

UNITED STATES DEPARTMENT OF AGRICULTURE  
BEFORE THE SECRETARY OF AGRICULTURE

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

VOLUME II

TRANSCRIPT OF PROCEEDINGS

September 23, 2015

Shelly A. Davis, CSR No. 8947  
397065



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

Wednesday, September 23, 2015  
9:00 a.m.

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

TRANSCRIPT OF PROCEEDINGS  
VOLUME 2

Reported by:  
Shelly A. Davis, CSR, RPR  
Certificate No. 8947

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 LAUREN BECKER, ESQ.

4 U.S. DEPARTMENT OF WILLIAM FRANCIS, Dairy  
 5 AGRICULTURE: Product Marketing Specialist  
 LAUREL MAY, Marketing Specialist  
 6 ERIN TAYLOR, Marketing  
 Specialist  
 7 MEREDITH FRISIUS, Marketing  
 Specialist

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

11 DAIRY INSTITUTE OF Davis Wright Tremaine  
 12 CALIFORNIA: BY: CHIP ENGLISH, ESQ.  
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 13 Knox Lemmon & Anapolsky, LLP  
 BY: JOHN M. LEMMON, ESQ.

14 LEPRINO FOODS: SUE TAYLOR, Vice-President  
 Dairy Economics and Policy

15 DEAN FOODS COMPANY: GREG DRYER, Senior  
 16 Vice-President Industry and  
 Government Relations

17 HILMAR CHEESE JOHN VETNE, ESQ.  
 18 COMPANY:

19 CALIFORNIA PRODUCER Stoel Rives  
 20 HANDLERS ASSOCIATION: BY: NICOLE HANCOCK, ESQ.  
 BAO VU, ESQ.

21 MAINE DAIRY INDUSTRY DANIEL SMITH, ESQ.  
 22 ASSOCIATION, KENTUCKY  
 DAIRY DEVELOPMENT  
 23 COUNCIL, GEORGIA MILK  
 PRODUCERS, INC.,  
 24 TENNESSEE DIARY FARMERS  
 ASSOCIATION:

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APPEARANCES (CONT.):

WESTERN UNITED  
DAIRYMEN:

ANDY ACMOODY, Economist

SELECT MILK PRODUCERS,  
INC.:

MILTNER LAW FIRM  
BY: RYAN MILTNER, ESQ.  
KRISTINE REED, ESQ.

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EXHIBITS

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1 WEDNESDAY, SEPTEMBER 23, 2015, 9:00 A.M.

2 CLOVIS, CALIFORNIA

3  
4 P R O C E E D I N G S

5  
6 JUDGE CLIFTON: This record is being made on  
7 September 23, 2015. It's a Wednesday. It's  
8 9:00 o'clock in the morning. We're in Clovis,  
9 California. Specifically we're in the Clovis Veterans  
10 Memorial District. This has been an excellent venue for  
11 this hearing, and I'm very grateful for the opportunity  
12 to be here.

13 My name is Jill Clifton. I'm a United States  
14 Administrative Law Judge. I work for the United States  
15 Department of Agriculture. It's my task here to gather  
16 in the evidence on which the Secretary will make  
17 determinations with the assistance of the United States  
18 Agricultural Marketing Service. And when I speak of the  
19 Secretary, I'm speaking of course of the United States  
20 Secretary of Agriculture.

21 With regard to the transcript, today is day  
22 two of the hearing, and each day will be contained in a  
23 separate volume. I would like the page numbers to be in  
24 sequence to those of yesterday so there is only one page  
25 1 in the entire hearing, although we expect to go

1 several weeks. And in that light, I want each page of  
2 the transcript volume to have a number, even if  
3 traditionally a cover page and a signature page at the  
4 end don't have numbers, I want mine to have numbers so  
5 that every single page of the transcript has a number.

6 The heading for the transcript: The top line,  
7 United States Department of Agriculture. The second  
8 line, Before the Secretary of Agriculture. The case  
9 caption is In re: Milk in California. The docket  
10 number is in brackets on the top line, capital A capital  
11 O, and on the second line Docket Number 15 hyphen 0071.  
12 That is the number by which the hearing clerk in the  
13 United States Department of Agriculture knows this case.

14 There will be a record copy maintained with  
15 the hearing clerk. And, in fact, when the parties want  
16 to file briefs after all the evidence is in, they will  
17 be filing those with the hearing clerk. We'll talk more  
18 about the details of getting that done at a later time  
19 in the hearing.

20 All right. I'll have some other preliminary  
21 items, but I would like first to take the appearances of  
22 those participating. Even though you already did this  
23 yesterday, I want you to do it again. I want to begin  
24 with just identifying who's here and what your role in  
25 the hearing is, what your job is, and I'd like to start



1 with those people who are here from the United States  
2 Department of Agriculture, first from the Agricultural  
3 Marketing Service, and then from the Office of the  
4 General Counsel.

5 So if you'd come forward, we'll use the podium  
6 that is to your right. I'd like to begin with  
7 Mr. Francis and have all the rest of the United States  
8 Department of Agriculture employees line up behind him.

9 I'm going to ask you again to spell your name,  
10 and later when you speak on record, each time you speak,  
11 I'd again like you to state who you are.

12 MR. FRANCIS: Good morning. William Francis.  
13 W-I-L-L-I-A-M. F-R-A-N-C-I-S. Agricultural Marketing  
14 Service. I'm a Dairy Products Marketing Specialist.

15 MS. MAY: Laurel May. L-A-U-R-E-L. M-A-Y.  
16 And I'm also a Marketing Specialist with the AMS Dairy  
17 Program.

18 MR. POLLOCK: Good morning. William Pollock.  
19 William, W-I-L-L-I-A-M. Pollock, P-O-L-L-O-C-K. I'm an  
20 Agricultural Economist for Federal Order 33, and I'm  
21 with detail with AMS Dairy Program.

22 MS. WARREN: Good morning. I'm really loud.  
23 Lorie Warren. L-O-R-I-E. W-A-R-R-E-N. I'm Chief of  
24 the Market Information Branch in AMS Dairy, and I will  
25 be presenting the data today.

1 MS. STEENECK: Hello. I'm Amanda Steeneck.  
2 A-M-A-N-D-A. Steeneck, S-T-E-E-N-E-C-K. And I'm an  
3 Agricultural Economist for AMS and will be testifying  
4 probably again today.

5 MS. FRISIUS: Good morning. I'm Meredith  
6 Frisius. M-E-R-E-D-I-T-H. F-R-I-S-I-U-S. And I'm a  
7 Marketing Specialist with the USDA.

8 MS. ELLIOTT: Good morning. My name is Pamela  
9 Elliott. P-A-M-E-L-A. Elliott, E-L-L-I-O-T-T. I am a  
10 Dairy Product Market Specialist with the USDA AMS Dairy  
11 Program.

12 MS. TAYLOR: Good morning. My name is Erin  
13 Taylor. E-R-I-N. T-A-Y-L-O-R. I'm a Marketing  
14 Specialist with AMS Dairy Program.

15 MS. RAGHUNATHAN: Good morning. My name is  
16 Uthra Raghunathan. That's U-T-H-R-A.  
17 R-A-G-H-U-N-A-T-H-A-N. I am an Agricultural Economist  
18 with AMS Dairy Program.

19 MR. CARMAN: Good morning. Clifford Carman.  
20 C-A-R-M-A-N. I'm an Agricultural Marketing Specialist  
21 with Dairy Programs.

22 MR. MYKRANTZ: My name is John Mykrantz.  
23 J-O-H-N. Last name is spelled M-Y-K-R-A-N-T-Z. I'm an  
24 Agricultural Economist with the Pacific Northwest and  
25 Arizona border on detail for this hearing.

1 MR. SCHAEFER: Henry Schaefer. H-E-N-R-Y.  
2 S-C-H-A-E-F-E-R. I'm Chief Agricultural Economist for  
3 the Upper Midwest Milk Marketing Area in Minnesota, and  
4 I'm on detail with the AMS Dairy Programs.

5 MR. CRYAN: Good morning. My name is Roger  
6 Cryan. R-O-G-E-R. C-R-Y-A-N. I'm a Supervisor  
7 Agricultural Economist in Washington, and I'm here to  
8 support the presentation of the data and the Economic  
9 Impact Analysis. Thank you.

10 MR. HILL: Good morning. I'm Brian Hill.  
11 B-R-I-A-N. H-I-L-L. I'm with the Office of the General  
12 Counsel.

13 MS. BECKER: Good morning. I'm Lauren Becker.  
14 L-A-U-R-E-N. B-E-C-K-E-R. And I'm also with the Office  
15 of the General Counsel.

16 JUDGE CLIFTON: I'd like now to take the  
17 appearances of those who are here beginning -- I'm going  
18 to ask for the appearances of all those who expect to  
19 participate, but I'm going to start with those who have  
20 taken some part in presenting to the Secretary a written  
21 proposal.

22 And, again, I want the whole team for each of  
23 you.

24 MR. BESHORE: I am Marvin Beshore.  
25 M-A-R-V-I-N. B-E-S-H-O-R-E. Counsel for the proponents

1 of Proposal Number 1, California Dairies, Inc., Dairy  
2 Farmers of America, Inc., and Land O'Lakes, Inc.

3 MR. VLAHOS: John Vlahos. John with an H.  
4 V-L-A-H-O-S. Co-counsel for the Dairy Co-op Proponents  
5 of Proposal Number 1, Hanson Bridgett, San Francisco.

6 MS. THOMPSON: Good morning. My name is Megan  
7 Oliver Thompson. That's M-E-G-A-N. O-L-I-V-E-R.  
8 T-H-O-M-P-S-O-N. Also co-counsel for the proponents of  
9 Proposal Number 1, California Dairies, Inc., Land  
10 O'Lakes, Inc., and Dairy Farmers of America, Inc.

11 MR. HOLLON: Good morning. I'm Elvin Hollon.  
12 I'm Director of Fluid Marketing and Economic Analysis  
13 for Dairy Farmers of America. That's E-L-V-I-N.  
14 H-O-L-L-O-N.

15 JUDGE CLIFTON: The whole team, please. Even  
16 the shy ones.

17 MR. ENGLISH: Good morning, Your Honor. My  
18 name is Chip English. C-H-I-P. E-N-G-L-I-S-H. I'm  
19 with the law firm of Davis Wright Tremaine, and counsel  
20 to the Dairy Institute of California.

21 MS. VULIN: Good morning, Your Honor. My name  
22 is Ashley Vulin. A-S-H-L-E-Y. Last name is V, as in  
23 Victor, U-L-I-N. I'm also here as co-counsel on behalf  
24 of the Dairy Institute of California.

25 MR. SCHIEK: Good morning. My name is William

1 Schiek. S-C-H-I-E-K. I'm an economist with the Dairy  
2 Institute of California.

3 MS. KALDOR: Good morning. I'm Rachel Kaldor.  
4 R-A-C-H-E-L. K-A-L-D-O-R. I'm Executive Director of  
5 Dairy Institute of California.

6 MR. LEMMON: Good morning. I'm John Lemmon,  
7 General Counsel for Dairy Institute of California.

8 MS. TAYLOR: Sue Taylor. S-U-E. T-A-Y-L-O-R.  
9 Vice-president Dairy Economics and Policy for Leprino  
10 Foods.

11 MR. BLAUFUSS: Good morning. I'm Rob  
12 Blaufuss. Blaufuss, B, as in boy, L-A-U-F-U-S-S. And  
13 I'm Senior Manager of Dairy Risk Management and  
14 Economics at Dean Foods Company.

15 MR. DRYER: Good morning. I'm Greg Dryer.  
16 G-R-E-G. D-R-Y-E-R. I'm here representing Saputo,  
17 Inc., and as a member of Dairy Institute of California.  
18 My title is Senior Vice-president Industry and  
19 Government Relations.

20 MR. VETNE: My name is John Vetne. V-E-T-N-E.  
21 Representative for Hilmar Cheese Company, a member of  
22 the Dairy Institute. I think that's all I need. Good.

23 MR. DEJONG: Good morning. Good morning.  
24 James Dejong. J-A-M-E-S. D-E-J-O-N-G. I'm the Dairy  
25 Policy and Economic Analyst for Hilmar Cheese Company.

1 JUDGE CLIFTON: Does your name have any space?  
2 MR. DEJONG: No.  
3 JUDGE CLIFTON: It's all one word, Dejong?  
4 MR. DEJONG: Yeah.  
5 JUDGE CLIFTON: And you pronounce it Dejong?  
6 MR. DEJONG: Dejong. Dutch. J sounds like a  
7 Y.  
8 JUDGE CLIFTON: Oh. Thank you.  
9 MR. ZOLIN: My name is Alan Zolin. A-L-A-N.  
10 Z-O-L-I-N. I am a consultant here representing Hilmar  
11 Cheese.  
12 MS. HANCOCK: Good morning. I'm Nicole  
13 Hancock. I'm with the law firm of Stoel Rives.  
14 N-I-C-O-L-E. H-A-N-C-O-C-K. I represent the California  
15 Producer Handlers Association as well as Ponderosa  
16 Dairies.  
17 MR. VU: Good morning. I'm Bao Vu. B, as in  
18 boy, A-O. Last name is Vu, V, as in Victor, U. I'm  
19 with Stoel Rives' Sacramento office, and together with  
20 Nicole Hancock, we represent the California Producer  
21 Handlers Association as well as Ponderosa Dairy.  
22 Thanks.  
23 JUDGE CLIFTON: Whether or not you  
24 participated in a writing presented to the Secretary of  
25 Agriculture for this hearing, if you intend to

1 participate, I'd like you to come forward now and  
2 identify yourself.

3 MR. SMITH: Good morning. My name is Daniel  
4 Smith, Montpelier Vermont. I represent the Maine Dairy  
5 Industry Association, the Kentucky Dairy Development  
6 Council, the Georgia Milk Producers, Incorporated, and  
7 the Tennessee Dairy Farmers Association. D-A-N-I-E-L.  
8 S-M-I-T-H. Thanks.

9 MS. ACMOODY: Hi, my name is Andy AcMoody,  
10 spelled A-C-M-O-O-D-Y, it's capital M. I am the  
11 economist for Western United Dairymen.

12 MR. MILTNER: Good morning. I'm Ryan Miltner,  
13 M-I-L-T-N-E-R, with Miltner Law Firm in New Knoxville,  
14 Ohio, representing Select Milk Producers, Inc.

15 MS. REED: Good morning, Kristine Reed.  
16 K-R-I-S-T-I-N-E. R-E-E-D. Co-counsel for Select.

17 JUDGE CLIFTON: Are there any dairy farmers  
18 here today who would like to speak today? Not yet. I  
19 hope we have some come back who were here yesterday to  
20 speak or new ones to arrive. We'll interrupt the  
21 proceedings at any time to take their testimony.

22 All right. I'd like now to deal with some  
23 preliminary issues, and in a moment I'll ask for a  
24 representative of Agricultural Marketing Service to give  
25 us a heads-up on some of the procedures and so forth.

1 First I have a couple my own. We don't need a dress  
2 code here, obviously people can come any way they want,  
3 but on this Friday and every Friday thereafter, those  
4 people who typically dress for court may dress down and  
5 come casual. What I mean by that is all genders may  
6 wear comfortable shoes to include running shoes and  
7 moccasins if you prefer. No one need wear a suit or a  
8 dress or sport coat or a tie. You may come comfortable  
9 as if you were going to travel as soon as we finish at  
10 5:00. And that will be true for every Friday. I won't  
11 let you out early, but I will allow you to be  
12 comfortable on Fridays. You're not required to do this.  
13 If you feel that your client expects you to dress as if  
14 you were in court, so be it.

15 All right. Who would like to speak for  
16 Agricultural Marketing Services?

17 MS. MAY: Laurel May, Your Honor.

18 Judge Clifton has asked that we continue kind  
19 of doing a little morning catch-up for all of you, so  
20 I'm happy to be here this morning to talk to you a  
21 little bit about the hearing.

22 As you know, USDA is holding this hearing to  
23 gather evidence in the form of testimony and exhibits  
24 regarding dairy industries' proposals to establish a  
25 Federal Milk Marketing Order in California. We thank



1 you for your interest and participation in this process,  
2 and we look forward to hearing from you and better  
3 understanding the California dairy industry through this  
4 process.

5 Meredith Frisius, with her hand up, is who you  
6 should approach if you would like to be on the list of  
7 witnesses, and so as producers that you know of enter  
8 the room, please direct them to Meredith so she can put  
9 them on the list and then notify Judge Clifton that they  
10 would like to speak.

11 Let's see. We hope that you will feel  
12 comfortable testifying at this hearing. We do ask a lot  
13 of questions, but they are not intended to confuse,  
14 stump, or embarrass you. We are simply trying to make  
15 sure that we understand everyone's position, which will  
16 help us develop a recommendation following this hearing.  
17 If you need us to rephrase our questions, please don't  
18 hesitate to ask.

19 Audience members may also ask questions of any  
20 witness about their testimony. Following the witness'  
21 prepared testimony, you may approach the microphone so  
22 that Judge Clifton can acknowledge you. Please use the  
23 microphone so that everyone in the room can hear your  
24 questions and so that the court reporter and the audio  
25 broadcaster will capture your questions.

1           As you know, we are providing a live audio  
2 feed of the hearing for the convenience of folks who  
3 want to listen in but can't be with. The webcast can be  
4 accessed at [tinyurl.com/camilkhearing](http://tinyurl.com/camilkhearing), all one word.  
5 And we are not recording this webcast.

6           The court reporter will transcribe the  
7 proceedings of the hearing. Transcripts and copies of  
8 the exhibits entered into the record will be available  
9 on our website approximately two weeks after the week in  
10 which they are presented here. The link for access to  
11 hearing transcripts and exhibits is  
12 [www.AMS.USDA.gov/caorder](http://www.AMS.USDA.gov/caorder).

13           As they become available, we will make copies  
14 of the exhibits and file them by number. You may take a  
15 copy from the piles in the back of the room. And you  
16 will also find on that table a tentative -- oh,  
17 nevermind that. The tentative schedule is out.

18           JUDGE CLIFTON: It's still a useful tool.

19           MS. MAY: It's a lovely tool, nevertheless.

20           JUDGE CLIFTON: It's not out, it just does not  
21 dictate the order in which witnesses will testify. It's  
22 still a useful tool, and I do hope lawyers will alert us  
23 as to what part of that document the witness will  
24 address.

25           MS. MAY: Okay. Thank you.

1           Finally, there are refreshments in the back of  
2 the room for everyone to enjoy, so please help  
3 yourselves.

4           Now, yesterday we left off with Amanda  
5 Steeneck testifying, and we believe that she was going  
6 to be cross-examined by Mr. Daniel Smith. And after  
7 Amanda, our plan is to put our next witness on the  
8 stand, who is Lorie Warren.

9           And that's all I have.

10           JUDGE CLIFTON: Thank you. That's very  
11 helpful.

12           I'm going to read a statement that I read  
13 yesterday.

14           This public hearing is being held to consider  
15 and take evidence on the proposed establishment of a  
16 Federal Milk Marketing Order to regulate the handling of  
17 milk in California. The proposed marketing area would  
18 incorporate the entire State of California.

19           USDA received four proposals from interested  
20 parties, some that include certain milk pricing and  
21 pooling provisions not found in current federal milk  
22 order. The proposals incorporate the same dairy product  
23 classification system used throughout the Federal Milk  
24 Marketing Order system. Additional features would  
25 recognize California quota premium and fluid milk

1 fortification values.

2 This hearing will consider the four proposals  
3 as contained in the Federal Register Hearing Notice  
4 published on August 6th, 2015.

5 Now, those of you who have participated  
6 yesterday know that we did a number of significant  
7 things. One is we agreed to hear the arguments of the  
8 proponents of Proposal 2 with regard to an additional  
9 topic they would like to have considered. We'll  
10 hopefully get to that today, but I'm not positive, I  
11 don't know how long the data will take. It will follow  
12 the data and precede opening statements.

13 As I've already said, I find that tentative  
14 agenda a very helpful tool in that it takes the typical  
15 federal regulation that regulates milk and it puts it  
16 into categories, and so it's useful on many fronts, one  
17 is as a checklist to make sure if you want to provide  
18 testimony, that you cover the areas that the Secretary  
19 will have to consider. You don't have to have testimony  
20 on each of those areas, some of them you can just argue  
21 in a brief, "the wording should be this," but in some  
22 areas you need testimony to back up why the wording you  
23 suggest would be the best. So I think it's an extremely  
24 useful tool myself.

25 What we decided yesterday is that we won't

1 have witnesses be called to testify, and then stop to be  
2 recalled when they get to a separate category on that  
3 agenda. Rather, we'll let them testify as their lawyer  
4 directs them. So a lawyer might choose -- for example,  
5 if Mr. Beshore is the first one to present evidence  
6 after the Government is through, because he's counsel  
7 for Proposal Number 1, he may decide to put on evidence  
8 on a particular category of that tentative agenda, and  
9 then allow others to testify on that category. I don't  
10 have any problem with that. You may want to do it that  
11 way.

12 I know that what I'm most interested in  
13 hearing are the controversial portions, and I don't  
14 expect anyone to yield the floor on those until they're  
15 through, but counsel may be able to help us here by  
16 showing as we go along which items are not in  
17 controversy, which items there's agreement on so that  
18 the Secretary need not puzzle over whether there's a  
19 difference in the proposals on certain items.

20 All right. So what other preliminary matters  
21 do we have prior to continuing with the testimony of  
22 Amanda Steeneck? There are none.

23 Ms. Steeneck, you may come back to the witness  
24 stand.

25 MS. STEENECK: Good morning.

1 JUDGE CLIFTON: Good morning, Ms. Steeneck.  
2 Ms. Steeneck, you remain sworn, and I'd like you to  
3 again state and spell your name.

4 THE WITNESS: Amanda Steeneck. A-M-A-N-D-A.  
5 S-T-E-E-N-E-C-K.

6 JUDGE CLIFTON: Is there anything you'd like  
7 to add to yesterday's testimony before Mr. Smith comes  
8 forward to ask you questions?

9 THE WITNESS: No.

10 JUDGE CLIFTON: All right. Mr. Smith.  
11 And, again, state your full name for us.

12 MR. SMITH: Okay. Daniel Smith. I represent  
13 the associations from the states of -- dairy  
14 associations from the states of Maine, Kentucky,  
15 Tennessee, and Georgia.

16 CROSS-EXAMINATION

17 BY MR. SMITH:

18 Q. Good morning, Ms. Steeneck.

19 A. Good morning.

20 Q. I'm obviously interested more in the impact of  
21 the different proposals in the two areas of the country  
22 that I represent producer groups from those two areas of  
23 the country, so my questions will focus on those  
24 impacts.

25 I'd like to start with the impact on the Class

1 I market. In Tables B12 on page 30 and B60 on page 45,  
2 the -- the Class I utilization in California changes  
3 under the Co-op Proposal by 800 -- an increase in  
4 848 million pounds.

5 A. That is correct. That is correct for  
6 California --

7 Q. And --

8 A. -- on average.

9 Q. On average.

10 And in Table B60 on page 45 there's an  
11 increase of Class I utilization of 865 million pounds?

12 A. One moment. That is correct.

13 Q. On -- on page 15 of your -- of your summary  
14 statement, you indicate that the expectation is that  
15 prices pass through from the wholesale to the retail  
16 market rapidly. "Rapidly" is the quoted term.

17 A. That -- that's what's written there, yes.

18 Q. So I understood from that statement and from  
19 what you said yesterday that you -- you didn't -- the  
20 model doesn't incorporate a -- any asymmetry of price  
21 response in the Class I market in California. There's  
22 no asymmetry built into the model?

23 A. With the retail market, we did not model the  
24 retail market, so we are assuming that the price changes  
25 on the wholesale level will be passed along to the

1 retail level, but that is not in the model.

2 Q. So if -- if there was some asymmetrical  
3 response, which other Class I markets show, is -- is  
4 that enough volume of milk if there was a change, a  
5 reduction say, if the price lagged so that -- that the  
6 price decrease lagged over time with the net result that  
7 there was less Class I utilization in California, would  
8 that volume of milk potentially have a statistically  
9 significant impact as it washed through the rest of the  
10 country? Is that enough volume of milk to move, in  
11 other words?

12 A. First, I'm going to ask if there's any way  
13 that you could clarify that --

14 Q. Yeah --

15 A. -- that question --

16 Q. -- it's kind of packed up.

17 A. -- a little bit for me.

18 Q. Okay. So if the -- the asymmetrical response  
19 conceivable could be that with the price decline in the  
20 California Class I price, that that's what would drive  
21 the increase in the consumption of Class I milk,  
22 correct?

23 A. The changes in the Class I sales in California  
24 are, as I discussed yesterday, a factor of multiple  
25 changes due to the different provisions in the



1 proposals. So the large increases that we're seeing in  
2 those numbers that we just discussed in Table 12, I  
3 think it was, and 60, a lot of that increase is due to  
4 Class I milk from out of state and producer-handler milk  
5 now being regulated under the California pool, and then  
6 that's also mixed in with the change in Class I  
7 utilization or Class I consumption due to the price  
8 changes.

9 Q. Is there any way to break out how much is  
10 related to the price as compared to the increase in --  
11 in out-of-state milk being pooled?

12 A. The way we modeled them, we modeled them in  
13 the proposal's entirety and that is the way that we are  
14 presenting them.

15 Q. Okay. On -- as far as the rest of the  
16 country, obviously there's not significant impact, but  
17 there is some impact, so on -- in the Co-op Proposal,  
18 Table B11 on page 29 and Table B13 on page 30, so  
19 they're close by. There's a decrease in the Class I  
20 price and a corresponding increase in utilization; is  
21 that correct?

22 A. I'm sorry, what table are you on?

23 Q. Table B11 and B13.

24 A. B13 is not -- that's the national class  
25 utilizations, so those aren't --

1 Q. Yeah, so the utilization is up slightly?

2 A. Yes.

3 Q. And Class I prices are -- tend to be down?

4 A. Yes.

5 Q. And that's -- that's the --

6 A. Yes, that's the --

7 Q. That's the corresponding --

8 A. Yes.

9 Q. -- cause and effect? Okay.

10 So turning to the impact on all milk prices.

11 Under the Co-op Proposal, which is Table B4 on page 27,

12 in the Northeast, the price shows a decline in 2017 of

13 \$.09 a hundredweight moving to \$.13 a hundredweight

14 during the period 2024 with an average of \$.12?

15 A. Yes.

16 Q. And in the Southeast, price moves from \$.12 --

17 minus \$.12 per hundredweight in 2017 to minus \$.32?

18 A. Yes.

19 Q. With an average of \$.24?

20 A. Yes.

21 Q. So overall, the numbers in the Southeast tend

22 to stand out in terms of both the original number but

23 primarily the second number, and I'm wondering if you

24 can explain why -- the other prices tend to stay

25 relatively static as compared to the Southeast, why the

1 Southeast over time moves quite so much?

2 A. So the all-milk prices are driven by blend  
3 prices, the most closely related order to it, so if you  
4 flip back to Table B2, you'll see that that is also the  
5 case for the Southeast blend price, similar situation.  
6 And then the blend prices are driven by the at test  
7 class prices, which are in Table B11. And they are also  
8 driven -- the blend prices are driven by the class  
9 utilization in each class as well to drive the weight.

10 Q. And that's the piece that doesn't appear?

11 A. And that is the piece that is not in front of  
12 me at this moment, but it's the combination of those two  
13 factors to where we're seeing those price differences or  
14 those at test prices and how they are affected versus  
15 the at test prices in the other.

16 Q. So it's essentially the machinery, for lack of  
17 a better word, that you described yesterday in terms of  
18 how it washes through. Okay. So --

19 JUDGE CLIFTON: Let me interrupt just a  
20 moment.

21 Ms. Steeneck, just so the record is clear,  
22 would you tell how to spell "at test prices"?

23 THE WITNESS: A-t, space, t-e-s-t, space,  
24 p-r-i-c-e.

25 JUDGE CLIFTON: Thank you. And what are

1 those?

2 THE WITNESS: Those are prices where we are  
3 using the component tests to derive the actual price  
4 instead of using a statistical uniform test, such as 3.5  
5 percent butterfat. An at test price could be, for  
6 example, Class I milk, one and a half, two percent,  
7 because that's typically how much fat is going into  
8 Class I milk, so -- whereas with other classes, its  
9 different, and it varies by order, and all of the tests  
10 are based on historic averages, so --

11 JUDGE CLIFTON: Thank you.

12 BY MR. SMITH:

13 Q. So if -- back to Table B4, if -- if the  
14 Southeast price is moving more relative to the other  
15 markets, the two variable -- it would be a function of  
16 one of those two variables, utilization or --

17 A. At test prices.

18 Q. -- at test prices. And is -- is the -- and  
19 the at test prices appear but the utilizations don't, so  
20 if you were disentangling that, is there some way that  
21 the utilization figures can -- are available to see if  
22 it's -- which it is?

