

UNITED STATES DEPARTMENT OF AGRICULTURE  
BEFORE THE SECRETARY OF AGRICULTURE

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

VOLUME III

TRANSCRIPT OF PROCEEDINGS

September 24, 2015

Shelly A. Davis, CSR, RPR, Certificate No. 8947  
397066



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

Thursday, September 24, 2015  
9:00 a.m.

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

TRANSCRIPT OF PROCEEDINGS  
VOLUME 3

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WITNESSES

PAGE

WILLIAM WISE

|                                     |     |
|-------------------------------------|-----|
| DIRECT EXAMINATION BY MR. HILL      | 424 |
| CROSS-EXAMINATION BY MS. HANCOCK    | 426 |
| CROSS-EXAMINATION BY MR. BESHORE    | 457 |
| CROSS-EXAMINATION BY MR. ENGLISH    | 480 |
| CROSS-EXAMINATION BY MR. VETNE      | 488 |
| RE-CROSS-EXAMINATION BY MR. BESHORE | 501 |

LORIE WARREN

|                                  |     |
|----------------------------------|-----|
| REDIRECT BY MR. HILL             | 525 |
| CROSS-EXAMINATION BY MR. ENGLISH | 526 |

CLIFFORD CARMAN

|                                  |     |
|----------------------------------|-----|
| DIRECT EXAMINATION BY MR. HILL   | 529 |
| CROSS-EXAMINATION BY MS. TAYLOR  | 534 |
| CROSS-EXAMINATION BY MR. BESHORE | 540 |
| REDIRECT EXAMINATION BY MR. HILL | 541 |
| CROSS-EXAMINATION BY MR. MILTNER | 542 |

JOHN MYKRANTZ

|                                |     |
|--------------------------------|-----|
| DIRECT EXAMINATION BY MR. HILL | 548 |
| STATEMENT OF JOHN MYKRANTZ     | 549 |

HENRY SCHAEFER

|                                     |     |
|-------------------------------------|-----|
| CROSS-EXAMINATION BY MR. BESHORE    | 562 |
| CROSS-EXAMINATION BY MS. VULIN      | 572 |
| CROSS-EXAMINATION BY MR. ENGLISH    | 598 |
| CROSS-EXAMINATION BY MR. VETNE      | 616 |
| CROSS-EXAMINATION BY MR. SMITH      | 633 |
| RE-CROSS-EXAMINATION BY MR. BESHORE | 635 |

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EXHIBITS

| NUMBER     | DESCRIPTION   | ID. | REC'D |
|------------|---|-----|-------|
| Exhibit 13 | Document entitled The<br>and Southeast Class<br>Utilization Charges Under<br>the Dairy Institute Proposal | 528 | 531   |

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THURSDAY, SEPTEMBER 24, 2015, 9:00 A.M.

CLOVIS, CALIFORNIA

P R O C E E D I N G S

JUDGE CLIFTON: We're on record now on September 24, 2015. It's Thursday. It's 9:00 in the morning. We're in Clovis, California.

My name is Jill Clifton, and I'm the United States Administrative Law Judge who's assigned to hear this administrative hearing, and my role is to take in evidence, that is testimony and exhibits.

Normally I would go through a routine that I like to do introducing people and identifying preliminary matters, but in view of the fact that Ms. Hancock must leave early today and is particularly interested in Mr. Wise's testimony, I want to go straight to that, and then we'll interrupt his testimony and go back to what we would normally do to begin each day.

So the only preliminary part that I want to address before Mr. Wise is called as a witness is that this is the third day of the hearing, and I'd like the transcript to have numbers in sequence to those of yesterday so that for the entire proceeding there will

1 be only one page 1 and so on throughout the entire  
2 proceeding.

3 Mr. Wise, would you come forward, please, to  
4 the witness stand. And please be seated and make  
5 yourself comfortable. I'll be swearing you in in a  
6 seated position. Would you raise your right hand,  
7 please?

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

11 THE WITNESS: I do.

12 JUDGE CLIFTON: Thank you. Please scoot as  
13 close as you can to that table, I think that would be  
14 good. Excellent.

15 Please state and spell your name.

16 THE WITNESS: William, W-I-L-L-I-A-M. Wise,  
17 W-I-S-E.

18 JUDGE CLIFTON: And what is your job?

19 THE WITNESS: I am the Milk Market  
20 Administrator for the Arizona and Pacific Northwest  
21 Federal Milk Orders.

22 JUDGE CLIFTON: Thank you.

23 Mr. Hill, you may proceed.

24 ///

25 ///



1 DIRECT EXAMINATION

2 BY MR. HILL:

3 Q. Good morning, Mr. Wise.

4 A. Good morning.

5 Q. So you were -- you were called to -- you are  
6 requested to provide basic explanation to some topics;  
7 is that true?

8 A. That's my understanding, yes.

9 Q. And those topics are producer-handler issues  
10 and payments by a handler operating a partially  
11 regulated distributing plant --

12 A. That's my --

13 Q. -- is that correct?

14 A. Yes, that's my understanding.

15 Q. Did you prepare any testimony for this case?

16 A. No. Not any written testimony.

17 Q. Just wanted to make that clear after  
18 yesterday.

19 I'm going to release this witness. He does  
20 not have any testimony. He's here to answer questions.

21 JUDGE CLIFTON: All right. By not having any  
22 testimony, you just mean he didn't bring a written  
23 statement.

24 MR. HILL: No written statement, correct.

25 JUDGE CLIFTON: All right. Very fine.

1 I'd like to ask some preliminary questions.  
2 How long have you been an administrator of a milk  
3 marketing area?

4 THE WITNESS: I was appointed Market  
5 Administrator in February 2011.

6 JUDGE CLIFTON: And what did you do before  
7 that?

8 THE WITNESS: I was the Assistant Market  
9 Administrator from 1995 to 2011, and from 1981 to  
10 1980 -- 1995 I hold a -- held, excuse me, various  
11 positions in the Market Administrator's Office.

12 JUDGE CLIFTON: And where are you physically  
13 located for most of your work?

14 THE WITNESS: Most of the time I -- I go back  
15 and forth between the office in Phoenix, Arizona, and  
16 Balta, Washington, but most predominantly in Phoenix.

17 JUDGE CLIFTON: All right. And how much of  
18 your time in administration of a milk marketing order  
19 has it concerned Arizona and the Pacific Northwest?

20 THE WITNESS: That's my primary function is  
21 the administration of those two orders.

22 JUDGE CLIFTON: All right. And have they been  
23 in existence, those orders, since say 1995?

24 THE WITNESS: Oh, yes, yes. The Arizona order  
25 in some -- some fashion since the early '50's, and I

1 believe the Pacific Northwest with the county's  
2 predecessor orders since around '50's.

3 JUDGE CLIFTON: Ah, okay, good. What is the  
4 number of the area?

5 THE WITNESS: Pacific Northwest is 124.  
6 Arizona is 131.

7 JUDGE CLIFTON: All right. Thank you very  
8 much.

9 Is there anything you'd like to add to that  
10 before I open the floor to questions from anyone?

11 THE WITNESS: I have nothing else on that  
12 line.

13 JUDGE CLIFTON: Thank you.

14 Who would like to begin?

15 CROSS-EXAMINATION

16 BY MS. HANCOCK:

17 Q. Nicole Hancock representing the  
18 producer-handlers and Ponderosa Dairy.

19 Good morning, Mr. Wise.

20 A. Good morning.

21 Q. I'd like to first by -- starting -- start off  
22 by thanking everyone today for being so accommodating.  
23 I know the judge has commented on how kind and gracious  
24 everyone is, but I do believe that she's -- she's very  
25 accurately describing this group, and you've all been

1 very welcoming to me, and I appreciate that.

2 So, Mr. Wise, if you -- I see you have a --  
3 you have a regulation book in front of you?

4 A. You know, we know in general, we may not know  
5 it by heart verbatim.

6 Q. Sure. Well, that's good to know because I  
7 kind of feel like you guys all know it by heart.

8 Sir, I'd like if you could turn to page 158,  
9 and we're in Title 7 CFR, and I'm having you turn to  
10 Section 1124.10, which is the definition of  
11 producer-handler.

12 A. Okay. Forward 124. Yeah, producer-handler  
13 definition, 124. Okay.

14 Q. And this is the order that you administer; is  
15 that correct?

16 A. 124 and 131, that is correct.

17 Q. Okay. So one -- one of them?

18 A. This is one of them, yes.

19 Q. Just one of them?

20 A. Yes, it is.

21 Q. Okay. And are they -- are they similar in the  
22 provisions?

23 A. Yes, they are very similar.

24 Q. That address producer-handlers?

25 A. Yes.

1 Q. Okay. So I'm just using this one as the  
2 example, but I just want to understand a little bit  
3 better how it works in your order system, and then that  
4 will help me put it into context for my client and --  
5 and the positions that's we're taking.

6 A. Okay.

7 Q. So full disclosure, that's my end game here.

8 A. Okay.

9 Q. Okay. So can you -- would you mind -- if we  
10 start with 1124.10, tell me what -- what this provision  
11 is and how it's organized.

12 A. This provision applies to -- if I can just  
13 read the preamble, I think that sets the table very well  
14 for what this provision applies to. So a  
15 producer-handler means a person -- a person under the  
16 Act is defined as an individual, partnership,  
17 corporation, or other business united -- so a person who  
18 operates a dairy farm and a distributing plant from  
19 which there is route disposition in the marketing area  
20 from which total route disposition, excuse me,  
21 disposition and packaged sales of fluid milk products to  
22 other plants during a month does not exceed  
23 three million, three million pounds, and who the Market  
24 Administrator has designated a producer-handler after  
25 determining that all the requirements of this section

1 are met.

2 So that means if you are a -- if you have  
3 route disposition and packaged sales in excess of three  
4 million, you're not eligible to be a producer-handler.  
5 So this only applies to people under three million.

6 And then as you move forward, these are the  
7 requirements that really lay out the fact that it has to  
8 be the sole risk and enterprise of the same person for  
9 both the farm and plant.

10 Q. Okay. And that three million pounds, that's  
11 based on the volume of -- of milk that's processed; is  
12 that right?

13 A. Class I, right. It says three million pounds,  
14 again, fluid milk products, packaged sales, route  
15 disposition and packaged sales of fluid milk products,  
16 so it's Class I.

17 Q. And -- and then the USDA conducts a  
18 determination to decide if a producer-handler meets this  
19 criteria, and once it receives -- once the  
20 producer-handler receives the USDA's blessing, then they  
21 have that designation provided they continue to meet  
22 that criteria?

23 A. Exactly. In Order 124, right, the -- this  
24 person would have to, you know, show us, show the Market  
25 Administrator to our satisfaction that they, number one,

1 are under three million pounds and meet the rest of the  
2 qualification requirements.

3 Q. And once they meet that qualification  
4 requirement, all of the milk -- they -- then they're  
5 fully exempt at that point?

6 A. That's correct. For anything under -- as long  
7 as they stay under three million, they're fully exempt,  
8 that's correct.

9 Q. And if they go to three --

10 A. As long as they don't violate any other  
11 provisions.

12 Q. And -- and if they go to three million and one  
13 pounds, then they're lost the exemption for the entirety  
14 of their -- of the milk; is that right?

15 A. That is correct. They may not necessarily be  
16 fully regulated, but they can't be a producer-handler.

17 Q. They've lost the ability to designate  
18 themselves as a producer-handler?

19 A. That's correct.

20 Q. So I describe this as an all-or-nothing  
21 approach; is that fair?

22 A. I -- I -- I would say to the extent that it's  
23 all -- if you're under three million, it's all exempt  
24 pricing. Over three million, you are subject to the  
25 regulatory provisions.

1 Q. And does it operate the same way in Order 30?

2 A. I don't know about 30.

3 Q. 31, excuse me.

4 A. 31 is -- the preamble that -- this preamble is  
5 I believe identical in every order, it's what follows  
6 that varies. What -- what -- as far as Order 131, I  
7 think there's maybe one variation in the rest of the  
8 language from 124, otherwise they're identical, and  
9 that's not a real material difference.

10 Q. And have you read the Cooperative's Proposal?

11 A. I'm fairly familiar that it's -- I believe the  
12 Cooperative's Proposal -- I don't have it in front of me  
13 so I guess I'm uncomfortable speaking to it, but -- so I  
14 don't -- I don't -- off the top of my head, I don't know  
15 exactly what it says. I mean, I have an idea.

16 Q. Is your -- is it your understanding that the  
17 Cooperative's Proposal would have a similar --

18 A. It's three million -- the three-million-pound  
19 designation I understand is in the Cooperative Proposal.

20 Q. Okay. All right. So walk me through the rest  
21 of this and help me understand how this works, how the  
22 sections are structured and what the impact is.

23 A. So we go through to the start, we have a  
24 requirement for designation. So designation of any  
25 person as a producer-handler by the Market Administrator



1 shall be contingent on the following provisions. The  
2 first one --

3 THE COURT REPORTER: Excuse me.

4 THE WITNESS: I'm sorry, start slowing.

5 THE COURT REPORTER: When you're reading, can  
6 you read a little slower?

7 THE WITNESS: I apologize.

8 THE COURT REPORTER: Thank you.

9 THE WITNESS: I tend to talk fast. I  
10 apologize.

11 BY MS. HANCOCK:

12 Q. He's trying to help me get out of here on  
13 time.

14 A. So, in essence, if you look at -- it would be  
15 look at (a)(1), so the care and management of the dairy  
16 animals and other resources designated in paragraph  
17 (b)(1). So in essence, if I can keep it fairly general  
18 without getting too technical, everything that has to do  
19 with the farm has to be under the sole control,  
20 ownership, and risk of this person. Also, any -- the  
21 fluid milk, the distributing plant, that operation has  
22 to be at the sole risk and enterprise of the same person  
23 that owns the farm, that operates the farm.

24 And there's a provision, you can have a little  
25 bit of extra milk, up to 150,000 pounds, as long as that

1 milk is priced under some other Federal order, either  
2 this -- either the order that you're in or some other  
3 Federal -- so you can have a little bit of extra milk  
4 received, but other -- if you get any more than that,  
5 you lose your producer-handler designation.

6 Also, you can't take nonfluid milk receipts  
7 and reconstitute them for classified use.

8 Q. What does that mean?

9 A. That means you buy powder or -- or  
10 concentrated milk, you add water to it, you make fluid  
11 milk, it's reconstitution, so you can't do that.

12 Q. So basically the goal here is to make sure  
13 that you don't have people trying to work the system and  
14 have a separate owner of -- separate farm providing milk  
15 to a separate processing plant?

16 A. Prevent -- you're trying to prevent shared  
17 risk. It has to be the sole risk and enterprise of one  
18 entity.

19 Q. Are there any restrictions on the transfer of  
20 those -- of the ownership of those entities?

21 A. The -- for us, you know, if -- once they're  
22 designated, whether they're a partnership or an  
23 individual proprietorship, whatever, if there's any  
24 change in that structure from what was originally  
25 designated, then we need to look at it again to make

1 sure that that change, in fact, if he -- if this  
2 individual or partner or whatever was sold, then that  
3 new entity has to be structured under these provisions.

4 So as far as -- you're inquiring, I think, in  
5 terms of any type -- any change in ownership would  
6 require us to look at it again to see if it met the  
7 requirements.

8 Q. But as long as it continued to meet the  
9 requirements, it would continue to receive the same  
10 designation?

11 A. That's correct.

12 Q. Okay. So there's no restriction or  
13 limitation, you don't lose the exemption if you transfer  
14 it to a separate entity?

15 A. Well, it would be an entire new entity, so it  
16 would be two -- I mean, the entity we designate, any  
17 change to that, then we start over again.

18 Q. Okay. Is there any financial investment  
19 requirement to obtain this designation?

20 A. No, no.

21 Q. So they --

22 A. No.

23 Q. -- don't have to pay to play?

24 A. No.

25 Q. Okay. Okay. Let's move on down, see what it

1 says.

2 A. So, again, so this -- this one, in essence  
3 you're talking about the farm, and then in (2), so we're  
4 at -- excuse me, I'll talk slower -- (a)(2), the plant  
5 operation again is in which the producer-handler  
6 packages and processes milk, is under the complete and  
7 exclusive control and ownership and management of the  
8 producer-handler, and is --

9 THE COURT REPORTER: Excuse me.

10 THE WITNESS: Sorry.

11 THE COURT REPORTER: I'm sorry.

12 THE WITNESS: Okay.

13 THE COURT REPORTER: You're reading way too  
14 fast.

15 THE WITNESS: Okay. I apologize.

16 Complete and exclusive control, ownership, and  
17 management of the producer-handler and is operated as  
18 producer-handler's own risk -- excuse me, own enterprise  
19 and its own risk.

20 So, again, just setting the table, the farm  
21 and the plant have to be owned/operated by the same  
22 entity.

23 And then as far as we talk about receipts, so  
24 the producer-handler neither receives at its designated  
25 milk production resources and facilities nor receives,

1 handles, processes, or distributes at or through any of  
2 its designated milk handling, processing, and  
3 distributing -- distributing resources and facilities  
4 other source milk products for reconstitution into fluid  
5 milk products. That's what we were talking about, they  
6 can't take powder, concentrated milk and add water to  
7 make a fluid milk product.

8 Okay.

9 BY MS. HANCOCK:

10 Q. Again, designed to protect the integrity of  
11 the system so that you know that exactly what you're  
12 producing and processing is what --

13 A. Yeah.

14 Q. -- you're calculating?

15 A. And -- and, you know, it has to move with  
16 reserve supply and other source receipts, so it has to  
17 be from your own herd up to the 150,000.

18 So, again, so other -- so other than -- right,  
19 it's designated milk so you can only get milk from at  
20 the plant, you can only receive milk from its designated  
21 milk production resources and facilities, own farm  
22 production.

23 Pool handlers and plants regulated under any  
24 Federal milk order within the limitation specified in  
25 (c)(2), and that's at 150,000. Nonfat dry milk --

1 excuse me. Nonfat milk solids which are used to fortify  
2 fluid milk products. So you can do that. You can  
3 fortify, you can't reconstitute.

4 The producer-handlers neither directly nor  
5 indirectly associated with the business control or  
6 management of, nor has the financial interest in,  
7 another handler's plant operation -- in other words,  
8 that any other handler so associated with  
9 producer-handler's operation. Again, we're talking  
10 about sole risk and enterprise. And that's basically  
11 all this language goes on, it just talks -- talks about  
12 that. Make sure there's no -- nothing else, no other  
13 entities involved other than that -- that entity that's  
14 been designated as the producer-handler.

15 Q. And that's to protect, again, the integrity of  
16 the system to make sure that you just don't just name  
17 your other plant a different name --

18 A. Right.

19 Q. -- and try and carve out, stay under the  
20 three-million-pound exemption?

21 A. It keeps -- it keeps -- it keeps it as that  
22 sole person's operation, right.

23 So then the -- the next para -- the next  
24 section (b) talks about what resources and facilities  
25 can be designated. So if we go to (b)(1), Milk

1 production resource and facilities shall include all  
2 resources and facilities, the milking herd, buildings in  
3 housing such herds, the land on which such buildings are  
4 located, used for the production of milk which are  
5 solely owned, operated, and which the producer-handler  
6 is designated as a source of milk supply for the  
7 producer-handler's plant operation. However, for  
8 purposes of this paragraph, any such milk production  
9 resources and facilities which do not constitute an  
10 actual or potential source of milk supply for the  
11 producer-handler's operation shall not be considered a  
12 part of the producer-handler's milk production  
13 operation.

14 In essence, okay, if you're a producer-handler  
15 in -- in the Seattle area, and somehow you have some  
16 interest in, or whatever, a farm in Virginia, that's  
17 probably not a -- you know, a reasonable source of  
18 supply, so that's -- probably would not, you know,  
19 qualify you to be -- lose your designation.

20 The milk handling, processing, and  
21 distribution resources and facilities shall include all  
22 resources and facilities, including store outlets, used  
23 for the handling, processing, and distributing fluid  
24 milk products which are solely owned by, and directly  
25 operated or controlled by the producer-handler or in

1 which the producer-handler in any way has an interest,  
2 including any contractual arrangement or over which the  
3 producer-handler directly or indirectly exercises any  
4 degree of management control.

5           Again, you can't have any interest in anything  
6 except your own operation, so it's your own sole risk  
7 and enterprise, there's no question that anybody else is  
8 in any way sharing any of the risk involved in your  
9 operation.

10           And then the designations remain in effect  
11 until they're canceled. And then we -- basically  
12 they're canceled if you violate anything that we've  
13 talked about.

14           And then -- so -- so, again, it goes on  
15 cancellation as a producer-handler status shall be  
16 effective on the first day of the month following the  
17 month in which the requirements are not met.

18           So if some time during January you violate it,  
19 you lose your designation February 1. That's in the  
20 bottom of -- towards -- towards the end there of (c)  
21 where it says "Cancellation."

22           Q.    What -- what is your look -- when you make the  
23 determination of how -- what the -- whether they met  
24 their volume threshold or not, what's your look-back  
25 period? Is it just the preceding month?



1           A.     Well, we have -- you know, we don't visit  
2 every handler every month, but we make an effort to  
3 visit handlers on a regular basis, so when we -- we go  
4 in and operate the producer-handler, if we find out  
5 that -- say we're doing a four-month audit, and in month  
6 one they -- you know, they did something that lost their  
7 designation, well, we're going to go back and pool them  
8 on audit in month two, three, and four until they came  
9 back on as to -- in that designation.

10           Q.     And for the month that they fell out of  
11 designation, would they then pay into the pool for that  
12 and have price adjustment?

13           A.     Whether they pay in or out would determine on  
14 what calculation they would be subject.  Again, they may  
15 or may not be fully regulated, they may be partially  
16 regulated, I mean, they would not -- in essence, they  
17 could lose the producer-handler designation, what would  
18 happen after that would depend on what their sales  
19 pattern is, what they are.

20           Q.     Okay.  So you can qualify one month, not  
21 qualify another month, and then qualify again the -- the  
22 third month?

23           A.     You -- you could -- you can lose your  
24 qualification in month A, during month -- month B, you  
25 would be pooled, but if during month B you corrected

1 that problem to the satisfaction of the Market  
2 Administrator, in month C you can gain your designation.

3 Q. All right. And then when -- I didn't mean to  
4 take you off track so we're --

5 A. Yeah, yeah.

6 Q. -- walking through the cancellation.

7 A. So, yeah, right. So then -- so -- so we're at  
8 (c)(1), milk from the production resources and  
9 facilities of the producer-handler designated (b)(1) in  
10 this section is delivered to name -- in the name of  
11 another person as producer milk to another handler.

12 So, again, you've got this production, it's  
13 not sole risk again.

14 The producer-handler handles fluid milk  
15 products derived from other sources -- excuse me,  
16 derived from sources other than the milk production and  
17 resources at the facilities -- excuse me, facilities and  
18 resources designated in paragraph (b)(1) of this  
19 section. Okay, this is 150 -- 150,000. Except that it  
20 may receive at its plant or acquire for route  
21 disposition fluid milk products from fully regulated  
22 plants and handlers under any Federal order if such  
23 receipts do not exceed 150,000. And this limitation  
24 shall not apply if the producer-handler's own farm  
25 production is less than 150,000, which basically makes

1 it an exempt plant.

2 The next one, milk in -- milk from the milk  
3 production resources and facilities of the  
4 producer-handler is subject to inclusion and  
5 participation in a marketwide equalization pool under a  
6 milk classification and pricing plan operated under the  
7 authority of a State government. So you couldn't have a  
8 farm that was subject to some state milk pricing plants  
9 and have that part of your producer-handler operation.

10 And then we make a public announcement and so  
11 publicly announce name, plant location of person  
12 designated as a producer-handler, names those persons  
13 whose designations have been canceled and the effective  
14 date.

15 And then the -- the last part here is just the  
16 burden of establishing and maintaining the status risk  
17 of the handler.

18 So again, you know, to -- to keep it in a more  
19 simple basic understanding, you know, with some of the  
20 language that's been used in the past is grass to glass,  
21 you know, farm to customer. It -- that has to be under  
22 the same exclusive, complete control of one entity, but  
23 no other possibility of any other shared risk or  
24 involvement.

25 Q. Okay. Do any of the orders that you operate

1 under have any type of quota system similar to that  
2 in -- in California?

3 A. No.

4 Q. So you don't have any -- well, I want to move  
5 on, then, to -- to the payments as well, how we  
6 calculate these payments. Where do you take your  
7 guidance from on how you calculate payments to -- under  
8 your pool plants?

9 A. For pool plants, not -- okay. It's -- the  
10 handler's obligation is in Section 60 of every order, so  
11 it would be 124.60.

12 Q. So just for the record, in -- in the book that  
13 I'm in, it's on page 174. I guess for reference for the  
14 rest of you.

15 A. 164?

16 Q. Oh, I changed orders.

17 A. If we're still on 124.

18 Q. 164, that's right.

19 Section 1124.60. Okay. Walk me through what  
20 this section guides you to do and how it works and in --  
21 in -- in the orders that you operate.

22 A. I could -- we'll go -- how about if I just  
23 give you sort of the broad view, and if you want to get  
24 more specific on -- on questions. In essence, you know,  
25 we're pricing the -- we want to get to the value of the

1 produced milk received, and the plant has a lot of  
2 utilization and a lot of different receipts normally, so  
3 the other section of the order tells us how to allocate  
4 those receipts to utilizations to try to net out what  
5 the producer milk -- what the end -- how the produced  
6 milk is used.

7           And then in essence, then, we just take those  
8 produced milk pounds by the class they were allocated to  
9 by the applicable class prices, and that's the handler's  
10 value of produced milk. There may be some other values  
11 in there if -- there may be inventory adjustments, there  
12 may be overage, but for that -- you know, pretty much  
13 all of the value of a handler's obligation is based on  
14 the value of how they used milk from farms qualified to  
15 be producers under the order.

