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UNITED STATES DEPARTMENT OF AGRICULTURE

BEFORE THE SECRETARY OF AGRICULTURE

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

VOLUME XVII

TRANSCRIPT OF PROCEEDINGS

October 16, 2015

Myra A. Pish, CSR No. 11613
397080

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BEFORE U.S. ADMINISTRATIVE LAW JUDGE
JILL S. CLIFTON

Friday, October 16, 2015

9:01 a.m.

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

TRANSCRIPT OF PROCEEDINGS

VOLUME XVII

Reported by:

Myra A. Pish CSR
Certificate No. 11613

APPEARANCES:

U.S. DEPARTMENT OF AGRICULTURE:	Office of the General Counsel BY: BRIAN HILL, ESQ. LAUREN BECKER, ESQ.
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CALIFORNIA DAIRIES, INC., DAIRY FARMERS OF AMERICA, INC., LAND O'LAKES, INC.:	Law Offices of Marvin Beshore BY: MARVIN BESHORE, ESQ. Hanson Bridgett, San Francisco BY: JOHN VLAHOS, ESQ.
DAIRY INSTITUTE OF CALIFORNIA:	Davis Wright Tremaine BY: CHIP ENGLISH, ESQ. ASHLEY VULIN, ESQ.
HILMAR CHEESE COMPANY:	JOHN VETNE JAMES DEJONG
CALIFORNIA PRODUCER HANDLERS ASSOCIATION:	Stoel Rives BY: NICOLE HANCOCK, ESQ
SELECT MILK PRODUCERS:	MILTNER LAW FIRM, INC. BY: RYAN MILTNER, ESQ.

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I N D E X - V O L U M E 17

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FRIDAY, OCTOBER 16, 2015 - - MORNING SESSION

JUDGE CLIFTON: We're back on record. This is Day 17 of the milk hearing. It is October 16, 2015, it's a Friday. It is approximately 9:01. My name is Jill Clifton. I'm the United States Administrative Law Judge whose been assigned to take in the evidence in this milk hearing. I am an employee of the United States Department of Agriculture. I would like to take the appearances of other employees of the United States Department of Agriculture who are here at this time.

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

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

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

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

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

MR. HILL: Happy Friday. I'm Brian Hill, B-R-I-A-N, H-I-L-L, and I'm with the Office of the General Counsel.

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

JUDGE CLIFTON: And now we'll take the teams that are associated with proposals or opposing proposals.

MR. BESHORE: Good morning, Marvin Beshore, M-A-R-V-I-N. B-E-S-H-O-R-E, counsel for the proponents of Proposal Number 1.

MR. VLAHOS: John Vlahos, Hanson Bridgett, J-O-H-N, B-R-I-D-G-E-T-T, the firm is H-A-N-S-O-N, B-R-I-D-G-E-T-T, co-counsel for the co-op proponents of Proposal 1.

MR. HOLLON: Elvin Hollon, E-L-V-I-N, H-O-L-L-O-N, employee Dairy Farmers of America and part of Proposal Number 1.

MR. SCHAD: Good morning, Dennis Schad, S-C-H-A-D, I work for Land O'Lakes.

MR. ENGLISH: Good Friday morning, your Honor. My name is Chip English, C-H-I-P, E-N-G-L-I-S-H, I'm with the law firm of Davis, Wright, Tremaine. My office is in Washington DC. I'm here on behalf of the Dairy Institute of California, proponents of Proposal Number 2.

MS. VULIN: Ashley Watkins, that's my maiden name, sorry about that. Please don't tell my husband that. Ashley Vulin, V-U-L-I-N, attorney for the Dairy Institute of California.

JUDGE CLIFTON: Ms. Vulin, please go back to the podium, now that you have said Watkins, we need to know how to spell it.

MS. VULIN: W-A-T-K-I-N-S.

MS. KALDOR: Good morning, Rachel Kaldor, R-A-C-H-E-L, K-A-L-D-O-R, I can't remember my maiden name, Dairy Institute

of California.

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

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

MR. VETNE: John Vetne, V-E-T-N-E, representative for Hilmar Cheese.

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

MR. LAI: Good morning, Victor Lai, L-A-I, from Producers Dairy Foods, a member of California Producer Handlers Association.

JUDGE CLIFTON: Now, I would like take other appearances of those of you who are participating who may not be associated with a particular proposal.

MR. MILTNER: Good morning, Ryan Miltner, M-I-L-T-N-E-R, with Miltner law firm, representing the Select Milk Producers.

JUDGE CLIFTON: And I would like to take the appearances of anyone else who would like to be recognized at this time, including anybody who would like to testify today.

All right. We'll move now to preliminary items, including announcements. I would like to begin with those from employees of United States Department of Agriculture.

MS. MAY: Laurel May. Let's see, what do you need to know today? As always, we are broadcasting this session of the hearing via live audio feed, and the link, the new link is WWW.AMS.USDA.GOV/LIVE.

We're in the process of posting our next set of hearing transcripts and I think those should be up pretty soon and exhibits, so you can check for those on the AMS Dairy website. We do have still some copies of former exhibits in the back, if you would like to pick up some of those.

If anybody would like to testify or ask questions of witnesses, they may come up and let us know. We have refreshments again, today is bagels and cream cheese looks like.

Yesterday when we ended, Dennis Schad was being cross-examined, and I think we're going to pick up with that today, and then we're anticipating Elvin Hollon returning as a witness. Also, we were asked earlier this week about the debt ceiling, and our Deputy Administrator checked on that and was told that that would not affect us or this proceeding, in case you are concerned.

And as a reminder, next week we will be here for the first three days and then moving over to the Piccadilly Inn at the Airport for Thursday and Friday, and then the following week we'll be back here, if we're still in session, we'll be back here. Okay.

JUDGE CLIFTON: Well, that was all good news. Who else has anything that you would like to address preliminarily? Nothing. Then, Mr. Schad, we would like you to come back to the witness stand. I would read the Hearing Clerk's docket number in brackets [AO] 15-0071.

MR. BESHORE: Your Honor, before we begin with Mr. Schad, I would like to just let you know, and let everyone know, Mr. Schad is going to present the clarifications to some of the dates in the Federal Register references in the testimony references, provide some additional dates to the Federal Register reference for everyone's benefit. He's got that all ready to go.

Mr. Hollon is available with his transportation piece. But the final Hollon, Part 4, which I have previewed, relating to producer-handler and some other issues, is not ready today. It's not physically possible for us to have that ready today. So in the event, likely or unlikely, that we were to get there, we would, we wouldn't be ready with that. I want everybody to know that right now. The transportation is a very substantial piece, and maybe we won't get through with that, or maybe we will, but I wanted to let you know and everyone up front about that.

JUDGE CLIFTON: Good. I do appreciate that. I also was thinking with regard to Mr. Schad's testimony, did he, maybe it's in his statement, I was thinking, I didn't -- I didn't

hear a lot about his background. We got a little of it, you know, for example, that most of his experience is within Pennsylvania, and so on. But the opening paragraph's a bit skimpy about his work and his expertise, and I would like you to develop that at some point.

MR. BESHORE: I would be glad to do that right off the bat.

JUDGE CLIFTON: Okay. Excellent. Thank you.

REDIRECT EXAMINATION

BY MR. BESHORE:

Q. Okay. Why don't we begin there, Mr. Schad, with your talking about your educational background.

A. Okay. To start off, my name is Dennis Schad, S-C-H-A-D.

JUDGE CLIFTON: Thank you. Thank you very much. You are all getting really good at this system. You remain sworn and I would like you to state and spell your name.

MR. SCHAD: My name is Dennis, D-E-N-N-I-S, Schad, S-C-H-A-D. And the question was my educational background?

BY MR. BESHORE:

Q. Yes.

A. I have a Bachelor's degree in History from the College of William and Mary; I have a Master's in Business Administration from Virginia Polytechnic Institute and State University, commonly known as Virginia Tech. I have worked since 1980 or so, I have worked for Dairy Farmers, beginning on

a dairy farm, and working for Interstate Milk Producers Cooperatives. And I worked for them until the, through their merger with Leehigh Valley Cooperative in 1987. The merged organization was called Atlantic Dairy Cooperative. I worked for Atlantic Dairy Cooperative through their merger with Land O'Lakes in 1997, so I have 34 years working for Land O'Lakes and its predecessor cooperatives.

Q. Okay. And can you just go through your, you know, the various duties and responsibilities, jobs you have had in your career with Interstate, Leehigh, Atlantic, and Land O'Lakes, working for dairy farmers?

A. I never worked for -- I started off as a, put out in the field as a field person and an area coordinator for Interstate. After a year, I was moved into the office. My title was Marketing and Transportation Coordinator. I worked with both the marketing side of the business doing analysis, as well as transportation analysis.

Q. Just for clarity, marketing means involved in the side that was selling milk?

A. Selling milk and its customers, and the Federal Order ramifications of selling milk and such. I then, subsequent to the merger with Leehigh in '87, I then took a position of Manager of Regulatory Affairs. And as Manager of Regulatory Affairs, I was in charge of forecasting the, in the Federal Order and State Order work. My testimony in Federal and State

Order hearings started with that. And my guess is, the first Federal Order hearing I testified at would have been '91, '92, and I continued in that role through the merger with Land O'Lakes in the year 2000 or so. My boss left Land O'Lakes for another position and I became Director of Marketing Mid-Atlantic Marketing, and also held the responsibility for regulatory affairs.

I have pretty much, although the title has changed, I have pretty much continued those responsibilities of marketing and regulatory affairs for Land O'Lakes in the Mid-Atlantic region. I have also had a responsibility for the national hearings starting with Federal Order Reform. The regional hearings, for instance, in the Midwest were done out of Minnesota, and the California hearings were also done out of California, mostly out of California, I'm sorry -- out of Minnesota -- out of our Minnesota resources.

Q. Okay. And you mentioned in your prepared statement that your present duties involve managing Land O'Lakes milk marketing in the Northeast, forecasted budget milk into the butter, powder plant in Carlisle, including the regulatory responsibilities.

Just talk a little bit about the day-to-day, non-regulatory duties you have. Are you involved both buying and selling milk, in essence?

A. Yes, we -- when we have -- we have a contract with

customers. Well, in the Northeast we have about 1800 members. We make just over 3 billion pounds of milk, those members. I'm responsible for the marketing of that. A major portion of that milk goes into our own manufacturing plant, but we have major customers out there. And it's, I have contract responsibility for those customers, as well as the buying milk from, buying milk from other entities.

Q. Okay. So you presently are involved in negotiating sales of milk, as well as negotiating purchases of milk?

A. That's correct.

Q. Okay. Okay. With that, do you have now some additional clarifications and corrections and information to provide to Exhibit 70 in follow up to your testimony yesterday?

A. Yes. You are going to cover the formula issue?

Q. Yes. Let's leave the formula issue to the end. Let's cover first, the Federal, basically the Federal Register citations and the references to the 2006 and 2007 hearing, which ran together and got garbled a bit.

A. Did you give a copy --

Q. Let me cover that. We're going to, Dennis is going to just walk through pages that have additions or corrections. I have provided a copy to Ms. Elliott, one document that just is 70 with just the additions and corrections that he's presenting this morning for her reference and assistance. But for everybody else, we're going to go through, including myself

here, we're going to go through just -- Dennis will highlight, will indicate the pages and the place where there is an addition or correction, and we'll take it like that. Taking the formulas afterwards.

JUDGE CLIFTON: All right. Good. So Ms. Elliott, I'm going to rely on you to be monitoring what we're getting from the witness stand. If there's any variation from the document you have been given, alert me so that we can clarify that.

MS. ELLIOTT: Okay.

JUDGE CLIFTON: All right. Thank you.

BY MR. BESHORE:

Q. Okay. First page.

A. Yes, let's start with page 4. There is one change on page 4. At the very top, I missed a citation for that quote, and that citation would be (75 Fed. Reg. at 33534 (2010))

Q. All right. So that's just an add to the end of the quote on the third line.

A. That's correct.

Q. Page 4.

A. Okay.

Q. Thank you.

A. Skipping to page 8. Again, there is just one addition. And that is at the very bottom on the page, I will cite the date for that, and that is 1990.

Q. Okay.

A. So that's the date for that quote.

Q. Okay. So we're adding dates to some of the quotes that didn't have dates, or some of the cites that didn't have dates, correct?

A. That's correct.

JUDGE CLIFTON: Now, okay. So -- all right. Thank you.

MR. SCHAD: If we're ready, to page 9. Also one addition. And there is, at the top of the page, a long quote. I would like to put the date 1995 in that citation.

BY MR. BESHORE:

Q. So the citation there is (60 Fed. Reg. at 7301 (1995)) for the date.

A. Correct.

Q. Thank you.

A. Now go to page 11, if there are two additions. At the large quote at the top of the page, add the date to the citation, 1993. And to be clear, on the -- in the second full paragraph there is an Id. bit citation, and while it may be redundant, add 1993 to that as well.

Q. Thank you.

A. Going to page 14, at the end of the paragraph there's a citation.

Q. First paragraph at the top?

A. Yes, I'm sorry. At the first paragraph at the top there is a citation. Add 1990 to that citation.

On page 15 there's a correction. In the first full paragraph, the sentence reads, "The broad authorization and informal rule making procedures granted in the," strike 1995, and insert 1996.

16, there's a bit of writing. If you go to under Heading B. There is, at the end of the first paragraph, the sentence reads, "the Secretary described the NASS survey," strike the semi-colon and insert, "in the December 2000 tentative decision to the Congressionally," I'll read the whole thing when I'm -- "mandated Class III and IV price formulas hearing."

And I'll read that clause, phrase again. "In the December 2000 tentative decision to the Congressionally mandated Class III and IV price formulas hearing."

Okay. Your Honor.

JUDGE CLIFTON: What punctuation now comes?

MR. SCHAD: I would also put a semi-colon.

MR. BESHORE: A full colon.

MR. SCHAD: Also on that page, the citation is incorrect. Strike 1999 and insert 2000.

MR. BESHORE: Next page.

MR. SCHAD: Are we ready, your Honor?

JUDGE CLIFTON: We are.

MR. SCHAD: Okay. And on page 17 there are five changes.

First, the first citation. Strike 2000 at the end and insert 2002. In the next paragraph, read the first three lines

that says, "During the 2006," strike 2006 and insert "February 2007."

Skipping down to the next large citation towards the middle of the page. Strike, at the end strike 2006, insert 2008. On the next paragraph, I'll read, it reads, "Another proposal put forward in the 2006," strike 2006, insert "February 2007."

And just to be clear, the citation of the quote at the bottom of the page is, may be redundant, should read (73 Fed. Reg. at 35328 (2008))

JUDGE CLIFTON: Okay. So are you talking about the very last words "Id?"

MR. SCHAD: Yes, strike the Id, I mean, I wanted to make sure that everyone knew exactly, since the Id. bit referred to two different pages, I wanted to know where that quote exactly came from.

JUDGE CLIFTON: Okay. So we're adding as the very last words on page 17, tell me again?

MR. SCHAD: (73 Fed. Reg. at 35328 (2008))

JUDGE CLIFTON: Good.

MR. SCHAD: Skip to page 19. Okay. Go to the last paragraph, second line in the last paragraph. It says, "Final decision of the 2006 make allowance hearing," strike "2006 make allowance hearing" and insert "2000 Congressionally mandated Class III and Class IV price formula hearing." I'll read that

again. "2000 Congressionally mandated Class III and Class IV price formulas hearing."

Okay. Additionally, at the very end of that page there's a citation, add the date 2002 to that citation.

There are two on page 20. At the end of the first paragraph, add 1999 to that citation. And in the body of the last paragraph on that page there is a citation, add 2002 to that citation.

JUDGE CLIFTON: So is that on page 20, the third line up?

MR. SCHAD: Yes.

JUDGE CLIFTON: Okay.

MR. SCHAD: (67 Fed. Reg. at 67909) add 2002 to the end.

Skipping now to page 22. At the very top of the page there is a citation quote. Add 2006 to that citation.

MR. BESHORE: It is on the second line.

MR. SCHAD: That's correct. Immediately under there there's another citation that reads Id. at 67487. Again, add 2006 to that citation.

Towards the middle of the page there is another large quote that has 73 Fed. Reg. at 35324, add 2008 to that citation. 2008.

On page 23, the very top of the page there's an Id, there's a citation Id. at --

MS. ELLIOTT: You missed one more on page 22.

JUDGE CLIFTON: Thank you, Ms. Elliott.

MR. SCHAD: And that would be?

MS. ELLIOTT: The 2008 on the second to the last paragraph.

MR. SCHAD: I'm sorry, I missed that one.

MR. BESHORE: Fourth line from the bottom.

MR. SCHAD: Fourth line from the bottom it says "Id. at 35325-25) and that should have the date 2008 as well.

MR. BESHORE: 2008.

MR. SCHAD: On page 23, again at the top of the page there is, the end of that paragraph says, "Id. at 35326" add the date of 2008. There's a large quote in the, towards the center of the page, and at the end of that citation add 1999.

On page 24 there's one change, and that is if you go about a third of the page down, it reads, it reads, "in 2006." Okay. I would like to insert and 2007.

Okay. You go now to page 25, there are four changes. First, there's a large quote at the top of the page. Insert the date 1999 at the end of that citation. Go down three lines, there's another citation that reads (65 Fed. Reg. at 76847) add the year 2000 to that citation.

In the last full paragraph on the next to the last line, it reads "The final decision" what I would like to do is insert the date 2002 so it reads "the 2002 final decision."

MR. BESHORE: Could you stay right there? Then would you add 2002 at the end as the date at the end of the cite?

MR. SCHAD: Yes.

MR. BESHORE: Thank you.

MR. SCHAD: Also, at the citation (67 Fed. Reg. at 67930) add the date 2002.

Going to page 26, at the end of the second paragraph there's a citation, I would want that to read (67 Fed. Reg. at 679220) with the date 2002.

On the next paragraph it says, "As a result of the testimony from the 2000," I would like that to read, "2007" strike 2000 and insert 2007.

At the end of that paragraph there's a citation, (73 Fed. Reg. at 35326) I would like that to add the date 2008.

And the next to the last line on that page there's another citation starting with that, in that, on that line, (Fed. Reg. at 76843) add the year 2000 to that citation.

On page 27, there are two insertions. At the end of the first full paragraph, insert 2002 to the citation. And towards the second half of that page, towards the top of the second half, there's also a quotation with a citation (64 Fed. Reg. at 16091) and you should add 1999 to that citation.

On page 28 there's one change. The very bottom of the page, (64 Fed. Reg. at 16108) insert 1999 at the end of that citation.

On page 29 there's one change. Towards the middle of the page there is a citation, (64 Fed. Reg. at 16108) insert

1999 after that citation.

On 30, there are two insertions. At the end of the first full paragraph, at the end of the first paragraph, (64 Fed. Reg. at 16102) add 1999. And there is a larger quote in the center of the page that's Id. bit, add 1999 to that citation.

On 31 there are a couple changes. I'm putting, I'd say there's three. First off, in the first full paragraph, at the end of the line it says additional cost to be 60 cents. Strike that and insert 40 cents.

At the end of that line it cites page 4909, strike that and insert 4908, and add the 1998 to the citation. So making it clear, it should read (63 Fed. Reg. at 4908 (1998))

BY MR. BESHORE:

Q. So in that sentence, Mr. Schad, which begins USDA --

A. Yes.

Q. Should it be 1998 then, since it was 19 Fed. Reg. instead of 1999?

A. Yes. Right.

Q. Okay.

A. And the citation for the larger quote towards the middle of the page, again, to make it clear, it was page 4908, in 1998.

Q. So that would be 63 Fed. Reg. at 4908?

A. Yes.

Q. Thank you.

A. Skipping to 33, again, two citation additions. Towards the end of the first paragraph there's a citation three lines up from the end of that paragraph, it reads Fed. Reg. at 16078, insert 1999. And just although redundant, just to make it clear, it I had bit at the end of that paragraph also insert 1999.

34, there are two citations, additions. In the third line of the first full paragraph there's a citation 64 Fed. Reg. at 16100, insert 1999 after that. And at the end of that paragraph there is a citation, 67 Fed. Reg. at 67937, insert 2002 at the end of that.

And, okay. On page 35 there are four changes. First, there's, at the top of the page there is a, the end of a quote, reading 67 Fed. Reg. at 67937, insert 2002 after that.

This one's in the next quote, we had a discussion within that quote there is a sentence that says "this additional time is intended for California dairy interests. The opportunity" and we inserted "to review" reading the quote actually the "to" was not there. So the Secretary's infallible in everything but grammar.

JUDGE CLIFTON: All right. Well, that's very good. So somethings even get to the Federal Register with little errors.

MR. SCHAD: At the end of that quote. I guess we should strike the "to."

JUDGE CLIFTON: Ms. Elliott, can you do that on your record copies? We had you add the word "to" yesterday on page 35 in then second quoted paragraph, four lines up in that quote we had you add the word "to."

MR. BESHORE: Actually we may not have added it. We were going to look at it. Mr. Hill confirmed, he got there first, and confirmed that it's not actually in the Fed. Reg.

MS. ELLIOTT: No, it was never added.

JUDGE CLIFTON: Excellent. Good. Well, this is a great team. All right.

MR. SCHAD: Never mind. And at the end of that quote, (64 Fed. Reg. at 16044) add 1999.

And one more at the third line from the bottom, at the end of that line it reads "Section 1000A" that should read "Section 1000.53(a)" and that is the extent of the --

MR. BESHORE: Date and corrections?

MR. SCHAD: Yes.

JUDGE CLIFTON: And with thanks to those who were helping us be alerted that these changes needed to be made. I'd like to single out Mr. English and Ms. Taylor and Mr. Hill. All of that is very helpful. Thank you.

BY MR. BESHORE:

Q. Okay. Let's talk about the formulas a bit. And is page 23 in the first place there is a formula in the text of 70.

A. Yes.

Q. Okay. So are these, are the formulas that you used elsewhere in the exhibit of the record?

A. Yes, at the --

Q. The syntax of the formulas at least?

A. Yes, especially, I made a point to, four times, say the current formula is, and there, also in the record, the record supplied by the Department, Exhibit 9, very first page lists the formulas in the correct syntax.

Q. Okay. So Exhibit 9, Attachment A is titled, Formulas for Advanced Prices and Pricing Factors, and on the second, on the back page or the second page, the formulas are stated there on a USDA AMS Dairy Programs publication, correct?

A. That's correct.

Q. And are the formulas on Exhibit 9, in terms of a structure of them, the same formulas that you have used in your testimony, Exhibit 70?

A. Yes, that is especially speaking to, I tried to trace, get changes in make allowances and changes in yields over the hearings, but specifically, when the, at the end I made a point to say the current formula is, and that would be the same as that which is on Exhibit 9.

Q. Okay. So looking at page 23, the first time you have an equation, for example, protein price, the numbers you used there are not the same numbers in the formula on Exhibit 9?

A. That's correct.

Q. Because it was an earlier generation, if you will, of data that you were discussing here?

A. Yes.

Q. But the structure of the formula, including the number of parens, which the befuddled me yesterday, is correct in your text?

A. I believe so.

Q. Okay.

Your Honor, what I would, I'm going to -- not sure what the best way to do this is, I would just propose to have the formulas as in Exhibit 70 be part of the record when that exhibit is presumably admitted into the record, and not ask Mr. Schad to recite them further in a way that is not going to help clarify it, I don't think. That's my suggestion.

JUDGE CLIFTON: All right. Mr. Schad, focusing on the formula that is shown in the top one third of page 23, are you satisfied that what you show here as a mathematical formula, is accurate?

MR. SCHAD: Yes.