23 A. I would have to check to see if we could make  
24 that available.

25 Q. Okay. As far as the Institute Proposal, the

1 relevant table is B52 on page 42. I didn't take  
2 everybody's suggestion and get two copies, but it really  
3 is a good suggestion, except for the trees.

4 So similar, the Institute Proposal shows --  
5 it's quite different, actually. The Northeast price  
6 starts out at positive in -- \$.14 and moves to a  
7 negative, minus \$.24 over time?

8 A. Yes.

9 Q. And the Southeast price moves from a positive  
10 \$.26 -- no, excuse me, that's California. Strike that.

11 The Southeast moves from positive of \$.32 to a  
12 negative of \$.71?

13 A. Yes.

14 Q. So I think same question, likely same answer,  
15 on the other hand, the -- the trend is quite a bit  
16 different --

17 A. Yes.

18 Q. -- between the two proposals, so you can  
19 provide some explanation, and I think it's proposal to  
20 proposal at that point, why there is such a different  
21 trend?

22 A. So similar answer in backtracking to where  
23 things are coming from, but we're going to backtrack  
24 even further.

25 Q. Okay.

1           A.     So the -- the class prices at test and the  
2     utilizations move back even further because they are  
3     products -- well, the -- the class prices at test are  
4     products of end product price formulas, and those end  
5     product price formulas are using the national product  
6     prices for those. So to understand the difference in --  
7     in the trend, you can look at Table B51 and see how the  
8     end product price formulas or the -- sorry, the dairy  
9     product prices on the national level are changing, and  
10    you can, for example, see that this starts higher off  
11    with cheddar cheese and then goes down with the price  
12    effects. And so this is going to vary by region how  
13    that affects them, whether they're more cheese or nonfat  
14    dry milk, their utilization in those different classes,  
15    how it affects exactly their blend prices, but then  
16    those translate back to the prices.

17           Q.     That's the machinery --

18           A.     Yes.

19           Q.     -- so -- so -- but the trend is much more  
20    pronounced, so is -- how is it that the change is  
21    compounding more over time under the Institute Proposals  
22    as compared to under the Co-op Proposal?

23           A.     If you compare Table B3 to B51, you can see  
24    that the changes in the product prices of the Dairy  
25    Institute's also have that larger spread and how they're

1 following similar trends, and those product price  
2 changes that we're seeing in the Dairy Institute's and  
3 the Co-op's are results of the policy changes that were  
4 incorporated throughout the entire model.

5 Q. Okay. Thank you.

6 I think the -- the consequences, what does the  
7 model allow you to make an assessment of how those  
8 trends might progress beyond the model time period,  
9 would you see under the -- the Co-op Proposal a similar  
10 trend as expressed and under the -- the Institute  
11 Proposal a similar trend?

12 A. I did not look beyond 2024. The Agency only  
13 puts out projections for their baseline out to 2024 at  
14 this point, and it's -- that's as far as we've gone. I  
15 can't speculate on anything further than that.

16 Q. So to -- you're not prepared to, as you would  
17 say, speculate beyond 20 -- 2024?

18 A. That's correct.

19 Q. Okay. Okay. Moving to the summary, more  
20 summary impact, we're looking at Table B7 on page 28.  
21 So the -- in your summary analysis in the narrative, you  
22 describe this, that the California price sees an  
23 increase -- that's not -- I don't know what I did here.

24 Well, looking at the net revenue, California's  
25 net revenue shows an increase of \$700 million over time,

1 the total US revenue \$770 million?

2 A. That's correct.

3 Q. So the net revenue to the other orders plus  
4 the unregulated areas is \$70 million; is that correct?

5 A. I believe that would be correct.

6 JUDGE CLIFTON: I need a little help here. So  
7 Table B7 is entitled Producer Revenue Changes under the  
8 Co-op Proposal, and your testimony is this is net  
9 revenue?

10 THE WITNESS: It's producer revenue, so it's  
11 the marketing times the all-milk price.

12 JUDGE CLIFTON: So it doesn't sound to me like  
13 it's necessarily net.

14 THE WITNESS: No, not necessarily.

15 JUDGE CLIFTON: Gross revenue.

16 THE WITNESS: Yes. Thank you. I --

17 MR. SMITH: Fair enough.

18 THE WITNESS: I appreciate that.

19 JUDGE CLIFTON: Okay.

20 MR. SMITH: So do I. Thank you, Your Honor.

21 JUDGE CLIFTON: You're welcome. I know net  
22 revenue is what everybody wants.

23 MR. SMITH: I was really using net in the  
24 sense of 770 minus 700, the net of that is the 70,  
25 that's what I was -- that was the intent.



1 JUDGE CLIFTON: Thank you.

2 BY MR. SMITH:

3 Q. The price, the all-milk price changes, Table  
4 B4, this one seems less amenable to that type of  
5 calculation. The California all-milk price, Table B4,  
6 thank you for a better identification of the table,  
7 all-milk price changes under the Co-op Proposal. The  
8 all-milk prices in California changes on average \$1.03,  
9 and the all-milk price for the country changes positive  
10 \$.28?

11 A. Correct.

12 Q. But if you -- you go down the line through  
13 the -- the different regional prices, other than the FW  
14 price, and again that's the unregulated Far West; is  
15 that right?

16 A. Former Western.

17 Q. Former Western. It isn't far. Okay.

18 The -- other than that, all of the prices are  
19 negative, so the -- is -- is there any way to take out  
20 the California price and just have a summary impact for  
21 the -- what the actual -- the all US, you've now  
22 incorporated California in as if it is part of the  
23 system, but apples to apples does it work?

24 A. To only look at the effects in these  
25 state-based regions excluding California, the model is

1 not currently set up to do it that way.

2 Q. Okay.

3 A. To calculate it that way.

4 Q. Okay. The Institute price is Table B22 on  
5 page 42. So Table 42 -- that's not right either.

6 Table B52, excuse me. So the California price  
7 moves from 26 positive -- the Table 52 is the all-milk  
8 price change under the Institute Proposal. The  
9 California price moves from positive \$.26 to a positive  
10 of 25?

11 A. Yes.

12 Q. And the all-milk US price including California  
13 moves from positive of 26 to a minus of negative 6?

14 A. Yes.

15 Q. So basically, to conclude, and I'm not sure  
16 what's doable given the modeling, but the -- there's  
17 essentially two differences that -- two -- two  
18 consequences with two differences. On page 24, you do  
19 provide -- of your -- of your preliminary analysis --

20 Just as an aside, yesterday you read a  
21 statement that was different than this; is that correct?

22 A. The statement or the testimony I offered at  
23 the beginning was not in any of the exhibits.

24 Q. And is -- is that available? There was some  
25 information in there that was quite helpful to -- if I

1 could have studied, it would have helped in terms of the  
2 machinery?

3 A. I --

4 MR. HILL: It's not available. Brian Hill.  
5 The statement is not available.

6 JUDGE CLIFTON: Thank you, Mr. Hill.

7 MR. HILL: It's just on the record.

8 JUDGE CLIFTON: Thank you, Mr. Hill. Which  
9 means it will be available in about two weeks.

10 MR. SMITH: Sure.

11 JUDGE CLIFTON: And you're planning to come  
12 back probably after that; is that correct?

13 MR. SMITH: To be determined, yeah. Hopefully  
14 I'll be back. I'm -- it's a long way out here, so I --  
15 but yes, that is the intent.

16 JUDGE CLIFTON: All right.

17 MR. SMITH: It's okay.

18 BY MR. SMITH:

19 Q. So the -- the summary analysis that you  
20 provided in -- in the preliminary impact analysis that  
21 is part -- is Exhibit 5, the -- the two paragraphs speak  
22 to the Co-op Proposal and the Institute Proposal.  
23 Reading from the summary as to the Co-op Proposal, "The  
24 increase in California production causes an increase in  
25 U.S. milk production, which decreases dairy product

1 prices in all current FMMO's and across the rest of the  
2 United States."

3 As far as the Institute Proposal, the last  
4 sentence represents that, "While the U.S." -- quote,  
5 "While the U.S. all-milk price and milk production  
6 overall increase, impacts to individual orders vary."

7 Granted they vary, but isn't it also the case  
8 that with the Institute Proposals, they're -- they're on  
9 a distinct downward trend line over time?

10 A. The numbers that are being shown in the  
11 Preliminary Impact Analysis for the time period of 2017  
12 through 2024 are showing the downward trend.

13 Q. And what does the modeling allow you to speak  
14 to by way of describing those -- those two -- two  
15 differences? What -- what vary -- variations between  
16 the two proposals would you point to as resulting in  
17 those two differences?

18 A. Could you clarify that question a bit more?

19 Q. So clearly the most significant difference  
20 perhaps between the two proposals is the -- the  
21 requirement under the Cooperative Proposal for all milk  
22 to be pooled as compared to the Institute proposal?

23 A. I'm not going to speculate on what the most  
24 significant difference is.

25 Q. Fair enough. Well, I guess I'm asking you as

1 an economist who's worked with the model, not  
2 necessarily to speculate but to explain.

3 A. Yes.

4 Q. There's a clear difference. You have the data  
5 in front of you, the model in front of you, all other  
6 variables in the model in front of you, and you have two  
7 different outcomes.

8 A. Yes.

9 Q. How would you explain those two different  
10 outcomes? What would you point to in terms of the --  
11 the different inputs and variables in the model between  
12 those two?

13 A. Both the Co-op Proposal and the Dairy  
14 Institute Proposal are extremely different proposals in  
15 many ways. I modeled the proposals in their entirety, I  
16 did not break out specific effects of one aspect of a  
17 proposal over another proposal. I only have the results  
18 for each proposal in its entirety, so to point to a  
19 specific aspect of each proposal to say which one may  
20 have larger effects or smaller, like a specific aspect,  
21 whether it be, as you said, you think the inclusive  
22 pooling, I can't -- I cannot speculate as to which one  
23 of those aspects is the largest aspect affecting the  
24 results.

25 But the results do significantly -- they are

1 significantly different. Overall, we see in California  
2 an increase in class prices under the Cooperative's,  
3 which increase the production in California, which  
4 decrease the milk supply -- or the -- decrease the milk  
5 prices for those products, which then goes on to have  
6 effects throughout the rest of the country.

7 In the Dairy Institute Proposal, the results  
8 are very mixed. And what we see there is it really  
9 depends more on what the order is more heavily, you  
10 know, utilizing, so whether it's a cheese, they  
11 specialize more in cheese in that order, or if they're  
12 more involved in the nonfat dry milk and butter, so we  
13 see decreases in nonfat dry milk prices and the butter  
14 prices in the Dairy Institute, and we see increases  
15 in the cheese price and dry whey price on average in the  
16 Institute's proposal. And those effects are seen  
17 throughout the model on the different orders and how  
18 they affect their prices and their production.

19 Q. Okay. So as -- as just a representation of  
20 what the model provides, fair enough. So then followup  
21 question would be does the model allow, if -- if there's  
22 a procedural way to make the request, to -- to remove  
23 the pooling requirement from the Cooperative Proposal  
24 and run the model without that provision?

25 A. We -- we have modeled the proposals as they

1 stand, and that is how we're going to be presenting the  
2 results.

3 Q. So that's -- that's -- there's -- my question  
4 really is two parts. One is whether procedurally,  
5 it's -- there's an appropriate way to make the request,  
6 but just from a modeling standpoint, does the model's  
7 configuration allow for that --

8 MR. HILL: Your Honor, this is Brian Hill. I  
9 think this question has been asked and answered twice  
10 now.

11 MR. SMITH: With respect, Mr. Hill, I'm not  
12 sure it has been asked. I'm --

13 JUDGE CLIFTON: Mr. Vetne, I'll allow you to  
14 take the microphone for a moment.

15 MR. VETNE: I am told by my colleagues that  
16 have been listening to the webcast that nothing Brian  
17 Hill says appears in the webcast. There is dead time.  
18 That -- that might be a problem.

19 JUDGE CLIFTON: Thank you. That's very  
20 helpful. Because his mic was on clearly, I could hear  
21 him. All right.

22 Should -- if you don't mind, Mr. Smith, I'd  
23 like to do a little test right now.

24 MR. SMITH: Sure, absolutely.

25 JUDGE CLIFTON: So remember where you are, if

1 you will, and I remember where you are.

2 MR. SMITH: It's quite memorable, so yes.

3 JUDGE CLIFTON: Yes, all right. Then let us

4 --

5 Mr. Hill, state your name, and then I want you  
6 to count to ten, please.

7 MR. HILL: Brian Hill. One, two, three, four,  
8 five, six, seven, eight, nine, ten.

9 MR. VETNE: 30-second delay.

10 JUDGE CLIFTON: Oh. On only Mr. Hill's voice?

11 MR. VETNE: On everybody.

12 JUDGE CLIFTON: On everybody. Okay. So we  
13 have to wait. Do you have anybody on the phone who can  
14 report back, Mr. Vetne?

15 MS. TAYLOR: Yeah, they can hear.

16 JUDGE CLIFTON: Ah. A-OK. Thank you. I  
17 appreciate this. This is wonderful to have this  
18 testing.

19 So, well, we've actually moved the microphone  
20 to him. I think sometimes because he's about to speak  
21 and we have no idea to turn the mic on, he needs to say,  
22 "This is Brian Hill," and when the mic is on, he needs  
23 to say, "This is Brian Hill," and then go forward, then  
24 we'll be good.

25 Okay. So, Mr. Hill, you say it's been asked



1 and answered.

2 MR. HILL: I think yesterday as well. We did  
3 talk, verify that Mr. Francis was going to be taking any  
4 questions about further analysis that has to be done  
5 with these numbers. I'm not sure that this witness can  
6 answer any more questions on this topic.

7 JUDGE CLIFTON: All right. Your objection is  
8 noted.

9 And I believe that Mr. Smith probably  
10 remembers that if he is to make a request, it would be  
11 through Mr. Francis, but this questioning is can the  
12 model be run by taking out the pooling requirement from  
13 Proposal Number 1. That's more a technical thing, and I  
14 would allow the witness to field that question. I don't  
15 know whether you can answer it, but you may certainly  
16 respond to it.

17 MR. SMITH: Thank you, Your Honor.

18 JUDGE CLIFTON: You're welcome.

19 THE WITNESS: To run the model without  
20 inclusive pooling for the Co-operative's Proposal is  
21 something that we -- it is -- we could do, but would  
22 require, again, a significant amount of effort and time  
23 to accomplish. And it's something that it's capable of  
24 doing.

25 ///

1 BY MR. SMITH:

2 Q. Thank you.

3 On -- on the -- the pooling provision, you  
4 indicated yesterday that -- that the -- the  
5 configuration of that provision in the model was -- was  
6 patterned after the Upper Midwest?

7 A. That is correct.

8 Q. Is it -- is -- can you just describe that a  
9 little bit more, that comparison, how it was put in?

10 A. So we used monthly data from the Upper Midwest  
11 to estimate how much Class II, Class III, Class IV  
12 separately, leave the model -- or not -- I'm sorry,  
13 misspoke -- choose not to pool on a monthly basis  
14 because that is a monthly decision typically, not  
15 something that's easily done on an annual basis. And if  
16 you look at page 21, footnote 9, you can see the  
17 estimated equations for Class II, III, and IV, milk not  
18 pooled.

19 Q. That's very helpful. I thank you --

20 A. And does that fully answer your question --

21 Q. Yeah.

22 A. -- or do you want me to keep going?

23 Q. No, I don't mean to interrupt you. Please,  
24 keep going.

25 A. Oh. And then we use -- we look at the monthly

1 prices and how they compare to the annual prices and use  
2 a distribution to say how frequently the monthly prices  
3 vary from the annual prices to the conceptual model.

4 Q. The footnote actually responds to my followup  
5 so that's --

6 A. Great.

7 Q. -- helpful.

8 So final question, on the impact of -- of  
9 the -- the quota, and I -- based on everything else we  
10 talked about, you may not be able to answer the  
11 question, but the -- the gist of my concern is impact  
12 nationally in the two regions in particular, so is it --  
13 is it possible to determine whether the -- the impact of  
14 the inclusion of the quota provision in either model  
15 only affects the internal allocation of pool proceeds as  
16 to producers or is there some net consequence outside  
17 the pool in terms of everything we've talked about over  
18 the last day and a half?

19 A. The way it's modeled, it's an internal  
20 proceeds within the California pool. The California  
21 production is driven off of the -- historically the  
22 state's blend price at test that CDFA puts out and is  
23 the closest thing that we have to it, the order.

24 Q. So the order is internal to the --

25 A. It's internal.

1 Q. To the baseline?

2 A. It's internal to the State of California.

3 Q. Okay. Very good. Thank you very much.

4 JUDGE CLIFTON: Thank you, Mr. Smith.

5 For the court reporter, when we just had  
6 reference to Class II, Class III, and Class IV, those  
7 are Roman numerals. And when we refer to the federal  
8 classification system, they're Roman numerals. When we  
9 refer to the State of California classification system,  
10 they're what I call Arabic and what somebody else calls  
11 numeral, but like an ordinary "1."

12 All right. Who else has questions for this  
13 witness?

14 MR. SCHIEK: Good morning, Your Honor.  
15 William Schiek, S-c-h-i-e-k, economist for Dairy  
16 Institute of California.

17 CROSS-EXAMINATION

18 BY MR. SCHIEK:

19 Q. Ms. Steeneck, I wanted to follow up on  
20 something Mr. Smith was talking about, and it -- just a  
21 nuance, but as you were trying to explain to him, and to  
22 all of us, because it's a complicated model, and we're  
23 being schooled by you, so as you were trying to explain  
24 that, you seemed to kind of go back to the table of the  
25 commodity prices that the proposal of the Co-ops -- how

1 it influenced commodity prices was different than the  
2 Dairy Institute proposal and how it influences commodity  
3 prices. And if I'm reading this correctly, in the Co-op  
4 Proposal where the results are in Exhibit 5, Table B3,  
5 it appears that on average, every -- all the commodity  
6 prices decrease by some amount relative to the baseline.  
7 Is that accurate?

8 A. Yes. Yes.

9 Q. Okay. Thank you. And in the Dairy Institute  
10 Proposal, which is on the same exhibit, Table B51, the  
11 commodity prices for cheddar cheese and dry whey on  
12 average increase relative to the baseline, and the  
13 commodity prices for butter and nonfat dry milk decrease  
14 relative to the baseline, and that decrease is  
15 substantially larger than the decrease for those  
16 commodities that we saw in the Co-op Proposal; is that  
17 accurate?

18 A. Yes.

19 Q. Okay. So what I -- what I want to ask about  
20 is getting at this issue of what's happening under the  
21 Dairy Institute Proposal that leads to higher cheese and  
22 dry whey, which are -- which are commodities associated  
23 with a Class III formula and Class III price, and the  
24 changes in the butter powder, which are in the Class IV  
25 price. So -- and would I be right to conclude from

1 that, relative to the Co-op Proposal, there's something  
2 happening in the Dairy Institute Proposal that leads to  
3 a bigger volume increase nationally in the production of  
4 butter and nonfat dry milk and a smaller production  
5 nationally of cheese -- cheddar cheese and dry whey?

6 JUDGE CLIFTON: And for the record, please  
7 spell dry whey.

8 MR. SCHIEK: Okay. Dry whey is two words.  
9 First word dry, d-r-y, second word, whey, w-h-e-y.

10 THE WITNESS: You're going to have to bear  
11 with me through this, but --

12 BY MR. SCHIEK:

13 Q. Okay.

14 A. We're going to start by looking at Table B61  
15 for the Dairy Institute, and you can see the Class IV  
16 price -- or the Class IV utilization nationally is  
17 increasing, which is driving down the prices of the  
18 nonfat dry milk and butter, and Class III utilization is  
19 decreasing. So if you look at the table above that,  
20 B60, you're seeing decreases in Class I, II -- or Class  
21 II, III, and IV in California across the board. Much of  
22 that is due to milk no longer being pooled.

23 Q. Correct.

24 A. So -- and that separation is not there between  
25 the -- you know, the total effect. So -- and then --

1 Q. Can I just ask when you say the separation is  
2 not there --

3 A. The --

4 Q. -- in the total effect?

5 A. The separation between the milk not being  
6 pooled and what is going -- would have other -- if -- if  
7 the Dairy Institute had had inclusive pooling as under  
8 the current CDFA regulations, then milk wouldn't have  
9 been able to be milk not pooled.

10 Q. Okay.

11 A. So there's that effect, and then there's also  
12 the effect due to price changes and formula changes and  
13 everything else grouped in there. So it's kind of like  
14 our Class I utilization change in California yesterday  
15 that not only due to the price change, but it's also due  
16 to the milk now being pooled, so --

17 Q. I'll let you finish, but I want to come back  
18 to that so --

19 A. Okay. If you -- okay. So then if you go to  
20 Table 41 in Exhibit 6.

21 Q. Thank you. I got it.

22 A. Great. You can see in California that there's  
23 a price ratio or a tradeoff, so as one price goes up,  
24 the other price -- as the one price goes up compared to  
25 the other price, milk is either going to move into 4a or

1 4b historically speaking. And so due to the effects of  
2 there -- they are small effects in there from milk being  
3 allowed to pool, and then there's price formula effects,  
4 and all of the other effects of the Dairy Institute  
5 Proposal that are causing milk in California to have  
6 this price tradeoff. So as one's going up due to all of  
7 the combination of the effects of the proposal, the  
8 other one is going down --

9 Q. Okay.

10 A. -- that are pushing milk into that utilization  
11 and vice versa, so they feed off of it.

12 Q. So as I'm looking at Table 41 --

13 A. Yes.

14 Q. -- and I'm looking at the second equation --

15 A. Yes.

16 Q. -- which is the log of California Class 4a  
17 total solids volume or use, right?

18 A. It's utilization.

19 Q. Utilization divided by the Class 2, California  
20 2, that's Arabic 2, and then that is explained by the  
21 intercept, a dummy variable from 1999 onward, and --

22 A. Well --

23 Q. -- and then the log of the nonfat dry milk  
24 wholesale price index divided by the cheddar cheese  
25 wholesale price index, and the estimate is positive. So



1 what does that mean? So if the nonfat dry milk price is  
2 higher than the cheddar price --

3 A. It increases more.

4 Q. -- we're going to have a higher utilization 4a  
5 relative to 2, right?

6 A. The relative to 2 in there is because it's --  
7 this entire section of 41 tables are estimated together  
8 as compositional regressions, so to the division of 2 --  
9 I don't want to get into the nitty-gritty of the math  
10 unless you really, really want me to, but that is --  
11 that is the -- the constraint -- constraining part of  
12 the equation.

13 Q. You explained that yesterday --

14 A. Yes.

15 Q. -- it's backing out from Class 1 and then  
16 you're constraining it so that it can't -- can't end up  
17 with more use than there is total production.

18 A. Exactly, that's why that's in there.

19 Q. All right. So -- so we're getting back to,  
20 then, the price effects of the Dairy Institute Proposal  
21 being different than the --

22 A. We are.

23 Q. Okay. And so the Dairy Institute Proposal has  
24 lower prices for 4b, III, Federal Class III under the  
25 formula in the Co-op Proposal; is that correct?

1 A. Can you restate your question?

2 Q. Okay.

3 A. Sorry.

4 Q. So the price formulas in the two proposals are  
5 different for Class III and for Class IV?

6 A. They are.

7 Q. And is it fair to say the Class III proposal  
8 from Dairy Institute generates a lower price than the  
9 Class III formula for -- is that what -- I'm trying to  
10 understand when you talk about price differences --

11 A. Yes.

12 Q. -- if that's what you're referring to.

13 A. Yes. It -- there are a lot of -- there are a  
14 number of changes in the proposal, and all of them have  
15 effects on the outcome, but the difference in the price  
16 formulas would be what I would speculate would be the  
17 difference that we're seeing. I shouldn't speculate.

18 Q. All right. All right. That's fine.

19 But your estimated analysis would show, then,  
20 that with regard to that milk that's not in the pool,  
21 that when the price of 4a is high relative to 4b, more  
22 of that milk is going to end up in, a, butter powder  
23 production?

24 A. Yes.

25 Q. And vice versa?

1 A. Yes.

2 Q. Okay. All right. Thank you. I understand  
3 now.

4 Changing topics.

5 A. Great.

6 Q. Because I think we've exhausted that one.  
7 Just so -- I'm going to stay with that,  
8 actually, that page. So that I can understand more  
9 about how the model components are put together and why  
10 they're put together the way they are, I just wanted to  
11 kind of go through a few questions, and I'm going to use  
12 40 -- this Table 41 as my case to kind of understand how  
13 the models work.

14 So in Exhibit 6, you have the compositional  
15 regression equations, I guess those run from page 26 to  
16 31, depending on the region.

17 So that data, the data in the explanatory  
18 variables in term of the parameters you're estimating is  
19 for what time frame again? Is it 2000 forward? Is it  
20 1980 forward? I'm trying to remember what you said  
21 yesterday.

22 A. For the compositional regressions where milk  
23 is being classified or allocated, it's 2000 forward to  
24 match with the change in order reform.

25 Q. 2004?

1 A. 2000 --

2 Q. Forward.

3 A. -- forward.

4 Q. Okay.

5 A. Sorry.

6 Q. So -- and it's annual data?

7 A. Yes.

8 Q. And so there are 14, 13, 14 observations?

9 A. Correct.

10 Q. Okay. I -- I notice that you have included a  
11 couple of dummy variables. Let's just look at the first  
12 equation, but there's -- there's a dummy variable in  
13 each one of these equations. Can you tell me what those  
14 were intending to represent or model?

15 A. The dummy variables in the model represent a  
16 number of things. They can represent structural  
17 changes. They can represent plant closures. They can  
18 represent outliers. So it's -- it's any number of  
19 things.

20 Q. Okay.

21 A. Policy.

22 Q. So you included them in the model as  
23 explanatory variables because presumably you thought  
24 they were important. Is -- by including those  
25 variables, are you -- does this -- in your view, does

1 that improve the performance of the model in some way  
2 versus leaving them out?

3 A. Yes.

4 Q. Okay. So does it -- does it have an impact or  
5 might it have an impact on the ability to get really  
6 good estimates, accurate estimates of some of the other  
7 explanatory variables, like the main one here, which is  
8 the -- in the first equation, it's the frozen dairy  
9 products CPI over all of the dairy product CPI, and  
10 you're estimating a parameter on that. I'm assuming  
11 when you put the dummies in there, your expectation is  
12 that it will lead to a better estimate of all the  
13 parameters; is that correct?

14 A. Yes.

15 Q. Actually, that leads me to another question on  
16 that. So in that same table, I notice that there's CPI  
17 data used to represent the frozen and other dairy  
18 product prices, and then in the 4b total solids  
19 equation, there's also other dairy products CPI all.  
20 There's no CPI information in the 4a. I'm -- is there a  
21 particular reason for that or just not available or --

22 A. So the frozen dairy product CPI is proxy for  
23 the frozen products price, and then divided by CPI all  
24 to make it real or to not make it nominal. In the case  
25 below those, since they're a ratio of prices, there's --

1 Q. Okay. Good explanation. And just for the  
2 record, CPI, the letter C, capital C, capital P, capital  
3 I, stands for Consumer Price Index; is that correct?

4 A. Correct.

5 Q. Thank you.

6 JUDGE CLIFTON: And 3b and 4a that you just  
7 referred to?

8 MR. SCHIEK: 4b and 4a are Arabic numerals  
9 with the letter afterwards, small letter afterwards.

10 JUDGE CLIFTON: I thought I heard 3b. It was  
11 only --

12 MR. SCHIEK: If it was -- if I did, I  
13 misspoke.

14 JUDGE CLIFTON: All right. So what you were  
15 talking about, just for those of us who don't know  
16 California, what is 4a and what is 4b?

17 BY MR. SCHIEK:

18 Q. Probably be a good question for the witness to  
19 answer it on the record.

20 Would it be correct to say that Class 1 in  
21 California, with an Arabic 1, is roughly equivalent to  
22 Class I with a Roman numeral in the federal orders?

23 A. Roughly, yes.

24 Q. Yeah, okay. And in California Classes 2,  
25 Arabic numeral, and Classes 3, Class 3, Arabic numeral,

1 are roughly equivalent taken together to federal order  
2 Class II, with a Roman numeral?

3 A. Yes.

4 Q. Okay. And Class 4a in California, with an  
5 Arabic numeral, is roughly equivalent to federal order  
6 Class IV, with a Roman numeral?

7 A. Yes.

8 Q. Okay. And lastly, Class 4b in California,  
9 with an Arabic numeral, is roughly equivalent to Class  
10 III with a Roman numeral in the federal order system?

11 A. Yes.

12 Q. Okay. So we got that on the record.

13 A. There's also a table.

14 Q. And there's also a table so it's on there.

15 JUDGE CLIFTON: You know, next time -- and I  
16 hope I get to do these often, they're my favorite kind  
17 of hearing -- I'm going to start with an economist  
18 talking to the economist. It's very helpful.