16           Q. And then who manages the payments to the  
17 producers?

18           A. Well, the -- the -- the handlers pay -- the  
19 handlers' cost of milk is always the class prices.  
20 Producers always get the blend price. So if a handler's  
21 cost of the milk is -- they pay the producer the blend,  
22 so if their cost of milk is over the blend price, pay  
23 producers the blend, they pay that difference into the  
24 producer settlement fund.

25           The opposite sometimes is true when the

1 handler's cost of milk is less than the blend price,  
2 then you pay the producers the blend price, that milk is  
3 drawn out -- excuse me, those dollars from the producer  
4 settlement fund, so the handlers pay the producers.

5 Q. Okay. And so it's a -- it's a reporting and  
6 accounting mechanism that's settled up between -- under  
7 your offices and with your handlers; is that essentially  
8 how that works?

9 A. I would not argue with that, yeah, it's a --  
10 it's a financial transaction between handlers,  
11 producers, and us.

12 Q. Okay. And is there -- there's one blend  
13 price, you don't separate out variations on the blend  
14 price for different calculations to pay producers?

15 A. Well -- well, there's one blend price  
16 announced at the base zone for the order. That blend  
17 price can be adjusted based on location of the plant the  
18 milk was received at. So there's a slight variation in  
19 the blend price, but there is one blend price adjusted  
20 for location.

21 Q. And if a -- if -- if a -- if a producer is  
22 exempt or a producer-handler is exempt, then they are  
23 outside of that calculation entirely; is that correct?

24 A. Right. If you're a producer-handler, you're  
25 exempt from the pricing and pooling provisions of the

1 order.

2 Q. You still get reporting from them --

3 A. Oh, yeah.

4 Q. -- just so you can calculate and quantify it,  
5 but they don't report in the pool?

6 A. They report each month, and we audit those  
7 reports, but as long as they meet the qualifications,  
8 there's no financial obligation.

9 Q. How does it work with a partially regulated --  
10 with partial regulated -- regulated producers?

11 A. That would be in Section 1076. Do you want to  
12 turn there?

13 Q. Yeah.

14 A. Okay. That is on page 44. Now, there are --  
15 there are four subsections to 76, and I want to be  
16 upfront, full disclosure with you, that the last one,  
17 which is 76(d), I have no familiarity with, I have never  
18 administered that, I have no -- so I really don't --  
19 can't really speak to 76(d) other than it doesn't really  
20 fall into the traditional category of a compensatory  
21 payment, so --

22 Q. Tell -- tell me what your understanding of  
23 what subsection (d) covers.

24 A. As I recall, section (d) came out of a -- what  
25 we call the National Decision from 1990, and it involved

1 reconstituting milk, and that if a plant in a Federal  
2 order produced powder and that powder went to some other  
3 plant and that plant reconstituted it and it sold it in  
4 some marketing area that the -- the plant that made that  
5 powder, there was some method to move the money back  
6 there. That's a very general, and I really don't want  
7 to speak to it any more because I've never had to do it,  
8 and I'm not familiar with it.

9 Q. You're not --

10 A. I know it's in there, it's just something I've  
11 never dealt with.

12 Q. You're not aware of anyone using that  
13 provision?

14 A. I -- I can only speak for myself. I've never  
15 administered it, never have. There may be other orders  
16 that have, I don't know, but I have not.

17 Q. Okay. Let's -- let's talk about (a) through  
18 (c) then.

19 A. Okay. Okay.

20 Q. Tell me what about your understanding is about  
21 what 1000.76 -- what it controls and then how it works.

22 A. Okay, (a) through (c). Well, I've got to go a  
23 convoluted way, I think it's the easiest way to explain  
24 this. We'll go (c), we'll go (a), we'll go (b).

25 Q. (c), (a), (b).



1 A. We'll take a cab.

2 Q. All right.

3 A. Section (c).

4 Q. Pay for it.

5 A. Section (c) applies only, and I can read the  
6 preamble here, if you look at the preamble of 76. On or  
7 before the 25th day after the end of the month, except  
8 as provided in 1090, which is the calendar day  
9 adjustment, the operator of a partially regulated  
10 distributing plant, here's -- here's the key, here's the  
11 (c), other than a plant that is subject to marketwide  
12 pooling of producer returns under a State government's  
13 milk classification and pricing program.

14 So I'll read that again. Other than a plant  
15 that is subject to marketwide pooling on producer  
16 returns under a State government's milk classification  
17 and pricing program. That's 76(c).

18 So if you are this -- this entity that's  
19 subject, the only payment obligation that you're subject  
20 to is 76(c).

21 Q. So if you fall outside of an order --

22 A. If you're -- if you are -- if you are located  
23 in a -- in a -- in a state that has classified pricing  
24 and marketwide pooling and you have packaged milk sales  
25 route dispositions into a Federal order that does not

1 result in full regulation, so you don't meet the  
2 threshold of full regulation, then you're partially  
3 regulated, and you're subjected to a compensatory  
4 payment calculation only under (c), and (c) -- what (c)  
5 does, it -- it looks at the applicable Class I price  
6 under the Federal order you're selling the milk into,  
7 compares that to the applicable state price for that  
8 product. The Federal order is more, you pay that  
9 difference into the producer settlement fund. If the  
10 state price is more -- excuse me. If the Federal order  
11 is more, state price is less, you pay that difference  
12 into the producer settlement fund in the order you're  
13 selling the milk into. If the state price is greater,  
14 you have no compensatory obligation. You don't get  
15 credit, you have no obligation.

16 Q. So it's -- and it's only for the portion of  
17 milk that -- that you've distributed into that order  
18 system?

19 A. That's correct. Partial regulation is dealing  
20 only with the amount of packaged route sales in the  
21 particular Federal order.

22 Q. So in my lay terms, I -- it's kind of the  
23 fairness factor, right? If you go into their system,  
24 you pay the increased amount if -- if you need to in  
25 order to true it up, and if you are under, you don't get

1 the benefit of that, but you also receive the benefit of  
2 being able to deliver into the order?

3 A. Partial regulation is designed to protect the  
4 regulatory scheme, keep handler equity at least  
5 comparable, but that's correct. If you have cheap milk  
6 coming in from outside, it won't work.

7 So (c), then, is only available to plants that  
8 are in a state order that has marketwide pricing, has an  
9 announced price. And, again, if the state price is  
10 higher, there's no obligation. If it's less than the  
11 Federal order, that difference then is -- is paid.

12 76(a) is the difference between I and blend.  
13 So any packaged route sales into a Federal order, and  
14 again, without -- I'll just say it one more time. When  
15 we talk about partial regulation, we talk about plants  
16 that have not met the threshold of full regulation,  
17 so -- so there's clearly not -- not subject to full  
18 regulation.

19 So under 76(a), a plant reports their route  
20 sales into the order, and then pay the difference  
21 between the announced Federal order Class I price at  
22 that plant and the blend price at that price, so it's  
23 the difference between I and blend on sales in the area.  
24 As far as the regulatory burden to that plant, they  
25 just -- normally they send us in one sheet, has their

1 sales in the area. You know, we -- we -- we look at the  
2 price difference between Class I and blend, and then  
3 when we go there and audit, we obviously audit their  
4 sales, so it's -- for a regulator -- from a regulatory  
5 standpoint for that plant, it's 33 versus 37.

6 Now, that leaves us --

7 Q. And that's evaluated on a monthly basis?

8 A. That's correct, yes, everything is month to  
9 month. So we've got (a), we've got (d), we don't want  
10 to talk about (d). Excuse me. We've got (a) -- we've  
11 got (c), we got (a), that leaves us with (b). (b) is  
12 known -- many times known as the Wichita Option, and I  
13 believe that's because as a result of a hearing that was  
14 held, I believe in 1955, sometime in the early '30's, in  
15 Wichita. So -- so in Wichita obligation we're --

16 Q. Sometimes early '30's?

17 A. '55 I think, I think it's '55, but I'm not  
18 sure. Anyway that's -- when people say the Wichita  
19 Option, they're talking about 76(b). And so if we talk  
20 about 76(b), we say, again, the payment under this  
21 paragraph shall be the amount resulting from the  
22 following computations: Determine the value that would  
23 have been computed pursuant to Section 60. Again, the  
24 handler's obligation on the order is the same  
25 designation, Section 60 in every order. Determine the

1 value that would have been computed pursuant to Section  
2 60 of the order for the partially regulated distributing  
3 plant if the plant had been a pool plant, and then  
4 there's some slight modifications that we can certainly  
5 go through, but in essence what these modifications do  
6 is try to ensure that the same milk is not priced twice.

7           So if you -- if a partially regulated plant  
8 receives milk that's priced as Class I from some pool  
9 plant but they also have sales in the Federal orders of  
10 Class I, we offset that so we would -- we would reduce  
11 the sales in the Federal orders by the amount of Class I  
12 they bought. So these qualifying paragraphs here  
13 basically try to restrict any type of double pricing.

14           So we compute this value of 60 as if the  
15 handler -- as if the plant had been fully regulated,  
16 which in essence is the -- is their -- again, the  
17 handler's cost is this class price, this is what they  
18 owe in total, not what they're paying producers, what  
19 they owe in total.

20           So then if you go to big C, so the value  
21 pursuant to 60, the unregulated supply plant, and that  
22 was -- well, I'm sorry, if we go to (2) --

23           JUDGE CLIFTON: I'm sorry.

24           THE WITNESS: I'm sorry.

25           JUDGE CLIFTON: I didn't hear that.

1 THE WITNESS: I apologize. I -- I jumped in  
2 on -- again, this is what I was reading, I wanted to go  
3 next down there to (2), but I -- the -- the -- under  
4 76(b) you can claim some other sources of supply, but  
5 you'll have -- you also have to compute a value for them  
6 as if they were fully regulated. That -- and I have no  
7 experience doing that. Our plants have never used these  
8 other sections where a -- a supply plant is claimed as  
9 part of its milk supply and used as part of the  
10 obligations of 60. I have no experience with that.

11 JUDGE CLIFTON: Have you noticed -- this is  
12 Judge Clifton -- when he talks to me, he talks slowly,  
13 so --

14 THE WITNESS: I guess when I'm not, I'm  
15 talking to myself, I don't know. I apologize.

16 JUDGE CLIFTON: Even though you're -- you're  
17 looking at Ms. Hancock and responding to what she asks  
18 you, pretend like you're talking to me.

19 THE WITNESS: You know, my -- my employees  
20 would tell you I have a saying that most people don't  
21 change after third grade, and I apologize. This is how  
22 I've always been. I'll make a conscious effort. I do  
23 seriously apologize.

24 So if we look at below that big (C), we got a  
25 (2), from the partially regulated distributing plant's

1 value of milk computed apparent -- computed -- computed  
2 pursuant to paragraph (b)(1) of this section, which as  
3 we say we compute a value pursuant to 60, subtract the  
4 gross payments that were made for milk that would have  
5 been producer milk had the plant been fully regulated.  
6 So we're looking at, okay, you would incur a  
7 compensatory payment if your cost of milk, your gross  
8 cost of milk if you had been fully regulated, if that  
9 exceeds the gross payment that you pay for your milk  
10 supply that would have qualified as producer milk,  
11 there's a positive difference there, then that is an  
12 obligation to the settlement fund.

13 If the reverse is true, if you're paying more  
14 for your milk supply than your cost of milk would have  
15 been had you been fully regulated, there is no  
16 compensatory payment.

17 And that's 76(b), we're looking at what your  
18 cost had you been fully regulated, what you paid  
19 producer's milk.

20 BY MS. HANCOCK:

21 Q. And in your order, how many handlers do you  
22 have that participate as partially regulated under  
23 subsection (b)?

24 A. You know, as far as -- I don't have my -- off  
25 the top of my head, I don't know how many partially

1 regulated. I would not be able to designate to you  
2 whether the claim (a), (b). (c) would be obviously  
3 because their plant location would tell you they have to  
4 be a (c). But whether they take (a) or (b), that would  
5 be proprietary.

6 Q. And is that -- is -- is it by their election,  
7 do they have to opt in and -- and ask for that  
8 calculation?

9 A. Should a handler so -- right. But we -- we  
10 would not -- if -- if they claim (b), we're also going  
11 to look at (a), okay, and if (a) is less than (b), then  
12 we would charge them (a). We're not going to charge a  
13 delivery charge, the lesser of (a) or (b).

14 But to do (b) -- again, you know, getting back  
15 to (a), they -- you know, what the handler supplies to  
16 us is basically usually just one sheet that shows their  
17 sales in the area. If they choose (b), they're just  
18 like a fully regulated handler. They have to give us a  
19 complete handler report and that is subject to audit, so  
20 they have to fill out the entire, what we call Report of  
21 Receipts and Utilization, and all the required documents  
22 for that, and then when we audit them, we do an audit  
23 just like we would on a fully regulated plant.

24 But that's in a nutshell. And it's gross  
25 payments that were made for milk that would have been



1 produced milk had the plant been fully regulated.

2 Q. And does that operate the same under both your  
3 orders that you -- that you operate?

4 A. Because this is in Section 1000, it's this way  
5 for every Federal order.

6 Q. That's right. Okay. I'm just  
7 double-checking. Sorry.

8 Is there anything else that I haven't asked  
9 you about that you think would be important for me to  
10 know? That's a genius question, I just want you guys to  
11 know.

12 A. I would say this, for someone that -- that as  
13 by own admission is not intimately familiar with the  
14 regulations, I think you hit all the high points. So --  
15 so I don't have anything to add.

16 Q. That's validation for me to go to the airport.  
17 I'm finished at this point. Thank you.

18 Again, thank you all for letting me kind of  
19 change the schedule a little.

20 JUDGE CLIFTON: Would all of you like to  
21 continue with this witness until he's done before we do  
22 our little preliminary matters? I'm getting yeses.

23 MR. ENGLISH: I'm flexible, either way.  
24 Whatever is best for the witness.

25 MS. TAYLOR: Is that okay with you?

1 JUDGE CLIFTON: The witness looks ready to --  
2 to continue. Good.

3 Then who will next ask Mr. Wise questions.

4 CROSS-EXAMINATION

5 BY MR. BESHORE:

6 Q. Good morning, Mr. Wise.

7 A. Good morning, Mr. Beshore.

8 Q. Marvin Beshore. Just a -- just a few  
9 questions, I think.

10 With respect to Section 76, partially  
11 regulated distributing plant provisions, was all of your  
12 testimony about how that section operates based on the  
13 language of part 1000.76?

14 A. Yes.

15 Q. Even though you were pointed to a particular  
16 page in one of your orders, it's all part of 1000 --  
17 it's -- it's the same in all orders I think you  
18 testified, it's in part 1000.76?

19 A. That's correct. And the fact the 1000  
20 references 60, which is the same connotation in every  
21 order, that's correct.

22 Q. Okay. So when the hearing notice provides in  
23 Proposal 1, which is the proposal of the Cooperatives,  
24 which I represent, indicates that we are proposing that  
25 new section, 1051.76, payments by a handler operating a

1 partially regulated distributing plant, (b) see 1000.76,  
2 all of your answers would operate as -- as if that  
3 were -- were part of the promulgated order?

4 A. I guess I just hesitate on a "what if." I can  
5 say that this -- everything that I've spoke to is  
6 currently contained in 1000 that applies to all Federal  
7 orders.

8 Q. Okay. 1000.76?

9 A. That's correct.

10 Q. Yeah, okay. That's fine.

11 Now, let's talk about part (c). You're  
12 familiar -- you've testified you're familiar with the  
13 operation of part 76(c), and that's because you have  
14 plants that are in California regulated under the Cal --  
15 present California state order system, which are  
16 partially regulated in the orders which you administer,  
17 correct?

18 A. That's correct.

19 Q. Okay. And do you publish on your -- on your  
20 website and otherwise in both orders a list of those  
21 plants on a monthly or other periodic basis?

22 A. Yes, we public publish the plant name and  
23 location.

24 Q. Okay. Do you do that monthly or annually or  
25 how?

1           A.    We should be updating that monthly, certainly  
2 annually, but I believe it should be updated monthly.  
3 Sometimes there's a little bit of lag.

4           Q.    Okay.  But with respect to -- to both orders,  
5 the Pacific Northwest and Arizona?

6           A.    The effort is made to keep those as currently  
7 as possible for both orders, yes.

8           Q.    Okay.  Do you -- now, you've testified that  
9 there's a calculation made with respect to the -- to  
10 those plants under Section 76(c).  Can you just tell us  
11 what that calculation is again?

12          A.    Yes.  Yes.  We look at the applicable Federal  
13 order Class I price at the location of that partially  
14 regulated plant.

15          Q.    Okay.  And how do you determine that?

16          A.    Well, that's -- that's based on the -- you  
17 know -- well, no, there's location for every county in  
18 the country, so it's based on plants -- milk at -- for  
19 plants is priced at where the plant is located, not  
20 where they sell the milk.  So if they were in Los  
21 Angeles County or whatever county in California, we have  
22 a Class I differential for this county, and that would  
23 establish the effective Class I Federal order price for  
24 that.

25          Q.    And that Class I differential is also in part

1 of 1000 of the regulations?

2 A. That's for -- for California, yes, it is.

3 Q. Okay. And that, then, is incorporated by  
4 reference, in essence, into your orders?

5 A. Yes.

6 Q. Okay. So -- so you look at part 1000, so  
7 you -- you have the location of the plant, you look at  
8 part 1000, is that Section, what, 52, 54?

9 A. I believe class -- location adjustments are  
10 52.

11 Q. Okay. If you find the county in 52, and that  
12 tells you then what the Federal order price is at  
13 that -- applicable to that plant, correct?

14 A. Gives you the differential that you would add  
15 to the movement, right.

16 Q. Oh, so you add the -- that tells you how to  
17 calculate --

18 A. That's correct.

19 Q. -- the applicable price?

20 A. Right.

21 Q. So now -- how do you -- to what do you compare  
22 that price?

23 A. To the -- what the -- the applicable state  
24 price for that product under the state program.

25 Q. Okay. And what's your source for that

1 information?

2 A. We go to the state itself, the state  
3 regulations.

4 Q. Okay. Now, do you -- do you publish on your  
5 on your -- on your website, a, or do you have, you know,  
6 in your orders information which would show us, which  
7 would tell for each location in California the published  
8 Federal price and the published state price for any  
9 given -- at any given time?

10 A. No. I believe when we -- on our plant list  
11 that lists the name and location, we might -- sorry,  
12 because I don't do that myself, but we might put the  
13 location differential on there, I'm not sure.

14 Q. The Federal -- Federal --

15 A. Federal record. We're not going to publish  
16 anything in regard to the state.

17 Q. Okay. So when you -- when you, however you do  
18 calculate with respect to those plants, a -- an  
19 obligation to the Federal Order Pool if the Federal  
20 price is higher than the state price?

21 A. They -- they -- we calculate, obviously, see  
22 what it is, correct, we calculate -- you know, if it's a  
23 positive, it's an obligation, if it's a negative, then  
24 it's not. So, yes, we calculate the -- take their  
25 price, our price, and compare it.

1 Q. Okay. And can you testify are those generally  
2 positive obligations from the California plants to -- to  
3 the Orders?

4 A. Well, obviously the price variances would --  
5 would, you know, would vary, but in most cases the  
6 Federal order price -- it would depend month to month.  
7 I guess without having the data in front of me, I would  
8 hesitate to say if it's more, what they pay.

9 Q. Okay. But they have -- they have paid in?

10 A. Oh, yes.

11 Q. Over the years?

12 A. Yes, yes.

13 Q. The -- there was an exhibit placed into  
14 evidence yesterday by -- through the Chief of Market  
15 Information Branch, Ms. Warren, which is Table 21 of  
16 Exhibit 9, which showed the number of partially  
17 regulated plants in the Federal order system that had  
18 that status under Section 76(c), and the number for most  
19 months was ten. Does that sound about right in terms of  
20 the number of plants that --

21 A. I'd say as -- oh, thank you. Thank you, Mr.  
22 Hill.

23 And so I'm looking at Number Table 21, it's  
24 not marked, but whatever exhibit this is. Number of  
25 partially regulated distributing plants using 76(a),

1 (b), or (c), all orders. So I see, so they -- so by  
2 year, (a), (b), (c), so this is for all the orders,  
3 through, right, not just for 124 and 131; is that  
4 correct?

5 Q. I think so.

6 A. Okay. That appears to be ten, nine, ten,  
7 nine, 11. So I guess the data speaks for itself, you  
8 know, since it's aggregated.

9 Q. And the information on your website would --  
10 for the Orders 124 and 131, we could -- we could look at  
11 that information, identifying the partially regulated  
12 plants, and count them up, and -- and compare them to  
13 that data to see whether basically all those plants are  
14 from California that are qualifying under (c)?

15 A. Again, knowing -- everybody knowing that the  
16 California has classified pricing order, that's the only  
17 other option they have, our plant -- our list shows  
18 they're located in California, that's correct.

19 Q. Do -- in our orders, do you have partially  
20 regulated distributing plants that are not -- yeah,  
21 other partial -- partially regulated distributing plants  
22 from states other than California that aren't fully  
23 regulated under another Federal order or any order?

24 A. Yes, we have partially regulated distributing  
25 plants that are not located in a state that has



1 classified pricing market orders, and they would be  
2 partially regulated because they weren't subject to full  
3 regulation anywhere else.

4 Q. Okay. And they'd be on that same list, I  
5 guess?

6 A. That's correct.

7 MR. BESHORE: Okay. We had requested -- this  
8 is a question for Mr. Hill or Mr. Frances, I'm not sure.  
9 We had requested a witness to speak to the operations of  
10 the MREA, and is Mr. Wise that witness?

11 THE WITNESS: I'll do the best I can.

12 MR. BESHORE: Okay. Thank you.

13 JUDGE CLIFTON: You're not limited to one  
14 witness so that you may begin with this witness, and you  
15 may also ask another witness.

16 MR. BESHORE: Well, I know it's not a  
17 Lunchable, but I'll start with him.

18 BY MR. BESHORE:

19 Q. Okay. So I used the -- the abbreviation MREA.  
20 What -- what does that stand for, to your knowledge?

21 A. Milk Regulatory Equity Act.

22 Q. And so how does that act -- is that a Federal  
23 act, Federal law?

24 A. Yes, it became part of the Agriculture Market  
25 Agreement Act.

1 Q. How does it affect the -- how does it apply in  
2 the administration of -- of your orders?

3 A. If I could turn to --

4 Q. Absolutely.

5 A. Okay.

6 Q. Whatever you need.

7 A. So it's -- it may be a different paragraph in  
8 each order, but it's contained in the pool plant  
9 definition of each order, so I will take -- we'll go to  
10 124. And we'll look at the pool plant, which is 247.

11 JUDGE CLIFTON: Now, just so that the  
12 transcript will help people who are reading the  
13 transcript find the right Federal regulation, are you  
14 saying Section 1024.7?

15 THE WITNESS: I apologize. 1124.7. In the  
16 copy of the CFR that I have it begins on page 156.

17 JUDGE CLIFTON: Thank you. And which of your  
18 orders is this?

19 THE WITNESS: Yes. 124. 1-2-4 is the Pacific  
20 Northwest order.

21 JUDGE CLIFTON: Thank you.

22 THE WITNESS: So in this particular order,  
23 Section (e) would be as a result of the MREA, and this,  
24 again, we're defining what pool plants are. Any  
25 distributing plant, located within the marketing area as

1 described on May 1, 2006, from which there is route  
2 disposition and/or transfers of packaged fluid milk  
3 products in any non-federally regulated marketing area,  
4 or areas, located within one or more states that require  
5 handlers to pay minimum prices for raw milk -- so we're  
6 talking about sales into a state that requires payments  
7 for minimum prices for raw milk -- provided that  
8 25 percent or more of the total quantity of fluid milk  
9 products physically received at such plant. And there's  
10 a parenthetical phrase that excludes concentrated milk  
11 for another -- from another plant by agreement for other  
12 than I. So, again, skipping over that parenthetical  
13 phrase, which I don't -- in our case, I don't think is  
14 going to hurt our discussion. Received to such plant --  
15 so we've got 25 percent or more of the total quantity of  
16 fluid milk products physically received at such plant is  
17 disposed of as route disposition and/or as transferred  
18 in the form of packaged fluid milk products to other  
19 plants. So, again, the first demarcation line is -- is  
20 at least 25 percent of the receipts of this plant using  
21 Class I. At least 25 percent of such routes disposition  
22 and/or transfers in aggregate or in any non-federally  
23 regulated market area, or areas, located within one or  
24 more states that require handlers to pay minimum prices  
25 for raw milk.

1           And then there's some exclusions there,  
2 they're subject -- if the order -- if this plant is  
3 already subject to some state-operated order, that this  
4 doesn't apply. If they're a producer-handler, it  
5 doesn't apply. And if they're fully regulated under  
6 some -- so that's the exclusions.

7           So, in essence, that -- that's the 25/25 rule  
8 that is in many Federal orders to qualify pool  
9 distributing plants, is your operation at least  
10 25 percent Class I, and of that Class I, is at least  
11 25 percent, in this case in the designated state.

12           Q. So does that -- does that -- the MREA  
13 presently operate in your order to impact the regulation  
14 of plants located in one of your orders by selling more  
15 than 25 percent into the State of California?

16           A. If -- if we had a plant that did, it would.

17           Q. Right. And we'll just keep it hypothetical.

18           A. Right.

19           Q. Now, in California, if a state -- if a Federal  
20 marketing order for the State of California were issued  
21 as a result of this hearing, how would that change?

22           A. That would be a Federal order so that -- if  
23 that -- if a plant that currently is a pool plant in one  
24 of my two orders --

25           Q. Yes.

1           A.    -- as a result of a paragraph we just went  
2 through --

3           Q.    Yes.

4           A.    -- if California were a Federal order, well,  
5 then that goes away because then they don't qual -- if  
6 it's not sales into a state that has -- it's different  
7 so it doesn't apply.

