3 that's part of his standing objection?

4 JUDGE CLIFTON: Yes, it is, and yet, I still want to be  
5 alerted where it is.

6 MR. BESHORE: I understand.

7 MR. ENGLISH: I'm pretty sure that's the only time, at  
8 least in this testimony.

9 BY MR. BESHORE:

10 Q. Could you proceed, Mr. Schad?

11 A. Yes, I'm proceeding on page 14.

12 Section 143 of the 1996 Farm Bill directed that the  
13 Secretary consolidate the (then) 31 Federal Orders to a number  
14 of between 10 and 14. Further, the Secretary was authorized to  
15 address related issues, such as the use of utilization rates  
16 and multiple basing points for the pricing of fluid milk, and  
17 the use of multiple -- I'm sorry, the use of uniform multiple  
18 component pricing when developing one or more basic formula  
19 prices for manufacturing milk. The Conference Committee Report  
20 of the 1996 Farm Bill instructed the Secretary, "There is no  
21 limitation to the number of issues the Secretary may consider  
22 when consolidating new orders." (Conference Report to  
23 accompany H.R., 2854, March 25th, 1996, page 338).

24 In addition, the Secretary was instructed to effectuate  
25 the reforms to the Federal Orders by utilizing the informal

1 rule making procedure. While formal rule -- I'm sorry, I'll  
2 start again.

3 While formal rule making required AMS decision making  
4 to be limited to the evidence on proposals provided by  
5 interested parties at a formal hearing, informal rule making  
6 permitted AMS more latitude to develop its own proposals based  
7 on industry comments and evidence. AMS established five  
8 committees composed of AMS and Market Administrator staff.  
9 Those committees were Price structure, Basic Formula Price,  
10 Identical Provisions, Classification, and a Regional Committee  
11 composed of the Midwest, Northeast --

12 Q. Stop there. Composed of?

13 A. Mideast.

14 Q. Okay.

15 A. Northeast, Southwest, and Western Regions.

16 Q. The fourth region south?

17 A. I'm sorry, Southeast.

18 JUDGE CLIFTON: So I would like you to start again with  
19 composed of.

20 MR. SCHAD: I'll read the full sentence, your Honor.

21 JUDGE CLIFTON: All right.

22 MR. SCHAD: Those committees were Price Structure, Basic  
23 Formula Price, Identical Provisions, Classifications, and a  
24 Regional Committee composed of Mideast, Northeast, Southeast,  
25 and Western Regions. In addition to utilizing USDA personnel,

1 partnerships were established with two university consortia to  
2 provide expert analysis on issues relating to price structure  
3 and basic formula price options.

4 The broad authorization and informal rule making  
5 procedures granted to the 1995, granted in the 1995 Farm Bill  
6 allowed AMS to standardized milk classification, pricing and  
7 procedures into a national system.

8 In the Recommended Decision of Federal Order Reform,  
9 the Secretary wrote:

10 The new basic formula price should be simple to  
11 derive and easy for the dairy industry to  
12 understand since it would be used in all Federal  
Orders. The BFP --

13 JUDGE CLIFTON: I would like you to do that sentence again,  
14 please.

15 MR. SCHAD:

16 The new basic formula price should be simple to  
17 derive and easy for the dairy industry to  
18 understand since it will be used in all Federal  
Orders. The BFP should also be transparent. That  
19 is, it should be possible to see and understand  
the derivation of the BFP, even if a complex  
20 formula is used to determine the price. Further,  
the new basic formula price should be applied  
uniformly within the orders and on a national  
21 basis.

22 The most important --

23 JUDGE CLIFTON: Now, I didn't stop you, there were two  
24 occasions in that paragraph where the word you used was not  
25 what was written, but it meant the same. And it is your

1 understanding that this is a quote; is that correct?

2 MR. SCHAD: Yes.

3 JUDGE CLIFTON: Okay. And so if there was any variation,  
4 it is the exhibit that would be the accepted version of the  
5 quote.

6 MR. SCHAD: Yes.

7 JUDGE CLIFTON: All right. Thank you. You may proceed.

8 MR. SCHAD: This is paragraph 2 of the quote:

9 The most important criterion is sound economics--  
10 the ability of the BFP to reflect the supply and  
11 the demand for raw milk. Currently, the BFP is  
12 intended to represent the interaction of supply  
13 and demand for manufacturing milk, and thereby the  
14 supply and demand for fluid milk at a minimum  
15 level. A replacement that fits this traditional  
16 role suggests that supply and demand for  
17 manufacturing milk should be reflected in the new  
18 price.

19 Sound economics also implies that minimum prices  
20 for milk used in manufacturing products will be  
21 market clearing. These two -- I'm sorry -- the  
22 use of two classes to price milk used in  
23 traditional "surplus" products of butter, nonfat  
24 dry milk and cheese (that is, milk in excess of  
25 that amount needed to fill fluid demand) helps  
26 assure that only one product will have to be  
27 priced at a level that clears the market.  
28 The market-clearing product in most cases is  
29 butter and nonfat dry milk.  
30 (63 Fed. Reg. 4802 and 4877 (1998))

31 BY MR. BESHORE:

32 Q. And I would just note the comment your Honor made that  
33 the printed text is the verbatim quote, and if there were any  
34 minor deviations from that, the printed text is the intended  
35 quote.

1       A. Thank you. The Secretary replaced the basic formula  
2 price (BFP) with a multiple component pricing system that  
3 derives component values from survey prices of manufactured  
4 dairy products. The adopted pricing system determines  
5 butterfat prices from milk used in Class II, Class III and  
6 Class IV products from a butter price. Protein and other  
7 solids from milk used in Class III products --

8       Q. Could you just take that clause again beginning with  
9 protein?

10       A. Protein and other solids prices for milk used in Class  
11 III products from cheese and whey prices, and nonfat solids  
12 prices for milk used in Class II and Class IV products from  
13 nonfat dry milk product prices. To translate prices of dairy  
14 commodities into class prices for milk, three factors are  
15 needed; a price discovery vehicle for butter, nonfat, dry milk,  
16 (NFDM), cheddar cheese and whey; the cost of processing milk  
17 into finished product commodities; and the yield of finished  
18 product from hundredweight of milk.

19               B. Determination of Commodity Prices.

20       The Federal Reform final decision established the  
21 determination of commodity prices for the class price formula  
22 through a survey conducted by the National Agricultural  
23 Statistic Service (NASS). Each week NASS would serve a butter  
24 powder and cheese -- I'll read that again. Each week, NASS  
25 would survey butter, powder, cheese, and whey manufacturers for

1 their sales prices and volumes sold. Monthly class prices  
2 would be determined by performing a volume-weighted average  
3 calculation of the weekly prices. The Secretary described the  
4 NASS survey:

5 In developing these commodity surveys, input was  
6 obtained from the dairy industry on the  
7 appropriate types of products, packaging, and  
8 package sizes to be included for the purpose of  
9 obtaining unbiased representative prices.  
10 A sale is considered to occur when a transaction  
11 is completed, the product is shipped out, or title  
12 or transfer -- or the title transfer occurs. In  
13 addition, all prices are FOB the processing -- and  
14 that should read processing plant, not plan --/  
15 storage center with the processor reporting the  
16 total volume sold and the total dollars received  
17 were the price per pound. NASS dairy products  
18 prices reports wholesale cheddar cheese prices for  
19 both 500-pound barrels and 40-pound blocks, USDA  
20 Grade AA butter, USDA grade -- I'm sorry -- USDA  
21 Extra Grade or USPH Grade A non-fortified dry  
22 milk, and USDA Extra Grade non-hygroscopic dry  
23 whey.

24 (65 Fed. Reg. Page 7832 and --

25 Q. Read the page number again.

A. I'm sorry, 76832 and 76837. The Secretary --

Q. The year?

A. 1999.

Q. Thank you.

JUDGE CLIFTON: Mr. Schad, before you go on, Mr. Beshore,  
may I direct the correction on the record copies of the word  
"plan" to "plant" as Mr. Schad showed us?

MR. BESHORE: Yes, please, your Honor.

JUDGE CLIFTON: All right. Then, Ms. Elliott, on page 16,  
in the quoted paragraph near the bottom of the page,

1 approximately in the middle of that paragraph, there is a line  
2 that starts plan/storage center, please rewrite "plan" to say  
3 "plant."

4 MS. ELLIOTT: Okay.

5 JUDGE CLIFTON: Thank you. And Mr. Schad, you may resume  
6 your testimony at the bottom of page 16.

7 MR. SCHAD: The Secretary has addressed the appropriateness  
8 of combining the prices of 40-pound blocks and 500-pound  
9 barrels of cheddar cheese adjusted to a 38 percent moisture and  
10 3 cents per pound.

11 BY MR. BESHORE:

12 Q. And -- could you just read that again? You missed a  
13 word there, Mr. Schad.

14 A. The Secretary has addressed the appropriateness of  
15 combining the prices of 40-pound blocks and 500-pound barrels  
16 of cheddar cheese adjusted to 38 percent moisture and plus 3  
17 cents per pound to determine the commodity price for the  
18 protein formula. For the class -- I'm sorry -- for the Class  
19 Price Hearing held in 2000, the Secretary wrote:

20 The hearing record provides no basis for altering  
21 the composition of cheddar cheese, of cheese  
22 prices surveyed for use in the Class III pricing  
23 formulas or for changing the calculation of the  
NASS weighted average cheese price, other than  
moisture of adjustment to 38 percent for 500-pound  
barrels. (67 Fed. Reg. 67906, 67926 (2000)).

24 During the 2006 make allowance hearing, proposals were  
25 made to eliminate barrels from the calculation of the weighted

1 average cheese price and/or eliminate the 3 cent addition to  
2 the 500-pound cheddar cheese prices. During the hearing,  
3 proponents asserted that since the price difference between  
4 blocks and barrels is almost zero, it can be concluded that any  
5 packaging cost difference must also be nearly zero. The  
6 Secretary disagreed and noted:

7 This decision does not find a causal relationship  
8 between selling prices and cost. While evidence  
9 does support that market prices of box and barrels  
10 can sometimes be identical, it cannot be concluded  
11 that any purported cost difference arising from  
12 packaging cost differences, must also disappear.  
13 The sometime relatively small market price prices  
14 of -- I'm sorry --

15 Q. Start that sentence again, please.

16 A.  
17 The sometime relatively similar market prices of  
18 blocks and barrels could be explained by  
19 multiple -- by a multitude of factors not relating  
20 to manufacturing and packaging costs.  
21 (73 Fed. Reg. Page 35306 and 35328)

22 Q. What year was that?

23 A. 2006.

24 Q. Thank you.

25 A. Another proposal was put forward in the 2006 hearing  
that would have eliminated the barrel cheese price from the  
protein calculation. Citing that barrel cheese is often in  
excess of --

JUDGE CLIFTON: Please start that sentence again, if you  
will.



1 MR. SCHAD: Citing that barrel production is often in  
2 excess of 50 percent of the volume of cheese in the survey, the  
3 Secretary rejected the proposal and noted, "Eliminating the  
4 barrel price from the protein price formula would significantly  
5 and needlessly reduce the volume of cheese used in the  
6 Class III product price formula, which could lead to protein  
7 prices that are in -- that are not as representative as the  
8 national cheese market." And that's Id. Bit.

9 JUDGE CLIFTON: And just read the last line on page 17,  
10 one more time.

11 MR. SCHAD: Protein prices that are not as representative  
12 of the national cheese market.

13 JUDGE CLIFTON: Thank you.

14 MR. SCHAD: It is the same citing as before.

15 Barrel cheese continues to be a major portion of the  
16 DPPSR cheese survey. During 2014, the barrel cheese comprised  
17 45 percent of reported cheese sales.  
18 [http://future.aae.wisc.edu/data/weekly\\_values/by\\_area/1622](http://future.aae.wisc.edu/data/weekly_values/by_area/1622) and  
19 [http://future.aae.wisc.edu/data/weekly\\_values/by/are/1624](http://future.aae.wisc.edu/data/weekly_values/by/are/1624)

20 Q. At this point, let me interrupt you there. At this  
21 point, your Honor, I'd just ask that without Mr. Schad reading  
22 the web URL's, which are at this place in Exhibit 70, that they  
23 be placed in the text as if read.

24 JUDGE CLIFTON: You don't want him to read them, but you  
25 want them placed in the transcript as if he had read them?

1 MR. BESHORE: Correct.

2 JUDGE CLIFTON: Because it will probably turn out better if  
3 the court reporter goes to page 13 or 18 and looks at them.

4 MR. BESHORE: I agree wholly.

5 JUDGE CLIFTON: I agree, too. It is so hard to read web  
6 sites. I think Laurel May should read this, but --

7 MR. BESHORE: She is an expert at website's.

8 JUDGE CLIFTON: All right. So I do instruct the court  
9 reporter at this point in the testimony, to insert into the  
10 transcript the web sites that are now contained at the top of  
11 page 18. And Mr. Schad, you need not read them. There are two  
12 of them, and you may then continue with your testimony below  
13 those two web sites.

14 MR. SCHAD: It looks like I have a typo in the first line  
15 of this, and I think it should read, "the use of national dairy  
16 commodity prices for national class prices." I don't believe  
17 it should read "Class I."

18 BY MR. BESHORE:

19 Q. Eliminate Class I there?

20 A. Yes.

21 JUDGE CLIFTON: Just the "I."

22 MR. SCHAD: Just the I.

23 MR. BESHORE: The Roman numeral I.

24 JUDGE CLIFTON: Thank you, Mr. Schad. I'm going to direct  
25 Ms. Elliott please, to make a change on the record copies with

1 regard to page 18, the sentence at the top just below the web  
2 sites, we'll strike the Roman numeral I, that's the only  
3 change.

4 MR. SCHAD: And I'll read the sentence again.

5 The use of national dairy commodity prices for national  
6 class prices has been facilitated by Federal law since 2000.  
7 Public law --

8 MR. ENGLISH: Excuse me, Chip English, and first I'll say I  
9 was wrong. So before he reads this sentence, your Honor, he is  
10 again going to talk about what a statute requires persons to  
11 do. And as I note my usual objection, without undercutting in  
12 my earlier statements, I have a lot of independent reasons and  
13 know a lot about this particular law for reasons having nothing  
14 to do with with this proceeding. And problem, as I stated last  
15 week, with people giving expert opinion about the law, is  
16 especially acute when they are wrong.

17 And I can say that what Public Law 106532 is, is  
18 required the Secretary to adopt regulations which would end up  
19 requiring persons. And the Secretary did not adopt such  
20 regulations until mid-2007. And so a statement that in 2000  
21 persons were required to do something, was just simply  
22 ineffective act until mid-2007. So my objection is to this  
23 paragraph on the grounds that it contains legal conclusions.

24 JUDGE CLIFTON: Thank you, Mr. English, that is helpful.

25 Nevertheless, Mr. Schad, you may read your testimony as

1 you have prepared it, and we will use the objection as a  
2 caution, and the objection is noted and is appreciated.

3 All right. That said, could you start again,  
4 Mr. Schad, with the words "the use."

5 MR. SCHAD: Yes. On page 18.

6 The use of national dairy commodity prices for national  
7 class prices has been facilitated by Federal law since 2000.  
8 Public Law 106-532 passed in 2000 required persons engaged in  
9 the manufacture and sale of selected dairy products to report  
10 certain information, including the price, quantity, and  
11 moisture content where applicable. Any manufacturer that  
12 processes and markets at least one million pounds of dairy  
13 products per year --

14 BY MR. BESHORE:

15 Q. Read that again, please.

16 A. Any manufacturer that processes and markets less than  
17 one million pounds of dairy products per year was exempt from  
18 the sales reporting requirements. USDA completed the rule  
19 making process on June 17th, 2008, creating the Dairy Products  
20 Mandatory Reporting Program. This program collects, evaluates,  
21 aggregates, verifies, and disseminates dairy product sales  
22 information to the public.

23 The Mandatory Price Reporting Act of 2010 required USDA  
24 to release dairy product sales information on or before  
25 Wednesday at 3:00 p.m. (unless affected by a Federal holiday.)

1 The Act also required establishment of an electronic mandatory  
2 sales reporting system for dairy products reported under Public  
3 Law 106-532.

4 MR. ENGLISH: Same objection, late.

5 JUDGE CLIFTON: Thank you, Mr. English, your objection is  
6 noted.

7 MR. SCHAD: The Act transferred the responsibility for the  
8 weekly reporting from NASS to AMS, which now issues the  
9 National Dairy Product Sales Report (NDPSR) -- and I'll note  
10 that earlier in my testimony, no, I won't say -- strike that.  
11 Now issues the National Dairy Product Sales Report each  
12 Wednesday. The Congressionally enacted mandatory reporting  
13 captures all applicable sales of the standardized commodities  
14 butter, nonfat dry milk, cheddar cheese, and dry whey. The  
15 list of "Policies and Procedures for Dairy Market, for Dairy  
16 Product Mandatory Reporting Program" --

17 BY MR. BESHORE:

18 Q. Start that again, please.

19 A. The list of "Policies and Procedures for Dairy Product  
20 Mandatory Reporting Program" is Cooperatives' Exhibit 6.B (3  
21 pages.) Moreover, AMS was directed to audit --

22 MR. ENGLISH: Objection to directed.

23 JUDGE CLIFTON: Just a minute, Mr. Schad, your objection,  
24 Mr. English, was to the use of the word directed?

25 MR. ENGLISH: Yes.

1 JUDGE CLIFTON: Thank you. Your objection is noted.  
2 Mr. Schad, start again with moreover.

3 MR. SCHAD: Moreover, AMS was directed to audit the  
4 reporting manufacturers, such that AMS visits the larger  
5 entities that account for 80 percent of the previous year's  
6 product at least annually. AMS visits the entities  
7 representing the residual 20 percent of volumes every other  
8 year. In 2012, AMS reported in the final rule that 18 entities  
9 representing one or more plants reported cheddar cheese sales  
10 of 40-pound blocks; 14 reporting entities reported cheddar  
11 cheese sold as 500-pound barrels; 19 entities, I'll insert that  
12 into the record, 19 entities reporting, I'm sorry, 19 reporting  
13 entities; 28 reported I need to read that sentence over.

14 Q. Just repeat -- just read it as printed.

15 A. Okay. 19 reporting butter entities; 28 reporting  
16 entities of nonfat dry milk sales; and 20 dry whey entities.

17 JUDGE CLIFTON: All right. There was one change that I  
18 think we want to make note of.

19 MR. BESHORE: The first line.

20 JUDGE CLIFTON: Yes. Yes. You read the word volumes, 20  
21 percent of volumes, I believe. I just want to be sure what  
22 that word is supposed to be.

23 MR. SCHAD: That's supposed to be 20 percent of volumes,  
24 the R is a typographical.

25 JUDGE CLIFTON: Is it supposed to be plural?

1 MR. SCHAD: Yes.

2 JUDGE CLIFTON: Okay.

3 MR. SCHAD: 20 percent of the volumes every other year,  
4 yes.

5 JUDGE CLIFTON: All right. So I'm going to ask  
6 Ms. Elliott at the top of page 19, top line, merely to strike  
7 the letter R. That way the word will read volumes, plural.  
8 All right. And Mr. Schad, you may resume.

9 MR. SCHAD: C. California is a Major Factor in Determining  
10 Monthly NDPSR Prices.

11 California produced 2.4 billion pounds of cheese from  
12 60 cheese plants during 2014, according to the NASS 2014 Annual  
13 Report. This total production of cheese represented 21 percent  
14 of the total cheese produced in the United States. I cite  
15 (Dairy Products 2014 Annual Summary, page 30). California  
16 produced 375 million pounds of cheddar cheese from 19 plants,  
17 representing 11 percent of the nation's total (page 32), same  
18 source. Additionally, California produced 33 percent of the  
19 nation's butter production from 14 plants (page 43), and 40  
20 percent of the nation's nonfat dry milk powder from 12 plants,  
21 (page 44). NASS's rules of confidentiality prohibit the  
22 disclosure of state -- I'll read that again.

23 NASS's rules of confidentiality prohibit the disclosure  
24 of state specific statistics when there are fewer than three  
25 reporting plants. However, it is logical to assume the state

1 responsible for 21 percent of the nation's cheese production  
2 would have an important impact on the various dry and protein  
3 concentrated dry whey products that are byproducts from cheese  
4 production.

5 The Secretary addressed relationship of California  
6 commodity prices and the NASS price series --

7 Q. Could you start that sentence again, please?

8 A. The Secretary addressed the relationship of California  
9 commodity dairy prices and the NASS price series in the final  
10 decision of 2006 make allowance hearing. The Secretary noted:  
11 "The NASS price survey for dairy products used as a basis for  
12 establishing Class III and Class IV prices, includes all dairy  
13 product prices and sales volumes in all regions of the country,  
14 including California." (67 Fed. Reg. at page 67937)

15 D. California Manufacturing Costs Have Always Been a  
16 Factor in Setting FMMO Make Allowances.

17 The process of determining the manufacturing cost of  
18 processing milk into butter, nonfat dry milk, cheddar cheese,  
19 and whey, has been iterative. During the Federal Order Reform  
20 and at every make allowance hearing, testimony was provided  
21 concerning manufacturing costs of California plants.

22 Initially, for the Federal Order Reform make allowances, the  
23 Secretary relied on the manufacturing cost survey of  
24 cooperative-owned milk processing plants, conducted by the  
25 Rural Cooperative Business Service RCBS of USDA, a Cornell



1 University study of processing costs, and a survey of  
2 processing costs of California dairy plants conducted by the  
3 California Department of Food and Agriculture (CDFA). The  
4 Secretary adjusted the surveys from marketing and packaging  
5 costs and return on investment. The make allowance for cheese,  
6 butter, and nonfat dry milk was based on a weighted average of  
7 the CDFA and RCBS cost service. The FMMO Reform make allowance  
8 was based on a Cornell --

9 Q. Start the sentence again please, Mr. Schad.

10 A. The FMMO Reform whey make allowance was based on a  
11 Cornell survey of whey processing costs. I cite (64 Fed. Reg.  
12 at pages 16096 through 99).

13 MR. ENGLISH: Your Honor, Chip English.

14 Before he reads the next sentence, object to the  
15 characterization that it was, that the Secretary was issued  
16 Congressional mandate to reconsider. Object to the legal  
17 conclusion.

18 JUDGE CLIFTON: Thank you, Mr. English, your objection is  
19 noted. I would like us to take a break. I know it is early,  
20 but this is -- this is concentrated information. And I think  
21 we all need to move around a little. So when we come back,  
22 we'll return to page 20 and we'll begin with the final  
23 paragraph there.

24 It is now 10:08. Please be back and ready to go at  
25 10:25.

1 (Whereupon, a break was taken.)

2 JUDGE CLIFTON: We're back on record now at 10:28.

3 Mr. Beshore?

4 BY MR. BESHORE:

5 Q. Yes. Mr. Schad would you please continue with your  
6 testimony beginning the last full paragraph of page 20, reading  
7 subject to Mr. English's noted objection.

8 A. In 2000, the Secretary was issued a Congressional  
9 mandate to reconsider the Class III and Class IV pricing  
10 formulas included in the final rule for the consolidation of  
11 Reform of Federal Milk Orders. The mandate was included in the  
12 Consolidated Appropriation Act 2000, Public Law 106-113, 115,  
13 Statute 1501). Subsequently, a public hearing to consider  
14 proposals submitted by the industry to change the pricing  
15 formulas in the marketing agreements and orders regulating the  
16 handling of milk in the Northeast and ten other marketing areas  
17 was held in Alexandria, Virginia, on May 8 through 12 of 2000.  
18 (67 Fed. Reg. at 67909). The final decision from that  
19 proceeding, again relied on weighted average of the most recent  
20 CDFA and RCDS manufacturing cost surveys for butter, nonfat dry  
21 milk, and cheese.

22 In 2006, a national hearing was held to consider  
23 changes to the manufacturing allowances contained in the  
24 Class III and Class IV product price formulas applicable to all  
25 Federal Milk Marketing Orders. At this hearing, a new

1 manufacturing cost survey was introduced by a college professor  
2 representing the Cornell Program on Dairy Market and Policy.  
3 (CPDMP). While the RBCS survey only included cooperative-owned  
4 plants, the CPDMP cost survey represented both  
5 cooperative-owned plants and proprietary plants. The CPDMP  
6 survey represented a stratified random sample of butter,  
7 powder, cheese, and whey processing plants located outside of  
8 California. In the tentative final decision, the Secretary  
9 described the CPDMP survey:

10           The CPDMP study is based on the voluntary  
11           structured survey of participating manufacturing  
12           plants selected to represent a cross-sectional  
13           view of manufacturing costs for cheese, dry whey,  
14           butter and nonfat dry milk outside of California.  
15           The CPDMP study is a first-time survey and  
16           study -- is a first time survey and study of plant  
17           manufacturing costs designed to be relied upon in  
18           establishing make allowances.  
19           And I cite (71 Fed. Reg. at page 67467, 67484, in  
20           (2006)).

21           Even though the CPDMP was contracted in part by USDA  
22           for determining manufacturing costs for butter or powder,  
23           cheese and whey plants, the Secretary chose also to consider  
24           the most recent CDFA survey in order to determine make  
25           allowances for Class III and Class IV in all Federal Orders.  
26           He wrote, and I quote:

27           While CPDMP's study provides improved  
28           manufacturing cost data from plants in the Federal  
29           Milk Order program, combining it with additional  
30           information available in the CDFA survey,  
31           establishes a superior set of data on which to  
32           determine revised make allowances. Specifically,  
33           this tentative final decision finds agreement with

1 CDFA survey with cost representative of Federal  
2 Order manufacturing costs for cheese, nonfat dry  
3 milk, and butter (except dry whey) is the most  
4 reasonable approach for determining changes to the  
5 make allowances. CDFA survey data should be  
6 combined with the CPDMP study results because  
7 California's production volumes of cheese, dry  
8 way, nonfat dry milk and butter are of such  
9 national significance, it would be unreasonable to  
10 ignore California's plant's manufacturing costs in  
11 the Class III and Class IV product price formulas.  
12 Same citation, Page 67486.