19 MR. SCHIEK: Okay. You haven't heard it all  
20 yet, so --

21 BY MR. SCHIEK:

22 Q. Okay. So thank you for the explanation on the  
23 CPI. That was very helpful.

24 I want to change topics a little bit again and  
25 return to a point that Mr. Beshore brought up yesterday.

1 In particular, I want to ask about the question of  
2 statistical significance in estimates and estimated  
3 parameters in the model and what statistical  
4 significance means from a -- from a statistical basis.

5 I -- I believe you noted yesterday that for  
6 the compositional regression for non-fluid milk use in  
7 California, so again looking at Table 41, Exhibit 6, you  
8 originally specified that Class 4a and Class 4b,  
9 California class equations, with an explanatory variable  
10 parameter estimate that was a ratio of the wholesale  
11 commodity price for that particular relevant commodity,  
12 so let's say it's 4a, you're looking at a butter or  
13 nonfat milk -- nonfat dry milk powder price, divide by  
14 the corresponding class price, so it would be like 4a  
15 class price, that -- so you -- you initially specified  
16 it in that way.

17 A. I also tried that for Class 3, Arabic numeral.

18 Q. Okay. And -- and I believe you said -- well,  
19 you did incorporate that same concept in your -- the  
20 non-fluid milk use estimations for some of the other  
21 regions, like Order 30, for example, right?

22 A. Yes.

23 Q. But in the case of California, am I right that  
24 you found the parameter estimate for that particular  
25 variable ratio, the parameter estimate was not



1 significant; is that correct?

2 A. That is correct.

3 Q. Okay. So I want to ask you a few questions as  
4 to why, I guess more generally an estimated parameter  
5 might be found to be not significant. If that makes  
6 sense. If you understand what I'm talking about. If I  
7 said it correctly.

8 A. Yes, I understand --

9 Q. Okay.

10 A. -- what you're saying.

11 Q. Okay. When we say a variable is statistically  
12 insignificant, and this is from what you were talking  
13 about yesterday, and I want to make sure I understand  
14 it, is it correct to say that we mean that there is not  
15 sufficient statistical evidence to reject a null  
16 hypothesis that the estimated parameter actually has a  
17 real -- in the real world has a value of zero?

18 A. Yes.

19 Q. Okay. So -- so let's talk about more  
20 generally, not specifically this equation, but in  
21 general, is the reason an explanatory variable is found  
22 to be insignificant in the statistical sense is because,  
23 and I believe you had talked about this yesterday, that  
24 the standard deviation, estimated standard deviation in  
25 the model of that particular parameter estimate is large

1 or wide variance relative to the model estimate. Is  
2 that appropriate?

3 A. I'm not sure I spoke exactly about that  
4 yesterday, but yes --

5 Q. Okay.

6 A. -- that is appropriate, what you just said.

7 Q. Okay. So -- so we have a large variance on a  
8 particular parameter estimate relative to the actual  
9 value of the estimate, and that leads to a weak or  
10 failure to reject in all hypotheses?

11 A. Yes, so just because -- as I was saying  
12 yesterday, and I -- I don't think I used the technical  
13 terms because I realized I was maybe getting in over --  
14 I didn't want to --

15 Q. Okay.

16 A. -- hurt people's -- didn't want to make it too  
17 difficult, but there is two types of errors, Type I  
18 error and Type II error. And Type I error is where you  
19 incorrectly reject the true null hypothesis, so you're  
20 getting a false positive. And a Type II error is where  
21 you fail to reject a false null hypothesis, and that's  
22 a false negative.

23 So when we are looking for statistical  
24 significance, we're not accepting a null hypothesis or  
25 we're not accepting an alternative hypothesis. We're

1 not saying yes, there's a -- you know, we're saying that  
2 we have enough statistical evidence when we say that we  
3 are going to reject a null hypothesis that we believe  
4 that there is an economic relationship here.

5 But just because we cannot reject the null  
6 hypothesis, this doesn't necessarily mean that there  
7 isn't a relation. And I think that's where you're going  
8 with this.

9 Q. You read my mind.

10 A. And so -- but we want to minimize it, we're  
11 going to minimize one of those errors, we don't want to  
12 say there's a relationship where there isn't one. We're  
13 more inclined to say there isn't a relationship if there  
14 could still possibly be one. If we want to minimize one  
15 of those errors, we want to minimize saying that there's  
16 a relationship when there isn't.

17 Q. So following up on that, if you were to --  
18 again, this is a -- more of a hypothetical, but if -- if  
19 you have a theoretical relationship that in a lot of  
20 cases has been proven true in a lot of industries, and  
21 you put that into a model that you estimate because you  
22 think the theory should apply everywhere else -- you  
23 know, it applies everywhere else, it should apply here,  
24 and you don't find it to be statistically significant in  
25 terms of being able to reject the null hypothesis.

1 A. Yes.

2 Q. There could be a lot of reasons why that would  
3 be the case?

4 A. Yes, there could.

5 Q. One might be that not all the -- all the  
6 explanatory variables, the complete set of things that  
7 impact a dependent variable have been included in a  
8 model, that might be one of them, correct?

9 A. There could be many, many, many.

10 Q. Okay. And another might be you might not have  
11 enough observations?

12 A. Another could be the differences between the  
13 California and the federal order systems --

14 Q. Okay.

15 A. -- so -- but the list is long as to why those  
16 could be or couldn't be, and --

17 Q. Okay. Thank you. I have no further  
18 questions.

19 JUDGE CLIFTON: Mr. Schiek, before you sit  
20 down, you have a Ph.D.?

21 MR. SCHIEK: I do.

22 JUDGE CLIFTON: Yeah.

23 MR. SCHIEK: I do, yes.

24 JUDGE CLIFTON: I -- when you all come forward  
25 and introduce yourselves, don't be bashful. If you

1 should be referred to as Dr. Schiek, don't let me fail  
2 to do that. So, Dr. Schiek, thank you.

3 MR. SCHIEK: Thank you.

4 JUDGE CLIFTON: Who else should -- oh, should  
5 we take a break? That's intense. It's 10:33. Do you  
6 want about 15 minutes? Yes. Okay. Please come back at  
7 10:47 -- 10:48. 10:48.

8 (Whereupon a break was taken.)

9 JUDGE CLIFTON: All right. This is Judge  
10 Clifton. We can go back on record. It's now 10:50 in  
11 the morning.

12 Just a comment about Mr. Hill's microphone.  
13 His microphone is turned off when he's not using it, as  
14 is mine, and this eliminates feedback that would  
15 interfere with the spoken word from the mics that are in  
16 operation, so there's a good reason why we should alert  
17 the sound man that we are going to be using our mic,  
18 which we can do by saying, "This is Brian Hill" or "This  
19 is Judge Clifton." Let him get it turned on, and then  
20 start again.

21 All right. Ms. Steeneck, before I ask if  
22 anyone else has questions for you, do you have anything  
23 in addition that you'd like to bring up from yesterday  
24 or today so far?

25 THE WITNESS: Yes. I would like to respond to

1 Chip English on some clarification.

2 So I looked at the out-of-state milk data  
3 that's entered in California in its aggregate that I  
4 received, and the data does not include that plant data  
5 in Nevada, so it has not been aggregated into that --  
6 that number, it is only bulk milk that's coming into a  
7 California plant. So -- and that data, since it's for  
8 only a small number of plants, is proprietary and cannot  
9 be included.

10 JUDGE CLIFTON: Mr. English, do you want to  
11 ask any follow-up questions?

12 MR. ENGLISH: You had to offer. Chip English.

13 CROSS-EXAMINATION

14 BY MR. ENGLISH:

15 Q. Just to connect A and B -- is the mic on?  
16 Hello. Sorry. Chip English.

17 Just to connect dots A and B, you said the  
18 milk is not included from the plant coming in from  
19 Nevada. If there is milk coming in from a plant other  
20 than Nevada, since you said it only includes bulk milk,  
21 I conclude that it also doesn't include any other milk  
22 coming in from other locations other than the particular  
23 plant in Nevada; is that correct?

24 A. It doesn't include any milk that would be  
25 coming in from out of state that was processed in a

1 plant out of state.

2 MR. ENGLISH: Thank you.

3 JUDGE CLIFTON: Who else has questions for  
4 Ms. Steeneck?

5 CROSS-EXAMINATION

6 BY MR. BESHORE:

7 Q. Marvin Beshore, I have just one simple  
8 informational question, I think.

9 On the tables on -- on the Exhibit 6, and  
10 I'm -- just happened to be on page 31, which is Table 41  
11 and 42.

12 A. 42. Sorry.

13 Q. It's okay. In a number of those equations,  
14 the phrase "wholesale price index" is used, "cheddar  
15 cheese wholesale price index, nonfat dry milk wholesale  
16 price index." What -- what data set does that -- does  
17 that refer to?

18 A. So we -- in the model, for example, in --  
19 let's just flip back a page and look at Order 33, Table  
20 37. We were using the Class III price, which is a per  
21 hundredweight price versus a per pound price, and so to  
22 equalize or level the playing field in the price  
23 changes, we took a price index of the two prices. So  
24 where -- I can't remember what year we said is the base  
25 year, I want to say it was 2000, but don't hold me to

1 that, but it's the base year of a hundred price index.

2 Q. So what set on Table 37, "cheddar cheese  
3 wholesale price index," what cheddar cheese information,  
4 wholesale price information was used to generated that  
5 index?

6 A. The AMS, previously NASS, weekly was then  
7 converted into monthly and then averaged annually.

8 Q. Yes. Okay. Thank you very much.

9 And that would be the same for nonfat dry  
10 milk --

11 A. Yes.

12 Q. -- or butter in here? Thank you.

13 JUDGE CLIFTON: When you say previous -- this  
14 is Judge Clifton. When you say previously NASS, does it  
15 have a new name?

16 THE WITNESS: No, previously NASS reported the  
17 prices, and then in I want to say 2012 we took it over  
18 over at AMS reporting the prices.

19 JUDGE CLIFTON: Thank you.

20 Who else has questions for Ms. Steeneck?

21 MR. VETNE: John Vetne for Hilmar Cheese.

22 CROSS-EXAMINATION

23 BY MR. VETNE:

24 Q. I'm in the same position I was yesterday. I'm  
25 the fourth-grader attending a college class so I'm



1 trying to understand here.

2 My questions were stimulated by your dialogue  
3 with Bill Schiek. I think you were referring to Table  
4 B60 which is the last page of Exhibit 5 and comparing  
5 that to B12, both of which refer to class utilization  
6 changes in California under the Proposals 1 and 2.

7 Look at B60 first. I just want to make sure  
8 my understanding is correct so I can process it as we go  
9 along. Under the Dairy Institute Proposal, Class III  
10 utilization goes down; it does not do so under Table B12  
11 under the Cooperative Proposal. My understanding was --  
12 I'm looking for an affirmation as to whether my  
13 understanding is correct -- is that the volume of Class  
14 III close down in Table B60 in substantial part, maybe  
15 totally, but in substantial part because the Dairy  
16 Institute Proposal allows depooling; is that correct?

17 A. Yes, it allows milk not pooled.

18 Q. Okay. So the volume, million pounds volume of  
19 Class III in the estimated California pool under the  
20 Dairy Institute Proposal goes down, correct?

21 A. Yes.

22 Q. Which does not mean that the volume of milk  
23 used to produce cheese products in California also goes  
24 down; is that correct?

25 A. It does not imply that, no.

1 Q. Okay.

2 A. But that difference or separation between the  
3 two, it's not separated --

4 Q. Okay.

5 A. -- here.

6 Q. For other tables of the -- of Exhibit 5, you  
7 referred to volumes not captured in a specific pool as  
8 moving to unregulated milk. Would that also be true  
9 here?

10 A. Yes, this milk would move to the unregulated  
11 pool.

12 Q. So the -- the model as described in Exhibit 6,  
13 which shows a map, various geographical areas including  
14 Unregulated West, which we identified as Montana and  
15 Wyoming, is it basically in that pool that this  
16 unregulated milk shifts to?

17 A. So the unregulated pool on this classification  
18 policy level of the model is very abstract, it does not  
19 necessarily limit it to a location. It is the milk that  
20 is in the Unregulated West, there's also the milk in the  
21 Former Western, you know, that isn't been pooled on one  
22 of the federal orders. It's Grade B milk. It's all  
23 sorts of milk that is not pooled across the country. So  
24 all of the milk across the country that is not regulated  
25 is put into that pool.

1 Q. Okay. So for that -- for all of the other  
2 pools, say Figure 1, Regional Supply Areas, there is a  
3 geographic connection as shown on the map, the milk, the  
4 milk that's received, the milk that's put into class,  
5 but for unregulated, it's not so much geography as some  
6 other characteristic?

7 A. So I want to be sure and clarify something.  
8 The map on page 2 of Exhibit 6? 6.

9 Q. Yes.

10 A. Shows the milk production region level or the  
11 farm level, and then there's the classification policy  
12 level where we're looking at the orders and pools, which  
13 you can see on page three. And those are based on the  
14 federal orders, the actual boundaries of the federal  
15 orders and the actual boundary on California, which is  
16 not on this map, but it's obviously the state  
17 boundaries. And then all of the areas that aren't  
18 covered by the federal areas, that don't have milk  
19 pooling on the federal orders or on California would be  
20 in that unregulated abstract pool that we're discussing.

21 Q. Okay. And would that also carry over to Table  
22 B61, National Class Utilization Changes under the Dairy  
23 Institute Proposal, would that like Table B60 limit  
24 Class III milk to milk that is actually pooled in a  
25 regulated system under the estimates?

1           A.    No.  So an assumption is made in the model  
2   that the unregulated milk, first there are three  
3   separate fluid demand equations that are regionally  
4   based, and when I say regionally based, I mean actually  
5   on a geographic region, that estimate fluid demand for  
6   the unregulated that takes it off the top of the pool  
7   and it's summed up for Class I utilization.  And then  
8   the remaining Class II, III, and IV, Roman numerals, are  
9   assumed to have a similar class breakdown to the rest of  
10  the country for the purpose of being able to derive a  
11  class -- a supply for the products across the entire  
12  nation.

13           Q.    Okay.  So my current understanding, then, is  
14  that Table B61, Class III, for example, includes all of  
15  the nation's milk production used -- used to produce  
16  cheese, whether it's regulated by a federal, state, or  
17  no marketing order at all?

18           A.    That is correct.

19           Q.    And so whatever has been depooled in Table B60  
20  would be recaptured in Table B61?

21           A.    The -- anything that has been depooled in  
22  Table 60 would be recaptured in the unregulated pool.

23           Q.    Which is part of Table B61?

24           A.    Correct.

25           Q.    Okay.  Now, I'm way out of my element, which

1 is why I'm asking the question. You asked -- you talked  
2 a lot with Bill Schiek about Table -- Exhibit 60 --  
3 Exhibit 6, Table 41, page 31. I don't know how to read  
4 this, but you -- you made a comment in referring to the  
5 columns in Table 41 that tell you and tell Bill Schiek  
6 as one goes up the other one goes down. Do you recall  
7 that?

8 A. Yes.

9 Q. Okay. Is that the column that shows  
10 "Estimate"?

11 A. It is --

12 Q. Which column do I look at at least to  
13 determine direction that something is going up and  
14 something is going down?

15 A. Okay. So "Estimate," what you're looking at  
16 is, for example, is let's say California Class 4a, that  
17 one.

18 Q. Yes.

19 A. If you're looking at .7311 is the estimate,  
20 which is positive. So what we're saying is as the  
21 nonfat -- sorry. As the nonfat dry milk price goes up  
22 compared to the cheddar cheese price, we would expect  
23 more milk to go into Class 4a relative to Class 2.

24 Q. So -- okay. So looking here, then, the nonfat  
25 dry milk price goes up .73, cheddar cheese .05 or .06,

1 so nonfat dry milk is higher, therefore you would expect  
2 milk to move to nonfat dry milk use?

3 A. If the price of nonfat dry milk goes up higher  
4 than cheddar cheese, then you'd expect more milk to move  
5 into Class --

6 Q. And -- and this --

7 A. -- 4b.

8 Q. -- indicates --

9 A. Or 4a.

10 Q. -- indicates that relationship one is higher  
11 than the other, so you would see that movement?

12 A. It's a price ratio.

13 Q. And the price here for 4a is higher, is that  
14 right, the ratio? Do you show one moving up relative to  
15 the other?

16 A. So if you see -- show one moving up relative  
17 to -- if you show nonfat dry milk moving up more than  
18 cheddar cheese, then more milk will go into nonfat dry  
19 milk or in this case Class 4a.

20 Q. And what numbers do I look at to determine  
21 that that has happened here?

22 A. The .7311.

23 Q. Relative to --

24 A. There's only one coefficient on that.

25 Q. Okay. And is there a cheddar cheese

1 coefficient?

2 A. So if you look at California Class 4b, total  
3 solids, and you looked at the cheddar cheese wholesale  
4 price over the nonfat dry milk wholesale price, you can  
5 see the .0592.

6 Q. Right. And what do those two numbers compare  
7 one to the other, what does that tell you? Anything  
8 about directional market behavior?

9 A. It tells you that more milk will move into  
10 nonfat dry milk as the nonfat dry milk moves up compared  
11 to the cheddar cheese wholesale price because it is a  
12 larger positive than the positive effect of the cheddar  
13 cheese price moving up into the nonfat dry milk.

14 Q. Okay.

15 A. Does that --

16 Q. That's -- that's sort of what I thought.

17 A. Is that what you're asking?

18 Q. Thank you.

19 Then I have a question. So as a general  
20 matter -- matter, if Class III price is higher than the  
21 Class IV price, Roman numerals, federal system, you  
22 would expect milk to move into cheese-making, correct?

23 A. Yes.

24 Q. Okay. And the same would be true in  
25 California, Arabic numeral, if 4b price were higher than

1 the 4a price, you would expect milk production to move  
2 to 4b?

3 A. Yes, but these are relative changes in their  
4 prices.

5 Q. Okay. Now, let me posit this scenario to you:  
6 Assuming a period of time in which there is a high price  
7 for milk used to produce cheese, which is federal class  
8 III, California 4b.

9 A. I'm sorry, can --

10 Q. Assuming that there is a period of time in  
11 which there is a high regulated price for milk used to  
12 produce cheese.

13 A. Okay.

14 Q. Okay?

15 A. So higher Class III price.

16 Q. Higher Class III price, so let's just talk  
17 about that. Substantially higher than Federal Class IV,  
18 but the Class III price achieves that high level  
19 significantly because of a whey pricing factor that most  
20 buyers of milk to make cheese don't make in their plant,  
21 and if they receive milk, they will make cheese at a  
22 loss, and therefore they make business decisions not to  
23 accept more cheese because every hundredweight they  
24 receive is going to cost them money. Let's say that  
25 happened, would that be reflected in your model?



1           A.    I'm going to need you to repeat the question  
2 so I can give it plenty of consideration.

3           Q.    Okay.  Here's --

4           A.    So I can write it down.

5           Q.    Here's -- here's the scenario.  If for a  
6 period of time a significantly high -- there was a  
7 significantly higher Class III price than Class IV,  
8 ordinarily your model would move milk to Class III, but  
9 if for that period of time the Class III price was high  
10 because of a high whey value assigned to the Class III  
11 formula, and buyers of milk to make cheese do not make  
12 whey product but made something else which caused the  
13 milk to be too costly for them because they wouldn't  
14 recover their manufacturing costs and therefore rejected  
15 milk to make cheese, would the model capture that market  
16 practice?

17          A.    So I first want to clarify something in Table  
18 41.

19          Q.    Okay.

20          A.    It's -- the price changes relative to each  
21 other, so let's say hypothetically the Class III price  
22 is a lot higher than the Class IV price, but let's say  
23 the Class IV price starts to come up a little bit.  
24 Okay?  Then that's a relative movement compared to the  
25 Class III price, Class III price remains unchanged.

1 Then more milk would start to move into Class IV. So  
2 even if they're substantially different, if that Class  
3 IV, or in this case the nonfat dry milk is increasing  
4 versus the cheddar cheese price that's staying the same,  
5 that's still going to drive more milk in the 4a. Okay?  
6 I just want to clarify.

7 Q. That makes a lot of sense to me. Thank you.

8 A. Okay. That being said, so what is in the  
9 model is as a Class III price goes up, the production of  
10 cheese goes up, and then because the production of  
11 cheese is going up without a change in demand, the  
12 cheese price would go down, which would then lower the  
13 Class III, so that is the loop that is built into the  
14 model.

15 In some orders, the dry whey price is a factor  
16 in driving the Class III utilization, and in other  
17 orders or pools it is not.

18 Q. What is there about some markets that would  
19 drive it in some markets and not drive it in others?

20 A. This goes back to our statistical significance  
21 conversation that we've been having where we found a  
22 statistically significant historic relationship between  
23 those dry whey prices over the Class III prices and  
24 where we did not.

25 Q. Just -- just as --

1           A.     But that doesn't necessarily mean it is not a  
2 factor.

3           Q.     Just -- just in a plain, simple English basis,  
4 you would agree with me that a manufacturer of anything  
5 that cannot recover costs is not going to stay in  
6 business long? Rational just economic decision is to  
7 stop doing what makes you lose money, correct?

8           A.     If you are on a very basic level. There are a  
9 lots of economic factors that -- you know, I've heard  
10 people run businesses at losses and things, but for the  
11 most part, economic theory says, you know, if you're not  
12 making any money, you're not going to stay in business.

13          Q.     In fact, the whole model is -- is -- reflects  
14 rational economic decision-making in the aggregate of  
15 producers and processors. As producers make more money,  
16 prices go up, produce more milk, prices go down, you  
17 know, you're not going to last, correct?

18          A.     Correct.

19          Q.     And when you talk about in some markets they  
20 dependent, some markets not, would that -- would it be  
21 correct to say that in some markets where milk to make  
22 cheese would not be rejected as much, it would be those  
23 markets in which cheese makers use the whey products  
24 that drive the regulated price, whereas in other markets  
25 maybe they use something else and don't recover those

1    why costs?  Would that be one distinction between  
2    markets where it's a factor and markets where it's not?

3           A.  I can't speculate on that.

4           Q.  Thank you.

5                   JUDGE CLIFTON:  Lawyers have all -- this is  
6    Judge Clifton.  Lawyers have lots of different ways of  
7    making their point.

8                   All right.  What other questions do we have of  
9    Ms. Steeneck?

10                  Mr. Hill.

11                  MR. HILL:  Brian Hill.

12                                 REDIRECT EXAMINATION

13    BY MR. HILL:

14                  Q.  Ms. Steeneck, do you recall yesterday being  
15    asked about California milk production either projected  
16    or actual for the years 2013 through 2016?

17                  A.  Yes.

18                  MR. HILL:  Your Honor, I would like to mark a  
19    document as Exhibit Number 7.

20                                 (Whereupon Exhibit 7 was marked for  
21    identification.)

22                  MR. HILL:  The document is entitled California  
23    Milk Production from the USDA Agricultural Marketing  
24    Service Dairy Program Regional Economic Baseline.

25                                 Does the witness have a copy of this?

1 THE WITNESS: Yes.

2 BY MR. HILL:

3 Q. And do you recognize this document? What is  
4 it? Can you tell us?

5 JUDGE CLIFTON: Just -- just a moment, Mr.  
6 Hill. We're getting copies distributed so --

7 MR. HILL: Okay, I'll wait.

8 JUDGE CLIFTON: -- we'll hold on, then  
9 everyone can look.

10 Raise your hand if you want a copy of Exhibit  
11 7 and don't have one yet.

12 Mr. Hill, you may proceed.

13 BY MR. HILL:

14 Q. So, Ms. Steeneck, can you in your own words  
15 tell us what this document shows?

16 A. This document shows the California milk  
17 production from 2014 to 2016 in billions of pounds for  
18 the baseline that we set for the benchmark estimates  
19 between '13 in an actual, and 2014 through 2016 are  
20 projected.

21 Q. And did you prepare this document?

22 A. Yes.

23 Q. And did you prepare it in answer to the  
24 questions that were asked of you yesterday about this  
25 topic?

1           A.    Yes.

2           MR. HILL:   If there are no issues with this  
3 document, no objections, I would like to enter it into  
4 the record as Exhibit Number 7.

5           JUDGE CLIFTON:   First of all -- this is Judge  
6 -- this is Judge Clifton.

7           First of all, I thank you for the work that  
8 went into it.  This is wonderful that you were able to  
9 produce this today.

10                  Who would like to ask questions of  
11 Ms. Steeneck before you determine whether you have any  
12 objection to it being admitted into evidence?  There is  
13 no one.

14                  Is there any objection to the admission into  
15 evidence of Exhibit 7.  There is none.

16                  Exhibit 7 is admitted into evidence.

17                  (Whereupon Exhibit 7 was admitted  
18 into evidence.)

19           JUDGE CLIFTON:   Who would like to ask  
20 questions of this witness now that you have this  
21 additional information?

22           MR. ENGLISH:   Chip English.  It had to be  
23 lower.

24    ///  
25    ///

1                                 RE-CROSS-EXAMINATION

2     BY MR. ENGLISH:

3             Q.     Thank you very much. I think you had a couple  
4 requests, but obviously one of them was mine, so I -- I  
5 appreciate it. I do note, and I think I know the  
6 answer, but first let me just -- you didn't provide 2017  
7 through 2024, correct?

8             A.     That is correct.

9             Q.     Okay. But would it be true that what one can  
10 do is go, for instance, to Table B5, which is the milk  
11 production changes in the Co-operative Proposal, and for  
12 2017, the change is 0.32 billion pounds.

13            A.     I have not got to that table yet.

14            Q.     I'm sorry.

15            A.     Go ahead.

16            Q.     So if I took the column for 2017 for  
17 California milk production in Table B5 on page 27, and  
18 that number is 0.32 in a positive direction, if I added  
19 that to 50.9, the 2017 for what the number -- model used  
20 or came up with the number for the Co-op Proposal, would  
21 that give me the -- what that did with the system?

22            A.     No.

23            Q.     No, it would not.

24            A.     So looking at .32, that would be in addition  
25 to the 2017 number that is not listed.

1 Q. I thought the 2017 -- so what -- so you're  
2 saying we're missing a number still, or missing a year?

3 A. It was my understanding that we were requested  
4 to provide 2013 through 2016.

5 JUDGE CLIFTON: That's correct, but --

6 MR. ENGLISH: It may have have been the  
7 lawyers thought that that meant that you got to 2017.  
8 No, it's not?

9 JUDGE CLIFTON: No.

10 MR. BESHORE: This is what I asked for.

11 MR. ENGLISH: Okay.

12 JUDGE CLIFTON: Yeah. But while you're  
13 talking about this, Ms. Steeneck, when you -- when you  
14 look at this Table B5, and you look at California milk  
15 production, and you find the 0.32 change shown in 2017,  
16 that's a change from what?

17 THE WITNESS: The 2017 baseline number for  
18 California milk production.

19 JUDGE CLIFTON: Okay.

20 Go ahead, Mr. English.

21 MR. ENGLISH: So I believe my request was  
22 actually for the full range, so it would have included  
23 2017, and maybe that just got lost in the translation  
24 and everything.

25 JUDGE CLIFTON: I never heard that request.



1 So let's assume that's what you want, you are requesting  
2 it?

3 MR. ENGLISH: Yes.

4 JUDGE CLIFTON: Is it -- is it -- is  
5 it already available in what we have, Ms. Steeneck?

6 THE WITNESS: No, that is not in what is  
7 already available in Exhibit 5.

8 BY MR. ENGLISH:

9 Q. And I apologize if my request was  
10 inarticulate. I thought the way I phrased it actually  
11 was to be inclusive all the way through 2024, which  
12 would have necessarily been 2017, but I may very well  
13 have been inarticulate about it, so let me --

14 I'm trying to minimize the burden of requests,  
15 so if we had one more column for 2017 --

16 A. Yes.

17 Q. -- could one then do what I just tried to do,  
18 which was add --

19 A. Exactly.

20 Q. And for any of the proposals, I could do that  
21 and we could create a chart for ourselves?

22 A. So hypothetically let's say 50.90 was for  
23 2017, then you would add .32 for the production.

24 Q. Okay. And then -- and then for the next year,  
25 I would add another 0.41? Or is it -- is 0.41 added to

1 the 2017 number only?

2 A. So each -- each number that you're seeing  
3 here, the .2 -- or .32 is for 2017, .41 is for 2018. So  
4 those are the -- that's the additional amount of milk  
5 production that there would be, the change away from the  
6 baseline than there was so --

7 Q. So --

8 A. For that year.

9 Q. So going back to my question: Assuming for a  
10 moment that we had 2017, it was -- what number did you  
11 assume?

12 A. I assumed the 2016.

13 Q. Okay. So if you assume the 2016 number  
14 actually is the 2017 number, you agree with me that then  
15 you could add .32 to get the 2018 number?

16 A. No, no, no, no, no. To get to the 2017  
17 number. So -- so what we do with the model is we say  
18 this is the baseline number. Okay. And as you  
19 mentioned yesterday, these are relative changes away  
20 from the baseline. So we make all of the adjustments  
21 asked in the proposal, and then we say, okay, what's the  
22 number now, so -- let me see. If we add .32 to 50.9,  
23 whatever that number is is what would have been the  
24 result of the Cooperative -- Cooperative Proposal's 2017  
25 number.