8           Q.    Okay.  And if hypothetically that plant had a  
9 preponderance -- a plurality of its distributions in the  
10 California -- State of California Federal Milk Marketing  
11 Area as opposed to the area where it was physically  
12 located, it would be regulated under the California  
13 order?

14          A.    Like -- like any plant in any -- if they have  
15 sales in the Federal order, that qualifies them under  
16 multiple Federal orders, they're going to be pooled  
17 where they have the most.

18          Q.    Okay.  So would that apply to plants located  
19 in, you know, in Arizona, for instance?  Is that a yes?

20          A.    Yes, yes.  Oh, I'm sorry.

21          Q.    Thank you.

22                   And Nevada?

23          A.    Oregon, Washington, any states that I  
24 administer, yes.

25          Q.    Okay.  Let me just ask a question or two on

1 producer-handlers. Are the -- first of all, do you have  
2 access to the -- the hearing notice? A copy of the  
3 hearing notice as opposed to the CFR?

4 A. Thank you. Assuming we're looking for  
5 Proposal 1?

6 Q. This is Exhibit -- yeah, Proposal 1 of Exhibit  
7 1, it's, you know, Section 10 on producer-handlers.

8 A. Right.

9 Q. Which is page 47212 of the Federal Register.  
10 Can you just --

11 A. Yes, I have it. Thanks. Sorry.

12 Q. Okay. Do you see the proposed  
13 producer-handler provisions there?

14 A. Yes, I do.

15 Q. All right. Now, are they similar or different  
16 than those that you described to Ms. Hancock which are  
17 in Order 124 presently?

18 A. Yes, they -- they are very similar. They use  
19 more broader language but imply what 124 and 131 make  
20 more specific.

21 Q. Okay. They do not have, for instance, the  
22 detailed cancellation and reapplication language that's  
23 in 124; is that correct?

24 A. I don't see it.

25 Q. Okay. But otherwise, to the best of your

1 knowledge, it would operate in essentially the same  
2 fashion?

3 A. Again, I -- you know, I just have to read it.  
4 Since it's not order language, not something I'm -- you  
5 know, had to administer, I hesitate to put a value  
6 judgment. I'm not trying to be uncooperative.

7 Q. Are you familiar at all with the language in  
8 all -- in the other orders in the Federal order system,  
9 producer-handler language?

10 A. In a -- in a -- in a broad sense, yes, I am.

11 Q. Okay. And generally are you -- would -- would  
12 it be your understanding that the language in Proposal 1  
13 tracks that language?

14 A. I would say that that's -- if -- well, again,  
15 I'd have to read it and look at all the language. I  
16 would say this, that to my knowledge, other than Order  
17 124 and 131, I think the rest of the producer-handler  
18 definitions in the rest of the orders are fairly  
19 similar, I -- I believe.

20 Q. Yeah. Okay. How long has the current  
21 language on producer-handlers been in -- in the orders  
22 that -- 124 and 131 which you administer?

23 A. I think 2004. It should have a designation in  
24 here.

25 Q. Well --

1 A. I believe 2004.

2 Q. Roughly?

3 A. Around 2004, as I recall.

4 Q. And were they -- was that a --

5 A. Or 2006, maybe.

6 Q. Okay. What were the provisions,  
7 producer-handler provisions prior to that time?

8 A. I believe in the Pacific Northwest, they were  
9 pretty much the same. They -- I don't think there was  
10 much change at all between what they were under the  
11 Pacific Northwest prior, except for the three-million  
12 pound. The preamble is what -- I'm sorry if I  
13 misunderstood. Yeah. The preamble of the  
14 three million pounds, that is a significant change.

15 Q. In other words, there was no limit prior to --

16 A. That's correct.

17 Q. -- on the -- on the volume of sales that --  
18 that producer-handlers could have prior to those  
19 amendments, correct?

20 A. That is correct.

21 Q. Okay. And were there in fact  
22 producer-handlers that had sales route dispositions  
23 substantially in excess or in excess of  
24 three million pounds at the time, at the time the  
25 regulations were changed?



1           A.    I, again, not trying to be uncooperative, but  
2 there is any -- a hearing record for that that I'm sure  
3 would be noticed that would answer all that.

4           Q.    Well, let me ask it this way since you were  
5 involved in administration of the order:  Were -- did  
6 the status of -- of a number of entities under the  
7 Pacific Northwest order, the regulatory status change  
8 after the producer-handler regulation was adopted with  
9 the three-million-pound cap?

10          A.    Yes.

11          Q.    Okay.  Are there -- are there any of those  
12 producer-handlers that participated in that hearing in  
13 opposition to the changes that have remained  
14 producer-handler in the Pacific Northwest?

15          A.    You know, I -- again, I mean, you think --  
16 it's not that long ago, but I'd have to go back and look  
17 at who actually testified.

18          Q.    Okay.

19          A.    So I -- off the top of my head, I couldn't  
20 hypothesis an answer.

21          Q.    Is the producer-handler list in -- in your two  
22 orders published on your website?

23          A.    Yes, sir.

24          Q.    Okay.

25          A.    Yes, you would go back and look, you could

1 look at producer-handlers prior to the change in the  
2 order, afterwards, yes. And, I'm sorry, off the top of  
3 my head I'm not -- I would hate to say somebody's name  
4 that didn't.

5 Q. Right. Okay. The -- the producer-handler --  
6 here's what I want to get at: California requires  
7 fortification, has solids standards in its fluid milk  
8 products which are higher than other states. You're  
9 familiar with that generally?

10 A. Yes.

11 Q. Okay. So if we have an order covering the  
12 State of California and a producer-handler with  
13 operations under -- with route sales under  
14 three million, a qualified producer-handler, uses --  
15 brings in condensed milk or uses powdered milk to  
16 fortify its Class 1 products in order to meet the  
17 California standards, under the language as it's  
18 presently constituted in the Federal orders as you  
19 understand it, would -- would its exempt status be  
20 affected or impaired?

21 A. No, I believe we went through that earlier in  
22 the testimony that it cannot reconstitute; however, you  
23 can add, increase the solids level.

24 Q. So if you bring in condensed to, you know, to  
25 increase the solids, does that amount to reconstituting?

1 A. No.

2 Q. If we use nonfat dry milk to add solids, does  
3 that amount to reconstituting?

4 A. No. If you're adding water to nonfat dry  
5 milk, that's reconstituting. If you're just adding  
6 solids to milk, you're just increasing the solids level.

7 Q. Okay. Would there be -- under the present  
8 language, would there be any -- you know, any limit to  
9 the poundage of solids in either condensed or nonfat  
10 that would impact the qualification as producer-handlers  
11 if it was just being used for fortification?

12 A. In 124 and 131, there is no -- the order has  
13 no language alluding to any type of limit on the amount  
14 of fortification.

15 Q. So if they qualified in every other way and  
16 were fortified to meet the standards, their status would  
17 not be impacted?

18 A. I wouldn't want to say the standards. Any  
19 type of fortification does not disqualify them for  
20 whatever reason they're doing that.

21 Q. Thank you, Mr. Wise. I don't think I have any  
22 other questions at this time.

23 I would like to request official notice be  
24 taken of the handler lists for Orders 124 and 131,  
25 partially regulated handler lists, in fact, all handler

1 lists for those -- for those orders for, you know, 2014  
2 to date.

3 JUDGE CLIFTON: Off -- all right. Let's talk  
4 about this for a minute. I don't love taking official  
5 notice of websites because they change. In the past  
6 what I've required is a hard copy to be made part of the  
7 record so that we all know what it was that we took  
8 official notice of. That's sometimes problematic. So I  
9 want you gentlemen to think about how to handle my  
10 concerns that in the hearing clerk record there be a  
11 hard copy of any anything we took official notice of.

12 We can take official notice in general of  
13 various websites that provides statistical information,  
14 and the problem is they're not static.

15 MR. BESHORE: I appreciate that, Your Honor's  
16 concern very much, and I have no problem with, I mean,  
17 with providing for the record the copied hard copies of  
18 lists that I can currently access. Whether the  
19 historical lists are -- are available, any historical  
20 lists that might -- we might be interested in are  
21 available presently, I'm not sure.

22 MR. ENGLISH: Chip English.

23 I have sort of a suggestion to maybe make  
24 things easier as we go forward, and I'd suggest that if  
25 each of us keep a list, running list of things that we

1 have or are going to ask official notice, that rather  
2 than putting things in seriatim -- two today, one  
3 tomorrow, six next week -- that we put in a package of  
4 official notice documents, maybe at the very end of the  
5 hearing, just as a thought of how we do it.

6 JUDGE CLIFTON: Now, I -- I like that  
7 Mr. Beshore brought it up the minute he thought of it.  
8 I think you should continue to do that, and a listing at  
9 the end would be extremely helpful.

10 MR. BESHORE: Fine.

11 MR. ENGLISH: Doesn't prevent somebody from  
12 doing it in seriatim, but it strikes me is that for my  
13 convenience purposes putting it into one booklet of all  
14 documents that we've taken official notice of would make  
15 sense.

16 MR. BESHORE: Yeah, and while Mr. Wise is  
17 still here, if there are any -- if we can't access and  
18 get -- find hard copies ourselves of things we list from  
19 your office that we want to make notices of, would you  
20 be prepared to --

21 THE WITNESS: Oh, sure.

22 MR. BESHORE: -- provide them.

23 THE WITNESS: Sure. We'll do the best we can.

24 MR. BESHORE: Thank you.

25 JUDGE CLIFTON: Mr. Wise, do you need a little

1 break or are you ready for the next questioner?

2 THE WITNESS: Well, I guess I would say yes  
3 and yes. I'm -- I'm ready to keep going, unless  
4 everybody else wants a break, I want to keep going. I  
5 leave it to the discretion of some of the other people.

6 JUDGE CLIFTON: You know, if -- if we did take  
7 a short break, it would allow you and me, Mr. Wise, to  
8 work with the court reporter on some of these citations.  
9 For example, I know those of you who use these numbers  
10 all the time take shortcuts, so when you say, for  
11 example, 1076, that could be written 1000.76.

12 THE WITNESS: Which would be the correct way  
13 to do it.

14 JUDGE CLIFTON: But it wouldn't have sounded  
15 like that --

16 THE WITNESS: That's correct.

17 JUDGE CLIFTON: -- when you said it. And so  
18 why don't we take a break, you and I will work with the  
19 court reporter on those technical things.

20 THE WITNESS: Okay.

21 JUDGE CLIFTON: And -- and then you'll still  
22 get a break before we start.

23 THE WITNESS: As long as I don't get left out,  
24 I'm in.

25 JUDGE CLIFTON: All right. So let's see. Why

1 don't we come back and ready to go at 10:25.

2 (Whereupon a break was taken.)

3 JUDGE CLIFTON: This record resumes at 10:32.

4 I spent a little bit of time with Mr. Wise and the court  
5 reporter, and I just wanted to make a record. The court  
6 reporter was able to capture the sound of his voice,  
7 even though he spoke very quickly on some phrases and  
8 some section numbers, but for the purpose of those  
9 people who want to find these various sections of the  
10 Federal regulations that were cited, I wanted to talk  
11 about how they're designated so that it might be easier  
12 for you if you are, for example, using a search engine  
13 such as Google and you just want to put in the section  
14 number.

15 Any and all of these things are in the Title 7  
16 of the Code of Federal Regulation. But, for example,  
17 when Mr. Beshore began asking Mr. Wise some questions,  
18 and he referred, for example, to 76. How you would look  
19 for that is 1000.76, and that's because that Section 76  
20 is applicable to all Federal orders, so it's in the  
21 1-0-0-0 portion.

22 But then when Mr. Beshore was talking about  
23 Section 60, that's found in the individual orders rather  
24 than in the portion of the regulations that apply to  
25 all, and so you would -- you would look for that, for

1 example, in Section 1124.60 or 1131.60.

2 Now, I wrote down something that I'm going to  
3 need Mr. Beshore's help to find what I meant. I  
4 erroneously wrote down something that doesn't exist in  
5 my notes. I wrote down 1051.76, so I got it wrong, but  
6 I don't know what I should have written.

7 MR. BESHORE: 1151. 1051.

8 JUDGE CLIFTON: I did write 1051. Is -- is  
9 there one?

10 MR. BESHORE: It's the -- it's the proposed  
11 order in the notice of hearing.

12 JUDGE CLIFTON: Oh, oh, oh, oh. Of course.  
13 Of course. Thank you so much. So -- all right. So I'm  
14 glad that what I wrote was correct, I just didn't know  
15 where to find it. So because it is not a Federal  
16 regulation but it is a proposed Federal regulation, you  
17 probably need instead the Federal Register citation. So  
18 for the Federal Register citation, you could look for  
19 Federal Register, Volume 80, Number 151, or you could  
20 look Federal Register, August 6, 2015. You could look  
21 Federal Register 7 CFR Part 1051. Those would be the  
22 places you would find it if you do not have a copy of  
23 Exhibit 1. All right. Well, that solves my problem.

24 Earlier before Mr. Beshore began to ask  
25 questions, there was a reference to Section 1076, which



1 really is, as I think I already indicated before we took  
2 the break, 1000.76.

3 And where you find the county which tells you  
4 how to make a calculation, you're looking in 1000.52.

5 And I think -- I think that's got it.

6 The -- the indication that you would look for  
7 page 47212 of the Federal Regulations is correct. That  
8 particular notice in the Federal Register actually  
9 begins with 47210. So sometimes when you're trying to  
10 find a proposed rule in the Federal Register, having the  
11 first page number helps you find it more quickly, 47210.

12 So, counsel, as we continue to question these  
13 witnesses, if you'll be mindful there's some people on  
14 audio feed and there will be some people reviewing the  
15 record months from now who may not know precisely where  
16 to look, so please help us lead a road map.

17 All right. Back to Mr. Wise. Would the next  
18 questioner come forward.

19 CROSS-EXAMINATION

20 BY MR. ENGLISH:

21 Q. Good morning. Chip English.

22 A. Good morning, Mr. English.

23 Q. And actually as I begin, Your Honor, I think  
24 this is more of a clarification than anything else, but  
25 let's -- you're right that there is a 1000.76, but it

1 only applies to an individual order such as 1124. If  
2 you look at Section 1124.76, there really is a 1124.76,  
3 but it points back to, it says "see Section 1000.76,"  
4 and incorporates it by reference. Part 1000 was adopted  
5 as part of the Federal Order Reform as sort of an  
6 administrative convenience so we didn't have all these  
7 books that we used to have, four or five books, and now  
8 we have one thinner book.

9           Although I would point out we've lost part  
10 900, you see it in the front, and it was very useful,  
11 so -- so we all have to go buy part 900 even though it's  
12 only a couple of pages, but -- so I just want to be  
13 clear there actually is a Section 1124.76, and there's a  
14 Section 1131.76.

15           So, Mr. Wise, we're going to have to be very  
16 careful because we both have a tendency to speak too  
17 quickly, and you now have a --

18           A. I have two.

19           Q. So another thing I'd like to do at the moment,  
20 Your Honor, is start where Mr. Beshore ended, and that  
21 is as to his official notice request going back to plant  
22 lists for Order 124 and Order 131, which is 1124 and  
23 1131, I'd actually like that to go back to 2005 because  
24 it takes us before 2006 changes, and therefore we'll be  
25 able to look at what happened, and we'll have to argue

1 about what that meant, but I think that one can look at  
2 the months before the implementation of the MREA and  
3 then the regulation thereafter, or actually the  
4 regulation first, and then the MREA, correct, Mr. Wise?

5 A. Yes.

6 Q. They follow close on each other, correct?

7 A. You would be able to -- there would be  
8 continuous trail of the listing of the plants.

9 Q. Thank you.

10 A. And some may have appeared before or after  
11 they made any changes.

12 Q. So let me start with .76, sorry, 1000.76, or  
13 1124.76, 1131.76, and your discussion that you had with  
14 Mr. Beshore with respect to paragraph (c).

15 As a result of how paragraph (c) is written,  
16 the -- as opposed to what you do for a plant located in  
17 a -- a non -- a partially regulated plant not located in  
18 California or location like California that has minimum  
19 price regulations and marketwide pooling, if there are  
20 any others, for those entities outside of California,  
21 you actually for purposes of paragraph (b), the Wichita  
22 Option, will look at what is actually paid for the milk,  
23 correct?

24 A. Yes. The -- the Order requires us to look at  
25 the gross payments that were made for milk that would

1 have been producer milk had the plant been fully  
2 regulated.

3 Q. And unlike that provision with respect to  
4 plants that are located in California and perhaps  
5 elsewhere that qualify under paragraph (c), if they  
6 become partially regulated under paragraph (c), you  
7 don't look at the actual payment, you literally look at  
8 California Department of Food and Agriculture regulated  
9 price, correct?

10 A. Yes.

11 Q. So the actual price paid if there were  
12 premiums paid for a plant in California partially  
13 regulated are not considered in paragraph (c), correct?

14 A. Yes, correct, we look at the applicable state  
15 price versus Federal order Class I price.

16 Q. So if a plant has been obligated to make a  
17 payment into, say, Order 1131 for a particular month  
18 under paragraph (c), that doesn't mean that its price  
19 that it paid for the milk was less than the order value,  
20 you just don't know?

21 A. It's not germane.

22 Q. So I want to move away from paragraph 1000.76,  
23 1124.76, 1131.76, and turn instead to 1124.10 and 11 --  
24 I'm sorry, 1131.10, which are the producer-handler  
25 provisions for your orders, correct?

1           A.    Yes.

2           Q.    And you had some discussion with Mr. Beshore  
3 about what the Cooperative Proposal looked at -- like.  
4 Are you at least familiar with the Dairy Institute of  
5 California's Proposal? Have you looked at that  
6 proposal, which appears I believe on page 47221 of  
7 Exhibit 1?

8           A.    I have -- I'm, you know, not over -- overly  
9 familiar with it. I will say clearly it contains more  
10 paragraphs than the Cooperative Proposal.

11          Q.    Whether you looked at it word for word, it  
12 looks more similar to your orders than, say, the other  
13 orders, correct?

14          A.    It appears to.

15          Q.    Now, leaving aside the three-million-pound  
16 issue that we've discussed, or that you've discussed  
17 with Mr. Beshore, those other provisions that exist in  
18 Orders 1121 and 1131 regarding, you know, proof of  
19 ownership and the cancellation and all of that, those  
20 came about as a result of a series of hearings in the  
21 past based upon facts that were put into evidence like  
22 this hearing, correct?

23          A.    That's how all -- all order language comes,  
24 that's correct.

25          Q.    And you've been around since 1985, correct?

1           A.    '81.

2           Q.    '81.  And as to at least the Arizona Order  
3 where you've had that involvement, these provisions were  
4 adopted because over time there was a perceived issue  
5 with respect to how facilities out West, at least, might  
6 move milk around, and going back to Ms. Hancock's sort  
7 of comment, sort of try to evade the requirements; is  
8 that correct?

9           A.    They were the result of a hearing as you said  
10 earlier.  I'm not trying to be evasive.

11          Q.    But you are aware that there were issues  
12 within those orders that were raised with respect to how  
13 milk was being dealt with by producer-handlers that  
14 resulted in those changes?

15          A.    Yes, and those -- and those issues would have  
16 been detailed in the -- in the decision and the record,  
17 hearing record.

18          Q.    So I can go take official notice of that if I  
19 want to.

20                    Within these provisions in Orders 124 and 131,  
21 are there any limitations on producer-handler status  
22 with respect to an entity that is vertically integrated  
23 that includes some form of retail operation where the  
24 retail operation can then receive a supply from another  
25 entity?

1           A.    124 and 131 would prohibit that.  Or do  
2 prohibit that.

3           Q.    Do prohibit that.

4                   And I was trying to follow, but maybe I missed  
5 it with Mr. Beshore, and maybe I'm just going to ask the  
6 question a different way.  We know that there were  
7 producer-handlers under your Orders 1131 and 1124 prior  
8 to the spring of 2006 that -- that qualified for the  
9 exemption of producer-handler, and that if we go look at  
10 the list, they didn't qualify for the exemption after  
11 that, correct?

12           A.    There are -- our -- our handler plant list  
13 monthly would show any appropriate changes in handlers'  
14 regulatory status.

15                   JUDGE CLIFTON:  Mr. English, the -- the  
16 numbers that you just said, you just meant the two  
17 orders with which this witness is familiar because he  
18 administers them?

19                   MR. ENGLISH:  That's -- that's correct.

20                   JUDGE CLIFTON:  All right.

21                   MR. ENGLISH:  Yes.  And -- and -- and also  
22 because the changes that occurred in 2006 only occurred  
23 in those orders.

24 BY MR. ENGLISH:

25           Q.    Are there, either in the Pacific Northwest or

1 the Arizona Order, the Orders that you deal with, pool  
2 distributing plants, fully regulated pool distributing  
3 plants for which a portion of their milk is treated as  
4 either partially regulated or is not regulated?

5 A. Well, certainly not partially regulated, I  
6 mean, if you're a fully regulated pool distributing  
7 plant, but they -- there could be, obviously, milk from  
8 a farm that they receive from farms that don't qualify  
9 as producers, you know, so to that extent, there's milk  
10 that may not be priced because it doesn't qualify to be  
11 producer milk, if I understand your question correctly.

12 Q. I think you understood my question correctly,  
13 but if -- let's just now get down to the weeds. If --  
14 if such a plant receives milk that is not producer milk,  
15 would that be allocated differently --

16 A. Yes.

17 Q. -- for purposes -- it would -- it would  
18 basically be treated as other source milk?

19 A. That's correct.

20 Q. And how is other source milk treated?

21 A. It's down allocated. Down allocated means it  
22 is allocated to the lowest use first, Class IV, and then  
23 Class III, then Class II, then Class I.

24 Q. Would the plant nonetheless have to account to  
25 the pool for the total value of milk, whatever it paid



1 that producer that is not a producer in the Federal  
2 order?

3 A. Under a plant's Report of Receipts and  
4 Utilization, they report all the milk that they're  
5 responsible for and how they used it, regardless of its  
6 status.

7 Q. And so that would nonetheless impact the  
8 regulated price it has to pay, correct?

9 A. It would -- it would impact the allocation  
10 process, which would result in their obligation.

11 Q. So it's not that they have no obligation on  
12 that milk, it's you don't trace back to what they paid  
13 for that milk to that -- that producer?

14 A. That's correct.

15 Q. I have no further questions. And thank you  
16 very much.

17 JUDGE CLIFTON: Who would ask next?

18 CROSS-EXAMINATION

19 BY MR. VETNE:

20 Q. John Vetne appearing as a representative of  
21 Hilmar Cheese Company.

22 For convenience, I'll just follow up on the  
23 last question asked. You used the term down allocated  
24 and you described that as allocated first to Class IV,  
25 then to III, then to II, then I. Is it correct that in

1 that process, the Market Administrators impute to that  
2 receipt of milk the lowest possible value under their  
3 classification system before accounting for producer  
4 milk?

5 A. The purpose of the allocation process in  
6 regard to other source milk is to not give it a higher  
7 value priority.

8 Q. Right. So when it's allocated to Class IV, it  
9 imputes a lower value to that -- that milk, which would  
10 the result be that the producer milk gets slightly  
11 higher plant blend than otherwise would be the case?

12 A. The more other source milk that's allocated to  
13 lower classes, then yes, there's no producer milk  
14 available to be allocated to those lower classes, so  
15 therefore it is allocated to the higher classes.

16 Q. And -- and by allocating producer milk to the  
17 higher classes, the obligation for which the handler  
18 must account to the pool is higher?

19 A. Depending on the price relationships. I mean,  
20 there's been rare occasions when a class --

21 Q. In ordinary circumstances it would be higher,  
22 correct?

23 A. That's correct.

24 Q. And so if -- if -- if a handler receives other  
25 source milk from a farm, farm milk that's allo --

1 that's -- qualifies as other source and pays, say, a  
2 Class I or a blend price for it, your system would not  
3 follow the price paid but would -- would rather credit  
4 that handler with a value that it might -- might be  
5 lower than actually paid for that milk?

6 A. We would -- yeah, the -- the regulatory  
7 language would not concern itself with what handlers pay  
8 for milk that does not qualify as producer milk. And as  
9 we said earlier, it would be allocated to whatever use  
10 the allocation process came, so whatever it would work  
11 out, allocation process worked out.

12 Q. Just in the general scheme of things, is it  
13 correct that there are two places in your audit and pool  
14 obligation determination process in which you look at  
15 total payments to producers by a handler? One is a  
16 fully regulated plant that has an obligation to account  
17 for milk, you look at the total amount paid to make sure  
18 that it's at least blend price, correct?

19 A. Yes.

20 Q. And the other instance is when you have a  
21 partially regulated plant qualifying under Section (b),  
22 the Wichita Plan, and you look at -- similar and  
23 identically look at the total obligations paid to  
24 producers to make sure that it's at least -- at least  
25 the minimum -- well, minimum plant blend, the aggregate

1 of class price obligations had it been fully regulated?

2 A. I'm -- your first example, in the regulated  
3 environment, we're just guaranteeing that the minimum  
4 price was paid. Anything over and above that, we're not  
5 concerned with. And, again, 1000.76 we're looking at  
6 the gross payments that would have been -- excuse me,  
7 that were made for milk that would have been producer  
8 milk had the plant been fully regulated.

9 Q. I wanted to go back to some terms used and  
10 protocols used by your office for those terms on -- for  
11 the Section 10 discussion on producer-handlers milk.  
12 One of the terms you used was "route distribution." In  
13 general, route distribution of a producer-handler can't  
14 exceed three million pounds. Route disposition is a  
15 word used under Section 7(a) and 7(b) for qualifying  
16 pool plants also. It's -- it's a term --

17 Let me ask you this: Does route disposition  
18 mean the same thing wherever it's used in the -- in the  
19 set of Federal Regulations?