13  
14  
15 In the case of pricing other solids the Secretary  
16 wrote, and I quote:

17 This tentative final decision finds agreement with  
18 the proponents such as Kraft, Glambia, Lactalis,  
19 Saputo, and Leprino, that the CPDMP studies  
20 weighted average manufacturing cost of dry whey  
21 plus a marketing cost factor of .0015 cents per  
22 pound, best represents the cost of dry whey for  
23 plants outside of California.  
24 Same citation, page 67487.

25 JUDGE CLIFTON: Now, when you read the dollar amount, as  
26 "point" and then you said "cents" it may distort what's shown  
27 there. So what's another way to express what you are looking  
28 at as the per pound?

29 MR. SCHAD: 15 mils, or \$0.0015.

30 JUDGE CLIFTON: All right. Thank you very much. So it is  
31 not even one cent?

32 MR. SCHAD: No.

33 JUDGE CLIFTON: It is a little more than a tenth of a  
34 cent?

35 MR. SCHAD: Uh-huh.

1 JUDGE CLIFTON: I see. Okay, thank you.

2 MR. SCHAD: Again, in 2007, a national hearing was held to  
3 consider amendments to Class III and Class IV formula. And  
4 again, the Secretary addressed a question manufacturing cost  
5 surveys to determine the make allowance. The Secretary  
6 concluded, and I quote:

7  
8 CDFA data represents the cost survey of only  
9 California processing plants. It is important to  
10 the Federal Order classified pricing that the  
11 Class III and IV prices be derived as much as  
12 possible from national estimates of manufacturing  
13 cost information, and because NASS's survey prices  
14 include California, accordingly, it is reasonable  
15 to conclude that appropriately combining this cost  
16 data with cost survey of plants not located in  
17 California, will tend to produce a measure of  
18 national manufacturing costs. Doing so will tend  
19 not to bias manufacturing cost measurements that  
20 may otherwise result from the exclusive use of one  
21 set of cost survey data over another.  
22 (73 Fed. Reg. at page 35324)

23 The current make allowance --

24 JUDGE CLIFTON: May I interrupt you? I would like you to  
25 read that last sentence again. The way you read it the meaning  
is clear, but the phrase to not bias is a particular choice of  
words, and so I wanted to make sure that's preserved in your  
reading. So would you start again with doing so?

MR. SCHAD: Doing so will tend to not bias manufacturing  
cost measurements that may otherwise result from the exclusive  
use of one set of cost survey data over another.

And that's the end of the quotation, next paragraph.

1           The current make allowances are a result of the 2007  
2 hearing. Specifically, the butter make allowance was derived  
3 through a NASS volume weighted average of CDFA and CPDMP  
4 manufacturing costs, plus a marketing cost adjustment of  
5 \$0.0015 and is \$0.1715 per pound of butter. The NFDM make  
6 allowance was also derived through a NASS volume weighted  
7 average of CDFA and CPDMP manufacturing costs and is \$0.1678  
8 per pound of nonfat dry milk.

9           (Same citation, pages 35325 and 26)

10          JUDGE CLIFTON: Tell the number again?

11          MR. SCHAD: 35325 and 26.

12           The Secretary found flaws in the CPDMP data regarding  
13 cheese make allowances and found that the CDFA survey provided  
14 the only viable manufacturing cost survey. Hence, the current  
15 make allowance in all Federal Orders for cheese is the 2006  
16 CDFA annual cheese manufacturing cost

17 BY MR. BESHORE:

18          Q. Mr. Schad, read that sentence again, please?

19          A. Hence, the current make allowance in all Federal Orders  
20 for cheese is the 2006 CDFA average cheese manufacturing cost  
21 of \$0.2003 per pound. Since -- I'm sorry -- since CDFA was not  
22 satisfied with the precision in estimating the average cost to  
23 produce whey products, the Secretary relied only on the CPDMP  
24 whey cost survey, which yielded a \$0.1991 per pound make  
25 allowance.

1 (Same citation, page 35326.)

2 Product yields. Cheese, the final decision -- this is  
3 a heading of product yields: Cheese. E. The final decision  
4 --

5 JUDGE CLIFTON: You got it all in, but go ahead and put it  
6 in the right order.

7 MR. SCHAD: Okay.

8 E. Product Yields: Cheese

9 The final decision of Federal Order Reform established  
10 the Class III price as a function of the protein price and the  
11 other solids price. The protein price would be derived --

12 JUDGE CLIFTON: I'm sorry, that seems particularly precise,  
13 so I would like you to read it exactly as you have written it.

14 MR. SCHAD: I'm starting at the beginning of the paragraph:

15 The final decision of Federal Order Reform established  
16 Class III price as a function of a protein price and an other  
17 solids price. The protein price would be derived through the  
18 following equation.

19 MR. BESHORE: Could I interrupt you there, Mr. Schad. Your  
20 Honor, there are a number of equations in the text, this is the  
21 first one. I would like Mr. Schad to read the equations  
22 without the parens which are interspersed and compounded upon  
23 each other. If he could just read it with the signs and the  
24 amounts and the names without the parens and the transcript  
25 could then reflect the precise equation operation as indicated

1 by the parens from the text.

2 MR. VLAHOS: Your Honor, Mr. Vlahos, may I consult with  
3 Mr. Beshore for just one second?

4 JUDGE CLIFTON: Yes.

5 MR. VLAHOS: Thank you, your Honor.

6 JUDGE CLIFTON: You're welcome, Mr. Vlahos.

7 MR. BESHORE: We're just trying to figure out the best way  
8 to do this. And my thought is if the court reporter could copy  
9 it in with the printed text in terms of the signs and the  
10 operations of the equation, but have Mr. Schad read it without  
11 the parentheticals.

12 JUDGE CLIFTON: Yeah, it doesn't work as a formula just  
13 reading it because it's a mathematical thing. I would like  
14 him --

15 MR. BESHORE: Maybe we can just have it copied in, but I'm  
16 open to your Honor's suggestion.

17 JUDGE CLIFTON: Yeah, I would bet you that Mr. Schad could,  
18 in looking at the formula, tell us what's multiplied by what,  
19 and so forth, and just describe for us how it's done, but I  
20 agree with you, Mr. Beshore, that the court reporter should go  
21 to page 23 of Exhibit 70 and capture the formula that is in  
22 this Subsection E, Product Yields: Cheese and put it in  
23 exactly as it's printed here.

24 MR. BESHORE: Yeah, and looking at it as printed, I think I  
25 can see that we have typographically omitted or not correctly



1 reproduced the parentheticals of the equation, because there  
2 are some parens missing at the end to close it out.

3 JUDGE CLIFTON: Yeah, and, for example, you open with two  
4 parens and you never close that, and then you have another  
5 section that has three parens and you never close that. But  
6 still, while we have this expert on the stand -- I'm referring  
7 to you as an expert, Mr. Schad, even though you have not been  
8 qualified as one -- I would like for you to explain in general  
9 terms what factors are considered in using the formula.

10 MR. SCHAD: Let me see if I can get it correctly. The  
11 protein price is the sum of, first, the NASS cheese price, less  
12 the make allowance of at that time, final decision make  
13 allowance, \$17.02 times a yield of 1.405. That quantity is  
14 added to the NASS cheese price, less the make allowance, times  
15 1.582, minus the butterfat price times 1.28.

16 Protein price = ((NASS cheese survey price - 0.1702) x  
17 1.405 +(((NASS cheese survey price - 0.1702) x 1.582) -  
18 butterfat price) x 1.28

19 JUDGE CLIFTON: That's very helpful. Yes, I think that's  
20 very helpful. However, no way could that be captured as the  
21 formula without the help of your written production of it, and  
22 Mr. Beshore, at the next break you and Mr. Schad can look to  
23 see if you want to have that changed in any way on page 23.

24 MR. BESHORE: We will do that, including the insertion of  
25 the dollar signs where Mr. Schad basically indicated they were.

1 JUDGE CLIFTON: Very good.

2 MR. BESHORE: Financial values for the make allowances  
3 there.

4 JUDGE CLIFTON: It is very helpful Mr. Schad, to have you  
5 explain it in the words you used, which are not, those are not,  
6 this --

7 MR. BESHORE: Not printed on the text of 70.

8 JUDGE CLIFTON: Yes, and these are portions of vocabulary  
9 with which you are familiar and many of us are not, so I thank  
10 you very much for explaining it.

11 MR. SCHAD: Maybe to help, the Secretary explains it some,  
12 too, in the next paragraph.

13 In explaining the equation, the Secretary wrote:

14 The factors used in the formula for computing  
15 component prices are derived by the quantity of  
16 the --

16 MR. BESHORE: Could you slow down just a bit? Make sure  
17 you get the words there. Start again.

18 MR. SCHAD:

19 The factors used in the formulas for computing  
20 component prices are determined by the quantity of  
21 the component in the commodity, except for  
22 protein, for which the Van Slyke yield formula is  
23 used. In the protein formula, the 1.405 and 1.582  
24 are yield factors derived from the Van Slyke  
25 cheese formula. Both the 1 --

23 JUDGE CLIFTON: I'm sorry I want you to do it verbatim.  
24 From the Van Slyke what?

25 MR. SCHAD: Cheese yield formula.

1 calculating the change in cheese yield if an  
2 additional tenth of a pound of protein or  
3 butterfat was contained in the milk. Holding  
4 everything else constant.

5 The [Federal Order Reform] proposed rule used a  
6 1.32 factor times the cheese price for use in  
7 computing the protein price. The change to a  
8 factor of 1.405 reflects the use of true protein  
9 as the basis for payments for protein, rather than  
10 using the measurement of "total nitrogen" for the  
11 protein content of milk. The resulting protein  
12 price will be for a pound of true protein.  
13 (64 Fed. Reg. at page 16098)

14 The result of the Congressionally mandated Federal  
15 Order hearing held in 2000, was a change in the protein formula  
16 to recognize a price for butterfat in Class III products. The  
17 Department's decision to establish a separate Class III and  
18 Class IV butterfat prices were, was subsequently modified by a  
19 set of court ordered formulas that were implemented in January  
20 2001.

21 In November of 2002, the Secretary promulgated a final  
22 decision for the Congressionally mandated hearing held in 2000.  
23 After testimony was presented regarding farm-to-plant losses of butterfat and nonfat solids, butterfat  
24 retention in cheese, and assumptions regarding casein  
25 percentages, the true protein, and their effects on the protein  
26 formula. The Secretary changed the formula to --

27 BY MR. BESHORE:

28 Q. Changed -- read that again.

29 A. Changed the protein formula to.

1 Q. Thank you.

2 A. Protein price = ((NASS cheese survey price - 0.165) x  
3 1.383) + (((((NASS cheese survey price - 0.165) x 1.572) -  
4 butterfat price x .9)) x 1.17).

5 (67 Fed. Reg. 67930(2002))

6 In 2006, two national Federal hearings were convened to  
7 consider changes in the Class III and Class IV pricing.  
8 Testimony was offered concerning cheddar cheese yields  
9 farm-to-plant uses and differential value of whey cream and  
10 butter as compared to the Grade AA butter and their effects on  
11 the protein price. Other than adjusting --

12 JUDGE CLIFTON: I'm sorry, on the protein what?

13 MR. SCHAD: I'll read that again.

14 Testimony was offered concerning cheddar cheese yields,  
15 farm-to-plant losses, and the differential value of whey cream  
16 and butter as compared to Grade AA butter and their effects on  
17 the protein formula. Other than adjusting the cheese make  
18 allowance, the Secretary found no compelling evidence to change  
19 the protein formula.

20 The current formula for protein is:

21 And I'll read it again, protein equals now it's the --

22 JUDGE CLIFTON: I'm sorry, protein what?

23 MR. SCHAD: Protein equals.

24 MR. BESHORE: Protein what?

25 JUDGE CLIFTON: Protein what equals?

1 MR. SCHAD: Protein price equals -- I'm sorry.

2 Now it is the NDPSR rather than the NASS cheese price  
3 survey, as I noted that's changed, less the make allowance of  
4 \$0.2003 x times -- that number does not look -- I think I have  
5 one too many decimal points.

6 BY MR. BESHORE:

7 Q. Or too many one decimal points.

8 A. I'm sorry?

9 Q. I think one decimal point was been duplicated. So?

10 A. Yes. As it should read 1.383, plus the quantity of the  
11 cheese survey price, less the make allowance of \$0.2003, times  
12 1.572, minus the quantity of the butterfat price, times .9  
13 times 1.17.

14 Protein price = ((NDPSR cheese survey price - \$0.2003)  
15 x 1.383) + (((((NDPSR cheese survey price - \$0.2003) x 1.572) -  
16 butterfat price x.9)) x 1.17).

17 And again, one of my exhibits is 1000.50, and this  
18 formula is contained in that, this is the current protein price  
19 formula.

20 Q. Okay. Thank you.

21 A. F. Product Yields: Other Solids.

22 As noted earlier, USDA recognized the value of cheese  
23 and whey to calculate the support price for cheese until the  
24 1985 Farm Bill. AMS used the Farm Bill yields and make  
25 allowances in the calculation assumptions of the basic formula

1 prices adjustments. Given the mandates of the 1995 Farm Bill  
2 to determine multiple component prices, the Department returned  
3 to determine the value of milk used to produce cheese through  
4 the product values of cheese and whey.

5 While pre-Reform orders priced other solids and milk  
6 used to produce cheese as a residual of the basic formula price  
7 after the values of protein and butterfat were subtracted,  
8 Federal Order Reform determined that the other solids value in  
9 Class III milk through the value of whey. The Secretary wrote  
10 in the final decision:

11 JUDGE CLIFTON: I think you added a that, and I just want  
12 you to read it as you have written it, beginning at the bottom  
13 of page 24. While pre-Reform orders.

14 MR. SCHAD: While pre-Reform orders priced other solids and  
15 milk used to produce cheese as residual of the basic formula  
16 price after values for protein and butterfat were subtracted,  
17 Federal Order Reform determined the other solids value in  
18 Class III milk through the value of whey. The Secretary wrote  
19 in the final decision:

20 A value for other solids is included in the Class  
21 III to assure that the Class III price reflects  
22 most of the value of milk used in Class III  
products. In the Federal Orders currently --

23 BY MR. BESHORE:

24 Q. Read that sentence again.

25 A.

1 In the Federal Milk Orders currently pricing three  
2 components, the other solids price is determined  
3 by subtracting the value of butterfat and protein  
4 from the BFP. In this final rule, the other  
5 solids price is established independently of the  
6 butterfat and protein price. Even though there is  
7 not a market for other solids as such, the dry  
8 whey price was determined to be the best indicator  
9 of value for other solids, and provides a method  
10 of accounting for, and distributing the value of  
11 Class III milk that is not accounted for in the  
12 protein and butterfat components. Other potential  
13 price series that could have been used to  
14 determine value --

9 Q. Start that sentence again, please.

10 A. Other potential price series that could have been used  
11 to determine --

12 Q. That start --

13 A. That could be used --

14 Q. Thank you.

15 A.  
16 That could be used to determine the value of other  
17 solids were whey protein concentrate and lactose.  
18 Under present market conditions, dry whey offers  
19 more market activity with less specialization than  
20 either whey protein concentrate or lactose, and  
21 therefore, constitutes a better price series for  
22 determining a minimum Federal Order price.  
23 Comments found by several parties supported the  
24 use of dry whey for the determination of the other  
25 solids price. The 0.968 factor in the formula  
represents the pounds of solids contained in a  
pound of dry whey.  
(64 Fed. Reg. at page 16099)

23 The other solids price was again considered at the 2000  
24 hearing and a tentative final decision was issued on  
25 December 1st, 2000. While there were proposals to change the

1 yield factor, the Secretary chose to continue the .968 yield  
2 factor. Citing Fed. Reg. 65 at page 76847.

3 Due to a court mandate --

4 JUDGE CLIFTON: You got all the numbers in but let's put  
5 them in --

6 MR. SCHAD: 76847.

7 JUDGE CLIFTON: No, let's start with the what's in  
8 parentheses and just say it again.

9 MR. SCHAD: (65 Fed. Reg. at 76847)

10 Due to the court mandate, the Department reissued the  
11 final decision to the 2000 hearing. As a result of the final  
12 -- as a result, the final decision adjusted the other solids  
13 formula to account for farm-to-plant losses of butterfat and  
14 nonfat milk solids. No testimony was offered, and there should  
15 be a word to.

16 Q. To. Insert "to" at that point. We if we could, your  
17 Honor?

18 JUDGE CLIFTON: Yes, so, Ms. Elliott, I'm not telling you  
19 to do anything where the formulas are until we have had a break  
20 and we make sure what we want the formulas to look like, but  
21 this little change I would like you to make now. This is on  
22 page 25 of Exhibit 70, and the change is -- help me,  
23 Mr. Beshore.

24 MR. BESHORE: The sentence beginning no testimony was  
25 offered, we need to insert the word to, TO, to change the yield



1 factor.

2 JUDGE CLIFTON: That is up from the bottom six lines.

3 MR. BESHORE: Yes.

4 JUDGE CLIFTON: No testimony was offered, we're merely  
5 inserting TO, to change. All right. Good. Thank you.

6 And Mr. Schad, just begin again with that sentence  
7 reading it as it should read.

8 MR. SCHAD: No testimony was offered to change the yield  
9 factor. Additionally, the Secretary chose to convert the  
10 formula yield factor from a divisor to one with a multiplier.  
11 The final decision other solids formula was:  
12 (NASS whey price- \$0.150) x 1.03. And I cite (67 Fed. Reg. at  
13 67930).

14 As a result of the 2006 Make Allowance Hearing, the  
15 current other solids formula is, other solids price, equals the  
16 quantity NDPSR whey price, minus dollar sign 0.1991, that  
17 quantity multiplied times a factor of 1.03.

18 Other Solids Price =(NDPSR whey price -\$0.1991) x 1.03.

19 G. Product Yields: Butter

20 Federal Order Reform changed butterfat pricing from a  
21 calculated butterfat differential reported by the Department  
22 with the monthly basic formula price, to a formula based on the  
23 NASS butter price series, less a make allowance, divided, and  
24 that should just plain read, or times yield factor.

25 BY MR. BESHORE:

1 Q. So there's an -- there's an O that should be deleted in  
2 the text, I suppose, correct? In that sentence?

3 A. Yeah, that's correct. The Reform final decision  
4 formula --

5 JUDGE CLIFTON: Just a moment, Mr. Schad, we might as well  
6 do it now. Ms. Elliott, with regard to page 26 of Exhibit 70,  
7 third line down in the top paragraph, you will just strike the  
8 little O that's by itself after the word divided.

9 Now, you may resume, Mr. Schad.

10 MR. SCHAD: Yes. The Reform final decision formula was  
11  $(\text{NASS Grade AA Butter Price} - \$0.114)/0.82$ . The quantity NASS  
12 Grade AA butter price, minus the make allowance of dollar sign  
13 0.114, that quantity divided by the yield of .82.

14 There were -- there were no changes to the .82 divisor  
15 as a result of the 2000 hearing. In 2002, the 2002 final  
16 decision changed the butterfat formula to recognize  
17 farm-to-plant losses, and also changed the yield factor divisor  
18 to a multiplier.  $(\text{NASS Grade AA butter price} - \text{make allowance}$   
19  $\text{of } .115, \text{ that quantity times } 1.20$ .

20  $(\text{NASS Grade AA Butter Price} - \$0.115) \times 1.20$ .

21 I cite (Fed. Reg 67 Fed. Reg. at 67920)

22 As a result --

23 JUDGE CLIFTON: Can you, Mr. Schad, as you read that,  
24 express the make allowance in dollars?

25 MR. SCHAD: In dollars? \$0.115.

1 JUDGE CLIFTON: All right. Thank you.

2 MR. SCHAD: Okay. As a result of testimony from the 2006  
3 National Class III and Class IV hearing, the butterfat yield  
4 was changed to correct the mathematical error from the 2002  
5 final decision that overcompensated processors for  
6 farm-to-plant loss. As a result, the butterfat formula was  
7 changed to (NASS Grade AA Butter Price - \$0.1715) x 1.211. (73  
8 Fed. Reg. at 35326)

9 The current butterfat price formula is --

10 BY MR. BESHORE:

11 Q. Read that sentence again, please.

12 A. The current Federal Order butterfat price formula is:

13 Butterfat price = NDPSR butter price - \$0.1715) x 1.211

14 H. Product Yields: Nonfat Dry Milk

15 The Federal Order Reform formula for nonfat solids  
16 price was developed to recognize the amounts of solids in  
17 nonfat dry milk with an adjustment for the small amount of  
18 butterfat powder that was made in conjunction with the  
19 manufacture of butter and nonfat --

20 Q. Start that sentence again, please.

21 A. The Federal Order Reform formula for the nonfat solids  
22 price was developed to recognize the amount of solids in nonfat  
23 dry milk with an adjustment for the small amount of buttermilk  
24 powder that was made in conjunction with the manufacture of  
25 butter and NFDM. (65 Fed. Reg. at 76843).

1 The FMMO Reform final decision formula was:

2 (NASS nonfat dry milk price - \$0.137)/1.02

3 As a result of testimony regarding the yields of nonfat  
4 dry milk and buttermilk powder from producer milk and  
5 plant-to-farm losses of components, the formula was changed in  
6 2002 to:

7 (NASS nonfat dry milk price - \$0.14) X .99.

8 There were no changes to the nonfat solids --

9 Q. Is there a Federal Register citation there?

10 A. I'm sorry. (67 Fed. Reg. at 67924).

11 There were no changes to the nonfat solids yield factor  
12 as a result of the 2006 hearing. The current nonfat milk  
13 solids price is:

14 Nonfat milk solids = (NDPSR nonfat dry milk price -  
15 \$0.1678) x .99

16 And I note that the final rule for the current make  
17 allowances and product yields was signed February 1st, 2013.

18 IV. Federal Order Reform Decision Resulted in Uniform National  
19 Class II Pricing.

20 Q. Could you repeat that?

21 A. The heading?

22 Q. From Roman numeral?

23 A. IV. Federal Order Reform Resulted in Uniform National  
24 Class II Pricing.

25 Citing this substitutability --

1 Q. Try that again.

2 A. Substitutionability of NFDM.

3 JUDGE CLIFTON: One more time.

4 MR. SCHAD: Substitution ability.

5 MR. BESHORE: Substitutability?

6 MR. SCHAD: Substituteability. Citing that -- citing that,  
7 Mr. English has a word like that, too.

8 Of NFDM and butterfat in the manufacture of Class II  
9 products, a final decision of Federal Order Reform changed the  
10 relationship of Class II pricing from Class III to the new  
11 Class IV. Including advanced pricing for Class II solids, the  
12 final decision described the pricing of milk used to produce  
13 Class II products for all Federal Orders:

14 And I quote:

15 The price of Class II skim for a month will be  
16 computed --

17 BY MR. BESHORE:

18 Q. Start that again.

19 A.

20 The price of Class II skim milk for a month will  
21 be computed by the sum of a Class IV skim price  
22 per hundredweight, calculated from product prices  
23 reported by NASS for the most recent two-week  
24 period for which prices are available  
25 On the 23rd day of the previous month, and the  
70 cent Class II differential. The Class II  
butterfat price will be determined from the NASS  
reported butter price, as in Classes III and IV  
plus .7 cents per pound to incorporate the  
Class II differential. This price will be  
announced on the fifth day of the month and

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previous month.  
(64 Fed. Reg. at page 616091)

Federal Order Reform resolved Order 2's farm point pricing incongruity and its singular Class II location adjuster. Consequently, all Federal Orders now share uniform Class II pricing.

V. Federal Order Reform Set National Uniform Pricing Criteria for Milk Used in Class I Products.

Prior to Federal Order Reform, each Federal Order shared a uniform base price in the form of the BFP. However, each Order had a defined pricing point and price Class I milk from that location. The consequence of such order specific and disparate pricing was that at times the minimum price of a distributing plant would pay for milk was dependent on the Federal Order on which that plant was pooled. For example, in 1993 a distributing plant located in Lansdale, Pennsylvania, and owned by multi-plant handler, changed regulation from Order 4 to Order 2. This change in regulatory status resulted in a decrease of \$0.345 per hundredweight in Class I price for Lansdale -- for the plant at Lansdale. Other Class I handlers located only miles from the Lansdale, from the Lansdale plant, competed in the same Philadelphia marketplace for sales with different base prices. Additionally, dairy farmers had their pay affected. Producers long pooled on Order 4, and --

Q. Is that Federal Order 4?

1       A. Yes. Long pooled on Federal Order 4 and possessing  
2 earned order 4 basis, were required to change their regulatory  
3 status to Order 2 to maintain the customer sale.

4           Disparate Class I pricing between orders was addressed  
5 and solved in Federal Order Reform. First, the 31 Federal  
6 Orders were consolidated to 11. And second, a national Class I  
7 pricing grid was adopted for all Federal Orders. The final  
8 decision of Federal Order Reform noted, and I quote:

9           JUDGE CLIFTON: Mr. Schad, before you get to that quote at  
10 the bottom of page 28, I want to go back up to the top of page  
11 28 and see if we want to make changes on the record copies.

12           So in about on the sixth line down, you have a line  
13 that begins, price for Lansdale, and do you want that instead  
14 to read, for the Lansdale plant?

15           MR. SCHAD: I think it better refers --

16           MR. BESHORE: That's how you read it, and more clearly,  
17 elaborate that's what your intending to describe, I believe.

18           MR. SCHAD: Yes.

19           JUDGE CLIFTON: Is that what you want it to say?

20           MR. SCHAD: Yes.

21           JUDGE CLIFTON: And then a little later on on that same  
22 line, you have a phrase, located only miles from the Lansdale.

23           MR. SCHAD: And again, referring to that specific plant.

24           So --

25           JUDGE CLIFTON: All right.

1 MR. SCHAD: I think plant would, inserting plant after  
2 Lansdale would complete the meaning.

3 JUDGE CLIFTON: All right. I'm going to instruct  
4 Ms. Elliott, please, on page 28 of Exhibit 70, on the line that  
5 is about six lines down where the word Lansdale first appears,  
6 to insert words so that it says, the Lansdale plant, and  
7 several words later in the same line insert the word plant  
8 after Lansdale.

9 MS. ELLIOTT: Again, to clarify, change price for the  
10 Lansdale plant?

11 MR. SCHAD: No, after the word price for, insert the word  
12 the, continue with Lansdale, and after Lansdale insert the word  
13 plant.

14 MS. ELLIOTT: Okay.

15 MR. SCHAD: And further, in the next sentence, the phrase  
16 says, located only miles from the Lansdale, and the word plant  
17 should follow the Lansdale at the end of that clause.