1 Q. Okay.

2 A. So that's the difference between the baseline  
3 and the proposal.

4 Q. Okay.

5 A. For 2017 only.

6 Q. Okay. Assuming again that the baseline for  
7 2017 were 50.9, what would you do for 2018?

8 A. There would be a different baseline number for  
9 2018 that would have been projected by the formulas and  
10 set as the baseline number.

11 Q. Okay --

12 A. And then the proposals are --

13 Q. Okay. I'm getting it now. I think that's why  
14 I think yesterday, whether inarticulate or whatever, I  
15 was asking for the baseline for 2017, 2018, 2019, 2020,  
16 2021, '22, '23, '24. So the baseline numbers, so that  
17 we could look at what the change applies to. And I -- I  
18 either repeat the request or I make the request now if  
19 somehow I didn't make it yesterday.

20 A. They -- they -- they are good. Yes.

21 Q. Okay. Thank you.

22 Now, as long as I'm up, and I want to go back  
23 sort of maybe to the very beginning of all of this,  
24 which is the projected number for 2014 --

25 A. Yes.

1 Q. -- is higher than what turned out to be the  
2 actual, correct?

3 A. That is correct.

4 Q. But for purposes of comparing the impacts of  
5 the various proposals, that's irrelevant because you're  
6 using the same baseline, correct?

7 A. Yes.

8 Q. Thank you.

9 JUDGE CLIFTON: Who else has questions -- this  
10 is Judge Clifton.

11 Who else has questions for Ms. Steeneck now?

12 RECROSS-EXAMINATION

13 BY MR. BESHORE:

14 Q. Thank you for providing this information,  
15 Ms. Steeneck.

16 So in -- with respect to Mr. English's last --  
17 last question, if you assume that -- well, we know that  
18 actual production in California in 2014 was less than  
19 the baseline projected amount here. It was 42.4, I  
20 believe, versus 44.8 projected. And we know that  
21 production in California in 2015 has actually declined  
22 year over year from 2014 so that, you know, the -- the  
23 actual production out there is much different than the  
24 baseline projections going into -- going into the model.  
25 Is it your testimony that that makes no difference

1 whatsoever with respect to the relative outcomes of the  
2 model one proposal versus the other?

3 A. The baseline sets a base -- a benchmark, and  
4 so then when you make the changes of the various models,  
5 you're looking at the changes, the relative changes from  
6 that, so -- I would say yes, that's my -- the  
7 conclusion.

8 Q. Well, intuitively to a layperson,  
9 non-econometrician, okay, it would seem to me that in a  
10 regional model projected out over time, if the relative  
11 production in one region such as California was less  
12 than -- in actuality was less in relation to another  
13 region, say the Upper Midwest, than the baseline  
14 projected, and you've got this regional interacting  
15 model, intuitively, I would think that those differences  
16 in relative production would have some impact on how the  
17 model works over time. Is that intuition incorrect in  
18 the econometrics?

19 A. In a model where we are using the most current  
20 data that we have when we projected it, which we stay --  
21 we maintain or have the consistent projections with the  
22 USDA agricultural projection forecasting period.

23 Q. Right, I understand that.

24 A. That is the policy that we use and the way we  
25 do the policy impact analysis.

1 Q. Okay. You use the best information that's  
2 available to you at the time, I understand that. I'm --  
3 and I -- I don't have any question about that at all.  
4 My question is more along the lines of some of you were  
5 asked -- earlier were asked by Dr. Schiek or Mr. Smith,  
6 that in terms of theory, if you've got -- if you have  
7 different, you know, production relationships -- if you  
8 had a baseline that had different production  
9 relationships in the regions, wouldn't it tend to  
10 generate different impacts?

11 A. How the model would change if I had 2014  
12 actual data in there versus how it is set up from -- and  
13 projecting with only data to 2013, which is the current  
14 department standard, I can't speculate on how things  
15 would change.

16 Q. Okay. And you don't have any -- I'm not  
17 asking you to speculate, but to use your professional  
18 expertise and judgment, which you have demonstrated to  
19 be very knowledgeable and quite, you know, capable in  
20 the field, you don't have any -- any real judgment about  
21 that?

22 A. I don't, I don't want to speculate on that.

23 Q. Okay. Thank you.

24 MR. SCHIEK: Oops, did I just disconnect your  
25 power cord?

1 Bill Schiek, Dairy Institute California.

2 RE-CROSS-EXAMINATION

3 BY MR. SCHIEK:

4 Q. Ms. Steeneck, I just want to make sure I  
5 understand the role of the baseline analysis in doing  
6 policy analysis, so I had a couple questions about that.

7 So when you -- when you estimate baseline,  
8 you're estimating, you're projecting based on your  
9 history of the data that you use to estimate all the  
10 equation parameters; is that right?

11 A. Yes.

12 Q. Okay. So -- and you don't know the future --

13 A. No.

14 Q. -- so you can't predict what might happen  
15 to -- you know, there could be a drought in Wisconsin or  
16 a freeze in Minnesota that destroys the alfalfa crops  
17 and milk per cow kind of goes down, that's not something  
18 you're trying to do, you're not trying to see into the  
19 future with this analysis really?

20 A. No.

21 Q. Okay.

22 A. So as I stated in my testimony, we use  
23 historic weather patterns so what we've historically  
24 seen. If a drought happens in 2018, I don't try to work  
25 off that.

1 Q. Right. So in terms of going forward, you're  
2 being kind of internally consistent with the model with  
3 respect to the past, with respect to what's been  
4 observed historically?

5 A. Yes.

6 Q. Okay. So then is it fair to say that when you  
7 establish a baseline and then you look at the impacts of  
8 different policies relative to that baseline, you are  
9 making a statement about the impact of the policy with  
10 or without, in other words, with the policy in place  
11 versus without the policy in place, as opposed to sort  
12 of a before and after where you're -- you're saying this  
13 is what happened before and this is what's going to  
14 happen after? Is that -- is that accurate or am I  
15 muddling the question too much?

16 A. I -- I think I understand what you're asking.  
17 So the baseline looks at current policy and what we  
18 forecast under the current policy, and then the changes  
19 away from the baseline show what we forecast if that  
20 policy were to take place.

21 Q. Uh-huh.

22 A. Or that policy change were to take place.

23 Q. Okay. So using the data that you've used up  
24 to the point it was available and then projecting  
25 forward, you are in a sense doing the -- the -- making



1 the best estimate of the policy impact that you can make  
2 with the known data?

3 A. Correct.

4 Q. Okay. Thank you.

5 JUDGE CLIFTON: Are there other questions now  
6 of Ms. Steeneck?

7 Ms. Steeneck, are you planning to be available  
8 here all week?

9 THE WITNESS: I will be here until Friday.

10 JUDGE CLIFTON: Including Friday?

11 THE WITNESS: Yes.

12 JUDGE CLIFTON: All right. Do -- do you have  
13 any idea of whether the additional data requested by  
14 Mr. English could be available for you to testify about  
15 before you go?

16 THE WITNESS: Yes.

17 JUDGE CLIFTON: And your idea is yes, you can  
18 do it?

19 THE WITNESS: Yes, I can do it. Sorry.

20 JUDGE CLIFTON: Okay. That's great.

21 All right. Then if there are no other  
22 questions for Ms. Steeneck now, we will expect to recall  
23 her before she leaves this week. And I see no other  
24 questions now.

25 Ms. Steeneck, you've been amazing. Extremely

1 complex, difficult information, and I appreciate the way  
2 you've answered the questions. You've done an excellent  
3 job of educating us all, I believe.

4 THE WITNESS: Thank you.

5 JUDGE CLIFTON: Thank you. And you may step  
6 down.

7 All right. Shall we go -- well, let me find  
8 out first if there are any producers, any dairy farmers  
9 who have arrived who would like to testify before we  
10 take the next USDA witness.

11 There being none, Mr. Hill, do you need a  
12 little break before the next witness or are you ready to  
13 go?

14 MR. HILL: Can I have one moment, Your Honor?

15 JUDGE CLIFTON: Certainly.

16 MR. HILL: Can I have one moment, Your Honor?

17 JUDGE CLIFTON: You may, Mr. Hill.

18 MR. HILL: Your Honor, I think we'll move  
19 ahead.

20 JUDGE CLIFTON: All right. Would you be  
21 calling Lorie Warren?

22 MR. HILL: That would be correct, Lorie  
23 Warren.

24 JUDGE CLIFTON: Are there any exhibits  
25 associated with her testimony?

1 MR. HILL: Yes, there are two, I believe.

2 JUDGE CLIFTON: All right. Would you have  
3 those marked and distributed. And I think while the  
4 marking and distribution goes on, everyone else can take  
5 a five-minute stretch break.

6 Ms. Warren, you're welcome to come up and  
7 bring your materials to the witness stand, but you don't  
8 have to stay here quite yet.

9 (Whereupon a break was taken.)

10 JUDGE CLIFTON: Back on record at 11:48.

11 Ms. Warren, I'm going to swear you in in a  
12 seated position. Would you raise your right hand,  
13 please.

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

17 THE WITNESS: Yes.

18 JUDGE CLIFTON: Thank you. Please state and  
19 spell your name.

20 THE WITNESS: Lorie, L-O-R-I-E. Warren,  
21 W-A-R-R-E-N.

22 JUDGE CLIFTON: Thank you.

23 Mr. Hill, you may proceed.

24 MR. HILL: Thank you.

25 ///

1 DIRECT EXAMINATION

2 BY MR. HILL:

3 Q. Now, Ms. Warren, you have prepared both a  
4 personal statement and data set; is that correct?

5 A. Yes.

6 MR. HILL: Your Honor, I'd like to mark as  
7 Exhibit Number 8 her statement and as Exhibit Number 9  
8 the data set.

9 (Whereupon Exhibit 8 and Exhibit 9  
10 were marked for identification.)

11 MR. HILL: There are a couple housekeeping  
12 matters on the data set, however. One would be Table  
13 18. This is an amalgamation of two attachments, and  
14 right now 21 tables. Table 18, the correct table, and  
15 if you look at the column marked "7(b) Excess Skim  
16 Shrinkage," the correct Table 18 should show in the very  
17 first line of that 825,474. So for those who picked up  
18 this document in this room earlier, the incorrect number  
19 in that first column would be 29,564,444. That is the  
20 incorrect Table 18. The corrected version is 825,474 in  
21 the first line of the "7(b) Excess Skim Shrinkage."  
22 Third column from the right.

23 JUDGE CLIFTON: I'm looking at my Table 18.  
24 I'm not seeing where you're finding your number, Mr.  
25 Hill. Tell me again.

1 MR. HILL: The third column from the right,  
2 it's listed at "7(b) Excessive Skim Shrinkage."

3 JUDGE CLIFTON: Ah, I see it now. And the  
4 correct number on that top line should be?

5 MR. HILL: 825,474, that is the corrected  
6 version.

7 Also, in the original packet there was no  
8 Table 21. Table 21 we're now adding to Exhibit Number  
9 9, what's marked as Exhibit Number 9.

10 And we figured it would be better to do that  
11 than to have 23 different exhibits of attachments and  
12 tables, so --

13 JUDGE CLIFTON: This is a tremendous amount of  
14 material.

15 MR. HILL: Yes, it is.

16 BY MR. HILL:

17 Q. So, Ms. Warren, I believe you do have your  
18 statement which you have marked as Exhibit -- we had  
19 marked as Exhibit 8. You can proceed whenever you're  
20 ready.

21 STATEMENT OF LORIE WARREN

22 A. Okay. I will try to read slowly.

23 My name is Lorie Warren. I am Chief of the  
24 Market Information Branch, MIB, of the Agricultural  
25 Marketing Service, AMS, of the United States Department

1 of Agriculture, USDA.

2 I have a bachelor's and master's degree in  
3 Agricultural Economics from the University of Tennessee.  
4 After graduation, I worked for five years for AMS as an  
5 auditor in the Federal Order 5 Appalachian Marketing  
6 Area. I then worked for five years for the National  
7 Agricultural Statistics Service, and that's capital  
8 N-A-S-S, in the New England field office as a  
9 statistician preparing regional dairy, cattle, and crop  
10 statistics. After that I worked for NASS for two years  
11 in headquarters in DC compiling the National Dairy  
12 Products Report. I have worked for AMS in MIB for the  
13 last three years coordinating the Dairy Products  
14 Mandatory Reporting Program, DPMRP, and national level  
15 Federal order statistics.

16 The data in the following exhibits were  
17 compiled at the request of Dairy Farmers of America,  
18 Inc., Land O'Lakes, Inc., and California Dairies, Inc.,  
19 hereinafter "Cooperatives" -- and I believe we just  
20 marked those as Exhibit 9 -- and the Dairy Institute of  
21 California. The USDA data were prepared by me or a data  
22 committee of economists from each Federal order office  
23 selected to assemble data for their individual order.  
24 All of the data was compiled under my supervision and  
25 are not presented for or against any proposal.

1           JUDGE CLIFTON: All right. I'm going to stop  
2 you there, Ms. Warren.

3           Who is the keeper of the record copies? Good.  
4 I want you to look at this Exhibit 8 and write right on  
5 Exhibit 8 in the second paragraph, you have the bank  
6 where it says "marked as Exhibits," strike the "s" and  
7 just insert the 9, so that will read "marked as Exhibit  
8 9." And then that sentence continues, "and the Dairy  
9 Institute of California," and again you'll make the same  
10 change, "marked as Exhibit 9." And that should be noted  
11 on both record copies. Thank you.

12           Ms. Warren, you may proceed.

13           THE WITNESS: Thank you.

14           The following tables were compiled at the  
15 request of the Cooperatives.

16           Attachment A shows the formula for the  
17 Advanced Prices and Pricing Factors and the Monthly  
18 Class and Component Prices. These are mathematical  
19 representations of Chapter 7 of the Code of Federal  
20 Regulations, CFR, Section 1000.50.

21           JUDGE CLIFTON: Excuse me. Go ahead and read  
22 the number exactly as it shows.

23           THE WITNESS: 7 CFR 1000.50.

24           JUDGE CLIFTON: All right. I think rather  
25 than Chapter 7, I think that would be Title 7.

1 THE WITNESS: Oh, Title 7, excuse me.

2 Do you need a drink?

3 JUDGE CLIFTON: Oh, no, thanks. I've got --  
4 I'm going to have to take one of my Fisherman's Friends.

5 You may proceed.

6 THE WITNESS: Okay.

7 Attachment B explains the reporting criteria  
8 for the National Dairy Products Sales Report, NDPSR, in  
9 accordance with 7 CFR 1170, 1170.

10 Tables 1 and 2 display the class prices and  
11 underlying commodity prices for both the Announcement of  
12 Advanced Prices and Pricing Factors, Table 1, and the  
13 Announcement of Class and Component Prices, Table 2.  
14 These prices are derived based on the current product  
15 price formulas located in 7 CFR 1000.50. The advanced  
16 prices and pricing factors are released at 3:00 o'clock  
17 p.m. eastern time no later than the 23rd of the  
18 preceding month. The class and component prices are  
19 released at 3:00 o'clock eastern time no later than the  
20 5th of the following month.

21 Table 3 displays the current Class I  
22 differentials by state, as well as the adjustments  
23 contained in the Appalachian, 5, Southeast, 6, and  
24 Florida, 7, orders.

25 Tables 4 and 5 are the list of Pool



1 Distributing Plants, Table 4, and Pool Supply Plants,  
2 Table 5, by state, county, and Order.

3 Table 6 contains the Monthly Mailbox Prices,  
4 in dollars per hundredweight for January 2000 to  
5 May 2015.

6 Table 7 shows the Component Tests by Order for  
7 January 2000 through June 2015. These are only shown  
8 for the orders in which component pricing is used, so it  
9 excludes the Appalachian, 5, Southeast, 6, Florida, 7,  
10 and Arizona, 131, Orders.

11 Table 8 shows the butterfat tests for the  
12 Orders in which component prices -- component pricing is  
13 not used, i.e., Orders 5, 6, 7, and 131. These tests  
14 are the weighted market averages of producer milk pooled  
15 each month based on test results submitted by Market  
16 Administrator, Cooperatives, or outside laboratories.

17 Table 9 shows the Total Pounds of Eligible  
18 Milk Pooled, Eligible Milk Not Pooled, and the Pounds of  
19 Eligible Milk Not Pooled for the Upper Midwest Order 30,  
20 for January 2000 through July 2015. Other orders were  
21 not included due to confidentiality.

22 The following tables were compiled at the  
23 request of the Dairy Institute of California, DIC.

24 Table 10 shows the Total Dumped Milk Pounds  
25 Pooled by Order for January 2000 through July 2015.

1                   Table 11 displays the Producer Milk  
2 Utilization by Class and by Order for January 2000  
3 through July 2015.

4                   Table 12 shows the Class I Utilization  
5 Percentage of Producer Milk by Order for January 2000  
6 through June 2015.

7                   Table 13 shows the Pool Distributing Plant  
8 Qualifying Route Disposition as a percentage of Physical  
9 Receipts by Order for January 2000 through June 2015.

10                  Table 14 shows the Pool Distributing Plant  
11 Qualifying In-Area Route Sales as a Percentage of Total  
12 Sales by Order for January 2000 through June 2015.

13                  Table 15 displays the Pool Supply Plant  
14 Shipping Percentages of Total Receipts by Order for  
15 January 2000 through June 2015.

16                  Table 16 shows the Diversion Limits as a  
17 Percentage of Producer Receipts by Order for  
18 January 2000 through June 2015.

19                  Table 17 displays the Pool Distributing Plant  
20 Receipts of Transferred Bulk Milk Pounds by Order for  
21 January 2008 through June 2015.

22                  Table 18 displays the Total 7(a) and 7(b)  
23 Plants with Excess Shrinkage in All Orders for  
24 January 2009 through June 2015, as well as the pounds  
25 involved in the calculation of excess shrinkage.

1           Table 19 shows the Uniform Prices by Order for  
2 January 2000 through June 2015.

3           Table 20 shows the Producers That Do Not Meet  
4 the Small Business Definition for June 2015.

5           I was also asked to review the Mailbox Price  
6 calculation in response to a request from Dairy Farmers  
7 of America, DFA. The Mailbox Price is defined as the  
8 net price received by producers for milk including all  
9 payments received for milk sold and deducting costs  
10 associated with marketing the milk.

11           Included in all payments for milk sold are:  
12 Over-order premiums, quality, component, breed, and  
13 volume premiums; payouts from state-run over-order  
14 pricing pools; payments from superpool organizations or  
15 marketing agencies in common; payouts from programs  
16 offering seasonal production bonuses; and monthly  
17 distributions of cooperative earnings. Annual  
18 distributions of cooperative proffer -- profits slash  
19 earnings or equity payments are not included.

20           Included in costs associated with marketing  
21 milk are: hauling charges; cooperative dues;  
22 assessments; equity deductions slash capital retains,  
23 and reblends; the Federal milk order deduction for  
24 marketing services; Federally-mandated assessments such  
25 as the National Promotion Program and budget deficit

1 reduction; and advertising slash promotion assessments  
2 above the national program level. Others deductions  
3 such as loans, insurance or feed mill assignments are  
4 not included.

5 For all markets, the mailbox price is reported  
6 at the handlers' average butterfat test, i.e., no  
7 adjustment to 3.5 percent.

8 The Market Administrators collect the  
9 information and calculate prices relative to their  
10 reporting areas, then submit to MIB. MIB then combines  
11 the data and publishes a weight average. CDFA  
12 calculates their mailbox price using our methodology and  
13 submits monthly to MIB to include in the Mailbox  
14 publication, as per usual practice.

15 DIRECT EXAMINATION

16 BY MR. HILL:

17 Q. So, Ms. Warren, do the tables you present here  
18 represent the entirety of the data request you received  
19 from either the Cooperatives or the Dairy Institute of  
20 California?

21 A. They do. For USDA data. They do not include  
22 CDFA data or ERS or NASS data.

23 Q. So it wouldn't include data that was  
24 confidential?

25 A. And it would not include data that was

1 confidential.

2 Q. Are you here to answer any questions about the  
3 CDFA data?

4 A. I am not.

5 Q. So the tables you are entering here complete  
6 the data request from the Cooperatives and the Dairy  
7 Institute of California?

8 A. Yes.

9 Q. Have these documents been available to the  
10 public before the hearing began?

11 A. Yes, they were on our website.

12 Q. Have you received any data core request from  
13 any other entities?

14 A. Yes.

15 Q. What entity would that be?

16 A. Ponderosa Dairy.

17 Q. Okay. So can you look at the last table of  
18 Exhibit Number 9, which is table 21. You didn't mention  
19 that in your statement, so can you explain what that is?

20 A. Yes. Table 21 is the Number of Partially  
21 Regulated Distributing Plants using 76(a), 76(b), or  
22 76(c) for All Orders for January 2009 through July 2015.

23 Q. And did Ponderosa request data from CDFA?

24 A. They requested data for -- from CDFA through  
25 us.

1 Q. Okay. And to your knowledge, would that be  
2 posted online at some point?

3 A. I believe that's yes.

4 MR. HILL: Your Honor, we will be taking  
5 official notice of that area of their website. We're  
6 trying to put together an exhibit for that so we're not  
7 going to do that at this time.

8 That's all I have for now.

9 And if there are no objections, I would ask  
10 that this be entered as an exhibit, Exhibits 8 and  
11 Exhibits 9.

12 JUDGE CLIFTON: Let me ask first if anyone  
13 wishes to question Ms. Warren before determining whether  
14 you have any objection to the admission into evidence of  
15 Exhibit 8 or Exhibit 9. I see no one.

16 Is there any objection to the admission into  
17 evidence of Exhibit 8? There is none.

18 Exhibit 8 is admitted into evidence.

19 (Whereupon Exhibit 8 was admitted  
20 into evidence.)

21 JUDGE CLIFTON: Is there any objection to the  
22 admission into evidence of Exhibit 9? There is none.

23 Exhibit 9 is admitted into evidence. And it  
24 includes tables through 21.

25

1 (Whereupon Exhibit 9 was admitted  
2 into evidence.)

3 JUDGE CLIFTON: Will you have specific  
4 questions for Ms. Warren, Mr. Hill?

5 MR. HILL: Okay. So I have a -- Brian Hill.

6 BY MR. HILL:

7 Q. I do have a question here.

8 From the implementation date of the  
9 Oregon/Washington Marketing Area adopted pursuant to 34  
10 Fed Reg 17703 on October 31st, 1969, what time period  
11 elapsed before the Oregon Department of Agriculture  
12 stopped administering the separate quota plant  
13 authorized by the USDA on October 31, 1969?

14 A. The Milk Stabilization Division of the Oregon  
15 State Department of Agriculture discontinued their quota  
16 program on December 31st, 1987, which would be an  
17 elapsed time of approximately 18 years and two months.

18 Q. And that question was given by Ponderosa --

19 A. Correct.

20 Q. -- to your knowledge?

21 Thank you.

22 I have no further questions, Your Honor.

23 JUDGE CLIFTON: Thank you, Mr. Hill. Whom  
24 would like to be the first person to question Ms.  
25 Warren? I wish all of you could see this from my

1 vantage point.

2 Mr. Beshore, you looked at your watch. Are  
3 you thinking we should have lunch first?

4 MR. BESHORE: I think it would be an excellent  
5 time.

6 JUDGE CLIFTON: I think you're right.

7 Now, I need to know what your experience was  
8 yesterday with regard to whether you need more than an  
9 hour today. I realize this is a lot of people to inject  
10 into Old Town Clovis who don't normally have this many.

11 MR. ENGLISH: Why don't we try an hour and 15,  
12 and then we can see how that works rather than saying an  
13 hour and getting it wrong. But, you know, my suggestion  
14 is an hour and 15.

15 MR. BESHORE: I agree.

16 JUDGE CLIFTON: All right. Does anyone object  
17 to that? No one does. Please be back and ready to go  
18 back on record at 1:25. 1:25, please.

19 (Whereupon a lunch break was taken.)

20 JUDGE CLIFTON: We're back on record. It's  
21 1:29.

22 Ms. Warren, you may take the witness stand  
23 again.

24 What we were talking about up here is a  
25 preliminary issue that we'll address when Dana Coale has



1 arrived. We'll probably address it tomorrow morning.  
2 It's the issue of whether a potential government  
3 shutdown affects us and how.

4 Mr. Beshore, are you still willing to be the  
5 first person to question?

6 MR. BESHORE: I'm willing.

7 JUDGE CLIFTON: I know it's -- you know, it's  
8 never easy to be the first because everyone else is  
9 taking notes on all the issues while you're up here, but  
10 because I'll allow you to go again, I don't think you're  
11 harmed.

12 MR. BESHORE: Right. I don't -- I don't feel  
13 harmed.

14 CROSS-EXAMINATION

15 BY MR. BESHORE:

16 Q. Good afternoon, Ms. Warren.

17 A. Good morning.

18 Q. Thank you for providing all the information  
19 that you have at our request and at the request of  
20 others. And I only really have, in this time around,  
21 probably a relatively few questions.

22 So going to Exhibit 9, the first document,  
23 Attachment A, a simple question, is this a document  
24 that -- that has previously been published by AMS Dairy  
25 Programs or was it specially prepared for this event?

1           A.    It -- yes to both.  It was specially prepared  
2 for this event, but these formulas and the terms and  
3 definitions are published every month in the -- both the  
4 Announcement for Advance Prices and Pricing Factors as  
5 well as the Announcement for the Monthly Class and  
6 Component Prices.

7           Q.    Okay.  And so what portion -- what part of it  
8 was specially prepared then?

9           A.    Basically I copied it from those publications  
10 and pasted it into this document.

11          Q.    Okay.  So to the -- as a -- as a regularly  
12 published document, it represents the -- the Agency's  
13 official statement with respect to the -- how the --  
14 what the language of 7 CFR Section 1000.50 means?

15          A.    Correct.

16          Q.    Now, going to Attachment B.

17          A.    Okay.

18          Q.    First of all, can you -- you maybe just  
19 elaborate a little bit in terms of your responsibility  
20 as Director of the Marketing Information Branch?  Did I  
21 get that right, is that --

22          A.    It's the Chief of the Marketing --

23          Q.    Chief of the Marketing Information Branch.  
24 Your responsibility with respect to the National Dairy  
25 Products Sales Reports?

1           A.    Yes.  This report is published weekly by my  
2 department, and I oversee the compilation of the data  
3 and the publishing of the report.

4           Q.    Who -- is the report -- is the report prepared  
5 and published according to a statute that requires  
6 mandatory reporting of this information?

7           A.    Yes, Chapter 11 -- or Title -- Title 7,  
8 Section 1170 of the CFR.

9           Q.    Okay.  So who is required to report to USDA in  
10 order -- the raw data that you compile for the weekly  
11 report?

12          A.    Any handler or plants that produce a million  
13 pounds or more of qualifying reportable sales annually.  
14 So they -- you know, depending -- it would be butter,  
15 salted butter, cheddar cheese in 40-pound blocks,  
16 cheddar cheese in 500-pound bales, dry whey, and nonfat  
17 dry milk, if they have products that meet the  
18 specifications of the survey of those and they have a  
19 million pounds or more of qualifying sales, they are  
20 required to report to us.

21          Q.    Okay.  Of what -- what period of time does the  
22 million pounds of reportable sales apply to?

23          A.    Annually, so January through December of the  
24 prior year.

25          Q.    Okay.  Does that mean that the reporters --

1 the reporters, say, for 2015 are determined on the basis  
2 of those plants' sales during the calendar year 2014?  
3 Or is it -- or is there a rolling year basis? Or how  
4 does that work?

5 A. It's primarily that, it depends on the order.  
6 They have the flexibility to -- if -- when they go out  
7 and conduct the Annual Validation Survey that is used to  
8 determine whether or not a plant meets these  
9 qualifications, they will sometimes look at the year  
10 prior to the date that they are there.

11 Q. And so who conducts the Annual Validation  
12 Survey?

13 A. Primarily it's the auditors in each individual  
14 federal order.

15 Q. Okay. So they're responsible for order -- for  
16 auditing that by plants in a given geographic area; is  
17 that how it works?

18 A. Correct. So if a plant falls within a  
19 particular order, then that order would be auditing  
20 them. For any plants in unregulated areas, they are  
21 assigned mostly on location closest to the order that's  
22 near them. So California plants, for example, would be  
23 audited by the Northwest Order, primarily, but you know,  
24 it depends.

25 Q. Okay. And so plants are -- are audited and

1 their participation in the mandatory reporting is  
2 validated, and that's irrespective of whether they're  
3 regulated plants, pool plants or --

4 A. Yes, that's correct.

5 Q. -- unregulated?

6 Are the reports -- at -- so annually the  
7 status as to whether the plant is required to report  
8 is -- is validated, I think that's what you described to  
9 me, is that --

10 A. Well, we have a survey that's called an Annual  
11 Validation Questionnaire, and it -- you can see a copy  
12 of it on our website. I can't give you the exact  
13 website because they just changed it all. I used to be  
14 able to say it was AMS dot US backslash dairy, but --

15 Q. I think some of us have experienced that.

16 A. Something. I can get that for you  
17 specifically after a break, but I don't know it off the  
18 top of my head, but that questionnaire is available  
19 online for your reference.