20 A. Route disposition is also defined in 1000.3,  
21 and that reads, "Route disposition means a delivery to a  
22 retail or wholesale outlet," parenthetical phrase,  
23 "except a plant, either" -- end of parenthetical phrase,  
24 "either directly or through any distribution facility,"  
25 parenthetical phrase, "including disposition from a

1 plant store, vendor, or vending machine, and that of a  
2 fluid milk product in consumer-type packages or  
3 dispenser units classified as Class I."

4 So that would be how route disposition is  
5 defined in every Federal order, so any section of any  
6 Federal order that refers to route disposition, that's  
7 what it's talking about.

8 Q. It incorporates that, okay.

9 In determining what is route disposition, if  
10 milk is delivered to a store, has a leak, is bad for  
11 some reason, is returned to the seller, how is that  
12 treated?

13 A. Route dispositions are sales less returns.

14 Q. Okay. A sale in June, a return in July is  
15 treated as -- how is that allocated?

16 A. No, it -- the sale less returns would have to  
17 be in the current month.

18 Q. So -- okay. So if I have June sales, I -- a  
19 client gets to subtract the returns of route disposition  
20 for May if they happen to come back to the plant in  
21 June?

22 A. No. No, if -- if you -- on June 1, you  
23 package milk through June 30, and in between that time  
24 of 1 through 30, if milk was returned to the plant, you  
25 know, and -- and -- and so usually it's dumped when it's

1 returned to the plant, then route disposition would be  
2 sales net returns, but we get to June, June 1. What  
3 comes back in June that was bottled in May is -- is a  
4 receipt, it's not -- it would not be -- it would not  
5 influence -- we would not go back and reduce May's for  
6 milk received in June, and we would not reduce June's  
7 for milk that was packaged in May. But assuming we're  
8 not -- we're not talking about inventory.

9 Q. No, we're just talking about returns.

10 A. Right.

11 Q. So is there a return that's -- I'm confused.  
12 Is a return that slips through the crack, if -- if  
13 packaged milk is delivered on May 30 but returned to the  
14 plant on June 5, is that ineligible to be deducted from  
15 either May or June's route disposition?

16 A. You know, it's not something that I deal with  
17 every day. I would say no, but I probably would have to  
18 look at our internal audit guidelines. But, again, each  
19 month stands on its own, so I don't see how a return  
20 from June for milk that was processed in May could have  
21 effect on June's route disposition.

22 Q. You referred to internal audit guidelines.  
23 Is -- is that a document that directs you for uniform  
24 policy in how the order is administered, for example,  
25 route disposition so it means the same?

1           A.     Not -- not uniform policy.  We all have our  
2 own -- my understanding, you know, we have our  
3 procedures that we want to follow, so it's an internal  
4 document outlining our own internal procedures.

5           Q.     Created -- created by those -- the Regional  
6 Market Administrator's Office?

7           A.     It's an internal document.

8           Q.     But is it created by your office or created by  
9 Dairy Programs in Washington?

10          A.     No.  My office.

11          Q.     Is there a similar guideline created by the  
12 Dairy Programs in Washington?

13          A.     I don't know.  Not that I'm aware of.

14          Q.     Okay.  So, again, to determine eligibility  
15 focusing on producer-handler, if the producer-handler  
16 packages products, 301 million pounds of fluid milk  
17 products in a month and leaves one million in -- in its  
18 plant on the shelves as inventory for the next month,  
19 that's not counted in a way so as to disqualify the  
20 plant for the current month; is that correct?

21          A.     For 124 and -- and 131, again, the -- the  
22 introductory paragraph, from which there is route  
23 disposition in the marketing area and -- excuse me, no  
24 "and" -- from which total route disposition and packaged  
25 sales of fluid milk products to other plants during the

1 month does not exceed three million.

2 Q. Okay. So I get it. The answer to the  
3 question, if it doesn't meet the definition of route  
4 disposition.

5 Is there any -- for -- for fully regulated  
6 plants, there's a audited and regulated shrinkage if a  
7 fluid milk processing plant has actual shrinkage, loss,  
8 pipes, whatever, of a half percent, they -- they get to  
9 allocate that volume to a lower class, it's not charged  
10 as Class I. If they exceed two percent they only get to  
11 allocate two percent to that lower class; is that  
12 correct?

13 A. Yes.

14 Q. Is there a similar rule of thumb that your  
15 office applies to producer-handlers?

16 A. No.

17 Q. For that -- that three-million-pound limit,  
18 assume with me that a producer-handler manages to  
19 produce exactly three million pounds and -- and  
20 processes, packages, and distributes that  
21 three million pounds, but adds to it condensed milk to  
22 meet California standards so that the packaged volume  
23 exceeds three million pounds even though the farm  
24 production did not, would that plant be disqualified?

25 A. I would tell you this, that I've never had



1 that situation occur that I've had to administer, so I'd  
2 have to deal with that when it came up, I've never had  
3 to deal with that.

4 Q. Nevertheless, you'd look at volume  
5 distributed, it's the volume in the package that you're  
6 looking at, not volume that comes from the farm?

7 A. It's volume weight conversion factors based on  
8 the packaged products.

9 Q. One of the important criteria to maintain  
10 producer-handler status is that no portion of the milk  
11 produced on the producer-handler's farm would qualify as  
12 producer milk if sent elsewhere; is that correct?

13 A. You cannot be a producer and a  
14 producer-handler from the same farm.

15 Q. So if -- if -- if the producer-handler's plant  
16 couldn't process all the milk and takes it from the farm  
17 and it sends it to a distributing plant, bingo, that --  
18 that's it, that producer qualifies as a -- that  
19 qualifies as a producer receiver at that distributing  
20 plant?

21 A. No, if the producer-handler qualifies as a  
22 producer-handler --

23 Q. Yes.

24 A. -- and if he -- if there's milk that that  
25 producer-handler delivers to a fully regulated pool

1 distributing plant, that is other source milk that is  
2 now allocated.

3 Q. I see. Is there limits on how much of that  
4 other source milk may be sent to a fully regulated  
5 plant?

6 A. Not as long as all the requirements to  
7 maintain producer-handler status are being met.

8 Q. Okay. So a producer may balance his milk  
9 supplied by sending milk directly from the farm to any  
10 plant, pool plant or nonpool plant, and that does not  
11 cause a loss of exemption?

12 A. That in and of itself, no.

13 Q. Section 76(c), state -- state pricing in  
14 pooling system plants. Are there any or have there been  
15 any plants that have been fallen -- that have fallen  
16 under that section because of association with a Montana  
17 milk pool?

18 A. Are you asking me if Montana has a --

19 Q. Yes.

20 A. -- state classification?

21 Q. Yes.

22 A. Yes, they do.

23 Q. Okay. And they have state pooling?

24 A. Yes. California, Montana, to my knowledge,  
25 are the -- the only two states in an order.

1 Q. You're not aware of one in Western New York?

2 A. No, I'm not.

3 Q. Okay.

4 A. I'm not aware of much west of the Mississippi.

5 Q. That's a long way. It's close to me.

6 Have any plants fallen under this 76(c)  
7 section because of association with Montana versus  
8 California?

9 A. If the -- the Section 76(c) is not specific by  
10 state, so any state that meets the criteria enumerated  
11 in 76 would -- this is the only option those plants  
12 would have.

13 Q. I think -- I think we had earlier discussion  
14 that if on the partially regulated list you see a plant  
15 located in California, we can assume it's a 76(c) plant.  
16 Have there been instances where there are plants on the  
17 76(c) list from which we may make a similar assumption  
18 for Montana?

19 A. Again, since we in our question -- Q and A  
20 here determined that Montana does have a system that  
21 qualifies pursuant to 76.

22 Q. In discussion with Mr. Beshore, you had some  
23 dialogue on Market Administrators', that's S apostrophe,  
24 application of pooling preclusions to a plant that has  
25 different regions and multiple markets and plurality in

1 one. Do you recall that?

2 A. Yes.

3 Q. And I -- I have written here with my own  
4 quotes around it, like any Federal order, they would be  
5 pooled where they have the most sales. Do you recall  
6 that --

7 A. Yes.

8 Q. -- question and answer?

9 It's true, though, is it not, that there are  
10 some plants to which that does not apply, plants  
11 regardless of where they have the most sales that are  
12 for some reason locked into the market in which they're  
13 located?

14 A. That is correct.

15 Q. Okay. And that would be Section 7(b) plants,  
16 extended shelf life plants as one example, there may be  
17 others?

18 A. You -- you are correct.

19 Q. And for that matter, in the -- in the orders  
20 in which -- that you administer, that's -- that's  
21 uniform language for 76(a) and 76(b), it's fairly  
22 consistent from order to order?

23 A. Yes, that's my understanding.

24 Q. And -- and such a locked-in plant actually can  
25 be locked into an order in which it has the least amount

1 of its sales?

2 A. Yeah, as you point out right, it is regulated  
3 in the order it is geographically located in.

4 Q. And that's only if -- so if you look at the  
5 geographic boundaries of a marketing area, not order in  
6 which it's located, it's an area in which it's located;  
7 is that correct?

8 A. It's the marketing area --

9 Q. Right.

10 A. -- as is defined under the order.

11 Q. Okay. So if -- if an ESL plant, say, is  
12 located in the donut hole in Mississippi, that's not  
13 part of the Central Marketing Order, that -- that plant  
14 isn't captured under that marketing provision?

15 A. Again, if it's not located in the marketing  
16 area as defined in the order, it's not subject to that  
17 provision.

18 Q. And then it could qualify as the partially  
19 regulated plant under 76(b) anyway?

20 A. It would be subject to any other applicable  
21 definition, yes.

22 Q. That's it. Thank you.

23 JUDGE CLIFTON: Who now has questions for Mr.  
24 Wise?

25 Mr. Beshore.

1 CROSS-EXAMINATION

2 BY MR. BESHORE:

3 Q. Marvin Beshore.

4 One point I forgot to pick up on with respect  
5 to Section 1000.76. In -- in that section under part  
6 (b) -- I'm sorry, part (a), (a)(2) in particular,  
7 there's reference to use of the producer price  
8 differential in determining a handler's obligation,  
9 partially regulated handler's operation, you see that?  
10 Okay. Can you just for foundation purposes tell us how  
11 that -- how that works and what goes into the equation  
12 there?

13 A. They are both, (2) and (3), as you -- as --  
14 well, some of our orders price milk based on just skim  
15 and fat, and some price on components, nonfat -- excuse  
16 me, other solids, protein, and butterfat, so -- and  
17 that's known as Multiple Component Pricing. So for  
18 orders with Multiple Component Pricing, compute a Class  
19 I differential price by subtracting Class III price from  
20 the current month's Class I price. Multiply the  
21 remaining pounds -- excuse me, multiply the pounds  
22 remaining after the computation in paragraph (a)(1)(i),  
23 which is where they narrow down exactly what it is, how  
24 many pounds we are pricing of this section, by the  
25 amount by which the Class I differential price exceeds

1 the producer price differential. And that if you go on  
2 to III, we talk about doing -- how the Class I price  
3 exceeds the uniform price, and so what we're doing under  
4 (2) under Multiple Component Orders is getting the same  
5 playing field of diff -- in essence, the difference  
6 between I and blend.

7 Q. Okay. Now, the use of the producer price  
8 differential in -- in part (a)(2) of Section 76 requires  
9 you to have a -- a value from the order to use; is that  
10 fair?

11 A. The producer price differential is calculated,  
12 that's right.

13 Q. Okay. So here's my question. In our -- in  
14 our proposed order, that is Proposal 1, the  
15 Cooperatives' proposed order, we calculate the  
16 regulations proposed there, the producer price  
17 differential value to be calculated, but -- and -- and  
18 announced, but not actually used in paying producers  
19 because we have a different formula for allocating that  
20 value to the milk components. Okay?

21 A. Okay.

22 Q. So if the language of an order provides for  
23 the calculation for producer price differential  
24 regardless of whether it's actually used in the  
25 obligation to producers, would that allow you -- would

1 that language if it's in the order allow you to  
2 administer part 1000.76 as written?

3 A. I don't know because it's not written to  
4 handle that. It was written for the world that we're  
5 living in now, that the producer price differential is  
6 calculated under the orders as now, so I really don't  
7 know.

8 Q. Okay. Well, assuming -- but it -- it requires  
9 a value, and it doesn't -- the language as you've  
10 described it I think requires that -- that you use a  
11 value there?

12 A. Yes.

13 Q. Okay. So presumably if there was a value  
14 stated in the order, you could apply it in that way?

15 A. You're -- again, you're trying to get, you  
16 know, a handler's cost of milk versus what their  
17 obligation to the pool is, and -- you know, and so  
18 however that would work out would be how -- I'm not --  
19 again, I'm trying not to be evasive, but I can't really  
20 answer that specifically, I can only address what this  
21 is written to do --

22 Q. Okay.

23 A. -- which is trying to equate a difference  
24 between I and blend that we do in skim weight.

25 Q. And the producer price differential is the



1 proxy for that?

2 A. Yes.

3 Q. Okay. Thank you.

4 JUDGE CLIFTON: Mr. Wise, you're -- you're an  
5 extraordinary witness and extraordinarily helpful.

6 You've used the phrase "difference between I  
7 and blend" a couple times, and in the transcript that's  
8 how it will look, "the difference between I and blend."  
9 By "I," do you mean Class I milk prices?

10 THE WITNESS: Yes, and I apologize. When I  
11 say "I and blend," the I is the Class I price applicable  
12 to that calculation. And when I say "blend," that means  
13 the uniform price.

14 JUDGE CLIFTON: Thank you. That part I did  
15 understand.

16 Who will next question Mr. Wise?

17 Mr. Wise, how many days do you expect to be  
18 here?

19 THE WITNESS: I'm leaving tomorrow.

20 JUDGE CLIFTON: You're leaving tomorrow?

21 THE WITNESS: Certainly if -- if my boss tells  
22 me to be available any other time, I will do -- she says  
23 jump, I says how high, so in all seriousness, if I'm  
24 required to be here again, I'll be here again.

25 JUDGE CLIFTON: Thank you so much. For now

1 you may step down.

2 THE WITNESS: Thank you. Thank you.

3 JUDGE CLIFTON: I -- I really hate to let him  
4 step down now that we've got him trained to speak  
5 slowly.

6 I think this would be a good time to do those  
7 things that I like to do at the beginning of each day,  
8 beginning with having the various participants introduce  
9 themselves. I'd like to start with those people who are  
10 USDA employees, beginning first with those from the  
11 Agricultural Marketing Service followed by those from  
12 the Office of the General Counsel. As I've indicated,  
13 I'm a USDA employee, and now I'd like to have the rest  
14 of you identify yourselves, please.

15 I realize that some of you who were here  
16 earlier aren't in the room right now. That's -- that's  
17 fine. We'll just go forward with whoever is in the room  
18 right now.

19 MS. TAYLOR: My name is Erin Taylor. E-R-I-N.  
20 T-A-Y-L-O-R. Agricultural Marketing Service Dairy  
21 Program.

22 MS. WARREN: Lorie, L-O-R-I-E. Warren,  
23 W-A-R-R-E-N. Chief of the Market Information Branch for  
24 AMS, USDA AMS Dairy Program.

25 MR. POLLOCK: William, W-I-L-L-I-A-M.

1 Pollock, P-O-L-L-O-C-K. Agricultural Economist Federal  
2 Order 33 on detail for Dairy Program.

3 MS. ELLIOTT: Pamela Elliott. P-A-M-E-L-A.  
4 E-L-L-I-O-T-T. Product Marketing Specialist USDA AMS  
5 Dairy Program.

6 MS. MAY: Laurel May. L-A-U-R-E-L. M-A-Y.  
7 I'm a Senior Marketing Specialist Rule Writer with the  
8 Order Formulation Division in AMS Dairy Program.

9 MR. HUNTER: Cary Hunter. C-A-R-Y.  
10 H-U-N-T-E-R. Southwest Milk Market Administrator Order  
11 126. I'm here for support staff.

12 MR. CARMAN: Clifford Carman. C-A-R-M-A-N.  
13 I'm Assistant to the Deputy Administrator for Dairy  
14 Programs.

15 MS. RAGHUNATHAN: Uthra Raghunathan.  
16 U-T-H-R-A. R-A-G-H-U-N-A-T-H-A-N. Agricultural  
17 Economist for USDA AMS Dairy Program.

18 MS. FRISIUS: Meredith, M-E-R-E-D-I-T-H.  
19 Frisius, F-R-I-S-I-U-S. Dairy Product Marketing  
20 Specialist for Dairy Programs.

21 MR. MYKRANTZ: John Mykrantz. J-O-H-N.  
22 M-Y-K-R-A-N-T-Z. I'm an Agricultural Economist with the  
23 Pacific Northeast and Arizona Order -- Orders on detail  
24 with Dairy Programs.

25 MR. SCHAEFER: Henry Schaefer. H-E-N-R-Y.

1 S-C-H-A-E-F-E-R. Economist for the Upper Midwest Milk  
2 Marketing Order, Federal Order Number 30, on detail with  
3 AMS Dairy Programs.

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

8 MS. COALE: Dana Coale. D-A-N-A. Coale,  
9 C-O-A-L-E. Deputy Administrator USDA AMS Dairy Program.

10 MS. BECKER: Lauren Becker. L-A-U-R-E-N.  
11 B-E-C-K-E-R. Office of the General Counsel.

12 MR. HILL: Brian Hill. B-R-I-A-N. H-I-L-L.  
13 Also attorney with the Office of General Counsel.

14 JUDGE CLIFTON: Thank you.

15 And now I'd like also those participants  
16 beginning with those who submitted written proposals to  
17 the USDA for this hearing. Please you and your team.

18 MR. BESHORE: Marvin Beshore. M-A-R-V-I-N.  
19 B-E-S-H-O-R-E. Representing the proponents of Proposal  
20 1, California Diaries, Inc., Land O'Lakes, Inc., and  
21 Dairy Farmers of America, Inc.

22 MR. VLAHOS: John Vlahos. J-O-H-N.  
23 V-L-A-H-O-S. Of Hanson Bridgett. H-A-N-S-O-N.  
24 B-R-I-D-G-E-T-T. San Francisco. Co-counsel for the  
25 proponents of Proposal Number One.

1 MS. THOMPSON: Good morning. I'm Megan Oliver  
2 Thompson. Megan is M-E-G-A-N. I'm also an attorney  
3 with the Law Firm of Hanson Bridgett in San Francisco  
4 and co-counsel for the proponents of Proposal Number  
5 One.

6 MR. WEGNER: I'm Thomas Wegner. T-H-O-M-A-S.  
7 Wegner, W-E-G-N-E-R. I'm a Dairy Economist with Land  
8 O'Lakes.

9 MR. ERBA: My name is Eric Erba. E-R-I-C.  
10 E-R-B-A. I'm a Senior Vice-President and Chief Strategy  
11 Officer of California Dairies, Inc.

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

15 MR. ENGLISH: Good morning, Your Honor. My  
16 name is Chip English. C-H-I-P. E-N-G-L-I-S-H. With  
17 the Law Firm of Davis Wright Tremaine in Washington, DC,  
18 and I'm here on behalf of the Dairy Institute of  
19 California.

20 MS. VULIN: Good morning. Ashley Vulin.  
21 A-S-H-L-E-Y. V, as in Victor, U-L-I-N. I'm also an  
22 attorney on behalf of Dairy Institute of California.  
23 Thank you.

24 MR. SCHIEK: Good morning. I'm William  
25 Schiek. That's W-I-L-L-I-A-M. Schiek is S-C-H-I-E-K.

1 I'm an Economist with the Dairy Institute of California.

2 MS. KALDOR: Good morning. I'm Rachel Kaldor.

3 R-A-C-H-E-L. K-A-L-D-O-R. I'm Executive Director of  
4 Dairy Institute of California.

5 MR. LEMMON: Good morning. My name is John  
6 Lemmon. L-E-M-M-O-N. Counsel for Dairy Institute of  
7 California.

8 MS. TAYLOR: Sue Taylor, standard spelling,  
9 Vice-President Dairy Policy and Procurement for Leprino  
10 Foods. L-E-P-R-I-N-O.

11 MR. DRYER: Good morning. Greg Dryer.  
12 G-R-E-G. D-R-Y-E-R. Senior Vice-President Industry and  
13 Government Relations for Saputo Cheese, USA, and a  
14 member of the Dairy Institute of California.

15 MR. BLAUFUSS: Good morning. Rob Blaufuss.  
16 Blaufuss is B-L-A-U-F-U-S-S. I'm the Senior Manager of  
17 Dairy Risk Management and Economics at the Dean Foods  
18 Company.

19 MR. VETNE: My name again is John Vetne,  
20 V-E-T-N-E, appearing as a representative for Hilmar  
21 Cheese Company. Also appearing with me but not in the  
22 room at the moment are Alan Zolin. A-L-A-N. Z-O-L-I-N.  
23 And James Dejong. James. D-E, no space, J-O-N-G.  
24 Who -- who is management at Hilmar Cheese Company.  
25 Thank you.

1 MR. VU: Good morning. I'm Bao Vu. B, as in  
2 boy, A-O. Last is Vu. V, as in Victor, U. And I'm  
3 with the law firm Stoel Rives. With me here earlier  
4 today was also Nicole Hancock, and together we represent  
5 the California Producer Handlers Association, as well as  
6 Ponderosa Dairy. Thank you.

7 JUDGE CLIFTON: And now I'd like those other  
8 participants that I'd like to have identify themselves,  
9 and this is whether or not you submitted a written  
10 proposal.

11 MR. SMITH: Daniel Smith, S-M-I-T-H,  
12 representing the Maine Dairy Industry Association, the  
13 Kentucky Dairy Development Council, Georgia Milk  
14 Producers, Inc., and the Tennessee Dairy Farmers, Inc.  
15 Thank you.

16 MS. REED: Good morning. Kristine Reed.  
17 K-R-I-S-T-I-N-E. R-E-E-D. Law firm is Miltner Law  
18 Firm, and we are counsel for Select Milk Producers.

19 MR. MILTNER: Good morning. Ryan Miltner with  
20 Miltner Law Firm. It's M-I-L-T-N-E-R.

21 MS. ACMOODY: Good morning. Andy AcMoody, A-C  
22 capital M-O-O-D-Y, and I'm the economist with Western  
23 United Dairyman.

24 JUDGE CLIFTON: Is there anyone else who would  
25 like to introduce themselves at this time?

1           Are there any dairy farmers here who would  
2 like to be heard from today?

3           I'd like now to move to preliminary matters.  
4 I'd like first to call on a representative of the  
5 Agricultural Marketing Service to give the general  
6 guidelines and introductions that we have done each of  
7 the two days already, and I'd like to have it done again  
8 today.

9           MS. MAY: Good morning. Laurel May.

10           As you know, we're here to talk about a  
11 proposal for a Federal Milk Marketing Order in  
12 California. We welcome witnesses from the audience to  
13 speak, and if you would like to speak, you need to see  
14 Meredith Frisius, who will stand, and she will put you  
15 on the list and let the judge know that you would like  
16 to speak.

17           As audience members, you may also ask  
18 questions of any of the witnesses, and if you would like  
19 to do so, you can approach the microphone when Judge  
20 Clifton indicates that that would be appropriate.

21           As you know, we have a live audio feed, and it  
22 is not being recorded, but you can listen in to it if  
23 you're not here in the room at  
24 [tinyurl.com/camilkhearing](http://tinyurl.com/camilkhearing), all one word.

25           Transcripts and exhibits will be available



1 approximately two weeks after the end of each week's  
2 hearing sessions, and you can access those on our AMS  
3 Dairy website, which is [www.AMS.USDA.GOV/caorder](http://www.AMS.USDA.GOV/caorder).

4 We are also providing a file of the exhibits  
5 that have been introduced, and they're -- the exhibits  
6 are filed by number, and it should be over on the side  
7 of the room, you can find those if you need them.

8 And finally we have refreshments available,  
9 and so please help yourselves.

10 JUDGE CLIFTON: I'd like to say again that the  
11 transcript should be headed with the two lines, United  
12 States Department of Agriculture Before the Secretary of  
13 Agriculture. The case caption is In Re: Milk in  
14 California. The docket number should be shown as two  
15 lines. The top line is capital A capital O in brackets.  
16 AO stands for Agreements and Orders. And the docket  
17 number is next on the next line, Docket Number 15 hyphen  
18 0071.

19 People have been very good about taking their  
20 separate conversations out of the hearing of those of us  
21 in the room so as not to disturb the witnesses and those  
22 listening to the witnesses. That's worked out very  
23 well.

24 This public hearing is being held to consider  
25 and take evidence on the proposed establishment of a

1 Federal Milk Marketing Order to regulate the handling of  
2 milk in California. The proposed marketing area would  
3 incorporate the entire State of California.

4 USDA received four proposals from interested  
5 parties, some that include certain milk pricing and  
6 pooling provisions not found in the current Federal Milk  
7 Orders. The proposals incorporate the same dairy  
8 product classification system used throughout the  
9 Federal Milk Marketing Order System. Additional  
10 features would recognize California quota premium and  
11 fluid milk fortification values.

12 This hearing will consider the four proposals  
13 as contained in the Federal Register hearing notice  
14 published on August 6th, 2015. And as I indicated  
15 yesterday, there's also under consideration additional  
16 information from Mr. English because some of the  
17 language he proposed was rejected, and I will review  
18 that and determine that after I've had an opportunity to  
19 hear his argument and those of others.

20 All right. I am delighted that Dana Coale is  
21 here. I would like her to come forward at this time and  
22 identify herself with her title and responsibilities,  
23 and she has some information that's of interest to all  
24 of us.

25 And I'm -- I'm pleased to know that she

1 listened in on the audio feed even though she wasn't  
2 here for the previous days.

3 MS. COALE: Good morning. I'm Dana, D-A-N-A,  
4 Coale, C-O-A-L-E, Deputy Administrator with USDA Dairy  
5 Programs.

6 There have been many questions with regards to  
7 how the proceeding will continue in the event that there  
8 is a lapse in funding for the federal government, and  
9 I'm here today to provide you a minimal amount of  
10 information, the most that I -- I am approved and  
11 allowed to share. I cannot comment with regards to  
12 whether or not I believe there will be a bill passed in  
13 Congress to fund the government, but what I will share  
14 with you is what will happen in the event that there is  
15 a lapse in funding.