JUDGE CLIFTON: All right. Then I would instruct the court reporter to show today in today's transcript, to show the formula on page 23 as you can find it in Exhibit 70 without Mr. Schad reading it into the record at this time. All right. We can go on then.

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

MR. BESHORE: Okay. So there are, on page 24, then, two further appearances of the protein formula, protein price formula, as it evolved. And I would ask that the same treatment be provided, that those formulas be handled in the same way, your Honor.

And can you confirm that those are accurate as depicted on Exhibit 70, to the best of your knowledge, Mr. Schad?

MR. SCHAD: Yes.

MS. ELLIOTT: On the second formula, there seems to be a typo.

MR. BESHORE: Yeah, did we correct -- we didn't, okay.

MS. ELLIOTT: Nothing was done with it.

MR. BESHORE: It's marked on mine, but we may not have corrected it. There is a typo in the second one, the one dot is repeated.

MR. SCHAD: Yes. We spoke about that yesterday, I believe.

MS. ELLIOT: We didn't correct it.

MR. BESHORE: With that correction, is that formula accurate to the best of your knowledge, Mr. Schad.

MR. SCHAD: Yes, delete the one dot on the -- it should not read "1.1.383" it should just read "1.383."

MR. BESHORE: Thank you, Ms. Elliott.

JUDGE CLIFTON: All right. Then I'm going to instruct the court reporter to show now, the two formulas that are found on page 24 of Exhibit 70, in the transcript as you will find them on page 24 without Mr. Schad having to read them into the record.

The first quote is within the top one-third of the page, excuse me, I don't mean quote, formula, the first formula is within the top one-third of the page, and I believe we already made the change yesterday where the word (67 Fed. Red) appears, I think we already made that Fed. Reg.

MS. ELLIOT: We did not.

JUDGE CLIFTON: We did not? I think we should correct the red to Reg, by striking the D and inserting the G in that first formula. Are you in agreement, Mr. Schad?

MR. SCHAD: I am, thank you.

JUDGE CLIFTON: All right. So, with that change, the court reporter may duplicate that formula.

And with regard to the second formula, which is found in roughly the beginning of the bottom half of page 24, the court reporter may duplicate that formula, except that we have corrected it in the top line of that formula. And that formula begins with the word, words, "protein price equals," and in the top line where the number can be found "1.1.383," that should instead be shown as "1.383."

Okay. I'm ready.

Protein price = ((NASS cheese survey price - 0.165) x1.383) + (((((NASS cheese survey price - 0.165) x 1.572)- butterfat price x .9)) x 1.17)

(67 Fed. Reg. 67930 (2002))

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

MR. BESHORE: Okay. Now I am not absolutely certain how the remaining formulas, which are simpler in structure to the protein price formula, whether they were read into the record in your testimony yesterday. And if they were, I think they probably were, I think they are probably self-explanatory. You don't need to do anything further with them. There's a whey price formula, two whey price, other solids formulas on page 25, and then, you know, a number of butter, nonfat dry milk formulas on pages 26 and 27. I don't think we need to do anything further with those.

MR. SCHAD: I agree with you.

MR. BESHORE: Thank you, Mr. Schad.

JUDGE CLIFTON: I don't know, I think for clarification it would be good to capture the snapshot of those in the transcript. Because I thought it was so helpful when Mr. Schad would read his formulas, because, for example, if he knew something was a make allowance factor, he would say that. That doesn't show in the formula. But I would still like the very

crisp snapshot of what we see. So I'm going to ask the court reporter to put into the transcript what you see at the bottom of page 25 of Exhibit 70, it's just two lines, and the lines start "as a result of." And I'd just like to you put that in the transcript as you find it there, bottom of page 25 of Exhibit 70.

As a result of the 2006 Make Allowance Hearing, the current Other Solids formula is:

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

MR. BESHORE: Your Honor, if I might, there's also the sentence immediately before the "as a result of" sentence has within it -- the sentence that begins before the "as a result of" sentence has within it the a formula also.

MR. SCHAD: Yes, but so the record's clear that the one that you are referring to is the former and not the current.

MR. BESHORE: Correct.

MR. SCHAD: The Judge instructed the current, you are coming behind with a former, just so the record's clear.

MR. BESHORE: It was a 2002 formula as stated --

MR. SCHAD: Correct.

MR. BESHORE: -- in the testimony.

JUDGE CLIFTON: All right. So I'm going to ask that the court reporter also show the formula that is also at the bottom of page 25, and it begins four lines up from the bottom of the page, and that line now reads, because we have just made an

insert to it, "The 2002 final decision Other Solids formula was" -- and I would like the transcript to show the snapshot of what the court reporter will find on page 25 in the transcript. And so that will now show -- I would like, Ms. Elliott, to make sure that the court reporter gets a copy of this exhibit with these changes that we made today, so that when she goes to type this, the changes that are here that we just put there, will be also in the transcript. Okay.

The 2002 Final Decision Other Solids formula was

(NASS Whey Price - $0.150) x 1.03

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

Okay. All right. Then, we're ready for the next one, Mr. Beshore.

MR. BESHORE: Okay. So on page 26, I note five instances where, four instances of butter or butterfat price formulas in the discussion subtopic "G: Product Yields Butter," which is the top two-thirds of that page. And I would propose that those butter and butterfat price formulas be handled in the similar fashion to the manner in which the formulas on the prior page have been handled.

JUDGE CLIFTON: Good, so the way I'm going to instruct this, and this also has some inserts from today that I want to show if they are part of the formulas, there is a section on page 26 of Exhibit 70 that's entitled "G: Product Yields: Butter." I would like the court reporter to capture each of

the formulas as they are found in that section in the transcript. And in that section alone, with regard to butter, there are one, two, three, four formulas that will be found. And with regard to the fourth one I want the court reporter to include these words, "The current Federal Order butterfat price formula is:" And then the formula.

(NASS Grade AA Butter Price - $0.114)/0.82

(NASS Grade AA Butter Price - $0.115) x 1.20

(67 Fed. Reg. at 67920)(2002))

(NASS Grade AA Butter Price - $0.1715) x 1.211

(73 Fed. Reg. at 35326)(2008))

The current Federal Order butterfat price formula is:

(Butterfat Price = (NDPSR butter price - $0.1715) x 1.211

Then, still on that page 26, the next section is entitled, "H: Product Yields: Nonfat Dry Milk," and I would like the court reporter to capture that formula.

(NASS Nonfat Dry Milk Price - $0.137)/1.02

All right. Mr. Beshore, ready for the next one.

MR. BESHORE: If I might then, the nonfat, the discussion of Product Yields: Nonfat Dry Milk continues to page 27, and at the top the page there are two additional formulas in that testimony that I would request be handled in the same manner.

JUDGE CLIFTON: I agree. And with regard to the last formula in that section, I would like the court reporter to include the language just above it which says, "the current

nonfat milk solids price is:"

(NASS Nonfat Dry Milk Price - $0.14) x .99

(67 Fed. Reg. at 67924)(2002))

The current nonfat milk solids price is:

Nonfat Milk Solids = (NDPSR Nonfat Dry Milk Price - $0.1678) x .99

MR. BESHORE: Just one final wrap up among, on the formulas, just to confirm, all of those formulas are shown in their structure and many of them, the final ones in the same numbers on Exhibit 9, second page, which is the AMS publication, correct?

MR. SCHAD: That's correct.

MR. BESHORE: With that, I have no further questions for Mr. Schad, or additions or corrections to Exhibit 70, your Honor.

JUDGE CLIFTON: Well, Mr. Schad, I'm delighted that all those formulas survived intact. Mr. English?

MR. ENGLISH: Your Honor, I did not, in any way, shape, or form want to interrupt that. But I would be remiss if I didn't at least raise my legal conclusion objection as to the inserted language on 16 and 19, referring to 2000 Congressionally mandated Class III and IV hearing. But I did not want to interrupt any of that flow.

MR. BESHORE: I was shocked I didn't hear it before.

JUDGE CLIFTON: But you know, in my brain, I heard the

objection.

MR. BESHORE: The only thing I would note is, those are the words the Secretary used in the Federal Register.

MR. ENGLISH: And that's fine, but, anyway -- so --

JUDGE CLIFTON: Right. And as we all know, the Secretary can, in fact, interpret Congressional mandates, so that's good.

All right. Who else would like to ask any follow up questions of Mr. Schad? And I would open it also, not just these technical corrections we've made, but if you thought of something else that is important that this witness knows about that you would like to ask him while we have this chance.

I thought of one. Mr. Schad, I want you to assume that, this is a hypothetical assumption, I don't know whether the evidence will bear this out -- but assume that the majority of California dairy farmers are losing money in producing milk.

MR. SCHAD: Okay.

JUDGE CLIFTON: Assume that some of them are losing as much as $4 a hundredweight, and that that's been going on for a few years. If that were true, what else would you need to know to determine whether there's something other than orderly marketing present in the environment they operate in?

MR. SCHAD: Well, if, when you say they are losing $4 a hundredweight, I read that to be the margin between price and cost. And so, you know, you would look at the, you know, whatever remedies that the government has relative to price of

the dairy farmers' product, milk, and you would look at the, you would want to look at their cost structure.

JUDGE CLIFTON: So the government could do something?

MR. SCHAD: That's why we are here relative to having California join a Federal Order. And our proposal would have California's class prices be the same as the rest of the Federal Order system, that if a large percentage of the milk is pooled, of the nation is pooled under the Federal Order system, and which I believe the evidence has showed is the Federal Order prices are higher than the California prices.

JUDGE CLIFTON: And the Federal government may not be able to address all of the issues.

MR. SCHAD: If they -- and again, if the question is margin, the answer is yes.

JUDGE CLIFTON: All right. Do you have anything to add to that that you think is important for the Secretary to consider in determining whether we have an orderly situation with milk marketing in California at present?

MR. SCHAD: No, I believe my testimony and my cross-examination has fulfilled that requirement.

JUDGE CLIFTON: Does anyone have any other questions for Mr. Schad? All right. There are none. You may step down. Thank you so much.

Let's take a break before we start Mr. Hollon's testimony. He can come to the witness stand and put his things

down, but let's take a break. It's 10:05. Please be back and ready to go at 10:20.

(Whereupon, a break was taken.)

JUDGE CLIFTON: We're back on record at 10:26.

Mr. Beshore?

MR. BESHORE: Yes, thank you, your Honor. Marvin Beshore.

Before I ask that Mr. Hollon's exhibits be marked, I would like to renew my request that Mr. Schad's Exhibits 70 and 71 be received.

JUDGE CLIFTON: Is there any objection to the admission into evidence of Exhibit 70? There is none. Exhibit 70 is admitted into evidence.

(Thereafter, Exhibit Number 70 was received into evidence.)

JUDGE CLIFTON: Is there any objection to the admission into evidence of Exhibit 71? There is none. Exhibit 71 is admitted into evidence.

(Thereafter, Exhibit Number 71 was received into evidence.)

MR. BESHORE: Thank you. Now, I would like to ask that three exhibits be marked as next consecutive appropriate numbers. The first being the testimony of Mr. Hollon which is a 21-page document, we'd ask that that be marked as 72.

MS. ELLIOTT: 72.

MR. BESHORE: Thank you.

(Thereafter, Exhibit Number 72 was marked for identification.)

MR. BESHORE: I would secondly ask that a document identified or titled in the first page as Exhibits of Elvin Hollon (Third Statement) In Support of Proposal 1, with a cover of which shows a listing of Tables 7.A through 7.X, ask that that be marked as Exhibit 73.

(Thereafter, Exhibit Number 73 was marked for identification.)

MR. BESHORE: And finally, a two-page, oversized, color document, California Ranch-to-Plant Hauling, by Area, April 2013-2014. I would ask that that be marked as Exhibit 74.

(Thereafter, Exhibit Number 74 was marked for identification.)

JUDGE CLIFTON: Very good. It shall be done as you have requested, Mr. Beshore. I have marked mine accordingly. Exhibit 72 is Mr. Hollon's third statement; Exhibit 73 are the exhibits in support of that; and Exhibit 74 is the, what is this, is this a --

MR. BESHORE: It is actually a CDFA document that we printed from the CDFA website, and obviously, it is quite heavy set of data. But it involves ranch-to-plant hauling costs.

JUDGE CLIFTON: Very good.

MR. BESHORE: Cost data.

JUDGE CLIFTON: Good. We're happy to have that. We're happy to have all of it, but especially something like this that's been pulled together for us in this format, Exhibit 74.

Mr. Hollon, you remain sworn. Would you again state your name and spell it?

MR. HOLLON: Elvin, E-L-V-I-N, Hollon, H-O-L-L-O-N.

JUDGE CLIFTON: Mr. Beshore, you may proceed.

MR. BESHORE: Thank you.

DIRECT EXAMINATION

BY MR. BESHORE:

Q. Mr. Hollon, would you now proceed to present your testimony, which is in Exhibit 72, the narrative. And when it is appropriate to deviate from the text in 72 to go to one of your tables and discuss them, discuss the tables separately, just do that on your own motion, if you would, please.

A. Thank you.

I. Background

A key component of our proposal for a California Federal Order is the inclusion of a transportation credit system to assist in moving milk from the most dense production locations distant from the added value fluid use plants. The transportation credit system we propose is necessary for a California FMMO to cause Federal Order Class I differential structure, standing alone is not adequate to accomplish this goal. Our proposal would further the goal by providing a

credit to handlers to offset the increased transportation costs required to move milk. Since all producers share in the higher value uses through the market-wide pooling process, it is reasonable that through pooling, all producers will share a portion of the responsibility for supplying and balancing that segment of the market.

This testimony will examine the market conditions that compel the conclusion that a transportation system is necessary --

Q. Transportation credit system?

A. Transportation credit system is necessary --

Q. Thank you.

A. -- describe the current California Department of Agriculture (CDFA) transportation allowance, compare hauling costs with the FMMO differential, and describe the details of the construction and operation of the transportation credit system we propose.

II. Market Description

A brief description of the market strongly supports the point that an intra-market transportation system is necessary for a California Federal Milk Marketing Order (FMMO). According to preliminary 2014 census data, California is the most populous state in the United States, its 38.8 million residents accounting for 12.2 percent of the 2014 total US population of 318.9 million persons (Cooperatives Table 7.A

Annual Estimate of Population for the United States: April 1, 2010 to July 1, 2014.)

Q. Mr. Hollon, if I could just interrupt, just to make things easier, I think we have been given leave to not include punctuation when you are reading from the, such as parentheticals and colons and such, so you can avoid that or you can be free to not feel compelled to do that as you go along.

A. Very good.

The United States Department of Agriculture's February 2015 Milk Production report, the annual summary issue, shows that California is also the largest milk producing state with 2014 milk production of 42.3 billion pounds produced for 20.6 percent of the total US production of 206 billion pounds. A position that has held for many years.

JUDGE CLIFTON: I'm not sure that means exactly the same as what you wrote. Would you read that again, please?

MR. HOLLON: California is also the largest milk producing state with 2014 milk production of 42.3 billion pounds produced, or 20.6 percent of the total US production of 206 billion pounds.

JUDGE CLIFTON: All right. So I guess it does mean the same, whether you say U.S. total production or total U.S. production. Okay. Go ahead.

MR. HOLLON: A position it has held for many years.

(Cooperatives Table 7.B -U.S. Milk Production by State 2014.)

Tables 7.A and 7.B are simply population tables, point out California's population amount, and compare to total U.S. population, those are Census Bureau documents.

Table 7.B is taken from the National Agricultural Statistics Service Milk Production Report, published monthly, and the February report is an annual summary of the prior year. So the 2015 report would have listed these amounts of milk production by state, and California's the largest state in terms of producing milk.

Within the state, population is heavily slanted towards the coastal counties and aggregated mostly in the southern portion of the state. Cooperatives Table 7.C (California Population Estimates by County 2014) and Cooperatives Table 7.D (California's Population by County and Principal City 2014), demonstrate that of California's 58 counties, 76 percent of the population resides in twelve of them -- encompassing most of the major urban areas. 26.2 percent of the population lives in Los Angeles County; 47.9 percent live in what would generally be considered the Los Angeles Metropolitan Area, in the counties of Los Angeles, Orange, Riverside, San Bernardino, and Ventura. 16 percent of the population lives in the general San Francisco Metro Area, in the counties of San Mateo, San Francisco, Contra Costa, Alameda, and Santa Clara. The San Diego Metropolitan Area (San Diego County) accounts for 8.3

percent of the population; and the Sacramento Metropolitan Area (Sacramento County) accounts for 3.8 percent.

Turning back to the list of, or to the table set. Table 7.C is California population estimates by county, 2014. And the counties are sorted from population, low being Alpine County, to high being Los Angeles County.

Table 7.D takes the largest population counties, taken from the population table, sorts them by rank, assigns a principal city, and so that would be over to the right of the page. So, for example, San Mateo County, principal city assigned there is San Francisco. San Francisco County, principal city would be San Francisco.

Q. Would you go back, the principal city in San Mateo?

A. Would be San Francisco.

Q. Are you sure it's San Mateo County, now. Okay. Thank you. I misread it. You were right.

A. And the aggregation all the way to the right, then, aggregates those various counties and cities to give some indication of where the largest amount of population is. So Los Angeles County would account for 47.9 percent using this method of aggregating. San Diego County, 8.3; San Francisco County, 16; Sacramento, or city not county, Sacramento 3.8. And these four metropolitan areas aggregated by county, would account for 76 percent of the state's population.

And map 7.E takes this data and then graphically

depicts it so the areas in blue are these large counties and metropolitan areas, and the darker the blue, the larger the population.

Returning to the statement. The population distribution is depicted graphically in Cooperatives map 7.E (California Population by County, Census Bureau, 2014). The above designated large population counties are depicted by the shades of blue and concentrated around the Los Angeles, San Francisco, San Diego, and Sacramento metropolitan areas.

The milk shed areas in California are generally some distance from the population centers. Cooperatives Table 7.F (California Total Milk Production: 1995, 2000, 2005, 2014) details data provided by the California Department of Food and Agriculture (CDFA) on California county milk production for selected years from 1995 to 2014. Notably, total production is increased 67 percent over the 19-year span. Additionally, milk production has about become more concentrated. In 1995, the top five milk production counties were Tulare, San Bernardino, Merced, Stanislaus, and Riverside, producing 66 percent of the state's total. In recent years, the urbanization of San Bernardino and Riverside counties has dropped them out of the list entirely, now ranking them ninth and tenth and producing 5 percent of the state's total, instead of 22.3 percent.

The new top five counties producing 72.8 percent of the

state's milk production are made up of Tulare, Merced, Stanislaus, Kings, and Kern counties. Interestingly enough, if these were the only counties in the state producing milk, California would still be the largest milk-producing state in the country. Cooperatives Map 7.G (California Milk Production by County, CDFA, 2014) plots the milk production by county from Cooperatives Table 7.F and demonstrates graphically the concentration of production. Cooperatives Table Map 7.H (California Milk Production and Population, 2014) combines the population and production data. Population density is noted by red dots and demonstrates the high population concentrations on the coastal counties, while production density, noted by solid color shading, is focused most in the central regions of the state. Clearly milk is more concentrated in areas where people are not.

So again looking to the tables and going to Table 7.F, that is a listing of county milk production taken from CDFA records, and was used to point out that there had been shifts in some of the production areas over time comparing 1995 to 2014.

Going to map 7.G demonstrates milk production by county taken from that table. And again, blue indicates more milk production and dark blue indicates the most milk production, and several metropolitan areas are demonstrated by yellow circles with a line attached to cities, and there's generally

not very much overlap between blue counties and yellow cities.

Map 7.H further details this by the addition of the red dots which indicate population in one thousand resident numbers.

Q. Is that ten thousand?

A. Ten thousand resident numbers.

Q. Thank you.

A. And the population indicators in an overlaid over the cities and the counties of milk production, and again, the cluster of red are generally not located in the darkest of the blue states.

Q. Counties?

A. Counties. Sorry, counties. Moving back to the testimony. Bottom of page 3.

A listing of plants and the products they produce is maintained and published by CDFA. Cooperatives Table 7.J.1 and 2 (CDFA Listed Plants with FMMO Class I & Class II use) were taken from the 2015 listing. Additionally, Cooperatives Map 7.I (California Class I Plants and Milk Production by County, CDFA, 2015), using the same milk production grid, plots the state's higher use value Class I plants. The table depicts plants understood to be primarily California State Order Class 1 fluid milk processing plants, and those that are CSO Class 2/3, primarily soft manufactured and frozen products, but not cheese and whey, or butter and powder processing

facilities. Note that for this purpose, all the plants we can determine having CSO Class 2 and 3 definitions, are noted as Class 2 operations. Of the 82 plants on this list, 35 plants are FMMO Class I plants, and 47 are FMMO Class II plants. Of the Class I plants, 23 are in the high population zones we have outlined. Of the 47 Class II plants, 26 of them are in the high population zones. The California State Order listing is located at --
http://www.cdfa.ca.gov/ahfss/Milk_and_Dairy_Food_Safety/index.html#Plants

Q. Without going through and reading that long URL, I think we can just have it, hopefully we can have it just copied into the transcript as if read in the manner it's typed on? Page 4 of Exhibit 72.

JUDGE CLIFTON: I agree, Mr. Beshore, I still call those forward slashes, but at any rate, it's easier just to see the picture of it. So I would ask that the court reporter, when typing this part of the transcript, go to Exhibit 72, page 4, top one-third, and type what is shown in this exhibit as if it had been read into the transcript.

MR. BESHORE: Thank you.

MR. HOLLON: Continuing from the testimony.

Cooperatives Map 7.I visually depicts that the majority of the higher use Class I use plants --

MR. BESHORE: Could you start that sentence again? Sorry

to interrupt you, Mr. Hollon, but you missed a word.

MR. HOLLON: Cooperatives Map 7.I visually depicts that the majority of the higher value Class I use plants are in the metropolitan areas where the population density is the greatest. Cooperatives Map 7.K (California Class II Plants and Milk Production by County, CDFA, 2015) with data from the same listing, plots Class II operations and the conclusion is the same. Clearly Class I and II plants are generally located in areas closer to population centers than the concentration of milk production.

Looking at map 7.I, we have now, then, the same state map with the same milk production densities marked blue, means more milk, dark blue means the most milk, the red stars indicate what we could best identify as fluid milk processing with Class I plants, and while there are a few red stars in the high production areas, most of them are clustered in the high population centers. The list of those plants and the way that we chose to designate them are Tables 7.J.1. And Table 1 is the listing of Class I plants by residential. Column P of that table marks them, and those would all be plants that have an X in Column F indicating fluid milk. And then they were mapped according to their county.

Table 2, where in Column P everything is labeled with a 2, were the plants that we could best identify as Class 2, California, CDFA Class 2 and 3 plants, and we identified these

then as the equivalent of Federal Order Class II plants, and their map according to the city and county where they are located at. And that is map 7.K.

BY MR. BESHORE:

Q. So when you referred just a moment ago to Table 2, you were referencing table 7.J.2, correct?

A. Correct.

Q. Thank you.

JUDGE CLIFTON: Before you start to read again, tell us where you are in the testimony, Mr. Hollon.

MR. HOLLON: Page 4.

III. Description of the Existing California Department of Food and Agriculture Transportation Allowance System

CDFA has operated a system of transportation allowances since 1983. The system offsets a portion of the transport cost form moving milk to designated plants located within designated areas and meets certain class usage definitions. Allowances are established by CDFA and are based on milk movements between designated supply points to designated sales points. The resulting rates are paid out of the producer milk pool.