20 And so an auditor will go out and visit with  
21 the plant, and we ask that the plant manager and the  
22 person that would be responsible for the reporting and  
23 any other people that the plant chooses would be in that  
24 meeting, and then they go through the questionnaire line  
25 by line and verify whether or not they meet the

1 qualifications based on that questionnaire.

2 Q. Okay. Now, is there an auditing process to  
3 which the weekly reports are subject?

4 A. Yes.

5 Q. Can you describe that, please?

6 A. According to the statute, the -- they are --  
7 it says -- and I don't know the exact language, but  
8 they're required to be audited for this, it's quite  
9 different, but so for plants that comprise 80 percent of  
10 the national report, they are required to be audited  
11 every year, and the other 20 percent are required to be  
12 audited at least every other year.

13 Q. And is that -- that auditing done by the same  
14 staffs of the Market Administrators Offices that do the  
15 annual validation --

16 A. Yes, they are.

17 Q. -- audit?

18 Okay. The data which is published weekly,  
19 is -- is published in terms of national average prices;  
20 is that correct?

21 A. Weighted average prices.

22 Q. Weighted average prices, yes.

23 Do you publish any regional data?

24 A. No.

25 Q. Are you able to publish any regional data?

1           A.    We cannot publish regional because it could  
2 reveal confidential information.

3           Q.    And does that apply to all of the products  
4 which are subject to mandatory reporting?

5           A.    Yes, it does.

6           Q.    Do you publish or are you able to identify  
7 just by number the number of participants in any  
8 geographic region?

9           A.    No, we cannot.

10          Q.    Now, you do publish, however, the number of  
11 reporting plants by product on a national basis,  
12 correct?

13          A.    Yes, that's in the report weekly.

14          Q.    Okay.  Is that number done by plant or by  
15 reporting entity?

16          A.    It's done by plant, so I'm going -- off the  
17 top of my head, but I'm pretty sure I'm correct, we say  
18 there's 96 reporting plants nationally, and of those 96  
19 plants, that is an addition of each of the individual  
20 products, but -- so it's each individual product is by  
21 plant, so a reporting entity that may have multiple  
22 products could be counted twice in that 96 or however  
23 many times they report.

24          Q.    Okay.  And if one company had more than one  
25 plant, just hypothetically it had a -- a butter

1 manufacturing plant that was obligated to report and  
2 then it has a nonfat dry milk plant that was a separate  
3 facility that was obligated to report, would that show  
4 up as two plants in the --

5 A. In the total for 96, yes.

6 Q. In the 96?

7 A. And I guess I should also clarify that if a  
8 headquarters report for multiple plants, that would only  
9 be listed as one. So if somebody had 18 plants but they  
10 compile everything together, those 18 plants would only  
11 be considered as one.

12 Q. Is that -- does that occur?

13 A. It could.

14 Q. Do you know whether it does?

15 A. I -- it does, yes.

16 Q. Okay. So that when -- when you say 96 plants,  
17 does that -- there would be by definition, if I  
18 understand your last answer, more than 96 physical  
19 facilities represented in that data set?

20 A. It's probably more accurate to say 96 plants  
21 and/or entities reporting.

22 Q. Okay. Do you know how many physical plants  
23 are included in the data set?

24 A. Not off the top of my head. And I do not  
25 believe that we could provide that because it could



1 reveal confidential information.

2 Q. Could you provide it for any of the product  
3 categories?

4 A. I will err on the side of saying no, because  
5 we're covered under regulations that provide  
6 confidentiality for this report.

7 Q. Okay. And is that confidentiality, which is  
8 quite expansive, if I could describe it -- if I describe  
9 it that way on the basis of your testimony, is that --  
10 is that based in part on the volume criteria, the fact  
11 that there's a volume criteria for these facilities?

12 A. It could be. So most of our confidentiality  
13 is determined by there must be three or more plants or  
14 entities reporting, and no one of those could have the  
15 majority of the volume. So it could be one or the  
16 other, there could be less than three plants. Obviously  
17 not when you look at the report, but, you know, there  
18 could be in some of the other data that we're talking  
19 about, or the volume would be high for one of those.

20 Q. Are you able to state whether in any given  
21 state there are or are not reporting entities?

22 A. No, we cannot.

23 Q. Okay. That's fine. Let me go on to just a  
24 couple of other -- couple of other questions about your  
25 exhibits, then.

1                   Table 3, which is 40 pages, if you go to page  
2 3.

3           A.    Page 3 of 43?

4           Q.    Page 3 of 43.

5           A.    Oh, of Table 3.  Thank you.  I have lunch  
6 brain.

7           Q.    Table 3, page 3 of 40.  Okay.  Do you have  
8 that page?

9           A.    Yes, I do.

10          Q.    Okay.  Now, that lists -- these are Class I  
11 differentials in the Federal order system; is that  
12 correct?

13          A.    Yes.

14          Q.    And they are part of what, part of 1000 in  
15 the --

16          A.    1000.52.

17          Q.    1000.52.  Okay.  Now, on -- on the page 3 of  
18 40, there are a number of entries listed for California,  
19 correct?

20          A.    That's correct.

21          Q.    Okay.  Since there's no Federal order in  
22 California, are those -- are those differential -- are  
23 those -- why are there -- why are their prices  
24 in California, if you know?

25          A.    I would need to confer with my colleagues --

1 Q. Okay.

2 A. -- on that.

3 Q. Can you tell me if a plant in California is  
4 partially regulated under a Federal milk order, would  
5 this -- a Class I plant, would -- would the  
6 differentials applicable to their county, parish, or  
7 city apply for purposes of -- of pricing under the  
8 Federal order? Do you know?

9 MR. HILL: Your Honor.

10 MS. TAYLOR: Can I --

11 JUDGE CLIFTON: Ms. -- Mr. Hill.

12 MS. TAYLOR: Well, this is Erin Taylor, I'm --

13 JUDGE CLIFTON: All right.

14 MS. TAYLOR: -- sorry.

15 We're going to have a witness on -- come on  
16 the stand at some point in the next day or two to  
17 discuss partially regulated plants. Ms. Lorie --  
18 Ms. Lorie. Ms. Warren, she doesn't work in Federal  
19 orders so she can't speak to those things. We will have  
20 a witness that can talk about that.

21 MR. BESHORE: Fine. Thank -- thank you very  
22 much.

23 BY MR. BESHORE:

24 Q. Let me -- let me go, then, to Table 6, which  
25 are the table of monthly mailbox prices. And I think I

1 have just one question. You elaborated on this  
2 information and how it's compiled in your testimony. I  
3 appreciate that.

4           There are -- there are footnotes at the end,  
5 which is page whatever the last page of Table 6, 12 of  
6 12, which -- some of the columns are footnoted but not  
7 all, and so my question is with respect to the -- the  
8 states that are listed for which, you know, there's no  
9 footnote explanation beyond the label, what universe of,  
10 you know, of milk is included in the data for those  
11 states? Just take the state of Wisconsin, for instance.

12           A. This data is compiled by economists and  
13 statisticians in those orders, and so they are the ones  
14 that determine their area that they are reporting to us,  
15 and it would be my understanding, but I can't speak to  
16 this directly, but it would be, you know, if it says  
17 Wisconsin, it's for the state boundary of Wisconsin. So  
18 it would be for the producers that are located within  
19 Wisconsin.

20           Q. And the same would apply to the other -- the  
21 other states?

22           A. Yes, the same.

23           Q. Okay. I have no further questions at this  
24 time. Ms. Warren, thank you, I'm finished.

25           A. Thank you.

1 JUDGE CLIFTON: Ms. Warren, did -- this is  
2 Judge Clifton.

3 Ms. Warren, did you want to add anything based  
4 on the questions you've been asked to far?

5 THE WITNESS: No.

6 JUDGE CLIFTON: All right. I wanted to spell  
7 Dana Coale for the court reporter. I mentioned her  
8 name. D-A-N-A. C-O-A-L-E.

9 Who will be the next questioner?

10 CROSS-EXAMINATION

11 BY MR. ENGLISH:

12 Q. Chip English.

13 Good afternoon.

14 A. Good afternoon.

15 Q. We do appreciate this volume of documents,  
16 although someone near me suggested that that -- that we  
17 ain't seen nothing yet, so --

18 I -- actually my colleague, Ashley Vulin, and  
19 I together on behalf of the Dairymen of California  
20 submitted a letter to William Francis, Dairy Programs,  
21 back on July 8th, 2015.

22 A. Correct.

23 Q. Are you familiar with that letter?

24 A. Yes.

25 Q. You've seen it?

1 A. I have it in front of me.

2 Q. Terrific. So --

3 JUDGE CLIFTON: Thank you.

4 MR. ENGLISH: Two for --

5 JUDGE CLIFTON: Will you be marking this --

6 MR. ENGLISH: Yes.

7 JUDGE CLIFTON: -- as an exhibit?

8 MR. ENGLISH: Yes, Your Honor. I've handed  
9 two to Meredith, I've handed one to the court reporter,  
10 one to you, the witness says she has one, although I  
11 guess I should give her one. I apologize.

12 JUDGE CLIFTON: Yes, you should give her one  
13 of yours, she can compare then, make sure it looks like  
14 hers.

15 This is Judge Clifton. Is this Exhibit 10?

16 MR. ENGLISH: That would be my request. I  
17 believe that's correct, I think.

18 MS. FRISIUS: Correct.

19 MR. ENGLISH: I believe it should be 10.

20 (Whereupon Exhibit 10 was marked for  
21 identification.)

22 JUDGE CLIFTON: Now, while copies are being  
23 made so that everyone who needs one will have it, I'd  
24 suggest we wait just a minute. That gives people who do  
25 have a copy the opportunity to read through it.

1           Is -- is everyone prepared for us to go  
2 forward now even though you may want another copy for  
3 your group?

4           It appears we're good to go, Mr. English.

5           MR. ENGLISH: Thank you.

6 BY MR. ENGLISH:

7           Q.    So, Ms. Warren, what has been handed to you is  
8 Exhibit 10. Does that document look like -- look to be  
9 identical to the document that you had received?

10          A.    Yes, I believe it is.

11          Q.    So for the record, it's a five-page letter  
12 dated July 8th signed by me and Ashley Vulin on behalf  
13 of the Dairy Institute of California.

14                So what I really want to do is sort of try to  
15 cross reference --

16          A.    Sure.

17          Q.    -- what's been provided against the letter,  
18 and by your own comments that some information was not  
19 provided because it might have been native from ERS or  
20 NASS, or for that matter California, which is going to  
21 come separately, I just wanted to try to line things  
22 up against --

23          A.    Sure.

24          Q.    -- this. And actually as it happens, the  
25 other thing that -- the very first one, number one is

1 eligible milk not pooled. I'm guessing there's some  
2 duplication in requests, not surprising between the  
3 cooperatives and us, because you have Table 9 listed in  
4 response to the question of the Cooperatives as being  
5 the total Pounds of Eligible Milk Pooled, Eligible Milk  
6 Not Pooled, and the Pounds of Eligible Milk Not Pooled  
7 for the Upper Midwest Order, correct?

8 A. Correct.

9 Q. And that you indicate that you're unable to  
10 provide the information for other orders because of  
11 confidentiality?

12 A. That's correct.

13 Q. So even though you've listed Table 9 as being  
14 responsive to the Cooperative's request, it's also fair  
15 to say it's your response to our question -- or our  
16 request one, correct?

17 A. Yes, that's correct.

18 Q. And then our request two, Volume of Dumped  
19 Milk by Federal Order appears to me to be Table 10?

20 A. That's correct.

21 Q. And my next request, number three, Class I  
22 usage by FMMO, capital F-M-M-O, since 1990, and then  
23 also Class II, III, IV usage by FMMO since -- it says  
24 199, but obviously intended to be 1990.

25 First, going back to testimony we've heard I



1 think earlier, because of Federal order reform, you  
2 basically start in 2000 and not earlier, correct?

3 A. That's correct.

4 Q. So are Tables 11 and 12 responsive to request  
5 three? Would that match up?

6 A. For the most part. Table 11 was more for  
7 yours, and I believe Table 12 was in part in a separate  
8 question, number six.

9 Q. Okay. Fine.

10 A. So it was -- you know, it's -- it's duplicated  
11 data for the most part, but it was trying to be  
12 responsive to your request.

13 Q. All right. So -- so six -- six had been  
14 subsumed -- three and six might have been together and  
15 they ended up with 11 and 12, Tables 11 and 12. Would  
16 that be --

17 A. Yes.

18 Q. All right. Request number four, USDA cost  
19 production by state and by year 2000 to 2014, from ERS  
20 if necessary. So this would be an example of data that  
21 you did not provide?

22 A. That is correct.

23 Q. To your knowledge, is it publicly available  
24 from ERS?

25 A. Yes, I believe it is on their website.

1 Q. Request number five, Spot milk sales below  
2 class as reported in Dairy Market News since 2000. And  
3 I have some questions. I do not see that --

4 A. Right.

5 Q. -- response.

6 A. This one we do not retain that information,  
7 and it's published and then not kept anywhere, so  
8 it's -- you know, if you wanted to go dig through the  
9 weekly report, it might be in there, but we could not  
10 compile that because it's not retained anywhere.

11 Q. So let me just review that. I think I know  
12 what you're saying, but there's a record here and  
13 somebody may be reading it some day that doesn't know  
14 these things. Dairy Market News collects information  
15 from a number of sources every week, correct?

16 A. Yes.

17 Q. And then that information gets published in a  
18 very fairly lengthy publication available on the website  
19 and otherwise sent to interested parties, maybe it's not  
20 still done that way, but basically you publish that  
21 information, correct?

22 A. Correct.

23 Q. And after that information is corrected -- is  
24 published, it is my understanding that the interview  
25 notes and any information that was created to create

1 that report is immediately or almost immediately  
2 destroyed?

3 A. That's correct.

4 Q. But nonetheless, the Dairy Program News would  
5 be available?

6 A. Yes, on the website.

7 Q. Is it available on the website now? Is it --  
8 is it linked now?

9 A. I believe it is now. I believe their -- their  
10 website is almost fully the way it used to be, but --

11 Q. All right. I'm -- I'm not sure, I'm still  
12 missing a few things, but that's okay. So I think we've  
13 covered request six with respect to our discussion on --  
14 earlier on request three.

15 Request seven was supply plant shipping  
16 percentage and aversion limit percentage for each order  
17 by month since 2000.

18 A. That would be Tables 15 and 16.

19 Q. That's what I had listed.

20 A. And also to clarify on number six that was  
21 separated out in part, so it's Tables 12, 13, 14 --

22 Q. Thank you.

23 A. -- all relate to request six.

24 Q. So 13 -- 12, 13, and 14 sort of combined would  
25 respond to six, and then also, as you said, 12 and 13

1 sort of also go back to request three --

2 A. Correct.

3 Q. -- sort of a overlapping?

4 A. Yes.

5 Q. Request eight, any and all data on the volume  
6 of milk movements of producer milk from producer zone to  
7 urban fluid milk plants? I don't see --

8 A. This one is denied. It would be infeasible to  
9 pull all that data together, and it would reveal  
10 confidential information as well.

11 Q. Leaving aside the infeasible for one moment,  
12 if you combined orders, could you deal with the  
13 confidential issue? Could it be addressed?

14 A. I don't think I could speak to that without  
15 pulling the data together and --

16 Q. I'm not going -- I'm not going to make a  
17 request now about it, I want to discuss this with my  
18 client because I don't want to just make requests for  
19 the purpose of making requests --

20 A. Sure.

21 Q. -- but I'd like to put things sort of on hold  
22 for a moment to see if we can do.

23 JUDGE CLIFTON: Thank you, Mr. English.

24 MR. ENGLISH: But I'm not making a request at  
25 this moment, I'm nonetheless going to try to do

1 something.

2 BY MR. ENGLISH:

3 Q. Number nine, any and all data on the volume of  
4 milk movements of transfer milk from plant of first  
5 receipt to fluid milk plants. Is that covered in Table  
6 17?

7 A. Yes.

8 Q. Ten, and this is from my letter, so the amount  
9 of or the percentage of plants where shrinkage exceeds  
10 the maximum amount allowed to be classified at lowest  
11 class, and I'm going to stop because we've already  
12 talked about this is Table 18 very clearly, right?

13 A. Yes, this is Table 18.

14 Q. 11 and 12 were information about various  
15 questions for the Department, and I think you have  
16 denied those?

17 A. That's correct.

18 Q. What's the basis for the denial of 11?

19 A. USDA did not consider these items as part of  
20 the data request. The requester is instructed that if  
21 they wish to pursue obtaining the information that they  
22 file a Freedom of Information request through AMS.

23 Q. Is that also true of 12?

24 A. Yes.

25 Q. Number 13, mailbox prices for FMMO reporting

1 areas and California, so we leave California aside for a  
2 moment. This would be conceivably duplicative of Table  
3 6 for the Cooperative's again?

4 A. Yes, that's correct.

5 Q. And that as of California, that is information  
6 that's provided to be collateral in the California  
7 website; is that correct?

8 A. Well, we do publish a mailbox price for  
9 California --

10 Q. Oh.

11 A. -- in --

12 Q. Is that -- is that in Table 6?

13 A. It is in Table 6.

14 Q. It is in Table 6, I'm sorry, I didn't see it,  
15 I apologize.

16 A. It's probably in the Table 6 continued, it's  
17 the very last column on -- where it says, "Table 6  
18 continued," so that would be pages 7 through 12 of Table  
19 6.

20 Q. I see it's on the last column.

21 A. And it's the last column, correct.

22 Q. So actually that question is responded to in  
23 its entirety, except I have a few questions about that,  
24 but okay.

25 Number 14, for FMMO marketing orders and

1 California, average 35 -- 3.5 percent blend prices,  
2 average prices at average tests, and the butterfat,  
3 protein, and total SNF tests, where available.

4 A. So that was -- Table 19 is partly in response  
5 to that, and that's the average 3.5 percent blend  
6 prices. The average prices at average test, we did not  
7 provide that, but the information was provided one week  
8 in advance that you could run those calculations  
9 yourself. And then the butterfat, proteins, and solid  
10 nonfat test are in Tables 7 and 8, which were also in  
11 response to the Cooperative.

12 Q. So let me just go back to the -- I mean, I  
13 agree I got these materials ahead of time, and I'm not  
14 sure when I got them, maybe there's an e-mail and I  
15 missed something. So what you're saying is because you  
16 provided the information with respect to -- I'm sorry,  
17 you provided that testing, you provided at 3.5?

18 A. At 3.5.

19 Q. Okay. And then you're saying we are able to  
20 run it at test?

21 A. If you would choose to do that. We do not  
22 publish that.

23 Q. Okay. So it's just not something -- it's --  
24 data requests of course for data that you already have  
25 and publish, correct?

1 A. Correct.

2 Q. And you're not going to create data  
3 necessarily except to the extent that --

4 A. Correct.

5 Q. All right. But if we want to do that, we're  
6 able to do that. All right.

7 So I'm not going to try to run through every  
8 single one of these. A number of these reports refer to  
9 NASS, and I think that what you're telling us is that's  
10 publicly available data and available on the NASS --

11 A. Yes.

12 Q. -- am I correct?

13 And then when there's a reference, pure  
14 reference to California like number 17, we're either  
15 going to be talking -- California has already put a lot  
16 up there, I think they're still putting things up, if  
17 things like that are out there, that would be  
18 California, correct?

19 A. Yes. Excuse me.

20 Q. So going down, then, to number 22, for each of  
21 the production areas in the previous request, and I  
22 guess maybe there's a plural missing from requests,  
23 please identify for each year the total number of  
24 producers and the number that produced more than  
25 500,000 pounds of milk per month. And that sort of goes



1 to small business, as does 24. Would 22 and 24 be  
2 responded to by Table 20?

3 A. Yes.

4 Q. So on page four of my letter, number 23, for  
5 each of the production areas in the previous requests,  
6 please identify the number of producers by size of dairy  
7 farm as measured by dairy cow numbers, less than 50, 500  
8 to a thousand, a thousand to 2,000, and greater than  
9 2,000. And I don't see a response to that request.

10 A. No. It was our understanding that that was  
11 request -- since it says "for each of the production  
12 areas in the previous requests," we assumed that meant  
13 that it was for California and would be answered by  
14 CDFA.

15 Q. Okay. I will again check with my client  
16 before I -- I think "requests" plural was intended to be  
17 all of them, but I will -- again, I will not -- at the  
18 moment let me confer with my client before I come back  
19 on that. I don't want to, again, just make a request  
20 for the purpose of making a request.

21 MR. ENGLISH: Your Honor, I move the admission  
22 of Exhibit 10.

23 JUDGE CLIFTON: Is there anyone who'd like to  
24 question the witness or question Mr. English before you  
25 determine whether you have any objection to the

1 admission into evidence of Exhibit 10? There is no one.

2 Is there any objection to the admission into  
3 evidence of Exhibit 10? There is none.

4 Exhibit 10 is admitted into evidence.

5 (Whereupon Exhibit 10 was admitted  
6 into evidence.)

7 BY MR. ENGLISH:

8 Q. Let me go back to one that I skipped because I  
9 made an assumption and it ought to be in the record,  
10 number 18, back on page three, and my assumption was in  
11 response to your questions of Mr. Beshore. This says  
12 for 2010 to 2015, the name and location of all  
13 California plants and products made, included in product  
14 price surveys as reported by AMS or NASS, CDFA,  
15 identifying for each the survey in which each plant  
16 participates.

17 A. Right. That's denied because it would reveal  
18 confidential information.

19 Q. All right. That was -- that was my  
20 assumption, but -- but my client is correct, it ought to  
21 be on record, so --

22 All right. Again, that -- that concludes my  
23 exam on Exhibit 10, but not my examination.

24 So let's briefly turn to Attachment B. And  
25 Attachment B is the National Dairy Products Sales

1 Reporting Data which result from, as you indicated, 7  
2 CFR part 1170, correct?

3 A. Yes.

4 Q. And the basis for that is found in the statute  
5 at 7 USC, capital U-S-C, Section 1637 through 1637b; is  
6 that correct, to your knowledge? If you don't know, I  
7 just -- there's a statute -- there's an underlying  
8 statute for dairy product mandatory reporting, correct?

9 A. Yes, that's correct.

10 Q. And the requirement for dairy product  
11 reporting is that the USDA shall establish this program  
12 for products that are used in the Federal Milk Order  
13 Program, correct?

14 A. Yes.

15 Q. And so for instance, the way the statute and  
16 therefore the regulation are written, it doesn't require  
17 the collection of information for any product that is  
18 not included, correct? That is that the statute  
19 actually says that you shall collect the information  
20 with respect to products that are used to establish the  
21 prices in Federal orders, correct?

22 A. Yes.

23 Q. So if there's a product -- so for -- for Class  
24 IV, Roman numeral IV, in the federal program, you  
25 collect data for nonfat dry milk because in the Federal

1 Order, that nonfat dry milk price is the price that is  
2 used to -- to help establish and formulate a Class IV,  
3 correct?

4 A. Correct.

5 Q. But you don't collect on something call SMP,  
6 or skim milk powder, because that product is not  
7 included?

8 A. Correct.

9 Q. Now, 1170, which is the regulation for dairy  
10 product price reporting, was adopted by the Department  
11 in response to the statute, correct?

12 A. Correct.

13 Q. But it's adopted through notice-and-comment  
14 rulemaking, correct?

15 A. Yes.

16 Q. Okay. Which is to say it is not subject to  
17 the same kind of proceeding we're here in today,  
18 correct?

19 A. That's correct.

20 Q. So if as a result of a proposal submitted in  
21 this hearing there were requests to collect the data in  
22 a different way, there's nothing that prevents the  
23 Department from amending 1170, correct?

24 MR. HILL: Your Honor.

25 JUDGE CLIFTON: Mr. Hill.

1 MR. HILL: Brian Hill.

2 I don't think that this witness can speak to  
3 that. I think we're making a little legal conclusion by  
4 her now at this point.

5 JUDGE CLIFTON: I -- I agree with you.

6 I understand what you're doing, Mr. English.  
7 Is there a way different way you could ask it?

8 MR. ENGLISH: I think the point has been made.

9 JUDGE CLIFTON: Well, yeah, you did make your  
10 point. You -- you asked her is there anything that  
11 would stop it. I don't know whether she can answer it  
12 if you asked her is she aware of anything that could  
13 stop it. I don't know.

14 BY MR. ENGLISH:

15 Q. Well, are you aware of anything that could  
16 stop it from being --

17 A. I can't speculate to that.

18 MR. ENGLISH: Thanks anyway, Your Honor.

19 BY MR. ENGLISH:

20 Q. You're aware that CDFA presently collects data  
21 for the CWAP, capital C, capital A, capital A,  
22 capital P. California Weighted Average Price.

23 MR. SCHIEK: You said CAAP.

24 BY MR. ENGLISH:

25 Q. Sorry. CWAP. So you are aware that that data

1 is collected, correct?

2 A. Yes, I am.

3 Q. And it's published, correct?

4 A. Yes, it is.

5 Q. And that is data collected on California  
6 plants only selling nonfat dry milk, correct?

7 A. That's my understanding.

8 JUDGE CLIFTON: Would you tell me again what  
9 that stands for?

10 MR. ENGLISH: California Weighted Average  
11 Price.

12 BY MR. ENGLISH:

13 Q. So turning to -- to the tables, and, again,  
14 partly more for clarity than anything else on some of  
15 these, Table 3, which is the Class I differential, this  
16 is literally taken out of part 1000 as mod -- as  
17 modified in the instance of the Southeast, Appalachian,  
18 Florida orders, correct?

19 A. Yes, Orders 5, 6, and 7.

20 Q. Right. And the column in the middle for Class  
21 I Differential Adjustment, that's for Orders 5, 6, and  
22 7, correct?

23 A. That's correct.

24 Q. For all areas, that's a zero, correct?

25 A. Yes.

1 Q. Turning to Table 6, which we discussed a  
2 moment ago, Mr. Beshore discussed with you with respect  
3 to California, when I looked through this, and I guess  
4 really the second half that -- in a way the first part  
5 half is the Eastern part of the country and the second  
6 half is the Western part of the country, correct, in a  
7 way?

8 A. I guess it could be, it was --

9 Q. Yes.

10 A. -- just --

11 Q. Yeah.

12 A. -- the way we normally publish it as that's  
13 where it looked good to break it on the page.

14 Q. I didn't see data, which I believe is actually  
15 available, back when Utah and Idaho were part of the  
16 Federal order. I believe USDA published mailbox data, I  
17 think in 2000 the data was combined, and then starting  
18 in 2001 the data was broken out through March of 2004  
19 when that order was voted out.

20 A. I -- I can't speak to that, that was before my  
21 time.

22 Q. Well, all right. Well, the time period  
23 covered here and by -- by the request began with 2000,  
24 and so I'm wondering whether we could get supplemented  
25 data or revised table to include the data that I believe

1 is available for 2000 through March of 2004.

2 A. It -- as long as that data was published, we  
3 could get that for you.

4 Q. So I will make that request.

5 MR. HILL: This is Brian Hill.

6 Would you please clarify what you're asking  
7 for so we can --

8 MR. ENGLISH: Sure.

9 MR. HILL: -- get that straight on the record?

10 MR. ENGLISH: Sure. So in our Exhibit 10, we  
11 asked for mailbox prices in number 13, and -- and that  
12 data also I think was asked by the Cooperatives, so  
13 there's -- there's some overlap. And we asked for it,  
14 this is one of the general ones, so from 2000 on. When  
15 I look at Table 6, I do not see data for what was the  
16 Western Order, and I believe that's how it was published  
17 in 2000. And then from the beginning of 20 -- 2001  
18 through March of 2004 when that Order terminated,  
19 through -- through March of 2004 when it was terminated,  
20 you published two columns, one for Idaho and one for  
21 Utah for mailbox prices. And so our request is that to  
22 the extent that data was published and was available in  
23 one column for 2000 and divided out in two columns for  
24 2001, that it be made available so that we have all the  
25 data like we have it for the other geographic areas.



1           Is that clear? I just wanted to make sure,  
2 you asked me, I wanted to make sure.

3 BY MR. ENGLISH:

4           Q.     Turning to Table 9. And this is -- I think  
5 for clarification, we'll see, you've indicated in  
6 response to request for -- question from Mr. Beshore and  
7 also from me that you were not able to publish in your  
8 written statements since that you were not able to  
9 provide data for individual orders other than the Upper  
10 Midwest, correct?

11          A.     That's correct.

12          Q.     But it appears to me that you've nonetheless  
13 provided combined data?

14          A.     Yes.

15          Q.     Okay. So looking -- looking at this, the five  
16 columns, if you took column four, which is eligible milk  
17 not pooled in all orders estimated, and you subtracted  
18 column five, the Upper Midwest, you would then by  
19 arithmetic have all the other orders that had eligible  
20 milk, correct?