16 If on September 30th at the conclusion of the  
17 day there has not been any appropriated funding passed  
18 and approved by Congress, the judge will adjourn the  
19 hearing with a statement that indicates that you will be  
20 adjourned until October 1st the next morning at  
21 9:00 a.m. as you typically do. She will then provide a  
22 caveat that if there is no funding or there is a lapse  
23 in funding, the hearing will be adjourned until a  
24 further point in time.

25 All USDA personnel who are associated with

1 this hearing will be required under law to return back  
2 to their duty stations as we are not exempted or  
3 excepted employees allowed to continue to operate. We  
4 will be departing on October 1st. The hearing will be  
5 adjourned.

6 Part 900, 7 CFR Part 900.6(b)(2) allows the  
7 Administrative Law Judge to adjourn a hearing. The  
8 hearing will be adjourned until further notification.

9 In order to find out if the government has  
10 been funded, we will provide a number on September 30th  
11 that you all are welcome to call to determine if a  
12 budget has been passed and if we will be holding the  
13 hearing on the 1st.

14 In the event that we depart on the 1st, the  
15 hearing will be adjourned until further notification. 7  
16 CFR Part 900.8(a) requires that we provide notification  
17 for when that hearing will be reconvened according to  
18 part 900.4(b) Giving Notification. We will publish in  
19 the Federal Register the notice to reconvene the  
20 hearing, and we will be able to do that as quickly as we  
21 can.

22 I would anticipate that you could plan  
23 tentatively for the hearing to reconvene somewhere in  
24 the neighborhood of five to seven days following the  
25 funding of the government. What those days are, I don't

1 know.

2 Are there any questions? Yes, Chip.

3 MR. ENGLISH: I said give me a minute, I'm  
4 trying to read the sections.

5 MS. COALE: 900.6(b)(2). 900.8(a). And  
6 900.4(b). And these references are all to the Rules of  
7 Practice.

8 MR. ENGLISH: Might I --

9 JUDGE CLIFTON: Mr. English, please.

10 MR. ENGLISH: Push her aside.

11 This is Chip English.

12 It's not an entire surprise that this issue is  
13 coming up today. I don't think counsel had the  
14 sections, and that's not to say we couldn't try to find  
15 them, but we're doing other things. I might suggest  
16 that maybe take, like, a five-, ten-minute break, and  
17 let counsel confer, and then ask questions if we still  
18 have questions at that time. Does that make sense? I  
19 would urge us to do that so that we're not just all  
20 sitting here while we're reading the language and trying  
21 to figure this out.

22 JUDGE CLIFTON: Yeah, I love breaks. I don't  
23 think five minutes is adequate.

24 MR. ENGLISH: 15.

25 JUDGE CLIFTON: Why don't we take a 15-minute

1 break? All right. So please be back and ready to go at  
2 11:55.

3 (Whereupon a break was taken.)

4 JUDGE CLIFTON: We're back on record now.  
5 It's 11:55.

6 Who -- who would like to address -- okay.  
7 Both of you want to go first. This is the first time.

8 Oh, you support Mr. English? All right.

9 MR. BESHORE: Well, I think I do --

10 MR. ENGLISH: We're on the same side again.

11 UNIDENTIFIED VOICE: Temporarily.

12 MR. ENGLISH: Chip English.

13 Thank you very much for the break, Your Honor.  
14 It gave us an opportunity to have some conversations  
15 among ourselves, the participants, with general counsel,  
16 and with Ms. Coale.

17 I have two questions. The first is when you  
18 said five to seven days, I believe is what you said with  
19 respect to a return after the end of a lapse in funding,  
20 which I know is a wonderful phrase, and I know you can't  
21 use the other phrase. So is that calendar days or  
22 business days or do you know?

23 MS. COALE: Unfortunately I can't provide any  
24 specific information with regards to it being calendar  
25 days or business days. What would happen is we would

1 need to have a document delivered -- cleared through the  
2 Department and delivered to the office of the Federal  
3 Register. We would have that ready to go on the day  
4 that the government is back up and running.

5 With regards to publication of that Notice to  
6 Reconvene in the Federal Register, I can't give you any  
7 indication as to how long that would take them because  
8 I'm certain, you know, they would have to be restarting  
9 up and may have a backlog of documents as well, but we  
10 would certainly try to make it a priority.

11 MR. ENGLISH: Thank you.

12 So then the second is more of a -- in the form  
13 of a request, and this comes from a number of people.  
14 Frankly, Ms. Vulin had the initial idea and we kind of  
15 modified it, but could you take back to the Department  
16 the idea of drafting and trying to clear -- yes, I know  
17 that's fun -- a notice that could be published prior to  
18 October 1st that says in the event of a lapse of  
19 funding, or whatever phrasing you need to use, that this  
20 hearing will reconvene here on X days, three days maybe,  
21 I understand travel schedules being what it is, X days  
22 after the lapse of funding X. Subject to that if that  
23 is, God forbid, October 23rd or whatever day that was  
24 that we were meeting somewhere else that we make sure we  
25 fix the location so we don't screw that up.

1 I'm just going to ask that -- that request --  
2 that's our request because maybe that would speed this  
3 whole process up. And I understand that may be  
4 impossible, but -- people may not be willing to do a  
5 contingent plan for lapse of funding, but I'd at least  
6 ask, and I think that the rest of the participants  
7 concur with me that we would like to try to do that. So  
8 that's our request.

9 MS. COALE: So based on your request, yes, we  
10 will take that back to the Department for consideration,  
11 but I can give you no indication as to what may or may  
12 not happen.

13 MR. BESHORE: Okay. So -- Marvin Beshore -- I  
14 have just two tiny clarifying questions hopefully. One  
15 is is there a -- a time required between the publication  
16 of the Notice to Reconvene and when it can happen? Is  
17 there -- does that have to be three days, five days, or  
18 anything like that?

19 MS. COALE: No. If you look very  
20 specifically, and I have with me in front of me Section  
21 CFR Part 900, and if you look in Section 8, paragraph  
22 (a), Time and Place, and this is under the conduct of a  
23 hearing, part way through there it indicates -- well,  
24 let me read it just to clarify.

25 "The hearing shall be held at the time and



1 place fixed in the Notice of Hearing unless the judge  
2 shall have changed the time or place, in which event the  
3 judge shall file with the hearing clerk a notice of such  
4 change, which notice shall be given in the same manner  
5 as provided in Section 900.4, paren, relating to the  
6 giving of notice of hearing, paren."

7 If you refer back to Section 900.4, paragraph  
8 (a) deals with the filing and contents of the Notice of  
9 Hearing. Paragraph (b) very specifically talks about  
10 giving Notice of Hearing and supplemental publicity, and  
11 it is in paragraph (b) that notification is required in  
12 the Federal Register, but there is no designation as to  
13 the number of days required for that notification.

14 MR. BESHORE: So if I understand correctly,  
15 then, that -- the time for reconvening could be set and  
16 be provided to public by means other than the Federal  
17 Register prior to the time it's -- it's published so  
18 that conceivably we could reconvene the same day it was  
19 published. Is that fair?

20 MS. COALE: We will certainly give everyone  
21 involved and everyone interested in this proceeding the  
22 maximum amount of notification we can as to when the  
23 hearing will reconvene, but the hearing officially  
24 cannot reconvene until it is published in the hearing  
25 notice. So we will do our best to provide notification

1 with regards to that.

2 MR. BESHORE: One other -- one other question.  
3 That notice for reconvening, would I assume contain no  
4 other content with respect to the subject matter of the  
5 hearing or anything else, it would just be time and  
6 place and not any modifications of proposals or the  
7 like?

8 MS. COALE: For clarification purposes, the  
9 intent and the specifics of this reconvening of Notice  
10 of Hearing will only pertain to when the hearing will be  
11 readjourned by the -- reconvened by the judge to begin.  
12 There will be no additional information included in that  
13 notice.

14 MR. BESHORE: Thank you.

15 MR. VETNE: John Vetne for Hilmar Cheese.

16 I -- 40 years I've never -- in 40 years  
17 we've -- we haven't had to rely on this, except maybe  
18 once, I think, there was a reopening, not a reconvening,  
19 but I just want to make sure I understand correctly.  
20 Maybe the judge or Deputy Administrator can answer this.

21 The order -- the -- the hearing can be  
22 reconvened as directed by the judge assigned to the  
23 hearing which gives notice to everybody. So at least  
24 pro forma, it would come from the judge, although the  
25 judge would confer with AMS as to its content, but as I

1 understand what was read there, and like some of the  
2 other counsel, I -- I'm reading it for the first time,  
3 the judge could order that a notice be published next  
4 week, "If we lack funding, parties are put on notice  
5 that the hearing would reconvene as posted on the AMS  
6 Dairy Programs website so pay attention." Am I correct?

7 JUDGE CLIFTON: I -- I would reject that. I  
8 think we need a date certain in the Federal Register,  
9 but the date certain could be first working day -- I  
10 would need some help with the language, but for example,  
11 suppose that it said that we would reconvene on the  
12 third working day after government -- after  
13 appropriations have provided for funding of the  
14 government, something like that. So I said a date  
15 certain; that's not a date certain but it's a way of  
16 determining the date.

17 I do think -- I do think it has to be evident  
18 from the face of the Federal Register without reference  
19 to some website.

20 MR. VETNE: So date calculable.

21 JUDGE CLIFTON: There. So I love the idea --  
22 Ms. Vulin, would you stand, please? I love the idea  
23 that we don't wait to see if there is a lapse of  
24 funding. We now do the notice that if there is a lapse  
25 of funding, and we get that thing in to the hearing

1 clerk and off to the Federal Register before there's a  
2 queue at the Federal Register for other unfinished  
3 business. That's brilliant. Thank you.

4 MS. COALE: I do want to provide for the  
5 record a clarification, Mr. Vetne. In past proceedings  
6 where we have adjourned a hearing and not have continued  
7 it consecutively, we have published in the Federal  
8 Register by note of proceeding a notice to reconvene the  
9 hearing and have been very specific on when, when that  
10 will reconvene. So it has been utilized in the past.  
11 That's okay.

12 JUDGE CLIFTON: I would add at this point that  
13 we have asked to be excepted. You know, there used to  
14 be a classification when there's a lapse of funding  
15 between those who are essential and non-essential  
16 federal employees, and that phraseology has gone out of  
17 favor. I think the taxpayers wondered why they were  
18 paying for non-essential employees at all ever, so  
19 that's not how it's phrased any more. But you can  
20 understand that there would be certain kinds of federal  
21 employees who would have to work, keeping airplanes in  
22 the air and that sort of thing. We've asked to be  
23 included among them, that's pretty unlikely, but at  
24 least we've asked.

25 What other questions or comments do you have?

1           How many of you, just by a show of hands, if  
2 we're interrupted at all want to get back at it just as  
3 soon as possible? How many would oppose that and would  
4 like a longer gap? Okay. Of those who chose to  
5 indicate a preference, it was unanimous that we get back  
6 to it as soon as possible.

7           I know, particularly for lawyers in private  
8 practice, I really appreciate the fact that you made  
9 arrangements to devote all your time and attention to  
10 this matter for this period of time, and now is when we  
11 need to be doing this business, so -- and we have this  
12 wonderful facility now, we have it now.

13           MS. COALE: Thank you. Your Honor.

14           MR. ENGLISH: Thank you.

15           MR. BESHORE: Thank you.

16           JUDGE CLIFTON: All right. What other  
17 preliminary matters would you like to discuss? I'll --  
18 I will be working with counsel and the Administrator on  
19 a document. We'll -- we'll clear it, of course, through  
20 the proper authorities, but wouldn't it be lovely if we  
21 could get that cleared right away.

22           All right. Other preliminary matters?

23           All right. I guess we're ready for the next  
24 USDA witness. I realize we could go to lunch, but we  
25 just had a break, so let's take the next USDA witness,

1 at least for a part of the time.

2 MR. HILL: Hold on. Brian Hill. Brian Hill.

3 One moment, Your Honor.

4 We're going to recall Lorie Warren.

5 JUDGE CLIFTON: Ah, good.

6 Welcome back.

7 THE WITNESS: I just can't stay away. Thank  
8 you.

9 JUDGE CLIFTON: You remain sworn. Would you  
10 again state and spell your name.

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

13 JUDGE CLIFTON: Mr. Hill, you may proceed.

14 DIRECT EXAMINATION

15 BY MR. HILL:

16 Q. Good afternoon now.

17 A. Good afternoon.

18 Q. When last you were here you were asked about  
19 an additional data request by the Dairy Institute of  
20 California. Do you remember that?

21 A. Yes, I do.

22 Q. Can you please tell us what you have found?

23 A. Mr. Hill, do you have the number that was in  
24 the letter?

25 Q. Number 25.

1           A.    25.  Thank you.

2                    So this is in reference to the Dairy Institute  
3 Request Number 25 on Exhibit 10, the name and location  
4 of all milk and dairy product plants located outside of  
5 California that received plant or ranch milk of  
6 California origin during 2010 through 2015, and the  
7 aggregate monthly volume and use classification of such  
8 exports.  We were able to pull that data and determine  
9 that it would result in restricted confidential  
10 information so we cannot provide that.

11           Q.    So for the record, you denied that request?

12           A.    Yes.

13                    JUDGE CLIFTON:  Mr. English.

14                                RE CROSS-EXAMINATION

15 BY MR. ENGLISH:

16           Q.    Chip English.

17                    Just -- just to clarify because the request  
18 was read the way it was written, and yesterday I  
19 modified it to say, okay, I understand names and  
20 locations are going to be a problem, and we asked  
21 instead if you could provide the volume information  
22 regardless of where it ended up.  And I take what you're  
23 saying is even when you do that, you can't do it?

24           A.    Yes, I -- that is correct.

25           Q.    I thank you for the effort.  Disappointed, but

1 I thank you for the effort.

2 MR. HILL: I have no further questions, Your  
3 Honor.

4 JUDGE CLIFTON: I'm trying to wrap my head  
5 around this. So -- so, Ms. Warren, using those criteria  
6 that you showed us before, there have to be at least  
7 three and one of them cannot have -- have supplied the  
8 majority, using those criteria you're not able to  
9 identify aggregate monthly volume and use classification  
10 during 2010 through 2015?

11 THE WITNESS: That is correct.

12 BY MR. ENGLISH:

13 Q. Was that effort made on a monthly basis, then,  
14 was that -- I guess the question is if we made it  
15 annual?

16 A. I still believe it would be restricted.

17 Q. If you could go back and just look, and you  
18 don't have to get back on if you conclude that it was,  
19 just, you know, if you could just make one more stab at  
20 it and see if you do it annually, whether that would --

21 A. I -- well, I know, I know it won't pass --

22 Q. I appreciate that.

23 A. -- the test.

24 Q. All right --

25 JUDGE CLIFTON: So so long as there is one --



1 what shall I say? One -- how shall I classify this?  
2 One plant that is involved with more than half, you  
3 can't provide the information?

4 THE WITNESS: Right. So, I mean, in a  
5 hypothetical situation, if there were not enough plants  
6 in any of those months to meet the criteria, it would  
7 be -- we could not provide it at any point.

8 BY MR. ENGLISH:

9 Q. I'm going to try one more time. If we divided  
10 it by use -- if we didn't divide it up by use, so it's  
11 just milk volumes?

12 A. It would still be denied.

13 JUDGE CLIFTON: Are there any other questions  
14 of Ms. Warren?

15 Ms. Warren, thank you. You may step down.

16 MR. HILL: I would like it call Clifford  
17 Carman.

18 JUDGE CLIFTON: Mr. Hill, we've been given a  
19 document. What number will it be known as?

20 MR. HILL: This would be marked as Exhibit  
21 Number 13, I believe.

22 MS. FRISIUS: That is correct.

23 (Whereupon Exhibit 13 was marked for  
24 identification.)

25 JUDGE CLIFTON: Mr. Carman, I'll swear you in

1 in a seated position.

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

5 THE WITNESS: I do.

6 JUDGE CLIFTON: Welcome back to the witness  
7 stand.

8 THE WITNESS: But it's been so long.

9 JUDGE CLIFTON: Mr. Hill, you may proceed.

10 DIRECT EXAMINATION

11 BY MR. HILL:

12 Q. Can you please give us your title and tell us  
13 a little bit about yourself and what you do?

14 A. My name is Clifford Carman, C-A-R-M-A-N. I'm  
15 currently Assistant to the Deputy Administrator of Dairy  
16 Programs. Previously my status with Dairy Programs was  
17 a Western Area Marketing Specialist. Then I was Chief  
18 of Water Formulation and Enforcement. And in 2006, I  
19 took the position as Assistant to the Deputy  
20 Administrator. Prior to that I worked in a dairy  
21 industry for dairymen, Dairylea in the Northeast, and  
22 AgWay, which was a large import supply cooperative. I  
23 also did economic research of USDA in which I wrote the  
24 Dairy Outlook and Situation Report.

25 Q. Thank you very much.

1 JUDGE CLIFTON: Would you spell the name of  
2 the businesses for which you worked?

3 THE WITNESS: Dairylea is D-A-I-R-Y-L-E-A,  
4 headquartered in Syracuse, New York, at that time, and  
5 they have since merged with Dairy Farmers of America.  
6 Prior to that, it was with Agway, A-G-W-A-Y, a Fortune  
7 100 cooperative at its time -- at the time I worked for  
8 them.

9 BY MR. HILL:

10 Q. Now, there was a -- do you have Exhibit Number  
11 13, marked Exhibit Number 13 in front of you?

12 A. Yes, I do.

13 Q. Okay. As part of a data request from  
14 Mr. Smith, Amanda Steeneck was asked to put together  
15 something. Is this the document that she was asked to  
16 put together, to your knowledge?

17 A. Yes, it is.

18 Q. Okay. And Ms. Steeneck is not here so you're  
19 going to be testifying as to these numbers?

20 A. Yes. My understanding is Amanda is sick.

21 Q. Thank you.

22 Could you, please, look at the document and  
23 give us your assessment?

24 A. The document is entitled The Northeast and  
25 Southeast Class Utilization Charges Under the Dairy

1 Institute Proposal. There are two sub tables under that  
2 document, one for the Northeast Class Utilization and  
3 one for the Southeast Class Utilization. Those are, in  
4 both cases, in millions of pounds for the years 2017  
5 through 2024.

6 Q. And these are changes from the baseline?

7 A. Correct.

8 MR. HILL: Your Honor, I don't have any  
9 further -- I do not have any further questions.

10 I would like to enter this into evidence as  
11 Exhibit Number 13 if there are no objections.

12 JUDGE CLIFTON: First let me see if anyone  
13 would like to question this witness about the exhibit  
14 before determining whether there are objections. No  
15 one.

16 Are there any objections to the admission into  
17 evidence of Exhibit 13? There are none.

18 Exhibit 13 is admitted into evidence.

19 (Whereupon Exhibit 13 was admitted  
20 into evidence.)

21 JUDGE CLIFTON: Who would like to ask  
22 questions?

23 Mr. Smith was here to introduce himself. I  
24 knew he had to leave; I didn't know exactly when. I  
25 don't know whether someone can e-mail him a copy of this

1 if he's already gone so that he doesn't have to wait two  
2 weeks to see it on the website.

3 THE WITNESS: Your Honor, we will make sure  
4 that he gets a copy of the table.

5 JUDGE CLIFTON: Excellent. Thank you.

6 Do you think he's coming back? Oh, he's just  
7 missing right now?

8 THE WITNESS: Yes.

9 JUDGE CLIFTON: You're pointing as if he left  
10 things in his chair.

11 UNIDENTIFIED VOICE: Computer and printer.

12 JUDGE CLIFTON: Oh, computer's still there,  
13 good. All right.

14 So I know, Mr. Carman, you'll be in the room,  
15 so would it be all right if we call you at a later time  
16 so we can see if Mr. Smith has questions?

17 THE WITNESS: No. No, I will be here, Your  
18 Honor.

19 JUDGE CLIFTON: Very good.

20 Mr. English.

21 MR. ENGLISH: I certainly understand he's on  
22 the stand with respect to this issue. I had a very  
23 brief procedural conversation with Mr. Hill and  
24 Mr. Francis this morning about with all the examination  
25 yesterday, we went back and worked on things, and we had

1 some inquiries going back to some issues that were  
2 raised yesterday, frankly by Mr. Smith, and then some  
3 other questions. And I know Ms. Steeneck is -- is ill  
4 today, and it may very well be that Mr. Carman couldn't  
5 answer, but I did have a plan, and I don't know if now  
6 is the appropriate time or if you want to wait, but it's  
7 up to you, but we were -- we were going to ask for  
8 Ms. -- Ms. Steeneck if she were available, or Mr. Carman  
9 in her absence, to be recalled to discuss the questions  
10 we had about talking -- Mr. Smith has shown up. Not  
11 unintended filibuster.

12 So I don't know whether now is the appropriate  
13 time or not at least to getting to the issue and see  
14 where it goes. But I'm certainly also willing to yield  
15 to Mr. Smith if he wants to ask questions about Exhibit  
16 13. Or however you, Your Honor, and Mr. Hill, and  
17 Mr. Carman wish to proceed.

18 JUDGE CLIFTON: I think you should have -- I  
19 think you should go ahead now, Mr. English. Mr. Smith  
20 has just arrived back at his chair, and that way if you  
21 go forward, it will give him a little time to gather the  
22 questions that he has in mind. Let -- let me find out.

23 MR. ENGLISH: Well, this is -- Your Honor,  
24 yesterday you appreciated the conversation that  
25 Dr. Schiek had with Ms. Steeneck, and I think this is

1 going to go a lot more efficiently if Ms. Taylor for  
2 Leprino has this conversation as opposed to me --

3 JUDGE CLIFTON: You do --

4 MR. ENGLISH: -- so --

5 JUDGE CLIFTON: -- very well, Mr. English, and  
6 I'm always appreciative, but I did love the level of  
7 understanding between the two economists.

8 Yes. Would you state again and spell your  
9 name?

10 MS. TAYLOR: Sure. It's Sue Taylor. S-U-E.  
11 T-A-Y-L-O-R. From Leprino Foods. L-E-P-R-I-N-O Foods.

12 JUDGE CLIFTON: Your last is spelled how?

13 MS. TAYLOR: T-A-Y-L-O-R.

14 JUDGE CLIFTON: Thank you. You may proceed.

15 MS. TAYLOR: Thank you.

16 CROSS-EXAMINATION

17 BY MS. TAYLOR:

18 Q. Mr. Carman, I have some specific questions  
19 related to construction of a California milk price  
20 baseline, and they're rooted in my interest in  
21 replicating the data that drives Tables 10 and Tables  
22 58, and it could be that I'm challenged in my  
23 spreadsheet, but I've not been able to replicate that  
24 data, so I'm interested in understanding the methodology  
25 used.

1           One thing that I'd like to confirm for, first  
2 of all, is the solid nonfat composition, that's assumed  
3 since the California order currently rolls up to  
4 8.7 percent SNF as opposed to Federal order of the  
5 8.685. Do you know whether this is stated in a common  
6 standard -- solid standard level?

7           A.    No, I do not.

8           Q.    Okay. Another question would be what  
9 commodity prices are used in California part of the  
10 baseline.

11          A.    For the California section, we were attempting  
12 to duplicate their pricing formulas as it exists under  
13 the baseline, that is the CME prices zoned back to  
14 California and the Western nonfat dry -- pardon me, the  
15 Western dry whey price and the California survey of  
16 nonfat dry milk prices.

17          Q.    So do you know if their actual commodity  
18 prices as published by CDFA were used to drive that  
19 baseline?

20          A.    They were historically what was used to  
21 estimate the equations, and it was as -- as I remember  
22 it, a relationship built between the AMS announced  
23 prices, formerly the NASS announced prices and those  
24 price relationships of the CME and -- and the other two.

25          Q.    And --



1           A.     The CWAP and the Western dry whey price.

2           Q.     And would you be able to provide what those  
3 price wedges were?

4           A.     If it's not an amount in the documentation, I  
5 don't have it.

6           Q.     Is that something that USDA may be able to  
7 provide with a future witness?

8           A.     I don't know if we would have a future witness  
9 that would have those specifications or not.

10          Q.     There -- there is some interplay between Table  
11 58 and Table 57 that has some repercussions, just trying  
12 to understand how the analysis was done.  On -- this was  
13 the proposal, and so it would be helpful to be able to  
14 replicate and understand which aspects of the formula  
15 changes are buried in which table, and so I would  
16 request that USDA provide that information or simply the  
17 baseline commodity data that is used for the California  
18 milk prices.

19          A.     I'll take that under advisement.

20          Q.     Another question that I have is how the model  
21 addresses premiums.

22          A.     We did not have premium data for California so  
23 I don't believe it's recognized in the model.  There is  
24 premium data available up until very recently for all of  
25 the other areas that are modeled in terms of milk

1 production.

2 Q. So is it fair to assume that the change in  
3 regulated price formula is directly reflected as a  
4 change in producer prices?

5 A. I would make that assumption, yes.

6 Q. And is that consistent with economic theory --  
7 well, now I'll take a hypothetical. If you start out  
8 with a regulated price formula that generates \$20 a  
9 hundredweight at farm level and you drop the regulated  
10 price to \$5 a hundredweight, would you expect the farm  
11 level price to be \$5 a hundredweight?

12 A. I would not expect that.

13 Q. But your understanding is the model would  
14 assume that it's \$5 a hundredweight?

15 A. That's my understanding of how we modeled  
16 that.

17 Q. Thank you. Thank you.

18 JUDGE CLIFTON: Do you need any clarification,  
19 Mr. Carman, of what was requested?

20 THE WITNESS: No, I don't think so.

21 JUDGE CLIFTON: Mr. Smith, have you had an  
22 opportunity to look at Exhibit 13?

23 MR. SMITH: Yes, Your Honor. I -- first I  
24 apologize. I figured I picked a pretty good time to  
25 step out during the -- I don't want to call it the

1 shutdown, the discussion about the shutdown, but  
2 apparently not, and I apologize.