18 JUDGE CLIFTON: And just to be perfectly clear, just read  
19 that line for us now, Mr. Schad.

20 MR. SCHAD: Okay. Other Class I handlers located --

21 JUDGE CLIFTON: Well start --

22 MR. BESHORE: Start at the beginning.

23 JUDGE CLIFTON: I think the line should begin with the word  
24 price, just the line.

25 MR. SCHAD: I'll read the sentence.



1           This change in regulatory status resulted in a decrease  
2 of \$0.345 per hundredweight in Class I price for the Lansdale  
3 plant. Other Class I handlers located only miles from the  
4 Lansdale plant, competed in the same Philadelphia marketplace  
5 for sales with different base prices. Additionally, dairy  
6 farmers --

7           JUDGE CLIFTON: And then, yes, go ahead and keep reading,  
8 because I'm suspicious of another word before we get to the end  
9 of the paragraph. So continue reading.

10          MR. SCHAD: Additionally, dairy farmers had their pay  
11 affected. Producers long pooled on Federal Order 4 and  
12 possessing earned Order 4 bases, were required to change their  
13 regulatory status to Order 2 to maintain the customer sale.

14          JUDGE CLIFTON: And the word I want to clarify is where you  
15 say Order 4 bases. What is meant by that and how is it  
16 spelled?

17          MR. SCHAD: It is B-A-S-E-S, and at the time Order 4, at  
18 the time there was an Order 4. And during this time, Order 4  
19 dairy farmers had a seasonal production plan which was called  
20 base excess. And dairy farmers, and it encouraged dairy  
21 farmers to have more production in the fall when, when milk was  
22 short and sales were high. And during that period in the fall,  
23 if I remember right, it was September through November, or  
24 September through December, that average daily production was  
25 called a dairy farmers base, so that during the longer

1 production months in the beginning of the year, through the  
2 spring, producer had a differential price. One he was paid  
3 basically the, what at the time was, I guess, the Class III  
4 price for excess, and the money from the excess was put in the  
5 base. So there's what a differential price in dairy farmers  
6 earned this base, and they they felt like they possessed it.  
7 Order 2 did not have such a pricing of formula.

8 JUDGE CLIFTON: Thank you. All right. Now, you are about  
9 to read the quote from the Federal Register that is contained  
10 at the bottom of page 28.

11 MR. SCHAD: Yes.

12 Although not required by the 1996 Farm Bill, the  
13 legislation provided authorization for the  
14 Secretary to review the Class I price structure as  
15 a part of consolidation of the orders, including  
16 consideration of utilization rates and multiple  
17 basing rates for developing a pricing system. In  
18 any event, the consolidation of orders requires  
19 the review of the pricing system because  
20 historically Class I pricing provisions, as well  
21 as other Federal Order provisions, have been  
22 reviewed primarily on an individual market basis.  
23 The Reform effort provides the opportunity to  
24 consider and establish a nationally coordinated  
25 Class I pricing surface that uses location  
adjustments to the differential levels to price  
milk for fluid use in every county in the United  
States.  
(64 Fed. Reg. at page 16108)

22 Class 1 prices are set based on the higher of the  
23 Class III or Class IV advance price as determined by AMS and by  
24 adding a specific Class I differential. Section 1000.52 lists  
25 the Class I differentials for all counties in the United

1 States, including California.

2           The Cooperatives recommend that this section be  
3 included in the California Order and Sections 1000.51 and  
4 1051.52. The National Pricing Grid establishes five  
5 differential zones in the proposed California marketing area.  
6 They range from, I'm going to read that again. They range from  
7 \$2.10 in the San Diego-Los Angeles area; \$2.00 in the Southeast  
8 corner of the state; \$1.80 from the East and North from the --  
9 I'm sorry, \$1.80 from the East and North from the \$2.10 zones.  
10 North up the Pacific Coast, including San Francisco and the Bay  
11 Areas to Oregon; \$1.60 in the heaviest production areas; and  
12 the \$1.70 zone, North of the \$1.60 region and bordering Nevada  
13 and Oregon. And I refer you to already in the record,  
14 Exhibit 20, map 1.D.

15           JUDGE CLIFTON: All right. So, you didn't always express  
16 the numbers in terms of dollars, but the court reporter will be  
17 able to capture that if you would like, when you didn't say  
18 dollars, but dollars were meant by merely looking at page 29 of  
19 the transcript. Would that be acceptable?

20           MR. SCHAD: Please, thank you.

21           JUDGE CLIFTON: All right. And so the part that I'm  
22 confused with is, tell me the words, all of the words that  
23 describe the zone for which the price is \$1.80.

24           MR. SCHAD: I actually -- okay. \$1.80 from the East and,  
25 from the East and North; from the \$2.00/\$2.10 zones North of

1 the Pacific Coast, including San Francisco Bay and areas to  
2 Oregon.

3 What I intended to do, I took Mr. Hollon's earlier  
4 testimony and basically copied that. It is in the record and  
5 it is visible in his Exhibit 20.

6 JUDGE CLIFTON: So there's only one region in California  
7 for which the price is \$1.80 and all of those words help us  
8 find it on the map?

9 MR. SCHAD: Yes. And also map 1.D of Exhibit 20.

10 JUDGE CLIFTON: All right.

11 MR. SCHAD: Visually present it.

12 JUDGE CLIFTON: All right. Good. Thank you. So now were  
13 you about ready to read the next paragraph?

14 MR. SCHAD: Yes. These differentials were developed on the  
15 Federal Order Reform process and represent the spatial value of  
16 milk and its components across the United States. AMS relied  
17 on the United States dairy market simulator model (USDSS) to  
18 estimate relative geographic values of milk, and placed them on  
19 a national grid which assigned Class I location values for each  
20 county in the United States. (64 Fed. Reg. Page 16108)

21 The Congress of the United States --

22 MR. ENGLISH: Excuse me, I object to the next sentence. It  
23 discusses what Congress did, and with respect to the Secretary,  
24 uses the word overrules or destructed, those are legal terms,  
25 or at least attempted legal terms. I would object on the

1 grounds that they are legal conclusions.

2 JUDGE CLIFTON: Thank you, Mr. English, your objection is  
3 noted and will be utilized as a cautionary note.

4 Now, I am just curious, Mr. Schad, are those, are on  
5 line 3 of this paragraph, are those initials truly the correct  
6 initials for that phrase? That United States Dairy Market  
7 Simulator Model? Is that truly known as USDSS?

8 MR. SCHAD: No, in typographical, thank you for catching  
9 it. USDMSM. Take out market.

10 JUDGE CLIFTON: Okay. Let's go off the record just a  
11 moment. Let's go off record just a moment and get this right  
12 while we're here.

13 (Whereupon, an off-the-record discussion was held.)

14 JUDGE CLIFTON: Back on the record. Would you, Mr. Schad,  
15 read the sentence in the middle of the page that begins with  
16 AMS relied on?

17 MR. SCHAD: AMS relied on the United States Dairy Sector  
18 Simulator Model (USDSS) to estimate relative geographic values  
19 of milk and place them on the national grid which assigned  
20 Class I location values for each county in the United States.  
21 (64 Fed. Reg. and 161008)

22 The Congress of the United States, through the  
23 Consolidation Appropriations Act of 2000 --

24 BY MR. BESHORE:

25 Q. Start that sentence again, please.

1           A. The Congress of the United States, through the  
2 Consolidated Appropriations Act of 2000 (Public Law 106-113,  
3 115) overruled the Secretary's choice of Class I pricing grid  
4 and instructed the Secretary to apply Option 1-A to all Federal  
5 Orders. The Federal Register of December 17th, 1999, lists all  
6 the counties in the United States, including counties of  
7 California, and the Class I differentials associated with each.  
8 That's cited (64 Fed. Reg. Page 70868 and 70871 (1999))

9           JUDGE CLIFTON: Let me stop you there so we can make the  
10 correction up higher before you finish this page 29. So  
11 Ms. Elliott, on page 29 of Exhibit 70, in the middle of the  
12 page, the third line down of a paragraph, you will find the  
13 phrase the United States Dairy Market Simulator Model, and  
14 that's the phrase that needs correcting. So it will instead  
15 say, you will strike the word market, and it will say the  
16 United States Dairy Sector S-E-C-T-O-R, Simulator Model. So  
17 you are just substituting the word sector where market now  
18 exists. Is that correct, Mr. Schad?

19           MR. SCHAD: Yes.

20           JUDGE CLIFTON: All right.

21           THE WITNESS: Thank you

22           JUDGE CLIFTON: You're welcome. Now, you may go back,  
23 Mr. Schad, to the last part of paragraph, at the bottom of page  
24 29 and resume.

25           MR. SCHAD: As noted, the other factor in determining

1 minimal Class I prices is the higher of the advanced Class III  
2 or Class IV price. The final decision for Federal Order Reform  
3 lists three reasons why the Class I mover should be determined  
4 by the higher of the advanced Class III or Class IV price.  
5 First, Class I is always in competition with processors of  
6 manufactured dairy products. Federal Order Reform provided for  
7 four distinct classes of milk, setting the Class I price at the  
8 higher of Class III or IV or Class IV, guarantees that the  
9 Class I price is related to the higher valued price used to  
10 produce manufactured products. The Secretary noted, "Since  
11 Class I handlers must compete with manufacturing class for a  
12 supply of milk, the Class I price must be related to the price  
13 of milk used in manufacturing." That's cited (64 Fed. Reg. at  
14 page 16102)

15 Second, due to advanced Class I pricing, price signals  
16 to producers may lag. It is especially important in a rising  
17 market that producers receive the price signal to increase  
18 production. In the final decision Federal Order Reform the  
19 Secretary wrote:

20 Since the Class I price is announced in advance in  
21 a rapidly changing market, the Class I price may  
22 not reflect the value needed to compete for the  
23 necessary raw milk supply or the Class I price may  
24 be overvalued relative to the raw milk price.  
25 Undervaluing Class I milk is a particular problem  
since it reduces producers' pay prices at a time  
when the producer should be receiving a positive  
price signal.  
And this is the on the same page as the previous  
cite.

1           The third reason cited in Federal Order Reform relates  
2 to the decreasing --

3           JUDGE CLIFTON: Start that again.

4           MR. SCHAD: The third reason cited in the Federal Reform --

5           JUDGE CLIFTON: One more time.

6           MR. SCHAD: The third reason cited in the Final Reform  
7 Decision relates to decreasing the likelihood of pricing  
8 versions and resulting depooling of producer milk, when the  
9 higher or of Class III or Class IV is utilized in the formula.  
10 The Cooperatives' proposal addresses the question of depooling  
11 through its mandatory pooling provision. Thus, the third  
12 reason cited in the final Reform Decision is not applicable to  
13 this proposal.

14           Also addressed in Federal Order Reform was the  
15 appropriateness of the utilization of the minimum \$1.60 per  
16 hundredweight base Class I price. As noted, the -- let me see  
17 -- the USDSS estimate the relative differences in the value of  
18 milk between geographic points. Due to the geographic  
19 characteristics of supply and demand, one or more points are  
20 found to be base pricing points. The Central Valley of  
21 California is one of the model's base points. Federal Order  
22 Reform set the price at these basing points at \$1.60 per  
23 hundredweight.

24           The Secretary clearly stated the need to set the base  
25 differential at \$1.60. And there's a change in the quote here,



1 I'll pick it up when I'm there.

2 Quoting the Secretary:

3 The \$1.60 minimum differential proposed is  
4 perceived to be the lowest value under present --  
5 it reads supply and it should read demand -- and  
6 supply conditions.

6 JUDGE CLIFTON: Okay. We'll make the change, but then I  
7 want you start again, because you read it a little different  
8 from that. All right.

9 So, Ms. Elliott, top of page 31 of Exhibit 70, we're in  
10 the small paragraph that's a quote, and the second line of that  
11 quote should read:

12 Lowest value necessary under present and help me,  
13 Mr. Schad?

14 MR. SCHAD: Demand and supply conditions.

15 JUDGE CLIFTON: So the word -- the word supply that is to  
16 be stricken is the first time it appears in that line; is that  
17 correct?

18 MR. SCHAD: That's correct.

19 JUDGE CLIFTON: So it's not supply and demand, it is demand  
20 and supply.

21 MR. SCHAD: That's correct.

22 JUDGE CLIFTON: Okay. So we'll strike the supply that  
23 first appears in that line and insert instead, demand. All  
24 right. Then, Mr. Schad, read the quote from the beginning,  
25 please.

1 MR. SCHAD:

2 The \$1.60 minimum differential proposed is  
3 perceived to be the lowest value necessary under  
4 present demand and supply conditions to maintain  
5 stable and viable pools of milk for Class I use in  
6 markets that are predominantly manufacturing  
7 oriented.

8 Citing (63 Fed. Reg. Pages 4802 and 4909 (1998))

9 The \$1.60 minimum has three components as presented by  
10 USDA in the recommended decision of Federal Order Reform. The  
11 first had to do with the cost of a producer maintaining Grade A  
12 status. The requirements for maintaining Grade A status  
13 include possessing and maintaining an improved water supply;  
14 facility construction and appearance requirements; plumbing  
15 requirements; and specific equipment. It was noted --

16 JUDGE CLIFTON: Now, you read approved water supply rather  
17 than approved water system.

18 MR. SCHAD: I'm sorry, it should be system, I read it  
19 incorrectly.

20 JUDGE CLIFTON: All right. So read it again, if you will.

21 MR. SCHAD: The requirements for maintaining Grade A status  
22 include possessing and maintaining an approved water system;  
23 facility construction and appearance requirements; plumbing  
24 requirements; and specific equipment. It was noted that  
25 maintaining a Grade A status would require additional labor  
resource and utility expense. USDA, in 1999, estimated the  
additional cost to be \$0.60 per hundredweight. I cite,  
(63 Fed. Reg. at page 4909).

1 At this point I would like to insert another sentence:

2 Exhibit B, I'm sorry, Exhibit C of my -- of my --

3 MR. BESHORE: Exhibit 71, 6.C.

4 MR. SCHAD: Yes, 6.C contains the barn scorecard and for  
5 the State of California it is relative to Grade A status and  
6 that --

7 BY MR. BESHORE:

8 Q. Could you just -- just turn to that exhibit for a  
9 minute, since you inserted the reference to it at this point in  
10 Exhibit 70.

11 A. Exhibit 6.C.

12 Q. Of Exhibit 71, correct?

13 A. Of Exhibit 71.

14 Q. Okay. So just tell us what, two pages?

15 A. Yes, and I'll just read it from the title page first.  
16 Dairy Farms Scorecard State of California Department of Food  
17 and Agriculture. And what it is, is the score sheet the dairy  
18 farms in the State of California are scored on relative to  
19 their maintaining Grade A status, and it delineates almost all  
20 the things that a dairy farmer must do in order to continue a  
21 Grade A status.

22 Q. So this exhibit really spells out the Grade A  
23 requirements that you described in general in the paragraph  
24 here on page 31?

25 A. That's correct.

1 Q. Okay.

2 JUDGE CLIFTON: It makes me think that your use of the word  
3 system should have been supply, but what do you think? Looking  
4 at the scorecard itself?

5 MR. SCHAD: I would be open if -- to have it say system and  
6 supply. Having an approved water supply is an assumption of  
7 having an approved water system.

8 JUDGE CLIFTON: So I think we should make that change. So  
9 let us do this. Ms. Elliott, with regard to page 31 of  
10 Exhibit 70, on the first full paragraph below the quotation  
11 from the Federal Register, the fourth line down begins,  
12 maintaining an approved water system. I'd just like you to  
13 insert after system "and supply."

14 And then with regard to what we will write on this  
15 exhibit at the end of that paragraph, we will just say, "See  
16 Exhibit 71, Exhibit 6.C, Dairy Farm Scorecard."

17 MR. SCHAD: That's at the end of the paragraph.

18 JUDGE CLIFTON: Yes. And if you do not have room, you can  
19 put an arrow and go on to the back.

20 MR. SCHAD: Okay.

21 JUDGE CLIFTON: All right. So it will just say "See  
22 Exhibit 71, Exhibit 6.C, Dairy Farm Scorecard."

23 MR. HILL: And, your Honor?

24 JUDGE CLIFTON: Mr. Hill?

25 MR. HILL: Brian Hill. This is super minor, but I'm going

1 to bring it up because it's a direct quote. Your suspicion was  
2 correct about the previous quote, about supply and demand, and  
3 demand and supply, it is actually supply and demand. But it's  
4 super minor.

5 JUDGE CLIFTON: Okay. All right. I'm just so used to  
6 hearing about supply and demand that it seemed odd. But, you  
7 know, in a way it ought to begin with demand. Oh, no. Not --  
8 okay.

9 MR. SCHAD: I'll stipulate to your supply and demand  
10 conditions.

11 JUDGE CLIFTON: All right. Then Ms. Elliott this changes  
12 what I had you do in the paragraph above. This may become  
13 easier if there were extra copies of Exhibit 70, I don't know.  
14 But what we really want, and I'll let you figure out how to  
15 make this happen later, on our two record copies on page 31 in  
16 the quote that is just five lines at the top of page 31, the  
17 second line should read, "lowest value necessary under present  
18 supply and demand conditions."

19 MR. BESHORE: We do have extra copies if -- if it would be  
20 helpful.

21 JUDGE CLIFTON: I think it would. It will be cleaner.

22 MR. BESHORE: There were some in the room at least at the  
23 beginning of the day.

24 JUDGE CLIFTON: So we're looking for extras of 70. It  
25 will say Testimony of Dennis Schad.

1 MR. BESHORE: We do have another one. How many do we need?

2 JUDGE CLIFTON: And we may need to provide you a little  
3 support later, Ms. Elliott, so that you can make that change on  
4 the record copies. All right.

5 MR. BESHORE: We'll provide support.

6 JUDGE CLIFTON: Thank you very much. So now, where are we,  
7 Mr. Schad and Mr. Beshore?

8 MR. SCHAD: Where it says the Secretary also cited in the  
9 middle of page 31.

10 JUDGE CLIFTON: Good. All right. So resuming there,  
11 Mr. Schad.

12 MR. SCHAD: The Secretary also cited marketing costs as  
13 they pertain to the buildup of the base differential. I quote:

14 These marketing costs include such things as  
15 seasonal and daily reserve balancing of milk  
16 supplies, transportation to more distant  
17 processing plants, shrinkage, administrative  
18 costs, and the opportunity or "give-up" charges at  
19 manufacturing milk plants that service the fluid  
20 Class I market.  
21 The same as the previous cite.

22 The Secretary noted that these marketing costs are  
23 approximately 60 cents per hundredweight. Additionally, the  
24 Secretary also noted that in the Upper Midwest, Class I  
25 handlers competed for milk with processors of manufacturing  
26 milk. The Secretary estimated the two-thirds of the  
27 competitive premium was 60 cents per hundredweight.

28 Further justification of the \$1.60 base differential

1 for the California Order is found in the Cooperatives'  
2 transportation credit proposal. This unique provision provides  
3 payment to handlers servicing the Class I market from the  
4 Order's pool, and is estimated by the Cooperatives to decrease  
5 the pool by 9 cents per hundredweight. Assuming a 15 percent  
6 Class I utilization in the California Order, the value to the  
7 Order's Class I handlers is 60 cents per hundredweight.

8 VI. The California Order Should Adopt the Federal Order Class  
9 I Pricing Formula and Differentials

10 Changing Class I prices in California, either through  
11 adjusting the differentials including the base differential, or  
12 modifying the Class I mover formula, would change the  
13 relationship of Class I prices in the Western part of the  
14 country. Through its State Order, California's Class I pricing  
15 has a limited effect on a joining Federal Orders. However, as  
16 a Federal Order, California Class I pricing could affect  
17 packaged regional milk sales. An increased California Class  
18 price would not change the national Class I grid --

19 BY MR. BESHORE:

20 Q. Just start that sentence again, please, Mr. Schad.

21 A. An increased California Class I price would not change  
22 the National Class 1 price grid and would only affect  
23 California counties. However, a decreased California Class I  
24 price may affect exports of California milk --

25 Q. Start that sentence again, please.

1       A. However, a decreased California Class I price may  
2 encourage exports of California milk and would provide an  
3 inappropriate price advantage in moving packaged milk into  
4 adjoining Federal Order markets.

5               Since Reform, AMS has only changed the Class I  
6 differentials found in Section 1000.52 once, as a result of a  
7 hearing held in May 2007 for FMMO's 5, 6, and 7. That decision  
8 to increase the differentials within the marketing area, was  
9 based on testimony that the Southeast was experiencing an  
10 increase in demand concurrent with a decline in milk  
11 production. All three marketing areas were described as milk  
12 deficit. Adjustments to county differentials were based on a  
13 transportation cost function from the nearest supply plant,  
14 from the nearest supply -- from the nearest surplus supply  
15 region to the Southeast markets. (73 Fed. Reg. Page 11194  
16 (2008)). None of the supply-demand factors referenced in the  
17 Southeast decision are present in California.

18               Concluding discussion.

19       Q. Is there a number to the heading there, Mr. Schad?

20       A. I'm sorry.

21       VII: Concluding Discussion

22               The 1996 Farm Bill specifically provided for the  
23 inclusion of California as a separate Federal Milk Order, but  
24 the provision was contingent upon petition and approval by the  
25 California producers. Throughout the Reform process, as well



1 as the mandatory hearings, California interests have  
2 participated as individual processors through the dairy  
3 processor and producer trade associations, the Dairy Institute  
4 of California and through CDFA. Citing their concern that  
5 producer groups would petition for a California Federal Order,  
6 the Dairy Institute submitted 29-pages, (including attachments)  
7 of comments to AMS on April 29, 1998 in response to the Reform  
8 recommended decision. Comments by the Dairy Institute of  
9 California were twice cited in the final Reform Decision. The  
10 first citation was to support the inclusion of Las Vegas with  
11 Arizona in order to eliminate competitive distortions between  
12 those areas and California. (64 Fed. Reg. at page 16078).  
13 Additionally, the Dairy Institute was cited in Reform final  
14 decision regarding their comments pertaining to product  
15 formulae, make allowances, and the yields.  
16 (Same citing, page 16098 and 9).

17           Additionally, two employees of CDFA gave testimony at  
18 the 2006 Make Allowance Hearing. They were Kelly Krug,  
19 Director of Market Services, and Venetta Reed, Supervising  
20 Auditor. They described in detail the procedures involved in  
21 the CDFA manufacturing cost survey, and the determination of  
22 the make allowances included in the CDFA formulas. The  
23 witnesses noted --

24           Q. Would you stop there?

25           JUDGE CLIFTON: In the CDFA what?

1 MR. SCHAD: Class price formulas.

2 BY MR. BESHORE:

3 Q. Thank you.

4 A. The witnesses noted the distinction between the results  
5 of the CDFA manufacturing cost survey and the make allowances  
6 included in the CDFA's class pricing formula. They noted --

7 JUDGE CLIFTON: Is --

8 MR. SCHAD: Did I miss something?

9 JUDGE CLIFTON: Well, you missed the word factors. It  
10 probably doesn't change the meaning, but this is your summary,  
11 so let's get it like you wrote it.

12 MR. SCHAD: The witnesses noted the distinction between the  
13 results of the CDFA manufacturing cost survey and the make  
14 allowance factors included in CDFA's class pricing formula.  
15 They noted that the CDFA decision process did not merely input  
16 the average plant cost into the price formulas. In addition to  
17 the reported manufacturing cost, Mr. Krug said that the formula  
18 make allowances included -- and I quote -- "supply, demand, and  
19 relationships between classes. There are many factors that are  
20 considered." He answered affirmatively to the question  
21 regarding the establishment of make allowances in California.  
22 "So it becomes a policy decision, not a mechanical process."

23 That is transcript of hearing on January 24th, 2006,  
24 page 182.

25 Addressing comments pertaining to regional milk

1 pricing, the Secretary states plainly in the final decision of  
2 Federal Order of FMMO Reform. "This decision replaces the  
3 current BFP with a national Class III and national Class IV  
4 price."

5 Q. Read that quote again.

6 A. "This decision replaces the current BFP with a national  
7 Class III price and a national Class IV price."  
8 Citing (64 Fed. Reg. at page 16100.) Component pricing solved  
9 the issue of regional yields; the NASS survey reported average  
10 national commodity sales prices; and, the product make  
11 allowances determined an average national product manufacturing  
12 cost by combining the cost of manufacturing within California  
13 with plants located outside of California.

14 And I cite (67 Fed. Reg. at page 67937)

15 Addressing comments regarding pricing relationships  
16 with California, the Secretary wrote, and I quote:

17 Class III and Class IV dairy products compete in a  
18 national market, because of this, Class III and  
19 Class IV prices establish for all Federal Milk  
Marketing --

20 JUDGE CLIFTON: Start again, please.

21 MR. SCHAD:

22 Class III and Class IV dairy products compete in a  
23 national market. Because of this, Class III and  
24 Class IV milk prices established for all Federal  
Milk Marketing Order areas are the same.  
25 The Federal Milk Order program gradually adopted  
the Minnesota-Wisconsin (M-W) price series as the  
Class III price in all Federal Milk Marketing

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JUDGE CLIFTON: Let me just inquire. Is it actually a price series or is it just a price, that Minnesota-Wisconsin price.

MR. SCHAD: I'm quoting him. If he did not say series, then I misquoted.

JUDGE CLIFTON: Okay. Just start that sentence again, if you will.

MR. SCHAD: The Federal Milk Order program gradually adopted the Minnesota M-W price --

JUDGE CLIFTON: Go ahead and take it from the top again. I know you are like a horse headed for the barn, but, slow down.

MR. SCHAD: Okay.

The Federal Milk Order program gradually adopted the Minnesota-Wisconsin (M-W) price, as the Class III price in all Federal Milk Marketing Orders. Although the M-W was first adopted in 1963, it was not until the mid-1970's, that the M-W established a uniform class price for milk used in Class III markets in all Federal Milk Orders.

BY MR. BESHORE:

Q. Read the last part of that sentence again, please.

A.

For milk used in Class III products in all Federal Milk Orders. Observations of the marketplace for cheese, butter, and nonfat dry milk provided the basis for concluding that these products compete in a market that is national in scope. Such findings were upheld, with the adoption of the basic formula price (BFP), which provided an

1 the declining statistical reliability of the M-W  
2 price series) until a more long-term pricing  
method could be developed.