As noted in the CDFA witness's statement, the locations for which the CDFA system provides an allowance does not include supplies from every county in the state, nor deliveries to every CSO Class 1, 2, or 3 plant. Deliveries to plants located within the largest milk supply regions, generally the

same regions we noted above, are not afforded an offsetting payment because those locations are able to acquire a milk supply at a lower transport cost. Conversely, deliveries to plants more distant to the largest milk supply regions are able to equalize the transportation component of their procurement costs by the use of the transportation allowance.

IV. Comparison Haul Costs versus Federal Order Differential

CDFA publishes summary statistics with the transportation allowance program.

(http://cdfa.ca.gov/dairy/uploader/docs/Haul%20Exhibit%20-%20RP%20Area%20April%202013_Oct%202014.pdf)

How do you want to handle this?

Q. Website URL to be inserted, if we might, please, your Honor.

JUDGE CLIFTON: I agree. This website does not even fit on one line, so we definitely don't want to read that into the record, so --

MR. HOLLON: And it has lots of backslashes.

JUDGE CLIFTON: It does, or forward slashes. We would, therefore, like the court reporter to go to Exhibit 72, page 5, and just shortly after the heading "IV. Comparison Haul Costs versus Federal Order Differential" we would like the court reporter to capture the website that is shown there just as if it had been accurately read into the transcript.

MR. HOLLON: For this section I want to speak to the tables

a little bit ahead of this, of the testimony, and then come back again after reading the testimony.

So Cooperatives Table 7.M.1 & 2 (California Ranch-to-Plant Hauling, by Area, April 2013 - October 2014). This is the multi-color table that you have in your packet.

BY MR. BESHORE:

Q. Which is also identified -- sorry to interrupt you, Mr. Hollon -- this is also identified as Exhibit 74, a more readable version of it. Am I correct?

A. You are correct.

Q. Okay. Thank you.

A. So this is a regularly published recap of hauling information. I cannot remember if Mr. Shippelhoute included one of these in his exhibits, but he certainly referred to it. And this data is collected from all parties in the state. It represents transportation transactions across all classes, not just one California Class 1 or 2 or 3, and it is an immense amount of detail. It designates from points, but I would emphasize those from points are not a farm, they are a geographic area. And it designates two points for delivery points, and those delivery points are not necessarily a plant, they are a geographic area.

And the data sums by the delivery, the supply points and the delivery points, some approximate number of loads, pounds shipped, a mileage range low to high, an average miles,

and then a rate. And this information is furnished by cooperatives, by handlers who direct hauling, and is collected in the same manner as we supply data for our own cost equation. I'll be making several references to some of the data that's in the October 2014 column in just a few minutes.

Q. So on Exhibit 74, October '14, there are actually four months of data in the October 2014, or the set of columns to the right of the exhibit; is that correct?

A. That's correct. This information is published quarterly, so the next time it's published, April 2013 will drop off and April 2015 will be added.

Q. Thank you.

A. Back to the handout.

Cooperatives Table 7.N (CDFA Haul Regions) and these have been established for some time. I was not a part of their establishment, so I can't tell you exactly the reasons or the boundaries, but these have been in place for sometime, and so any of the descriptive data and the cost data that's on the large page statement, when it indicates, I'll give you an example, in the upper left of the table that says from Chino Area 1, and delivered to, and there's five different possibilities; Chino Area 1, Los Angeles Area 3; San Diego Area 4, South San Joaquin Valley Areas 7, 8, 9, or north San Joaquin Valley Areas 10, 11, 12, if you look over to the map of the haul regions, you can find the Chino area in the Southern

portion of the state --

JUDGE CLIFTON: Now, what page are you on looking at the haul areas?

MR. HOLLON: Map 7.N, I'm sorry.

JUDGE CLIFTON: So we're in Exhibit 73.

MR. HOLLON: Yes, 7.N.

JUDGE CLIFTON: Go to 7.N, okay. Thanks.

MR. HOLLON: So if there were data that were, that represented a delivery from the Chino area, that would be the small yellow lower left geographic designation that touches several counties. And if there was a load of milk that moved from the Chino area to the Los Angeles area, it would be into the pink area, that's Los Angeles Number 3. So that's how the from's and the to's, if you will, or the origination and destination of the data in the big sheet, are recapped.

BY MR. BESHORE:

Q. By the "big sheet" you mean Exhibit 74?

A. Correct, Exhibit 74.

Q. Thank you.

A. And again, that data supplied in this type of format by handlers who are seeking either a transportation allowance or providing data for this summary when it is published on a quarterly basis.

JUDGE CLIFTON: So just so I understand this, when I'm looking at Exhibit 73, Cooperatives Map 7.N, I notice that at

the very Northern most corner of California there is an area that is area number 20.

MR. HOLLON: Yes.

JUDGE CLIFTON: And when I look at the example you have shown us from Chino, there isn't any delivery shown into that area.

MR. HOLLON: So that been -- where were you looking at asking me the question, there was no milk from Chino that would have delivered to Area 20. And there's not a lot of milk delivered into or out of. But if you look at the second page of the table --

MR. BESHORE: Exhibit 74.

MR. HOLLON: Exhibit 74. And go all the way down, you do see that from that area, which is Del Norte, Humboldt to North Bay there were none, in April of 2013, or none in the delivered to the South San Joaquin Valley, but there were 27 loads that were delivered in that area for which there was some data collected. And if you run your finger across the four corners, you kind of see that that's a consistent pattern. By and large, the patterns somewhat remain the same, but they are not all identical from period to period to period.

BY MR. BESHORE:

Q. So Mr. Hollon, just looking at table, the map 7.N in Exhibit 73, and the large Exhibit 74, both of which are in color, the colors match up; is that right?

A. They do.

Q. So that helps reading the two together a little bit.

A. Right.

Q. Thank you.

A. Now I want to talk about Table 7.O.

So in order to point out that the current location adjustment structure or Class I differential structure, that would be, or that would be present in a California Federal Order, and that structure is, they are listed differential for all counties. I needed to find some way to compare what I might, what the differential structure might offer a transport if there was a California Federal Order, and point out that that comparison was inaccurate. And that's not the easiest thing to do, and it's even a little bit harder to explain, and probably even harder to follow.

So going to tell you what I did and perhaps a couple of times. So looking to Table 7.O, I went into exhibit --

Q. I'm sorry, let me interrupt you right now. Table 7.O, is there a typographical error in the title? Maybe it's been corrected by hand, I'm not sure. But just so we know what time period the data represents.

A. The title initially said October 2013. And so the first time I did that exercise, that was the most recent data I had available. I did go back and do it for October 2014. So table 7.0 has on I think everyone's copy, 2013 struck through,

and written over 2014.

Q. Thank you.

JUDGE CLIFTON: Okay. Now, let's talk about that. How many pages do I have on 7.O? I see I have page 1, but there's only one page.

MR. HOLLON: There's four pages.

JUDGE CLIFTON: Four pages, okay. So the copy I have, all four pages still have 2013.

Ms. Elliott, with regard to the copies you have, if you will look at Exhibit 73, and this table is not a pretty map with colors, it's a lot of columns and words and numbers. Find, if you will, 7.O, and there will be 7.O.1, 7.O.2, 7.O.3, and 7.O.4 in the heading, the title of that, is the last part of that heading in yours, 2014? Is it showing as corrected?

MS. ELLIOTT: Two out of the three I have checked, yes.

JUDGE CLIFTON: Okay. Good. So the record copies do show the 2014. That's good. The rest of us can correct ours as we go. And Ms. Elliott, would you be sure to check at a break that the court reporter's copy also shows the 2014?

MS. ELLIOTT: All of them have 2014.

JUDGE CLIFTON: Okay. Now, you know, the one I'm talking about is the one she'll take home for her own use for typing, the one that's on her desk right now, that's the one I'm talking about. Just -- just to be sure, because she can't make corrections while she's capturing everything that's said.

Okay. Thank you. Mr. Hollon, you may resume.

MR. HOLLON: Looking to Table 7.O.1, rows 1 and 2, data was taken from the differential maps, as well as the CDFA table, Exhibit 74. So row 1, for example, would be a shipment from the Chino Area 1, just so happened there were 64 loads that went out of that area. And Chino Area 1 encompasses in the main, Riverside and it is -- say it the other way. Chino area 1 is located in Riverside and San Bernardino Counties. It does not include the entirety of those counties, as you can tell from the map we looked at. And in those two counties, Riverside has a Class I differential of $2; San Bernardino has a Class I differential of $1.80.

Taken from the table, there were deliveries into Chino Area 1 and into Chino Area 2. And again, the counties that fit those deliveries, and the differential that fit those deliveries, and the CDFA haul rate that they determined that was .4, let's see how to say it right -- $0.4276 or 42.76 cents. And if you look at Exhibit 74 and go all the way to the upper right, in October of 2014, you will see on the very first row it will show 64 loads from Chino Area 1, and the rate I just mentioned $0.4276.

BY MR. BESHORE:

Q. Okay. Now, in describing that information here in rows 1 and 2 of Table 7.O.1 you mentioned a Chino Area 2, if I heard you right. And I don't think there's any Chino Area 2.

A. There is not.

Q. So there's just Chino Area 1 is the only area, correct?

A. Correct.

Q. But there happen to be two different differentials by county in that area?

A. Correct.

Q. Thank you.

A. So what I attempted to do was to say what was the, what would be the most money that the differential service would offset, and what would be the least money that the differential service would offset? And there's no way from this data to know which was an actual transaction. And so if something had, if this load had originated in San Bernardino County, and delivered in San Bernardino County, or originated in Riverside County and delivered in Riverside County, there would have been no gain at all. And if the load would have originated in San Bernardino but delivered to Riverside, there would have been a 20 cents differential value available. So that's the how columns I and J were computed.

So comparing what the differential might offer with what the transportation rate was, if you have got zero, you wouldn't cover any of it, and if you got 20 cents, you would cover 47 percent. So that's how columns K and L were computed.

And these 64 loads back over in Column B, represented a tenth of a percent, or .11 percent of all of the loads in the

month that were transported, which were 59,130 loads.

Q. Does that number, is that on 74 somewhere?

A. That number is on Exhibit 74 on the second page, all the way down in the lower right.

Q. On the line that's labeled grand total on the left?

A. That would be a good label for that line, yes.

Q. And that October 14 loads column?

A. Correct.

Q. Okay. Thank you.

A. So I repeated this exercise for selected samples all the way through the system. I didn't attempt to do every one, but as I went through the system, if you were to look down Columns K and L on the percent to haul covered solids, you have a lot of zeroes. You don't have very many large percentages.

On the percent cover haul largest, you have got, for example, this 47 percent we just calculated was among the larger percentages that the differential would offset. The largest percentage that the differential would offset would be in the second block, and you see a 74 percent, but that only applies to 2.38 percent of the loads that were transported, and you would assume that all of the loads got the maximum it could get, which is not necessarily realistic because you don't know exactly the geography it started from or the geography it ended at.

And if you look all the way through this on each of the

four pages, again looking down Column L, in no case is the amount that would be offset by the differential adequate or enough to fund the transportation cost.

JUDGE CLIFTON: And you know that how?

MR. HOLLON: Because the percentage in Column L is never a hundred, so that would be we funded it all, and that's not necessarily the goal to fund the hundred percent. But typically, well, there's not a lot of these in the order system, but where the one that is used the most is in the Southeast. And when in Southeastern orders, Federal Orders 5 and 7, the target in those decisions were 95 percent. And while that target may be arguable, I might say, maybe it ought to be 99 percent. But clearly these are well below that. So if all we were going to afford a credit or an offsetting payment, in most cases it would be a very small percentage of the amount. And this is the most tedious table in the set. But that process was repeated in all of these various comparisons.

JUDGE CLIFTON: So let me just understand the basics. If there's to be a Federal Order, then the way you deal with some subsidy or support for transporting --

MR. HOLLON: Typically typically.

JUDGE CLIFTON: Milk is what?

MR. HOLLON: Is to say if where you started out at a Class I differential of $2, and where you ended up had a

Class 1 differential of $3, you would gain something. And that gain would be used to, in theory, offset your transport cost because you paid to get it there. So you got a higher price.

JUDGE CLIFTON: Okay. And when you talk about the Class I differential price surface, does that just mean the amount of extra money you are getting for the transportation you have to do?

MR. HOLLON: It could mean that. If you would back up to Table 7.L, these are a listing of all of the differentials that have already been assigned by the Order system for California. There's 3,100 plus counties in the United States, and every county has a differential assigned. That was discussed in the earlier testimony about how they were derived, the process. If you remember in Mr. Schad's testimony, there was a little bit of discussion about USDSS versus USDMSS, that acronym, and that model done by university, at the behest of the USDA, worked out a differential service, and then that was in the Federal Order Reform Decision. Congress said use the slightly different one, and that's been in place since then.

And so that differential represents, among other things, transportation, but Mr. Schad went through a list of those numbers and rationale.

So if that were the only value that we were going to have, it would not be adequate to fund the cost. And in our proposal, Class 1 and 2 buyers would be afforded the shipments

to those, would be afforded, they would like that, and the seller would like to have that portion of their cost covered through that mechanism. And as the testimony evolves, we'll be developing what that mechanism is.

But the again, the purpose of these four tables was to show that if left alone, it would be inadequate.

JUDGE CLIFTON: Thank you, that helped me a lot.

MR. HOLLON: Back to the testimony on page 5. Pick up with IV. Comparison Haul Cost versus Federal Order Differential

And I'll start with the sentence after the citation that we discussed how to deal with it.

JUDGE CLIFTON: Right, that website that will already show in the transcript.

MR. HOLLON: Yes.

The data is provided by milk sellers to CDFA. It notes the source, destination, number of loads, mileage data and cost data for that movement. Their data is compiled for all destinations to all plants from each farm, and not just those received in the payment, and not just for shipments to Class 1, 2, or 3 plants. We have taken representative locations from the report for the period October 2014 from Cooperatives Table 7.M.1 & 2 (California _ Hauling by Area, April 2013 - October 2014) representing significant milk movements from various designated haul regions to identify demand points and compare the haul cost report reported by CDFA with the difference in

location adjustment allowed by the Federal Order Class I differential price service. Cooperatives Table 7.L (Class I Differentials California Marketing Area) is a summary of the existing Federal Order Class I differentials. The haul regions depicted in Cooperative Map 7.N (CDFA Haul Regions) are generally defined, I'm sorry, are defined as generally portions of counties and frequently cross county -- and insert the word "boundaries."

JUDGE CLIFTON: All right. I'm asking that Ms. Elliott insert the word "boundaries" on page 5 of Exhibit 72 at a point about seven lines up from the bottom, word boundaries ends that sentence. "Frequently cross county boundaries."

MR. HOLLON: Cooperatives Table 7.O (Comparison CDFA Published Haul Cost with Federal Order Differential Allowance, California Milk Sheds and Markets, October 2014) (4 pgs.) recaps the movements and cost extracted in Cooperatives Table M.1 & 2.

* Column A denotes the CDFA labeled milk shed;
* Column B the number of loads that moved between the supply point and the demand point;
* Column C the counties that make up the principal geography of the supply area;
* Column D the Federal Order Class I differential for the specific supply zones -- and I would note that after the word differential is reference to footnote number 1.

Reading footnote number 1:

> Federal Order provisions establish a Class I differential value for every county in the United States. The differential is designated, in part, to the represent the cost to attract the milk supply to demand locations. The price surface was established during the Federal Order Reform hearing process that culminated the final decision, milk in the New England other marketing areas. Decision on proposed amendments to marketing agreements and to orders. (64 Fed. Reg. 16026, et seq. (1999)). In general, the hearing record gathered supply, demand, processing cost, raw milk transport, and dairy product distribution cost data for the entire United States, and developed a supply demand least cost model to fill all the demands at the least cost for processing, milk transport, and dairy product distribution. A listing of these differentials can be found at 7 CFR Part 1000.52.

BY MR. BESHORE:

Q. Just to interrupt you there, Mr. Hollon. Of course those differentials in the final decision, as you have testified and Mr. Schad testified, were changed by act of Congress, and ultimately the differentials in the CFR ended in place of the Congressionally enacted ones.

A. Correct.

Q. Thank you.

A. Moving back to the testimony.

* Column E the CDFA labeled plant zone;
* Column F the principal counties that comprise the the plant zone;
* Column G the Federal Order Class I differential for the

specific plant zone counties;

* Column H the CDFA computed haul rate;
* Column I the smallest non-negative value difference between Class I differentials in the counties composing the supply zone and the counties composing the plant zone;
* Column J the largest value difference between Class I differentials in the counties composing the supply zone and the counties composing the plant zone;
* Column K the percent of the CDFA calculated haul rate covered by the smallest differential difference;
* Column L the percent of the CDFA calculated haul rate covered by the largest differential difference;
* Column M the percent of the total volume hauled represented by this set of source and destinations;

The data in cooperatives Table 7.O represents 57,549 loads of milk, or 97.3 percent of the data in the CDFA, October 2014 report. The average transport rate in the sample was 75 percent per hundredweight. In the observations collected, transport cost for CDFA range from 35 cents per hundredweight to $1.82. These representative observations illustrate that the differential value in every case is well below the cost of transport and covers too small a percentage of the cost to be useful or equitable without additional cost offset provisions.

The three supply - demand locations that have a largest recovery percentage are the Chino Area 1 to the Los Angeles

Area 3, (73 percent recovery if all the milk were in the largest differential spread locations) accounting for 2 percent of the total observations; the South San Joaquin Valley Area, 7, 8, 9, to South San Joaquin Valley Area 7, 8, 9 (56 percent recovery if all the milk were in the largest differential spread locations) accounting for 50 percent of the observations; and South San Joaquin Area 7, 8, 9 to Los Angeles Area 3 (47 percent recovery if all the milk were in the largest differential spread locations) accounting for 8 percent of the observations. But even those observations are below a reasonable and equitable relationship for cost recovery. Furthermore, some of the hauls in each of these areas may take place from points that would have a lesser or no differential difference to possibly offset the transport cost.

These three observations collectively account for 60 percent of all observations. The remaining 40 percent show a much smaller contribution from the differential value differences to offset a transport cost, and in many cases, the differential value is zero.

Cooperatives Table 7.P (California Population (2015) Milk Production (2014), Federal Order Differential and State Pooling Designation) details each county, its Federal Order Class I differential, population, population percentage, designation by CDFA as a Northern California county for pricing purposes (1) or Southern California County for pricing purposes

(2), the population weighting for that county as a CDFA pricing designation, and the 2014 milk production for the county. The data summary by FMMO zone is recapped below, and Cooperatives Map 7.Q (Federal Milk Marketing Order Class I Differential and Summary Statistics, Population and Milk Production, 2014) depicts this graphically.

Cooperatives Table 7.P - Summary

Q. At this point, perhaps well, do you want to read the data, Mr. Hollon, or how do you want to handle the table which is incorporated into the text of Exhibit 72?

A. So looking at the data, the first column is the appropriate Federal Order zone, ranging from $1.60 up to $2.10. The population in that selected geography; the percentage of the population in that selected geography; the milk production in that selected geography; and the percentage of milk production in that selected geography.

So for example, in the $1.60 zone, five percent of the population resides there, but 49 percent of the milk production is located there. Or in the highest zone, the $2.10 zone, includes 43 percent of the population and the milk production percent is not enough to register one percent, so between zero and one percent.

Looking to the map, Cooperatives Map 7.Q has all of the same information, but it's graphically shown instead of tabular.

Q. Okay. Your Honor, I would like to request that the table which appears in the page 8 of exhibit 72 be reproduced in the transcript as it appears in the exhibit, as if read, at this point.

(Refer to the table on Page 8 of Exhibit 72.)

JUDGE CLIFTON: I agree. I'm going to instruct the court reporter to turn to, when typing the transcript, to turn to Exhibit 72, page 8, and in the top half of the page, to picture this table, to type this table into the transcript, but include please, the words above the table:
Summary-California Population and Milk Production by FMMO Zone and then show the table with its headings and its columns and its numbers.

MR. BESHORE: Thank you.

JUDGE CLIFTON: You're welcome.

So, Mr. Hollon, when we when we have the Exhibit 73, Map 7.Q open, and we look at your table, walk us through some of this.

MR. HOLLON: Okay. Looking at the map, for example, the yellow represents the $1.80 zone or where the Class I differential is $1.80 in those counties. Looking down in the lower left corner there is a text box with a $1.80 zone in it, and it recounts the population 34 percent, 13.2 million; and the milk production from that same geography, 6.2 million, 15 percent.

If you were to look over on the table, you would see the same 34 percent and 15 percent. And so it's just a matter of what you are attempting to point out, again, that population and milk production don't necessarily match up. And in order to meet those demands, milk will need to move where it is produced to where it is processed and ultimately consumed, and that the differential difference, if you only had the Federal Order alone, it would be inadequate.

JUDGE CLIFTON: And so there really are only five zones in all of California.

MR. HOLLON: That's correct. And you know, those boundaries, you know, if we had Arizona or Nevada or Oregon, there would be zones in those states, and some cases they would align and in some cases they would extend.

JUDGE CLIFTON: Thank you. Mr. Beshore?

BY MR. BESHORE:

Q. Okay. You may resume on page 8, I guess, Mr. Hollon.

A. Page 8, picking up from the paragraph that is just below the summary table.

To summarize, the $1.60 zone has five percent of the population, and 49 percent of the milk production; in the $1.70 zone these ratios are 12 percent and 33 percent; in $1.80 zone, 34 percent and 15 percent; in the $2.00 zone, 6 percent and 2 percent; and in the $2.10 zone, 43 percent and less than one percent of the milk production. Clearly the milk production

and population centers are not in the same counties.

The Federal Order differential structure alone is not adequate to move milk from supply to demand points, and the marketing system will need additional cost recovery assistance to function in an orderly manner and incent milk to move to the higher use classes. Without an inside the market transportation credit system --

JUDGE CLIFTON: Read that again, please.

MR. HOLLON: Without an inside the marketing area transportation credit system, many of the Class I and Class II handlers would be at a competitive disadvantage to serve similarly situated use Class 1 and Class II handlers located in the more densely supplied milk shed areas.

The proposed California Order includes a market-wide pool. Our proposal will pay every producer the same basic pooled blend price, adjusted for quota where appropriate, in essence, assuring that all producers share equally in the pool returns. The full cost of the transportation credit system will be borne by the blend price pool, assuring that all producers share equally in the cost of serving the higher value market. Only the reimbursable transportation costs that actually occur are deducted from the pool. Class I handlers will be billed according to their location, but all of the monies will be blended into the producer pool. Thus, there is no reason to adjust the transport reimbursement rate by the

difference in differential value.

V. Cooperatives' Transportation Credit Payment Construction

A. General Description

The Cooperatives' proposal is both mileage and transaction based. For each haul trip that meets the criteria for a payment, an established rate will be paid. Miles for which reimbursement is paid will be based from each producer location to the destination of the route, multiplied by the pounds picked up from that producer. Reimbursements will be limited to only 225 miles and will be paid only on milk actually delivered, and will be increased or decreased by a fuel adjuster. Handlers will receive transportation credit payments on shipments to plants that are located in designated areas meeting specifically defined milk use parameters. The cap of 225 miles reflects data from the CDFA study on the maximum number of miles that milk is transported and is a reasonable distance to set the cap limit. This limit will -- this will limit the disorderly application of the reimbursement rate.

B. Development of the Rate Estimating Equations

To preserve the confidentiality of the data in developing the rate reimbursement formula, the proponents requested assistance from the staff of the Pacific Northwest Market Administrator's Office to analyze delivery costs and derive equations to estimate the cost function. The Cooperatives submitted data on source point, destination point, miles

travelled, volumes transported, and rates paid (including if applicable per hundredweight rates, mileage rates, stop charges, and fuel adjustments) for all deliveries to FMMO Class I and II plants (CDFA Class 1, 2, and 3 plants) for May and October of 2013.) The data was based on each producer and each delivery and was similar in form to the data submitted to CDFA that is used to compile the quarterly recap cost publication.