3 JUDGE CLIFTON: We now call that the lapse of  
4 funding.

5 All right. Do you have -- identify yourself,  
6 please, and then ask any questions you -- you may have  
7 of Mr. Carman.

8 MR. SMITH: Daniel Smith, the four producer  
9 associations. Actually I -- this is what I requested,  
10 I -- I don't have any questions, if it's been moved and  
11 admitted, so --

12 JUDGE CLIFTON: It has, it's admitted into  
13 evidence.

14 MR. SMITH: Thank you very much.

15 JUDGE CLIFTON: You're welcome.

16 Does anyone else have questions of Mr. Carman?

17 MR. ENGLISH: This is partly a statement or  
18 whatever, so since we can't do it off the record it's  
19 got to be on the record for obvious reasons.

20 I think all the participants are interested in  
21 the best data, and we've got great data that's submitted  
22 and so we're very, very appreciative. Let me be clear  
23 about why Ms. Taylor asked those questions, and we could  
24 be wrong, but in trying to replicate the data, we're  
25 having issues, and we suspect the possibility that the

1 price formulas that were used are the existing Federal  
2 price orders for Cal -- the Dairy Institute and not the  
3 modified within our proposal. And if we're wrong,  
4 that's fine, but I want to be clear what we were looking  
5 at in trying to replicate.

6           There's no point -- we're not here to play  
7 games with that. We want the best possible data in the  
8 record, and, you know, we know USDA has worked very hard  
9 on this, we just don't know if the dataset that was used  
10 might have inadvertently used the existing formulas.  
11 And, you know, if -- if -- if we're right, that means  
12 there will be different numbers, and that may work  
13 against our interest in terms of what we're trying to  
14 show. That is not the point. The point is get the  
15 right numbers in the record. And that's what we're  
16 interested in.

17           And obviously I couldn't say that to Mr. Hill  
18 and Ms. Francis off the record.

19           Do you want to clarify?

20           MS. TAYLOR: And just to clarify, on Table 57  
21 it appears that the results showing in terms of the  
22 impact is the impact on commodity prices under the Dairy  
23 Institute Proposal extended by the current Federal order  
24 formulas. That may be correct if Table 58 includes an  
25 adjustment for the difference in Federal order formulas

1 between existing and the proposed Dairy Institute  
2 proposal. That's why we need to understand all of the  
3 pieces that are embedded in Table 58.

4 MR. ENGLISH: That's why, Mr. Carman, we're  
5 trying to make this request. And, you know, the rules  
6 of the hearing are excellent rules about not having ex  
7 parte communications, so we're not -- you know, we -- we  
8 want it very clear what we're trying to do and trying to  
9 get, and it's to the benefit of all the parties.

10 CROSS-EXAMINATION

11 BY MR. BESHORE:

12 Q. Marvin Beshore.

13 I have a question or an area of followup to  
14 questions from Ms. Taylor. There are in terms of paying  
15 produce -- premium payments to producers, there are  
16 multiple -- you know, multiple scenarios and -- and  
17 inputs in the -- in the model here, including a couple  
18 of other ones I think for -- for producer payments such  
19 as the all-milk price. I mean, all-milk price reflects,  
20 does it not, all payments to producers including  
21 anything that would be not -- or considered to be a  
22 premium over a minimum regulated price, et cetera?

23 A. That's correct. The blend prices are the  
24 principle driver of that all-milk price, but the  
25 premiums are also included in that all-milk price.

1 Q. So therefore the -- the models -- the results  
2 of the model in tables that show changes in the all-milk  
3 price would have factored into them input-wise somewhere  
4 the -- you know, the all milk price which represents  
5 total receipts by producers at gross receipt?

6 A. Per -- per 100 pounds.

7 Q. Per hundredweight?

8 A. Yes.

9 Q. Okay. That's all. Thank you.

10 JUDGE CLIFTON: Does anyone else have  
11 questions for Mr. Carman at this point? I see none.

12 Thank you, Mr. Carman.

13 Oh, I'm sorry, Mr. Hill.

14 MR. HILL: Brian Hill. I was just waiting to  
15 see if anyone else had any questions.

16 We do have one other issue.

17 REDIRECT EXAMINATION

18 BY MR. HILL:

19 Q. There was a request by Mr. Miltner for  
20 additional modeling work. Are you aware of that,  
21 Mr. Carman?

22 A. Yes. I have the request that was given to  
23 Will by Mr. Mitt -- Mitner, Mitner. Excuse me, Miltner.

24 Q. Can you speak to that now?

25 A. As we have done with the other proposals in

1 this hearing, those that we got after our call for  
2 additional proposals were analyzed using the model  
3 result, the modeling. We are not able to run that  
4 alternative that -- that has been requested. We ran the  
5 ones that were noticed in the hearing notice, the four  
6 proposals, and the model documentation and the  
7 preliminary results were posted to the web at that time  
8 that the hearing notice was announced.

9 Q. Thank you very much.

10 CROSS-EXAMINATION

11 BY MR. MILTNER:

12 Q. Ryan Miltner with -- on behalf of Select Milk  
13 Producers.

14 Because my request was -- was given to  
15 Mr. Francis, just for the record, what I had requested  
16 was a comparison of the existing baseline to the recent  
17 changes that California Department of Food and  
18 Agriculture made to their price formulas, correct?

19 A. That's correct.

20 Q. Okay. Let me ask when you stated that you --  
21 you -- the Department was not going to provide that, you  
22 stated that it was because you had modeled existing  
23 proposals. So is it -- is it accurate to say that it  
24 would be possible and feasible for that to be done and  
25 the Department is simply declining to do so?

1           A.     Anything is possible given enough time and  
2 resources.  In this case, we don't have enough time and  
3 resources to do this here at this hearing site.

4           Q.     Do you have -- and I understand that there's a  
5 great investment of time and effort to -- to do this,  
6 and I appreciate, as everybody else, the work that goes  
7 into it.  Would it be possible that that information  
8 would be something that could be done before  
9 November 6th when this hearing is at least currently  
10 scheduled to terminate?

11          A.     I don't want to speculate on something that at  
12 this point I -- I don't know how much effort would be --  
13 it would take to do that.  We're dealing with a model  
14 that's got 1200 equations, 8,000 variables in it.  
15 I'm -- I can't make a speculation of whether we could do  
16 that by Nov -- by the end of the hearing or not.

17          Q.     For the record, let me just state that the  
18 request was not made because we wanted that to be  
19 considered a proposal, and I don't think that that's  
20 what you are saying, but I want the record to be -- to  
21 be clear and reflect that.  The reason for the request,  
22 as I mentioned with -- I think when Ms. Steeneck was on  
23 stand is that a comparison to a baseline is -- is of  
24 course useful and that because of the interim change  
25 that California made to its price formulas, that an



1 accurate comparison to what is, I guess, now a baseline  
2 would be useful for interested parties who are looking  
3 at information, looking at the preliminary economic  
4 analysis, and trying to assess what the impact on other  
5 Federal orders might be if any of the proposals were  
6 adopted.

7           For example, the tables currently show effects  
8 in the neighborhood of \$.12 a hundredweight on other  
9 Federal orders compared to the existing baseline in the  
10 model, and that with California's recent formula  
11 changes, it might be that those impacts on the other  
12 Federal orders may not be of the magnitude that are in  
13 the tables currently presented. And I don't need a  
14 response to that, I wanted to make that clear for the  
15 record.

16           And if, Mr. Carman, after some evaluation on  
17 behalf of Dairy Programs that might be something that  
18 would be something we could put into the record before  
19 we -- we adjourn, I would certainly appreciate it, and I  
20 think the others might as well.

21           That's all I have, Your Honor. Thank you.

22           JUDGE CLIFTON: Thank you, Mr. Miltner.

23           It -- it is somewhat problematic that  
24 California acted after we were set and only temporarily.  
25 I think all parties of course will comment on that.

1 Whether your own economists can project what difference  
2 that makes, I don't know.

3 There's no guarantee that we'll be in this  
4 hearing until November the 6th or whatever date, I --  
5 I'm hopeful we'll finish far before then. I'm getting  
6 looks like, oh, yeah, in your dreams, but --

7 All right. Other -- other questions of  
8 Mr. Carman on any topic?

9 THE WITNESS: No, we're not talking about the  
10 Mid East. The last time I was on the hearing -- hearing  
11 stand was to present data for a hearing we held in the  
12 Mid East Order in which Judge Clifton was the  
13 Administrative Law Judge.

14 JUDGE CLIFTON: I do like to hear him testify.  
15 But I can't think of anything to ask him right now, so  
16 --

17 All right. Thank you, Mr. Carman. You may  
18 step down.

19 Mr. Hill.

20 MR. HILL: Your Honor, I think it's 12:40 now.  
21 This might be a good time to break for lunch.

22 JUDGE CLIFTON: Did an hour and 15 minutes  
23 work out well yesterday? Was that enough time? It  
24 seems that the consensus is yes.

25 All right. Then please be back and ready to

1 go at 2:00.

2 MR. BESHORE: Who are we going with?

3 JUDGE CLIFTON: Oh, Mr. Mykrantz is next,  
4 right?

5 MS. TAYLOR: Yes.

6 MR. HILL: Thank you.

7 JUDGE CLIFTON: All right. You're welcome.  
8 We'll -- we'll be back at 2:00.

9 (Whereupon a break was taken.)

10 JUDGE CLIFTON: We're back on record at  
11 2:04 p.m.

12 Let's see. Is there anything preliminary to  
13 the next USDA witness taking the stand? There being  
14 nothing, I invite the witness to be seated in the  
15 witness chair.

16 I'll swear you in in a seated position. If  
17 you'll raise your right hand, please.

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

21 THE WITNESS: I do.

22 JUDGE CLIFTON: Thank you. Please state and  
23 spell your name.

24 THE WITNESS: My name is John Mykrantz.  
25 J-O-H-N. Mykrantz is spelled M-Y-K-R-A-N-T-Z.

1 JUDGE CLIFTON: And where do you work within  
2 the USDA?

3 THE WITNESS: I'm employed by USDA AMS Dairy  
4 Programs as an Agricultural Economist for the Pacific  
5 Northwest and Arizona Federal Milk Marketing Orders.  
6 The office where I work is in Bothell, Washington.

7 JUDGE CLIFTON: And how is that spelled?

8 THE WITNESS: B-O-T-H-E-L-L.

9 JUDGE CLIFTON: And would you tell me  
10 something about your educational background and work  
11 background?

12 THE WITNESS: I have a bachelor's degree in  
13 history from Washington University in St. Louis, and a  
14 master's degree in Agricultural Economics from Michigan  
15 State University.

16 JUDGE CLIFTON: And your work experience?

17 THE WITNESS: I've been employed by the Market  
18 Administrator's office or a Market Administrator office  
19 since 1990.

20 JUDGE CLIFTON: And how long have you worked  
21 in the Pacific Northwest Region?

22 THE WITNESS: Since 1994.

23 JUDGE CLIFTON: Thank you very much.

24 Mr. Hill.

25 ///

1 DIRECT EXAMINATION

2 BY MR. HILL:

3 Q. Brian Hill. Brian Hill. Good afternoon.

4 Now, you were requested to provide some basic  
5 information. Is that what your understanding is?

6 A. That's correct.

7 Q. Those topics, I'm going to read some topics to  
8 you, and you tell me if these are the topics that you're  
9 prepared to describe. 1000.43, General classification  
10 rules?

11 A. Correct.

12 Q. Excuse me. 1000 part -- point 44,  
13 Classification of producer milk?

14 A. Correct.

15 Q. 1000.77, Adjustment of accounts?

16 A. Correct.

17 Q. 1000.78, Charges on overdue accounts?

18 A. Correct.

19 Q. 1000.85, Assessment for order administration?

20 A. Correct.

21 Q. And 1000.86, Deduction for marketing services?

22 A. Correct.

23 Q. And it's my understanding you're prepared to  
24 speak about those topics now, and if you want, you may  
25 begin.

1           A.    I am, thank you.

2   STATEMENT OF MR. MYKRANTZ

3           A.    To begin, 1000.43, General classification  
4 rules. As a preliminary step to 1000.44, Classification  
5 of Producer Milk, calculations are performed to  
6 determine allowable shrinkage, excess shrinkage, and/or  
7 overage. Calculations are made for skim and butterfat  
8 separately.

9   Shrinkage is the loss of butterfat or skim  
10 between the accounting of receipts and the accounting of  
11 utilizations.

12   Excess shrinkage is that portion of actual  
13 shrinkage which is greater than the calculated allowable  
14 shrinkage.

15   Allowable shrinkage is assigned to the class  
16 of the lowest price.

17   Excess shrinkage is assigned to the highest  
18 class of the plant's utilization.

19   An overage occurs when skim or butterfat in  
20 receipts is less than the skim or butterfat in  
21 utilizations. The classification of an overage is  
22 determined at Step 11, Section 1000.44, Classification  
23 of Producer Milk.

24   Allowable shrinkage is calculated as  
25 two percent of physical receipts of milk at farm weights

1 and tests plus 1.5 percent of plant weight receipts plus  
2 0.5 percent of the quantity of milk diverted to another  
3 plant on the basis of other than farm weights and tests  
4 minus 1.5 percent of bulk transfers of milk or  
5 concentrated milk except concentrated milk transferred  
6 by agreement for other than Class I use.

7 A 9(c) cooperative delivering milk to a plant  
8 at other than farm weights and tests has an allowable  
9 shrinkage of 0.5 percent.

10 Paragraph (c) of 1000.43 instructs the MA to  
11 convert milk products that may have had water and/or  
12 components removed to their original volume.

13 Paragraph (d) of 1000.43 instructs the MA to  
14 assign, quote, "receipts of bulk concentrated fluid milk  
15 and nonfluid milk products that are reconstituted for  
16 fluid use shall be assigned to Class I use up to the  
17 reconstituted portion of labeled reconstituted fluid  
18 milk products, on a pro rata basis, open parentheses,  
19 except for any Class I use of specific concentrated  
20 receipts that is established by the handler, close  
21 parentheses, prior to any assignments under Section  
22 1000.44. Any remaining skim and butterfat in  
23 concentrated receipts shall be assigned to uses under  
24 1000.44 on a pro rata basis, unless a specific use of  
25 such receipts is established by the handler," period,

1 close quote.

2 1000.44, Classification of producer milk. The  
3 classification of producer milk occurs by means of  
4 any -- of an allocation process described in 1000.44.  
5 The allocation process begins with the gross utilization  
6 of milk, milk products, and shrinkage at a plant, and  
7 results in producer milk, namely skim and butterfat, by  
8 class.

9 There are currently 11 steps in the allocation  
10 process at which what is not producer milk is removed  
11 from gross utilization.

12 The gross utilization of a plant represents  
13 what milk products were made at the plant by class,  
14 movements from the plant by class, inventory of packaged  
15 fluid and bulk milk, and shrinkage and overage.  
16 Allowable shrinkage is assigned to the lowest price  
17 class. In the event a plant experiences excess  
18 shrinkage, it is assigned to the highest class available  
19 at the plant.

20 The allocation process has two identical  
21 parts, (a) and (b). Paragraph (a) applies to skim and  
22 butterfat. Strike that. Paragraph (a) applies to skim  
23 and (b) applies to butterfat. Paragraph (c) is the sum  
24 of paragraphs (a) and (b) for the product pounds by  
25 class.



1           The first step of the classification of  
2 producer milk removes skim and butterfat in previously  
3 priced packaged fluid milk products from Class I.

4           The second step removes bulk concentrated  
5 fluid milk products in other source milk used in Class  
6 II from Class II.

7           The third step removes what is known as other  
8 source milk. The first part of the third step removes  
9 bulk concentrated fluid milk products not used in Class  
10 II from producer utilization beginning from Class IV,  
11 and then the higher classes, that is IV, III, II, and  
12 finally I.

13           The second through sixth part of the third  
14 step removes non-Grade A and unidentified milk, milk  
15 from exempt plants, milk from producer-handlers, milk  
16 from what are called dairy farmers for other markets.  
17 An example of that is milk of dairy farmers whose milk  
18 is not qualified to be pooled on any order.

19           The last part of step three removes milk not  
20 otherwise allocated in steps one and two.

21           The fourth step removes milk from an  
22 unregulated supply plant for which the receiving handler  
23 requests a class other than I in sequence, IV, III, II,  
24 but not in excess for the milk in these classes.

25           The fifth step removes milk from an

1 unregulated supply plant in sequence, IV, III, II, that  
2 may remain from step four or is -- was requested Class I  
3 which is in excess of a calculation.

4           The calculation involves multiplying the skim  
5 and butterfat pounds remain at this allocation step by  
6 1.25, which is paragraph little (i) and subtracting the  
7 skim and butterfat pounds respectively in receipts of  
8 producer milk and fluid milk products from other pool  
9 plants, paragraph 2 little i. If the result of 2 little  
10 i is less than 1 little i, the excess is allocated at  
11 step eight. If the result of 2 little ii is greater  
12 than 1 little i, skim and butterfat is allocated at step  
13 five in sequence, IV, III, II.

14           The sixth step removes milk from another order  
15 which is not requested Class I in sequence IV, III, II.

16           The seventh step removes beginning inventory  
17 in sequence from Class IV, III, II.

18           The eighth step removes milk not previously  
19 subtracted in step five according to a proration to  
20 utilization remaining after step seven, that is Class I  
21 versus the sum of Class II, III, and IV, and the  
22 percentage attributable to Class II, III, IV is  
23 allocated IV, III, II.

24           The ninth step removes milk from another order  
25 which is requested Class I. According to a proration

1 based on an estimated utilization of Class I versus II,  
2 III, IV, of all handlers or proration to utilization  
3 remaining after step eight, open parentheses, Class I  
4 versus Class II, III, IV, close parentheses, whichever  
5 represents the lower Class I utilization. The  
6 percentage attributable to Class II, III, IV is  
7 allocated IV, III, II.

8 The tenth step removes milk received from  
9 other plants at the request class or as allocated.

10 The eleventh step removes skim and/or  
11 butterfats that are in excess of receipts, that is  
12 overages.

13 The result of the allocation is producer  
14 milk -- producer skim milk and butterfat by class.  
15 Federal orders with component pricing assume that the  
16 components in the skim, that is protein and other  
17 solids, follow the skim.

18 Section 60 of the order uses information from  
19 Section 44 to calculate a handler's value of milk.

20 Section 1000.77, Adjustment of accounts.  
21 Monthly reports submitted by the handler are subject to  
22 audit by the Market Administrator, MA. Requirements for  
23 handlers to provide records and facilities for the audit  
24 are described in 1000.27. The MA will conduct audits on  
25 handler reports to uncover mathematical and procedural

1 errors. The audited data will be processed in the same  
2 manner as the original pool or report. Handler  
3 obligation will be calculated using classified prices  
4 and announced MA prices, open parentheses, producer  
5 price differential or skim and butterfat blends, close  
6 parentheses, effective for the month being billed  
7 compared to the obligation calculated at pool time.

8 Differences that result in a final obligation  
9 or adjustment of accounts may be due from the handler to  
10 the MA or due to the handler from the MA. Adjustments  
11 may affect the Producer Settlement Fund, the  
12 Administrative Fund, and/or the Marketing Service Fund.

13 MA offices may employ a minimum billing  
14 standard. Positive or negative values that fall within  
15 the standard will not be billed. Findings in audit may  
16 result in additional payments to be paid by the handler  
17 to producers or cooperative associations. Timely  
18 payments to producers and cooperatives to assure  
19 compliance with 1000.78 will be verified.

20 All payments and due dates required by the  
21 order will be enforced and resulting assessments  
22 included in the adjustment of accounts.

23 Monthly report may be re-audited when  
24 information not available in audit becomes available.  
25 Typically, this will be allocations of product on the

1 handler report classified for final disposition at  
2 another plant. The MA will notify the handler of any  
3 adjustment of accounts and payment will be due on or  
4 before the next payment due date. Adjustments may be  
5 included in a statement to the handler that includes  
6 obligations determined in the following monthly pool  
7 resulting in a net payment. Obligations are due for  
8 payment on dates described in Section 71 and 72 of the  
9 respective order.

10 Accounts or previously -- accounts for  
11 previous monthly pools will be adjusted for handlers  
12 regardless of current regulatory status. The MA will  
13 make every effort to complete the audit on all  
14 outstanding months for handlers that cease operations  
15 within a suitable time frame and possibly complete the  
16 audit before the final pool is calculated.

17 1000.78, Charges for overdue accounts.  
18 Federal order provisions require handlers to make  
19 payments to producers and cooperatives no later than  
20 date specified in Section 73 of the respective order and  
21 to the Market Administrator no later than dates  
22 specified in Section 71 of the respective order.

23 1000.90 modifies payment dates when they fall on a  
24 Saturday, Sunday, or national holiday until the next day  
25 the MA office is open for public business.

1           Payments required by the order not made by the  
2 due date will be assessed a one percent penalty by the  
3 MA made payable to the MA Administrative Fund. The  
4 penalty will be assessed at the same rate on any amounts  
5 that continue to be late on the corresponding due date  
6 each succ -- each succeeding month. Charges for overdue  
7 accounts are only charged on the value of required  
8 Federal order minimums. A late payment on an invoice  
9 that includes premiums or other fees will not be  
10 assessed on those extra charges. A timely advanced  
11 payment that exceeds quarter requirements may result in  
12 a reduction of the value assessed as a penalty in the  
13 subsequent late final payment.

14           Handlers are notified immediately of any late  
15 charges for payments due the MA. The MA will make every  
16 effort to contact a handler before close of business on  
17 the due date when payments are not received. Payment  
18 dates to cooperatives and producers are verified through  
19 examination of records available in the office and  
20 submitted by the responsible party or during the audit  
21 process through records only available at the handler.

22           Charges for overdue accounts are billed along  
23 with other adjustments to accounts described in Section  
24 1000.77.

25           1000.85. Assessment for order administration.

1 The Market Administrator assesses each handler on the  
2 market pro rata share of expenses necessary to  
3 administer the order. The rate specified by the MA,  
4 Market Administrator, is known as the administrative  
5 assessment. Fees from the administrative assessment are  
6 included in the administrative fund and reported in the  
7 MA's financial statements.

8 Regulated handlers are assessed on producer  
9 receipts included in the handler's classification of  
10 producer milk. Receipts reported by a 9(c) handler  
11 diverted to a pool plant are assessed at the receiving  
12 plant. Receipts reported by a 9(c) handler shipped to a  
13 nonpool or other order plant are assessed to the 9(c)  
14 handler.

15 Partially regulated handlers are assessed the  
16 same administrative rate on the volume of Class I route  
17 disposition inside of the marketing area. Regulated  
18 handlers with product pounds subject to Class I  
19 compensatory payments under the order may be subject to  
20 administrative assessment. This will include  
21 concentrated milk products, nonfluid milk products, and  
22 other sorts of receipts allocated to Class I.

23 Partially regulated plants and regulated  
24 handlers subject to compensatory payments that receive  
25 the associated products pounds from any regulated

1 handler subject to administrative assessments will not  
2 be assessed. Individual MA's may choose to waive  
3 certain months of the assessment to balance the  
4 administrative fund to annual expenses incurred by the  
5 MA to administer the order.

6 Section 1000.86, Deduction for marketing  
7 services. The Market Administrator assesses handlers  
8 making payments to producers who are not members of a  
9 cooperative association that's qualified under the order  
10 the rate per hundredweight specified by the MA. The  
11 rate is known as the Marketing Service Assessment. Fees  
12 from the Marketing Service Assessment are included in  
13 the Marketing Service Fund and reported in the MA's  
14 financial statements.

15 A handler will typically pass this assessment  
16 back to the producer in the form of an authorized  
17 deduction to the producer's final payment. The  
18 assessment does not apply to a handler's own farm  
19 production. The assessment is separate and in addition  
20 to the Administrative Assessment. Cooperatives and  
21 handlers who do not benefit from the marketing service  
22 are not subject to assessment.

23 Fees collected by the Marketing Service  
24 Assessment are used by the MA to provide specific  
25 services to the producers who have been assessed. The



1 MA verifies and may establish the weights and tests of  
2 the producer's milk necessary to determine the Federal  
3 order minimum price the producers are to be paid.

4 Other services provided by the MA include  
5 market information. The MA issues a monthly publication  
6 containing information on market prices, trends, and  
7 other topics in dairy and general agriculture.

8 The MA will upon request calibrate bulk milk  
9 tanks for producers covered by market service and  
10 provide a chart with gallons or pounds of milk based on  
11 a stick reading.

12 And that concludes my description of the order  
13 language.

14 JUDGE CLIFTON: Thank you, Mr. -- thank you,  
15 Mr. Mykrantz. We should have had you go first. You're  
16 an excellent model.

17 Do you have further questions of the -- of the  
18 witness, Mr. Hill?

19 MR. HILL: No, I do not, Your Honor.

20 JUDGE CLIFTON: Who would like to ask  
21 questions of Mr. Mykrantz?

22 MR. ENGLISH: Your Honor, this is Chip  
23 English. Harkening back to yesterday, I thought the  
24 idea was that since we had an expedited transcript now  
25 for Mr. Schaefer, what we were going to do was

1 temporarily excuse Mr. Mykrantz and recall Mr. Schaefer,  
2 and he has not yet been subject to cross-examination so  
3 we basically go to that point, was my understanding of  
4 what we were going to do next.