3 The implementation of milk order Reform in January  
4 2000 continued the finding that Class III and  
class --

5 JUDGE CLIFTON: Go ahead and read it again.

6 MR. SCHAD:

7 The implementation of Milk Order Reform in January  
8 of 2000, continued finding that Class III and  
Class IV dairy products compete in a national  
9 marketplace. However, a competitive price for  
milk as represented by the M-W and BFP prices was  
10 no longer viable, as it intended long-term  
method -- as intended as a long-term method --

11 JUDGE CLIFTON: No, go ahead.

12 MR. SCHAD: As intended as a long-term method, the Federal  
13 milk --

14 JUDGE CLIFTON: I'm sorry, your -- I want to make sure you  
15 are enunciating each word, so do it one more time.

16 MR. SCHAD:

17 As an intended long-term method, the Federal Milk  
18 Order program has adopted end product price  
formulas, valuing Class III and Class IV milk on  
19 the basis of the value of Class III and Class IV  
end products in the marketplace. The NASS price  
20 survey for dairy products used as a basis for  
establishing Class III and Class IV prices,  
21 includes all dairy product prices and sales  
volumes in all regions of the country, including  
22 California. In this regard, the Federal Order  
program has, and will continue to reflect  
23 California's impact on dairy product prices while  
establishing Class III and Class IV prices that  
24 are reflective of a national supply of reflective  
of national supply and demand conditions.  
(67 Fed. Reg. at page 67937.)

25 The implication from a paragraph from a paragraph --

1 and I would like to change that. That should be the 1999 final  
2 decision, strike 2000 -- strike 2002.

3 JUDGE CLIFTON: All right. So Ms. Elliott, with regard to  
4 page 35 of Exhibit 70, just below the quoted material at the  
5 top of the page you will find the word, the number 2002, strike  
6 that, please and instead insert what, Mr. Schad?

7 MR. SCHAD: 1999.

8 MS. ELLIOTT: Okay.

9 JUDGE CLIFTON: Begin again with that sentence, please,  
10 Mr. Schad.

11 MR. SCHAD: The implication from a paragraph from the 1999  
12 final decision is very telling of the Secretary's intention to  
13 accommodate California's entry into the Federal Order System:

14 The Omnibus Consolidated and Emergency  
15 Supplemental Appropriation Bill passed in October  
16 1998, extended the time for implementing Federal  
Order Reform amendments from April 4th, 1999.

17 BY MR. BESHORE:

18 Q. Could you -- you missed a word there, Mr. Schad. Why  
19 don't you start again, please.

20 A.

21 The Omnibus Consolidated and Emergency  
22 Supplemental Appropriations Bill, passed in  
October 1998, extended the time for implementing  
Federal Order Reform amendments.

23 Q. No, Federal?

24 A. Order.

25 I'm sorry -- Federal Milk Order Reform Amendments

1                   legislation provides that California has from the  
2                   date of issuance of this final decision until  
3                   September 30th, 1999, to become a separate Federal  
4                   Milk Order. This additional time is intended to  
5                   allow California dairy interests the opportunity  
6                   to review this final decision to determine whether  
7                   a Federal Milk Order for California, consistent  
8                   with the provisions adopted for the consolidated  
9                   orders, would best meet their milk marketing  
10                   regulatory needs.

11                   Since Federal Order Reform, I'm sorry, at the end of  
12                   that I cite (64 Fed. Reg. at page 16044).

13                   JUDGE CLIFTON: And, Mr. Schad, you read four lines up from  
14                   the bottom of that quote, the opportunity to review this final  
15                   decision.

16                   MR. SCHAD: The opportunity to --

17                   JUDGE CLIFTON: Do you know for sure what the quote is?

18                   MR. SCHAD: No, I'm not sure if it was misquoted or is that  
19                   the way in the continuity would require, would expect it to say  
20                   the opportunity to review, but opportunity review, I would  
21                   think it should be to review.

22                   MR. BESHORE: We'll check that, your Honor.

23                   JUDGE CLIFTON: All right.

24                   MR. SCHAD: Thank you,

25                   JUDGE CLIFTON: And then you may resume, please, with the  
first sentence following that quote.

                 MR. SCHAD: Since Federal Order Reform, the manufacturing  
costs of California plants and the price of commodity dairy  
products sold in California, have and will continue to be, an

1 integral part of the Uniform National Federal Order class  
2 prices. It is now for those prices to be applicable to the  
3 milk producers.

4 JUDGE CLIFTON: Let's do that again.

5 MR. Schad: It is now time for those prices to be  
6 applicable to the milk produced on the California dairy farms.  
7 VIII. Announcement of Class Prices, Component Prices and  
8 Advanced Pricing Factors.

9 The Cooperatives propose that the California Order  
10 adopt the class component --

11 BY MR. BESHORE:

12 Q. Start that sentence again, please.

13 A. The Cooperatives propose that the California Federal  
14 Order adopt the class component and advanced pricing factor  
15 listed in Section 1000.53 with the exception of 1000(a)11: "The  
16 Somatic Cell Adjustment Rate." The timing and manner of these  
17 necessary price announcements are consistent with other Federal  
18 Orders.

19 The Cooperatives are not proposing the inclusion of  
20 somatic cell adjustment in the California Order. Such an  
21 adjustment in class and producer prices has been historically  
22 at the option of the Order's Dairy Farmers. Currently two,  
23 Federal FMMO 1 and 124, of the six Federal Orders that have  
24 multiple component pricing do not include somatic cell  
25 adjuster. The 2014 average Class III and Class IV utilizations



1 in the Northeast Order were 25.8 percent and 14.6 percent.  
2 Class III and Class IV utilizations in the Pacific Northwest  
3 Order were 35.8 and 31.9 percent, respectively. For the same  
4 period, CDFA reported Class 4b utilization with 45.8 percent  
5 and the 4a utilization was 33 percent.

6 IX. Equivalent Price

7 The Cooperatives propose that the California Federal  
8 Order adopt the equivalent price provisions in Section 1000.54.  
9 This provision provides the Market Administrator the authority  
10 to use an equivalent price provided by the Deputy Administrator  
11 of Dairy Programs in the event that a constituent pricing  
12 factor required by Section 1051.50 is unavailable. This  
13 proposal will aid in the effective and efficient administration  
14 of the order.

15 Q. Okay. And that concludes the prepared testimony in  
16 Exhibit 70; is that correct, Mr. Schad?

17 A. That's correct.

18 Q. Okay. Now, I would just like to ask you a couple of  
19 additional questions.

20 First of all, let's just look at Exhibit 71 to, it's  
21 been referenced, but just to -- just to identify what is  
22 included there. There are three exhibits that were referenced  
23 in your testimony that are compiled under cover of Exhibit 71;  
24 is that correct?

25 A. That's correct.

1 Q. Okay. And so what's Exhibit 6.A of 71?

2 A. Well, this is -- this is Section 105, well, Section  
3 1000.50, which we propose to include as Section 1051.50 in the  
4 proposed California Order. Basically, the pricing provision of  
5 the, of the Order, especially as I read it could be confusing,  
6 so we wanted to make sure that the Department understands  
7 exactly where we're looking for the adoption of the  
8 Section 1000.50.

9 Q. Okay. So rather than having read this three-and-a-half  
10 pages of single-spaced regulation, you are attaching that as an  
11 exhibit and requesting its adoption in Proposal 1 as  
12 Section 1051.50?

13 A. Yes.

14 Q. Okay. Now, does that have in it the description of the  
15 formulas which you depicted, we're going to check them and make  
16 sure they are correct, but this has the narrative description  
17 of the price formulas which you presented in your prepared  
18 statement, correct?

19 A. That's correct.

20 Q. Okay. Now, let's go then, to the second Exhibit 6.B  
21 under Exhibit 71, and just, that's what, three pages. Tell us  
22 what that is, please?

23 A. Yes, this is the policy and procedures for dairy  
24 product mandatory reporting program. They tell you what  
25 products that are reported, and when it's reported, and a

1 verification. I thought it was appropriate because of our  
2 reliance on the the dairy product price series included in my  
3 testimony.

4 Q. That was referenced in your testimony?

5 A. Yes.

6 Q. Okay. And Exhibit 6.C is the dairy farmer scorecard  
7 which you referenced previously?

8 A. Yes.

9 Q. Previously described. Okay. Let's turn, then, to  
10 Page 32 of Exhibit 70, if you would, and the partial paragraph  
11 at the top of the page, can you see that?

12 A. Yes.

13 Q. Okay. And in the last sentence of that partial  
14 paragraph you refer to a 15 percent Class I utilization in the  
15 California Order, and noting that in terms of supporting the  
16 funding for a transportation pool that would imply a  
17 differential 67 per hundredweight. So assume with me that some  
18 of the data in the record from CDFA, which is in some of  
19 Mr. Hollon's tables, as well as Mr. Shippelhoue's data, I  
20 believe, reflects that in recent years, the Class I utilization  
21 in California has been less than 15 percent, between 12 and 13  
22 percent. What impact, if any, does that have upon your  
23 testimony at the top of page 32?

24 A. Well, the 60 cents per hundredweight is referenced is 9  
25 cents per hundredweight across the entire pool, divided by .15,

1 and that's, the result is 60 cents. But if you made that  
2 calculation with the more proper Class I utilization of 12.5,  
3 again, 9 divided by .125, you would come up with 72 cents per  
4 hundredweight.

5 Q. So the math you did there was take the utilization  
6 percentage, or take the 9 cents for hundredweight that you,  
7 that's the approximate cost of the transportation pool, of the,  
8 yeah, the transportation credits across the pool, and you  
9 divided that by the Class I utilization percentage to arrive at  
10 a per hundredweight charge per Class I that would be needed to  
11 find fund that pool?

12 A. On, per hundredweight charge Class I.

13 Q. On Class I?

14 A. Yes.

15 Q. Okay. And 15 cents, 15 percent it would be 60 cents,  
16 12.5 percent it would be 72 cents?

17 A. That's correct.

18 Q. Okay. Now, just one other question on direct testimony  
19 that I would like you to address. And your testimony,  
20 Mr. Schad, proposes that the California Order adopt essentially  
21 the current, the existing Federal Order class, national class  
22 price, prices, price formulas, and the Class I price grid,  
23 correct?

24 A. That's correct.

25 Q. Okay. And there's been questions that have arisen

1 already on cross-examination, some of the proponents of  
2 Proposal Number 1, with respect to whether these prices are  
3 appropriately current, or whether they reflect current  
4 conditions, current data, etcetera, and therefore, whether they  
5 are appropriate. You understand? You have been here for much  
6 of the hearing, not all of it, but you have heard those  
7 questions.

8 A. Yes, I have.

9 Q. Okay. So I want you to address, give us your thoughts  
10 with respect to that issue of whether these prices are  
11 appropriate for adoption today.

12 A. Yes, and I would like to first emphasize that the  
13 Secretary signed a final rule for the current make allowances  
14 in February 2013. They have a currentness based on that, and  
15 you have got to remember that the monthly prices are based on,  
16 the monthly class prices, are based on monthly commodity prices  
17 that are done every month so that, and that's completely  
18 current. But when you go back to the last Make Allowance  
19 Hearing, there is a proposal by National Milk to put an energy  
20 updater into the Federal Class III price and Class IV prices,  
21 with the idea if you want currentness and you -- and you accept  
22 that a major part of the costs of, within the make allowances  
23 are energy related, you could -- you could, you would be  
24 solving that issue by having an energy updater in the make  
25 allowance formulas. That, while the final rule notes that

1 basically all producer groups supported that, other interests,  
2 proprietary interests, were opposed to it. And the reason they  
3 were opposed to it, was because it would change the  
4 relationship for hedging instruments, for Class III futures and  
5 those things.

6 Their argument is that -- I'm reading into their  
7 argument, but if there's the volatility of Class III and Class  
8 IV prices based on supply and demand. This would add another  
9 layer of volatility it with fuel prices and they, they opposed  
10 it. And I'd just like to point out that when the Secretary is  
11 looking at questions of, for instance, whether something is  
12 current or not, there are competing factors. So in the -- in  
13 the, our position of maintaining the current Section 1000.50  
14 prices, we are, the Secretary, the Secretary has the, we  
15 believe the Secretary has the need to look at the factors  
16 related uniform pricing, as well as the factors of currentness.  
17 He's got competing interests that he has to weigh along that.

18 There's also the question of regional prices. And it's  
19 really interesting in the last promulgation hearing in 1990, I  
20 cite that there was just a small difference between a proposal  
21 to keep the current, well, at that time, the butterfat  
22 differential for the two state orders, the North Carolina and  
23 South Carolina, as opposed to the Federal. And the Secretary  
24 used the word disorderly to note that there was a, that  
25 difference just wouldn't work. That there was that order

1 coming the Carolina Order being promulgated had to have  
2 consistency with the other Federal Orders.

3 Q. Okay. So in that case, the most recent promulgation,  
4 the Secretary's determination was that the national uniformity  
5 factors overrode any local factors, which were embodied in the  
6 existing or prior state orders in that case, correct?

7 A. That's correct.

8 Q. Is there anything else you want to note on that, the  
9 currentness issue?

10 A. No, thank you.

11 Q. Very good. Your Honor, subject to our homework with  
12 respect to the formulas and the way they are presented in the  
13 testimony, and with respect to the text of the quoted page 35,  
14 I don't have any other questions for Mr. Schad on direct.

15 I would move for the admission of Exhibits 70 and 71  
16 subject to the homework we have of being appropriately  
17 completed or corrected with that information.

18 JUDGE CLIFTON: I would rather wait until we have got them  
19 right before we admit them.

20 MR. BESHORE: I just make the motion and it can be acted on  
21 at your Honor's pleasure.

22 JUDGE CLIFTON: That sounds good. So you are moving the  
23 admission of Exhibit 70 and Exhibit 71?

24 MR. BESHORE: Yes.

25 JUDGE CLIFTON: I won't rule on that at this point. I will

1 invite anyone who would like to ask this witness questions  
2 about these exhibits before determining whether you have an  
3 objection to their being admitted. Mr. English?

4 MR. ENGLISH: Thank you, your Honor. Maybe this will, by  
5 not bidding and giving a chance, I think there may be some  
6 other issues to address as we go forward.

7 CROSS-EXAMINATION

8 BY MR. ENGLISH:

9 Q. I'm going to focus exclusively on Exhibit 70,  
10 Mr. Schad -- I'm Chip English. And because it's different from  
11 all the other things I want to talk about, I want you to look  
12 first at page 18.

13 A. Yes, sir.

14 Q. So at the top of the page you reference something  
15 called the DPPSR cheese survey. And I didn't find that  
16 anywhere else. We did a search of your statement, and I was  
17 wondering what the DPPSR cheese survey is?

18 A. I'm sorry, that's a typographical. It should be the  
19 MDPSR, which I note down --

20 Q. Which you discuss later down on the page?

21 A. National Dairy Products.

22 Q. I wasn't sure whether it was NDPSR or whether it was  
23 supposed to be the Dairy Product Mandatory Reporting Program,  
24 which is DPMRP, so because it had sort of the first two  
25 letters, but you're now saying it should be NDPSR?



1 A. Yes, sir.

2 Q. I'm sorry, I --

3 A. Last time I'll be sorry.

4 Q. I imagine we're going to have things like this, so  
5 that's fine.

6 Now, I want to turn to a several pages, and I got  
7 myself so twisted around and confused with some of the  
8 citations, and I want to start with the following proposition  
9 and see if you will accept the following proposition.

10 The Federal Register is published everyday, every year,  
11 every weekday every year, correct?

12 A. I believe that to be true.

13 Q. It wasn't published on Saturdays but, and the volume  
14 numbers just simply go up year by year. Would you accept that?

15 A. That's my understanding, that's correct.

16 Q. All right. So if we look first at page 15 where you  
17 have a lengthy cite to a recommended decision of Federal Order  
18 Reform, you cite to Volume 63 in the Federal Register. Do you  
19 see that?

20 A. That's correct.

21 Q. Okay. And I'm going to represent to you that that is  
22 correct, that 63 is the correct reference. Now, we turn to  
23 page 16, so 63 is for 1998. If you turn to page 16, at the end  
24 of the quote you cite 65 Fed. Reg. and you have the year 1999.

25 A. I'm sorry, what page?

1 Q. Now, we're on page 16. On Page 16 you have a long  
2 quote describing the NASS survey. And at the end of the long  
3 quote you have (65 Fed. Reg. 76832, 76837) and then you have  
4 got (1999).

5 A. Yes.

6 Q. I want to suggest to you that (64 Fed. Reg.) was (1999)  
7 and that (65 Fed. Reg.) is (2000?)

8 A. I would -- that would be logical. I would like to say  
9 here that I'm not responsible for the dates. A paralegal came  
10 behind me and --

11 Q. And I'm not trying to, again, this is -- I think, my  
12 view is that this is very important time issue, we're going to  
13 have a lot of discussion on our part and the timing and I think  
14 the statement ought to accurately reflect that. So I'm not  
15 trying to do that or to pass blame. This stuff is hard. I do  
16 want to note that to the extent your reference before the quote  
17 was the Reform Final Decision, the first sentence. When you  
18 get to the quote you say "the Secretary described the NASS  
19 survey" to the extent the NASS survey is described in a Federal  
20 Register decision from 2000, that wouldn't have been from  
21 Federal Order Reform, that would have been from the Class III,  
22 IV hearing in 2000, correct?

23 A. I have lost you. Still on 16?

24 Q. I'm still on page 16. So look now above the quote.

25 A. Above the quote.

1 Q. So in the first sentence under B, determination of  
2 commodity prices, you reference the Reform Final Decision --

3 A. Uh-huh.

4 Q. -- establishing how NASS would do things. In the  
5 sentence that immediately precedes the quote where you say the  
6 Secretary described the NASS survey --

7 A. Uh-huh.

8 Q. -- to the extent that someone might think that came  
9 from the Final Reform Decision, I want you to at least think  
10 about whether that reference to 2000 would be a different  
11 decision.

12 JUDGE CLIFTON: You don't have to give us the answer now,  
13 but this is part of the homework that you and Mr. Beshore and  
14 the team will do to help us get that right.

15 BY MR. ENGLISH:

16 Q. So now I want you to turn to page 17, and again,  
17 remembering that 65 Fed. Reg, I think we agree, it's 2000. And  
18 at the top the page you are referencing the Class Price Hearing  
19 in 2000, and then you have a citation for quote, which says?  
20 67 Fed. Reg. Page numbers and you have said 2000. And I want  
21 to suggest to you that the volume number is correct, but the  
22 volume number for 67 would be 2002 not 2000. And you don't  
23 have to agree with me, as Judge Clifton just noted, you don't  
24 have to agree with me now.

25 A. I appreciate that thank you.

1 Q. Now, we get to your discussion of a 2006 make  
2 allowance, and this is why I think the timing is important.  
3 Because we agree there were multiple hearings, one in 2000 and  
4 then there were some hearings in 2006, 2007, correct?

5 A. That's correct.

6 Q. But I think we need to nail down what happened and  
7 when. So here you are referencing, you say, "during the 2006  
8 make allowances there were various proposals made," and then  
9 you have, "during the hearing proponents asserted," and then  
10 you say, "the Secretary disagreed and noted," and you have a  
11 quote.

12 A. That's correct.

13 Q. And at the end of the quote you have (73 Fed. Reg.)  
14 with page numbers, and you say 2006. And I want to suggest to  
15 you and again, with Judge Clifton's caution or urging or, that  
16 that really was 2008. And I want to go further and suggest  
17 that the (73 Fed. Reg.) cite (2008) is not to the 2006 hearing,  
18 but to the 2007 hearing, which would mean the next paragraph  
19 which has an Id. Cite would also be, if I'm right, a 2007  
20 hearing, and that's all on page 17.

21 A. Okay.

22 Q. If you would turn to page 19. So at the bottom of the  
23 page you have a quote. You talk about in the second line, the  
24 2006 Make Allowance Hearing, and then you say "the Secretary  
25 noted:" which I took it to reference the 2006 Make Allowance

1 Hearing --

2 A. I think so.

3 Q. -- but then you have a citation to (67 Fed. Reg.) which  
4 I suggest to you would be 2002, and if the cite is 2002, I  
5 suggest the Secretary, as prescient as he or she may be, would  
6 not have been able to do that with respect to a hearing four  
7 years later.

8 A. Would you run that by me again?

9 Q. Sure. On the bottom of page 19 you have a paragraph  
10 discussing, where the Secretary discussed the relationship of  
11 California commodity dairy prices to the NASS price series, and  
12 you say "In the final decision of the 2006 Make Allowance  
13 Hearing," and then you say "the Secretary noted" which I think  
14 logically means that you are referring to that decision you  
15 just referenced in the prior sentence, but the citation at the  
16 bottom is to (67 Fed. Reg. at page 67937), and I suggest to you  
17 that going back and looking at our math and the years, that  
18 (67 Fed. Reg.) was in 2002.

19 A. Okay.

20 Q. And if that was in 2002, I'm further suggesting that  
21 that couldn't be the 2006 Make Allowance Hearing.

22 A. That's correct. I understand. I understand your point  
23 you are making.

24 Q. Okay. And then going to page 24, under the formula  
25 citation, which I certainly don't intend to read into the

1 record, you have a paragraph that says in 2006, two national  
2 Federal hearings were convened to consider changes in Class III  
3 and Class IV pricing.

4 A. Okay.

5 Q. I want to suggest maybe, you know, look at it. I think  
6 there were two national hearings, one was Class III/Class IV,  
7 there was another one about Class I/Class II, but I would  
8 suggest to you that there was only one hearing in 2006 with  
9 respect to Class III and Class IV, and it was held on  
10 January 24 -- started on January 24, 2006.

11 And then, finally, as to the Exhibit 70, your Honor,  
12 it's similar to our discussions about 2006 earlier. On page  
13 26, in the third paragraph, you reference, "as a result of  
14 testimony from the 2006 national Class III and IV hearing there  
15 were these changes made" and you cite again (73 Fed. Reg. at  
16 35326) and I want to suggest if you look at that, that was  
17 2008. And my reading of 2008 is, it talks about the hearing  
18 having convened in 2007. So I would suggest that maybe you  
19 look at that as well.

20 And that's all I have on this particular issue, your  
21 Honor.

22 JUDGE CLIFTON: Thank you. That's very helpful. The other  
23 thing is there are several citations to Federal Register that  
24 omit the year, the year just isn't included. It may be helpful  
25 if the year were included for all of them, actually. All

1 right.

2 Are there other questions of this witness before you  
3 determine whether you have objections to the documents being  
4 admitted, that would be Exhibit 70 and Exhibit 71? All right.  
5 There are none.

6 Mr. Beshore, would you come back to the podium? How  
7 would you like to proceed?

8 MR. BESHORE: I would like to take a break for lunch. And  
9 I believe that there's a producer present, or coming, that  
10 would be, is interested in testifying who would be prepared to  
11 testify, or who I think should be given the opportunity to  
12 testify first thing after lunch. There's also Ms. AcMoody has  
13 some additional testimony she would like to present. I suggest  
14 that testimony should be taken after lunch or after the  
15 producer, and then -- then we would resume with Mr. Schad.  
16 Perhaps I can provide and assistance with some of these  
17 corrections to the Federal Register dates, etcetera.

18 JUDGE CLIFTON: Very good. I do want you to get lunch  
19 because you need nourishment, too. So if you don't get them  
20 done before we resume again, that's fine. All right.

21 Let us take an hour and 15 minutes, roughly. It's now  
22 12:27. Please be back and ready to go at 1:45. 1:45.

23 (Whereupon, the lunch recess was taken.)

24 ---o0o---

25

1 THURSDAY, OCTOBER 15, 2015 - - AFTERNOON SESSION

2 JUDGE CLIFTON: We're back on record at 1:46. Mr. Beshore?

3 MR. BESHORE: Marvin Beshore. Thank you, your Honor. At  
4 this time there is a dairy farmer, Mr. Steve Maddox, who is  
5 here and would like to testify.

6 JUDGE CLIFTON: Excellent. Mr. Maddox, please come  
7 forward. I'd ask that you be seated in the witness stand to  
8 your left. I'd ask that you make yourself comfortable and then  
9 I'll swear you in in a seated position.

10 Would you raise your right hand, please? Do you  
11 solemnly swear or affirm under penalty of perjury that the  
12 evidence you will present will be the truth?

13 MR. MADDOX: Yes, I do.

14 JUDGE CLIFTON: Thank you. Please state and spell your  
15 name.

16 MR. MADDOX: My name is Stephen Maddox, S-T-E-P-H-E-N,  
17 M-A-D-D-O-X. My business address is at 12863 West Kamm Avenue,  
18 Riverdale, California. I appreciate the opportunity to testify  
19 at this hearing.

20 JUDGE CLIFTON: Now, let me stop you for just a minute.  
21 How is the name of your street spelled?

22 MR. MADDOX: K-A-M-M.

23 JUDGE CLIFTON: Thank you. And you may proceed.

24 MR. MADDOX: Thank you. I thank the United States  
25 Department of Agriculture for calling this hearing at the



1 request of the overwhelming majority of dairy farm families in  
2 California.

3 First, a little bit about myself. I graduated from Cal  
4 Poly San Luis Obispo in 1978 with a Bachelor of Science in  
5 Dairy Production. In 1990, I was elected to the Danish  
6 Creamery Board and rose to the position of Chairman of the  
7 Board in 1995, when we celebrated the --

8 JUDGE CLIFTON: Now, pretend like somebody has to capture  
9 everything you say and has a marvelous machine and skill, but  
10 you are going pretty fast.

11 MR. MADDOX: She's typing pretty fast.

12 JUDGE CLIFTON: I know she is.

13 You mentioned that you had risen to the Chairman of the  
14 Board.

15 MR. MADDOX: I rose to the position of Chairman of the  
16 Board of Danish Creamery in 1995, when we celebrated the 100th  
17 anniversary of the co-op. During my chairmanship, we started  
18 the conversation with our neighboring co-ops, California Milk  
19 Producers and San Joaquin Valley Dairymen in considering the  
20 possibility of merging into one, which eventually became  
21 California Dairies, Inc. I also served on the Challenge Dairy  
22 Products Board, which markets butter and dairy products across  
23 the Western 13 United States at the time, and now across the  
24 whole country. I was a founding Board Member of Dairy America  
25 in 1995. I have served on the National Milk Producers Federal

1 Board of Directors. In 1999, upon the merger of the three  
2 co-ops into California Dairies, Inc., I was elected Secretary  
3 of the Board and served in that position through 2009. In  
4 2007, I was appointed by the Secretary of Ag to the National  
5 Dairy Board, which I rose to the position of Chairman in 2012,  
6 and 2013. From 2007 to 2013, I was a member of the United  
7 States Dairy Export Council Board. Currently, I'm sitting on  
8 the Sustainability Council for the Innovation Center for U.S.  
9 Dairy, and have been recently appointed to the Dairy Council  
10 Board of California.