JUDGE CLIFTON: Go ahead and just read and that is used to compile, and finish the sentence from there.

MR. HOLLON: -- that is used to compile the CDFA quarterly recap haul cost publication. For each record, 30 cents per hundredweight was deducted from the cost. Based on our experience across all milk sheds, a rate of 30 cents per hundredweight is a typical "local" haul rate. This amount represents the charge for delivery to the local market or the producers responsibility for a portion of the cost of a longer distance haul in order to meet a demand order. Observations with haul rates also then 30 cents per hundredweight were not included.

JUDGE CLIFTON: Let's go off record for just five minutes. It is almost 11:35. Let's take ten minutes. Please be back and ready to go at 11:45.

(Whereupon, a break was taken.)

JUDGE CLIFTON: We're back on record at 11:47.

Mr. Beshore, would you address what we discussed during

the break with regard to the difficulty in re-creating a table within the transcript?

MR. BESHORE: I'll try to. Marvin Beshore.

I understand that it is logistically difficult, perhaps impossible, to incorporate a graphic table such as appears on page 8 of Mr. Hollon's testimony, Exhibit 72, to incorporate that into the transcript itself as I had requested. I do understand that. And with that understanding, you know, we certainly won't make any further requests of that nature, but will ask that the testimony reflect, just discuss the table as appears on page 8 of Exhibit 72 for instance, or the applicable page of the exhibit, so that the person reading the transcript can have the table from the exhibit in their hand for reference to the testimony itself.

JUDGE CLIFTON: Very good. So I had previously instructed the court reporter to include in the transcript the table that's found on page 8 of Exhibit 72, and I reversed myself. I don't want that done. So I did ask that the words be included: Summary -- California Population and Milk Production by FMMO Zone. And I would like that to show and then there can simply be an indication "table omitted." So that table is not only in Exhibit 72 at page 8, but it is in another exhibit as well; is that correct, Mr. Beshore?

MR. BESHORE: I'm not sure that it is. It is a summary of table, of data on Table 7.E of Exhibit 73, but I do not believe

that the table itself is in 7.P. am I correct, Mr. Hollon?

MR. HOLLON: I think that's correct.

MR. BESHORE: Yes. So I would want to note as labeled on page 8 of Exhibit 72, that Cooperatives Table 7.P summary, that that is what this data set on page 8 of 72 is. Summary of what of the data in table 7.P of Exhibit 73.

JUDGE CLIFTON: Very good. I encourage, my own preference, I encourage you to continue to put in snapshots like this table within testimony that will be read into the record, even if it is a portion of the testimony that won't actually get read into the record, because those of us who will be looking at Exhibit 72 will appreciate the visual that this table provides for us.

All right. Now, Mr. Beshore, do you recall where we were when I took the break?

MR. BESHORE: To be perfectly candid, no.

JUDGE CLIFTON: Do you, Mr. Hollon?

MR. HOLLON: Page 10, the paragraph in the middle of the page, beginning with "the supply and destination points were defined as follows:"

JUDGE CLIFTON: Okay. Now, before you go there, Mr. Hollon, go back to page 8, and now that you know that the table will not appear as you have shown us, I would like you to talk a little bit more about what's depicted there, if you choose to.

MR. HOLLON: In the summary table on page 8 is a recap of

the data that's shown on the map 7.Q, so the map 7.Q depicts the various counties that make up the various differential values, and there are some summary data for each of the differential locations. So, for example, the $1.80 location area, each county that has $1.80 Class 1 differential is shown on the map as yellow, and there is a text box with an arrow that points into that yellow block of counties that has population number and percent, and milk production number and percentage. And the information that's in those text boxes are what appears in the summary of table 7.P which is on page 8.

BY MR. BESHORE:

Q. Okay. Could you pick up then, Mr. Hollon, on page 10?

A. Page 10, picking back up with the statement, and starting in roughly the middle of the page.

The supply and destination points were as follows:

Transportation Zone 1 - deliveries to plants located in the counties of Los Angeles, Orange, Riverside, San Bernardino, San Diego, and Ventura, originating from dairy farms located in the counties of Riverside or San Bernardino. These are represented as "So Cal (R/SB)" in Cooperatives Table 7.R (Descriptive Data Resulting from the Market Administrator Transport Study - California Data, May and October 2013.)

Transportation Zone 2 - deliveries to plants located in the counties of Los Angeles, Orange, Riverside, San Bernardino, San Diego, and Ventura, originating from dairy farms located in

all other counties with in the marketing area, except Riverside and San Bernardino. These are represented as "So Cal(-R/SB)" in Cooperatives Table 7.R.

Transportation Zone 3 - deliveries to the counties of Alameda, Contra Costa, Marin, Napa, Sacramento, Santa Clara, Santa Cruz, San Francisco, San Mateo, Solano, and Sonoma, originating from Dairy farms located in all other counties within the marketing area. These are represented as "Not So Cal" --

Q. What -- spell it again, or start again with the name you have called that zone.

A. These are represented as "Not So Cal" in Cooperatives table 7.R. We selected these combinations as most representative of the market's procurement patterns for areas where transportation credit assistance was necessary. They represent payments from narrowly defined procurement areas, as in the case of Transportation Zone 1. Our experience is the milk assembly and delivery conditions are different from that region when compared to the general situations in Transportation Zone 2 and Transportation Zone 3, which represent longer transport mileages.

Additionally, as demonstrated earlier, the destination points selected reflect areas of increased population and the predominance of fluid plants. There are plants that --

JUDGE CLIFTON: In the predominance of --

MR. HOLLON: Of fluid use plants. There are plants that will not receive transportation credit assistance. Those plants are located in areas of high milk production, having shorter hauls, and thus, lower procurement loss. Only counties located in the marketing area would be eligible for transportation credit.

C. Descriptive Data

Q. Now, at this point on page 11 of Exhibit 72, you have printed in the text of Exhibit 72, the very table which is also in table 7.R in Exhibit 73.

A. Correct.

Q. Okay.

A. So I'm going to turn to Table 7.R and talk about the information that's there. And the first is, I need to have a correction penciled in. The October number of 574 should be 547.

Q. That's in column A?

A. Column A.

Q. The number of records for October should be 547 rather than 574?

A. Correct.

JUDGE CLIFTON: Now, Ms. Elliott, are you there?

MS. ELLIOTT: Yes.

JUDGE CLIFTON: So -- and do you also still have open page 11 of his testimony?

MS. ELLIOTT: Yes.

JUDGE CLIFTON: Which is Exhibit 72?

MS. ELLIOTT: Uh-huh.

JUDGE CLIFTON: You will notice that in his testimony he has it correct as he wants us now to change it --

MS. ELLIOTT: Okay.

JUDGE CLIFTON: -- on the table. All right. So I'm making my change as well, 547, all right. And the record copies will be conformed accordingly. Mr. Hollon?

MR. HOLLON: Table 7.R is some descriptive data for the information that the Cooperatives shared with the Market Administrator's Office to generate a rate-estimating equation.

The term "record" simply means a reflection of a page of data. And so we sent in information per farm, per destination point, pounds, miles, and a cost. And a page may have had information about a dozen farms, 20 farms, or 2 farms, that's all that the word "record" refers to.

We sent information for the month of May and October to represent a flush month and a month when milk production was high and a month when milk production was somewhat lower. We only sent information on transports that went into the designated demand areas that I have identified in my recap of transportation Zones 1, 2, and 3, and you can get some sense of how many records there were, but a better sense would be to look in Column B, which is pounds. And so for the two periods

for all the, for all data we submitted was 835,880,529 pounds.
BY MR. BESHORE:
Q. And those pounds were deliveries by, from cooperative farms to Class I and II plants?
A. Well, what would be considered a Federal Order Class I and II or a California Class 1, 2, and 3.
Q. Thank you.
A. And that was segregated by how many pounds were in May and October and how many pounds went to the various transportation areas. The rest of the description, I omitted a column reference, so pounds per record doesn't have a column of reference.
Q. Do those, does this that column have any particular significance, in any event?
A. No.
Q. Okay.
A. Column C is a weighted miles, so gives some idea of what the average of looking down in the demand areas, what the weighted miles were, so that would be, you know, a figure representing the load size and the mileage, a weighted average rate. It would be the same, and, you know, essentially to note that there is some differences in the demand areas on a weighted average rate, and weighted average rates per mile, and rates per loaded mile. And they are not, looking across at the demand areas, they are not the same in each area. So it points

to the need for a different estimating equation for the different areas.

Again, all of the rates were reduced by 30 cents, so if the record indicated that transaction cost a dollar, we reduced it by 30 cents to represent what is a typical, in our experience in the state across all of the markets, a local haul, and producers responsibility for perhaps a more distant haul than a portion of that responsibility.

And, again, this data was taken from confidential business records of the Cooperatives, and so while we are here jointly in a proposal, certain elements of our business we simply choose not to share with one another, so that's why we went to a third party to do this, plus to gain the expertise.

JUDGE CLIFTON: So -- okay. Looking back at your three transportation zones that are at the bottom of page 10. I see what those are, and then you have the little shorthand way of referring to them which is in the table.

MR. HOLLON: Yes.

JUDGE CLIFTON: Why did you choose the little shorthand way of referring to Transportation Zone 2 with a minus in it?

MR. HOLLON: To indicate not, to make it fit in the space.

JUDGE CLIFTON: Okay. So you still -- okay. So that's not Riverside and not San Bernardino?

MR. HOLLON: So going back to transportation Zone 1 and 2, they both reflect deliveries to the same plant locations, but

the supply locations in one case are only from Riverside and San Bernardino County, and the other is from any other county in the state that went there.

JUDGE CLIFTON: Oh, I get it.

MR. HOLLON: And we designated the zones, both the demand points and the supply points, based on our experience of what we thought was typical and responsible assignment.

BY MR. BESHORE:

Q. For those zones, essentially Riverside and San Bernardino, are they closest counties to the --

A. Yes, they are closer to the demand area and would have a different transportation characteristic.

Q. Okay. The rest of the counties are more distant?

A. More distant, yes.

Q. Thank you.

(See table at the bottom of Page 11 of Exhibit 72.)

JUDGE CLIFTON: This is an amazing piece of work.

MR. BESHORE: We're still going through it. We're not at the end yet.

JUDGE CLIFTON: It's great. Yeah, but just having gotten this information from the Cooperatives and distilling it like this is really, really amazing. I think it's time for lunch. What do you all think? Mr. Beshore looks disappointed, he wants it keep going.

MR. BESHORE: Well, we were thinking of the possibility of

finishing the direct before lunch. It is, obviously pushing later and later. So I'm, you know, we're open to break. Mr. Hollon?

MR. HOLLON: Certainly.

JUDGE CLIFTON: If you want to keep going, I'm fine with it. We did just have a break.

MR. BESHORE: I'm not sure we can finish.

JUDGE CLIFTON: We don't have to finish, if you would like to get in a little more before lunch that's fine with me.

MR. BESHORE: Yeah, let's push longer.

JUDGE CLIFTON: Okay. That's good.

MR. HOLLON: On page 12, beginning from the top of the page:

For analysis purposes, the data, both source and destination point, were grouped as described above for Transportation Zones 1 through 3. Cooperatives Table 7.R (Data resulting from Market Administrator Transport Study - California Data, May and October 2013) details descriptive information concerning the data submitted.

The data was sorted by month and by demand area. There were 1073 records representing 835,880,529 pounds delivered in May and October. Submitted deliveries in May represented 416,461,767 pounds, and in October, 419,418,765 pounds. These months were chosen to be representative of a flush and short milk supply situations. The average load travelled a weighted

average 112.1 miles. Pounds used in the predicted equations represented 78 percent of the pounds in each of the two months that received the transportation allowance from CDFA.

D. Study Results

Analysis was performed in order to:

1. Develop a representative equation to estimate the cost per hundredweight per mile for each of the Transportation Zones;

2. Generate a credit to the handler that closely approximates the actual cost of delivery, less 30 cents per hundredweight; and

3. Reflect the approximate cost of supplying each of the Transportation Zones.

The equations estimating costs resulting from the analysis of the data, Cooperatives' Table 7.S (Regression Summary from the Market Administrator Transport Study - California Data, May and October 2013) were in the form of an intercept plus the coefficient or constant, which is multiplied by the miles driven. The proposal includes separate equations for each cost determination for each of the three demand areas. The equations show good predictability and met the three objectives outlined above. Variations in predicted versus actual involve chiefly differences in farm size and density in the various milk sheds, peculiarities in road networks within the different delivery points, and the differences in the mileages necessary to deliver to each market. For example,

delivery into a market may require more miles, while delivery into another market may require more tolls and be in a high-traffic area.

For the combined three regions for the Cooperatives in both months, the equations resulted in a calculated payment of $5.205 million versus an actual payment of $5.261 million.

Q. Can you just clarify when you say actual payment, what you mean there? By and from where or --

A. The data that was submitted, I included detailed information from the destination, from the source point to the delivery point, mileages, volumes, and how much was paid for that transport.

Q. So the --

A. So that would be the actual.

Q. The actual payment is what was actually paid the trucker?

A. Correct.

Q. On the records?

A. On the records that were recorded.

Q. Thank you.

A. And the estimated amount would be what the rate estimating equations would have generated.

JUDGE CLIFTON: Now, when you say estimated, are you equating that with calculated?

MR. HOLLON: Yes.

JUDGE CLIFTON: Okay.

MR. HOLLON: For the month of May, the equations resulted in the calculated payment of $2.156 million.

BY MR. BESHORE:

Q. Read that again.

A. For the month of May, the equations resulted in a calculated payment of $2.516 million versus an actual payment of $2.582 million, and for October, a calculated payment of 2.689 million versus an actual payment of $2.679 million.

Cooperatives Table 7.S I'm going to move back over to the tables and talk about table 7.S.

Q. Which is reprinted in Exhibit 72 at this point in the document on page 13. But it is the very same table that is in Exhibit 73 as 7.S, correct?

A. Correct, except for the word coefficient and constant are different, but they are intended to mean the same thing.

Q. Okay. So I interrupted you as you were going to talk about 7.S.

A. Okay. So supplying all of the data and having, again, trying to come up with a cost-estimating equation, these were the results. So for the demand area --

JUDGE CLIFTON: Before you do that, please read into the record above the table what you call it, including your title for it and so forth.

MR. HOLLON: Cooperatives Table 7.S (Regression Summary

from the Market Administrator Milk Transport Study - California Data, May and October 2013)

We had three demand areas, which I have outlined earlier. So for the demand area So Cal (R/SB) Southern California, coming from Riverside and San Bernardino counties, Transportation Zone 1, the estimating equation would have had an intercept of 0.04497, plus a constant of 0.00318 for that area, times a number of miles driven. And in our final equation, that constant would be adjusted by fuel adjuster. The R-Square, or the measure of how good a predictor the equation is of the actual data, was 0.792 or 79.2 percent. And again, the number of records, pounds, and weighted miles from the descriptive data.

The second equation, which would have been estimating deliveries into Southern California listed as So Cal (-R/SB) were deliveries into Southern California from any county except Riverside and San Bernardino, Transportation Zone 2, would have had an intercept of 0.00485, and a constant of 0.00546 and again, the constant would be adjusted by fuel adjuster. And the R-Square for that equation was 97.6, indicating its predictability to, predictability of the equation versus the actual data.

And third demand area, Not So Cal, or Not Southern California, Transportation Zone 3, had intercept of 0.05441, and a constant 0.00571, and again, that would be adjusted by a

fuel adjuster. And had an R-Square of 0.992.

And I would note that the intercepts to show different values of which would be expected, and that the Transportation Zone 2 value has a different looking intercept than the other two, but that is reflective of the make up of the observations, and we went back and looked at that many times as a part of our process, and those are the numbers that are accurate.

BY MR. BESHORE:

Q. Can you just talk briefly about the labels, constant and coefficient, which are different words of the same place in the table that's on page 13 of Exhibit 72, versus the table that's in Exhibit 73. Just describe what those are on, I think you said the words basically meant the same thing or attempted to.

A. That was my mistake of labeling them differently, and I did both of, you know, created the first table and copied it in, and made a change in that absentmindedly. But the estimated equations, as we'll run through them, are in the form of, for example, in the Transportation Zone 1, it would take 0.04497, plus the fuel adjusted 0.00318 times the number of miles, and whatever that represents, is a, ends up being a cost per hundredweight per mile, and you multiply that by the hundredweights driven, and that would give you the credit payment. And that's detailed again, as we go through the document.

Q. So just a couple of things, then. Are cost and coefficient just terms that are sometimes that interchangeably used in these kinds of statistical calculations?

A. I interchange them.

Q. Okay. Now, the numbers in the columns on Table 7.S, intercept and constant, are they dollars and cents items?

A. Well, they resulted in dollars and cents item, so to say they are exactly dollars and cents, I'm not sure that would be the right definition. But when you run them through the process, you end up with a dollars and cents item.

Q. Okay. Thank you.

(See Table on Page 13 of Exhibit 72.)

A. Back to page 13.

E. Fuel Adjustor

Diesel fuel is one of the key components of the cost of milk transport. The proposal includes the fuel cost adjustor. Historically, diesel fuel prices are marked by periods of volatility. Price volatility makes it difficult to negotiate the full value of frequent fuel cost changes. Thus, a fuel adjustor is an important mechanism in the regulated transport cost recovery system. Its inclusion serves to fairly and accurately reflect fuel cost changes, thus maintaining the reimbursement cost formula in line with actual cost, and preventing either underpayment of cost or making a windfall payment if fuel costs were to decline significantly.

Additionally, the inclusion of a fuel cost adjustor should reduce the frequency of hearings to adjust the transport reimbursement rate and has been included in other FMMO transportation credit systems in the Southeastern orders.

Our proposal for a fuel cost adjustor is based on current experience in the California market. Our format to compute an adjuster is:

1. Determine a price series for fuel;

2. Determine a base period for measuring fuel cost change;

3. Compute the difference between the base period and the current period;

4. Divide the difference by a standard miles per gallon to arrive at an adjustment factor per mile;

5. Divide the dollar cost by a typical load size and then by 100 to express the value in a cost per hundredweight per mile;

6. Multiply the result by the number of hundredweights hauled and the miles travelled.

Q. Is that point 6?

A. Point 6. Multiply the result by the number of hundredweights hauled and the miles travelled.

For the current price measure to adjust diesel fuel cost, our proposal will use the most recent eight weeks average of the diesel (online highway) - All Types Price Per Gallon as reported by the Energy Information Administration of the United States Department of Energy for California from the price

series Weekly Retail Gasoline and Diesel Prices. This data is published --

JUDGE CLIFTON: Let me have you -- within that sentence you have got in parentheses written, (on highway) and you read it as (online highway.)

MR. HOLLON: Okay. I meant on highway.

JUDGE CLIFTON: On highway. All right.

MR. BESHORE: Thank you, your Honor.

MR. HOLLON: This data is published weekly and prices from January of 2011 through July 2015 are outlined in Cooperatives Table 7.T (California No. 2 Diesel Retail Prices (Dollars Per Gallon)) and depicted in Cooperatives Chart 7.U (E.I.A -- California nO. 2 Diesel Retail Prices January 2011 to July 2015.)

This file can be found at:

http://tonto.eia.gov/dnav/pet/hist/LeafHandler.ashx?n=PET&s=EMD_EPD2D_PTE_SCA_DPG&f=M

Q. We would like to request that that URL for that website, which is more than a line long, be placed in the transcript as if read at this point, as it is printed on page 15 of Exhibit 72.

JUDGE CLIFTON: I agree. The court reporter will go to Exhibit 72, page 15, and find the website that's located the second line down from the top and type that in as if the witness had read it into the record.

MR. BESHORE: Thank you.

MR. HOLLON: Returning to the testimony at page 15, top of the page:

Using the most recent prior eight weeks average allows for short-term spikes or --

JUDGE CLIFTON: Wait, wait start again.

MR. HOLLON: Using the most recent prior eight weeks average price allows for short-term spikes or troughs such as a weather event or a short-term "market shock" to be incident to be averaged out. We propose using the period April 2013 through November 2013 to establish the base. This period overlaps by a month on each end the period for which the Cooperatives' actual data was collected for the rate study. The eight month base diesel rate price was --

BY MR. BESHORE:

Q. Start that sentence again.

A. The eight month base rate diesel price was $4.11 per gallon. For the purposes of this example, the most recent eight week average diesel price was $3.094 per gallon, and that would have been, (06/22/2015-08/010/2015), which would represent from June 22 to August 10th.

Q. Of 2015?

A. Of 2015. This base would be used by the Market Administrator each month to compute the fuel adjustor. It would remain in place until changed at a subsequent hearing.

For implementation of a final decision, the most recent eight week period would be set by the Market Administrator in accordance with the process described above.

JUDGE CLIFTON: All right. Let's just go back up one paragraph and look at the way that date is expressed, that August 10, 2015. Shall we strike a zero just so that it is in the more usual format?

MR. HOLLON: That would be true.

JUDGE CLIFTON: Okay. So it doesn't make a difference, but we might as well be used to looking the at the date. So let's have the, Ms. Elliott, if you will mark on the two record copies, this change on page 15 of Exhibit 72, at the very end of the first full paragraph there's a date. And that date is August 10, 2015, expressed in numbers. So if you will just strike the 0 before the 10.

MS. ELLIOTT: Okay.

JUDGE CLIFTON: Thank you. All right. Now, you have read the next paragraph, and so if you want to start with the next, heading you may.

MR. HOLLON: The next paragraph is cooperatives Table 7.V (Combination Truck, Fuel, Consumption and Travel) is abstracted from the Highway Statistics as published by the U.S. Department of Transportation for combination trucks. The Highway Statistics Series consists of annual reports containing analyzed statistical information on motor fuel, motor vehicle

registrations, driver licenses, highway user taxation, highway mileage, travel, and highway finance. This information has been published annually since 1945. The data for 2013, the most recent data available, show an average of 5.8 miles per gallon as a national average. This also reflects the experience of our hauling operations in California, and this data series has been used in other FMMO hearings.

So I'm going to go back to the exhibit and look at 7.T, 7.U, and 7.V. 7.T is simply a listing of the diesel prices from the locations cited, and showing for the period April of 2013 through November of 2013, an average of 4.110. And this is what we chose to use for the base period. The data we collected for our hauling study that generated the equations were from May and October, and we chose to overlap those diesel prices by one month and then average them to get a base.

BY MR. BESHORE:

Q. So on Table 7.T, the months of April 2013 through November 2013 are likely shaded from the exhibit, correct?

A. That is correct.

Q. And the $4.11 is a simple average of the reported figure from the Energy Information Administration for those eight months?

A. It is.

Q. Thank you. Go ahead.

A. Chart 7.U is the graph of those prices. And the point

of chart 7.U is to demonstrate that the prices are volatile and that there's been a market change and decrease, and yet still there is the volatility up through the data that's published.

Q. Okay.

A. And Table 7.V is taken from the Department of Transportation Data.

JUDGE CLIFTON: I'm sorry, help me -- would you go back to page 15, and you intend this to be an eight-week period; is that right?

MR. HOLLON: Uh-huh.

JUDGE CLIFTON: I think we have got a seven-week period, I'm not sure.

MR. BESHORE: That's the June 22, 2015 through August 10, 2015 period that your Honor is checking?

JUDGE CLIFTON: Yeah, I think it is seven weeks. We can get back to that later, but if you want eight weeks, we may have to look at that again.

MR. HOLLON: So for the purpose of the example, if it is seven weeks it's not going to make any difference.