5 JUDGE CLIFTON: I bet Mr. Mykrantz would agree  
6 with that.

7 THE WITNESS: I'm fine with that.

8 JUDGE CLIFTON: I was going to ask about that,  
9 so -- so there is a copy of the expedited transcript?

10 MS. TAYLOR: There's copies over there.

11 MR. ENGLISH: There may be copies.

12 JUDGE CLIFTON: On the table?

13 MR. ENGLISH: Yes.

14 JUDGE CLIFTON: All right. So if you want  
15 one, if you'd like to go to the table and obtain it.

16 MR. ENGLISH: And of course it's a rough  
17 draft.

18 JUDGE CLIFTON: Right.

19 MR. ENGLISH: The court reporter wants to make  
20 sure that gets on the record.

21 JUDGE CLIFTON: Thank you, yes. It's a  
22 miracle is what it is.

23 All right, Mr. Mykrantz, you may step down for  
24 the time being.

25 And, Mr. Schaefer, you may come to the witness

1 stand.

2 Mr. Schaefer, do you have a copy of that  
3 expedited transcript?

4 THE WITNESS: Yes, I do.

5 JUDGE CLIFTON: Okay, good.

6 Mr. Schaefer, you remain sworn. Would you  
7 state and spell your name?

8 THE WITNESS: Henry Schaefer. That's  
9 H-E-N-R-Y. S-C-H-A-E-F-E-R.

10 JUDGE CLIFTON: Mr. Hill, do you have any  
11 questions of Mr. Schaefer preliminary to my opening it  
12 to others?

13 MR. HILL: Your Honor, we do not have any  
14 questions at this time.

15 JUDGE CLIFTON: Thank you.

16 Who would like to be the first person to ask  
17 additional questions of Mr. Schaefer?

18 CROSS-EXAMINATION

19 BY MR. BESHORE:

20 Q. Marvin Beshore. I think I just have a few  
21 questions, Henry.

22 When we look at -- these relate to Section 42.

23 A. Okay.

24 Q. Now, 42 is about transfers and --  
25 classification of transfers and diversions, I guess it's

1 called --

2 A. Correct.

3 Q. -- or something like that.

4 Can you tell us just in concept like what  
5 other sections in the order does that importantly  
6 interact with? Or what other sections rely on -- on  
7 what happens in 42 for something to happen?

8 A. Basic -- basically that's kind of a starting  
9 point for Section 43 and Section 44 of the allocation  
10 process.

11 Q. And do the results of those processes affect  
12 the handler's obligation to the -- for milk under the  
13 order?

14 A. Yes, they do.

15 Q. And that's in Section 60, 61?

16 A. 60.

17 Q. 60. So if, for instance, you know, a -- let's  
18 just talk about a handler receiving a transfer of  
19 condensed milk to its -- its plants, okay, can you talk  
20 about how that would be classified?

21 A. It depends on which plant, what type of plant  
22 it's coming into or which you're shipping to, because  
23 there's transfers into pool plants, into various types  
24 of nonpool plants, and there's a difference to a certain  
25 extent as to what -- how that's handled going into these

1 plants.

2 Q. Let's assume it's transferring to a pool  
3 plant.

4 A. Specifically I guess I can't really address  
5 how a specific load would go, concentrate.

6 Q. Okay.

7 A. In fluid milk, bulk fluid milk, it would go  
8 Class I if it went into a pool plant unless the handlers  
9 agreed for it to be in another class, and then both  
10 handlers would agree, and then it would be in one of the  
11 other classes.

12 A little clarification on the concentrate, I  
13 believe that --

14 Q. That's condensed?

15 A. Condensed.

16 Q. Is that also referred to as --

17 A. Condensed. Yeah.

18 Q. If you see concentrated milk, that would be --  
19 in the language, would that include condensed?

20 A. I'm going to say yes.

21 Q. Okay.

22 A. I use it somewhat interchangeably and  
23 sometimes -- but generally speaking you can't direct  
24 allocate, when you get into the allocation in IV, it has  
25 to go through the procedure. But if you're using

1 concentrated, condensed, in let's say a Class II  
2 product, then it would move at Class II.

3 Q. So if -- is it generally correct to say that  
4 condensed milk if it starts out at what, as a Class II  
5 product under the orders?

6 A. Correct.

7 Q. But if it is used in another product, how is  
8 it then classified?

9 A. Generally speaking it follows the  
10 classification of the product that it's made into. In  
11 our market, we have very little manufacturing in pool  
12 plants, and so we don't have milk concentrate moving  
13 into III or IV in our pool plants because we just don't  
14 have manufacturing in that -- in that.

15 Q. So in your order, intermediate products like  
16 condensed typically are moved to nonpool plants?

17 A. Correct.

18 Q. And then how is that classified?

19 A. They would be classified according to the  
20 usage at that plant, and so if it went into a cheese  
21 plant, for instance, cheese is -- milk going into cheese  
22 is considered Class III, and so it would be a Class III.

23 Q. And if a plant happened to be an ice cream  
24 plant, how would it be classified?

25 A. Class II.

1 Q. And is that -- is that process of -- of  
2 classifying an intermediate product, is that the -- is  
3 that in -- do we find that, what you've just described  
4 that -- in the language of Section 42?

5 A. No, it's not. It would be in the classes of  
6 utilization section where it talks about condensed in  
7 Class II.

8 Q. Okay.

9 A. I can't remember right off the top of my head.

10 Q. 43 or 44?

11 A. No, it's 40, I believe.

12 Q. Okay. So in any event, those various sections  
13 of the order that you referred to, including 60, 42, 43,  
14 44, maybe some others, they interrelate and operate  
15 together?

16 A. That's correct.

17 Let me -- let me back up to one thing. When  
18 we talk about classifying an allocation, you can move a  
19 product at let's say Class I, but if the plant that  
20 you're shipping to has no Class I utilization, it -- the  
21 product would not stay as Class I. It's -- you have to  
22 have product available there to carry out the allocation  
23 process that Mr. Mykrantz discussed. And so if there  
24 was no product in that class at that point in the  
25 allocation process, it would not stay there, it would

1 move to where there was product.

2 Q. Okay. Now, can you -- let's talk about the --  
3 the transfer of condensed, concentrate if you want to  
4 call it that, milk to a distributing plant, pool  
5 distributing plant for purposes of -- for using -- use  
6 in the fluid milk product processing for fortification,  
7 how -- can you tell us how is that classified? Where  
8 does it tell us how that works in the order?

9 A. Right offhand I don't recall where it's  
10 precisely in there.

11 Q. Okay. So, I mean, I'm just taking that shot  
12 because we're 42, which was in your area, is called  
13 classification of transfers and diversions, and I  
14 thought it might -- that might be a starting point at  
15 least.

16 A. It -- 42 doesn't specifically talk about  
17 that --

18 Q. Okay.

19 A. -- because products moving in for  
20 fortification are handled somewhat differently.

21 Q. Okay. So even though that's a -- what you've  
22 described at an earlier point in your testimony, I think  
23 as a physical transfer of milk, that is a load from one  
24 plant to another? That's a yes? You have to speak --

25 A. Oh, yes.



1 Q. -- rather than nod. Thank you.

2 Okay. That type of transfer is not -- the  
3 treatment of it under the order is not specifically  
4 addressed in Section 42?

5 A. That is correct.

6 Q. Okay. Do you -- and you're not sure offhand  
7 where -- which section it's addressed in?

8 A. I just right offhand can't recall.

9 Q. Okay.

10 A. I kind of -- I kind of know what -- what we  
11 do, but I don't remember the section that it's in right  
12 offhand.

13 Q. So whatever section it's in, it wasn't among  
14 those that you have testified to?

15 A. That is correct.

16 Q. Okay.

17 JUDGE CLIFTON: Don't -- don't hesitate to ask  
18 him to find it if you'd like.

19 BY MR. BESHORE:

20 Q. Yeah, if you can find it.

21 JUDGE CLIFTON: Of course he can.

22 BY MR. BESHORE:

23 Q. Or at the next break or --

24 A. Okay, yeah, we'll --

25 Q. Next break is fine --

1           A.     Okay.

2           Q.     -- Your Honor, rather than interrupt the  
3 hearing.

4                     Okay.  Now, you -- you talked about the Market  
5 Administrator definition, 25, also.

6           A.     Correct.

7           Q.     Back -- back onto another section now.

8                     Does that have within it the authorization of  
9 the Market Administrator to contract for services  
10 required to administer the order?

11          A.     I believe it does.

12          Q.     Okay.  And, you know, in your experience, does  
13 that sometimes involve contracts with other governmental  
14 entities or agencies such as another Market  
15 Administrator's Office?

16          A.     I believe it does.

17          Q.     I mean, sometimes -- tell me if this is right  
18 or wrong, if there's a plant that Order 31 audits but  
19 it's located in Texas, you might contract with -- he was  
20 here earlier, Mr. Hunter's office to perform some audit  
21 services for your benefit down there?

22          A.     I'm aware of instances in which we've done  
23 work together to get the audit taken care of.

24          Q.     Okay.  Are there -- are you aware of any  
25 instances where there was an occasion to contract with,

1 you know, another arm of the federal or state government  
2 for some reason or another for some purpose or another  
3 in carrying out the order?

4 A. Yes, there has been.

5 Q. Okay. What examples?

6 A. When we went to order reform, so '98, '99, in  
7 that time period, we contracted with the National Ag  
8 Statistics service, NASS, to do the price surveys for  
9 the -- so we could incorporate that information into the  
10 new Federal orders at that time.

11 Q. And some part of that service expenditure was  
12 financed through the Market Administrator's Office?

13 A. It was not.

14 Q. Pardon?

15 A. It was not. The Market Administrator -- that  
16 was financed out of Washington.

17 Q. Okay.

18 A. The Market Administrators were separated from  
19 that transaction.

20 Q. Does the -- I guess Mr. Mykrantz -- where do  
21 the funds -- funds come from for the Market  
22 Administrator to carry out all of his responsibilities  
23 and obligations?

24 A. The Market Administrator has a -- what's  
25 called an Administrative Fund, and that money is charged

1 on a rate per hundredweight for all of the milk that is  
2 pooled in the market, and as Mr. Mykrantz pointed out,  
3 partially regulated, on the Class I partially regulated  
4 milk as well. And that in our particular market is \$.03  
5 currently, and that money is set aside in a separate  
6 fund for use to pay employees, rent on the office,  
7 office supplies, and so forth to carry on the  
8 functioning of the office.

9 Q. So I don't know whether you have this  
10 tentative hearing agenda schedule available to you or  
11 not, but we haven't really been tying the testimony into  
12 these subjects particularly yet, but I just wanted to  
13 note that, for instance, the funding of the Market  
14 Administrator's Office is in topic nine, agenda topic  
15 nine, which you've alluded to presently whereas the  
16 actually carrying out responsibilities under agenda  
17 topic three, which is part of what you were  
18 responsible --

19 A. Correct.

20 Q. -- to testify to?

21 And you've also testified under agenda topic,  
22 what, five regarding classification of transfers and  
23 diversions?

24 A. Correct.

25 Q. And alluded to handler's value of milk in

1 agenda topic number eight, for instance?

2 A. Correct.

3 Q. Okay. Some of these things really get tied  
4 together and are pretty hard to unravel as -- as  
5 separate, discrete kind of subjects?

6 A. That's correct.

7 Q. Okay. I think that's all the questions I have  
8 subject to you having a chance to retrieve that --

9 A. That references.

10 Q. -- that reference --

11 A. Okay.

12 Q. -- that we talked about earlier. Thank you.

13 CROSS-EXAMINATION

14 BY MS. VULIN:

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

17 Mr. Schaefer, thank you for being with us this  
18 afternoon.

19 A. You're welcome.

20 Q. So the federal system uses a lot of similar  
21 terms that have been previously used under the  
22 California state regulatory system, but I'm not sure  
23 that they mean the same thing, so I'd kind of like to do  
24 an overview of this in a bit more general terms so that  
25 people who aren't as familiar with the federal system

1 can fully understand what kind of system they're  
2 adopting if they choose to adopt an FMMO. So I would  
3 ask for the John Vetne fourth-grader treatment with the  
4 caveat being I probably was in fourth grade when all of  
5 this was passed.

6 So I'd like to begin with Section 1030.4,  
7 which is the definition of a plan, I believe that's the  
8 first section you identified that you'd like to speak  
9 towards.

10 A. Okay.

11 Q. So it looks like in Order 30 that references  
12 Section 1000.4, which is the general provision, correct?

13 A. Correct.

14 Q. So if I'm new to this system and I'm looking  
15 at Order 30 and I see that, I know I need to go to the  
16 general provisions which are in the front of our CFR?

17 A. Correct.

18 Q. All right. And actually before we get into  
19 the specifics, can I ask you some general questions  
20 about Order 33?

21 A. Yes.

22 Q. When was Order 30 created?

23 A. The current Order 30 was created January 1st  
24 of 2000 with order reform. It was a merger of the Upper  
25 Midwest Order, Order 68, and the Chicago Regional Order,

1 which was Order 30, and we also have a little bit of the  
2 Upper Peninsula of Michigan, which was Order 44.

3 Q. So there are a variety of different states  
4 included in Order 30?

5 A. That is correct, there's a Minnesota,  
6 Wisconsin, North and South Dakota, parts of North and  
7 South Dakota, parts of Minnesota -- or parts of Iowa,  
8 parts of the UP, and parts of Illinois.

9 Q. Any reason why all those different states were  
10 grouped together under one order?

11 A. The detail of why they grouped them that way  
12 would be in the final decision for the order reform, but  
13 basically I believe their -- what kind of their criteria  
14 was, a uniform dairy industry across that region and  
15 competition. One of the criteria for a Federal order  
16 has traditionally been handlers who have -- compete for  
17 milk sales in a particular area should be regulated by  
18 the same order, and so that was also part of that.

19 I don't recall the details of the whole  
20 explanation, but that would be part of it.

21 Q. Any reason why it was called Order 30? Does  
22 the number have any significance?

23 A. It was called Order 30 because when they did  
24 order reform and merged the orders -- when I talk about  
25 order reform, prior to 2000 there were roughly 32

1 Federal orders. The 2000 -- the 1996 Farm Bill,  
2 Congress mandated that Federal orders be combined down  
3 to ten to 13 orders, and so that process started with  
4 that Farm Bill. It completed -- and it had to be done  
5 by 2000, January 1st of 2000.

6 And when we did that, when they merged orders  
7 to get down to the ten to 13 orders, the orders that  
8 were merged were renumbered based on the lowest number  
9 in the merged orders. So they just kind of picked the  
10 criteria and did that rather than having people fight  
11 over, well, I want this number for my order, and so  
12 forth and so on, so --

13 Q. How long have you worked for Order 30?

14 A. The old Chicago Regional Order was also Order  
15 30, and so I've been working for Order 30 for 30 years.

16 Q. Have you -- have you any -- ever worked for  
17 any other orders besides the Chicago Order that predated  
18 now currently Order 30?

19 A. Well, I -- about 15 years ago in 1998, I moved  
20 from the Chicago Order to the Upper Midwest Order, which  
21 was Order 68, which was located and headquartered in  
22 Minneapolis.

23 Q. How long did you work for Order 68?

24 A. Until we merged back into Order 30 two years  
25 later.



1 Q. You missed it too much?

2 A. No.

3 Q. So why is Order 30 a good comparison for a  
4 potential California Federal order?

5 A. I think some of the reasons might be is a --  
6 they have a similar utilization. An order --

7 Q. Can you -- what does that mean?

8 A. Okay. When we talk about utilization in  
9 Federal orders, we're usually talking about the  
10 percentage of Class I, II, III, and IV milk, so we have  
11 a -- we have a range between about 11 percent Class I  
12 utilization up to about 15 percent Class I utilization.  
13 We have a pool consisting of about three -- when we have  
14 total pool in our market, we would have anywhere between  
15 three billion to three and a half billion pounds of  
16 milk. And I think that was some of the thought that  
17 both markets are fairly large, have a fairly low Class I  
18 utilization, we have the lowest Class I utilization of  
19 any of the Federal orders.

20 One of the differences might be, though, is we  
21 have about 80 percent Class III utilization, and I  
22 believe California would have somewhat less than that  
23 because they have a larger powder production base than  
24 what Order 30 has. We have a very small Class IV  
25 utilization, we're down around 10 percent, and so I --

1 that might be one of the differences, but I think it has  
2 to do with basically size, with comparable production --

3 MS. TAYLOR: Your Honor.

4 THE WITNESS: -- type --

5 MS. TAYLOR: This is Erin Taylor. I just want  
6 to interject a little bit that Mr. Schaefer here is to  
7 talk about current order provisions, not necessarily why  
8 Order 30 might or might not be a good comparison to the  
9 proposed California order, so I think that that's just  
10 not why he's up here on the stand to testify.

11 JUDGE CLIFTON: Do you object to his answering  
12 the question or are you just warning --

13 MS. TAYLOR: As a non-attorney I'd like to  
14 object.

15 JUDGE CLIFTON: Well --

16 MS. TAYLOR: USDA, we are part of the team  
17 that evaluates the proposals and don't think that him  
18 getting into whether or not Order 30 is or is not a good  
19 comparison to the proposed California is appropriate for  
20 his role at this proceedings.

21 JUDGE CLIFTON: Well, I was mistaken when I  
22 said yesterday that I thought that was a good  
23 comparison, because I knew a lot of the milk in Order 30  
24 was not Class I, but he's just pointed out that there  
25 are other things to look at, which I think is valuable,

1 but I appreciate the caveat that you've raised.

2 MS. TAYLOR: Okay.

3 JUDGE CLIFTON: But I think we should allow  
4 him to add to our -- I -- I think for those of us who  
5 are -- who are not even novices, I mean, we're just on  
6 the outside of this looking in, this is helpful food for  
7 thought, I believe.

8 MS. VULIN: And I'm done with that line of  
9 questioning.

10 JUDGE CLIFTON: Oh, that's helpful, too. All  
11 right.

12 MS. VULIN: We can stop there.

13 JUDGE CLIFTON: And -- and your concern is  
14 noted for the record.

15 BY MS. VULIN:

16 Q. So you mentioned Federal Order Reform in 2000.  
17 Can you just give me kind of an overview of what that is  
18 or what happened?

19 A. Basically Congress ruled -- as I said, prior  
20 to 2000 there were approximately 32 orders, Federal  
21 orders, I don't remember the exact number, but Congress  
22 passed a law that mandated that the orders be combined  
23 down to ten to 13 orders. One of the mandates was also  
24 that California could come in as a Federal order as one  
25 of those ten to 13.

1           And so we went through a process that was a  
2 somewhat unique process for us that it was informal  
3 rulemaking, where this is a formal rule-making process,  
4 and combine the orders down to that -- to -- I believe  
5 we had ten at that time.

6           Q.    And the 1000 section was created during  
7 Federal Order Reform?

8           A.    The 1000 section had always been there, but  
9 not in its current form.  The 1000 section at that  
10 time -- prior to that was predominantly the provisions  
11 of -- dealing with the Market Administrator and so some  
12 of those things, so 1000.25, 26, 27 was in there I  
13 believe, 28, something like that, but it was a  
14 relatively small grouping of things that pertained to  
15 the -- all the orders universally.

16                Part of order reform was to -- or part of the  
17 idea when we went to order reform was to make some of  
18 the provisions more standard across all of the orders.  
19 Orders used to be very independent and had very  
20 individual provisions.  And as the industry has grown  
21 and we've seen cooperatives marketing milk across  
22 multiple regions we've seen handlers that have plants  
23 and operations across multiple regions, there was a  
24 significant discussion to making some standardization of  
25 provisions.  And so that's where you see the

1 allocation -- the 1000's, and so those provisions are  
2 standard across all the markets, and it was felt that  
3 that would help the industry with dealing with Federal  
4 orders is to have some consistency on how these  
5 provisions were written and conceivably administered.

6 Q. Thank you.

7 So I'll turn back now to Section 1000.4, which  
8 is the definition for a plant. Now, if you had to  
9 summarize this for a layperson, how would you -- how  
10 would you tell -- how would you describe to them what  
11 that is under Section 1000.4?

12 A. Well, basically I think if you -- if you don't  
13 take exactly what's in here and abbreviate it or  
14 summarize it, it's basically describing the operation of  
15 the plant. It's got to process milk, it has to receive  
16 milk, it has to have facilities for those things, those  
17 processes.

18 Q. And can a plant be one company with different  
19 facilities or is each facility a plant?

20 A. Each facility is a plant. A hand -- a  
21 handler -- well, that's kind of skipping ahead to  
22 something else, but a handler would have -- could have  
23 multiple plants, but a plant is a -- one plant.

24 Q. Okay.

25 A. One facility.

1 Q. Okay. And each would be regulated differently  
2 when the regulations pertain just to plants?

3 A. Each one could be regulated differently, but  
4 not necessarily. If a handler had two cheese plants,  
5 they would -- and they were in the same Federal order,  
6 then they would be regulated in the same fashion,  
7 assuming they were both pool plants. There would not be  
8 one would be regulated differently than the other.

9 If you had a distributing plant and a supply  
10 plant, then you could conceivably have different  
11 regulations because you're dealing with a distributing  
12 plant versus a supply plant.

13 Q. So turning to Section 1030.5, which is a  
14 distributing plant, it again refers to the Section 1000,  
15 correct?

16 A. Correct.

17 Q. So turning to Section 1000.5, it describes  
18 that a distribution plant means a plant that is approved  
19 by a duly constituted regulatory agency for the handling  
20 of Grade A milk at which fluid -- fluid milk products  
21 are processed or packaged and from which there is route  
22 disposition or transfers of packaged fluid milk products  
23 to other plants. So what is route disposition?

24 A. Route disposition, and I'll read the  
25 definition here is -- means the delivery to a retail or

1 wholesale outlet, either directly or through any  
2 distribution facility, including disposition from a  
3 plant store, vendor, or vending machine, of a fluid milk  
4 product in consumer-type packages or dispenser units  
5 classified as Class I milk.

6 Q. So a distributing plant sends out the milk not  
7 necessarily to the final consumer?

8 A. Yes.

9 Q. They're -- they're definitionally middleman?

10 A. There could be, they could -- they could send  
11 it directly to a consumer. For instance, there's a --  
12 some dairies who have their own milk routes to consumers  
13 and that -- let me back up.

14 When I see route sales, I think -- the way I  
15 think about it is that the plant is delivering to --  
16 delivering it, they have a route that they go down and  
17 they dispense the milk, either to a consumer, to a  
18 retailer, to a wholesaler.

19 Q. Can a distributing plant get the milk directly  
20 from a dairy farmer?

21 A. Can a what now?

22 Q. Can a distributing plant --

23 A. Yes.

24 Q. -- receive the milk directly from a dairy  
25 farm?

1 A. Yes.

2 Q. Can they receive it from another distributing  
3 plant?

4 A. Yes.

5 Q. Does it matter if the milk for a distributing  
6 plant, just for the definition of distributing plant,  
7 does it matter if the milk comes from a dairy farm  
8 within the marketing area or without the marketing area?

9 A. No, it does not.

10 Q. Now I'll turn to Section 1000.6. Thank you  
11 for going through these with me, I'm sure it's very  
12 rudimentary for you.

13 So Section 1030.6 again references the Section  
14 1000 definition?

15 A. Correct.

16 Q. And this is the definition for a supply plant.  
17 So a supply plant is a plant that is approved by duly  
18 constituted regulatory agency for the handling of Grade  
19 A milk that receives milk directly from dairy farmers  
20 and transfers or diverts fluid milk products to other  
21 plants or manufactures dairy products on its premises.

22 So can you explain to me how a supply plant is  
23 different than a distribution plant?

24 A. A supply -- a distributing plant distributes  
25 packaged fluid milk products on routes or to other



1 plants, a supply plant is predominantly distributing  
2 bulk milk, and the idea is that the supply plant  
3 supplies the distributing plant.

4 Q. But they don't necessarily have to supply a  
5 distributing plant, do they?

6 A. No, they do not.

7 Q. So now I'll go to Section 1030.7 with is the  
8 definition of pool plant. So previously the definitions  
9 for what a type of plant is classified as just had to do  
10 with what they did with the milk, not where the milk  
11 came from, correct?

12 A. Correct.

13 Q. But now looking at the definition of a pool  
14 plant, that's different when you're discussing what a  
15 pool plant is, correct?

16 A. When you're discussing def -- the definition  
17 or the qualification of pool plant, you're discussing  
18 where that milk moves to or from.

19 Q. So if you had to describe to a layperson what  
20 a pool plant is, how -- how would you describe that?

21 A. The -- probably the -- the simplest form is to  
22 say either distributing plant or supply plant that meets  
23 certain qualifications to be part of the Federal Order  
24 Market Pool.

25 Q. And these qualifications are where their milk

1 comes from?

2 A. It does not.

3 Q. Okay. What -- what are these qualifications  
4 then?

5 A. Distributing plants and supply plants both --  
6 let me back up.

7 Where a producer is located does not  
8 necessarily mean that's where the milk is pooled. The  
9 pooling is determined by where the distributing plants  
10 sell their route sales. So a producer does not have to  
11 be in the same marketing area as the distributing  
12 plant's route sales. Okay. So a distributing plant  
13 qualifies by selling a certain -- a percentage of  
14 their -- first of all, they produce and make into Class  
15 I fluid milk products that are sold on routes a  
16 percentage of the milk that is received in the plant.  
17 In our market it's 15 percent. And then to determine  
18 what Federal order they're located in, they have to sell  
19 at least 25 percent of those route sales into the  
20 marketing area. And those numbers vary by order. Ours  
21 are 15 and 25. I believe Mr. Wise said this morning 25  
22 and 25 was a number that's in a lot of the orders as  
23 well, so it does vary by order. And that was -- those  
24 numbers are in Exhibit -- I did not bring it with me --  
25 9, Exhibit 9.

1 Q. And Section G of this same provision allows  
2 the Market Administrator to change these numbers,  
3 correct?

4 A. That is correct.

5 Q. Have they ever been changed in Order 30?

6 A. The Market Administrator generally will not  
7 change the numbers on a distributing plant, that happens  
8 very rarely. In fact, I can't think of a time that it  
9 has happened. Generally the numbers on the supply plant  
10 will be what changes, depending on the utilization of  
11 the market and the supply of milk in the market and the  
12 demand for milk in the market.