11 In addressing this hearing, I earlier had reservations  
12 about the citing the demise of the California Milk Pooling  
13 system, due that in the mid-'60's my father Doug was part of  
14 the group that put together the, or put together the Gonzalves  
15 Milk Pooling Act, and helped sell, he was part of the road show  
16 team that went up and down the state to explain the new milk  
17 pricing system to dairymen, with meetings prior to the pooling  
18 referendum that installed the California Milk Pooling System.

19 Much like a piece of equipment after years of tweaking  
20 and adding parts, there comes a point when unintended  
21 consequences caused the California Milk Pricing Program not to  
22 work as expected. Relevant prices to surrounding areas for  
23 fair competition, audit and make allowances, and different  
24 timing of formula pricing are all issues that have plagued the  
25 California Order.

1 JUDGE CLIFTON: Would you tell me those three things again,  
2 please.

3 MR. MADDOX: Relevant prices to surrounding areas for fair  
4 competition, audit and make allowances, different timing on  
5 formula pricing.

6 JUDGE CLIFTON: Thank you.

7 MR. MADDOX: The unpredictable -- in addition, the  
8 unpredictable basis for milk futures in dairy products on the  
9 CME versus the California pool prices have made it challenging  
10 at best for hedging or insuring our milk price for dairymen in  
11 California.

12 Ongoing difficulties with Interstate Commerce has also  
13 been an issue between the California Order and Federal Milk  
14 Marketing Order system over the years. It is time to start  
15 with a new, with a Federal Milk Marketing Order in California  
16 taking the best of the California Order, adding a twist from  
17 the Federal system, and change the auditor or referee to insure  
18 a balanced fair pricing structure for both dairy farmer and  
19 processor.

20 I support the proposition, Proposal 1 for the  
21 Cooperatives in California to re-establish and enhance the  
22 integrity of California market-wide pool. It provides for a  
23 level playing field for producers, minimum milk prices aligned  
24 with national prices for comparable milk from top to bottom of  
25 the class categories. This proposal also gives a level playing

1 field for processors, equal raw product costs within the  
2 classes at the national and competitive minimum prices, and  
3 support for producer-funded initiatives to assist processors in  
4 securing an adequate milk supply through transportation credits  
5 and allowance.

6 Finally, and most important for positive referendum of  
7 milk, protection of California's historical quota program.

8 I believe Proposal 1 put forth by California Dairies,  
9 Inc., Dairy Farmers of America, and Land O'Lakes, uniquely  
10 meets the goal of orderly milk marketing milk in California,  
11 and I thank you for your time.

12 JUDGE CLIFTON: That's extremely concise and loaded with  
13 valuable information. Thank you. Mr. Beshore?

14 MR. BESHORE: Yes.

15 DIRECT EXAMINATION

16 BY MR. BESHORE:

17 Q. And thank you, Mr. Maddox, for taking the time to come  
18 and present your thoughts and views for this hearing.

19 I have just one additional question I would like you to  
20 address, or additional background. Can you tell us a little  
21 bit about your dairy operation? Your background, your personal  
22 background is replete with industry leadership, and that's a  
23 terrific thing. Now just give us a little bit about the home  
24 dairy operation.

25 A. Sometimes dealing on the national scene gets in the way

1 of common sense.

2 The size of my dairy is 3,200 milking cows, about 700  
3 dry cows, 4,300 head of replacement heifers, and 1,200 bulls,  
4 all registered purebred cattle.

5 Q. And that's an operation that your father was part of,  
6 and now you're part of, and are there other family members  
7 involved, also?

8 A. Yes, my brother and sister are involved with me in our  
9 generation, we're third generation. My son is back in the  
10 business now. Actually, at home doing what I'm supposed to be  
11 doing.

12 Q. Thanks for him, too. Okay. I don't have any other  
13 questions.

14 JUDGE CLIFTON: Did you say you have 1,200 bulls?

15 MR. MADDOX: Yes. We, if I may, we have an extensive  
16 embryo transfer program with our purebred cattle, so half of  
17 our calfs born every year are either transferred from the top  
18 ten percent elite genetics. We sell about 2,000 embryos a year  
19 export, and -- and we sell about half the breeding bulls in the  
20 State of California, New Mexico, and Arizona.

21 JUDGE CLIFTON: Are they all one type of cow?

22 MR. MADDOX: All Holsteins, although I do flush a couple of  
23 Jerseys for Cal Poly.

24 JUDGE CLIFTON: And why do you keep the dry cows?

25 MR. MADDOX: The dry cows, you give the cows kind of a

1 vacation when they are getting in their seventh month of  
2 pregnancy for two months, so that their milk tissue can  
3 regenerate, and they get a little rest before they are giving  
4 calves again.

5 JUDGE CLIFTON: All right. Who else has questions for  
6 Mr. Maddox?

7 CROSS-EXAMINATION

8 BY MS. TAYLOR:

9 Q. Good afternoon, Mr. Maddox. I'm Erin Taylor with USDA.  
10 I want to express the Department's appreciation for you to come  
11 out and testify at our rule making hearing, and taking the time  
12 away from your business to be involved in this process.

13 Part of the facts that we have to consider in making a  
14 decision is our, the impact to small businesses. And the way  
15 we define a small business is net farm, or gross farm revenue  
16 of \$750,000 a year, which is around 315,000 pounds of  
17 production a month. Would you fall under a small business  
18 definition?

19 A. No.

20 Q. Okay. Thank you.

21 JUDGE CLIFTON: When you said you were appointed by the  
22 Secretary, I believe to the National Dairy Board --

23 MR. MADDOX: Yes.

24 JUDGE CLIFTON: What Secretary is that?

25 MR. MADDOX: Secretary of USDA.

1 JUDGE CLIFTON: USDA?

2 MR. MADDOX: Yes.

3 JUDGE CLIFTON: And you have been on that board since 2007?

4 MR. MADDOX: I was on that board for 2007 to 2013. I have  
5 been asked to come back as an advisor for the last two years.

6 JUDGE CLIFTON: And what were your primary functions on the  
7 National Dairy Board.

8 MR. MADDOX: Predominantly I sat on the Export Committee,  
9 Butter, Powder Export Committee, because that was my area of  
10 expertise from being on the old Danish Creamery Board and  
11 California Dairies Board, particularly with -- in key interests  
12 in California, since 40 percent of our milk produced here is  
13 exported, which is over half the dairy products exported in the  
14 United States is from California.

15 JUDGE CLIFTON: Explain a little bit to me about the phrase  
16 audited make allowance. I believe that was the phrase you  
17 used.

18 MR. MADDOX: Yes. Differences between the -- well, in  
19 California, they go through an annual audit, on not just, you  
20 know, observing the dairies cost of production, but also the  
21 audits of the cost of plants. And part of end product pricing  
22 that we have had in California is that you go with the bulk  
23 prices, bulk commodity prices of cheese, powder, and butter,  
24 and you figure the cost of producing that, along with a small  
25 return on investment. And then anything additional that the

1 plants can keep, but that translates back to the dairy milk,  
2 that price. You take the CME price minus that basically, and  
3 with some details.

4 JUDGE CLIFTON: And why is the Federal system of pricing  
5 preferable to that?

6 MR. MADDOX: Well, for a long time, going back to 1990,  
7 that's some of the old issues we have had, because the make  
8 allowance formerly in the Federal system only dealt with the  
9 product being purchased by the, purchased by the CCC commodity,  
10 and --

11 JUDGE CLIFTON: So that does go back.

12 MR. MADDOX: Yeah. All of a sudden I'm in the chair where  
13 my father and grandfather were, so that was in, and then it's a  
14 little easier in California, in strengths and weaknesses of our  
15 milk pooling system is to be able to call hearings quickly, to  
16 report out quickly. And so you came for a regular review every  
17 two or three years on the readjusting the make allowances on  
18 that. But that was a big area of contention, more for the rest  
19 of the U.S. than it was for California, but that was one issue  
20 between our state system and the Federal system, was the make  
21 allowance for California.

22 JUDGE CLIFTON: And why do you believe it will be  
23 preferable to be uniform with the other Federal Orders in that  
24 regard?

25 MR. MADDOX: In that regard? Not necessarily, because I



1 think our price is a little bit more sensitive to the actual  
2 costs that are happening at the time. It's always, you are  
3 always looking back on energy costs and things like that, but  
4 on the average, it averages out. On Federal system I think it  
5 is more of a set number that doesn't adjust, so it's not quite,  
6 probably not as fair for the processing end of it, of covering  
7 their actual costs, but it is better than what they had before.

8           However, there is other issues for the, on the Federal  
9 system where they can depool and recapture that value  
10 difference, not having to pay the established price on some of  
11 the commodities, but I'm a little foggy on some of that. I did  
12 operate dairies in Tennessee and New York, or at least our  
13 family did. So we do have a little experience with those kind  
14 of dairies, but it was 1980 to '93.

15           JUDGE CLIFTON: There have been a lot of changes I have  
16 been hearing about over the years.

17           MR. MADDOX: Oh yeah.

18           JUDGE CLIFTON: Who else has questions for Mr. Maddox? Is  
19 there anything you would like to add?

20           MR. MADDOX: Nothing that won't get me in trouble.

21           JUDGE CLIFTON: We appreciate very much your coming in here  
22 making your statement --

23           MR. MADDOX: Thank you.

24           JUDGE CLIFTON: -- giving us your testimony. Thank you.  
25 Would Ms. AcMoody be next? Mr. Vlahos?

1 MR. VLAHOS: John Vlahos, your Honor, the answer is yes,  
2 she would be next.

3 JUDGE CLIFTON: All right. Very fine.

4 Ms. AcMoody, you remain sworn. I would like you again to  
5 state and spell your name.

6 MS. AcMOODY: First name is Annie, A-N-N-I-E. Last name,  
7 AcMoody, A-C-M-O-O-D-Y.

8 JUDGE CLIFTON: Thank you. Mr. Vlahos, you may proceed.

9 DIRECT EXAMINATION

10 BY MR. VLAHOS:

11 Q. Bonjour, Madame AcMoody.

12 A. Bonjour.

13 Q. Some of this has already been in the record, but the  
14 people who didn't get to listen to you over the broadcast or  
15 may not have been here, and for those who were here, who may  
16 not have heard you or may have let their attention wander.

17 I wonder if we could re-establish a few things. Would  
18 you state your employment, please?

19 A. Yes, I work for Western United Dairymen.

20 Q. And your position?

21 A. My title is Director of Economic Analysis.

22 Q. And what, tell me what Western United Dairymen is?

23 A. It's a trade association that represents half, about  
24 half of the dairies in the state.

25 Q. Approximately how many?

1 A. About half. That's the number I think I gave last  
2 time.

3 Q. What's the general scope or geographical extent of your  
4 membership?

5 A. They range from San Diego County all the way up to  
6 Del Norte.

7 Q. Do they include both large and small dairy operations?

8 A. Yes, the smallest I'm aware of is 17 cows, all the way  
9 up to 10,000.

10 Q. So would some of your members meet the definition of a  
11 small business in that they 315,000, you can correct me if I'm  
12 wrong, 315,000 per month, pounds per month, or \$750,000 annual  
13 gross revenue per year?

14 A. Yes, some do.

15 Q. Okay. Do you have any idea how many?

16 A. No, I don't, not off the top of my head.

17 Q. Okay. You have some remarks that you wanted to make on  
18 the subject of quota; is that correct?

19 A. Yes.

20 Q. And you're delivering these remarks on behalf of  
21 Western United for the directors and its members?

22 A. Correct.

23 Q. And is your testimony confined to the issue of quota in  
24 California?

25 A. Yes, that's the objective.

1 Q. Would you like to make those remarks for the record?  
2 And you may consult your notes.

3 A. Thank you. I still need a little consult my notes.

4 So in recent weeks, co-ops, representatives, and  
5 experts testified on the value and importance of quota.  
6 Similarly, the importance of inclusive pooling in the co-ops'  
7 proposal has been demonstrated. Those two elements are key  
8 features of Proposal Number 1, but not only are they  
9 independently crucial, one can be dependent on the other. That  
10 is, to insure the quota program remains intact, pooling  
11 provisions for a California FMMO must be strict.

12 The California Food and Agriculture Code Section 62712,  
13 specifically states that all pool quota must be recognized and  
14 shall not be diminished in any way. Allowing looser pooling  
15 rules could put the quota value at risk, possibly diminishing  
16 it. Therefore, we want to emphasize the importance of  
17 inclusive pooling to insure the survivability of the program,  
18 of the quota program, like we know it today.

19 Proposal Number 1 provides explanations on how the MA  
20 should determine producer prices, but one of the detailed  
21 aspects of the milk price determination process is particularly  
22 relevant. The MA shall deduct the total amount for quota  
23 premiums (as reported by CDFA to the MA) from total pool  
24 revenues. This means the quota premiums taken out of the total  
25 revenue pool would be roughly the same each month. Quota

1 premiums are currently deducted from total pool revenues and  
2 average approximately 12.5 to 13 million pounds per month.

3 Q. That's under the California system we're talking about?

4 A. Correct. Currently. The fixed amount of revenue taken  
5 out of the pool each month for quota will have a different pool  
6 impact if the volume of milk decreases sharply, as might happen  
7 if depooling is permitted. The resulting impact on pool prices  
8 could be substantial from month to month. To give a numerical  
9 example, removing \$13 million for quota premiums out of the  
10 pool representing 3.3 billion pounds of milk sold, means  
11 reducing money available for pool prices by approximately  
12 37 cents per hundredweight. If that same \$13 million is taken  
13 out of a smaller pool, let's say a pool that's reduced by a  
14 third of the volume, all pool prices could drop by  
15 approximately 62 cents.

16 If manufacturing handlers and cooperatives can opt to  
17 not pool their milk and milk receipts when the applicable  
18 manufacturing class prices of milk are higher than the Order's  
19 blend, then those remaining in the pool are at further  
20 competitive price disadvantage to those producers whose milk is  
21 not pooled.

22 Assuming quota holders will want to ship their milk to  
23 a plant that participates in the pool, this adds another  
24 possible level of frustration for quota holders. If a quota  
25 holder shifts its milk to a handler that elects not to pool

1 milk for a given month, the quota holders milk may lose  
2 eligibility to receive the quota premium. If this consistently  
3 happens, it could give the quota holder the incentive to either  
4 sell its quota or try to ship his milk elsewhere. This  
5 decreases the demand for quota and likely diminishes its value.

6 Stated otherwise, if there are more producers willing  
7 to sell quota and there's not more producers willing to buy it,  
8 this should put down the pressure on quota value.

9 Additionally, if in a given month all the Class III and  
10 IV milk opted out the pool, this could leave a total solids not  
11 fat in the pool roughly equal to the pounds of quota solids not  
12 fat. This could lead quota holders to be paid about the same  
13 as if there was no quota, i.e., if the quota premium value  
14 reduces the non-quota blend by about as much, the quota premium  
15 is not very useful.

16 Quota is an asset and if suddenly the asset was driven  
17 to be worth close to nothing, some lending institutions could  
18 find issues with their producer clients. Some producers have  
19 borrowed money to purchase quota. These loans are expected to  
20 be paid back with the incremental return generated by holding  
21 this asset. If the value of that incremental return and the  
22 liquidation value goes down substantially, this could put  
23 producers in the precarious position with their lending  
24 institution. If quota does not generate any excess payment,  
25 one could anticipate its value would go down.

1           Quota is also a cash flow tool that has helped many  
2 dairies stay afloat in harder financial years.  USDA has  
3 questioned a few witnesses about the size of their members to  
4 see whether they fit within the definition of a small business.  
5 While I do not know exactly how many of our members fit that  
6 definition exactly, I believe some quota holders fit within  
7 that definition and their survival is particularly dependent  
8 upon the survival the quota program.

9           Through my five years at WUD, at Western United  
10 Dairymen, no other topic has raised a similar amount of  
11 question and concern than quota has, and particularly with  
12 smaller herds who may be making up for lack economy to scale by  
13 owning quota.

14           The California FMMO must recognize the integration of  
15 the State's quota program and adopt strict pooling provisions  
16 as outlined in Proposal Number 1.

17           Q.  Ms. AcMoody, you mentioned the value of the quota.  Are  
18 you aware of the fact that some witnesses have testified that  
19 lending institutions, some of them, have accepted quota as  
20 actual collateral for loans, and others perhaps not doing that,  
21 but have used balance sheets as a basis for making loans to  
22 producers, which balance sheets include the value of their  
23 quota.

24           Do you understand that testimony has been given?

25           A.  I have heard that.

1 Q. And in your view, what would happen if the value of  
2 quota under a Federal Milk Market Order were significantly  
3 decreased or perhaps even eliminated?

4 A. Well, I'm sorry, could you repeat the question?

5 Q. Yes. What would happen, if under a proposed or adopted  
6 Federal Milk Market Order, the value of quota were  
7 significantly negatively impacted, decreased or perhaps even  
8 eliminated?

9 A. Yeah, that would be a big problem. I have outlined in  
10 my testimony for some producers who had to borrow money to  
11 purchase quota, then they would be left with nothing on their  
12 balance sheet.

13 Q. Is that both because of the asset value of quota and  
14 also its ability or its guarantee of cash flow?

15 A. Yes, so it would impact them both ways. One on the  
16 asset and the other way that I mentioned, that quota is used as  
17 a cash flee tool by many dairy producers.

18 Q. Thank you very much. That's all I have.

19 JUDGE CLIFTON: Thank you, Mr. Vlahos.

20 Ms. AcMoody, do you recall Mr. Vlahos' greeting to you and  
21 can you interpret it for us? His greeting in French?

22 MS. AcMOODY: Bonjour, it it means hello.

23 JUDGE CLIFTON: I know you said bonjour, is that what he  
24 said also?

25 MS. AcMOODY: I think that's what he tried to say.



1 JUDGE CLIFTON: All right. So assuming that he did, that  
2 was in French, good day?

3 MS. AcMOODY: Yes.

4 JUDGE CLIFTON: And you responded likewise?

5 MS. AcMOODY: Yes, I did.

6 JUDGE CLIFTON: All right. Who else has questions for  
7 Mrs. AcMoody?

8 CROSS-EXAMINATION

9 BY MR. ENGLISH:

10 Q. Chip English.

11 Have you or your organization done an analysis of how  
12 long it takes for a pound of quota, if someone purchased a  
13 pound of quota solids not fat, how long it takes that purchase  
14 to pay for itself?

15 A. I have done that a few years ago. It depends on the  
16 sales price of the quota. I think the average when I heard it  
17 was approximately seven years, but it depends on variety of  
18 factors.

19 Q. So could a system that recognizes quota through the  
20 pool, pay out, buy out the quota over seven years?

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

22 Q. Yes, if a pound what is solids nonfat pays for itself  
23 over seven years, could a system be structured that pays out  
24 the value of the quota over seven years?

25 A. That sounds like a different topic than what I'm here

1 to testify for here today.

2 Q. You are talking about quota and including it and  
3 everything, and I think that, you know, the question is are  
4 there alternatives to recognizing quota?

5 A. I suppose there could be alternatives, but they would  
6 need to be considered and evaluated.

7 Q. Have you considered them?

8 A. Some of those alternatives have been mentioned at  
9 industry meetings. I believe Dr. Erba mentioned the quota  
10 review. We have, there was a quota working group as part of  
11 the CDFA Task Force, some options have been considered, but  
12 none of them were implemented, obviously, since we're still  
13 where we are at today.

14 Q. So you have talked about the value of quota, and  
15 Mr. Vlahos asked you questions about what you have heard in  
16 the testimony, have you seen the exhibits or any of the  
17 discussion with respect to the amount of overbase as opposed to  
18 quota in California today?

19 A. I'm not sure what exhibits you are referring to.

20 Q. Okay. So there's certainly an exhibit from CDFA that  
21 shows the relative break down of quota based upon how much  
22 percentage farmers own, correct?

23 A. Yes. I did not see that specific exhibit, but I think  
24 I know which document you are referring to.

25 Q. So when the money for quota comes out of the otherwise

1 pool, isn't it the case that those dairy farmers who don't have  
2 any quota are similarly, if quota holders have value to quota,  
3 then those producers who don't have quota must have an  
4 aggregate, a matching lack of value, correct?

5 A. I'm not sure if we call it a lack of value, it is a  
6 redistribution of pool revenues.

7 Q. Right. But in that redistribution of pool revenues,  
8 those dairy farmers who only have overbase, and again, are  
9 adding all of the overbase value together, ultimately, in  
10 aggregate doesn't equal the value of the quota? There's a  
11 negative aspect, because it's a redistribution, correct?

12 A. It is a redistribution.

13 Q. So it's a redistribution, and it's a plus for the quota  
14 holders, must it not be a minus for the overbase holders?

15 A. It is a minus taken out of the pool revenue, yes.

16 Q. But it is a minus for their value, correct?

17 A. Yes, I think I stated that actually means currently  
18 that it is approximately 37 cents per hundredweight.

19 Q. And the two aggregates must be equal, correct?

20 A. They should -- I mean.

21 Q. Thank you.

22 JUDGE CLIFTON: Who else has questions for Ms. AcMoody?

23 CROSS-EXAMINATION

24 BY MS. TAYLOR:

25 Q. Erin Taylor, USDA, good afternoon.

1 A. Good afternoon.

2 Q. I tried to take notes on what you said, and there was a  
3 lot packed into that, but somewhere along the line you talked  
4 about 62 cents, and I'm not quite sure. I know you talked  
5 about 37 cents being the amount it takes, take out per  
6 hundredweight to pay about \$12 million of quota a month, but  
7 what was the 62 cents?

8 A. I was just giving another example, saying that if a lot  
9 of milk was depooled, that we were dealing with smaller pools,  
10 then the impact would be larger. So the example I gave here,  
11 if you took the same \$13 million out of that smaller pool, then  
12 the impact would be 62 cents.

13 Q. Okay.

14 A. So it was just an example. That number could go up and  
15 down depending on the size of the pool you are talking about.

16 Q. Okay. Thanks.

17 JUDGE CLIFTON: Who else has questions for Ms. AcMoody?  
18 Ms. AcMoody, is there anything you would like to add to what  
19 you have told us so far today?

20 MS. AcMOODY: No, thank you.

21 JUDGE CLIFTON: All right. Thank you. You may step down.  
22 Thank you.

23 Mr. Schad may come back to the witness stand.

24 Mr. Schad, will you again state and spell your name.

25 MR. SCHAD: Dennis Schad. S-C-H-A-D, D-E-N-N-I-S.

1 JUDGE CLIFTON: Thank you. Mr. Beshore?

2 MR. BESHORE: Marvin Beshore. Your Honor, with your  
3 consent, we would like to make the corrections or check on the  
4 citations in the Exhibit 70, and do those all at one time first  
5 thing tomorrow, if we could. And with that, I do not have any  
6 other questions of Mr. Schad and he would be available for  
7 cross-examination.

8 JUDGE CLIFTON: I think that's an excellent plan. That  
9 will give you ample opportunity to get the corrections made,  
10 and I don't believe anyone's cross-examination will be hampered  
11 by those technical corrections that are needed. So who would  
12 like to begin the cross-examination of Mr. Schad? Mr. Vetne?

13 MR. VETNE: John Vetne for Hilmar Cheese. I will be  
14 referring to proposed Exhibit 70 on occasion, and if I say  
15 Exhibit 70, it is understood that I mean proposed Exhibit 70.

16 JUDGE CLIFTON: Yes. Well, I tell you, it is Exhibit 70.  
17 It's been identified as Exhibit 70. So it's not really  
18 proposed. I haven't either accepted or rejected it, but it has  
19 been identified as Exhibit 70.

20 MR. VETNE: All right.

21 CROSS-EXAMINATION

22 BY MR. VETNE:

23 A. Good afternoon, John.

24 Q. Good afternoon, Mr. Schad. Good to see you again.

25 A. Good seeing you.

1 Q. I don't know about you, but I'm missing the fall  
2 colors.

3 A. Yes.

4 JUDGE CLIFTON: Do you share a New England background?

5 MR. VETNE: We're both from the East. He's a little  
6 further South, his might not have come to peak yet, but mine  
7 are passing peak as I stand here.

8 JUDGE CLIFTON: I'm sorry you are missing it. We did have  
9 a little rain here, however.

10 MR. SCHAD: John, you are excused if you want to leave.

11 BY MR. VETNE:

12 Q. Go to page 14, please, of your statement.

13 A. Yes.

14 Q. At the top you refer to a Carolina decision. And near  
15 the bottom of the paragraph that concludes on page 14, you say  
16 "citing the difference between the State's order and Federal  
17 Orders butterfat pricing is a factor of disorderly marketing.  
18 The Secretary ruled against the proposal, the Secretary said:"

19 A. I'm sorry, which paragraph are we on, John?

20 Q. The paragraph that concludes on top of the page.

21 A. Yes, sir.

22 Q. Before the Federal, those two register cites.

23 A. And we're reading the last sentence in that paragraph?

24 Q. Four lines up you use the word "disorderly marketing?"

25 A. Yes.

1 Q. Okay?

2 A. Yes, sir.

3 Q. You quote from the Secretary's decision, but you don't  
4 include in any of the language you quote from that decision,  
5 the words "disorderly marketing." And I am wondering whether  
6 the words disorderly marketing are words used by the Secretary  
7 as it appears from exhibit, or whether used by the Secretary or  
8 if it, as appears to me, that it is your characterization of  
9 what the Secretary said?

10 A. I'm reading from (Fed. Reg. 55, 256) and it is hard to  
11 read here, 25622, and I'll read the entire paragraph:

12 "Although record shows there has been considerable shifting of  
13 producers between handlers in North Carolina. The situation is  
14 even more prevalent in South Carolina. The disparity and pay  
15 prices called by individual handler pools and individual base  
16 plans have contributed to disorderly marketing in North  
17 Carolina and South Carolina."