JUDGE CLIFTON: Right. Unless you want --

MR. HOLLON: I wanted to generate, I just wanted to generate a number to show how it would work. If I dropped a week in the average, that was my mistake. But the --

MR. BESHORE: The number's just a hypothetical one to make it work through.

MR. HOLLON: Well, it's hypothetical now.

MR. BESHORE: Well, or it's an example.

MR. HOLLON: It's an example, right.

JUDGE CLIFTON: Okay.

BY MR. BESHORE:

Q. So Table 7.V.

A. This is the data from the U.S. Department of Transportation that shows their data series, and the fact that the average miles travelled per gallon for 2013 was 5.8. And again, this data series is published regularly, and it was used in a similar manner in the Southeastern order hearings.

Q. And the table, Cooperatives Table 7.V, is actually printed on page 16 of your testimony statement.

A. It is.

Q. Correct.

A. And I would note that in the testimony statement, the rows designating the cite are correct and visible, and yet in the Exhibit 73, there were the rows were collapsed somewhat, you can't see the entire cite. So the court reporter can pull them out of her copy of the statement to insert them, that would be okay with me.

Q. The source is the website, or the sources at the bottom of the exhibit as part of it was lost in reprinting Table 7.V in Exhibit 73?

A. Correct.

Q. Okay. But the full cites are listed in the sources on the page 16 of Exhibit 72?

A. It is.

JUDGE CLIFTON: All right. So even though the table won't be in the transcript, you would like, Mr. Hollon, for the sources of Cooperatives Table 7.V (Combination Truck Fuel Consumption and Travel), you would like the sources of that information to be in the transcript --

MR. HOLLON: Yes.

JUDGE CLIFTON: -- without you having to read it, because it's complicated and it can be copied from page 16 just below the table.

MR. HOLLON: Yes.

JUDGE CLIFTON: All right. Good. I think that is a good way to get that into the transcript, just as if you had just read the words under the word "sources."

(COURT REPORTER INSERTED INFORMATION AS LISTED ON PAGE 16 OF EXHIBIT 72.)

Sources

1965-94; U.S. Department of Transportation, Federal Highway Administration, Highway Statistics Summary to 1995, FHWA-PL-97-009 (Washington, DC; July 1997), table VM-201A, available at http://www.fhwa.dot.gov/policyinformation/statistics.cfm as of Mar. 23, 1995-2012: Ibid, Highway Statistics (Washington, DC:

Annual issues), table VM-1, available at http://www.fhwa.dot.gov/policyinformation/statistics.cfm as of Mar. 4, 2014.

MR. HOLLON: Returning to page 16. Back to the testimony.

There are several software programs that can establish a mileage matrix composed of mileages from every farm in the state to every plant in the state. Both CDFA and other FMMO offices use the amount. This table would be determined and maintained the by the Market Administrator. The fuel adjustor requires a truck tank size as part of the calculation. The Cooperatives' experience is that an average size load of 51,500 pounds is typical for the market. A sample computation for the fuel adjustor per hundredweight per mile is:

And now, I refer to Table 7.W, which is also reproduced in the testimony.

(See Table on Page 17 of Exhibit 72.)

So this table outlines how a fuel adjustor would be computed each month.

Column A is simply a description of what's going on.

Column B is numbers including some calculations which I have outlined in the rows beneath the table. So for the purposes of my example and what I intended to be a current eight-week average -- thank you -- is $3.094 per gallon. So in that eight-week period, diesel fuel averaged $3.094 per gallon. The base period, which would not change unless there was a

hearing to change it, was $4.11 per gallon. So fuel decreased in this period by a $1.016 per gallon. Divided that by the tank size, so that's price per gallon, gives, and I'm sorry, divide by the gallons per mile of 5.8.

BY MR. BESHORE:

Q. Miles per gallon.

A. Yields a negative 0.175172. If you went one mile, that would be your fuel adjustor. To get it to a per hundredweight rate, we would divide it by the average tank size, which is 51,500 pounds, or converted to a hundredweight, 515 hundredweights, and you would get a per mile per hundredweight adjustment of negative 0.000340.

Q. Okay. So. Can you just go through the labeling, identifying the numbers by column on Table 7.W the way the calculation flow goes. So in Column B you determine, you calculate as you have described, a rate per mile for the fuel adjustor, correct?

A. Correct.

Q. And then Column C, just -- just go through the process but identify the column in which the number resulted in your calculation is placed.

A. Sorry, you need to try that again, please.

Q. I think it is time to break, right?

A. No, a little bit further it is time to break. Finish this page and it will be a good break.

Q. So in Column B of Table 7.W, you calculate a rate per mile for the fuel adjustor. In this case it's negative $0.175172?

A. Correct.

Q. Okay. Then to get back to dollars per hundredweight, you need to know how many miles are involved, which is Column B, correct?

A. No, column C is 1.

Q. C, I'm sorry.

A. Right.

Q. Okay. For the cost per, okay, so if it is only -- why is the load cost then the --

A. Because we're developing a rate per hundredweight, per mile.

Q. Okay. So 175172 is per hundredweight per mile as a load cost. Then E is the tank size, the number of hundredweights?

A. Right.

Q. And F is dividing the load cost by the number of hundredweights?

A. Correct.

JUDGE CLIFTON: Mr. Vlahos?

MR. VLAHOS: Just --

MR. BESHORE: Mr. Vlahos makes the point that I misstated, Column E is not the number of hundredweights, it shows the

number of pounds.

MR. HOLLON: Right.

MR. BESHORE: That needs to be converted to hundredweights.

MR. HOLLON: Right.

MR. VLAHOS: And then you divide by a hundred to get the hundredweights.

MR. HOLLON: Right.

MR. BESHORE: So can you take us from there to your lunch break?

MR. HOLLON: The result of this calculation for this time period is that .000340 per hundredweight per mile is deducted from the rate calculation or constant derived from the regression equations described in Cooperative Table 7.S for the month the calculation was made. Should the fuel adjustor result in a positive number, it would increase the rate calculation.

MR. BESHORE: So the number at the beginning of that sentence, is, can you just state that as a dollar figure? Because you didn't identify it as a dollar figure?

MR. HOLLON: $.000340

MR. BESHORE: Dollar decimal sign.

MR. HOLLON: Correct.

MR. BESHORE: Okay.

MR. HOLLON: Step by step.

JUDGE CLIFTON: You know, that's not going to be real

clear. Let -- why don't you just read that sentence one more time, beginning with "the result of this calculation."

MR. HOLLON: The result of this calculation for this time period is that $.00034 per hundredweight per mile is deducted from the rate calculation (or constant) derived from the regression equations described in Cooperatives Table 7.S for the month the calculation was made. Should the fuel adjustor result in a positive number, it would increase the rate calculation.

F. Step-by-Step Calculation of Rate Payment

The calculation is computed as follows:

MR. BESHORE: Is that a good place to break --

MR. HOLLON: Yep.

MR. BESHORE: -- before we get into that table? I propose we break for lunch at this point, your Honor, which is the end of page 17, beginning the top of page 18 of Exhibit 72.

JUDGE CLIFTON: Very good. Let's see, what time is it now? So it's pretty close to 12:40. Please come back ready to go at 2:00.

(Whereupon, the lunch break was taken.)

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FRIDAY, OCTOBER 16, 2015 - - AFTERNOON SESSION

JUDGE CLIFTON: We're back on record at 2:05. Mr. Beshore?

MR. BESHORE: Yes. Marvin Beshore. Thank you, your Honor.

BY MR. BESHORE:

Q. Mr. Hollon, when we left off, you were at the top of page 18 of your testimony, Exhibit 72, and I think ready to delve into Table 7.X.

A. The final table.

Q. Thank you. Please proceed.

A. Table 7.X is a working example of the language and how it would apply, and so I'm going to briefly run through the table and then move down to the language.

So the examples were taken from data out of the October 14 CDFA Haul Study just to get a reasonable representative of a pound and a mile. So that the, going back to this, the structure of the table, the very first column, is the section --

JUDGE CLIFTON: Before you get to the columns, would you read the name of it, the title?

MR. HOLLON: Cooperatives Table 7.X (Computation of Transportation Payment)

So the first column is the various section references in the language, so where, for example, it says 1051.55(b)(1), something that's happening in that row should parallel with the section language that's giving an instruction.

The next column that says A, B, C, D, E, and F is simply for reference. So if there is a question about something it may be easier to say in Section D, and then attach it to a section, or the next column which is describing some type of action. So zones might be the Transportation Zones, pounds may be the pounds that is in this part of the operation. So intercept coefficient, referring to the numbers that are in those columns.

The next column is if there's a mathematical calculation, I tried to give an example of what would be the first column. So just for example, the first thing in that column is $3.094 - $4.110, and over in the next column, that result is -1.016. So when you see -1.016, you might look over and see what the math is that got there.

The next column that says October 14, Transportation Zone 1, would be an application of the transportation language to, below that originated, and was shipped to a Zone 1 example. And I think I pulled all of those so that they actually fit Zone 1. But even if they don't, the numbers would still be the right calculation.

And the next column is intended to be an example of how a transportation from a farm to a Zone 2 plant. And the third would be a calculation from a farm that would be described into a plant described in Transportation Zone 3.

So looking across, the first row, 1055.(b)(1)

identifies which transportation zone it might be in so that someone would know where the from was and where the to was, that everything would apply, or if it was going to be audited, that the farm and the plant did actually meet that definition.

The row labeled 1051.55(b)(1) is a pound, and that section talks about giving a pound of milk.

1055(c)(1)(i) are miles, and that refers to the section where you attach miles to the calculation and what the rules are for miles.

1051.56(a)(1) would be the most recent eight weeks of diesel price. And we have gone over where that comes from. And for this example that would be $3.094.

Row 1051.56(a)(2) would be the diesel base, and that's the number that we're starting out with as the diesel, the base diesel price for the period that we collected transportation data in.

The next row subtracts those two numbers to give a negative -1.016.

The next row, 1051.56(a)(3) is the truck miles per gallon base of 5.8 miles per gallon taken from the Department of Transportation table.

1051.56(a)(3) divides these two numbers to come up with a negative -0.175172.

The next row, 1056.(a)(4) is typical tank per hundredweight size, and we are offering up 51,510 pounds as an

average.

And the row 1051.56(a) (4) and (5) is the division of those numbers, and that definition takes place in two places.

I'm going to back up a row. My tank size is 51,500, and it says 51,510, and I would have to correct that if the math flows through, but we wanted 51,500 for our tank size.

Dividing those out, the row 1051.56(a) (4) and (5) makes that division.

So now we have the fuel adjustor calculator. 1051.56(a)(6)(a) brings over the appropriate intercept value for the transportation zone, and that would be different for each of the columns, because there's a different value for each of the transportation zones.

1051.56(a)(6)(a) brings over the mileage coefficient for the appropriate zone and there would be a different one for each of the three zones.

The next row is the subtraction or adjusting the miles coefficient by the fuel adjustor. So since the fuel adjustor is negative, we're going to reduce that in each case. And so as an example, in Transportation Zone 1 where that result is the 0.00284, that is 0.00318 plus the negative -0.00034. And so that, that calculation would take place in each of the three zones.

Coming down to, in the E section, there's only one row. 1051.56(a)(6) yields a factor per hundredweight for the miles

driven. So that's our equation of the intercept plus the constant, adjusted by fuel, times a number of miles. And you can see the parentheses takes that mileage times the per mile constant, the per mile number.

And we, the end result of that is then multiplied by the load weight to get a payment on this particular load of $67.91 or on the middle column, for that 143-mile trip, $368.54 or $269.23 on the third column.

So moving through the proposed text, and there is a footnote, so Heading G. Proposed Text, and footnote 2 indicates:

The presence of Italics, Bold, and Underline indicate changes from the proposed language.

Section 1051.55 Payment for Transportation credits.

(a) Payments for transportation credits to handler, including cooperative associations, shall be made as follows:

> (1) On or before the 16th day, (except as provided in Section 1000.90) after the end of each month, the Market Administrator shall pay to each handler, including cooperative associations acting as handlers that delivered and reported pursuant to Section 1051.30(c), milk directly from producers' farms as specified in paragraph (b)(1) to plants as specified in paragraphs (b)(1) and (2) of this section, an amount determined pursuant to paragraph (c) of this section.

I want to back up and say that the 16th should be bolded and underlined, because earlier in our process when Mr. Eric testified, we moved some of those dates. And so I

neglected to bold and underline, I think the Notice of Hearing says 13th.

BY MR. BESHORE:

Q. Correct. So the 16th is a change in our pool, all the date sequences basically moved three days.

A. Correct.

Q. Thank you.

A. Back to page 19.

(2) Transportation credits paid pursuant to this section shall be subject to final verification by the Market Administrator pursuant to Section 100 0.77, strike the word and

(b) Transportation credits shall apply to the following:

(1) Bulk milk delivered directly from dairy farms, to pool plants described in (b)(2) in the following Transportation Zones:

(i) Transportation Zone 1 - deliveries to plants located in the counties of Los Angeles, Orange, Riverside, San Bernardino, San Diego, and Ventura, originating from dairy farms located in the counties of Riverside -- strike the words San Diego -- and going back after striking San Diego, the words after striking San Diego, it should read or San Bernardino;

So just to make it clear, that sentence with the words with the words taken out would say, originating from dairy farms located in the counties of Riverside or San Bernardino.

(ii) Transportation Zone 2 - deliveries to plants located in the counties of Los Angeles, Orange, Riverside, San Bernardino, San Diego and Ventura, originating from dairy farms located in all counties within the

the words San Diego -- and San Bernardino. So that sentence with the words San Diego struck should read, I'll read the last part of it -- counties within the marketing area except Riverside and San Bernardino.

(iii) Transportation Zone 3 - deliveries to plants located in the counties of Alameda, Contra Costa, Marin, Napa, Santa Clara, San Francisco, Santa Cruz, San Mateo, Sacramento, Solano, and Sonoma counties originating from dairy farms located in all counties within the marketing area.

(2) The pool plant(s) which for the month have utilization of greater than 50 percent in Classes I and/or II. The utilization requirement may be met for this current month or it may be met on the basis of utilization during the preceding twelve-month period ending with the current month.

(c) Transportation credits shall be calculated at the following rates:

(1) With respect to each delivery described in paragraph (b)(1) of this section, the Market Administrator shall:

(i) determine the shortest hard-surface highway mileage between the shipping farm and the receiving plant. The mileage determined by this calculation shall not be greater than 225;

(ii) Multiply the pounds determined in Section 1051.55(b)(1) by the rate for the month computed to set, computed pursuant to Section 1051.56(a)(6) for each transportation zone;

Section 1051.56, strike the words mileage rate, insert the word rate, followed by for transportation credits.

So corrected for the strikes and the insertions, it should read: Rate for transportation credits.

(a) The Market Administrator shall compute the fuel adjustor

(1) For the fuel adjustor rate, compute the simple average rounded to the three decimal places for the most recent eight weeks of the Diesel (on Highway) - All Types price per gallon as reported by the Energy Information Administration of the United States Department of Energy for the Series California Number 2 Diesel Retail Prices.

(2) From the result in paragraph (a)(1) in this section subtract -- strike $4.099, insert $4.110 per gallon;

(3) Divide the result in paragraph (a)(2) of this section by 5.8, and round to -- strike the word 3, insert the word 6, decimal places to compute the fuel cost adjustment factor.

(4) Divide the result in paragraph (a)(3) of this Section by 515 -- strike 520.

(5) Round the result in paragraph (a)(4) of this section, down to -- strike the word 5, insert the word 6 -- decimal places, to compute the fuel adjustor rate.

(6) Compute the hundredweight rate as follows:

(i) For Transportation Zone 1, the sum of $0.04497, plus the product of the miles determined in Section 1051.55(c)(1)(i) times the sum of $0.00318 plus the amount determined in Section 1051.56(a)(5);

(ii) For Transportation Zone 2, the sum of $0.00485 plus the product of the miles determined in $105 --

Q. Excuse me, is that a -- that's a section?

A. Correct.

Q. Not dollar?

A. I'll back up a few words.

Plus the product of the miles determined in Section 1051.55(c)(1)(i) times the sum of $0.00546 plus the amount determined in Section 1051.56(a)(5);

(iii) For Transportation Zone 3, the sum of $0.05441, plus the product of the miles determined in Section 1051.55(c)(1)(i) times the sum of $0.00571 plus the

(b) The Market Administrator shall announce publicly on or before the 23rd day of the month (except as provided in Section 1000.90 of this chapter) the fuel adjustor rate pursuant to paragraph (a) of this section for the following month.

Note that payments are calculated and paid on a per farm basis, so these examples envision the volume coming from one farm located in the source area and delivering to a plant in a demand area. A single farm could have multiple delivery points in a single month, hence multiple payments, and a route could have more than one stop and each stop would be treated individually for the pounds it delivered to the plant.

Handlers will be responsible to report to the Market Administrator all data necessary needed to compute the transportation credit. Transportation credit payments will be made to handlers, and handlers will be responsible to furnish information to independent producers relative to the transportation credits received on their milk deliveries.

Transportation credits will apply to shipment to pool plants which, for the month, have utilization of greater than 50 percent in Classes I and/or II. The utilization requirement may be met for the current month, or it may be met on the basis of utilization during the preceding twelve-month period ending with the current month. Since Class I and II shipments contribute higher values to the producer blend pool, we propose shipments to plants with both utilizations get transportation credit payments.

We also propose that the Market Administrator periodically publish a hauling cost study that details key cost data. Participants in the industry can request to hear to review the cost data determine if they wish to alter the reimbursement rates.

Q. So that completes the presentation of your testimony in Exhibit 72, correct?

A. It does.

Q. Okay. So just a couple of initial questions on direct examination.

Would you go to Table 7.W of Exhibit 73, please?

A. Yes.

Q. Okay. In the very last line below the chart, very last line on the tables, is there a correction required?

A. There is a correction required. The very last line, the very last calculation that reads, 515 divided by 100, should read: 51500 divided by 100.

Q. Okay. We would request, your Honor, that that correction be made on the record copy of Exhibit 73, Table 7.W.

JUDGE CLIFTON: All right. Ms. Elliott, let me know when you have in front of you Exhibit 73, Table 7.W, which is the next to the last page of that exhibit.

MS. ELLIOTT: I'm there.

JUDGE CLIFTON: Okay. Good. So do you see the last line below the table?

MS. ELLIOTT: Yes.

JUDGE CLIFTON: Do you see the very last numbers in parentheses?

MS. ELLIOTT: Yes.

JUDGE CLIFTON: So would you strike what you are looking at there, and write in parentheses (51500/100).

MS. ELLIOTT: Okay.

JUDGE CLIFTON: All right. And, Mr. Hollon, while we're looking at that --

MR. HOLLON: Sorry, I was through looking at that.

JUDGE CLIFTON: Okay. You had said you want 51,500 for the typical tank size.

MR. HOLLON: Correct.

JUDGE CLIFTON: Now, that is 51500 what?

MR. HOLLON: Pounds.

JUDGE CLIFTON: Pounds. Okay. That's why we're dividing by a 100 to get a hundredweight.

MR. HOLLON: Correct.

JUDGE CLIFTON: All right.

MR. HILL: Your Honor?

JUDGE CLIFTON: Mr. Hill.

MR. HILL: Brian Hill. In his Exhibit 72 on page 17, should we make the same correction, I'm assuming?

MR. BESHORE: Yes, thank you, Mr. Hill. I neglected to note that.

JUDGE CLIFTON: Good. Thank you. So, Ms. Elliott, would you go with us, please, to page 17 of Exhibit 72, find that same line and make that same correction.

MS. ELLIOTT: Okay.

JUDGE CLIFTON: Good. Mr. Beshore?

BY MR. BESHORE:

Q. Yes. Okay. So turn to Table 7.X, if you would, in 73, Mr. Hollon. And Mr. Miltner has called to my attention that this is your example of a calculation. In the unlabeled column, the very last cell at the bottom row there is the number 49,992. To do the math right, that should be divided by 100; is that correct?

A. Yes, it should. In the instruction it says "rate times hundredweight hauled" and I have pounds there.

Q. So we should add a slash 100 --

A. Correct.

Q. -- after 49992? That's Table 7.X, the fourth column from the left, the bottom row. We would ask that that correction be made on the record copy, your Honor.

MR. HILL: And again, the same change on 7.X in Exhibit number 72 would be applicable?

MR. VLAHOS: Page 18.

MR. HILL: Page 18, yes.

MR. HOLLON: Yes, it would.

JUDGE CLIFTON: I'm going to ask Ms. Elliott to listen with

me, I didn't catch where this is. So, Mr. Beshore, excuse me, Mr. Hollon, tell us again, and I'm going to ask Ms. Elliott to make these corrections as you say, but I have not yet grasped where we are.

MR. HOLLON: Which exhibit is your finger on?

JUDGE CLIFTON: I'm on 7.X of Exhibit 73.

MR. HOLLON: Okay. 7.X of Exhibit 73, in the center column where there are math functions happening, the very bottom it says $0.135850 times 49992?

JUDGE CLIFTON: Yes.

MR. HOLLON: There should be an additional divide by 100.

JUDGE CLIFTON: Slash 100 we insert. So Ms. Elliott, are you finding that?

MS. ELLIOTT: Yes.

JUDGE CLIFTON: All right. And we do that same thing on Exhibit 72, page 18.

MR. HOLLON: That is correct.

JUDGE CLIFTON: Good. Mr. Beshore?

MR. BESHORE: Thank you, your Honor.

BY MR. BESHORE:

Q. Just two questions to wrap up.

First off, why are the payments for transportation, transportation credits, why are the payments made to handlers rather than to producers, Mr. Hollon?

A. Handlers are the entity that has the relationship with

the pool, and so that's where the calculation would be made by the Market Administrator and credited back to the handler, who presumably pays producers and also directs the transportation function.

Q. Does the payment to handlers have anything to do with what's authorized under the statute?

A. That is also correct. What is authorized under the statute it does.

Q. So those transportation credits under the infamous 1985 Act, are only payable to handlers, correct?

A. Correct.

Q. Okay. So, finally, we have been through a lot of detail testimony as you got through 72 here, in terms of the calculations and mathematical regression tables, and the equations, etcetera.

Can you just to close that, bring us back to the purpose of this entire function and proposal, part of the proposal, as you see it?

A. Well, as we started out saying that we feel like the transportation system needs to be, transportation credit system, needs to be a part of the proposal. And producers have indicated willingness to fund this in the Federal Order as they do in the State Order now. And I would note, and has been noted earlier, if all of these dollars were assumed in the form of a Class I premium, it would be along the lines of perhaps 60

cents on the low end. And to my knowledge, that's even higher than the prevailing normal premium in the marketplace. So I think producers recognize that that's maybe not a reasonable option.

So why this model? I want to point out first, that there's a tremendous difference between the amendatory hearings and promulgation hearings, and I have never been to a promulgation hearing. But you start out with, certainly, much more things you need to cover. The data and information that you have is not always what you would, as complete as you would like it to be, because, you know, you are promulgating something new. And you may be in a place where there is some data but you don't have everything maybe you want. So in order to do this, we would have to reach in some different directions in order to be able to do that.

The practice of farm-to-destination as far as hauling rate calculation and a methodology is common to the California market. It is not as common in other order scenarios where frequently it's thought of as route-to-destination, but that's not true in the California market. The proponents negotiate and work with producers on hauling rates on that pattern. So our methodology supports that.

It does, however, conform with the USDA, what I'll say typical transportation function, being transaction based and mileage based. So our proposal says you start here, you end

there, you went so many miles, according to a prescribed formula, there's a payment, here's the payment. And it's an exact calculation. So you have exact miles, you have exact volumes.

The California producer industry is not familiar with the zone concept, the location adjustment concept. So this would conform with something that they have some familiarity with.