21          A.     Correct.

22          Q.     Before I ask the next question, I'm going  
23 to -- I -- I could ask you, but I think I should ask  
24 somebody else, what the treatment of dumped milk is, and  
25 would I be correct that is a question better asked of a

1 market order witness?

2 A. Could you clarify what you mean by  
3 "treatment"?

4 Q. How is it classified by the Federal order?

5 A. It is priced at the lowest class.

6 Q. Oh, okay. I -- forgive me, I -- I made an  
7 assumption based on -- I apologize. So you do know the  
8 answer, and it's based on the lowest class?

9 A. Correct.

10 Q. So let me turn to Table 18. The column for  
11 7(b), Total Skim Pounds Received, Physically Received,  
12 for the month of January 2009, the total is 34,394,744,  
13 correct?

14 A. Correct.

15 Q. And that is milk received by plants that are  
16 pure 7(b) plants, correct?

17 A. That is my understanding.

18 Q. So if there was an ESL -- if there's a plant  
19 or reporting entity that has ESL and non-ESL, that  
20 probably would have been under 7(a)?

21 A. It depends on how they qualify. If -- if they  
22 qualify -- it's my understanding if they meet the  
23 qualifications for 7(a), then that is how they are  
24 counted.

25 Q. Okay. So there could be ESL milk that because

1 it's -- the plant qualifies as an (a) plant is then  
2 under the (a) column rather than the (b) column --

3 A. That's correct.

4 Q. -- is that right?

5 So let's turn to Table 21. And this is  
6 1000.76, partially regulated plants. And I'm not going  
7 to make assumptions like I did earlier and I was wrong,  
8 but obviously if I should ask these questions of  
9 somebody else, please feel free to tell me that.

10 Under 1076(c), is it true that whether there  
11 are any other states, that plants -- fluid milk plants  
12 in California that are partially regulated under the  
13 Federal order are treated as a 1076(c) plant unless they  
14 meet the full regulation requirements of the order,  
15 correct?

16 A. That would be my understanding.

17 Q. Without divulging confidential information,  
18 but just yes or no, are there any plants under (c) that  
19 are plants located in jurisdictions other than  
20 California?

21 A. I can't -- this data was submitted to me by  
22 the economists and the statisticians in the orders, so I  
23 couldn't --

24 Q. Okay.

25 A. -- speculate on that.

1 Q. I didn't make this request, but -- but there  
2 is also provision for, under 1076(d), that maybe a  
3 request wasn't made for that, but --

4 A. Well, it was made for that, but we're not  
5 aware of anyone that falls under 76(d).

6 Q. There's nobody that's ever fallen under  
7 1076(d), to your knowledge?

8 A. Not that I'm aware of, but --

9 Q. That's all my questions. Thank you very much.

10 MR. ENGLISH: I do reserve with the  
11 opportunity, Your Honor, to consult with my client about  
12 those couple items that, again, I don't want to simply  
13 make the request. And of course I am interested still  
14 in either revised or additional Table 6 with respect to  
15 the Idaho, Utah data for the time period that was  
16 available.

17 Otherwise, I am done, and I thank the witness.

18 JUDGE CLIFTON: Thank you. Thank you, Mr.  
19 English.

20 I do admire how you and Mr. Beshore are so  
21 well-prepared for this. Obviously getting it ahead of  
22 time helped.

23 Who else would like to question this witness.  
24 now?

25 ///

1 CROSS-EXAMINATION

2 BY MR. VETNE:

3 Q. John Vetne for Hilmar Cheese.

4 Let's see. I think it was Exhibit 10, request  
5 18 included a request for a list of plants, products, so  
6 forth; is that correct? Do you see that?

7 A. A list of the plants that were included in the  
8 Product Price Survey.

9 Q. Is -- is that -- the request is longer than  
10 that, but is that where the confidentiality provision  
11 kicked in?

12 A. Yes.

13 Q. So whatever come after that, even though you  
14 might have been able to provide it, you stopped with the  
15 start of the question because the plants that  
16 participate are not publicly known or publicly available  
17 to anybody?

18 A. Correct.

19 Q. Got it.

20 But with respect to the -- if we can go back  
21 to the question that Chip English asked, AMS now and  
22 NASS in the past, provides surveyed information on  
23 average prices at which, for example, NFDM products  
24 sell, correct?

25 A. Correct.

1 Q. And -- and -- and you do so because the price  
2 formula in the Federal order says here's the price of  
3 milk, you take NFDM, you subtract the make allowance and  
4 whatever else it is, it's part of the formula, correct?

5 A. That's correct.

6 Q. That's why you do it. So if -- if the federal  
7 order were to change and say, okay, we're going to take  
8 the average price for whole milk powder or -- or skim  
9 milk powder or whatever product is put in there, it  
10 would be your obligation to find plants that make it and  
11 survey a price?

12 MR. BESHORE: Object. That's -- that's asking  
13 for a legal -- that's asking --

14 JUDGE CLIFTON: You are?

15 MR. BESHORE: Marvin Beshore, sorry.

16 That's asking the witness to make a legal  
17 conclusion or a legal interpretation of the statutes and  
18 regulations, to which Mr. Hill had objected previously  
19 when Mr. English was questioning her. I object to  
20 asking for that kind of information from the witness, I  
21 mean, she -- it's not appropriate, she can't give it,  
22 and you know, what's it worth from her?

23 JUDGE CLIFTON: Mr. Beshore, stay there,  
24 please. It seemed logical to me the answer would be  
25 yes. How is that a legal question rather than a

1 common-sense question?

2 MR. BESHORE: The question was whether -- how  
3 the statute for mandatory reporting would operate if a  
4 hypothetical, nonexistent regulation under the federal  
5 orders were in place, and I think that's -- you know,  
6 that's a legal question. It's asking for an  
7 interpretation of how the statute would -- would  
8 operate.

9 JUDGE CLIFTON: Does the statute itself  
10 specify the particular products or does only the  
11 regulation specify?

12 MR. BESHORE: I don't have it in front of me,  
13 so I -- so I don't know.

14 JUDGE CLIFTON: Then I guess it is a legal  
15 question. All right. Thank you, Mr. Beshore.

16 Mr. Vetne, any -- any response to  
17 Mr. Beshore's objection?

18 MR. VETNE: Yeah, I think it's an important  
19 distinction in the statute, which -- and I didn't -- my  
20 question did not ask about the statute. My question  
21 asked about AMS protocol in relation to regulations that  
22 they promulgate.

23 JUDGE CLIFTON: In that case, the objection is  
24 sustained.

25 ///

1 BY MR. VETNE:

2 Q. Does AMS -- apart from who participates in the  
3 survey, does AMS apply a confidentiality rule to  
4 revealing what products are made at certain plants?

5 A. Can you repeat the question again, please?

6 Q. Yeah. Forget the -- who participates in the  
7 survey question. If -- if AMS is asked, well, about,  
8 you know, how many plants make cheddar cheese, where are  
9 they located, would -- would that raise a  
10 confidentiality issue in your experience?

11 A. It's possible, but we publish the number of  
12 reporting entities for cheddar cheese in the Weekly  
13 National Report every week that report on that survey.

14 Q. If -- I'm sorry, I'm talking -- I'm not  
15 talking about survey -- price surveys; I'm talking about  
16 who makes what product. Is there a confidentiality  
17 issue there in AMS?

18 A. If you are asking us to tell you a specific --  
19 what a specific plant manufactures, then yes, that would  
20 be confidential.

21 Q. Okay. Even though it's public knowledge on a  
22 plant code on the product or public knowledge in the IMS  
23 list published by the FDA, AMS applies a different  
24 confidentiality rule to things that are in public  
25 knowledge?



1           A.     Yes, they do.

2                   JUDGE CLIFTON:   Now, I want to go back to your  
3 question and the answers.  You used the word "plants,"  
4 and the witness used the word "entities."  Does that  
5 make any difference with regard to the questions and  
6 answers?

7                   MR. VETNE:   Gee, it might because entities are  
8 multiple plants, so let's make sure we -- we have the  
9 answer as it applies to plants by any entity.

10                   JUDGE CLIFTON:   Could -- could you just start  
11 again?

12 BY MR. VETNE:

13           Q.     Let me ask the witness how she understood the  
14 question.

15           A.     I understood it to ask that you -- if you  
16 asked us what products an individual plant makes --

17           Q.     Yes.

18           A.     -- would we reveal that to you?

19           Q.     Yes.

20           A.     And the answer is no.

21           Q.     Okay.  Thank you.

22                                   CROSS-EXAMINATION

23 BY MS. HANCOCK:

24           Q.     Good afternoon, Ms. Warren.  Can you hear me?  
25                   Nicole Hancock for the Producer Handlers

1 Association and the Ponderosa.

2 I want to talk to you just briefly about Table  
3 21 for Exhibit -- in Exhibit 9. This was prepared in  
4 response to a request from Ponderosa; is that correct?

5 A. That's correct.

6 Q. And -- and it asked for the number of plants  
7 by milk order under 7 CFR 1000.76 sections (a) through  
8 (d)?

9 A. Correct.

10 Q. Okay. And so it -- if I understood you  
11 correctly, this chart identifies (a) through (c) because  
12 those are the ones that you have numbers for, you don't  
13 have any numbers for anyone under (d) because you don't  
14 have any record of any producers that are partially  
15 regulated under subsection (d)?

16 A. That's correct.

17 Q. Okay. And then the request also asked for the  
18 volume that was subject to each election as well as the  
19 state where the plants were located. Were you able to  
20 obtain that information?

21 A. We could not supply that data because it would  
22 reveal confidential information.

23 Q. Okay. So you can't produce that information  
24 in part either or in some collective rolled-up way that  
25 wouldn't reveal any confidential information?

1 A. No, we can't.

2 Q. Okay. And is it -- is it fair to say that the  
3 marketing orders -- the USDA marketing order witnesses  
4 who will come on after you would be the -- better  
5 situated to talk about the justifications behind the  
6 partially regulated sections identified here, the  
7 justifications that went into those exceptions?

8 A. That's correct.

9 Q. Okay. That's all I have. Thank you.

10 JUDGE CLIFTON: Who else has questions of this  
11 witness?

12 RE-CROSS-EXAMINATION

13 BY MR. BESHORE:

14 Q. May I have -- thank you for bearing with me.  
15 Just a couple follow-up questions.

16 Marvin Beshore, Ms. Warren.

17 With respect to dumped milk, I think your  
18 testimony was that -- you were asked how it's counted  
19 for under the orders, and you said the lowest -- my  
20 notes say you said the lowest class. Is that the lowest  
21 class by price that month or just Class IV, which is the  
22 lowest numerical class in the Federal orders?

23 A. It's my understanding it's priced at the  
24 lowest class in that month.

25 Q. Okay. So it could be priced at Class III

1 or --

2 A. That's my understanding.

3 Q. Okay. I may have asked this before, and I  
4 apologize if it is duplicated, but with respect to  
5 the -- the weekly National Dairy Products Reports data,  
6 is it possible to report, without identifying the number  
7 of plants or the -- or the identity of the plants, can  
8 volumes be reported on any regional bases?

9 A. No, they cannot for the same reason I stated  
10 earlier, that the confidentiality rules that we assigned  
11 to this is three or more plants or no one plant can have  
12 the majority of the volume.

13 Q. Thank you. And I hope that wasn't totally  
14 repetitive.

15 A. No, it's good to clarify.

16 Q. With respect to Exhibit 21 and the  
17 identification "Partially Regulated Plants," are the  
18 numbers showing on there -- do they indicate the number  
19 of plants or the number of, you know, reports from the  
20 Federal order system? In other words, what I'm  
21 wondering is some partially regulated plants are  
22 partially regulated in multiple Federal orders in the  
23 same month. Would that plant -- would such a plant show  
24 up as, assuming it was in Category A, would it show up  
25 as one plant on this table or two or three depending on

1 how many orders it's in?

2 A. It would only show up as one because it was  
3 reported by the Order that was assigned responsibility  
4 for that plant.

5 Q. Okay. And so for Category C, California  
6 plants, that -- or Category C, plants, which it would  
7 appear would be all California plants being the only  
8 market-wide state order pooling regulation that we know  
9 of, that would indicate then the number of plants from  
10 California that are partially regulated?

11 A. I can't answer that totally because I --  
12 again, this was data that was submitted to me by the  
13 orders, so if the 76(c) that are reported there would  
14 have been plants that were assigned to one of the orders  
15 and then submitted to me, so I don't know specifically  
16 that that's a hundred percent true.

17 Q. But it was your understanding, if I heard your  
18 last response correctly, that each plant has one person  
19 assigned to it so that it's only counted one time even  
20 though it distributes in multiple orders? I mean,  
21 that's --

22 A. Maybe I misunderstood your question, but I  
23 guess let me clarify. Were you asking me if I know  
24 specifically that every plant in the 76(c) section is  
25 California?

1 Q. No.

2 A. Okay. That's what I was answering, sorry.

3 Q. Oh, I'm sorry. No, but -- no, my question is  
4 do you -- is it your understanding that that represents  
5 10 or 11, depending on the month, different plants?

6 A. Oh, yes, that's correct.

7 Q. Okay. Now, one final question. There were  
8 some questions from Mr. English, I believe, with respect  
9 to the Dairy Market News Reports on spot milk sales or  
10 prices in spot milk sales, and you didn't provide any  
11 prepared data in response to that request, but you  
12 indicated that it's in Dairy Market News, and those are  
13 available?

14 A. Those are available on their website.

15 Q. Okay. So just with respect to that data, is  
16 it -- would it generally be correct that there's no  
17 tabulated volumes reflected in those reports?

18 A. I do not believe so.

19 Q. Okay. And there's -- there -- they're fairly  
20 described as anecdotal, are they not? Wouldn't that be  
21 correct?

22 A. That would be my understanding of it, yes.

23 Q. Okay. Not usually done in terms of ranges or  
24 mostlys or anything of that sort?

25 A. No.

1 Q. Okay. Very good. Thank you.

2 A. Thank you.

3 Judge Clifton, can I take a five-minute break?

4 JUDGE CLIFTON: This is Judge Clifton. This  
5 is Judge Clifton. Let's take a break. The witness has  
6 asked for only five minutes, but I think we need 15.

7 So what is it? It's roughly 2:40. Please be  
8 back ready to go at 2:56.

9 (Whereupon a break was taken.)

10 JUDGE CLIFTON: All right. We're back on the  
11 record at 2:57.

12 I love that announcement, it makes me feel  
13 like I'm a conductor on some sort of a train.

14 Who was on the way up here?

15 RE-CROSS-EXAMINATION

16 BY MR. ENGLISH:

17 Q. Chip English.

18 So some of this is prompted by answers to  
19 Mr. Vetne, one of the -- some of it is prompted by the  
20 fact that I realize I skipped ahead too much.

21 Let's look at Number -- Request Number 18 as  
22 opposed to Table 18 again.

23 A. In your -- your letter?

24 Q. In my letter of July 8th, yes, Exhibit 10.

25 So I think I understand what happened, and I

1 probably should have known better. Asking for the name  
2 and location. I know a little bit about the reporting,  
3 and I can see why that created some issues. So if we  
4 try to rephrase it and took out "name and location," my  
5 thought was if it said -- we said, Could you by product  
6 tell us for California which products would have three  
7 or more reporting and for whom, very limited, more than  
8 50 percent by one of those entities. Because my -- my  
9 understanding is there's two rules. You've got the  
10 you're not going to report if it's fewer than three, and  
11 I'm very familiar with that one from the Federal orders,  
12 but then the second one, as I understood it, is but also  
13 even if you have more than three, if one entities  
14 reports more than the majority, you would not be able  
15 to --

16 A. Correct.

17 Q. -- count that one?

18 So my question is -- and you may have to  
19 consult and come back -- is could you provide instead,  
20 get rid of the names, location, we're not looking for  
21 confidential information, I shouldn't have asked that  
22 question. So instead, could you provide by reportable  
23 products, not just all products because we only care  
24 about reportable products, the names of the products for  
25 which for California you would have three or more



1 entities and for which you don't have an entity that's  
2 the majority, that's to say that conceivably it could be  
3 disclosed?

4 A. Right. We would not provide any regional  
5 information, including we would consider California  
6 regional.

7 Q. So even that you can't do?

8 A. No, we would not.

9 JUDGE CLIFTON: Why?

10 THE WITNESS: Most likely it would result in  
11 confidential information being revealed.

12 JUDGE CLIFTON: Do you determine that without  
13 applying the math to see if the rule would be violated?

14 THE WITNESS: We would have to run those  
15 calculations, but based on my experience running this  
16 report for three years, we would deny that information.

17 BY MR. ENGLISH:

18 Q. Thank you.

19 Turning to number 25. And I, again, see the  
20 initial problem with name and location. Do you know  
21 whether data is collected -- again, we're not looking  
22 for confidential information, so somehow we deal with  
23 the name and location area -- do you know what  
24 information is collected by Federal orders for milk of  
25 California origin received at plants?

1           A.    I -- I would need to confer with my colleagues  
2 on that.

3           Q.    All right.  If you could confer with your  
4 colleagues, and if there is a way of responding to the  
5 question with respect to volume and use classification  
6 and combining it as to all locations, so we're talking  
7 about it's received outside of California, and -- and if  
8 it can avoid the confidentiality requirements, combine  
9 them.  I think if we get some data, some data better  
10 than none.  So I'm looking at some way of modifying the  
11 request, and if you want to, we can talk, you know, off  
12 record a little bit, too, but some way of modifying the  
13 request to see if there's a way of getting a response to  
14 the data request.

15                   And, look, I'm just as interested in  
16 protecting my client's confidentiality as the other, I  
17 have never wanted that, so again, I should have noticed  
18 that when we drafted the question that we were getting  
19 into that with the name, so see if there's a way of  
20 working on that.

21           A.    Okay.

22           Q.    And that's all I have.

23                   THE WITNESS:  Judge Clifton, may I make a  
24 clarification for Mr. English?

25                   JUDGE CLIFTON:  Certainly.

1 THE WITNESS: For number 23 of your requests,  
2 I misspoke in talking about it thinking that it was  
3 related to California only. We do not maintain cow  
4 numbers in the Federal order, so we could not fulfill  
5 that request.

6 MR. ENGLISH: It's a different reason, same  
7 result?

8 THE WITNESS: Same result, no data, but yeah.

9 MR. ENGLISH: I appreciate the clarification.  
10 And thank you. And I thank everybody for their hard  
11 work.

12 JUDGE CLIFTON: Stay there, if you will,  
13 Mr. English.

14 All right. So I went back to my notes on  
15 number 23, and originally you had assumed only  
16 California was requested, but now that you know that's  
17 not true, why is that still not something that you can  
18 provide?

19 THE WITNESS: They requested producers of size  
20 -- or by size of dairy farm as measured by dairy cow  
21 numbers, and we do not maintain any dairy cow number  
22 data.

23 MR. ENGLISH: Thank you.

24 JUDGE CLIFTON: Who will next question this  
25 witness?

1 See how intimidating you are?

2 RE-CROSS-EXAMINATION

3 BY MR. VETNE:

4 Q. John Vetne for Hilmar.

5 In response to that last question, you said,  
6 "We do not maintain dairy cow data." Am I correct that  
7 when you say "we," you do not mean USDA, but you mean  
8 Agricultural Marketing Services Dairy Programs?

9 A. Yes, that's correct.

10 MR. VETNE: Thank you.

11 JUDGE CLIFTON: Does anyone else have  
12 questions for this witness now?

13 I would assume she would be recalled when  
14 she's had an opportunity to confer with colleagues about  
15 the question still pending, although, Mr. English, you  
16 probably owe her confirmation as to whether you're  
17 interested in the things that you had said you would  
18 confer with your client about.

19 MR. ENGLISH: Chip English. And I apologize.  
20 I've conferred, and we're not going to pursue -- the one  
21 we just talked about, yes, we're going to pursue, but  
22 the one that I said I want to talk to my client about,  
23 we're not.

24 JUDGE CLIFTON: That's helpful. Thank you.

25 All right. I'd like to just go over in my

1 mind, then, make sure I know whether there are loose  
2 ends for this witness which would require her to be  
3 recalled.

4 So, Mr. English, I think you still want the,  
5 quote, "Western Order Information" from 2000 to March of  
6 2004, that Utah and Arizona information.

7 MR. ENGLISH: Chip English.

8 Yes, Your Honor. I think there are now two  
9 things we're talking about. That information I actually  
10 did make a request for. And then what I was just  
11 discussing with Ms. Warren with respect to the plant  
12 receipt of California milk, if there's some way of  
13 getting that information.

14 The -- there were two other requests that I,  
15 you know, said I would confer about, and those I'm  
16 taking off the table, but I think we're down to those  
17 two things that I'm still interested in.

18 Definitely want the Utah and Idaho information  
19 for 2000 through March of 2004, with the caveat that the  
20 2000 information I think was published combined.

21 JUDGE CLIFTON: Are there any other questions  
22 for Ms. Warren?

23 Ms. Warren, did you want to add anything to  
24 your testimony thus far?

25 THE WITNESS: No, I do not.

1 JUDGE CLIFTON: Thank you. You may step down.  
2 You are a remarkable witness.

3 THE WITNESS: Thank you.

4 JUDGE CLIFTON: Thank you very much.

5 Mr. Hill, how would you like to proceed?

6 MR. HILL: I would like to recall Amanda  
7 Steeneck, please.

8 JUDGE CLIFTON: Very fine.

9 MR. HILL: And I will report that there is  
10 another -- Brian Hill. I will report that there is  
11 another handout in response to Mr. English's requests.  
12 I'm not sure how you want to proceed because we do have  
13 Exhibit Number 7, which is essentially the same document  
14 with less numbers. So if you want to have this marked  
15 as Exhibit Number 11, I'm fine with that. If you want  
16 to replace this as Exhibit Number 7 with fuller  
17 documentation, I'm fine with that as well.

18 JUDGE CLIFTON: I don't want to replace  
19 anything.

20 MR. HILL: Okay.

21 JUDGE CLIFTON: We could, however, choose to  
22 make -- the problem if I make it -- let me start over.

23 If I knew that I was going to have two number  
24 7's, I would say from the beginning one's 7A and one's  
25 7B. Since I haven't done that, I think it's easier

1 rather than to link this to 7, just call it 11.

2 MR. HILL: That's fine with me, Your Honor.

3 JUDGE CLIFTON: And am I correct that this  
4 will be Number 11?

5 MR. HILL: That is correct.

6 (Whereupon Exhibit 11 was marked for  
7 identification.)

8 JUDGE CLIFTON: All right. So we'll pause now  
9 while these are distributed.

10 It is extremely impressive that the  
11 Agricultural Marketing Service is able to produce this  
12 kind of data so quickly. I'm very pleased.

13 Ms. Steeneck, you remain sworn. Would you  
14 again state your name for the record?

15 THE WITNESS: Amanda Steeneck.

16 JUDGE CLIFTON: Mr. Hill, you may proceed.

17 REDIRECT EXAMINATION

18 BY MR. HILL:

19 Q. Yes, Ms. Steeneck.

20 Brian Hill.

21 Ms. Steeneck, you have been -- you're now in  
22 possession of what is marked as Exhibit Number 11; is  
23 that correct?

24 A. Yes.

25 Q. And do you recognize this document?

1 A. Yes.

2 Q. What is it, please?

3 A. This is a California Milk Production from the  
4 baseline with the actual data for 2013 and projected  
5 data from 2014 to 2024.

6 Q. And did you put this together?

7 A. Yes.

8 Q. And it was at the request from Mr. English; is  
9 that correct?

10 A. Yes.

11 MR. HILL: I would like to enter this into  
12 evidence, Your Honor, if there is no objection.

13 JUDGE CLIFTON: Does anyone wish to question  
14 the witness on Exhibit 11 before determining whether  
15 there are any objections to it being admitted into  
16 evidence? There are none.

17 Is there any objection to the admission into  
18 evidence of Exhibit 11? There is none.

19 Exhibit 11 is admitted into evidence.

20 (Whereupon Exhibit 11 was admitted  
21 into evidence.)

22 JUDGE CLIFTON: Who would like to question  
23 this witness -- well, Mr. Hill, did you have anything  
24 further?

25 MR. HILL: I have no questions, Your Honor.



1 JUDGE CLIFTON: All right. Who would like to  
2 begin the questioning?

3 RECROSS-EXAMINATION

4 BY MR. BESHORE:

5 Q. Just a -- Marvin Beshore.

6 Just a question or two about how we would use  
7 this with respect to the tables. So if we took the --  
8 one of the tables, which -- which showed the change in  
9 the baseline in each year, in each of these years, and  
10 say under in the Cooperative's Proposal we wanted to  
11 plot volumes that are projected under the Cooperative's  
12 Proposal. We'd take the baseline number in the year,  
13 and then add to it -- if it's an add, if it's a positive  
14 number -- the number on the table. And I didn't bring  
15 my exhibit here to know which table it is. The  
16 applicable table -- add to it the number in the  
17 applicable table where you projected a difference with  
18 your model. The model showed a difference if the  
19 Cooperative's Proposal was in place, and that would give  
20 us the total production projected in California for that  
21 year.

22 A. Yes. As long as you add the corresponding  
23 year to the -- to the assumed year, yes.

24 Q. So at the end in 2024, the number would be  
25 added to 66.6, and that would be assumed the difference

1 there. Well, that -- that would be the projected total  
2 production in California under the Cooperative's  
3 Proposal that year.

4 A. Correct.

5 Q. Okay. You'd do the same thing with the Dairy  
6 Institute Proposal or any of the other proposals that  
7 you -- that you modeled, correct?

8 A. Yes.

9 Q. Okay. Now, I did some quick rough  
10 calculations, just something kind of comparing year over  
11 year data here. It -- it -- most of them come out to  
12 around the 3.5 percent per -- per year increase; is  
13 that --

14 A. I'm going to have to trust your --

15 Q. Okay.

16 A. If your --

17 Q. If my --

18 A. If your calculations are correct.

19 Q. If my phone calculator had the right digits  
20 entered into it and was working. In any event, whatever  
21 those ratios are, that is -- that is the percentage  
22 annual increase that is built into the USDA baseline  
23 model for California production, I would assume?

24 A. Yes.

25 Q. In the baseline, are those production changes

1 level for the whole country? In other words, if you had  
2 Pennsylvania on here, because that's where I'm from,  
3 would the year-to-year increments for the baseline for  
4 Pennsylvania, if there was one, be the same as for  
5 California?

6 A. I do not have that information in front of me,  
7 and I -- I -- I can't answer that question.

8 Q. Okay. I just wondered since it's not --

9 A. The --

10 Q. It's not a regional -- USDA model is not a  
11 regional --

12 A. No.

13 Q. -- model.

14 A. So what the USDA, the national model  
15 predicts -- the national model and the national numbers  
16 that are predicted in production increases are -- are  
17 published and available for your viewing on the World  
18 Agricultural Outlook Board. The regional sums for all  
19 of the 14 milk production regions summed to that  
20 national number. So --

21 Q. So the --

22 A. -- for the --

23 Q. -- World Agricultural Outlook Board  
24 projections show -- have 14 regional --

25 A. No. No, no, it just shows a national, but the

1 14 regional milk productions that we have in our model  
2 sum to that number, so this is one of those 14 regions.

3 Q. Gotcha. Thank you very much. That's all I  
4 have.

5 JUDGE CLIFTON: That reminds me that we did  
6 want from Ms. Warren the best cite to the website where  
7 some of the information is harder to find since USDA is  
8 switching from website to website gradually through the  
9 different agencies.

10 All right. Any other questions of  
11 Ms. Steeneck? Yes.

12 RE-CROSS-EXAMINATION

13 BY MR. SCHIEK:

14 Q. William Schiek with the Dairy Institute.

15 I thought I understood things when I sat down,  
16 and Mr. Beshore asked questions, and I'm confused again,  
17 so I just wanted to make sure.

18 I'm looking at Exhibit 6, and I'm looking at  
19 table where -- okay, Table 13 entitled "California  
20 Regional Milk Supply Equation," and I note that there is  
21 also a Southwest Regional Supply Equation, and a  
22 Western -- Former Western Order Supply, it -- there's a  
23 number of regional supply equations. So I guess my  
24 question is, because I was -- I was confused, in terms  
25 of using his number of three -- looked like about three

1 and a half percent per year, I was assuming that that  
2 number came out of a baseline that was produced in part  
3 by this California Regional Supply Equation, estimated  
4 parameters here projected forward. Is that wrong? Was  
5 I --

6 A. No, that is correct. So the Department  
7 requires consistency in our estimations as what we're  
8 putting out there, so this model had to be consistent  
9 with the production estimations for the entire United  
10 States. This model, however -- okay, this is not  
11 something I -- this model allowed each region to produce  
12 an estimated amount for each region and then summed  
13 itself up.