18 "Another factor contributing to disorderly" -- this is  
19 another paragraph -- "another factor contributing to disorderly  
20 marketing is this two state area," I'm sorry, "in this two  
21 state area is the butterfat differential used in paying  
22 producers."

23 Is that enough or would you like me to read on?

24 Q. I would like you to read on to see if the Secretary  
25 referred there to market behavior. In what you have read

1 previously, there was observations of market behavior of  
2 producers. Is there any similar market behavior of producers  
3 related to the butterfat differential?

4 A. I'll read further on:

5 "In both states, the butterfat differential is based on  
6 a factor of .1 of the Chicago '90's two-score butter price. In  
7 surrounding Federal Order markets, the butterfat differential  
8 is based on a factor of .115 of the Chicago '92 score butterfat  
9 price. The witness testifying about marketing conditions in  
10 South Carolina estimated the difference in the computation of  
11 the butterfat differential costs South Carolina Dairy Farmers  
12 about \$400,000 per year. The witness testifying about  
13 marketing conditions in North Carolina estimated that the use  
14 of a factor of .115 would add 4 to 6 cents per hundredweight to  
15 producer pay prices.

16 From the foregoing, it's clear that the two state  
17 programs cannot assure Dairy Farmers associated with this  
18 marketing area of payments for their milk in accordance with  
19 its use and at minimum prices that are uniformly applicable  
20 throughout the market. These state programs, if allowed to  
21 continue, could lead to a further dependence on outside milk  
22 supplies to meet needs of the area. A Federal Order providing  
23 for classified pricing at reasonable levels and market-wide  
24 pooling for distributing the returns uniformly among all  
25 producers, will help to provide the needed market stability."



1 Q. Thank you. Was that the end of the sentence?

2 A. No, that's -- that's the end of the sentence, yes. The  
3 paragraph goes on and there, yeah.

4 Q. So my understanding from that is that the Secretary  
5 looked at a number of things happening in the State Order  
6 program versus the Federal Order program, or the State Order  
7 programs adjacent to each other, saw shifting of producer milk  
8 supplies between, to take advantage of price differences, and  
9 observed that there was a difficulty of supplying the deficit  
10 market in that area. Are you aware of any --

11 JUDGE CLIFTON: Do you want to find out if he agrees with  
12 that characterization before you ask?

13 MR. VETNE: Do you agree with that?

14 MR. SCHAD: No. I think it was addressing what was in  
15 Carolina against what was outside of Carolina in Federal Order,  
16 in the Federal Order area. So its comparison was status quo,  
17 if you will, Carolina to the Federal Orders outside of  
18 Carolina, and he was looking for a change by the promulgation  
19 of the order, and what would happen if he continued to State  
20 Order butterfat pricing.

21 BY MR. VETNE:

22 Q. You don't recall then, reading about the practice of  
23 producers shifting between markets to take advantage of price  
24 differences? What you just read?

25 A. Okay.

1 Q. You don't recall that? That, as well as difficulty of  
2 supply to a deficit market being two of the observed factors?

3 A. Well, again, it was my --

4 Q. Okay. You read the text, we have the citation, we can  
5 argue about whether observations of behavior or not were  
6 included in the Secretary's conclusion of disorderly market.

7 Do you have observations of market behavior in the  
8 proposed California Marketing Order which meet any category of  
9 disorderly marketing that you might have in mind?

10 A. Yes. I think, as we know, disorderly marketing is not  
11 defined anywhere. We can't go to it. It is kind of a -- and  
12 I -- and I think it's more about characteristics of a market,  
13 but by saying something is disorderly characteristic. And I  
14 would -- I would include two in the -- two specifically come to  
15 mind, would be different prices for dairy farmers, and we have  
16 adequate testimony in the record that difference in dairy  
17 farmers prices in California as opposed to the Federal Orders.  
18 And also differences in prices for processors, the different  
19 class prices between Federal Order classes, class prices, and  
20 the between the Federal Order and the California.

21 Q. I understand that, and I have heard that repeatedly.  
22 My question to you was, do you know of any market behavior that  
23 has been stimulated by those price differences that are  
24 inefficient and non-predictable, or you know, some other  
25 surface that's not in the public good?

1       A. I think -- I think Mr. Hollon's testified to quite a  
2 bit on Class II condensed --

3       Q. My question is to you, sir.

4       A. -- on cheese prices.

5       Q. My question is do you know of any?

6       MR. BESHORE: I object to Mr. Vetne repeatedly interrupting  
7 Mr. Schad in responding -- I object to Mr. Vetne's repeated  
8 interruptions of Mr. Schad's answers to his questions.

9       JUDGE CLIFTON: I have to agree. Mr. Vetne, as you know, I  
10 admire your ability to get to the root of things. But this  
11 matter of questioning is just rejecting what answer he gives  
12 you, because -- and he is responding to your questions.

13       Now, it's fine to repeat what it is you want him to  
14 answer, but you will have to let him finish. You are just too  
15 enthusiastic for this time of afternoon.

16       MR. VETNE: I've finally adjusted to the time change.  
17 Thank you, your Honor, and you are right. I'll let the  
18 witness, for example, refer to Mr. Hollon's testimony, and then  
19 I'll ask him again whether he has any personal observations.  
20 So I'll try to do that kind of thing in the future.

21       JUDGE CLIFTON: That's good. So your question was fine,  
22 the timing was bad. Would you go back to what you were saying  
23 about Mr. Hollon's testimony and how it's responsive to  
24 Mr. Vetne's concern?

25       MR. SCHAD: Well, Mr. Vetne was asking for examples of

1 market behavior that you would not expect, other than the  
2 characteristics of a lower California price for certain classes  
3 of milk commodity.

4 JUDGE CLIFTON: Well, specifically he mentioned -- now I'm  
5 doing it -- specifically he mentioned inefficiency,  
6 unpredictability, so he was looking for the kinds of  
7 characteristics that might be regarded as disorderly in his  
8 mind, so that's, I believe, what you were starting to respond  
9 to.

10 MR. SCHAD: And recalling Mr. Hollon's testimony, which is  
11 in the record, he spoke about a cheese plant in Texas that had  
12 competitive issues with cheese from California. And he  
13 responded, and again, using Mr. Hollon's testimony, he talked  
14 about the condensed pricing. And I believe it was, I'm  
15 thinking in terms of the Tennessee type area where condensed  
16 milk product, all condensed milk product coming out of  
17 California, was undercutting local Federal Order prices. To be  
18 responsive to your question about my experience, that's as I'm  
19 sitting here --

20 BY MR. VETNE:

21 Q. That is my question.

22 A. Took a long way to get to it.

23 That I would say, I have seen milk powders coming into  
24 the East from California, and I remember reading an article in  
25 the, it was, we all get the news survey things that tell you if

1 there's an article out there about butter, I get to read it.  
2 And there was an article about a supermarket and reactions to  
3 Dairy Farmers that the supermarket shelves were full of  
4 California butter, rather than Eastern butter.

5 Q. Did that butter have a real California seal on it?

6 A. I wasn't there, I just read the article. Actually on a  
7 computer, so I didn't even see the source, the source of  
8 newspapers.

9 Q. Okay. When I asked about your experience, I was hoping  
10 that it would be interpreted as more specific than an article  
11 that you read. You have experience in Land O'Lakes with milk  
12 and butter, and powder, manufactured at East Coast locations,  
13 correct?

14 A. I have experiences, but it doesn't -- I have no  
15 experience on the sale of either of butter powder, but I do  
16 have experience in sale of milk.

17 Q. I see. Okay. So --

18 A. And limited mostly to Pennsylvania. As I pointed out,  
19 my whole career has been in Pennsylvania.

20 Q. Okay. So Land O'Lakes has plants in the Midwest, Upper  
21 Midwest and in the East, and you don't have knowledge of their  
22 marketing practices or competitive advantages or disadvantages  
23 they may have with respect to products from California?

24 A. For the Midwest, yes. Limited experience in the east.

25 Q. Okay. And with respect to product sale competition in

1 the East with respect to Land O'Lakes, your employer, do you  
2 have personal knowledge?

3 A. I just thought I answered that. I said limited in the  
4 East, Counsel, but not fully in the East, and not in the  
5 Midwest.

6 Q. None in the Midwest. Okay. So you also don't know  
7 about the Land O'Lakes plants, two of them that remain in  
8 California, whether they have perceived difficulty or advantage  
9 in marketing products to the East?

10 A. No, sir.

11 Q. Okay. At the bottom of page 14, the next to the last  
12 line referring to the function of AMS in a Federal Order  
13 promulgation process, you indicate that AMS in the Federal  
14 Order Reform process had more latitude to develop its own  
15 proposals. Are you aware of any restraint on their latitude  
16 under the formal rule making process?

17 A. I think my testimony is based on industry comments and  
18 evidence. They were, I think, I quoted the Conference  
19 Committee Report on that Farm Bill that basically told the  
20 Secretary that I, no, I won't try to paraphrase it. It is in  
21 my testimony. It is what it is. But I only know what I put in  
22 my testimony. I can't say whether he has any restraints or had  
23 restraints or no restraints.

24 Q. Okay. So you're aware that the Secretary may advance a  
25 proposal for a hearing even without receiving something in the

1 mail or over the Internet from the dairy industry?

2 A. I have seen it done.

3 Q. Okay. So --

4 A. I believe I have seen it done.

5 Q. So you don't know whether as a result of some  
6 authorization from Congress, USDA had more or less latitude in  
7 Reform than it has more or less latitude before or after  
8 Reform.

9 A. I think that they have more latitude in informal rule  
10 making than they have in formal rule making. That was the  
11 point I was trying to make.

12 Q. Because of the process?

13 A. Yes, sir.

14 Q. Okay. Because they don't have to go through what we  
15 are going through?

16 A. They are not limited to the evidence that we're putting  
17 on the record. That's my point.

18 Q. Oh, okay. Same latitude as far as the proposal stage,  
19 but a limitation in the evidence stage?

20 A. Again, that's your characterization. I'm not  
21 completely sure how a --

22 Q. Okay?

23 A. How --

24 Q. Go ahead, sorry.

25 A. I'm not sure how the process for the Secretary, to on

1 his own initiative, start a rule making process. I don't know  
2 the answer to that.

3 Q. All right.

4 A. An attorney would mostly tell me it was illegal. I  
5 wouldn't know.

6 Q. Maybe you -- maybe you would, maybe you won't when I'm  
7 up here, I don't know.

8 Page 28 of your testimony, the paragraph sort of ending  
9 in the middle of the page coming down from the top. You  
10 explained what you meant in response to questions that, I think  
11 from Mr. Beshore, or about earned Order 4 bases, that producers  
12 only earned Order 4 bases?

13 A. They were responsive to the --

14 Q. To the Judge, that's right. Because I put down a  
15 question, sorry, Judge Clifton, I didn't give you credit for  
16 that question.

17 Two lines above that, however, you used -- you used the  
18 word different base prices referring to handlers.

19 A. I meant in terms of the effect of Class I price under  
20 Federal Order IV and Federal Order II for the same plant.

21 Q. Okay. So your use of the word "base" in two adjoining  
22 sentences has a totally different meaning in one place than the  
23 other?

24 A. Thank you very much for pointing that out.

25 JUDGE CLIFTON: Now, I have to get help here. I don't



1 think you mean it differently, I think you mean the base price  
2 is for the producers and --

3 MR. SCHAD: There's two uses of the word base in that  
4 paragraph. The first one, if I -- the first one would be at  
5 the end of the sentence where it says Philadelphia marketplace  
6 for sales with different base plants.

7 JUDGE CLIFTON: Say again what it says.

8 MR. SCHAD: I'm reading sentence, "Other Class I handlers  
9 located only miles from the Lansdale Plant competed in the same  
10 Philadelphia marketplace for sales with different base prices."

11 That one I was referring to the price of milk to the  
12 processor, and I used the word base. And I did in other places  
13 it would be, it would be fully adequate. But when I used, when  
14 I go into the next sentence and I talk about base in excess at  
15 the producer level, I see the confusion that I have wrought.

16 JUDGE CLIFTON: And what do you mean as you use it in the  
17 next sentence?

18 MR. SCHAD: The next sentence I use it referring to dairy  
19 farmers who were at the time, pooled on Federal Order IV and  
20 earned a base as we spoke about when I was, I was reading this  
21 testimony.

22 JUDGE CLIFTON: Okay. So Mr. Vetne, you were just too far  
23 ahead of me. Now I think I grasp it.

24 BY MR. VETNE:

25 Q. Perhaps I can close the loop on that clarification.

1 The first time you used it in reference to handlers, you used  
2 it essentially as meaning class price, minimum class price,  
3 correct?

4 A. Yes, sir.

5 Q. And the second time you used the word base, you are  
6 essentially talking about a pool price, a distribution of the  
7 pool value to producers in the form of base and excess, sort of  
8 like quota and overbase, only on a much smaller scale?

9 A. And there are a whole lot of differences. I wouldn't  
10 even say it's sort of.

11 JUDGE CLIFTON: So before Mr. Vetne explained it,  
12 Mr. Vetne, just do the first part before you say "sort of like  
13 quota and overbase."

14 MR. VETNE: Redistribution of pool money to pool dairy  
15 farmers. Period.

16 JUDGE CLIFTON: Is that what you meant by bases?

17 MR. SCHAD: In the context of the second use of the word  
18 base, yes.

19 JUDGE CLIFTON: Thank you.

20 BY MR. VETNE:

21 Q. Exhibit 71.C.

22 A. I believed you when you told me you weren't going to be  
23 long. I have got it here. Let's see, yes, sir.

24 Q. And you may open your testimony, Exhibit 70, to page 31  
25 at the same time.

1 A. Yes, sir.

2 Q. I'm trying to do the math here. Page 31.

3 A. 31, okay.

4 Q. Let's look at page 31 first.

5 A. Yes, sir.

6 Q. You talk about the base Class I differential, the very  
7 first line of the page, page 31.

8 A. Yes, sir.

9 Q. \$1.60. And then you note in that discussion that had  
10 three components --

11 A. As cited in Federal Order Reform.

12 Q. Yes, but looking at your testimony, trying to put the  
13 pieces together. The first component is the cost of being a  
14 Grade A producer versus a manufacturing grade producer, which  
15 is 60 cents, correct?

16 A. That's estimated by the Secretary.

17 Q. Yes. And then the second one is a marketing cost of  
18 about 60 cents per hundredweight?

19 A. That's estimated by the Secretary.

20 JUDGE CLIFTON: Wait now, it's fine for you to add your  
21 explanation, but is he right about the numbers?

22 MR. SCHAD: Yes, on both sections. I'm sorry.

23 BY MR. VETNE:

24 Q. And the third one is part of the competitive premium of  
25 60 cents per hundredweight?

1 A. Yes.

2 Q. Those 60 and 60 and 60, add up to \$1.80 to me.

3 JUDGE CLIFTON: 60 and a \$1.60 and 60?

4 MR. VETNE: 60 times 3 is a \$1.80. What am I missing here?

5 JUDGE CLIFTON: I thought the middle one was \$1.60, was it  
6 not?

7 MR. VETNE: It's a total of \$1.60.

8 MR. SCHAD: John's pointing out that the base price of a  
9 \$1.60 is justified by a \$1.80 in cost. And what I think what  
10 the, I can't speak for the Secretary, but I think what he was  
11 trying to, what he often does is he doesn't compensate, he  
12 doesn't -- he compensates as a partial remuneration of an  
13 established cost. I'm using transportation credits, for  
14 instance, often there will be 80 percent of the documented  
15 cost. So that's my guess at why the Secretary gave three times  
16 .60, and yet had the base differential at \$1.60.

17 And quite frankly, I'll even go to the next step, that  
18 further justification, we're talking about the transportation  
19 credit in the proposed California Order that obviously wasn't  
20 in the Federal Order Reform Decision.

21 BY MR. VETNE:

22 Q. Would you agree -- agree with me that whenever  
23 frequently when the Secretary looks at cost base adjusters, the  
24 result is less than actual cost for the reason of encouraging  
25 market efficiencies?

1 A. Yes.

2 Q. With respect to the Grade A differential part, the 60,  
3 the first component of 60 cents, with the virtual elimination  
4 of Grade B milk, does that exist any longer?

5 A. Are you -- I think the costs are still there. And  
6 whether there's a Grade B or Grade A, you still, in order to  
7 have this market and be pooled on the Order, you have to be to  
8 Grade A and you incur certain costs.

9 Q. Okay. And you have heard that this market, let's look  
10 at California market, you are aware that there are some  
11 producers who market their milk other than as Grade A or as,  
12 California uses the term market milk producers?

13 A. I have no independent knowledge of that, but I have  
14 been told that.

15 Q. Do you have any knowledge of whether those producers  
16 have different production and quality characteristics than  
17 shown on Exhibit 71, part C?

18 A. No.

19 Q. So you don't know whether it would cost them 60 cents  
20 or zero to convert from manufacturing grade to grade?

21 A. I'm trying to list out the costs that a dairy farmer  
22 who's Grade A has to incur.

23 Q. I want to just try to understand the place that your  
24 testimony serves in the larger picture of proponents testimony.  
25 Your -- my understanding --

1 A. I think it's the 12th day.

2 Q. Correct me if I'm wrong here, I'm trying to figure this  
3 out. And my understanding is that your testimony is, in  
4 essence, the collective effort of your team, it was written by  
5 the team, correct? It wasn't written by you personally?

6 A. It was mostly written by me. When there was editing  
7 and, you know, suggestions where to place things in it, but 90  
8 percent of the words are mine.

9 Q. Okay. Reviewed by the team?

10 A. Of course.

11 Q. The position of the team?

12 A. I'm sorry?

13 Q. The position of the team?

14 A. What is the position?

15 Q. Position. Your paper represents, your statement  
16 represents the collective position of the three cooperatives?

17 MR. BESHORE: Your Honor, may I?

18 JUDGE CLIFTON: Marvin Beshore.

19 MR. BESHORE: I'm not sure what this -- Mr. Schad said up  
20 front this represents support of, he will testify in support of  
21 Sections 1051.X, Y, Z, etcetera, of the Proposal 1, which is  
22 the Cooperatives' proposal. Now, I'm not sure how much more  
23 beyond that there is to go. That's what he's testified to, to  
24 the proposal of the Cooperatives, which is obviously the  
25 proposal of the Cooperatives. He's testified to the particular

1 sections which speak for themselves in terms of what they  
2 provide. I don't know what more there is. So I object to the  
3 inquiry into, I don't know, some mental process behind or some  
4 further attempt to, you know, get behind that.

5 JUDGE CLIFTON: Mr. Vetne?

6 MR. VETNE: Mr. Beshore is not sure how much more there is,  
7 and I can assure him and you there's not much more, in fact.

8 JUDGE CLIFTON: I don't understand what you are looking for  
9 by the word position. Are you saying --

10 MR. VETNE: Mr. Beshore said it for me, and I will accept  
11 his characterization as his statement of the party, and that's  
12 fine with me.

13 JUDGE CLIFTON: Okay.

14 BY MR. VETNE:

15 Q. Okay. Your statement is not fact-specific as to  
16 California, but rather is a narration of the history of where  
17 we are, Federal Orders. How we got to this point.

18 A. And I think --

19 Q. And that's -- and that's really all of your function,  
20 is how we got to this point?

21 A. And I think I point out to California's role within  
22 that function. It wasn't done -- it wasn't done in a foreign  
23 country. California was, is part of the the national pricing  
24 grid, the Class 1. California is, their commodity prices are  
25 in the DPPSR.

1 Q. Yeah, the survey.

2 A. The survey, thank you. And also, the California's had  
3 a major impact on, California has a major impact on the make  
4 allowances to the extent that the cheese make allowances in the  
5 Federal Orders, solely from California.

6 Q. Which is really encompassed in my question to you, is  
7 where we came from and where we are now. What you are doing is  
8 elaborating on where we are now, and part of how we got here?

9 A. I think it is important to note in that California's  
10 role in that, and I tried to do that.

11 Q. It is important to isolate some parts that are more  
12 specific to your proposal?

13 A. Which happens to be a Federal Order for the state of  
14 California.

15 Q. So you're not going to talk about, it's not your  
16 function to talk about supply and demand for milk and its  
17 products in the proposed marketing area that California has a  
18 function of price, you are talking about supply and demand as a  
19 national policy as a function of price?

20 A. Yes.

21 Q. That's -- sorry. My question was compound and I don't  
22 know what the no answer is to.

23 A. Then please restate it.

24 JUDGE CLIFTON: I thought he said, yeah.

25 MR. SCHAD: And please repeat the question, if it's



1 compound, I was confused.

2 BY MR. VETNE:

3 Q. It is a compound question, my bad.

4 Your testimony is broad -- not -- is not directed to  
5 supply and demand for milk and its products within California,  
6 correct?

7 A. I would -- I'm sorry?

8 JUDGE CLIFTON: Mr. Vlahos?

9 MR. VLAHOS: Your Honor, John Vlahos. I'm going to object  
10 to this line of testimony. The testimony of Mr. Schad is what  
11 it is. To give -- Mr. Vetne is trying to get subjective here,  
12 what is the, what do you really mean? Where does it fit into  
13 the picture? The testimony is what it is. I'm going to object  
14 to further attempts by Mr. Vetne to get the witness to  
15 subjectively describe what this testimony is supposed to be. I  
16 think it is irrelevant and it's a waste of time.

17 JUDGE CLIFTON: Mr. Vetne, are you wanting to know if  
18 Mr. Schad has additional information not contained in Exhibit  
19 70 or Exhibit 71 about the flow of milk within California? Is  
20 that what you are asking about?

21 MR. VETNE: Well, maybe, I think I can answer your question  
22 and Mr. Vlahos' objection at the same time.

23 JUDGE CLIFTON: Okay.

24 MR. VETNE: Yes, I do want to know where it fits into the  
25 picture, that's why we have witnesses to advocate. And yes, I

1 do want to know what part of this, if any -- I think the answer  
2 is none -- but, if any, response to supply and demand for milk  
3 and its products within California. And if it is not here,  
4 where could we look to get it or when can we expect to hear it?  
5 If it is not in witness's testimony, the first little thing  
6 okay, it is not there, I don't have to look anymore. And if  
7 we're going to get it later, maybe he can tell me when I might  
8 hear it. But it may be in here someplace, he can point me to  
9 it. If it's not in here, my next question would be to whom  
10 should I look for that information?

11 JUDGE CLIFTON: Might not be presented by these proponents.  
12 But you may ask him, if you would like, about questions about  
13 supply and demand of milk in California in 2015 and 2014,  
14 however you want to ask him the question, you may ask if he has  
15 knowledge of that.

16 BY MR. VETNE:

17 Q. Okay. So let me ask, your testimony is not intended to  
18 inform the record about the supply and demand for milk and its  
19 products within California, correct?

20 A. The supply and demand for milk and the prices that are  
21 derivative from that are part of the national pricing grid. As  
22 as we said two, three pages ago, California's commodity prices  
23 are reported and in the National Price Survey. And  
24 California's make allowances are included in the make  
25 allowances. So the derivative prices are there. California's

1 a part of it.

2 Q. So California supply and demand for milk, contribute to  
3 Federal Order pricing outside of California? That's your, is  
4 that -- am I paraphrasing correctly?

5 A. That -- yes, that's true.

6 Q. Okay.

7 A. And the call area and appropriate for pricing within  
8 California.

9 Q. You -- okay. I think that's a good place to stop.

10 JUDGE CLIFTON: Yeah, I think that was an excellent answer.  
11 All right. Who else has questions for Mr. Schad?

12 MR. SCHAD: Just an aside, Chip, given that you are not  
13 bringing volumes of stuff, you haven't found anything on my  
14 history?

15 JUDGE CLIFTON: Normally Mr. English has two folding chairs  
16 to hold it all right here.

17 MR. SCHAD: I don't see that from the back.

18 CROSS-EXAMINATION

19 BY MR. ENGLISH:

20 Q. Let me start here. Chip English.

21 Let me start actually with a couple of questions that  
22 were not on my list but came up either because of Mr. Vetne's  
23 examination or Mr. Beshore's additional direct at the end of  
24 your written direct.

25 And I apologize if I'm retreading, I was trying to put

1 all of this together at one time. With respect to condensed  
2 milk that departs California --

3 A. Yes.

4 Q. -- and ends up in Class I plants in Federal Milk  
5 Marketing Orders, those Class I plants will end up having  
6 account for that condensed milk at Federal Order prices,  
7 correct?

8 A. I'm not sure I'm the one to answer this, but give me  
9 more.

10 Q. Well, I thought I heard some discussion with you and  
11 Mr. Vetne about movement of milk out of California?

12 A. And I was talking about bulk condensed milk at  
13 Class II.

14 Q. So you weren't talking about what happens when it goes  
15 to Class I?

16 A. No, I was not.

17 Q. All right. So with respect to the questions that  
18 Mr. Beshore asked you, effectively anticipating questions of  
19 current marketing conditions and where we are today, you gave  
20 several different answers, I don't want to say you didn't give  
21 only one, but your first answer, as I recall, was, you  
22 referenced the 2013 final rule on Class III, IV hearing,  
23 correct?

24 A. That's correct.

25 Q. Okay. And you called that as current as it gets,

1 correct?

2 A. I'm not sure I said that word, but I'd say that it is  
3 the most current, yes.

4 Q. Okay. Now, the 2013 final rule, would you agree with  
5 me that what the Secretary, first of all, that had to do with  
6 the 2007 hearing that you and I discussed during the one year  
7 of the exhibit, correct?

8 A. Yes, and let me just say up front is that, and given  
9 your questions about the Exhibit 70, for me, 2006 and 2007 just  
10 kind of blurred together.

11 Q. And I'm not going there right now.

12 A. I'm just letting you know, because you asked the  
13 question.

14 Q. If you attended both of those proceedings, I can  
15 understand why they might be a blur.

16 A. I did.

17 Q. And I get that. And that's not -- and I just -- it is  
18 a long statement, that wasn't the purpose of the the voir dire  
19 is to just clear it up for the record.

20 But now I'm going to a different place. So now I'm  
21 saying the 2013 final rule that you responded to for  
22 Mr. Beshore was basically the Secretary's final word on the  
23 hearings, extensive hearings that were held during 2007?