The current California transportation model, as I mentioned, is not similar. It takes wider geographic zones and prescribes a rate rather than a point-to-point transaction. And in our experience and in selling milk in the marketplace, the transportation zones that we defined do have some amount of commonality or uniqueness to them, and the conditions aren't all similar. Hence the need for three different types of equations which provide a level of precision that we would feel is necessary. And this is somewhat different, again, from even the Federal Order model. I would throw out as an example in the Chicago market, a delivery from a farm to a plant, say, in Chemung or Huntley, Illinois, which is a metropolitan area but pretty small, would face some different cost structures than if you were delivering into Milwaukee or you were delivering into Minneapolis. So our proposal recognizes that there are differences just based on you end your route at.

The methodology we suggested is a normal way to

estimate relationships. And so it's, you know, nothing new, it's, I suspect many of us in the room would have done that at some stage in our educational career and forgotten more about how it works than you remember, but that was the methodology of using a regression equation is not unusual.

The California transportation model has been amended many times, and I have not been to any of the transportation amendment hearings, those have been handled by our local folks. But I'm not aware that there's been a clean-the-slate look. You know, no one has asked for one, so that would be one part. But this is a clean-the-slate look. We're starting over from a blank page and saying here are transactions, here's precise transactions, and so we want to try to get a minimal cost recovery system. And that's it.

Q. Thank you, Mr. Hollon. I would move for the admission of Exhibits 72, 73, and 74, your Honor. Mr. Hollon's available for cross-examination.

JUDGE CLIFTON: All right. Before we admit them, I want to go back, and you may not want to go too far away, Mr. Beshore. I want to go back to exhibit 72, page 18,

MR. BESHORE: Yes.

JUDGE CLIFTON: And where Mr. Beshore said the 16th should be both bolded and underlined, I want to direct Ms. Elliott to do that. So that's page 18, up from the little indented paragraph to the first line of that little indented paragraph,

which starts with the number 1 in parentheses. The 16th will be in bold and underlined on the record copies.

MS. ELLIOTT: Do I just re-underline it?

JUDGE CLIFTON: Yeah, I guess -- yeah, just right, just underlining it will be adequate. I don't want you to trace over it. Good point.

All right. Now, I want to ask, on page 15, Mr. Hollon, in the top, at the top half of the page there's a full paragraph that ends with the eight weeks that were used, and they are in parentheses. Those eight weeks begin with June 22, 2015. Does the eighth week begin with August 10, 2015?

MR. HOLLON: Yes.

JUDGE CLIFTON: All right. And so we do have the eight-week period there. Is that a conventional method of looking at the eight weeks to identify the beginning day of each of the weeks involved?

MR. HOLLON: I think that's the way the E.I.A. tables are published with those dates in that convention.

JUDGE CLIFTON: What are the E.I.A.

MR. HOLLON: Energy Information Tables, so as it was referred to diesel fuel prices, that's the branch of the Department of Transportation that tracks gasoline prices, and they are known commonly through the industry as the E.I.A data table and information. That information is used all over the country to calculate fuel adjustor programs.

JUDGE CLIFTON: Very good. All right. Does anyone have anything else as a technical matter with regard to Exhibit 72 before I ask if anyone has any objections to it being admitted?

Does anyone wish to ask Mr. Hollon any questions about Exhibit 72 before determining whether you have any objection to it being admitted? No one. Are there any objections to the admission into evidence of Exhibit 72? There are none. Exhibit 72 is admitted into evidence.

(Thereafter, Exhibit Number 72 was received into evidence.)

JUDGE CLIFTON: Does anyone wish to ask Mr. Hollon any questions about Exhibit 73 before determining whether you have any objection to it being admitted? There's no one. Is there any objection to the admission into evidence of Exhibit 73? There is none. Exhibit 73 is admitted into evidence.

(Thereafter, Exhibit Number 73 was received into evidence.)

JUDGE CLIFTON: With regard to Exhibit 74, does anyone wish to ask any questions of Mr. Hollon? Are there any objections to the admission into evidence of Exhibit 74? There are none. Exhibit 74 is admitted into evidence.

(Thereafter, Exhibit Number 74 was received into evidence.)

JUDGE CLIFTON: Now, Mr. Beshore, anything further before cross-examination of Mr. Hollon begins?

MR. BESHORE: Nothing further.

JUDGE CLIFTON: Thank you. Who would like to begin? Ms. Vulin.

CROSS-EXAMINATION

BY MS. VULIN:

Q. Good afternoon. Ashley Vulin for the Dairy Institute of California.

A. Good afternoon.

Q. I just want to start by thanking you for putting together these exhibits. They were very helpful and instructive in how you propose the system be designed.

What I would need to do is just go through some questions to make sure I understand it. So I will start first with Exhibit 73, map 7.H.

A. Yes.

Q. Just a question about the dot distribution on the map. There is no significance to the location of any of these dots, that that's the region where the residents may reside? For example, in San Bernardino, the population isn't spread evenly over the county?

A. That's correct.

Q. Okay. So the density helps within a county, or excuse me, between counties but not within a county?

A. Correct.

Q. But your proposal doesn't seek to differentiate within

counties in the way that California has done in the past?

A. Within a county, that's correct, it does not.

Q. And do most Federal Orders treat population just strictly by county lines or do some divide it up like California has?

A. There's not -- there's not another comparable analogy. So for example, where there's a transportation system, it is point to point. And the location differentials are, Class I differentials are a full county. So the answer to your question is no, to my knowledge. But it -- it doesn't have a real bearing because I don't know of any other place that divides a county for a particular reason.

But, good question. I understand why you are asking.

Q. Thank you. So I'm turning now to Table 7.T also in Exhibit 73.

A. Table again, please?

Q. 7.T as in tiger, or transportation credits.

A. Yes.

Q. So this data you said came from where?

A. The Energy Information Association's website.

Q. And this is current for the year 2014?

A. That's what's published out there, so it should, as far as I know it's current for all of the numbers.

Q. Okay. And then turning to the next table, Table 7.U, the eight-week price that you are using is for 2014, correct?

A. Yes. And whatever the dates were that I mentioned that we had the back and forth about, the end of the week or the beginning of the week.

Q. And --

A. And again, I would just point out that that number is, for example, so when it's, when it's time to put all this in place, the Market Administrator would use the most recent eight-week number and that would move with each month.

Q. Okay. So the goal would be to keep the system updated with as recent data as possible?

A. Yes.

Q. And can you explain just really quick, I might have missed it, I'm sorry, how the Market Administrator is going to look at that data anew every month to update what the fuel cost should be?

A. They would set a pattern and make it known to the industry based on calendars and timing, what weeks they would use, and that would be, that would be a normal process. So we're going to use the last three of this to the first of that, but whatever is determined that they can get the data and announce it by the date will be the method of getting to the eight.

And the Southeastern orders use a similar construct, I can't tell you exactly what weeks they use, but it's set and known, and all people in the industry know the methodology for

the time period that they choose to compute the fuel adjuster.

Q. And so I have a question, would something similar be done with the population distributions?

A. No.

Q. What about the distributions of Class I and II plants, if a bunch of new plants were built somewhere, that might change some of these locations. Would that be something that would be updated regularly?

A. That would have to be subject to a hearing to do that, so the only number for which there's flexibility is the recent eight-week fuel. Any other number would need a hearing to make an adjustment.

Q. So under the current system you believe the transportation credits, your view showing your tables, don't come close enough to cover the cost of moving milk to these Class I and II plants?

A. I'm sorry, try your question again.

Q. Under the current system, in --

A. The California system of credits and allowances? Okay.

Q. Yeah. Are you showing through these tables that the credits aren't high enough in order to move enough milk to Class I and II plants?

A. We would prefer this system to that system, and it does have update mechanisms that are in place. So we're offering this as a different methodology than that, and that's, the

current system is not similar to what's done in the other two, three markets where there is a transportation system. It is, as I described, transaction based and mileage based. And the California system you originate in a block of geography on those maps. So, for example, just a second.

If you will turn to Table 7.N.

Q. In Exhibit 73?

A. Correct. I'll just use as an example, if there was a load of milk that moved out of Haul Region 9 to Los Angeles, whether that farm was located on the South part of Haul Region 9, or the North part, and the plant was on the South part of Los Angeles Region 3 or the North part, the rate would be the same. And so there may be, may be a windfall, there may be a short fall. And then the system that we are proposing says if you move it 100 miles, then that has a cost associated with it.

Q. So a more exact?

A. A more exact and more precise result.

Q. And what happens if milk is moved between plants?

A. We have no proposal for milk that's moved between plants. Now, I would say in my example that in some of the haul rate areas in the current system, there is some amount of mileage differentiation. So for example, if you move 0 to 75 miles, or 75 to 100 miles, but again, our proposal is more exact and more precise than that.

Q. So now I'm at Table 7.Q, still in Exhibit 73. So these

are the current Class I differentials for California, correct?

A. Correct.

Q. Five different regions, correct?

A. Correct.

Q. And so your suggestion is to revise these, essentially, into three different -- and I don't think it's quite areas, but maybe scenarios is the better description?

A. No, we're not changing the differential surface at all. So in our proposal, what's on this map is $1.80 or $1.70 or $1.60 or $2.00 or $2.10 would remain perfectly as is.

Q. Okay.

A. And I think what we have outlined before, any Class I plant would get the Class I price, what would be the, what's determined as the Class I mover plus that differential. And any Class II, III, and IV would be what's determined by the Federal Order pricing surface. But for transportation purposes, we have identified three transportation areas, and then so if the plant is located in those areas, a transportation credit would be made based on where the farm came from, and there's definitions for that to the plant. So there's three of those. But we are in no way altering the differential surface.

Q. Just adding a different layer on top of it that maybe has different boundaries.

A. Yes, that would be true. But again, the differential

amount itself would have no bearing on what our transportation calculation. In Table X as an example, there were no mentions of, and no use for any of these numbers.

Q. Okay. So now I'm on Exhibit 72, page 9.

A. Yes.

Q. So can you explain to me again where the 225 miles comes from?

A. First, we did want to have some limit, so we didn't want to subsidize a transportation from Texas to California. So it's a matter of picking a limit and so we looked back at the CDFA table and tried to find an upper limit of what was on there. Can I find an exact 225 miles? Maybe. No, I don't see one that's exactly 225 miles. But we picked that as a representative spot that encompassed most transactions. And so that was simply our choice for a limit.

Q. Do you think that's going to change the shipping habits for a significant amount of milk or is that a smaller amount? How might that change?

A. That would encompass the overwhelming majority of truck transits. If you look in the October 14, you know, block, and you run your finger down the mileage range of the average miles, you are going to see that most are under that.

Q. So now I'm on page 10 of Exhibit 72. So about five lines down you say, "For each record 30 cents per hundredweight was deducted from the cost." Where does that 30 cents come

from?

A. That is simply our assessment of what a local haul rate might be. And again, producers should have some responsibility for transporting product. And so we looked at, in our own records, we looked across the three cooperatives, and we felt like that was an appropriate number to deduct from the cost to represent the producer responsibility. And you are not going to find that number in any, any table.

Q. That's just one of that you proposed?

A. We proposed. Correct. And then our analysis was done with that adjustment.

Q. Okay. So I'm just going to kind of summarize in my own words what I think you're proposing with the three transportations zones.

A. Okay.

Q. Please stop me or correct me if you think I have missed any of it.

A. Okay.

Q. So we'll say scenario one is when a producer in Riverside or San Bernardino delivers milk to any of the counties, including any of the following counties; Los Angeles, Orange, Riverside, San Bernardino, San Diego, and Ventura.

A. Yes.

Q. Okay. And those are basically the LA area?

A. Correct.

Q. So this would apply if there's a delivery from a farm in San Bernardino to a plant in San Bernardino?

A. Yes.

Q. So how does that work if -- how can you qualify for a transportation credit when you are delivering from a producer in the county to a processor in the same county?

A. You have, if there's miles involved, if there's volume involved, you run it through the calculation and whatever it results in, you know, would make that payment. And so maybe I would guess that wouldn't be very many miles because they are in the same county.

Q. So scenario 2 is deliveries from any other county besides Riverside and San Bernardino into what I called the Los Angeles area counties?

A. That's correct.

Q. So any producer in the entire state is going to qualify for a transportation credit if they deliver into the Los Angeles area counties?

A. Correct. Subject to the limit of 225 miles, and subject to the equation. However many miles times however much volume.

Q. And then our third scenario is deliveries into the following counties: Alameda, Contra Costa, Marin, Napa, Sacramento, Santa Clara, Santa Cruz, San Francisco, San Mateo, Solano, and Sonoma. And is that kind of in San Francisco area?

A. Correct.

Q. So any producer in the entire state delivering to the, what you call San Francisco area, would also qualify for a transportation credit?

A. Correct.

Q. And that applies even if they are already located with that that county?

A. Yes.

Q. So now I'm on page 13 of Exhibit 72.

A. Okay.

Q. And here, the first full paragraph I understand is basically an example that you brought to show how much under your scenario producers would have been paid for their deliveries, and how much they actually spent on making those deliveries; is that correct?

A. So it would be the results of what the actual payment was, and then what, if the system we proposed were to be used. So in the first full sentence for the entire period, the regression equation, if you will, resulted in a pay out of $5.205 million, and if you were to sum up all of the payments on the records, you would get $5.261 million.

Q. So under that scenario the actual cost of transportation still isn't fully covered?

A. In total, it's not. And remember that we're dealing with lots of records and lots of time. So, for example, the

two scenarios down it flips and then there's a couple of thousands dollars in the other direction. And that would not be totally unexpected because you have wide geography, you have lots of combinations.

Q. And on whole, is it impossible for you to say whether or not on average a farmer is going to end up slightly better off, slightly worse off, or even?

A. No. Again, we show in total, but that's sort of one the drawbacks of having the new system, is sometimes you don't have every single thing in place. And so the fact that we were able to arrive at these equations and come this close to total, we felt good about.

Q. Would there be any need, you think, to over rather than undershoot?

A. The goal would be to get as close as you can.

Q. But knowing that that's impossible for us to do?

A. I would rather not overshoot, if possible.

Q. Now, I'm on page 15 of the same exhibit. So the very bottom sentence of this page says, "This also reflects the experience of our hauling operations in California. And this data series has been used in other FMMO hearings."

Which other FMMO hearings?

A. In the Southeastern hearings for Federal Orders 5 and 7.

Q. Thank you. Now I'm on page 19, just looking at the

exact language.

A. Okay.

Q. And in reading this, I'm trying to figure out what happens with milk that comes in from out-of-state.

A. Milk out-of-state would not get a transportation credit. Milk from out of the marketing area would not get a transportation credit.

Q. What about milk that starts in the marketing area and moves out?

A. I would say we probably didn't consider that. Well, let me rephrase. You would still have to be in one of the counties to receive, so if you are not in that county, you wouldn't get a payback. So Transportation Zone 1 has X number of counties, if you are not one of those counties, you are not going to receive a payment.

Q. I guess, thank you for further clarifying. Under the language as is, whether you consider it or not, it's not provided?

A. That's correct.

Q. Is it something --

A. But your direct question was one I hadn't thought about, so that's why I had to stop a minute and think.

Q. Last question, should be pretty easy. I'm on table 7.X of Exhibit 73.

A. Yes.

Q. What is an intercept?
A. It's a statistical term about where one line crosses another.
Q. So that doesn't enter into your equation at all? Or if so, how does it?
A. Well, okay.
Q. Is your intercept where your dot is on your regression line and using that into the equation?
A. Well --
Q. I'm digging real deep into my old high school college economics classes here.
A. If you look, for example, in the D section on Table 7.X.
Q. Uh-huh?
A. And if you go to the first line, 1051.56(a)(6)(a), it says intercepts, run your finger across 04497, if you go back to Table 7.S you will find 04497 and it picks up there.
JUDGE CLIFTON: You go back to table 7.S like Sam?
MR. HOLLON: Yes, ma'am.
BY MS. VULIN:
Q. Okay. Then, help me out. And then now I'm back at Table 7.S, and how does the intercept fit in now with Table 7.S? What's it doing with these numbers?
A. Ask your question again?
Q. So, you said this 0.044970 --

A. Right.

Q. -- refers back to Table 7.S. so what is that number doing within this table?

A. So in Table 7.S is simply reporting what it is. The result of the regression yielded those factors. And on Table 7.X, if you were to run the equation, you would use 0.04497, plus 0.00318 adjusted by fuel, and have a factor for hundredweight for miles driven, and that calculates down in the very bottom line to a factor for hundredweight per mile.

Q. That's not so easy.

A. I'm reminded of one of my bosses along time ago that he said, English is a wonderful language. You think you know what they understood you to say. And that actually runs both ways.

Q. That's all I have for you. So thank you.

MR. HILL: Brian Hill. Apparently there was a producer, Mr. Fernandes is here.

JUDGE CLIFTON: Good. Mr. Fernandes, do you want to continue to hear this cross-examination or would you like to testify now?

MR. FERNANDES: I would like to testify now, if I could.

JUDGE CLIFTON: All right. Why don't we -- why don't we take a ten-minute break, and then we'll take Mr. Fernandes' testimony. So it's almost 3:10, be back then ready to go at 3:20.

(Whereupon, a break was taken.)

JUDGE CLIFTON: We're back on record at 3:24. Mr. Beshore.

MR. BESHORE: Yes, we have a dairy farmer who has taken time out of his demands of his occupation today to come and testify. And we would like to give him that opportunity at this time. If you could swear him in.

JUDGE CLIFTON: Excellent. Thank you, Mr. Beshore.

I'm going to swear you in in a seated position. Would you raise your right hand, please?

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

MR. FERNANDES: Yes.

JUDGE CLIFTON: Please state and spell your name for us.

MR. FERNANDES: Joey Fernandes, J-O-E-Y, F-E-R-N-A-N-D-E-S.

JUDGE CLIFTON: And do you have any written statement?

MR. FERNANDES: Well, not that you can probably read very well, but my punctuation, but I was trying to be brief and I figured I better read this because I can ramble. So hopefully I can just read what I have here.

JUDGE CLIFTON: All right. Now, have you, in your statement, told us about your background? Have you told us about you and your farming operation?

MR. FERNANDES: Yes, I do reflect on that, yes.

JUDGE CLIFTON: All right. Great. All right. You may begin by reading your statement.

MR. FERNANDES: Well, thank you, your Honor. And I really

thank you for the opportunity to testify today. I especially want to thank USDA for holding this historic hearing. And I am excited and hopeful for this, through this process we can establish a California Federal Milk Marketing Order that will ultimately provide greater sustainability to our industry.

My name is Joey Fernandes. I am a third generation dairy farmer in Tulare, California, and a member-owner of Land O'Lakes, and I am here to support the proposal put forth by Land O'Lakes, Dairy Farmers of America, and California Dairies, Incorporated.

Now, I'm not here today to talk about the details of proposal or quantify the negative impact our current pricing system has on my operation, much of that has already been discussed. Instead, I want to just share a little of my history and thoughts with the panel, to give a little bit understanding of the culture and the fabric of the California dairymen.

Personally, I am the oldest of six brothers who worked alongside and were so inspired by our father that all of us are still dairymen today. Like most fellow dairymen my age, if not your father, it was our grandfather who emigrated here with very little or nothing. Nothing more than ambition and a love for the dairy cattle.

My grandfather was one of those who emigrated here in the early '20s from the Azure Islands. Like so many others, he

worked milking cows until he was able to start and build a dairy of his own. In the middle of the depression, TB had come through and wiped out most of his herd, and subsequently after losing his property, he was left with no more than six cows that he grazed on the sides the road in Tipton, California.

He was shipping his milk to Dairyman's Cooperative Creamery at the time, and he would tell the truck driver what road or corner he would be on the next morning to pick up his milk. With the help of fellow dairymen, he was able to get back on the small rental property and start over.

As tough as it was then, there was always hope and opportunity through hard work and profitability -- and profitability through gains and efficiency and skill. Today, that hope and optimism has been challenged on so many fronts. I'm not here asking for sympathy or the assurance of profitability, just hope. Hope that can come on one front, from simply a more equitable milk price.

As challenged as we are as dairy producers in California, with drought, regulation, and competing higher value crops, our ability to compete is most hindered by our disparity in milk price. Those of us that have survived the last seven years of unprecedented volatility and disparity are not necessarily any better dairymen than those who didn't. We either had the ability or were willing to erode all of our equity with the hope that we could eventually align our State

Order pricing and/or make it to the next market correction. Some would likely call this stupidity, but I'm here to tell you it is simply the passion to dairy that we inherited from our fathers. Yes, passion to a fault. By the simple nature of our business, we can cannot simply throttle back or idle our operations, and the last thing we do is not feed our cows.

We were naive to believe that market corrections would come quick enough, when California, the 20 percent of the nation's milk was so heavily discounted to the rest of the country. Naive no more. Dairymen are now reacting more quickly. I know I am. By either exiting or leveraging assets into a different direction while they still have equity. Expansion is no longer an option. The best we can hope for through milk market price reform in California is to slow the decline, or hopefully, maintain adequate production to sustain our processing plants. And there's not a lot of milk that can come from the West of us.

But thank you again today for the opportunity to share my thoughts. I have three young sons who, like me, still have passion to dairy, but are looking for hope. Hope that can come to this process today. Just speed it up a little bit. Thank you.

JUDGE CLIFTON: If you have been listening in, you know the mountains of information that must be digested.

MR. FERNANDES: I have been listening in, yes.

JUDGE CLIFTON: Mr. Beshore?

MR. BESHORE: Just two quick follow up questions, Mr. Fernandes.

DIRECT EXAMINATION

BY MR. BESHORE:

Q. You mentioned your grandfather's experience with TB in the Depression years. Just tell us what that is, for the record.

A. Tuberculosis. Bovine Tuberculosis. Before they were able to, we obviously, before it was eradicated and we vaccinated for it, it devastated quite a few people in the industry.

Q. Very good. Thank you. And can you just tell us, in Tulare County there, how many cows are you milking? What's basically the configuration of your own operation?

A. Yeah. I have, I have three separate dairy operations, milking both Jerseys and Holsteins, for a total of about 2,400 cows.

Q. Thank you. Thank you very much. And thank you again for taking time to come today and testify.

A. You're welcome.

Q. I have nothing further.

JUDGE CLIFTON: Who has questions for Mr. Fernandes?

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BY MS. TAYLOR:

Q. Good afternoon. Erin Taylor with the USDA.

I want to thank you on behalf of the Department for coming here and spending the afternoon with us away from your busy day, and sharing your views on the process here. It's very much appreciative.

I just have a couple of questions. First, you talked a lot about the milk price inequity that you feel exists now in the milk price that you get through the California system. And there's been a lot of discussion over the past few weeks as to why that discrepancy exists, according to the proponents. And so I just wanted to know, if you could just give us a general idea, nothing too technical, but just generally why you think your price is not equitable?

A. Well, and again, I don't think -- I think I would be, I would be redundant I think, but repeating. In my situation from what I know, and the biggest disparity, most of it, comes through, is the, is the 4b side of the pricing that I receive.

Q. Okay.

A. My blend price and how it's affected through the 4b difference in the Class III.

Q. And the 4b difference between what you see here in California and the Class III price in the Federal Order, current Federal Order system?

A. Correct.

Q. And lastly, the Department in this process has to consider the impact to small businesses, and that's defined within farm annual gross revenue of $750,000 or around 315,000 pounds of production a month. So would you fit under a small business definition?

A. No, I wouldn't.

Q. Okay. Thank you. That's all I have.

JUDGE CLIFTON: You mentioned a concern of keeping an adequate supply of milk to keep the processing plants supplied. As of member of Land O'Lakes, you participate in both activities; is that correct, producing and processing?