14 That being said, you -- to gain consistency,  
15 those aren't necessarily going to be the same numbers  
16 summed up as the published USDA numbers. So what we  
17 have to do is adjust numbers through intercept adjusters  
18 to gain consistency across the board, so we adjust the  
19 intercepts to gain that consistency.

20 Q. Okay. So you -- is -- is that specifically  
21 referred to in the Table 13, that intercept adjuster?  
22 Would I be able to find that there?

23 A. No.

24 Q. No. Okay. So -- so you -- you let these --  
25 you estimate these regional supply equations and you sum

1 them up, and you find out that, oh, my gosh, we're, you  
2 know, we're at more production nationally than the World  
3 Agricultural Outlook Board?

4 A. Or less.

5 Q. Or less. So you -- you adjust the intercept  
6 to each individual regional to -- to sum it or -- or to  
7 get it to work out or how -- how is that done?

8 A. So there are different type of intercept  
9 adjusters.

10 Q. Okay.

11 A. So there are intercept adjusters that affect  
12 the intercepts all of each production region equally.  
13 There are intercept adjusters that just affect one  
14 production region. But in this case, what I did is I  
15 put together a system that allowed the interceptors  
16 that -- adjusters to automatically solve for themselves  
17 to true to the -- the number that is -- to be consistent  
18 with the number that it is provided by the World  
19 Agricultural Demand Board, so that intercept adjuster  
20 that affects all of the regions simultaneously was used  
21 to adjust all the regions simultaneously to change the  
22 estimates to be consistent with the --

23 Q. Okay.

24 A. -- World Agricultural --

25 Q. So --

1 A. -- Outlook Board.

2 Q. Thank you.

3 So does it -- can you tell me does it -- does  
4 it adjust them all in a consistent percentage basis or  
5 is it -- is it -- is it somehow determined that it  
6 adjusts some more than others based on some other factor  
7 that it's looking at?

8 A. The intercept adjuster for all of them would  
9 be consistently the same exact number. When --

10 Q. Okay.

11 A. -- it is percentage-wise it would vary, I  
12 would assume, from the regional number --

13 Q. Okay.

14 A. -- I assume, in how that affects things,  
15 but --

16 Q. Okay.

17 A. If that helps.

18 Q. And that -- that's a -- a lot of nuance, I --  
19 I appreciate that.

20 Getting back to Mr. Beshore's question,  
21 though, to kind of understand sort of the difference  
22 between California and Pennsylvania. If you were -- I  
23 don't need you to know the actual number in answer to  
24 this question, I don't think, but -- but there's --  
25 there's a different underlying supply equation model

1 that you've estimated, so unless it happened to turn out  
2 that way, it's not necessarily the case that because  
3 California has gone up three and a half percent per year  
4 on the baseline according to this calculation, you  
5 wouldn't necessarily say that that would be the same  
6 result you would see in Pennsylvania?

7 A. No, I would not necessarily assume that to be  
8 true.

9 Q. Okay. Thank you.

10 JUDGE CLIFTON: Are there other questions for  
11 Ms. Steeneck at this time?

12 Ms. Steeneck, is there anything you'd like to  
13 add?

14 THE WITNESS: No.

15 MR. HILL: Smart answer.

16 JUDGE CLIFTON: You may step down. And thank  
17 you so much. I'm very pleased you were able to get that  
18 data so quickly.

19 THE WITNESS: Thank you.

20 JUDGE CLIFTON: Ms. Warren, would you like to  
21 come forward just with the website?

22 And if -- you remain sworn. If you'd just  
23 again state your name.

24 THE WITNESS: Lorie, L-O-R-I-E. Warren,  
25 W-A-R-R-E-N.



1 JUDGE CLIFTON: All right. And what website  
2 are you telling us about?

3 THE WITNESS: This website is for the Dairy  
4 Products Mandatory Reporting Program and would contain  
5 the Annual Validation Questionnaire that I was referring  
6 to earlier.

7 JUDGE CLIFTON: Thank you. And if you'd read  
8 into the record the website.

9 THE WITNESS: Should I say dot or period?

10 JUDGE CLIFTON: Good question. I think  
11 everyone understands dot.

12 THE WITNESS: Okay. So it is  
13 www.AMS.USDA.gov/rules-regulations, all together, no  
14 spaces, back splash -- backslash M, as in Mary, M-R  
15 backslash DMR. It's much longer than it used to be.

16 JUDGE CLIFTON: Are those truly backslashes  
17 rather than forward slashes?

18 THE WITNESS: I would -- I guess they're  
19 probably forward slashes.

20 JUDGE CLIFTON: Well, it could be either one.

21 THE WITNESS: It's this one (indicating).  
22 Could somebody help me out here?

23 MR. HILL: Show that on the record. Bottom  
24 left to forward right?

25 JUDGE CLIFTON: I thought she was showing

1 forward slash. Does -- okay. Does the one in between  
2 gov, G-O-V, and rules have the top leaning more toward  
3 rules?

4 THE WITNESS: Yes.

5 JUDGE CLIFTON: So that's a forward slash.

6 Okay. I -- if I were trying this, folks, I  
7 would try the forward slash first and if that doesn't  
8 work, try the backslash.

9 THE WITNESS: Come put me down.

10 JUDGE CLIFTON: All right. So those things,  
11 two things are M like Mary, M like Mary, R like Ron, and  
12 then a slash, and then D like David, M like Mary, R like  
13 Ron.

14 THE WITNESS: Correct.

15 JUDGE CLIFTON: And what do those stand for?

16 THE WITNESS: They change -- I want to say the  
17 DMR is Dairy Mandatory Reporting. And the MMR is -- I  
18 have no idea.

19 MR. CARMAN: Mandatory Market Reporting.

20 THE WITNESS: Mandatory Marketing Reporting.

21 JUDGE CLIFTON: Excellent. Thank you so much.

22 And, you know, I have tried to find things  
23 that I know are on USDA website somewhere, and it is not  
24 user-friendly, so I'm very grateful to have this  
25 information.

1 MR. BESHORE: That's on the record.

2 JUDGE CLIFTON: All right. Ms. Warren, you  
3 may step down.

4 THE WITNESS: Thank you.

5 JUDGE CLIFTON: Mr. Hill, how would you like  
6 to proceed?

7 MR. HILL: Well, at this time, Your Honor, we  
8 do have certain witnesses to honor a request by some  
9 proponents about specific sections of other federal  
10 marketing orders and how they work, but there is, I  
11 believe, a preliminary matter that Mr. --

12 MR. ENGLISH: I said I would put that off  
13 until after -- I'll do it any way you want to do it, but  
14 it seems to me you have some time constraints, and I'm  
15 happy to continue with your --

16 MR. HILL: I was talking about the whey  
17 factor.

18 MR. ENGLISH: Yeah, that's --

19 MR. HILL: Okay.

20 MR. ENGLISH: I don't have to have -- my  
21 understanding was that was going to go after all your  
22 witnesses.

23 MR. HILL: Okay. That's fine.

24 JUDGE CLIFTON: Me, too. I need to rest up  
25 for it.

1           There -- there is one preliminary matter with  
2 regard to the opening statements that I'd like to take  
3 some information on before you call your next witness.

4           MS. HANCOCK: Nicole Hancock for the Producer  
5 Handlers Association and Ponderosa. I have a scheduling  
6 issue that I'm going to be gone for a part of the day  
7 tomorrow and on Friday, and I have asked the parties who  
8 submitted written proposals, the USDA, and -- and  
9 Judge Clifton if it would be okay if -- if we don't get  
10 it -- if we don't get to that point in the schedule by  
11 tomorrow morning before I leave, that I do my opening  
12 statement either on Monday when I return or at the  
13 beginning of -- before we present our case at whatever  
14 time. I don't have a preference, whatever works best  
15 for Dairy Institute and the Cooperatives and -- and  
16 Your Honor.

17           I do have an associate here who's covering,  
18 Bao Vu, who's covering for me while I'm gone, but  
19 because I prepared the case, I think it would be easier  
20 for me to do the opening.

21           JUDGE CLIFTON: So -- don't leave.

22           So there are a couple ways I look at it. One  
23 is if each proponent gives us an opening before  
24 Mr. Beshore begins with his case-in-chief, it's helpful  
25 because I've got a roadmap in my head, and that would be

1 my first preference, but I suspect we'll get to the  
2 opening statements before she's back. So since that's  
3 true, would you all agree that her opening statement  
4 could be later, perhaps after Mr. Beshore has completed  
5 his case-in-chief, or even Mr. English has also  
6 completed his case-in-chief?

7 As she points out, hers is not a standalone  
8 proposal, and perhaps it will be even more useful if she  
9 hears the evidence in the two standalone proposals  
10 before she gives her opening.

11 So I -- I just want to know if there's any  
12 preference from the rest of you.

13 MR. ENGLISH: I'm completely flexible, Your  
14 Honor.

15 JUDGE CLIFTON: So Mr. English says he's  
16 completely flexible.

17 Mr. Beshore?

18 MR. BESHORE: We have no preference.

19 JUDGE CLIFTON: No preference.

20 MR. BESHORE: We're flexible, also.

21 JUDGE CLIFTON: All right. Great. Well,  
22 we'll agree to wait for your opening statement until  
23 you're back here, and then we'll figure out when to fit  
24 it.

25 MS. HANCOCK: Thank you. I appreciate it.

1 JUDGE CLIFTON: You're very welcome.

2 All right. Then, Mr. --

3 MR. HILL: Brian Hill. Can we have five  
4 minutes to discuss with our client before we put the  
5 first witness on?

6 JUDGE CLIFTON: Certainly.

7 MR. HILL: Thank you.

8 JUDGE CLIFTON: So is five minutes adequate?  
9 It is. All right.

10 MR. HILL: Yes.

11 JUDGE CLIFTON: So everyone else, don't go too  
12 far, but you're welcome to move around the room.

13 (Whereupon a break was taken.)

14 JUDGE CLIFTON: All right. We're back on  
15 record at 3:42.

16 This is amazing. I love that we already have  
17 this data.

18 Mr. Hill, do you want to recall Ms. Warren  
19 with regard to the document that's just been  
20 distributed?

21 MR. HILL: That is correct, Your Honor.

22 JUDGE CLIFTON: All right.

23 MR. HILL: And I would like to mark that as  
24 Exhibit 12, I believe.

25 MS. FRISIUS: Correct.

1 JUDGE CLIFTON: All right. We're marking our  
2 documents as Exhibit 12.

3 (Whereupon Exhibit 12 was marked for  
4 identification.)

5 JUDGE CLIFTON: And would you state your name?

6 THE WITNESS: Lorie, L-O-R-I-E. Warren,  
7 W-A-R-R-E-N.

8 JUDGE CLIFTON: Mr. Hill.

9 REDIRECT EXAMINATION

10 BY MR. HILL:

11 Q. And, Ms. Warren, you are in possession of what  
12 is now marked as Exhibit 12. Do you recognize that  
13 document?

14 A. Yes.

15 Q. Did you participate in putting these numbers  
16 together?

17 A. I did not.

18 Q. You did not.

19 A. I was testifying.

20 Q. And what are -- what do these numbers show,  
21 though?

22 A. These are the Monthly Mailbox Prices for the  
23 Western Order for 2000, and then for Idaho and Utah for  
24 2001 through March of 2004 as requested.

25 Q. And these were requested by Mr. English?

1 A. That's correct.

2 Q. And calculated for that purpose?

3 A. Yes.

4 Q. And will these -- will this document be posted  
5 on the website?

6 A. By tomorrow morning.

7 MR. HILL: I have no further questions, Your  
8 Honor. I would like to move this into evidence as  
9 Exhibit 12 if there are no objections.

10 JUDGE CLIFTON: Does anyone want to question  
11 Ms. Warren about Exhibit 12 before I determine whether  
12 there are any objections to it being admitted into  
13 evidence? No one.

14 Are there any objections to Exhibit 12 being  
15 admitted into evidence? There are none.

16 Exhibit 12 is admitted into evidence.

17 (Whereupon Exhibit 12 was admitted  
18 into evidence.)

19 JUDGE CLIFTON: Do you have any other  
20 questions of Ms. Warren about Exhibit 12?

21 MR. HILL: I do not, Your Honor.

22 JUDGE CLIFTON: Does anyone else have any  
23 questions of Ms. Warren?

24 ///

25 ///



1 RE CROSS-EXAMINATION

2 BY MR. ENGLISH:

3 Q. Chip English.

4 And just very quickly and just for clarity.  
5 We've labeled this as Table 22, we've labeled as Exhibit  
6 12, but when we look back in the record, in a way it  
7 supplements Table 6 for Exhibit 9, correct?

8 A. I believe that's correct. I've lost track of  
9 the exhibit numbers at this point.

10 Q. Exhibit 9 is the exhibit of your data and  
11 Table 6 was the response to both our request and the  
12 Cooperative's request for mailbox data. This was the  
13 data that I requested for the Western Order for the  
14 month -- for the year 2000 and then broken out for  
15 Idaho, Utah for 2001, 2002, 2003, through March of 2004?

16 A. Correct.

17 MR. ENGLISH: Thank you.

18 JUDGE CLIFTON: Are there any other questions  
19 for Ms. Warren with regard to Exhibit 12? There are  
20 none.

21 You may step down then. And thank you and  
22 your team.

23 MR. HILL: Was that admitted into evidence?

24 JUDGE CLIFTON: Oh, yes, it was.

25 MR. HILL: Okay. I would like to call Mr.

1 Henry Schaefer, Your Honor.

2 JUDGE CLIFTON: Mr. Schaefer, I'll swear you  
3 in in a seated position. Would you raise your right  
4 hand, please?

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

7 THE WITNESS: I do.

8 JUDGE CLIFTON: Thank you. Please state and  
9 spell your name, and again tell us what your usual job  
10 is.

11 THE WITNESS: My name is Henry Schaefer.  
12 That's H-E-N-R-Y S-C-H-A-E-F-E-R. And I'm an  
13 Agricultural Economist for the Upper Midwest Milk  
14 Marketing Order, Order Number 30, and I'm here on detail  
15 to the AMS Dairy Programs for the hearing.

16 JUDGE CLIFTON: And just to acquaint those of  
17 us who aren't familiar with order numbers, what region  
18 is covered by Order 30?

19 THE WITNESS: The Upper Midwest, basically  
20 Minnesota, Wisconsin, and portions of North and South  
21 Dakota, Iowa, and Illinois.

22 JUDGE CLIFTON: Thank you.

23 Mr. Hill, you may proceed.

24 ///

25 ///

1 DIRECT EXAMINATION

2 BY MR. HILL:

3 Q. Hello, Mr. Schaefer.

4 A. Hello.

5 Q. Is it your understanding that you were called  
6 here to provide a basic explanation of certain topics  
7 requested by the proponent groups?

8 A. That is correct.

9 Q. Can you give us a list of those basic topics  
10 that you wanted -- that you're going to testify on?

11 A. Okay. I'm going -- I've got a number of them  
12 here. I'll read through them, and then we'll go on from  
13 there.

14 The first one is -- will be pool  
15 qualifications standards. Those are provisions  
16 contained in Sections 4 through 13.

17 The Market Administrator definition.

18 Continuity and separability of provisions,  
19 which is -- Market Administrator was Section 25.  
20 Continuity and separability of provisions is Section 26.

21 Handler responsibility for records and  
22 facilities, Section 27.

23 The termination of obligations, Section 28.

24 And lastly, classification of transfers and  
25 diversions, Section 42.

1           Most of those sections are in the 1000 -- 1000  
2 series. The general -- or the pool qualification ones  
3 are by order, so those will change by order.

4           Q. And the testimony you're about to give, you  
5 are not taking any position on any of these proposals,  
6 are you?

7           A. I am not.

8           Q. So this is just for use of the parties in  
9 their own case?

10          A. That is correct.

11          Q. You can continue.

12                               STATEMENT OF HENRY SCHAEFER

13          A. Thank you. Okay. We'll start with pooling  
14 provisions in Section 1000.4 through 1030.13. Those are  
15 kind of combined because two of the first ones are in  
16 the general provisions in Section 1000.

17               And also because we are talking about pooling  
18 provisions, I am familiar, of course, with Order 30  
19 provisions. I cannot really speak to how other Market  
20 Administrators may handle certain provisions in those  
21 sections.

22               The purpose of the pooling provisions are to  
23 determine which plants and which producers can  
24 participate in respect to federal orders.

25               The first step in this process for plants in

1 Section 1000.4 describes the requirements for being a  
2 plant. The second step is then to determine if the  
3 plant is a distributing plant, and this is contained in  
4 Section 1000.5 or a supply plant in 1000.6. In both  
5 cases, the plant has to be approved by a duly  
6 constituted regulatory agency for the handling of Grade  
7 A milk.

8 The basic difference between a distributing  
9 plant and a supply plant is a distributing plant bottles  
10 milk and moves the resulting products on routes or to  
11 other plants while a supply plant receives milk from  
12 dairy farmers and ships bulk milk to distributing  
13 plants.

14 The third step is to determine whether each of  
15 these types of plants is a pool plant and can therefore  
16 participate in a particular Federal Order.

17 MR. ENGLISH: Excuse me. He's going too fast  
18 for me.

19 THE WITNESS: Oh, I'm sorry.

20 MR. ENGLISH: I wonder if he's going too fast  
21 for the court reporter.

22 JUDGE CLIFTON REPORTER: Slowing down would be  
23 helpful.

24 MR. ENGLISH: If he's too fast for me --

25 THE WITNESS: Actually, one of my colleagues

1 said to slow way down so I am here until 5:00 o'clock.

2 MR. ENGLISH: That wasn't why I said it. But  
3 I got a look from the court reporter, and besides which  
4 I was having some issues, Your Honor.

5 THE WITNESS: No, that's fine. I understand.  
6 I have a tendency to read fairly quickly so I'll slow.

7 Do you want me to back up at all?

8 THE COURT REPORTER: No, you're okay.

9 THE WITNESS: Okay.

10 THE COURT REPORTER: But slower going forward.

11 THE WITNESS: Okay.

12 The third step is to determine whether each of  
13 these types of plants is a pool plant and can therefore  
14 participate in a particular Federal Order. Route sales  
15 can be broken into two categories: In area sales where  
16 packaged fluid milk products are sold to outlets in the  
17 marketing area, and out-of-area sales where packaged  
18 fluid milk products are sold to outlets -- let's see  
19 here -- outside the marketing area. Route sales do not  
20 include sales to other plants.

21 Section 1000.7 describes the requirements that  
22 a plant must meet to become a pool plant in each of the  
23 Federal Orders. Generally a distributing plant is fully  
24 regulated by the Federal Order in which the majority of  
25 its packaged fluid milk is sold. One exception is a

1 plant that processes at least 15 percent of the plant's  
2 receipts of a fluid milk product which are physically  
3 received into ultra-pasteurized or aseptically-processed  
4 fluid milk products. These plants are regulated by the  
5 Federal Order whose marketing area that plant is  
6 physically located within.

7           The process of determining whether or not a  
8 distributing plant is a pool plant in a particular order  
9 is a two-step computation. The first step is to  
10 determine the percentage that the route disposition  
11 and/or transfers of packaged fluid milk products to  
12 other plants are of the plant's receipts of fluid milk  
13 products that are physically received.

14           The second step is to determine the percentage  
15 of the plant's route sales are in the Federal Order  
16 marketing area. For instance, in Federal Order 30, a  
17 pool distributing plant must have 15 percent or more of  
18 the fluid milk products physically received in the  
19 plant, disposed of on routes, and/or transfers of  
20 packaged fluid milk products to plants, and 25 percent  
21 or more of the route sales and transfers to other plants  
22 disposed of in the Order 30 marketing area. See section  
23 1030.7(a) for specific details. The percentages and  
24 percentage calculations may vary by order. And I  
25 believe in Exhibit 9, Tables 13 and 14, that information

1 was presented earlier in the hearing.

2           Supply plants are plants that supply fluid  
3 milk to distributing plants. The Federal Order in which  
4 they would be regulated is determined by the Federal  
5 Order which regulates the distributing plants that the  
6 supply plant ships to.

7           In addition, each order has a specified  
8 shipping percentage that the supply plant must ship to  
9 the distributing plants in the specific order for the  
10 supply plant to become a pool supply plant. The  
11 shipping percentage may vary by order and by month. And  
12 there's also a diversion limit that a distributing  
13 plant -- or that a supply plant has to meet, which means  
14 that they cannot divert -- and we'll talk about divert  
15 in a minute -- to nonpool plants. The diversion limit  
16 is the inverse of the shipping percentage, and those  
17 numbers are contained in Exhibit 9, Tables 15 and 16.

18           Distributing plants and certain manufacturing  
19 plants may also qualify as pool plants by being part of  
20 a distributing plant unit. The unit must meet the same  
21 qualification percentage as an individual distributing  
22 plant. In addition, at least one of the plants must be  
23 able to meet the qualification percentages as if it were  
24 a stand-alone pool distributing plant, and the other  
25 plants in the unit must use more than 50 percent of



1 their bulk receipts to produce Class 1 and/or Class 2  
2 products. The plants all must be operated by the same  
3 handler.

4 One or more handlers operating one or more  
5 supply plants may create a supply plant system to meet  
6 the supply plant shipping percentages. The system must  
7 meet the supply plant shipping and diversion percentages  
8 applicable to an individual supply plant. Each  
9 individual supply plant that is a member of the system  
10 does not need to meet the shipping and diversion  
11 percentages.

12 The shipping percentages and diversion limits  
13 may be changed by the Market Administrator by his own  
14 initiative or by request from interested parties and  
15 after an investigation as to whether the change would  
16 encourage needed shipments or to prevent uneconomic  
17 shipments.

18 In Section 10,000 -- in Section 1000.8, we  
19 have the description of nonpool plants. A nonpool plant  
20 is defined as any milk receiving, manufacturing, or  
21 processing plant other than a pool plant. There are  
22 several categories of nonpool plants, including other  
23 order pool plants, producer-handlers, partially  
24 regulated distributing plants, unregulated supply  
25 plants, and exempt plants.

1 I do find it kind of interesting that other  
2 order plants are considered nonpool plants, and that is  
3 because they are a pool plant in another order so  
4 they're a nonpool plant on the order -- all the rest of  
5 the orders that they aren't regulated on.

6 Okay. Producer-handlers are dairy farmers  
7 that operate both a dairy farm and a distributing plant  
8 and have route disposition or transfer less than  
9 3,000,000 pounds of packaged fluid milk products.

10 Partially regulated distributing plants are  
11 distributing plants that have route sales into one or  
12 more Federal Order marketing areas but do not meet the  
13 requirements for a pool plant in any Federal Order.  
14 These plants do follow a report -- do file a report of  
15 receipts and utilization for each order that they are --  
16 ship products into, and they may have an obligation to  
17 each of those orders' producer settlement fund.

18 Unregulated supply plants are supply plants  
19 that ship bulk milk to pool distributing plant but do  
20 not ship enough to meet the supply plant's shipping  
21 percentage. They do file a report of receipts and  
22 utilizations for each order, and they may have an  
23 obligation to the producers settlement fund.

24 In many instances, these plants are attached  
25 to a particular distributing plant, and they change

1 regulation when the distributing plant changes  
2 regulation.

3 Exempt plants are generally small distributing  
4 plants that do not distribute packaged fluid milk  
5 products through commercial channels or plants with less  
6 than 150,000 pounds of packaged fluid milk sales per  
7 month.

8 1000 -- Section 1000.9 describes a handler as  
9 any person who operates a pool or nonpool plant. In the  
10 case of Federal Orders, a person means any individual,  
11 partnership, corporation, association, or other business  
12 unit.

13 There are two special cases of handlers:  
14 Brokers and cooperatives. Brokers are generally not  
15 subject to the payment provisions contained in the  
16 order. Cooperatives may move milk directly to the farm  
17 of a patron to a pool plant, and by agreement with the  
18 handler of the pool plant, the handler of pool plant  
19 would become the handler of such milk. This means that  
20 the handler of the pool plant would pool the milk and  
21 settle with the pool on the classification of the milk.  
22 This transaction is usually referred to as a 9(c) milk  
23 shipment after the section in the order that allows this  
24 type of transaction.

25 Okay. Moving on to producer qualification.

1 In discussing producer qualification, it is important to  
2 remember that we do not pool producers but we pool the  
3 milk of qualified producers. So we first of all have to  
4 determine if a dairy farmer is a producer, and then  
5 determine if the milk of that producer is eligible to be  
6 pooled.

7 There are several terms that need to be  
8 defined before we proceed. The term "divert" is used to  
9 describe milk movements directed by the plant operator  
10 or a 9(c) handler from the farm directly to another pool  
11 plant or to a nonpool plant. This is all sometimes  
12 referred to as direct-ship milk as opposed to a milk  
13 transfer which occurs when milk moves from plant to  
14 plant.

15 "Touch base requirements" refers to how much  
16 of and how often a producer's milk must be received at a  
17 pool plant so that it may it be eligible -- so that it  
18 is eligible to be diverted. For example, in Order 30,  
19 one full day's milk production must be received in a  
20 pool plant any time during the first month the producer  
21 comes on the market. And he stays on -- as a producer  
22 on the market until the association is broken.

23 And in Order 30, that association is broken in  
24 one of two ways: Either by being -- having the farm  
25 degraded for a calendar month or by being pooled on

1 another order.

2 Other orders may require multiple days'  
3 production be received in a pool plant when the producer  
4 first comes on the market. Other orders may require  
5 shipments to a pool plant multiple times a month in one  
6 or more months.

7 There are two sections in the orders that --  
8 there are two sections in the orders that define what  
9 milk can participate in a Federal Order. The first  
10 Section, 1000 -- I'm not going to say this. 1000 --

11 In our case I'm looking at 1030. 1030.12  
12 defines a producer and which dairy farmers are not  
13 producers. Not all dairy farms are producers. First,  
14 the dairy farmer has to produce milk approved by a duly  
15 constituted regulatory agency for fluid consumption as  
16 Grade A milk. The milk must be received at a pool plant  
17 or diverted by the operator of the pool plant or be  
18 received by a 9(c) handler.

19 The second section, 1000 -- and this would  
20 be -- varies by order, but it's in Section 13. This  
21 section, the conditions that must be met for the milk of  
22 a producer to be eligible for producing in the Federal  
23 Order pool -- for participating -- I'm sorry, let me  
24 start that sentence over again.

25 The second section, Section 13, is the section

1 that lists the conditions that must be met for the milk  
2 of the producer to be eligible for participating in the  
3 Federal Order pool. The milk must be received at a pool  
4 plant or by a 9(c) handler or diverted by the operator  
5 of a pool plant to a nonpool plant. There is usually a  
6 touch base requirement that must be met as mentioned  
7 above. In addition, there is a diversion limit which  
8 specifies the percentage of milk a handler may divert to  
9 a nonpool plant.

10 The diversion limit is generally the inverse  
11 of the shipping percentage, so if the shipping  
12 percentage is 25 percent, the diversion limit would be  
13 75 percent. As with the shipping percentage, the  
14 diversion limit percentage varies by order and in some  
15 cases by month.

16 The producer milk section also specifies that  
17 milk will be priced where it is first received.

18 In several orders, the producer milk section  
19 also contains provision for restricting the amount of  
20 milk a handler may bring back onto the pool after  
21 electing to not pool the milk. Milk that is diverted to  
22 a nonpool plant may be pooled but does not have to be.  
23 Milk physically received directly from the farm at a  
24 pool plant in almost all cases must be pooled.

25 Okay. Moving on to the discussion of Market

1 Administrator.

2 Each Federal Order is administered by a Market  
3 Administrator who is designated by the Secretary of  
4 Agriculture.

5 The section -- this section defines the powers  
6 and duties of the Market Administrator. Such powers  
7 include administering the terms and provisions of the  
8 order, maintaining and investing funds outside of the US  
9 Department of Treasury for the purpose of administering  
10 the order, and making rules and regulations to execute  
11 the terms and provisions of the order.

12 The duties of the Market Administrator include  
13 the computation and announcement of minimum class prices  
14 and uniform skim and butterfat prices or producer price  
15 differential, management of an administrative budget  
16 verification and auditing of handlers' monthly reports,  
17 and preparation and dissemination of market statistics.  
18 The Market Administrator employs a staff of auditors,  
19 agricultural economists, and laboratory, clerical, and  
20 data processing personnel to assist in administering the  
21 order.

22 Section -- that was Section 1025.

23 Section 1026, continuity and separability of  
24 provisions.

25 After a referendum is held to determine if

1 producers approve an issuance of an order or an amended  
2 order, a final rule is issued by the Secretary of  
3 Agriculture. The Secretary will declare the effective  
4 date for the provisions of the order or any amendments  
5 to the order in the final rule, and the order will  
6 continue until suspended or terminated.

7 A marketing order must be ended when the  
8 Secretary of Agriculture determines that it is -- that  
9 its termination is favored by a majority of the dairy  
10 farmers who deliver more than 50 percent of the milk to  
11 the market. The order may also be terminated if the  
12 Secretary finds the order either obstructs or does not  
13 tend to carry out the declared policy of the  
14 Agricultural Agreement Act of 1937, as amended. Also in  
15 the case of an amendment to the order, the order will be  
16 terminated if producers fail to approve the order as  
17 amended.