24 A. Yes.

25 Q. Okay. And what the Secretary did in 2013 was make

1 final one piece that the Secretary had put, intended to final  
2 in 2008, correct?

3 A. One piece?

4 Q. There were two things the Secretary did. It -- he --

5 A. In the 2008 --

6 Q. In the 2013 -- 2013 final decision, the Secretary did  
7 two things, if you will agree with me; one, the Secretary made  
8 final the Secretary's tentative final decision from 2008?

9 A. I agree.

10 Q. And as to everything else, the Secretary terminated the  
11 proceedings.

12 A. I agree.

13 Q. Thank you. So the most current thinking of the  
14 Secretary, while issued in 2013, was based upon a hearing that  
15 was held in 2007, correct?

16 A. I agree, but I would also say, especially after my  
17 colloquy with Mr. Vetne, the Secretary had the authority and  
18 power, and I believe actually 2007 was a reopening of the 2006,  
19 that's why I kind of get them blurred. So in its, we can, we,  
20 it is logical to assume that the Secretary looked at it, looked  
21 at the decision and said, "Yep, still works."

22 Q. Or the Secretary just looked at it and said, "This is  
23 just a big mess and I don't know what to do with it."

24 A. Neither of us know the Secretary's thinking.

25 Q. I want to look at a proposed exhibit, or what is

1 Exhibit 70 just not yet offered, not admitted, it's been  
2 offered, but -- and I want to go to page 6. And this is sort  
3 of to follow up on those discussions you had with Mr. Vetne and  
4 what I was just asking about. At the end of the carry-over  
5 paragraph on page 6 above the heading A, the sentence reads,  
6 "Pricing California milk production under the national class  
7 price grid is essential to extend uniform pricing to a fifth of  
8 the nation's milk production."

9 A. Yes.

10 Q. Now, as you talk about it, the California formulas  
11 factor into the Federal system, correct?

12 A. Yes.

13 Q. But even as the Secretary did that, the Secretary  
14 didn't actually have that California production regulated by  
15 the Secretary, correct?

16 A. That's correct.

17 Q. Okay. As an economist, would you agree that that could  
18 lead to a different conclusion from the Secretary if the  
19 Secretary had had the capacity or did regulate that California  
20 milk back in 1999?

21 A. Are you asking me that if he had that ability he  
22 wouldn't have used California make allowances --

23 Q. No, I'm asking --

24 A. -- extending NASS prices into California?

25 Q. No, I'm asking whether he might have come up with a

1 different decision, given the fact that such a large volume of  
2 milk would have actually then been under its regulation?

3 A. I don't believe that he would, because he included  
4 California in both the make allowances and the price survey.

5 Q. But --

6 A. -- the Commodity Price Survey.

7 Q. But nonetheless, the actual price set, minimum price  
8 setting, did not actually apply to California, correct?

9 A. Actually, I mean, look at, if you look at the quote  
10 that I have, and it talks about, we did Federal Order Reform,  
11 California you are still on the outside. If you want to come  
12 in, you come in under the provisions of Federal Order Reform.  
13 So I'm -- I would think that especially under Federal Order  
14 Reform, we, no one knew whether there would be a petition from  
15 California.

16 Q. Well, thanks for jumping to that actually. The  
17 provisions of Federal Order Reform would have included, of  
18 course, performance standards that were in existence in other  
19 Federal Orders, correct?

20 A. I don't -- I wouldn't assume that for California Order.

21 Q. Well, I guess --

22 THE COURT REPORTER: I'm sorry, I can only do one at a  
23 time, guys.

24 MR. ENGLISH: I thought he was done --

25 MR. SCHAD: And I apologize -- please go on.



1 BY MR. ENGLISH:

2 Q. All right. You just stated, quoting from the  
3 Secretary, that California, you know, would have the  
4 opportunity, which it didn't take, right?

5 A. Yes.

6 Q. Okay. For 15 years, correct? California did not ask  
7 for this for 15 years, correct?

8 A. Yes, I think the record would be clear on that.

9 Q. So I'm sorry, what page is that on in your testimony?

10 A. 35.

11 Q. Okay. Somehow folded my documents, that was the last  
12 page. So language on 35 in that last sentence is in the quote.

13 A. I would probably go to the sentence in the quote that  
14 starts with the Legislation provides.

15 Q. Right. Okay. And well, beyond that sentence there's  
16 the language you just used which is consistent with the  
17 provisions adopted for the consolidated orders.

18 A. Yes, sir.

19 Q. And the provisions of the consolidated orders would  
20 include not just the pricing provisions, but it would include  
21 the pooling provisions and the performance standards of those,  
22 correct?

23 A. Well, every order had their own pooling and  
24 qualification. I mean, it -- I don't -- if there was a  
25 proposal back then, I'm not so sure that it wouldn't address

1 the same problems that we have with forming an order around  
2 quota, which was recognized in the, in that Farm Bill.

3 Q. I guess that's the problem with all of us quoting the  
4 Secretary and then trying to impute what the Secretary meant by  
5 his sentence. You impute that, and I impute that it would be  
6 consistent with the provisions so you don't get to cherry pick,  
7 and you get, you know, the pricing provisions, and in the  
8 pricing provisions, you get the pooling provisions.

9 A. And I, as a witness, am not agreeing with you.

10 Q. On page 19, you now discuss under Paragraph C, the  
11 Heading C, and you say, "California produced 2.4 billion pounds  
12 of cheese from 60 cheese plants during 2014 according to the  
13 NASS 2014 annual report."

14 How much cheese did California produce in the 1996,  
15 say, and 1998 period on an annual basis?

16 A. I do not know.

17 Q. How much cheese plants were there in California in 1996  
18 to 1998?

19 A. I do not know.

20 Q. My next question actually is, I didn't know what you  
21 meant by it, so on page 20 in the first sentence you say, "the  
22 process of determining the manufacturing products of processing  
23 milk into butter, NFDM, cheddar cheese and whey, has been  
24 iterative." And I, you know, I love the dairy industry and I  
25 love these hearings, and I always learn something. What did

1 you mean by iterative?

2 A. Iterative process, I think it starts at one point and  
3 goes to another, and kind of builds upon itself. That's kind  
4 of the way I was using iterative in this sentence. It's kind  
5 of, you start with Federal Order Reform and, you know, the next  
6 set of hearings puts difference of a price of Class III and  
7 Class IV butterfat, and then it changes, and it goes through,  
8 so it's a process, that's what I was trying to say. And if --  
9 okay.

10 Q. Go ahead. Want to say something more? I'm not trying  
11 to cut you off.

12 A. Not today.

13 Q. So in that way, this proceeding would be iterative,  
14 correct?

15 A. Well, I think, I think in terms of what I was probably  
16 saying, all the examples I gave you were national hearings.  
17 So, no, this is not a national hearing. So I wouldn't, I  
18 wouldn't include that in the rule making for Class III, IV and  
19 which is basically the subject of my testimony.

20 Q. But this is a promulgation hearing for California, so  
21 why wouldn't it need to have its own, as you have discussed, or  
22 your own witnesses have discussed, you know, need for unique  
23 characteristics, why on the flip side of that, wouldn't you  
24 need to look at all the aspects, including the pricing?

25 A. I would -- I would -- as I have brought out before in

1 the questioning, I -- the Secretary has -- has conflicting  
2 points of view, if you will. And I -- we're here to testify  
3 and we see in a period of, over a period of time, that  
4 uniformity of Class III and IV prices, given that there is the  
5 subject continues to say, there is Class III and IV compete in  
6 the national market.

7 Q. But those prices haven't been updated, except for the  
8 most recent 2007?

9 A. They are updated every month.

10 Q. Okay. The actual formulae have not been addressed  
11 since the testimony in 2007?

12 A. The testimony in 2007 stood and was signed in 2013.

13 Q. But when the Secretary signed it in 2013, the Secretary  
14 didn't say, oh, I want to look at data for 2012, right? The  
15 record was closed, right?

16 A. He did not say that, correct.

17 Q. On page 28, you, in the between the quote and  
18 carry-over paragraph, you have a sentence, "this put Class I  
19 pricing between orders was addressed in solved in Federal Order  
20 Reform." And you have a quote for nationally coordinated  
21 Class I pricing service. And then you do acknowledge that the  
22 Secretary, on page 32, you reference the fact the Secretary did  
23 change Class 1 differentials for Orders 5, 6, and 7, correct?

24 A. That's correct.

25 Q. And are you aware there was also a hearing in the

1 Mideast that the Secretary issued at least a recommended  
2 decision to also make changes in the Mideast Class I  
3 differentials?

4 A. Actually, I'm aware of that. I was aware there was a  
5 hearing, but I didn't follow it.

6 Q. Okay. All right. And to be fair, that proceeding was  
7 ultimately terminated and no decision was issued. But that  
8 was, just putting that in since I asked the question. But  
9 nonetheless, you then have the statement below there that, you  
10 know, the marketing areas were described as deficit, and  
11 adjustments to the differentials were based on transportation  
12 cost function from the nearest supply region to the Southeast  
13 markets.

14 You then say, "none of the supply demand factors  
15 referenced in the Southeast decision are present in  
16 California."

17 A. Yes.

18 Q. What study have you done of the supply demand factors  
19 in California to make that statement?

20 A. I have not done a formal study. I would -- I would say  
21 that anecdotally we're not hearing that there's a deficit of  
22 milk in California, and I am also hearing that there is not  
23 increasing Class I demand.

24 Q. Impact is falling in Class I demand?

25 A. I think the numbers that we used for the 12.5 in my

1 supplemental direct there, probably about the same over those  
2 three years, but within that 12, 13 to 12.5, 12.2.

3 Q. Well, now you are using a utilization percentage. How  
4 about absolute numbers of Class I. Isn't it true that absolute  
5 sales of Class I are down?

6 A. I don't know the answer to that question.

7 Q. So if the Secretary can, and did, make adjustments to  
8 the national price surface in an existing set of Orders, 5, 6  
9 and 7, why shouldn't the Secretary look at supply and demand  
10 factors in California for setting Class I prices for an order  
11 that doesn't yet exist?

12 A. We're arguing for the uniformity of the, that the  
13 current pricing grid, and I believe that we would also argue  
14 that if there was a change, it should be done at a national  
15 hearing.

16 Q. And ironically, are you aware that those are sort of  
17 the reverse arguments that were made in the Southeast, that I  
18 was representing proprietaries in the Southeast who made the  
19 argument that it should be done at a national hearing, and that  
20 we were violating, the Southeast changes would violate the  
21 national price surface, and the Cooperatives made the opposite  
22 argument that no, no, the special supply and demand conditions  
23 in the Southeast weren't a departure from the National Price  
24 Surface?

25 A. And I'll graciously take the halo effect from your

1 reason and argument.

2 Q. So you would agree that's the case, that was -- the  
3 Secretary rejected my argument, didn't he?

4 A. I guess. And I only read the final decision. I -- I  
5 can't really speak to all the testimony. But reading, a  
6 cursory view and reading of the final decision, you know, led  
7 me to the point that I brought up.

8 I'd also note that in also reading that final decision,  
9 there was, there was talk about the need to have the Southeast  
10 orders in the Class I differentials be in relative alignment  
11 with their outside Federal Orders, with their bordering Federal  
12 Orders, so --

13 Q. But nonetheless, those changed relationships, didn't  
14 it? I mean, to the extent there were plants in the Mideast to  
15 a proceeding having reference that you say you know nothing  
16 about, if you went back and looked at it, it could very well be  
17 the argument the co-ops made was, now we're out of alignment,  
18 and we need to get back in alignment.

19 A. I can't answer that question.

20 Q. So if it's perfectly fine to look at current supply and  
21 demand factors to raise prices in the Southeast, but it's not  
22 perfectly fine to look at supply and demand factors for maybe  
23 lowering them in California?

24 A. I -- I wasn't -- my Land O'Lakes wasn't a party at that  
25 hearing, so --

1 Q. On page 5 of your testimony, in that paragraph that  
2 you, with Mr. Beshore, added some language that had been  
3 omitted, you referenced adopting the identical provisions for,  
4 among other things, shrinkage, correct?

5 A. Yes. Sections 43 and 44 -- excuse me, Marvin, could  
6 you bring up my water -- thank you.

7 I answered your question.

8 MR. CARMAN: Your Honor, the court reporter needs a break.

9 JUDGE CLIFTON: Good for her. 3:20. Let's take 15  
10 minutes. Please be back at 3:35 ready to go.

11 (Whereupon, a break was taken.)

12 JUDGE CLIFTON: We're back on record at 3:44. Mr. English,  
13 you may resume your cross-examination of Mr. Schad.

14 BY MR. ENGLISH:

15 Q. Chip English. Thank you, your Honor.

16 So, Mr. Schad, on page 27 in part 4 --

17 A. Yes.

18 Q. -- you reference in your testimony the national price  
19 established in Federal Order Reform for Class II. Have you or  
20 any of the other proponent Cooperatives to your knowledge, done  
21 any studies for this proceeding of data subsequent to Federal  
22 Order Reform with respect to the conversion factor that's used  
23 by USDA of 70 cents?

24 A. If you are asking if Land O'Lakes, or to my knowledge,  
25 another Cooperative, which they can answer for themselves, have



1 done any studies relative to the 70 cents, I can speak for  
2 Land O'Lakes and say no.

3 Q. Okay. And we have discussed the Class I surface, other  
4 than whatever testimony a proponent Cooperative is here with  
5 Land O'Lakes has given with respect to, of Mideast or the  
6 Southeast orders, have Land O'Lakes, or to your knowledge, any  
7 of the Cooperatives done any study of what the National Price  
8 Surface would look like post-1999?

9 A. Land O'Lakes has done no such survey.

10 Q. Are you aware of any such studies?

11 A. Am I aware of --

12 Q. Any such studies about spatial analysis for studies for  
13 Class I?

14 A. I had heard that Cornell had done something for USDA,  
15 and that I never saw the results. Cornell, was more like  
16 Cornell was in the process, is always in the process.

17 Q. Did you attend the -- you have been here for most the  
18 hearing, correct?

19 A. I have been -- I missed the first four days, and I have  
20 been in -- I have attended the meeting, I have been out of the  
21 room whatever times, but, yes.

22 Q. Were you here when I asked Mr. Hollon about the annual  
23 economist workshop in Chicago in 2011?

24 A. Yes.

25 Q. Did you attend that annual workshop in Chicago in 2011?

1 A. I believe I did. I did not -- I did not attend all of  
2 them, but I believe I attended one in Chicago. I think it was  
3 outside, and near an airport, and --

4 Q. Well, that's any dairy meeting in Chicago, right?

5 A. Like Federal Order, they blur together.

6 Q. Did you peruse the Exhibit 30, it's not been admitted,  
7 did you peruse that when it was discussed two weeks ago?

8 A. Yes, I did.

9 Q. Did you recognize it?

10 A. No, I didn't.

11 Q. Okay. Turning now to manufacturing prices, what  
12 analysis has Land O'Lakes done, if any, what analysis, if any,  
13 has Land O'Lakes done, or to your knowledge the other proponent  
14 Cooperatives, to show that manufacturing plants in California  
15 can pay the Federal Milk Order prices that you propose for a  
16 California order?

17 A. I think, I mean, that comes to the testimony, I think  
18 that points to the testimony the Department gave on market  
19 clearing prices. I wasn't here for that. I got to read the  
20 transcripts, and I was -- I was impressed by the eloquence that  
21 the market clearing prices are built into the formula prices  
22 because of the, based on the actual commodity prices that the  
23 class prices are based on the actual commodity prices that are,  
24 that plants sell their products.

25 Q. On a national level. The national market clearing,

1 correct?

2 A. She said yes, national market clearing. And again,  
3 every area contributes to that, to those national clearing  
4 prices.

5 Q. Her testimony was not that it was market clearing, it  
6 was California specific, correct?

7 A. I didn't read close enough. I can't answer that  
8 question.

9 Q. So there's been, you were also here for the testimony  
10 of Dr. Erba, correct?

11 A. Less of his than other folks.

12 Q. Were you here when Mr. Vetne cross-examined him and  
13 asked him about his testimony that is now Exhibit 53, you are  
14 welcome to have a copy of that, from May of 2013, CDFA?

15 A. I probably was in the room.

16 Q. And in that testimony, Mr. Vetne had read into the  
17 record by Dr. Erba, I believe, but maybe Mr. Vetne didn't and  
18 Dr. Erba said it was his statement -- on page 55 and 56 of  
19 Exhibit 53, a reference to the study conducted by  
20 Mark Stephenson and Chuck Nicholson, do you recall that?

21 A. Not specifically.

22 Q. Do you recall Dr. Erba testified that that study  
23 revealed that prices for milk used for cheese ought to be 70  
24 cents less than the Federal price?

25 MR. BESHORE: Your Honor, I don't think there's any "ought

1 to" in the quote that he's attributing to Dr. Erba. In fact,  
2 I'm certain there's no "ought to" in the quote, and therefore,  
3 I object to it.

4 MR. SCHAD: I think it is best that you ask Dr. Erba the  
5 questions. I didn't author it.

6 MR. ENGLISH: Well, But you have seen the study, haven't  
7 you?

8 MR. SCHAD: Have I seen the study?

9 BY MR. ENGLISH:

10 Q. The study that Mark Stephenson did and Chuck Nicholson?

11 A. I have seen -- I have seen -- I don't know whether I  
12 have seen the study that is referred to in your quote.

13 Q. Okay. This is the study that Cooperatives, according  
14 to Dr. Erba, Dairy Farmers of America, Land O'Lakes, and CDI  
15 co-funded, the study conducted by Doctors Mark Stephenson and  
16 Chuck Nicholson.

17 A. I saw a study that would have been co-funded, but the  
18 study I saw was a work in progress. I remember being on a, on  
19 a call and asking questions.

20 Q. Okay. So I'm going to read from page 56, lines 1  
21 through 4, if only because Mr. Beshore questioned my voracity  
22 as to what the quote is. "The level of a differential is about  
23 70 cents --"

24 JUDGE CLIFTON: Just a minute, let me stop you. Would you  
25 back up, and would you go to page 55, and begin to read about

1 five lines up, "the study," if you would start there, and I'm  
2 going to hand my copy to the witness so he can follow along  
3 with you.

4 MR. ENGLISH: Fine. I offered that earlier.

5 JUDGE CLIFTON: I understand. I'm going to make the  
6 witness take this.

7 BY MR. ENGLISH:

8 Q. So you asked, your Honor, that we start at -- this is  
9 Exhibit 53, Dr. Erba's testimony to CDFA on May 2013, page 55,  
10 and I'm going to start on line 21, just after Chuck Nicholson,  
11 and I'm going to read over onto page 56, through at least part,  
12 line 4.

13 "The study identified the large Class 4b, Class III  
14 price spread as being problematic and suggested that a  
15 manufacturing differential on the Class III price could resolve  
16 the problem of higher milk prices, while simultaneously  
17 encouraging pool participation by cheese plants. The level of  
18 the differential is about 70 cents per hundredweight. In other  
19 words, the study suggested that the California price for milk  
20 used for cheese ought to be 70 cents per hundredweight less  
21 than the Federal price."

22 MR. BESHORE: What page are you on, Chip?

23 MR. ENGLISH: That was on page 56.

24 BY MR. ENGLISH:

25 Q. Are you saying you don't recall that part of the study?

1       A. Yes. The part of the study that I was concerned with  
2 was doing comparisons of pool California prices under Federal  
3 Order, and so that was the part of the study that I was looking  
4 at.

5       Q. But given the fact that the Cooperatives are supporting  
6 mandatory pooling, and your own study as testified by Dr. Erba,  
7 suggests that there ought to be a difference of 70 cents  
8 between the Federal Order price and California price, what  
9 analysis do you have in the face of that that the manufacture  
10 of, the cheese manufacturing plants in California can pay the  
11 mandatory prices that your proposal would require?

12       A. Again, well, we go back to the Secretary has over and  
13 over again stressed the need for a National Price Surface, and  
14 then we go back to the way the formulas are derived. They come  
15 from a lot of current sales of cheese, butter, powder and whey.  
16 And that's that's my answer.

17       Q. But that's your explanation. The answer is, no, you  
18 have not done an analysis, an actual analysis, other than what  
19 you just said the Secretary's statement is, about how those  
20 plants could pay that in the face of your own study that we  
21 don't have on the record, that establishes that the price ought  
22 to be 70 cents less?

23       MR. BESHORE: Well --

24       MR. ENGLISH: May I have an answer to the question?

25       MR. BESHORE: Well, may I object to the question?

1 JUDGE CLIFTON: Yes. Let me hear the objection.

2 MR. BESHORE: Well, the objection is that it is a  
3 truncation of the Erba testimony, including the "ought to"  
4 sentence, which I agree the words are there, but, you know.

5 JUDGE CLIFTON: The objection is noted. Nevertheless, the  
6 witness may answer. And the question to you is, Mr. Schad,  
7 have you done an analysis?

8 MR. SCHAD: The answer is no.

9 MR. ENGLISH: Thank you.

10 JUDGE CLIFTON: And has Land O'Lakes done one?

11 MR. SCHAD: To my knowledge, no. But that's not to say  
12 they didn't do it.

13 JUDGE CLIFTON: And are you aware of any other analysis  
14 done by the other Cooperatives?

15 MR. SCHAD: No.

16 MR. ENGLISH: Thank you, Judge Clifton, you did it much  
17 better than I could. I don't have any other questions.

18 JUDGE CLIFTON: Who else has questions for Mr. Schad?

19 CROSS-EXAMINATION

20 BY MS. TAYLOR:

21 Q. Good afternoon. Erin Taylor with USDA. Hi, Mr. Schad.

22 A. How are you?

23 Q. Good. How are you?

24 A. I'm well.

25 Q. Hopefully I'm the last person standing between you and

1 getting off the stand.

2 A. I hope so.

3 Q. I want to -- maybe you won't be that lucky. I want to  
4 add one clarifying thing first for you to consider when you  
5 come back in the morning to make whatever corrections that you  
6 all need to do in your statement.

7 On page 31 in regarding the base differential. The  
8 first full paragraph.

9 A. Please, I'm getting there.

10 Q. Sorry.

11 A. Gotcha.

12 Q. And this is in response to some of Mr. Vetne's  
13 questions that the 60 cents times three equals \$1.80, not the  
14 \$1.60 minimum?

15 A. That's correct.

16 Q. So I, if you look back on the Federal Register cite  
17 that you give the page before, page 4908, I would suggest that  
18 on that page it talks about the part of the differential  
19 regarding maintaining Grade A status.

20 A. Uh-huh.

21 Q. And I would suggest to you that on that page it talks  
22 about the differential being 40 cents, which would make your 60  
23 cents, plus 60 cents, plus 40 cents, equal \$1.60. So you all  
24 can look at that this evening and come back and decide whether  
25 you agree.



1 A. Thank you.

2 Q. Okay. But on that same page, getting into your  
3 justification of why the differentials that are currently in  
4 California on the national pricing grid sheets should be  
5 adopted by California if they come in the Federal Order system,  
6 the \$1.60, it is your, or the Cooperatives justification that  
7 the \$1.60 is appropriate as your base differential because  
8 California was used as a pricing point I think is how you  
9 termed it.

10 A. Correct. There is isn't \$1.60 basing point in  
11 California. Class I differential.

12 Q. Okay. And on the next page, page 32, you talk about,  
13 the California Order should adopt the Federal Order Class I  
14 pricing formula and differentials. And the bottom part of that  
15 first paragraph you talk about "an increased California Class I  
16 price would not change the National Class 1 price grid, and  
17 would only affect California counties. However, a decreased  
18 California Class I price may encourage exports of California  
19 milk, and would provide an inappropriate price advantage in  
20 moving packaged milk into adjoining Federal Orders."

21 Could you expand on that statement and explain why that  
22 would have, would occur, in your opinion?

23 A. Right. If the Department decided to increase, which is  
24 not our proposal, the Class I differential inside California,  
25 we don't believe that it would have any effect of milk from

1 outside of the state coming in. However, if it's decreased and  
2 the price of milk is less, then we believe that there would be  
3 an opportunity for California milk to cross the state line and  
4 be sold in adjoining Federal Order territories, marking areas.

5 Q. Packaged milk sold?

6 A. Yes.

7 Q. I want to go skip to page 36, and you talked about the  
8 somatic cell adjustment, which you guys are not proposing there  
9 be a somatic cell adjustment. And you cite that there's  
10 currently two Federal Orders that don't have an adjustment, and  
11 you give their relative Class III and IV utilizations and  
12 compare that to California class utilizations.

13 Can you just expand on why that is your reason for not  
14 asking? I just would like the record to have a little more  
15 expansion on why the Cooperatives feel that an adjustment is  
16 not necessary for California Federal Order?

17 A. It's, you know, we believe it's by option, at least  
18 when we were within Federal Order Reform and Federal Order and  
19 writing our input into the different committees as Association  
20 of Dairy Cooperatives Northeast, we asked if Federal Order I  
21 not have a somatic cell adjuster. So we understood that it is  
22 at the option of the dairy farmers whether there would be or  
23 would be or not. And we just believe that it is, it's  
24 something that we would, if it's to be done at all, it would  
25 be, we would rather it be done outside of the pool.

1 Q. Okay. And I want to then turn to the previous page 35.  
2 And in that you kind of broadly give, as Mr. Vetne eluded, a  
3 lot of your testimony talks about how we got to where we are in  
4 the Federal Order pricing. And you explain how California, all  
5 along in your opinion, has had a role in Federal Order pricing  
6 despite not being part of the Federal Order system. So I  
7 wanted you to expand a little bit. And I know Mr. Hollon has  
8 testified about why it's appropriate you all think to have  
9 current Federal Order prices in California, but that was his  
10 testimony.

11 And since you are talking about the actual prices, I  
12 kind of want to close that loop for the record, and why you all  
13 feel these class prices, what is the problem that you have now  
14 with the prices you see in California, and why these prices are  
15 then appropriate.