MR. FERNANDES: Yes.

JUDGE CLIFTON: And you said you didn't want to dwell on the specifics so much that we had already received, but what can you share with us about what percentage, if you have any way to know, of people in Tulare County are struggling to maintain their dairy operation? Do you have any awareness in addition to what you, yourself have dealt with?

MR. FERNANDES: No, I couldn't tell you a percentage. My purpose today was hopefully reflect based on my feelings being in this industry all my life, and really just to casual conversation with fellow dairy producers, that going forward, they are looking at a different direction, and it is not increasing milk production in their operations. And that's

generally speaking.

And so I, when I look at the pattern anywhere I am going or the fellow dairymen are looking at, we're trying, it is really trying to grapple and determine what is the most sustainable option going forward. And my concern is that the dairymen are not going to have the passion or the fight to go through the dips and valleys like they have done in the past.

JUDGE CLIFTON: When you say you waited a long time for a market correction, how long, and did it come?

MR. FERNANDES: Well, yeah. I mean, we have just come off a correction that, 2014, that previous to that it was fairly long spell. And I, and for me it's been really hard for those that I have known who had to exit the business at the end of 2013 when there was so much opportunity to recoup the erosion in 2014.

And so the valleys, you know, the market signals today aren't working correctly when one part of the country gets the signal much earlier than the rest of the country. Today we have a signal in California that brings less milk, that's not necessarily the case in other parts of the country, which just delays the correction in milk quantity. And we're already suffering. So -- if that makes sense.

JUDGE CLIFTON: It does. Your ramping down while other regions of the country are ramping up. Is that what you are expressing?

MR. FERNANDES: Right. Exactly.

JUDGE CLIFTON: Of your brothers who also are dairymen, are they in Tulare County?

MR. FERNANDES: Yes, they are.

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

MR. FERNANDES: No. I just, again, I want to thank you for the opportunity, and I hope more dairymen come forth. I mean, this is a great opportunity. This is a tool that we should always look at whether we win it into a Federal Order or not. I have learned so much listening in.

And so, staff, for those here, I just, again, thanks for going through this process. I just would love to see it get picked up a little bit as far as speed.

JUDGE CLIFTON: And you will vote, if there's a proposal to vote on?

MR. FERNANDES: Yes, I will. Hopefully by the end of the year, right?

JUDGE CLIFTON: Thank you so much. Mr. Fernandes, thank you so much for coming and sharing your thoughts with us. All right. Is there anyone else who wants to testify prior to Mr. Hollon resuming the stand? Not at this time. Mr. Hollon, welcome back. Dr. Schiek?

CROSS-EXAMINATION

BY DR. SCHIEK:

Q. William Schiek, S-C-H-I-E-K.

Good afternoon, Mr. Hollon.

A. Good afternoon, Dr. Schiek.

Q. I just have a few questions, you know, maybe I'm going to start with kind of picking up from Ms. Vulin's questioning, getting back to the intercept and the interpretation of that. Would I be totally off base if I suggested that that number is basically the cost associated with moving milk zero miles? Basically the fixed cost associated with loading the truck, doing those kinds of things, from an estimation standpoint?

A. In general, I would agree with you.

Q. Okay. Okay. Getting back to the question of local haul. I just, I think I would like to look at Exhibit 74, which is the ranch-to-plant hauling table, and so the number you are using is 30 cents to represent, be a representative local haul; is that right?

A. It is.

Q. And so do you have in mind, in terms of picking that number, approximately how many miles that is? How many miles is a local haul? Is there a general ballpark?

A. I do not.

Q. Okay. So just to kind of look at the, let's see, first page of Exhibit 74, if I go down 1, 2, 3, 4, 5, 6th, haul region from the South San Joaquin Valley, and it says delivered to, the 1, 2, 3, 4th line down on the delivered to side is also

the South San Joaquin Valley, and there's about 1.44 billion pounds of milk in that particular month delivered from that region to that region. And the haul rate there is 35.46 cents or $0.3446 per hundredweight. But I see that the mileage range is up as high as 132. Would you think 132 might be a little bit longer than a local haul, typically?

A. Could be in Atwater in that area or longer than a local haul could be.

Q. And that's pretty close, it is a nickel and a half above your 30 cent thing, but -- but you know, maybe if you eliminated some of those higher, one end of the region to the other, 100-mile plus hauls, you probably would be in the 30 cents ballpark, maybe?

A. And if you look at the average miles of 26, that's got to tell you that more them are closer to one than 132.

Q. Right. And there's a certain fixed cost associated with any haul, so even if you had a mile haul, it's not going to be really close to zero or something, right?

A. That's correct.

Q. Okay.

A. You've got a sample, you have got a test, you've got to weight, you've got to pump for somebody who shows up at the farm.

Q. Okay. And if we look at the next section down, this may be a little bit of overkill, but I'm making a point. But

North San Joaquin Valley to the North San Joaquin Valley, if you look over in the October 2014, we have got a haul rate, average haul rate and that shipment of 40 and a half cents per hundredweight, about. That's actually $0.4053 per hundredweight. But the average is 27 miles, and in that, again, in that route, the high is 93, so there maybe some longer hauls in there. But, again, I think those two numbers probably, especially when you take out the higher rate hauls, they probably suggest your 30 cent number is not far off. I just wanted to --

A. I would agree with you. But I would say that our local marketing folks, you know, for the genesis of the 30 cents and they're in touch with the day in and day out, and you have made some good points.

Q. Okay. And I wanted to just say, I was very impressed with the information you put on the record, particularly by getting all the information you and your fellow co-ops have in term of making these deliveries, because you are the only ones with that information that could do what you did in estimating that, so I think that was excellent information to get on the record, and I appreciate that you did that.

I do want to ask a question about transportation. What is known under the current State Order as transportation credits, which is the assistance provided from plant to plant movements. You mentioned when Ms. Vulin was questioning you

about, you know, they weren't included as part of your proposal, was there a deliberation about whether they should or shouldn't be included or a rationale why they weren't? I was just curious.

A. Again, talking to the local people on the ground, we did have a discussion about that multiple, at multiple times as we worked our way through this, and the general consensus was they wanted to focus on the ranch-to-plant movement. And I think I recall that there was not a lot of plant-to-plant movement. I think that was commented on by, again, local market guys in all three co-ops.

Q. Yeah. And certainly the data that CDFA presented or they showed branch-to-plant dollars taken from the pool versus plant-to-plant is much smaller. Do you have any sense of what those plant-to-plant movements represent, what kind of product they are, where they are going, from where to where?

A. I do not.

Q. So you don't know if there, say, for example, condensed skim for fortification going to Class I plants?

A. Likely, if you were paying me to guess.

Q. Well, I'm not, but pretend.

A. I would think there would be a condensed product of some type.

Q. Okay. This was just another question I had. On page 8 of your statement, Exhibit 72. So this is maybe the second

paragraph up from the bottom, and the one that starts with the Federal Order Differential Structure?

A. Yes.

Q. And the last sentence you state, "Without an inside the marketing area transportation credit system, many of the Class I and II handlers would be at a competitive disadvantage to certain similarly situated use in Class I and II handlers located in the more densely supplied milk shed areas."

Can you, would you be willing to expand on that? In other words, what's the -- what's the source of that disadvantage? Just trying to understand that statement a little bit more.

A. I think as also reflected in other places, that we chose not to try to define our transportation zones as locations that were more distant from the heavier milk supply. And clearly not every Class I or Class II plant is more distant, and those that are in the areas where there's lots of milk would likely be able to attract it at a lower transportation rate than a further, than a plant located farther away.

Q. Okay. I think, you know, when I was first studying transportation issues in graduate school in terms of milk and transportation, one of the things that I learned at the time, and it was maybe it was wrong, but, was that bulk -- I don't think it was wrong at the time -- but bulk milk shipments were

generally lower cost, more efficient than packaged route distribution shipments.

Do you have a sense, is that true at all today or is it changing? Is the marketplace changed in some way that maybe would?

A. I would generally agree with that.

Q. That it has changed?

A. No, that bulk transports are, to some extent, cheaper than packaged. I have had some processor customers debate that a bit, but in the main, it seems like it is cheaper to transport bulk than it is to transport packaged goods.

Q. Do you think that certain kinds of customers, the bit wholesale club stores, for example, might, rather than having a route disposition to their stores, you know, do Class I plants, in your knowledge, sometimes make deliveries to a distribution center? So instead of having to actually go out and distribute to all the stores, they sometimes make bulk drop shipment to a distribution center and then that distribution is handled by the store?

A. I think those types of patterns are probably about as many as you could come up with.

Q. Okay. I think this is on page 15. And you are talking about the period you used to establish a base for the fuel price. You said the eight-month base rate diesel price was 4.110 per gallon -- $4.110 per gallon. And so the question I

had that was, it's kind of a period of high-priced fuel. But is the reason you chose that period because it corresponds to the time period you did your study of, with all the information that your Cooperatives put together and had the Market Administrator help you analyze?

A. Yes.

Q. Okay. I think, I wanted to look for a second.

A. You're welcome.

Q. Oh, gosh, a literalist.

Cooperatives map 7.Q on Exhibit 73, your list of exhibits, where you have the Federal Milk Marketing Order Class I Differential and Summary Statistics.

A. Yes.

Q. In your written statement, if I understood it correctly, you were talking in earlier part of the statement about how this price surface, in other Federal Orders, serves the role to assist in transportation. Is that because there's a location differential or PPD that's applied at the location of the plant of first receipt, that producers price is adjusted based on this map or a map like this in other areas?

A. I think Mr. Vetne and I went through this.

Q. Oh.

A. Do you recall?

Q. Was it today?

A. I haven't had that privilege yet today. But try -- try

your question, ask your question again.

Q. So in Federal Orders, this differential price surface, and the fact that when a producer delivers to a zone on the map that has a higher price than maybe the zone that they are actually located in, that they might ship to a local manufacturing plant in, they get a higher price for that delivery to the deficit zone; is that correct?

A. Correct. So in your example, if your farm was in a typical Federal Order, the $1.60 zone and you deliver to the $2.10 zone, that delivery would carry the $2.00 differential as part of the price. But your milk check might be, would be referenced in your zone. And the thought was that the haul cost, you bore the cost of taking it there.

Q. Right. Okay. And in the system that you are proposing under Proposal 1, there wouldn't be that kind of adjustment to the producer price. All the movement would be handled by the transportation credit system that you have proposed in terms of economic incentive for movement; is that correct?

A. I think the answer is correct, but I'm not sure if the way you asked it is correct. But I think what you intended to ask was would we have a flat producer price?

Q. Yes.

A. And would we have a price to handlers, buyers, that reflected the differential surface? Yes.

And would all the dollars from sales go into the pool

and to pay producers and to pay transportation? Yes.

Q. Okay. That is all. Thank you. I think that's all I have.

CROSS-EXAMINATION

BY MR. ENGLISH:

Q. Chip English. Good afternoon, Mr. Hollon.

A. Good afternoon.

Q. I, too, thank you for this material. And I think as I indicated in our statement, I think this is a place where I would like to learn as much as I can, our areas of disagreement are, they may still be levels of disagreement, but I think it is very different from where we have been with the rest of this proceeding.

Let me start out with page 19. And the change that you, the substantive change, I know you put the deletion of the word and, the substantive change of removing San Diego from Transportation Zone 1, and then by striking San Diego in the exception to 2 basically, I think it allows plants in San Diego or handlers delivering to plants in San Diego, to get credits at least from some parts of the state; is that correct?

A. Yes.

Q. So, and I may have missed it, if you said it, but what's the rationale -- first of all, in the existing California Order, is that how it is, San Diego is listed as Riverside and San Bernardino?

A. I don't remember.

Q. Okay. All right. Can you tell me what the reason for the change from the Hearing Notice to now?

A. As we discussed this, and again, with the local marketing staff, they felt like this was a better representation of what we wanted to do with milk movement and what we wanted to do with transportation payments.

Q. So the way it was written, the credit would only be available for plants in San Diego if the milk came from Riverside or San Bernardino, right? So by deleting San Diego in Transportation Zone 1, you don't get a transportation credit if the delivery is made in the San Diego County to San Diego, correct?

A. Correct.

Q. So that effectively eliminate a local haul, correct?

A. In that case, yes.

Q. It eliminates the credit for a local haul. But by deleting the exception for San Diego in Zone 2, you now get the ability to get a credit or -- what is the impact of the change in Zone 2, then?

A. You would get a credit from a delivery from any other place, any other county in the state, which in that case would include San Diego.

Q. Okay. So you actually do get a credit for delivery from San Diego to San Diego on your Transportation Zone 2 rule,

correct?

A. Yes.

Q. But you also can get a credit for delivery to a San Diego plant for a farther distance, say from --

A. Yes.

Q. -- Fresno?

A. Yes.

Q. Okay. Since San Diego is South of Los Angeles, why would you effectively permit a credit for a haul from Fresno to San Diego when you are not going to permit it from Fresno to Los Angeles?

A. I'm sorry, I don't have an answer.

Q. All right. I'm getting some help from Mr. Schiek. I'm genuinely trying to understand.

So what Dr. Schiek is suggesting, is that the way it was written before a change, was that you get two different rates for the same haul conceivably.

A. That is conceivable.

Q. Okay. So the change as at least made presented two different rates for the same haul, but it may also have created the ability to get a credit for a haul that jumps over Los Angeles and goes into San Diego, say from Fresno?

A. Could.

Q. Now, if I understand it correctly, is the decision to alter the normal Federal Order process of having the handler

price in a location, also be the producer price in the same location? Is this transportation credit system, as you explained the need to sort of compensate and simplify it by not taking into consideration the difference between the two producer prices, is that the sole reason that the co-ops proposed having the producer price not based on location?

A. Well, part of it is, obviously, the function inside the transportation system. And part of is that that's not been the practice in California, that producers are used to this type of payment method and system, and so it would be easier to explain and understand.

Q. I accept that.

A. We also wanted to try to focus the dollars on transportation. In the existing system, there's adjustments made to the pool that for difference in location, maybe milk never even moves and there's -- there's, the location adjustment is held out of the pool whether the milk moves or not. So we wanted to try to focus all of the dollars that we could on the system.

Q. Okay. Now, the flip side of that is that the diverted milk is priced at the plant to which diverted, correct?

A. Yes.

Q. But a dairy farmer whose milk is maybe close by to that plant which is diverted, would nonetheless have the same price for his or her milk as a dairy farmer, say, located in?

Los Angeles?

A. All producers would get the same price.

Q. And going back to Ms. Vulin's questions, you specifically said you don't want to overshoot.

A. Correct.

Q. And by that you mean that you certainly don't intend to pay more than a hundred percent of the haul, correct?

A. Correct. Windfalls are not good in our business.

Q. Windfalls are not good in the business. And so there are sort of two pieces to that. First, you subtracted the cost of 30 cents?

A. Yes.

Q. Under the view that that is already being paid by the producer in your view, correct?

A. Correct.

Q. But even leaving aside that from your own examples, you never quite get to 100 percent of the remainder, correct?

A. Correct.

Q. Okay. So is that what you meant by, in one of your earlier statements, that you were trying to leave producers indifferent as to whether they deliver to a Class I plant or not, as opposed to if you had a windfall, they might actually want to send their milk there?

A. We don't want to create a windfall because that messes with the procurement patterns and activities, and so we wanted

to also try to set up a transportation system that would recover that extra cost. So I mean, those are part of our goals.

Q. But the extra cost is not actually by your own efforts, not going to be 100 percent, correct?

A. That's true.

Q. Okay. And turning to page 21 of your testimony, and you reference the idea that the transportation credits will apply only to facilities that have utilization of greater than 50 percent in Class I and/or II.

So first, if a plant has 100 percent Class II, is it eligible for the transportation credit?

A. Given it meets all the geographic limitations?

Q. Yes.

A. Yes.

Q. Now, yesterday you were here for the testimony of Mr. Schad, or no, you weren't actually, I take that back.

A. I was getting ready for today's testimony.

Q. Did you read Mr. Schad's testimony at any time?

A. I have read parts of it. I've not read it all word for word.

Q. Do you recall his part where he discusses the build up on the Class I price cost differential would include an element for the transportation credits?

A. Not particularly.

Q. Okay. Nonetheless, if a facility were 49 percent Class I and II, let's say it was 40 percent Class I, and 9 percent Class II, and everything else was somehow Class III or IV, it would not be eligible for transportation credits at all, correct?

A. Correct.

Q. But nonetheless, on that 40 percent of milk Class I, you would be paying the Class I differential, correct?

A. It would, correct.

Q. I have no further questions.

CROSS-EXAMINATION

BY DR. SCHIEK:

Q. William Schiek. Sorry, Mr. English's line of questioning reminded me of something I forgot to ask.

If there were a dairy farmer in a location who was in a designated area, wherever you can pay for him to, let's say he would, under your system, be eligible for a transportation credit. But in his case, his best option was to ship to that, to a Class I plant, the deficit area. Is shipping to a manufacturing plant was actually farther away for that person, so under, if you will accept the premise that in that situation, money really isn't needed to get that milk to move to the Class I plant? Your proposal doesn't take into account or treat that producer differently, he still would get a credit?

A. Yes.
Q. The handler would get the credit?
A. It would be a pretty large amount of judgment that somebody would have to start applying that would be pretty hard to do.
Q. Okay.
A. I don't think any Market Administrator would want that task.
Q. Okay. Thank you.

CROSS-EXAMINATION

BY MR. VETNE

Q. John Vetne for Hilmar Cheese Company.

A follow up on that same question. Would you agree with me that there are some regions in the state where there are, there is a market and plants in search of milk?
A. In the State of California?
Q. In the State of California.
A. There are markets --
Q. -- and plants in search of milk because local supply is deficit.
A. I guess hypothetically that could be true.
Q. Hypothetically, like Los Angeles. In actuality, the Los Angeles area is an area with population and plants and inadequate supply of nearby milk?
A. That would be true.

Q. Okay. And are there other regions in the state where there is milk production in search of a market sort of like the situation that Dr. Schiek just described. Producers got milk looking for, looking for a home?

A. I'm sure there are regions in the state where there may be more milk than the reverse of the Los Angeles comparison.

Q. Yes. At least some modest amount of transportation allowance has been applied by CDFA, and I think would be, may be available in your proposal, for example, in Northern California, the Humboldt area.

A. No.

Q. It's not --

A. No.

Q. It's not there at all?

A. It is not one of the areas that is one of the counties that a credit can be received in.

Q. Okay. All right. It's your intention, however, to apply the credit as much as possible where there is a market that is in search of milk needed to be transported to it, rather than to give the credit to a supply that is looking for a market?

A. Yes.

Q. Okay. Direct your attention, please, to page 8 of your statement. The first sentence of the first, of the second full paragraph beginning on that page, you say, "the Federal Order

differential structure alone is not adequate enough to move milk from supply to demand points."

Is that thought, and the sentence continues, was it that thought we need to do something to encourage that. But the premise thought, the beginning of that sentence, "the Federal differential order structure alone is not adequate." Is that illustrated in part in your Table 7.O?

JUDGE CLIFTON: 7.O?

MR. VETNE: Yes, 7.O, they are letters not numbers.

BY MR. VETNE:

Q. Where it shows the Federal differential, and you calculate an amount of transportation recovered in the Federal differential compared to the CDFA rate.

A. Yes.

Q. Now, would you agree with me that the Federal differential structure represents judgment of the various values of producer milk delivered to one location compared to other locations?

A. I think it covers the, doesn't it cover all locations in the country?

Q. Yes, but all, the same price is not at all locations, there are different prices. And those prices reflect different values of producer milk delivered to those locations.

A. I think it is actually one of the footnotes describes the model and talks about all of its constraints to achieve, to

go in together to produce the differential service. Is that what you are asking?

Q. Yes, it's a function of transportation. Some places need to transport less milk than others and they would have lower differential prices.

A. It is also a function of processing, processing costs, distribution costs. All of those variables are in play at one time. I have heard Mark Stephenson lecture on that many times.

Q. Maybe I need to be reminded. You mentioned processing cost. Does your footnote indicate that to fill demands, at least cost for processing milk transport and dairy product distribution, does that mean that the Class I differential structure created at the time of Federal Order Reform represents something either more or less or different than the relative value of milk at one location compared to other locations?

A. I think the differential surface took all of these things into account in the model, and the result of the model was the differential surface.

Q. All right. When you talk on page 8 of the Federal Order differential alone is not adequate enough to move milk, let me see, if you could look at your Map 7.Q, the FMMO Class I differential map?

A. Yes.

Q. Do you mean there for illustration purposes that the 50

cent difference from the $1.60 zone to the $2.10 zone is not adequate enough to move milk between those two zones?

A. Yes.

Q. Okay. You also use the term on page 5 of your testimony, near the bottom, I think it's a heading, it's in bold at least, oh, it's a title of the table, the Federal Order Differential Allowance. Is differential allowance the same, mean the same thing as the dollar figures represented by zone on the map, page 7.Q?

A. I think in that case it would be, the answer is yes, this does differentials and the differences between the two.

Q. Between the two. Okay. So built into the Federal Order system is an allowance to account for the different, difference in value of milk in the $1.60 zone to the $2.10 zone. But, in fact, your proposal, as I understand, correct me if I'm wrong, provides none of that allowance for transporting milk from the $1.60 to the $2.10 zone?

A. Our proposal identifies locations where milk is delivered to, where it originates from, and a payment for delivery between those two locations.

Q. Yes, I understand that. In the Class I differential structure, there is a 50 cent differential allowance between the $1.60 and the $2.10 zone.

A. Right.

Q. But your proposal, in fact, by having flat pricing,

takes zero of that differential allowance and applies it to transportation; is that not correct?

A. No, we take all of that 50 cents, if that were an actual transaction, put it in the blend pool, and then out of the blend pool, make a transportation payment.

Q. The blend pool comes from Class I, II, III and IV?

A. Yes.

Q. Okay. So you are not taking any of the allowance in the Class I differential and applying it to the variable cost, variable value of milk in the $1.60 zone compared to the value of milk in the $2.10 zone. You are taking the differential value on one side of the equation, bringing it into the pool, and taking out of the pool something different, just from all classes, to fund the transportation credit system.

A. I guess I would describe it the way I described it, and that's not the same way that you did, but I don't -- you have got so many hoops and turns that I don't think I can quite keep up with it. But I have given you the best description that I have got, and it seems like I am in the same spot that you are.

Q. My read of this is that you refer to the Federal Order system as providing an allowance, and that allowance is not enough, which implies that there's something there that helps move milk. So we want to add to that allowance to get milk from point A to point B. But in fact, your proposal, although an allowance may be created on the processor payment side,

takes zero dollars from that different location values towards transportation, and simply puts all of it into the pool for everybody.

A. I don't know how to answer you.

JUDGE CLIFTON: So, Mr. Vetne, assume for a minute that the amount that comes into the pool from what we look at on the map at 7.Q --

MR. VETNE: Yes.

JUDGE CLIFTON: -- turns out to be exactly the same amount that's paid to the handlers under the formula that Mr. Hollon has suggested. Just assume for a minute that they were equal.

MR. VETNE: That would be a huge transportation pool, but I can assume that with you.

JUDGE CLIFTON: That would be a huge transportation pool?

MR. VETNE: Yes. 50 cents on all of the milk, all of the Class I milk that comes into Los Angeles from the $1.60 zone.

JUDGE CLIFTON: You don't think it, you don't think that amount would be exhausted by the formula that Mr. Hollon has suggested?

MR. VETNE: I do not think so.

JUDGE CLIFTON: You think it would be more money than will --

MR. VETNE: I hope to find out.

JUDGE CLIFTON: By doing a model or do you mean --

MR. VETNE: No, by asking questions.