18 If the order is terminated or suspended, the  
19 Market Administrator is provided the authority to  
20 continue its operations to settle any outstanding  
21 obligations. The Market Administrator or a designated  
22 agent must liquidate the business of the Market  
23 Administrator's office and distribute any excess funds  
24 to contributing handlers and producers in an equitable  
25 matter.



1           If any provision or its application to any  
2 party is found to be invalid, the remaining provisions  
3 of the order or the application of the provision to  
4 other parties are not affected.

5           Section 1027, handler responsibilities for  
6 record and facilities.

7           Handlers are required to maintain and retain  
8 records of its operations and make such records and its  
9 facilities available to the Market Administrator. If  
10 such records are not made available, the handler's milk  
11 receipts may be allocated to the highest-priced class.

12           Handlers are required to submit monthly  
13 reports detailing the receipts and utilization of milk  
14 and payments to producers. Each handler must also keep  
15 other records as the Market Administrator deems  
16 necessary to verify or establish the handler's  
17 obligation under the order.

18           All records required under the order must be  
19 retained by the handler for three years. If such orders  
20 are necessary in connection with a court action or a  
21 proceeding in Section 608c, and then we have left  
22 parentheses, 15, right parentheses, left parentheses A,  
23 capital A -- left parentheses, then a capital A, then a  
24 right parentheses. Okay?

25           JUDGE CLIFTON: Let -- let me stop you there.

1 I know that that's not an exhibit, but I am going to ask  
2 that when you're through with your testimony that a copy  
3 of your notes be given to the court reporter just for  
4 assistance in typing these very unfamiliar terms.

5 THE WITNESS: That's fine.

6 JUDGE CLIFTON: All right. Great.

7 MR. ENGLISH: Your Honor.

8 JUDGE CLIFTON: Mr. English.

9 MR. ENGLISH: As long you've interrupted, and  
10 I understand what happened with an earlier witness,  
11 which was a relatively short statement, but this is a  
12 statement, I think there's a number of copies the USDA  
13 has, but I don't think any of the hearing participants  
14 have, and candidly for cross-examination purposes, it's  
15 going to be a whole lot more efficient if we have it.

16 Now, if your position is you're not going to  
17 share it -- I've never had that happen in one of these  
18 hearings, it's always been shared before -- if that's  
19 the position of the Department, I get it, but then I may  
20 have to go back and have the court reporter to read back  
21 sections of the testimony so I can conduct my  
22 cross-examination, and I think that's going to be very  
23 inefficient.

24 JUDGE CLIFTON: Well, let's talk about the  
25 status of the document. Is it not polished enough to be

1 an exhibit?

2 MR. HILL: That is correct.

3 JUDGE CLIFTON: And I understand that. Is it  
4 -- even though it's rough and even though it's not going  
5 to be an exhibit, would there be any objection to giving  
6 copies not only to the court reporter but to the  
7 participants in the room for their use in  
8 cross-examination or just for their use in understanding  
9 the administration of a marketing order?

10 MR. HILL: Well, like you said, this doc --  
11 Brian Hill. This document has not been polished.

12 JUDGE CLIFTON: I don't -- I don't think your  
13 volume is up. Start again, please.

14 MR. HILL: Brian Hill. This document has not  
15 been prepared for distribution at all. I mean, it's a  
16 very rough draft. He's ad libbing a lot throughout this  
17 document as I'm reading it, so it's just not prepared  
18 for distribution throughout the rest of the participants  
19 here.

20 JUDGE CLIFTON: All right. It's extremely  
21 valuable, his testimony. The other thing we could do is  
22 we could ask for an expedited transcript of this portion  
23 of the record. It will cost the AMS more money, but  
24 it's worth it. This is -- like I said, this is  
25 extremely valuable testimony, not only for people in

1 California who aren't familiar with these provisions,  
2 but for anyone.

3 MR. ENGLISH: And I want to agree. I mean,  
4 frankly this is perhaps more than I expected when we  
5 made the request, and I think Mr. Beshore made the  
6 request, but I think it is really good information, and  
7 so the request is made, saying, boy, this is really good  
8 stuff, but it's hard to follow it as much as there is,  
9 and I think that -- I think cross-examination will be  
10 a whole lot more efficient if -- if we have it. I think  
11 that I'm going to end up being in agreement with Mr.  
12 Beshore here.

13 MR. BESHORE: Marvin Beshore. Boy, do I hate  
14 to agree with Chip, but -- but I do. But I do agree. I  
15 mean, I would -- if -- the document being rough, we all  
16 understand that. I -- I don't want any of  
17 Mr. Schaefer's, you know, notes or anybody else's notes  
18 or anything, but, you know, a rough, you know, typed  
19 document, even if it's had interlineated, you know, ad  
20 lib testimony, it would be useful at least. Better than  
21 waiting for an expedited transcript, actually, in terms  
22 of efficiency of the hearing. But of course, you know,  
23 the Department has to make that decision, I do  
24 understand it. I'd request to take the handwritten  
25 notes or anybody's personal notes off of it, if it's

1 just something we can -- we can look at that covers most  
2 of it, I think it would help.

3 JUDGE CLIFTON: In a moment I'm going to ask  
4 Mr. Schaefer's comments, but I -- I just applaud  
5 Agricultural Marketing Services. You -- you have been  
6 amazing at providing so much information and so well,  
7 and this is so difficult. Just very pleased that you've  
8 stepped out. I certainly don't want it to bite you.

9 What do you think, Mr. Schaefer?

10 THE WITNESS: Can I have a minute to talk  
11 with --

12 MR. HILL: Yes.

13 JUDGE CLIFTON: Yes. Let's everybody take a  
14 five-minute stretch break.

15 THE WITNESS: Thank you, Your Honor.

16 (Whereupon a break was taken.)

17 JUDGE CLIFTON: All right. Let's go back on  
18 record. I know I took longer than a five-minute stretch  
19 break, but it's about 4:22.

20 Mr. Brian Hill, how do you want to proceed?

21 MR. HILL: Yes.

22 BY MR. HILL:

23 Q. I'm going to go back to the beginning of your  
24 statement, Mr. Schaefer. Could you once again read for  
25 me or tell me what you're going to be -- what you're

1 trying to explain today, what sections you're going  
2 over?

3 A. Okay. What we are going to go over is pool  
4 qualifications standards, which go from Section 1000.4  
5 to 1030.13.

6 And then we're going to also cover the market  
7 administrator provision, which is the 1000.25.

8 Continuity and separability of provisions,  
9 which is 1000.26.

10 Handler responsibilities for records and  
11 facilities, 1027.

12 Termination of obligations, 1000.28.

13 And classification of transfers and diversion  
14 1000.42.

15 MR. HILL: Your Honor, at this point I want to  
16 reiterate that this document was not put together as an  
17 exhibit. If it were to be an exhibit, it would have had  
18 to have been vetted through the proper departmental  
19 hierarchy, which it has not been.

20 As such, I'm going to release the witness  
21 directly from the proponent groups on the topics.

22 JUDGE CLIFTON: You don't want him to finish?

23 MR. HILL: No, Your Honor, because we're not  
24 going to be able to allow this to be an exhibit. If the  
25 proponents are fine with allowing him to continue

1 reading and it not being an exhibit, that's fine. If  
2 not, they're going to have to ask their own questions on  
3 the topics that they wanted guidance on.

4 MR. ENGLISH: Well, let me be clear. I'm not  
5 trying to be cumbersome. We're not --

6 JUDGE CLIFTON: Mr. English, go ahead and  
7 state your name.

8 MR. ENGLISH: I'm sorry, Chip English.

9 You know, I think there may be some suspicion  
10 of what we're trying to do here. None of us asked for  
11 it to be an exhibit, so let's start with that. We are  
12 not asking for it to be an exhibit. I -- and, again, we  
13 are very grateful, and we don't want this to cut off the  
14 discussion of two other witnesses, so we're not trying  
15 to do that.

16 I think that given the fact that this is a  
17 promulgation proceeding, this testimony is  
18 extraordinarily useful, and again, I'm going to repeat  
19 what the judge has been saying, this is very good stuff,  
20 so I don't want this to turn into a situation where  
21 because we make a request we end up with less than we'd  
22 get.

23 I understand what the concerns are, and I  
24 wonder whether an expedited transcript if he finishes  
25 what he's reading today, we may be very close to 4:45 at

1 that point anyway. I believe someone's consulted with  
2 the court reporter and we could have an e-mail of an  
3 expedited transcript by the morning, and then we can  
4 work with it.

5 Now, if that's a concern for the Department --  
6 again, the last thing I want to have happen is because  
7 we make a request, we end up with getting less. That's  
8 not the goal, and I think everybody on the participants'  
9 side is agreeable on that, so that's not what we want,  
10 Mr. Hill, we're not trying to say, okay, let's stop  
11 doing that. We are grateful for the prepared -- I mean,  
12 I think this is good stuff. So saying it's good stuff  
13 doesn't mean that I want to, you know, give it up, and  
14 at the same time, it's just efficient cross-examination.  
15 That's all we're getting at.

16 I don't know how else to do it. I guess one  
17 way to do it is if I know what sections, I can go back  
18 to every single section and ask him a question about  
19 every single section, but I just don't think that's an  
20 efficient exam. And, again, I want to end where I  
21 began. Thank you for putting this witness on. Thank  
22 you for the statement. We are not trying to get less  
23 because of trying to get a copy.

24 MR. BESHORE: Marvin Beshore.

25 I concur with everything Chip has said. My



1 suggestion at this point would be that we finish -- that  
2 Mr. Schaefer, if he would please and with authorization  
3 from counsel finish his direct testimony as intended on  
4 the subject matters indicated, and that we adjourn at  
5 that point. We will, as participating parties, request  
6 the expedited transcript, which we're told is available  
7 in the morning by e-mail to be able to use and we have  
8 further examination at that time with that, with that  
9 available. Obviously he's testifying, the transcript  
10 doesn't present any review, any clearance issues, and I  
11 would hope maybe that's how we can proceed.

12 JUDGE CLIFTON: Mr. Beshore, don't leave.

13 When you say as participants we're requesting  
14 the transcript, are you saying that you're not expecting  
15 the Agricultural Marketing Service to pay for the  
16 expedited transcript?

17 MR. BESHORE: Well, we're certainly willing to  
18 talk about that.

19 JUDGE CLIFTON: It does make a difference.  
20 They're expensive.

21 MR. BESHORE: I understand.

22 JUDGE CLIFTON: It's already expensive to get  
23 the service that we have, which means we wouldn't have  
24 this for two weeks, but Mr. Schaefer's testimony is so  
25 valuable on so many levels, one is there are some

1 similarities between the marketing order that he  
2 administers and California's as far as many products  
3 being produced and so on. I just think for us to be  
4 able to get a grasp in our heads of all the different  
5 kinds of plants, for example, would be extremely useful  
6 and, you know, talking about diverting milk to a  
7 different plant and to nonpool plants and how it's all  
8 accounted for, I just think he has a wealth of  
9 information that would be so useful here.

10 MR. BESHORE: I couldn't agree more.

11 JUDGE CLIFTON: Mr. Hill, do you have any  
12 objection to the court reporter having access to his  
13 rough notes just to make sure that the transcript has a  
14 chance of getting all the words in?

15 MR. HILL: We have no problem with that,  
16 Your Honor, and we're prepared to go forward in the  
17 manner that you've asked and requested now.

18 JUDGE CLIFTON: All right. Let's talk about  
19 the cost. This is -- when you at -- when you're in a  
20 hearing that already has a timetable for producing  
21 transcripts, then when you ask for a segment of it to be  
22 expedited, just one witness just to be expedited, that's  
23 a whole additional cost.

24 MR. HILL: One statement, we do have one more  
25 person who would go up and do the same exact thing, and

1 if we start, maybe we can finish both tonight and get  
2 that expedited transcript --

3 JUDGE CLIFTON: That would be excellent.

4 MR. HILL: -- on that at the same time.

5 JUDGE CLIFTON: Excellent. So before we have  
6 a court reporter undertake this, I do want to know who's  
7 paying for it, whether the Agricultural Marketing  
8 Service is paying for it as they're paying for all of  
9 the rest of the transcript, or whether those people that  
10 are represented by Messrs. English and Beshore and  
11 perhaps others are going to pay for it.

12 MS. TAYLOR: We don't have authority to expend  
13 any more funds.

14 MR. ENGLISH: We'll split it.

15 JUDGE CLIFTON: Perfect. Thank you,  
16 gentlemen.

17 MR. FRANCIS: If we can contribute, we will,  
18 if we can, but we don't know.

19 MR. BESHORE: Whatever you can't, we'll split.

20 JUDGE CLIFTON: Excellent. This -- this is an  
21 excellent hearing. I appreciate everybody working it  
22 out.

23 MR. HILL: Did the record catch --

24 JUDGE CLIFTON: And I've never seen you play  
25 hardball like that.

1 MR. HILL: Did -- did the record catch  
2 their -- their willingness to pay this? I don't believe  
3 they went to the microphone.

4 JUDGE CLIFTON: He's still playing hardball.

5 MR. ENGLISH: I don't think it needs to be on  
6 the record, my word should be good, but yes, we will  
7 split it.

8 MR. BESHORE: Anything over and above what  
9 Mr. Francis doesn't make available.

10 JUDGE CLIFTON: Thank you. All right. So --

11 MR. HILL: Mr. Schaefer --

12 JUDGE CLIFTON: Yes. Let's turn Mr. Hill's  
13 mic back on.

14 BY MR. HILL:

15 Q. Brian Hill.

16 So, Mr. Schaefer, do you remember where you  
17 were?

18 A. Well, I do kind of, but why don't I start with  
19 Section 1000.27, Handler responsibilities for records  
20 and facilities, I believe I was in that paragraph, and  
21 that way I won't miss something that we have here.

22 Q. That's fine. You may continue.

23 A. Thank you.

24 Section 1027, Handler responsibility for  
25 records and facilities.

1            Handlers are required to maintain and retain  
2 records of its operation and make such records and its  
3 facilities available to the Market Administrator. If  
4 such records are not made available, the handler's milk  
5 receipts may be allocated to the highest-priced class.

6            Handlers are required to submit monthly  
7 reports detailing their receipts and utilization of milk  
8 and payments to producers. Each handler must also keep  
9 other records as the Market Administrator deems  
10 necessary to verify or establish the handler's  
11 obligation under the order.

12           All records required under the order must be  
13 retained by the handlers for three years. If such  
14 records are necessary in connection with a court action  
15 or proceeding under Section 608c, beginning parentheses,  
16 15, end parentheses, begin parentheses, capital A, end  
17 parentheses, of the Agricultural Agreement Act of 1937,  
18 as amended, the Market Administrator may request before  
19 the end of the three-year period that the records be  
20 retained until further notice.

21           Section 1028, Termination of obligations.

22           The Market Administrator office performs audit  
23 to verify the accuracy of the handler's information in  
24 determining its obligation to the order. If the audit  
25 shows that the handler must pay any funds required under

1 the terms of the order, the Market Administrator must  
2 notify the handler in writing that the funds are due  
3 prior to two years after the last day of the month  
4 during which the Market Administrator received the  
5 handler's report of receipts and utilization. There are  
6 exceptions to the two-year period limit, such as the  
7 handler fails or refuses to provide the required records  
8 to determine the obligations or a transaction involved  
9 fraud or willful concealments of facts on the part of  
10 the handler.

11 The obligation of the Market Administrator to  
12 pay any funds that handlers claim are due under the  
13 terms of the order will terminate two years after the  
14 end of the month the milk was received by the handler.  
15 The obligation of the Market Administrator to refund any  
16 payment made by a handler will terminate two years after  
17 the end of the month during which payment was made by  
18 the handler. The exception of the applicable two-year  
19 limit applying to funds due from the Market  
20 Administrator's office would be if the handler files a  
21 petition under 6 -- under Section 608c, begin  
22 parentheses, 15, end parentheses, begin parentheses,  
23 capital A, end parentheses, of the Agricultural  
24 Agreement Act of 1937, as amended.

25 Section 1042, Classification of transfers and

1 diversions.

2           The Market Administrator office allocates  
3 transfers and diversions on a monthly basis. Transfers  
4 describe shipments of milk made from plant -- one plant  
5 to another. Diversions are typically farm-to-plant  
6 deliveries to a nonpool plant that can be pooled based  
7 on qualification criteria established by the Federal  
8 Order.

9           Milk or cream transferred or diverted from a  
10 pool plant to another pool plant is Class I unless both  
11 handlers request the same classification in another  
12 class. In that case, classification is limited to the  
13 amount of skim and butterfat remaining in each class at  
14 the receiving plant after classification of producer  
15 milk, Section 1000.44, with additional exceptions made  
16 from receipts of other source milk at the transferring  
17 plant.

18           Transfers and diversions to a plant regulated  
19 by another order are Class I if transferred as packaged  
20 products. If transferred or diverted in bulk form,  
21 classification is based on utilization at the other  
22 order plant, parentheses -- left parentheses, if both  
23 plants request the bulk transfer be classified as other  
24 than Class I, end parentheses. If the plant receiving  
25 diverted milk does not have utilization available for

1 the requested class and some of the diverted milk is  
2 therefore going to be Class I, the diverting handler has  
3 the option to designate some or all of the diverted milk  
4 as producer milk at the receiving plant pending approval  
5 from the proceeding -- from the receiving plant.

6 Transfers and diversions to a producer-handler  
7 plant regulated by any order are Class I. Packaged  
8 transfers to an exempt plant are Class I. Bulk milk or  
9 cream transferred or diverted to an exempt plant is  
10 classified based on the receiving handler's utilization  
11 in each class in series beginning with Class IV.

12 Transfers and diversions to other nonpool  
13 plants are Class I if transferred as packaged products.  
14 Bulk milk or cream transfers and diversions are  
15 classified based on the nonpool plant's utilization if  
16 the transferring slash diverting handler claims such  
17 classification and the nonpool plant retains records  
18 which can be verified by the Market Administrator.  
19 Additional steps, begin parentheses, Section 1000.42,  
20 begin another set of parentheses, d, end parentheses,  
21 begin parentheses, 2, end parentheses, begin  
22 parentheses, i -- little i, little i, dash, little v,  
23 little i, little i, end parentheses, end parentheses,  
24 are taken to assign any Class I utilization at the  
25 nonpool plant to the Federal Orders supplying the bulk



1 milk.

2 Thank you.

3 JUDGE CLIFTON: Mr. Hill.

4 MR. HILL: Well, if we have an agreement to  
5 defer questions until tomorrow, we will call up another  
6 witness, we can continue with testimony on different  
7 topics.

8 JUDGE CLIFTON: Okay. That's good. I just  
9 want to clarify the citation to these sections. So all  
10 of the sections that you talked about, Mr. Schaefer, are  
11 in Title 7 of the Code of Federal Regulations; is that  
12 correct?

13 THE WITNESS: That's correct.

14 JUDGE CLIFTON: And tell me how, if -- if you  
15 administer Order 30, tell me how the 30 gets fitted into  
16 these regulatory citations? How does that work?

17 THE WITNESS: The -- all of this is in what  
18 I'll say is a overall Section 1000, so the thousand  
19 series is 100 point and then whatever the individual  
20 paragraph or section number is. And for Order 30, we  
21 are 1030 point whatever. So, for instance, whatever the  
22 number of the section is, so for instance, pool plant  
23 would be Section 7 or point 7.

24 JUDGE CLIFTON: Okay. So if I were looking in  
25 the book you got there, Title -- it's a short little

1 volume, Title 7 of the Code of Federal Regulations, if I  
2 -- if I found in there 7, Code of Federal Regulations,  
3 1000.4, I would know that applies to all the orders?

4 THE WITNESS: Correct.

5 JUDGE CLIFTON: And then if I found -- after I  
6 looked at all the 1000 point sections, all the numbers,  
7 and I then wanted to go to the 1030 point sections, I  
8 would find some orders specific to the area you  
9 administer?

10 THE WITNESS: That is correct.

11 JUDGE CLIFTON: Okay. Good. So is there any  
12 chance the court reporter could borrow that volume in  
13 addition to your notes for overnight?

14 THE WITNESS: I don't see why not. We have  
15 plenty of copies here, and we can make that arrangement.

16 JUDGE CLIFTON: I really think it would be  
17 useful, particularly when you're looking at little i's  
18 and three of them in parentheses and so on.

19 THE WITNESS: All right. The -- the ones we  
20 would not have -- I don't have the ones that have the  
21 section 608(c) in them, but we could arrange some help  
22 with that, too, if need be.

23 JUDGE CLIFTON: All right. Very good.

24 THE WITNESS: And they are in what we're going  
25 to give the court reporter for backup.

1 JUDGE CLIFTON: Great. That's good enough.  
2 That's great. So you've already gotten a volume because  
3 it's been delivered. And, now, did -- does someone want  
4 to make a copy of Mr. Schaefer's notes to give to the  
5 court reporter?

6 MR. HILL: Somebody -- Brian Hill.

7 This is Brian Hill. Somebody will, yes.

8 JUDGE CLIFTON: Okay. Good. All right. Then  
9 for now, you may step down, Mr. Schaefer. I'm so glad  
10 you're testifying.

11 THE WITNESS: Thank you.

12 MR. HILL: I have been told that Mr. Mykrantz  
13 may not be able to finish in 20 minutes.

14 JUDGE CLIFTON: Yes. And we actually have  
15 less than 20 if we are going to talk about tomorrow. So  
16 do you think it would be better to start with him  
17 tomorrow?

18 MR. HILL: Yes, that would be better. We can  
19 do all the questioning on Friday.

20 JUDGE CLIFTON: Oh, dear, the gentlemen do  
21 want an expedited transcript of what we can get from Mr.  
22 Mykrantz, I can see this.

23 MR. ENGLISH: Well -- well, let me just say  
24 something first. Is Mr. Mykrantz going to be available  
25 through Friday or --

1 MR. HILL: That is correct.

2 MR. ENGLISH: So we could do another expedited  
3 transcript, and then do that.

4 I just want to be clear, for the expedited  
5 transcript, we only want the statement, we don't want  
6 the colloquy and anything like that. We're paying for,  
7 you know, just the statement, please.

8 But, yes, I'm -- I'm fine with -- with  
9 pursuing it that way. Then what we do is put  
10 Mr. Mykrantz on in the morning maybe so that we can get  
11 that expedited transcript started, and then go back to  
12 Mr. Schaefer, and then put Mr. Mykrantz on when we get  
13 that other transcript.

14 MR. HILL: Okay. That's fine with us, yes.

15 MR. BESHORE: Yes.

16 JUDGE CLIFTON: Now, Mr. English, go back,  
17 please. I -- I want to make sure I know what you don't  
18 want. You're -- you're fine with when Mr. Hill is  
19 asking questions of Mr. Schaefer, and then Mr. Schaefer  
20 responds, but you don't want the part where Mr. Hill is  
21 addressing us and we're addressing him back?

22 MR. ENGLISH: Well, and most importantly where  
23 we're talking about what we're going to do about this,  
24 that whole part that's interspersed in all of this where  
25 Mr. Hill is talking to me, I'm talking to him, we're all

1 talking -- all of that we want excluded, we don't want  
2 to pay for that expedited transcript.

3 MR. BESHORE: Like now.

4 JUDGE CLIFTON: Yes. I agree.

5 MR. BESHORE: Do we have --

6 MR. ENGLISH: Do we have any idea how much  
7 this might be?

8 MR. BESHORE: We're passing a hat. We've got  
9 some more help.

10 JUDGE CLIFTON: Good. Thank you all for  
11 helping on that. I think it's worth it.

12 All right. Good. So -- so if -- if I  
13 understand the plan, we're almost done for the day, and  
14 what we'll do now is summarize what we think tomorrow  
15 will bring.

16 So the first thing that we -- well, first of  
17 all, I -- I didn't get a single dairy farmer on the  
18 witness stand today. Are there any here that would hope  
19 to get their testimony in yet today? Yes. Would --  
20 would someone stand who's a dairy farmer who would like  
21 to testify today? All right. Well, I'm happy to take  
22 you today. I realize we do want to finish before 5:00  
23 so it doesn't give you a lot of time, and maybe you'd  
24 like to testify a different day. But I'm happy to  
25 interrupt whatever we're doing for a producer or dairy

1 farmer to speak.

2 All right. So the plan is that when we come  
3 back in the morning, we're interested in talking with  
4 Dana Coale about potential government shutdown as a  
5 preliminary matter. Mr. English, once we get through  
6 all the government witnesses, is eager to persuade me  
7 why his topic should be an additional one to be  
8 addressed besides what was noticed in the Federal  
9 Register. We'll want to complete the rest of the  
10 government witnesses first. In addition to Mr.  
11 Mykrantz, and would you spell his name for me?

12 MR. HILL: I believe it -- Brian Hill.

13 I believe it's -- his last is spelled  
14 M-Y-K-R-A-N-T-Z.

15 MR. CARMAN: It's in the official record.

16 MS. TAYLOR: It's in the record.

17 JUDGE CLIFTON: I just want to make sure it's  
18 right right now in the record.

19 You may use the microphone right there.

20 MR. MYKRANTZ: My name is spelled

21 M-Y-K-R-A-N-T-Z.

22 JUDGE CLIFTON: Thank you.

23 MR. HILL: And there will be -- Brian Hill.

24 There will be one other witness whose name is  
25 Bill Wise.

1 JUDGE CLIFTON: W-I-S-E?

2 MR. HILL: William Wise.

3 JUDGE CLIFTON: Good. All right. And if we  
4 get all that done, we would then move into opening  
5 statements beginning with Mr. Beshore.

6 And any expedited transcript that might be  
7 requested of Mr. Mykrantz or Mr. Wise would lead to  
8 cross-examination the following day; is that correct?

9 MR. HILL: I believe that would be correct. I  
10 will say that Mr. Wise never had any prepared testimony.

11 MR. ENGLISH: And he's certainly not going to  
12 prepare it now.

13 MR. HILL: So don't think that we're changing  
14 just because --

15 MS. TAYLOR: Well, can I clarify just -- this  
16 is Erin Taylor.

17 I just want to clarify who's going to talk  
18 about what tomorrow so you're not confused, and we'll  
19 try to be a little clearer if we can.

20 Tomorrow John Mykrantz will talk about Section  
21 43, General Classification Rules; Section 44,  
22 Classification of Producer Milk; Section 77, Adjustment  
23 of Accounts; Section 78, Charges on Overdue Accounts;  
24 Section 85, Assessment for Order Administration; and  
25 Section 86, Deductions Marketing services.

1 William Wise will talk about Section 76,  
2 Payments by a Handler Operating a Partially Regulated  
3 Distributing Plant; and Section 10, Producer-handlers.

4 And I do want to reiterate that these sections  
5 were specifically asked of us to discuss, which is why  
6 these are the specific ones we are here to talk about.

7 JUDGE CLIFTON: Very good. And if it turns  
8 out that counsel don't feel they'll need the expedited  
9 transcript and want to go right into the  
10 cross-examination with those witnesses tomorrow, that's  
11 fine, too.

12 All right. I think of nothing else.

13 Let's start with Mr. English. Do you have  
14 anything else tonight?

15 MR. ENGLISH: Not to carry somebody else's  
16 water, but it occurs to me that Ms. Hancock is going to  
17 leave at some point tomorrow, and she is obviously very  
18 interested in producer-handler, so maybe Mr. Wise goes  
19 first --

20 MS. TAYLOR: That's fine.

21 MR. HILL: -- to allow her an opportunity to  
22 participate.

23 JUDGE CLIFTON: Do you want him to testify  
24 before you cross-examine Mr. Schaefer?

25 MR. ENGLISH: Yeah, I don't see -- yeah, I



1 don't see there's in order of that. I think that's  
2 fine. I mean, it just occurred to me that she said she  
3 has to be leaving after about an hour, so maybe she has  
4 her chance before she has to leave.

5 JUDGE CLIFTON: That sounds excellent. You  
6 are cooperating well among yourselves. I'm very  
7 pleased.

8 Mr. Beshore, anything further today?

9 MR. BESHORE: I have nothing further.

10 JUDGE CLIFTON: Mr. Beshore does not have  
11 anything further. Does anyone before I say we are in  
12 recess for the -- for the time being?

13 All right. Once again, you can come into this  
14 room at 8:00 o'clock tomorrow, make yourselves  
15 comfortable, but we will not go on record until 9:00.  
16 And we now go off record at 4:49.

17 (Whereupon the proceedings recessed  
18 at 4:49 p.m.)

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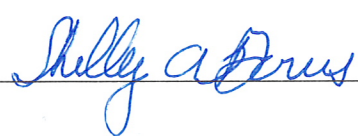
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I am a duly qualified Certified Shorthand Reporter, in the State of California, holder of Certificate Number CSR 8947 issued by the Court Reporters Board of California and which is in full force and effect.

I am not financially interested in this action and am not a relative or employee of any attorney of the parties, or of any of the parties.

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: October 7, 2015

  
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