16 A. Well, the prices in California are lower than the  
17 adjoining Federal Orders, and I'm talking about class prices,  
18 which becomes a problem for those Federal Orders. And we see,  
19 as Mr. Hollon testified and as I testified to Mr. Vetne, we see  
20 disruptions from the class price side going as far as the East  
21 Coast of products that you wouldn't expect competing in a  
22 Pennsylvania market. Just as if we wouldn't expect Cabot  
23 cheese from Mr. Vetne's part of the world, strongly competing  
24 in this market, there's geographic. So I think there's a  
25 disruption in the class price grid, a lack of uniformity, which

1 I think leads to characterizations of disorderly marketing, and  
2 at the same time, the dairy farmer side, which is very, very  
3 important. A difference in prices. We have had multiple  
4 testimonies of dairy farmers who have farms inside Federal  
5 Orders and also inside California, and their disparate prices  
6 for milk. And that, we believe, is an unfairness that  
7 California bears, and their ability to compete with the rest of  
8 the country for resources.

9 Q. And would, to say it a little differently, you can tell  
10 me whether you would agree with this statement then, that the  
11 Federal Order prices more, I don't want to put words in your  
12 mouth, but somehow more appropriately value farmer milk for its  
13 components. And I'm speaking specifically to whey, since  
14 there's been a lot of conversation, obviously in the Class III  
15 price and the value of whey in it, that it better returns, not  
16 better, but it returns a more appropriate value for whey to the  
17 California producer than what you think happens currently under  
18 CDFA price formulas?

19 A. I would fully agree with that statement.

20 Q. And it's your opinion that the make allowances and  
21 yields in the Federal Order formulas are appropriate for the  
22 California, for proposed California Federal Order because  
23 California was factored into both makes and yields when the  
24 Secretary has decided that it was over many iterations?

25 A. Yes.

1 Q. I think that's it. Thank you very much.

2 A. Okay.

3 JUDGE CLIFTON: Is there any other cross-examination before  
4 I invite redirect?

5 CROSS-EXAMINATION

6 BY DR. SCHIEK:

7 Q. William Schiek.

8 Good afternoon, Mr. Schad. How are you?

9 A. I'm well, how are you?

10 Q. You will be better in a few minutes, right?

11 A. Hopefully in a few minutes.

12 Q. I just have a couple of questions. Actually, I think  
13 it's starts on page 7 of your statement, Exhibit 70. It is,  
14 the first question I have has to do with the use of the  
15 Minnesota-Wisconsin series, your discussion of the  
16 Minnesota-Wisconsin price series. In terms of using that as  
17 the basis for pricing in Federal Orders prior to Federal Order  
18 Reform, in your research on the background of pricing, what was  
19 the reason the Minnesota-Wisconsin prices were chosen as the  
20 basis for pricing as opposed to some other region of the  
21 country?

22 A. My understanding was that the proliferation of Grade B  
23 farmers and Grade B farmers could only go to manufacturing, and  
24 manufacturing was defined as all uses other than Class I. So  
25 it provided a laboratory, if you will, for competitive pricing

1 for milk that had only had the alternative of manufactured use.

2 Q. Okay. So these were Grade B farmers, there were more  
3 Grade B farmers there than other parts of the country; is that  
4 the thinking?

5 A. I don't know that to be true, but I believe I pointed  
6 out that there were quite a few, originally.

7 Q. Right. Okay. So my question is on the discussion of  
8 the value of whey being implicitly embodied in the M-W. Do you  
9 have any sense in your research, of how many of surveyed cheese  
10 plants were doing anything with their whey, whether they had  
11 processed value for their whey?

12 A. No, but -- and I tried to bring out implicitly. If it  
13 was a cost, then it would be that the cheese makers would have  
14 less money to pay the farmers in that competitive system. If  
15 there was a -- if they had a processing where they had a  
16 positive value, then they were able to pay something. So it  
17 would, the point was this competitive price --

18 Q. Right.

19 A. -- theoretically brought in the cost and the values.

20 Q. Okay. So if they were losing money disposing of whey,  
21 that also would have been captured in the valuation of the M-W  
22 price?

23 A. Yes.

24 Q. Okay. What about in the current formula, people are  
25 losing money on whey, does that get captured in the calculation

1 of price?

2 A. Well, we are not in a competitive price environment  
3 anymore.

4 Q. So the answer is --

5 A. We have to move away from that. But I think that since  
6 we're in a formula pricing, an end product formula, end pricing  
7 environment, I think the question that we would have to ask is  
8 that if someone is losing money on whey, or what product are  
9 they making? Because it all rolls together. It's cheddar  
10 cheese, the make allowance on cheddar cheese, and the cost of  
11 cheddar cheese, and whey as part of the Class III price. So if  
12 you -- if you go into the current environment of California  
13 Federal Orders, we don't think that you have the apples and  
14 apples comparison anymore.

15 Q. Okay. But my question was, for plants that are losing  
16 money on whey right now, does the formula take that into  
17 account?

18 A. The -- no. It assumes that there's a positive value.

19 Q. Right. Okay. Thank you.

20 JUDGE CLIFTON: Who else has cross-examination for  
21 Mr. Schad? There is no one. Mr. Beshore?

22 MR. SCHAD: We could end this here, Marvin.

23 REDIRECT EXAMINATION

24 BY MR. BESHORE:

25 Q. We will very shortly.

1 Marvin Beshore. And just a couple of questions on  
2 redirect, Dennis.

3 First of all, let's talk about the \$1.60 base Class I  
4 differential. And you provided, I guess I have lost a page,  
5 you provided in your testimony, several factors that support  
6 the \$1.60 testimony, and we'll look at Federal Register that  
7 Ms. Taylor has called our attention to with respect to  
8 quantification of the representative of the cost of, well, at  
9 those pages in the Federal Register. My question is, did you  
10 provide, you know, support for factors that add up to more than  
11 \$1.60 regardless of whether that is 60 cents versus 40 cents in  
12 the one segment?

13 A. Yes.

14 Q. Okay. So, and assume that's 40 cents, just break that  
15 down and tell us, you know, what the total was that you support  
16 and why you think it's greater than \$1.60 and therefore  
17 supports at least \$1.60?

18 A. Well, 40 cents, plus 60 cents, plus 60 cents, and then  
19 the question of, you know, at my quantification of the, of the  
20 transportation credit is between 60 and 72. So that's, let's  
21 go at 66. So you are at, you know, \$2.26. So my intent was to  
22 over prove the \$1.60 and show that it's a conservative number.

23 Q. So there's at least enough cost justification there to  
24 support the \$1.60, which is what we're proposing in  
25 Proposal Number 1?



1 A. Yes, as proposed in Proposal Number 1.

2 Q. Now, with respect to the choice not to propose a  
3 somatic cell adjuster in our proposed California Order, would  
4 you agree -- I'm not finding the right page there, but in any  
5 event --

6 A. It is the last page there.

7 Q. It is page 36, okay. So you cited the other orders,  
8 the other MCP orders which do not use a somatic cell adjuster,  
9 and noted their utilizations with respect to California. Is  
10 it -- isn't it correct that one of the factors in all those, in  
11 all those orders and in California is the high utilization of  
12 nonfat dry milk in particular?

13 A. Yes.

14 Q. And nonfat in somatic cell is much less of a factor in  
15 the yield of nonfat dry milk than in the yield for cheese,  
16 correct?

17 A. That's correct.

18 Q. And to your knowledge, as a participant in one of those  
19 orders and a student of these hearings, is the fact that  
20 somatic cell is not a big issue with nonfat dry milk  
21 utilization, one of the factors that goes into the choice of  
22 whether to have it in the Order or not?

23 A. That's correct.

24 Q. Okay. Now, in response to Mr. Schiek's question, I  
25 think it was, one of his questions, you characterized or you

1 described the transition from the M-W price to the end product  
2 formula prices as coming off a competitive price onto some  
3 other price.

4 A. As a method to determine class prices.

5 Q. Okay. And my question --

6 A. Methodology to use.

7 Q. I just want to clarify and understand your use of the  
8 word competitive in that context. By using competitive there,  
9 you are talking about not moving from a competitive producer  
10 pay price formula?

11 A. Yes.

12 Q. As opposed to, you are not saying that those markets  
13 were competitive, and the markets that we're using for prices  
14 in the end product formulas are not competitive?

15 A. No, the M-W has always been characterized as a  
16 competitive market where buyers and sellers freely negotiate  
17 the price of milk, not the price of components.

18 Q. And it was unregulated?

19 A. And it was completely unregulated.

20 Q. And so the end product, the markets for the  
21 commodities, dairy product commodities, that are the starting  
22 point for the Class III and IV in effect, all the prices in the  
23 system now. Those are unregulated markets, correct?

24 A. That's true.

25 Q. Okay. And as you have testified, they are, those

1 prices are determined by supply and demand, the end product  
2 price is determined by supply and demand?

3 A. That's true.

4 Q. And prices used in the Federal Order formulas are, by  
5 economic fact, market clearing prices for those commodities?

6 A. That's true.

7 Q. I think I have just one other question. And this  
8 relates to the issue of whether there's any evidence to show  
9 that California cheese plants or manufacturing plants generally  
10 could afford to pay Federal Order prices. You've been asked  
11 that a couple different ways. Do you recall that?

12 A. Uh-huh.

13 Q. Yes? And I think you were clear, you were specifically  
14 asked, did Land O'Lakes do any study to determine whether  
15 California manufacturers could pay Federal Order prices, and  
16 you said, no, you didn't do any study, correct?

17 A. That's true.

18 Q. Okay. Setting aside whether you have done a "study"  
19 have you, in your professional, in your job with Land O'Lakes,  
20 and as a student of dairy markets, observed, in fact, that  
21 manufacturers of milk in your personal area and throughout the  
22 Federal Order system, do, in fact, pay Federal Order prices and  
23 more for milk from manufacturers?

24 A. Yes.

25 Q. Would that not be something of a "study" suggesting

1 that plants in California might also be able to pay those  
2 prices?

3 A. Yes.

4 Q. And if, as we heard today, plants in Minnesota to pay  
5 their, to pay a dairy farmer for the same components, the same  
6 month, \$3.25 to \$3.75 more per hundredweight for milk than  
7 manufacturers in California, than buyers in California are  
8 required to pay, is that some evidence that there might be an  
9 ability of plants in California to pay the same, sort of close  
10 to the same levels?

11 A. Yes.

12 Q. Thank you. That's all I have.

13 JUDGE CLIFTON: I don't want to open up a whole new area.  
14 As you know, Mr. Schad, I'm the least abreast of all these milk  
15 marketing issues. But when you have a factor that is a fixed  
16 price and no suggestion for how it might be adjusted over time,  
17 does that present any difficulty in a Federal Milk Marketing  
18 Order?

19 MR. SCHAD: I think the only fixed price that would be in a  
20 Milk Marketing Order would be the make allowance, that would be  
21 the cost to convert milk from producers into the commodity that  
22 is sold.

23 JUDGE CLIFTON: All right. And in your experience, does  
24 that need adjusting from time to time or are there enough  
25 variables in the formula that it can stay fixed without

1 problem?

2 MR. SCHAD: Here we are from 2000 to 2015, I would, we  
3 were, just off the top of my head, I would say the make  
4 allowances have changed three times.

5 JUDGE CLIFTON: Oh. And does it require a hearing to do  
6 that?

7 MR. SCHAD: It was done at a national hearing every time.

8 JUDGE CLIFTON: Is there bay to have a, some kind of an  
9 adjustment factor built in?

10 MR. SCHAD: We, as we in the last hearing, National Milk  
11 Producers Federation, which Land O'Lakes supported, introduced  
12 and it proposed that there would be an adjuster for energy into  
13 the make allowances, and that if I remember correctly, it  
14 depends on the product, that could be 25 to 50 percent of the  
15 total cost of the make allowance, depending on whether you are  
16 drying milk or making cheese with the electricity.

17 JUDGE CLIFTON: And as you have pointed out in your  
18 testimony, the Secretary rejected that?

19 MR. SCHAD: It terminated the, it terminated that proposal.

20 JUDGE CLIFTON: All right. All right. And in your  
21 proposal there are no suggestions for an up or down adjustment  
22 to any fixed portions?

23 MR. SCHAD: That's correct. In our proposal there are  
24 none. We proposed that California Federal Order adopt the  
25 uniform prices as I started off in Section 1000.50.

1 JUDGE CLIFTON: All right. Who else has questions for  
2 Mr. Schad? There are none. Oh, yes.

3 RECROSS-EXAMINATION

4 BY MS. TAYLOR:

5 Q. This is Erin Taylor with USDA.

6 In your conversation with Mr. Beshore about the base  
7 differential, and kind of made me think that maybe the record  
8 needs to be a little more clear --

9 A. Okay.

10 Q. -- on your justification for your \$1.60. So when I  
11 turn to page 31, and we talk about the first part of that on  
12 maintaining Grade A status, and I know it is either 60 cents or  
13 40 cents. Your adjusting -- it is the Cooperatives' opinion  
14 that that whatever it is, 60 cents or 40 cents, is justified  
15 because the cost back in 1999 justified that amount. And it's  
16 your opinion that those costs are even greater now. So that is  
17 at least that base number?

18 A. Those costs are at least 40 cents.

19 Q. Okay. And same thing for marketing costs?

20 A. I would think that also the marketing costs as well.

21 Q. And when it comes to -- and part of that marketing  
22 cost, if you look in the quote that you added from the  
23 Secretary, it talks about transportation costs. And that is  
24 part of your final paragraph there that goes onto the next page  
25 that talks about the 60 cents, that that's what, if I remember

1 you earlier saying, 60 cents is what -- my notes say, is what  
2 would the charge would need to be if the transportation pool  
3 was only funded through Class I milk. Am I getting this right?

4 A. If the cost of transportation in the transportation  
5 credit, which you saw in our proposal, as well as you will hear  
6 more about it, if that -- we believe that will cost 9 cents a  
7 hundredweight across the pool. So if you allocate that  
8 directly to Class I, it will come to a number of 60 to 72 cents  
9 depending on what your Class I allocation is.

10 Q. And so the next step is in that cost is another reason  
11 to think why the transportation factor and the base  
12 differential is more than what we accounted for in 1999?

13 A. Yes.

14 Q. And the same thing with the third piece of that, which  
15 is the competition for milk with processors of manufacturing  
16 milk?

17 A. Yes, yes.

18 Q. Okay. That's all.

19 JUDGE CLIFTON: Are there any other questions for  
20 Mr. Schad? There are none.

21 Mr. Schad, you may step down, although we expect to  
22 call you again tomorrow morning with regard to technical  
23 corrections.

24 MR. SCHAD: Thank you very much.

25 JUDGE CLIFTON: You're welcome. Thank you. Mr. Beshore,

1 we're fortunate that we still have more than a half hour.

2 MR. BESHORE: Well, there's fortune in the other side of  
3 the coin. Our next witness is Mr. Hollon. He is not here.  
4 He's still involved in the production of his testimony of  
5 transportation credit system, which is the topic of that  
6 presentation. So we are not able to go forward with that at  
7 this time because he's not here, and that means it's not quite  
8 ready yet.

9 JUDGE CLIFTON: All right. Well, let's use this time for a  
10 preview of what you have left.

11 Now, I think you have done admirably. This is Day 16  
12 of the hearing and you have never run out of evidence so that's  
13 wonderful. So what else do you have?

14 MR. BESHORE: We actually have two statements by  
15 Mr. Hollon, the transportation is the larger piece, and it's a  
16 dense piece in terms of data. And then he has an additional  
17 wrap up statement that touches on the producer-handler  
18 qualification. He'll also bring in 20A at that time, which is  
19 a lose end from the beginning. And Section 76 he'll also  
20 address in that presentation. And that, other than the  
21 possibility of additional dairy farmers being present at some  
22 point in the hearing, I don't know if they will be here  
23 tomorrow or not, but I was just informed today that there are  
24 several additional dairy farmers interested in testifying. May  
25 be here tomorrow or, and/or may be here Monday. Those are all



1 our affirmative witnesses in support of our case.

2 JUDGE CLIFTON: All right. Now, I know it's impossible to  
3 guess how long anything will take, but when do you think you  
4 will finish? In other words, the first question is, do you  
5 think you will finish tomorrow? Although, of course the dairy  
6 farmer can testify at any time.

7 MR. BESHORE: Right.

8 JUDGE CLIFTON: And if that's not likely, then give me a  
9 guess about next week, if you will.

10 MR. BESHORE: Well, my best guess is that I don't think  
11 we'll finish tomorrow. But my guessing is a big wild card  
12 variable, of course there is the cross-examination, which I am  
13 really bad at predicting. But the testimony, the statement on  
14 transportation is, I'm not sure. At least 20 pages and there  
15 are 20 tables of charts of data. That's going to take a little  
16 while to present in direct, and cross I don't know.

17 The second piece of producer-handler and the other  
18 loose ends is, you know, is much, much shorter. My best guess  
19 is we're not going to get those things done tomorrow, and that  
20 they would be carrying over until next week, Monday.

21 JUDGE CLIFTON: Is it possible that before Monday is ended  
22 you will have completed the presentation primarily of your case  
23 in chief?

24 MR. BESHORE: I think that's very possible, quite likely,  
25 my best guess.

1 JUDGE CLIFTON: All right. Then, Mr. English, would you  
2 come to the podium and talk to us a little bit about what you  
3 see for tomorrow and Monday and the remainder of next week?

4 MR. ENGLISH: Chip English. Thank you, your Honor.

5 And obviously we have been in some communication with  
6 Mr. Beshore and Mr. Vlahos, and discussing these. We would be  
7 prepared to start Monday morning, start Monday morning with  
8 Dr. Schiek as the first witness talking about topic one, which  
9 is 4b marketing.

10 If Mr. Beshore's guess is wrong, I don't think we're  
11 going to go tomorrow, only because we have been trying to get  
12 it ready. We would be ready to start Monday morning.  
13 Obviously, if he's still going with the cost on Monday morning,  
14 we will adjust to that.

15 I don't have a whole roadmap yet that I will give when  
16 we start, but I think I indicated last Friday before noon that  
17 we do have a number of witnesses obviously dairy farmers always  
18 have the right of way. Assuming things work out, we have a  
19 number of witnesses who are looking to get on the stand next  
20 week, and so we may end up chopping things up a little bit. We  
21 don't want to, but we do have other witnesses obviously to  
22 discuss disorderly marketing. Then we do anticipate probably  
23 taking someone out of order, the issue of shrinkage in extended  
24 shelf life. And we have at least three witnesses, I think  
25 maybe not more than three witness, to discuss that issue, who

1 could be able to start mid-afternoon Tuesday and mostly need to  
2 get done by close of business Wednesday.

3 And then we expect some other witnesses later in the  
4 week, but we will be prepared to go forward starting Monday  
5 morning. And if we need to postpone it, obviously Mr. Beshore  
6 we're not going to say we have to start Monday morning.

7 MR. BESHORE: And I'm interested in who the other witnesses  
8 relating to topic one, orderly marketing, might be besides  
9 Dr. Schiek. I heard an elusion to a couple.

10 MR. ENGLISH: We didn't have names attached to anything,  
11 and I will on Monday try to give you a roadmap with, you know,  
12 with a number of witnesses. I think you can expect that there  
13 will be cheese manufacturers, I think you can expect there will  
14 be Class I processors to talk about the subject. But we will  
15 certainly, along lines that you did, I will try to provide an  
16 outline of the number of witnesses on topics and their topic  
17 areas. But you didn't give us names, and I don't propose to  
18 give you names.

19 JUDGE CLIFTON: Oh, it's going to be so hard to dig up  
20 their prior testimony.

21 MR. ENGLISH: Ours will be consistent.

22 JUDGE CLIFTON: Now, the other thing we need to be thinking  
23 about is the fact that next Thursday and Friday we are in a  
24 different location. So just remember that. And be remembering  
25 to tell your witnesses that. We expect to be, next Thursday

1 and Friday, which are October 22 and 23, at the Picadilly Inn  
2 at the Airport. All right. Are there any other announcements  
3 before we close for today? There are none. We go off record  
4 at 4:34 p.m.

5 (Whereupon, the evening recess was taken.)

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I am the reporter that stenographically recorded the testimony in the foregoing proceeding and the foregoing transcript is a true record of the testimony given.

DATED: November 4, 2015  
FRESNO, CALIFORNIA

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| <p><b>40 (10)</b><br/>3113:19;3185:12;<br/>3242:22,23;3250:11,<br/>14,18;3256:13,14,18</p> <p><b>400 (1)</b><br/>3086:17</p> <p><b>40-pound (1)</b><br/>3112:10</p> <p><b>43 (2)</b><br/>3113:19;3234:5</p> <p><b>44 (2)</b><br/>3113:21;3234:5</p> <p><b>45 (1)</b><br/>3107:17</p> <p><b>45.8 (1)</b><br/>3163:4</p> <p><b>45-day (1)</b><br/>3086:22</p> <p><b>4908 (1)</b><br/>3242:17</p> <p><b>4a (1)</b><br/>3163:5</p> <p><b>4b (3)</b><br/>3163:4;3239:13;<br/>3260:9</p> | <p>4,16;3215:2,3,19;<br/>3228:12;3242:13,22,<br/>23;3250:11,18,18,<br/>20;3256:12,14,25;<br/>3257:1,8</p> <p><b>600 (1)</b><br/>3085:14</p> <p><b>62 (4)</b><br/>3191:15;3198:4,7,<br/>12</p> <p><b>62712 (1)</b><br/>3190:12</p> <p><b>63 (3)</b><br/>3171:18,22,23</p> <p><b>64 (8)</b><br/>3096:23;3115:11;<br/>3142:20;3143:21;<br/>3144:8;3155:12;<br/>3161:8;3172:6</p> <p><b>65 (7)</b><br/>3130:2,9;3133:25;<br/>3171:24;3172:3,7;<br/>3173:17</p> <p><b>66 (1)</b><br/>3250:21</p> <p><b>67 (12)</b><br/>3114:14;3116:18;<br/>3126:5;3131:12;<br/>3132:21;3134:10;<br/>3165:17;3173:20,22;<br/>3175:3,16,18</p> <p><b>67909 (1)</b><br/>3116:18</p> <p><b>67920 (1)</b><br/>3132:21</p> <p><b>67924 (1)</b><br/>3134:10</p> <p><b>67930 (1)</b><br/>3131:13</p> <p><b>679302002 (1)</b><br/>3126:5</p> <p><b>67937 (2)</b><br/>3114:14;3175:16</p> <p><b>6A (1)</b><br/>3164:1</p> <p><b>6B (2)</b><br/>3111:20;3164:20</p> <p><b>6C (6)</b><br/>3149:3,4,11;<br/>3150:16,22;3165:6</p> | <p>3163:16;3165:10;<br/>3169:15,23;3170:9;<br/>3176:11;3177:4;<br/>3199:4,14,15,15,16,<br/>17,19;3212:24;<br/>3219:19;3223:9;<br/>3225:1;3234:23;<br/>3235:1;3237:23;<br/>3238:23;3239:18,20;<br/>3240:7,22;3247:13</p> <p><b>700 (1)</b><br/>3183:2</p> <p><b>70868 (1)</b><br/>3144:8</p> <p><b>70871 (1)</b><br/>3144:8</p> <p><b>71 (14)</b><br/>3149:3,12,13;<br/>3150:16,22;3163:20,<br/>23;3164:1,21;<br/>3169:15,23;3177:4;<br/>3215:17;3219:19</p> <p><b>71C (1)</b><br/>3212:21</p> <p><b>72 (4)</b><br/>3166:3,16;<br/>3250:20;3257:8</p> <p><b>73 (5)</b><br/>3133:7;3154:15;<br/>3174:13,17;3176:15</p> <p><b>76 (1)</b><br/>3258:19</p> <p><b>76832 (1)</b><br/>3172:3</p> <p><b>76837 (1)</b><br/>3172:3</p> <p><b>76843 (1)</b><br/>3133:25</p> <p><b>76847 (3)</b><br/>3130:2,6,9</p> | <p>3079:5</p> <p><b>90 (1)</b><br/>3216:7</p> <p><b>90's (1)</b><br/>3202:6</p> <p><b>92 (1)</b><br/>3202:8</p> <p><b>93 (1)</b><br/>3187:14</p> <p><b>95341 (1)</b><br/>3085:2</p> <p><b>968 (1)</b><br/>3130:1</p> <p><b>98 (1)</b><br/>3087:17</p> <p><b>99 (3)</b><br/>3115:12;3134:7,<br/>15</p> |
| <b>5</b>   |  |  |   |
| <p><b>5 (8)</b><br/>3080:2;3093:10,<br/>14,21;3154:7;<br/>3230:23;3232:8;<br/>3234:1</p> <p><b>50 (2)</b><br/>3107:2;3255:14</p> <p><b>500-calve (1)</b><br/>3086:19</p> <p><b>500-pound (1)</b><br/>3112:11</p> <p><b>53 (3)</b><br/>3237:13,19;<br/>3239:9</p> <p><b>55 (5)</b><br/>3098:10;3201:10;<br/>3237:18;3238:25;<br/>3239:9</p> <p><b>56 (4)</b><br/>3237:18;3238:20;<br/>3239:11,23</p> <p><b>57 (1)</b><br/>3087:18</p>   | <p><b>7</b></p> <p><b>7 (4)</b><br/>3154:7;3230:23;<br/>3232:9;3247:13</p> <p><b>70 (40)</b><br/>3093:9,14;<br/>3095:20;3107:22;<br/>3122:21;3130:22;<br/>3132:6;3138:4;<br/>3144:11;3149:10;<br/>3150:10;3151:13,24;</p>  | <p style="text-align: center;"><b>8</b></p> <p><b>8 (4)</b><br/>3091:8,9;3096:5;<br/>3116:17</p> <p><b>80 (2)</b><br/>3112:5;3214:14</p> <p><b>800-student (1)</b><br/>3088:10</p> <p><b>82 (2)</b><br/>3132:13,14</p>   |   |
| <b>6</b>   |  |  |   |
| <p><b>6 (7)</b><br/>3098:3;3154:7;<br/>3202:14;3225:2,5;<br/>3230:23;3232:8</p> <p><b>60 (32)</b><br/>3097:7;3113:12;<br/>3153:7;3165:24;<br/>3166:1,15;3213:15,<br/>18,25;3214:2,2,2,3,3,</p>   |  | <p style="text-align: center;"><b>9</b></p> <p><b>9 (9)</b><br/>3096:14;3126:4;<br/>3127:12;3153:5;<br/>3155:16;3165:24;<br/>3166:3,6;3257:6</p> <p><b>9:00 (1)</b><br/>3080:14</p> <p><b>9:01 (1)</b></p>   |   |