JUDGE CLIFTON: Okay.

BY MR. VETNE:

Q. Okay. Have you compared, estimated the amount of draw from the whole pool for transportation allowances in the proposal compared to what the total payments have been by CDFA for transportation?

A. The best answer I can give you on that is when we did the data in our model, that we got pretty close, really close to what was submitted for transportation. That was the same type of data. And, you know, on 78 percent of the pool we got approximately the estimated function got to be approximately the same as the actual payments.

Q. Okay. You've referred a few times to Southeast transportation credits, so I would like to go through an example and see where this is similar. Where we have some prior understanding of how it works and where there's difference. So again, looking at the map, assume a supply of milk in the $1.60 zone moves to the $2.10 zone. The map, page 7.Q in Exhibit 73.

Now, under the Southeast and Appalachian markets, if milk costs a dollar a hundredweight to move someplace from the $1.60 zone to the $2.10 zone, do you follow me so far? The actual cost?

A. I want to ask you a question. You realize in the Southeast zone they would get nothing?

Q. Because it has to come from outside the marketing area, right?

A. Right.

Q. Just apply that model to this, we'll assume the marketing area is Los Angeles. In that model it costs a dollar to move milk and it was transported from $1.60 to $2.10. The 50 cents difference would go to the producer as part of his higher blend price at the higher valued location, correct?

A. Yes.

Q. Okay. And there's still 50 cents unaccounted for --

A. Correct.

Q. -- that somebody had to absorb. And in the Southeast model you'd hope to recover a percentage of transportation cost through an allowance, something less than a hundred percent to encourage efficiency, correct?

A. Yes.

Q. Okay. So if you recover 90 percent of the unrecovered transportation cost, that which is not reflected in the location adjustment, there's 50 cents out of pocket, 90 percent of 50 cents is 45 cents. Is that pretty much how the system works in the Southeast?

A. Yes.

Q. Okay. But if you had the same target percentage of recovery of unreimbursed transportation costs under your proposal, and what we have gone through with the Southeast 50

cents is recovered by the producer cost, 45 cents is recovered by the 90 percent target on the balance, the total total of 90 cents is recovered.

A. 95.

Q. 95 cents.

A. Yes.

Q. Okay. And 50 cents of that goes directly to the farm to the producer, correct?

A. That's not the way it works in practicality.

Q. It -- Cooperatives are the reporting handler for more of the those shipments?

A. Yes, and pays that dollar haul bill.

Q. And pays the dollar haul bill?

A. Right.

Q. And does the producer receive the value of the 50 cents because of location difference?

A. And the handler receives the value of the 50 cents, and the 45 from the Transportation Credit Program.

Q. Okay. And in the Southeast, it is the producer, the producer receives a 50 cent higher blend price, and somebody would recover the 45 cents, it is not recovered, correct?

A. Yes.

Q. Okay. And you do note that under the system you propose, nothing by regulatory mandate flows directly to the producer, unlike the Southeast, the producer gets the 50 cent

value and the blend price at that location, but all of it goes to the handler. The producer gets information about what the handler collected, but there's no mandate that the handler share that revenue with the producer, as there is under the Southeast model for at least half of it going directly to the producer as part of the producer blend price delivered to that location. Am I correct?

A. Only in the somatic sense. In the Southeast model, again, the handler is the cooperative, and the handler has the dollar cost, and the producer has the 50 cents, if you will, different base price. But at the end of the day all of those costs have to be, you know, covered in one way or another. So to finish your example, what you are implying is that if somebody ends up 50 cents short and if the, if the producer ends up 50 cents short or his cooperative ends up 50 cents short, in your example, you would be in the same spot.

Q. Okay. I think you made some reference to the notion that if we didn't do this, there would be substantial over-order premiums charged to recover those costs.

A. No.

Q. No, you didn't say that?

A. I didn't say that.

Q. Well, would you?

A. I don't know. We would have to see when we got there.

Q. Okay. Are there currently over-order premiums charged

for the cost of transporting milk that isn't recovered from state transportation system?

A. At times.

Q. Are there over-order premiums charged for other reasons for Class I milk?

A. Well, I'm not totally familiar with the California market, there are over-order premiums in the California market.

Q. We have had nobody talk about that. Do you have any information either hard or anecdotal that you might want to share?

A. There's not a common marketing agency in the California market, so other than the presence of premiums, that would be proprietary between all of the various suppliers and sellers, and so I'm not totally comfortable with sharing DFA structure.

Q. All right. Go back to the map on page 7.Q in Exhibit 73.

A. Map 7.Q?

Q. Map 7.Q, yes, same map. Does the need arise occasionally, because of holidays and the like, for surplus milk in Southern California to find a manufacturing home?

A. Do you mean in the $2.10 zone?

Q. $2.10 or $1.80 zone?

A. I'm not completely sure. There obviously is a balancing component to the market, but I can't tell you exactly is that zone always surplus or deficit. I don't know the

answer.

Q. Did not DFA a few years ago have a cheese plant down in the $1.80 zone?

A. It did.

Q. Okay. Let us say that there was a storm or there was a holiday for some reason, demand for milk at fluid milk plants dropped off for a period of time, and some of the Southern California production had to find a manufacturing home and there wasn't enough local capacity for that manufacturing production in the south.

Would a handler in the scenario I describe be entitled to a location adjustment? Here's the description. Let's say there's ten million pounds of milk in the South that needs to find a home, 20 trucks, or how many trucks is that anyway? 200 trucks. Could not -- could not the existing supply in Southern California be used for local manufacturing purposes and, in fact, that Southern California surplus move up to Fresno or Tulare or someplace to the North to a distributing plant and earn a transportation credit?

A. Transportation credits are only earned from movement in the specified geography. So if it fits, if your example fits the specified geography, then the answer would be yes. If it doesn't fit a specified geography, the answer would be no.

Q. So there may be an incentive to shift surplus milk and supplies and distributing plant supplies around so that if the

milk's going, if some milk has to move that direction anyway, if you could find a transportation credit for it, you would look for it, wouldn't you?

A. That could possibly happen. The economics in total would have to work out obviously, but just because you get a transportation credit doesn't mean it is a wise thing to do economically. Right?

Q. If you get -- if you get a net dollar benefit, it is something you would have to consider for your members?

A. Yes, if you got a net dollar benefit you would have to consider it.

Q. Thank you.

JUDGE CLIFTON: Dr. Schiek?

CROSS-EXAMINATION

BY MR. SCHIEK:

Q. William Schiek.

Mr. Hollon, just one more clarification question. The 225-mile cap that you have referenced in terms of how you would calculate the rate, I just want to make sure I understand that correctly. That's not a mileage cap per se, it's a rate cap. Is that right? In other words, if I'm 226 miles away, can I, and that milk moves, do I get a rate that's calculated at 225 mile level or do I get a zero rate?

A. A rate that's calculated at 225 miles.

Q. Thank you.

A. You're welcome.

JUDGE CLIFTON: Are there other questions for Mr. Hollon?

CROSS-EXAMINATION

BY MS. TAYLOR:

Q. Good afternoon. Erin Taylor for USDA.

I would like to start for a clarification on Table 7.O?

A. 7.O?

Q. Yes.

A. Okay.

Q. I just want to make sure I got the math correct on how you came up with, for example, Column K, which is the percent haul covered by the smallest differential gain. And to work the math there, I would say it would be whatever the value is in Column I divided by the value in Column H.

A. Yes.

Q. Okay. So then working over, where there's a number, say, in Column L, 47 percent. So here what that, I can interpret that as saying that 47 percent, 47 percent, the differential covers 47 percent of what CDFA currently pays out.

A. Yes.

Q. Okay. So then just to be clear, though, that your transportation, it, well, I'll ask. Is your system that you all designed trying to replicate exactly what CDFA pays out in their current transportation, or trying to insure that the actual cost that the three co-ops have observed and put into

this progression analysis are covered?

A. The second.

Q. Okay. That's my only exhibit question. Now I just have some other questions.

Your program has three different transportation zones. Can you explain why the three zones? How you came up with the three zones for the record?

A. Again, the local day-to-day marketing folks were involved. And we looked at some of the existing CDFA zones that they had, they have a similar collection of geographies. We attempted to define the ones that we thought that were the most likely, the most reasonable, and the most in need, if you will, and not to cover areas that were in, like, haul that would be in an area where milk was plentiful, if you will, compared to demand, and this was the result that we came up with. And we looked at, obviously looking at the populations as best we can, and where the plants are, those are located in the coastal areas, primarily in the San Francisco area and Los Angeles area, so that helped define the destination points. And when we went through the, looking at the maps, looking at the geographies, looking at the milk productions, there was a longer distance there. Then we had to try to figure out where the from points would be, so we tried to look at where likely transportation, where the plot points would be that would also be in need of some transportation assistance, and that's how we

arrived at San Francisco area from anywhere; Los Angeles area, if you will, from anywhere except Riverside and San Bernardino County; and then the Los Angeles area only from them. And as we looked at different combinations, that eventually was the one we settled on that we thought was the most efficient and most representative of what the needs were.

Q. Did you look at any of your own hauling costs, actual haul that come from those supply regions to the demand locations in those zones?

A. That was the data that, all of the data that went into our model was our own cost item.

Q. So is it fair to say that the similarities between what you proposed and what's currently done in California is the transportation zones in general, in that producers are paid a flat price, and then transportation costs are covered through the program, but all the other aspects of the transportation allowance program as it in CDFA, are different than what you have proposed, and that is based on actual mileage and not their bracketed system that they have?

A. There was a lot in that.

Q. Did you get all that? I was channeling John Vetne right now.

A. You are channeling me.

Q. I'm just trying to make the record clear.

A. I think the answer is yes, but try it again.

Q. Okay. I guess I'm just trying to make the record clear that where your proposed system is similar to what's currently done in California and where it's different.

A. Okay.

Q. That's all.

A. The California system does have definitions of supply points and destination points, and as does our proposal. The California system does pay, you know, on distances, but it's not as precise, here's the spot point, here's the destination point. The difference between those two is an exact number of miles, and so our system does that instead. And it's evolved through the data rate estimation process, as opposed to broader geographic area, and saying from this area to that area. So I guess that's how I would describe the similarities and how I would describe the differences.

Q. Okay. And I tried to do this in some logical order, but I might not succeed. When you talk about payments, the to and the from, and the payment is on from each stop on the load; is that correct? So if a truck stops at two farms, you get one payment from farm one and whatever that mileage is; and another payment calculated for farm two, and whatever that mileage is, assuming, and it all went to Plant A?

A. That is both correct, and that's the way that it's done today, and that's the way the rates are calculated today. So we went to Erin's Trucking Company and you gave us a bid,

that's the way it would be structured. In just your example, we would get two different rates from Farm A and Farm B to Plant A.

Q. So could the possibility exist that for one load some of those costs are double-paid for, if that makes sense?

A. The thought process there, you get, it gets stuck on the other areas of the country mile where you think about a route. I would say, I spent a lot of time thinking about that. But again, the way that rates are set and negotiated was the data that we put in, so that reflects the actual negotiated amount from the transport company to what, to what we pay now. So the fact that we ended up with payments that were the estimated equation and the actual were close, very close, would cover that. It is hard to get your head around that, I understand it.

Q. I think I understand.

A. Good.

Q. You are trying to say that the data that went in to come up with your intercepts and your coefficients, etcetera, accounted for the fact that there were multiple stops on a load, and you had different rates that went into it.

A. There may be.

Q. Essentially.

A. And obviously, not obviously, but in this market there's a larger percentage of only one stop load than in most

other markets.

Q. Okay. You have proposed that plants that have a Class II utilization of 50 percent or greater, can get a transportation credit.

A. Yes.

Q. We don't have that currently in any other Federal Order. Generally it is just Class I plant. So could this result in, it's on the whole load, it is not prorated to the plant utilization; is that correct?

A. That's correct.

Q. So a plant that has a 70 percent Class II and 30 percent Class III or IV, etcetera, they would get a payment for all of that milk?

A. They would.

Q. And --

A. And part of the reason for that is that, again, as you start something new, you have a certain amount of what you had to start with, and that's the mechanism in the market here today, so that's one factor. And then another is that those two classes to add higher use to added value to the proposal, so that combination were two of the main reasons why we went there, knowing that it is different than in other orders.

Q. Did you consider for Class II plants, prorating it on your Class II utilization?

A. We did not, partially because that's not what happens

now. So you would face a certain amount of opposition to get an order.

Q. Okay. Previous testimony in the previous weeks you guys have referred to 9 cents. 9 cents being the cost to the pool so on a hundredweight basis, to fund the current transportation credit system?

A. Yes.

Q. Nowhere in today's testimony did you talk about 9 cents, so I'm just trying to get an idea of, the 9 cents was based on, perhaps, what CDFA currently pays out, and what is your impact, since you are not necessarily trying to pay out what CDFA paid out, yours is on actual cost?

A. The best answer I can give you there is we don't have access to every movement, is that we get our estimated pay based on the equation, was almost the same as the actual data that we had available. And that data is in the same form and format that's submitted to CDFA for cost reimbursement, so we have to assume that we're in the same range as 9 cents, but we don't have a hard number.

Q. And that actually makes me want to clarify something in your statement, because I think you just did clarify it. But to be certain, let me find the page. On page 13, where you talk about what the equations resulted in in total payments versus actual payments, and those are not actual CDFA payments, that's actual data from the Cooperatives, what you all paid?

A. Correct.

Q. Okay.

A. But again, I would say that the data that we used to develop those equations, is in the same form and format and information as we would submit to CDFA for some type of reimbursement.

Q. Okay. I want to talk a little bit about the 30 cents that you guys put in and said that that's what you equate to be a local haul rate.

A. Okay.

Q. How is that accounted for in a, for example, what we're familiar with in say the Southeast, there's a local haul rate of 85 miles, and so that's easy to see where that, how that impacts what the reimbursement is. But here, 30 cents isn't anywhere in --

A. It is in --

Q. Is it probably implicitly somewhere, but it is not directly in your table, so --

A. Correct.

Q. -- can you explain how you all accounted for the 30 cents?

A. In the rate calculation equations when we had from, to miles, pounds, amount, from the amount we deducted 30 cents.

Q. And then that went in to come up with, and that data, after the 30 cent removal, went in to come up with your

intercepts and your coefficients.

A. Correct.

Q. Did you consider instead, doing something, for example, as the first 25 or 50 miles, or not covered instead of accounting for it in the, as a monetary as 30 cents?

A. I think we talked about it some, but the conclusion we came to was this was a better fit than what we were trying to do. So I don't know that we actually ran any models that said -- oh, you know, actually we did run some that tried, that tried 25 miles, 50 miles, but we got a better fit with our data using the 30 cents.

Q. Okay. And when you talk about a local haul, that's a farm-to-plant movement going to their nearest manufacturing plant, nearest plant.

A. Or what would be conceived as a local haul in an area. Many times that may be set as much as by competitive conditions as the plant that's ten miles down the road. So it's not always the local plant. There may not be a local plant from where some producers are located.

Q. On the last page of your statement, the very last paragraph talks about, you propose the Market Administrator periodically publish a hauling cost study?

A. Yes.

Q. I just want the record to be clear, that's not part of your order language, that's just going forward, if there was a

California Order, that information would be?

A. Yes, you are correct.

Q. Okay. And along that vein, then, because the way the program is structured and it has intercepts that are based off all this data, etcetera, it would be in the future, perhaps, that intercept needs to be updated. And to do that, we would have to go through a whole process of going back to do this regression analysis to see what the new cost would have impact, be an impact on?

A. I think the idea is to have data that the market can use to assess that. And so a certain amount of it, and I can't tell you exactly what it would be or what form it would take that would be involved, and it would be out of the future. Then if there was a need and if someone requested, you know, made a proposal, you would have data to work with.

Q. Okay. You propose that for the adjuster, the Market Administrator use the most recent eight weeks of diesel prices?

A. Correct.

Q. Why eight weeks?

A. There are fuel adjusters present in the market today. When the DFA negotiates with haulers, we have that adjustment factor. Understanding taking to CDI and Land O'Lakes they have the same, that's a typical use that we have, that begin to take a short-term spike or short-term event out and tries to give you a more level, if you will, number.

Q. Okay.

A. So we picked eight because that's custom now.

Q. Okay. On page 15 in the middle, talking about computing the fuel adjuster. Again, with the most recent eight-week period, the last sentence in the middle paragraph says, "For implementation of a final decision, the most recent eight-week period would be set by the Market Administrator in accordance with the process described above."

I think what you, well, I'm going to say what I think you mean and you can tell me if I'm wrong. But they don't really set anything, but say when the order was first put in place, whatever month that would be, they would use the recent eight weeks of diesel prices?

A. Yes, and it may not necessarily be the absolute most recent, they need to adjust the date in order to meet the recording requirements.

Q. Okay. I think that's all we have. Thank you.

A. You're welcome.

JUDGE CLIFTON: Is there any other cross-examination of Mr. Hollon before I invite redirect? I need two spellings, Mr. Hollon. Near the end of your direct testimony you named two communities in Illinois. The first one sounded like Chemung.

MR. HOLLON: C-H-E-M-U-N-G, there is a large fluid processing plant located there.

JUDGE CLIFTON: And the other one was Huntley.

MR. HOLLON: H-U-N-T-L-E-Y, I'm not sure there is anybody here to correct me, so that there's a large processing plant there, also.

JUDGE CLIFTON: Thank you. Mr. Beshore?

REDIRECT EXAMINATION

BY MR. BESHORE:

Q. Marvin Beshore.

Just a couple of quick questions and redirect before we get that 5:00 whistle.

Mr. Vetne asked you about the possibility of, if I understood the suggestion, the possibility of credits being used for efficient milk movements are one that, movements that wouldn't ordinarily be done by moving milk from in a surplus situation, moving milk to cheese. A surplus in Los Angeles shipping milk to a cheese plant there and getting a credit by shipping additional milk out to Fresno Class I.

Do you remember that?

A. There was a hypothetical established, yes.

Q. Okay. Just so it's clear, under your proposal, there's no credit possible for shipments to Fresno Class I plants regardless of where they originate, correct?

A. That's correct.

Q. The only areas are the demand areas of San Diego?

A. Wherever the geographies are established in the

transportation zones.

Q. And Los Angeles?

A. Correct.

Q. Okay. On table, just in response to questions from Ms. Taylor --

JUDGE CLIFTON: I'm sorry, that doesn't leave the right impression when you say the only demand areas are San Diego and Los Angeles.

MR. BESHORE: Including the surrounding counties.

JUDGE CLIFTON: And of course San Francisco is another area. But were you limiting this consideration to the Southern California as Mr. Vetne did?

MR. BESHORE: No.

MR. HOLLON: I think the correct answer would be that there was only credit if the demand is located in the designated counties, and the Transportation Zones 1, 2, and 3 spell out those counties, so that would be the only place you could get a payment from or to.

MR. BESHORE: I was perhaps a bit hasty.

JUDGE CLIFTON: Well, it was short cutting and I didn't want to you leave it that way. Thank you, Mr. Hollon.

MR. BESHORE: Thank you, your Honor.

BY MR. BESHORE:

Q. With respect to Table 7.L, I want to make sure I'm clear and the record's clear. As I understand, and you were

asked about the percentage in Column K.

A. Yes.

JUDGE CLIFTON: 7 which?

MR. HOLLON: O.

BY MR. BESHORE:

Q. 7.O, percentage of Column K. And take the 47, I think the 47 percent sample was perhaps used. That is 47 percent of the haul cost in the CDA publication; is that correct?

A. Yes.

Q. So that publication, the CDA publication which is Exhibit 74, is a haul cost of all kinds, not just haul costs subject to CDFA transportation allowances?

A. That is true.

Q. Okay. So if -- and I don't know if I got this down right. But if the question was whether that's a percentage of the CDFA pay out, it's really a percentage of the CDFA, of the cost as calculated by CDFA?

A. That's correct. If I missed that, I'm sorry.

Q. I want to make sure I got it right and hopefully the record has it right.

A. In Exhibit 74, makes it easy because it is in the very first line, but the 4276 in H is the very right most number on the top line, 4276. And so that would be the day-to-day collected on the 64 loads that averaged 32 miles, and there was a cost there of 4276. And my example said, if all of those

loads may have come from the $1.80 zone into the $2.00 zone, the Federal Order difference would be 20 cents. And 20 divided by 4276 hopefully is 47 percent.

Q. Okay. Now with that in mind, I do want to, I do want to ask if you have any information, Ms. Taylor asked you for, any information about the potential cost to the pool of the Transportation Credit Program as proposed in Proposal 1. We have used 9 cents based on current actual cost of the pool, CDFA system, correct?

A. Correct.

Q. In the CDFA in the State Order, correct?

A. Correct.

Q. Now, when you compared -- did you compare the pay out, so to speak, the credit that would be obtained under Proposal 1 for the actual transactions that you submitted for analysis to get the intercept and the coefficients, did you compare the pay out that would generate to what credits are presently received, what allowances are presently received on those transactions for CDFA?

A. I think I indicated that the data that we submitted to calculate the equations were the same type of data that we would submit for a transportation allowance recovery, and that our equations resulted in very near that amount.

Q. By that amount, do you mean the amount that you would actually receive as allowances under the present CDFA system?

A. There's a piece in there I don't know of. I don't know if we submit the total cost and get an allowance, if those just match. I don't know the answer for that.

Q. Okay. So but is it your best judgment on the basis of what you do know, that a cost to the pool of around 9 cents is as good an approximation as you can come up with of the cost of the transportation credit system in Proposal 1?

A. That's what we think.

Q. Do you think it will cost about the same?

A. We think it will cost about the same.

Q. Okay. One, just one final question. I think you commented on this in response to Mr. Vetne or Dr. Schiek, I'm not sure. Let me just ask it. Is it your view that in a market, there's a certain, in a market, such as in any Marketing Order pool, there's a certain cost in dollars to move milk from production points to Class I and II consumption points? There is a certain dollar amount that's involved in that, correct?

A. That is true.

Q. Okay. And one, the location differential, producer location differential system is one way of partially, presumably partially compensating for some of those costs, correct?

A. True.

Q. Is it your view as an Economist and someone who has

been involved in these markets, Federal Order markets all over the country for years, that a transportation credit system based on actual costs, point-to-point, paying only on a transaction basis is, in fact, a more efficient way to use the total, the dollars generated for those transportation costs?

A. It would be.

Q. Thank you.

JUDGE CLIFTON: Does that prompt any other questions?

MS. TAYLOR: Yes. Sorry, just one more. Can't help myself, I won't be here next week.

So is the goal of your proposed system is to cover all transportation cost except 30 cents?

MR. HOLLON: Yes. Because we deducted 30 cents from our rate calculation. If we wanted to capture that, we would have left it in.

JUDGE CLIFTON: Ms. May, would you come to the podium and tell us our marching orders?

Mr. Hollon, you may step down. And I thank you for this invaluable contribution to our assembly here. Thank you.

MS. MAY: Today is Friday. We will be back in this room on Monday, but we need to take all of our things out of here tonight and move them over to the same storage closet that we used last week. Well, that's kind of a USDA thing. So we can save your chair, so don't leave anything here that you want to see again Monday, because it won't be here. Anything else?

JUDGE CLIFTON: That's it. Thank you. Everyone have an excellent weekend. We go off record at 5:02.

(Whereupon, the evening recess was taken.)

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COURT REPORTERS CERTIFICATE

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) ss.
COUNTY OF FRESNO)

I, MYRA A. PISH, hereby certify:

I am a duly qualified Certified Shorthand Reporter, in the State of California, holder of Certificate Number CSR 11613, issued by the Court Reporters Board of California and which is in full force and effect.

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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 6, 2015

FRESNO, CALIFORNIA

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