13 Q. And you said you didn't think that any Order  
14 30 changes have been made. Do -- do you know of any to  
15 any order?

16 A. We have not had any changes in our shipping  
17 percentage or our distributing plant percentages since  
18 order reform.

19 Q. And these shipping percentages, did they only  
20 apply to fluid milk?

21 A. I believe a supply plant can ship condensed  
22 and also qualify, get some qualification.

23 Q. Is there anything else you think a layperson  
24 would need to know in order to understand what a pool  
25 plant is?

1           A.     Probably not.  That's the -- that's the  
2 basics.

3           Q.     So now I'll turn to Section 1030.8, which also  
4 adopts Section 1000.  So Section 1000.8 defines what a  
5 nonpool plant is.

6           A.     Correct.

7           Q.     In laymen's terms, can you explain to us what  
8 a nonpool plant is?

9           A.     It's any plant that's not a pool plant.

10          Q.     Which means?  What happens with the milk in a  
11 nonpool plant?

12          A.     Some of the nonpool plants, like for instance  
13 there's a number of categories of nonpool plants.  In --  
14 and I think I mentioned yesterday in the testimony that  
15 one of the things I find kind of interesting is a pool  
16 plant in another order is a nonpool plant to our order,  
17 so Order 32 pool distributing plant is a nonpool plant  
18 to Order 30, so there's one form of a nonpool plant.

19                 Partially regulated plants I believe are on  
20 that list except --

21          Q.     What is -- what is a partially regulated  
22 plant?

23          A.     A partially regulated plant is a plant that  
24 does not meet -- that has sales, route sales into the  
25 marketing area but not enough sales to qualify as fully

1 regulated. So, for instance, if we back up to an Order  
2 30 plant where we have to have 15 percent of the  
3 receipts in packaged fluid milk out on routes and  
4 25 percent of those route sales have to be in the  
5 marketing area, there could be a plant that has  
6 15 percent -- meets the 15 percent, the first category,  
7 and makes it a distributing plant because they have the  
8 route sales, but maybe they only sell five percent of  
9 their route sales into our market. They would not be  
10 fully regulated, they would be a partially regulated  
11 plant because they don't need the full definition.

12 Q. And why would a plant choose to be a nonpool  
13 plant as opposed to a pool plant?

14 A. In some cases they don't have much of a  
15 choice, obviously. If they're another order  
16 distributing plant -- another order pool plant or  
17 they're a partially regulated pool plant, exempt plants,  
18 certain categories of plants are laid out as nonpool  
19 plants.

20 Some plants choose to be nonpool plants, and  
21 that choice is predominantly in our market made based on  
22 the economics of pooling milk in a particular month.

23 Q. So the prices would be better if you didn't  
24 pool as opposed to if you pool for that month?

25 A. Basically it's based on the relationships of

1 the prices, which lead to the producer price  
2 differential and the return that they would get from  
3 pooling.

4 Q. Can a plant move from being a pool plant to a  
5 nonpool plant and vice versa?

6 A. Yes.

7 Q. Can they do this monthly?

8 A. Yes. They have to meet certain regulations to  
9 do that. So, for instance, a supply plant in our market  
10 has to ship 10 percent of their receipts to a  
11 distributing plant to be regulated, so if they decided  
12 to be a pool plant, they would have to ship 10 percent  
13 in that particular month. If they were -- if they did  
14 that and they became a pool plant, let's say in  
15 September, and then in October they did not want to be a  
16 pool plan, they would not ship, and so they would have  
17 no shipments to a distributing plant and be a nonpool  
18 plant.

19 Distributing plants are a little tougher  
20 because they are -- have milk going out on routes all  
21 the time, but conceivably they could come and go  
22 monthly.

23 Q. So now I'll turn to Section 1030.9, which  
24 again references back to Section 1000.9, and this is the  
25 definition of a handler. So I see there are three types

1 of handlers. Can you explain to me each of these types?

2 A. Well, there's basically -- yeah. The first  
3 part of the handler definition is just a -- a -- kind of  
4 a generic definition because it says "any person who  
5 operates a pool plant or a nonpool plant," and that  
6 pretty well picks up a whole lot of folks, but that's a  
7 handler.

8 Section (b) of the handler definition and  
9 Section (c) are kind of what I would call special parts  
10 of Section (a) in that Special (b) is a broker, and this  
11 is somebody who brokers milk products, and they are not  
12 subject to the financial aspects of the Federal order,  
13 and so that would be a special instance of that handler  
14 definition.

15 The other one, which is a little -- which is  
16 really a definition that is used a lot in the Federal  
17 orders is (c), and the order -- in the orders, it's  
18 referred to as 9(c) handler. And the 9(c) handler is a  
19 cooperative -- in fact, a proprietary handler cannot be  
20 a 9(c) handler -- it's a cooperative who picks up milk  
21 of its members and delivers it to pool or nonpool  
22 plants.

23 And there is some special handling of that  
24 milk. One of the things about a 9(c) handler is that  
25 with agreement with the pool plants that they ship to,

1 that they deliver milk to, is that that handler becomes  
2 the responsible party for that milk, and that receiving  
3 handler then has that milk on their report as producer  
4 milk, they're responsible for paying producers, and it  
5 is allocated at the plant as producer milk. And so  
6 that's kind of a -- having a new case of a handler, it's  
7 a little different.

8 The -- and those producers are paid generally  
9 in aggregate, so instead of the plant paying each  
10 producer that was delivered on a 9(c), they would  
11 play -- pay the cooperative the blend value for all the  
12 milk from -- that that handler delivered.

13 Q. Now I'm looking at Section 1030.11, and it  
14 says this section is reserved. What does that mean?

15 A. At one point in time, there was probably a  
16 provision there that there isn't any longer when it says  
17 reserved, and so instead of renumbering everything, they  
18 just plunked "reserved" in.

19 Q. So now I'm at Section 1030.12, and this is the  
20 definition of a producer. And it looks like this is one  
21 of the first ones where Order 30 has their own  
22 definition?

23 A. Order 30 does. I believe all the orders have  
24 their own definition. All the orders have their own  
25 definition for 7 as well, 1000.7, the pool plant.



1 Q. Okay. So what is a producer under Order 30?

2 A. It's any person who produces milk approved by  
3 a duly constituted regulatory agency for fluid  
4 consumption as Grade A milk, and then whose milk is  
5 received at a pool plant directly from that producer or  
6 diverted by the plant operator in accordance with  
7 Section 1030.13.

8 Q. To be a producer, do you have to sell all of  
9 your milk to a pool plant?

10 A. No.

11 Q. If you sell some of your milk to a pool plant,  
12 is your other milk pooled?

13 A. It can be.

14 MR. BESHORE: Your Honor. I want to -- I want  
15 to interpose -- Marvin Beshore.

16 I want to interpose an objection at this  
17 point. I think there's great ambiguity in -- in what  
18 we're getting from this testimony of this nature from  
19 this witness. He's asked about the provisions of Order  
20 30, which really aren't the subject to this hearing, per  
21 se, they may or may not be illustrative, but they're not  
22 subject to the hearing. And then, you know, the next  
23 question is, well, what happens if a producer doesn't  
24 deliver all of his milk. Does that mean under Order 30  
25 or under Part 1000 or under -- it's -- there's --

1 there's a lot of general testimony being elicited. It's  
2 not at all clear whether that applies to all orders or  
3 only a particular order or what, and I think we're  
4 getting way afield from a witness who is there primarily  
5 to testify about Part 1000, which is in every order, and  
6 that was my understanding, maybe some other generalities  
7 about the qualification, but whether they're specific or  
8 generally, it's getting quite mirky.

9 MS. VULIN: May I respond? This is Ashley  
10 Vulin. I tried to make it very clear on the order when  
11 we're referring to Section 1030 or Section 1000, so it  
12 should be clear in the record when the witness is  
13 speaking towards something that's particular to Order 30  
14 or something in the more general 1000 provisions.

15 Secondly, we're asking the State of California  
16 and all of the farmers in California to adopt a system  
17 that is totally different than the one that they've been  
18 using, and the ability to understand how the system has  
19 worked in other states in more layman's terms as opposed  
20 to the complex economics that we've been discussing so  
21 far I think is really important for -- for this hearing.

22 JUDGE CLIFTON: Mr. Beshore, you very  
23 articulately have pointed out that when we're talking  
24 about something that applies to Order 30, we're talking  
25 about something that applies to Order 30. I think that

1 is very helpful and very meaningful.

2 So you may go forward, but that's helpful for  
3 us to remember that.

4 So, let's see, we were just talking about --  
5 would you reask your last question?

6 MS. VULIN: Actually could I ask the court  
7 reporter to read it back? I've forgotten now.

8 (Whereupon the record was read.)

9 THE WITNESS: In Order 30, it could be.

10 BY MS. VULIN:

11 Q. Under Order 30, would you still be a producer  
12 if you only sold some of your milk to a pool plant?

13 A. Depends on the percentage and other factors.

14 Q. Okay. Now, I'm moving to Section 1030.13,  
15 which is coming from Order 30, and this is the  
16 definition of producer milk. So when you said if you  
17 sell some of your milk you may still be a producer,  
18 you're referring to this provision?

19 A. Basically in -- in one of the parts of -- of  
20 Section 1030.13, producer milk, is a description of milk  
21 that may be diverted to a nonpool plant.

22 Q. So now I'm at Section 1000.25, and this is the  
23 definition of a Market Administrator. Now, this  
24 somewhat more procedural provision is the same  
25 throughout all of the orders, correct?

1           A.    That is correct.

2           Q.    And can you just describe generally what a  
3 Market Administrator does?

4           A.    He maintains and invests funds outside of the  
5 US Department of Treasury for the purpose of  
6 administering the order, makes rules and regulations to  
7 effectuate the terms and provisions of the order,  
8 receive, investigate, and report complaints of  
9 violations to the Secretary, recommend amendments. His  
10 duties include, let's see, "Market Administrator shall  
11 perform all the duties necessary to administer the terms  
12 and provisions of each order under his or her  
13 administration, including but not limited to the  
14 following" --

15          Q.    And I'll stop you there, you don't need to  
16 read all of it, thank you. But so just generally, the  
17 Market Administrator is the person who's in charge of  
18 making sure that the order is being implemented as it  
19 was written?

20          A.    That is correct.

21          Q.    And we're almost done, we're just getting  
22 through the last ones.

23                    So now I'm in Section 1000.26.

24          A.    Okay.

25          Q.    This is continuity and separability of

1 provisions, so this is also a more procedural provision  
2 that's the same across all orders, correct?

3 A. That is correct.

4 Q. And what -- if you can just summarize what  
5 does the provision means.

6 A. Basically, it's laying out what would happen  
7 if an order was disbanded or voted out or what happens  
8 in a liquidation or so forth.

9 Q. Now to Section 1000.27, this is handler  
10 responsibility for records and facilities, and this just  
11 summarizes that a handler has additional recordkeeping  
12 duties if they're a handler under a Federal Milk  
13 Marketing Order?

14 A. Basically it lays out the requirements of a  
15 handler for maintaining records to meet our requirements  
16 to have available those records when we need them.

17 Q. But it doesn't have to do anything to do with  
18 what makes someone a handler?

19 A. No, it does not.

20 Q. Section 1000.28. This is termination of  
21 obligations. Can you just summarize generally what this  
22 provision is about?

23 A. Basically what we're talking about in 1028 is  
24 timeframes for settling money coming into and going out  
25 of the Producer Settlement Fund and the Administrative

1 Fund and the Marketing Service Funds of the market, so  
2 there's deadlines on how soon or how long it would take  
3 in maximum to receive your funds or that you need to pay  
4 your funds, so it kind of sets a set of deadlines there.  
5 Some of those deadlines can be changed if there's court  
6 proceedings.

7 Q. Last one, Section 1000.42. It says  
8 "Classification of transfers or diversions." What's a  
9 transfer?

10 A. A transfer is when a plant ships milk directly  
11 to another plant, so they -- it's in their plant, they  
12 load it on a truck, send it to the other plant.

13 Q. And what's diversion?

14 A. A diversion occurs when a handler or a  
15 cooperative receives milk or picks up milk from the farm  
16 and delivers it to a pool or nonpool plant at the  
17 distribution of that proprietary handler or 9(c)  
18 handler.

19 Q. That's all I have. Thank you for your time,  
20 Mr. Schaefer. I appreciate it.

21 A. You're welcome. Thank you.

22 JUDGE CLIFTON: Thank you, Ms. Vulin. I think  
23 that was very helpful.

24 Who next will question Mr. Schaefer?

25 Mr. English.

1 CROSS-EXAMINATION

2 BY MR. ENGLISH:

3 Q. Chip English. Good afternoon, Mr. Schaefer.  
4 So I want to direct a number of my questions to your  
5 testimony from yesterday, and for ease, I will actually  
6 tell you what page it's on from the "rough draft only"  
7 from yesterday.

8 JUDGE CLIFTON: Is there another copy of that?  
9 I don't have one. Is this the last one? I didn't mean  
10 to take one from a participant.

11 MS. VULIN: I got one.

12 MR. ENGLISH: She just handed it to me, and I  
13 was trying to speed it up.

14 BY MR. ENGLISH:

15 Q. So I'm looking at page 3, lines 21 through 23,  
16 which reads, "The purpose of the pooling provisions are  
17 to determine which plants and which producers can  
18 participate in respect to Federal orders." Why is that  
19 important?

20 A. It determines who really participates in the  
21 pool and who receives -- or who receives their blend,  
22 the blend price, who is eligible to receive the blend --  
23 blend price from a respective order. It -- so it sets  
24 up basically boundaries or limits or whatever you want  
25 to call it as to who is going to participate in this

1 marketplace.

2 Q. Turning to page 4, referring to page -- at  
3 line 7 and 8. And connecting back a little bit to  
4 Ms. Vulin's examination, you say there's a basic  
5 difference between distributing plants and supply  
6 plants. Why is there a distinction at all?

7 A. It -- I believe the distinction really is  
8 their service that they perform in the marketplace. The  
9 distributing plant is bottling the milk and supplying  
10 the Class I marketplace, whereas a supply plant is  
11 supplying milk, or traditionally has been supplying milk  
12 to that distributing plant. The supply plants  
13 historically would have been out in the country  
14 gathering milk supplies from the farmers, and then  
15 putting that milk on a truck to send to a plant at a  
16 urban area for bottling and distribution to consumers.

17 Q. Is that another way of saying it's part of  
18 deciding who is in the boundaries? Because if you're  
19 not a distributing plant, you're not a supply plant,  
20 you're not going to be inside the boundary, correct?

21 A. Not necessarily. You don't have to be -- a  
22 producer or a plant does not necessarily have to be  
23 within the boundary of the marketing area.

24 Q. And, I'm sorry, I was using the term  
25 "boundary" as you used it about three minutes ago about



1 the boundaries of the pools.

2 A. Oh, okay.

3 Q. I was not referring to market area, I  
4 apologize.

5 A. Yeah, basically, it does -- it does kind of  
6 have that, if you don't have a supply plant or  
7 distributing plant to ship to, then you would not be  
8 able to participate.

9 Q. A couple lines down, lines 13 to 15, again on  
10 page 4, "The third step is to determine whether each of  
11 these plants is a pool plant and therefore can  
12 participate in a particular Federal order." So, again,  
13 this is going back to that first statement on page 3  
14 with respect to determining who's in and who's out?

15 A. Correct.

16 Q. And in Order 30, by definition, that means  
17 there are some plants to which milk is shipped that are  
18 out, we call those nonpool plants, correct?

19 A. We have some plants that are nonpool plants in  
20 Order 30, that is correct.

21 Q. And -- and by that I mean they're nonpool  
22 plants not because they're regulated on another Federal  
23 order but because they're just nonpool plants anywhere?

24 A. That is correct.

25 Q. Okay. Turning to page 9 of your testimony,

1 and I'm referring now to lines 16 through 21 with  
2 respect to unregulated supply plants. And in the lines  
3 19 through 21 you say, "They do file a report of  
4 receipts and utilizations for each order, and they may  
5 have an obligation to the settlement fund." Under what  
6 circumstances do they not have an obligation with  
7 respect to the settlement fund?

8 A. If I recall correctly, and this is going to  
9 stretch me a little bit, I believe, and if I see  
10 somebody from this side of the room hop up and wave and  
11 yell and scream, then I've obviously misstated, but in  
12 certain cases there -- what we're really looking for is  
13 that milk that is used in Class I gets priced as Class I  
14 milk.

15 In the case of a nonregulated supply plant,  
16 you could have an instance where they move milk and the  
17 distributing plant or the plant that they move that milk  
18 to would pay the Class I, and so they would not -- so  
19 the unregulated supply plant would not necessarily have  
20 an obligation to the pool. The milk would still get  
21 charged -- have a Class I charge on it based on the  
22 distributing plant but it would not pass back -- it  
23 would be a direct billing to and from the Market  
24 Administrator to the unregulated supply plant.

25 Q. So I'm going to go off script here for a

1 moment, and -- and I think I'm at a point where it's  
2 going to be a little different, but it's sort of in the  
3 same vein. What enforcement is there of the minimum  
4 price regulation for Order 30 on pooled milk that is  
5 received by a nonpool plant?

6 A. If the milk is pooled and received in a  
7 nonpool plant, we enforce minimum payment. Now, that is  
8 true for proprietary handlers. Cooperatives are --  
9 because they're a cooperative are allowed to pay the  
10 price that their members have decided is appropriate  
11 price for that month.

12 Q. But even as to proprietary entities, against  
13 whom do you enforce the minimum price on pooled milk  
14 that is received by a nonpool plant?

15 A. The handler who pooled it.

16 Q. Do you enforce any price as to the nonpool  
17 plant?

18 A. If a pool plant has milk of their own  
19 producers and it is not pooled, we do not enforce any  
20 minimum price.

21 Q. But let me just kind of tie that together. If  
22 it's pooled milk, the handler that filed the report,  
23 you're going to enforce the minimum price as to that  
24 entity, correct?

25 A. That is correct.

1 Q. But to the extent that that transaction  
2 carried forward and the nonpool plant received the milk,  
3 are you looking to the nonpool plant under their  
4 circumstances to enforce the minimum price in any way?

5 A. We are not, we are looking at the pool plant  
6 who pooled it.

7 Q. So going back to your testimony just one more  
8 time, page 11, line 13, and you used the term "touch  
9 base requirements." Why are touch base requirements  
10 important?

11 A. Touch base requirements really indicate  
12 whether the producer -- the -- the idea of a touch base  
13 requirement is to determine if the producer who is part  
14 of the pool can deliver Grade A milk to a pool plant for  
15 use in the Class I market.

16 Q. Does it go back to our idea of helping  
17 determine, now not the market area boundary but the  
18 boundary of who's in and who's out for pooling purposes?

19 A. At times it could be used for that way, could  
20 be used that way.

21 Q. Okay. You use the term in your testimony  
22 "degraded milk." D-E-G-R-A-D-E-D. Degraded milk. What  
23 is "degraded milk"?

24 A. I've been thinking about that a little bit,  
25 that probably wasn't the correct term, but basically

1 what I was referring to was a farm that had lost their  
2 Grade A status and therefore is ineligible to  
3 participate in the Federal order.

4 Q. Because it can no longer be a producer because  
5 it's -- doesn't meet the definition of what's happening  
6 from a duly regulated authority, correct?

7 A. Correct.

8 Q. Now, is -- is that something that can be  
9 voluntarily given up by a producer?

10 A. That I do not know.

11 Q. Okay.

12 A. I -- I'm not familiar enough with the -- with  
13 the State, because the State is who determines whether  
14 they're Grade A.

15 Q. So you don't know whether under Order 30, for  
16 instance, in some states a producer may give up its  
17 Grade A status and then get it back in a future month to  
18 come back onto the pool?

19 A. That I do not know.

20 Q. Okay. I -- I have a topic area, but I'm going  
21 to mention it, and I'm assuming we're going to have to  
22 come back, and that is the treatment of condensed milk  
23 and/or nonfat dry milk for fortification purposes, and I  
24 think that is the identical or at least close enough to  
25 the topic area Mr. Beshore raised that maybe after a

1 break you'll be able to respond to; is that correct?

2 A. That's correct.

3 Q. So, Your Honor, I also want to talk about that  
4 subject.

5 A moment ago we talked about milk going from  
6 the country to the city, and we talked a little bit  
7 about the PPD, or you did with Mr. Beshore. Is there a  
8 difference between a blend price and/or where it matters  
9 a PPD for producer and the price announced for the city  
10 zone?

11 JUDGE CLIFTON: For the city what?

12 MR. ENGLISH: For the city zone.

13 JUDGE CLIFTON: Zone?

14 MR. ENGLISH: Zone, Z-O-N-E.

15 THE WITNESS: In Order 30, our -- our price  
16 for our PPD, or -- or blend price, if you want to call  
17 it that route, is announced in what's called a dollar 80  
18 zone, which is the county's, including Cook County,  
19 which is the Chicago area, and I believe the dollar 80  
20 zone actually goes up to Michigan, Lake Michigan, a ways  
21 into Wisconsin, so there are a number of counties that  
22 have a dollar 80 zone, and that is what our price is  
23 announced at. If the milk is delivered in a county  
24 other than that dollar 80 county, there is a reduction  
25 in the PPD.

1 BY MR. ENGLISH:

2 Q. So for that producer, the blend price for PPD  
3 would be lower than what you announced for the principal  
4 zone?

5 A. Correct. Now, let me -- I also think it can  
6 go up as well. If -- if our -- if we have a milk that  
7 would have been delivered into a county in the \$2 zone  
8 and got priced in our market, then he would get more  
9 money, but our -- our marketing area is all less than a  
10 dollar 80.

11 Q. So I want to discuss a little bit now the  
12 mechanics of pooling, and sometimes we use the word --  
13 some of us use the term "depooling," or I guess it's,  
14 you know, it's not eligible to be pooled, it's not  
15 pooled. And again I'm use pooling, P-O-O-L-I-N-G, and  
16 depooling is one word, D-E-P-O-O-L-I-N-G.

17 So I just -- I don't want to get in this --  
18 I'm not trying to get in the weeds, I just want to talk  
19 about it generically. And, you know, we've got some  
20 testimony in the record through the exhibits from the  
21 Department, and I think some answers to questions of  
22 Mr. Beshore and Ms. Vulin, you discussed, for instance,  
23 the fact that a plant could be pooled one month and be a  
24 nonpool plant another month, correct?

25 A. Correct.

1 Q. And that could impact whether or not the milk  
2 received at that plant is pooled or not, correct?

3 A. That is correct.

4 Q. So let's talk about this proposition: Who  
5 makes the decision to pool milk?

6 A. The handler of --

7 MR. BESHORE: Can I -- okay. Now that -- this  
8 is exactly where --

9 JUDGE CLIFTON: Who are you?

10 MR. BESHORE: Marvin Beshore.

11 This is exactly where I think the record needs  
12 specificity and clarification with respect to what's  
13 being talked about. Under what Order? I mean, there's  
14 not -- you know, is it under -- if it's under Part 1000,  
15 then it's who generically decides, but if we're talking  
16 about particular orders -- if we're not talking about a  
17 generically answerable question, which I don't think  
18 that one is, then we need to talk about particular  
19 orders or we've got testimony that's not attached to  
20 anything.

21 JUDGE CLIFTON: Thank you.

22 MR. ENGLISH: I will accept that. It was  
23 intended, Mr. Beshore, and certainly I'm asking this  
24 witness in this instance about Order 30.

25 THE WITNESS: In Order 30, it's the handler



1 may elect to not pool milk that has been received in a  
2 nonpool plant. Generally speaking milk that is received  
3 in a pool plant must be pooled.

4 BY MR. ENGLISH:

5 Q. So -- so, for instance, a handler who operates  
6 a 7(a) plant doesn't have the same choice as another  
7 handler who operates a supply plant?

8 A. If a 7(a) plant brings that milk as their  
9 own -- let's say they have their own producers, and  
10 brings that milk into the plant so it's physically  
11 received at the plant, it must be pooled. If he diverts  
12 that milk to a nonpool plant, then that milk that was  
13 diverted he may elect to not pool.

14 Q. So they have the election even as to that?

15 A. Correct.

16 Q. As long as it's not physically received within  
17 the 7(a) plant?

18 A. Correct.

19 Q. Now, there may a consequence in a future month  
20 for having made that choice, say, in September, correct?

21 A. Correct.

22 Q. That if you have made the choice in a  
23 particular month, say September, not to pool a certain  
24 producer's milk, then you will have to qualify it again  
25 in the future month, correct?

1           A.     In Order 30, once a producer is qualified, he  
2 is basically on the order for life unless he loses his  
3 Grade A status for a calendar month or the milk has been  
4 pooled on another Federal order.

5           Q.     So you don't have to even requalify the  
6 milk --

7           A.     That is correct.

8           Q.     -- on Order 30?

9           A.     So if he elects to not pool the milk in the  
10 month in September, he -- if the producer was qualified  
11 in August, he elects to not pool it in September, he can  
12 bring the producer back in in October. Now, that's the  
13 qualification portion of it.

14                     Order 30 has another portion in there that  
15 deals with how much volume a handler can pool month to  
16 month, and so a handler during the period of -- let's  
17 see, I've got to get my months right here -- April  
18 through February can only bring on or only pool  
19 125 percent of the milk that he pooled in the previous  
20 month. In March it's 135 percent. So there is some  
21 restriction as to what you can bring on month to month.

22           Q.     But it doesn't apply to the specific producer,  
23 it's applied -- it applies to the handler who's made  
24 that election to not pool milk, and he might have a  
25 limitation which could impact pooling all of his

1 producers but -- or all the milk, but it wouldn't affect  
2 the question as to whether that producer was still  
3 eligible to be pooled?

4 A. That is correct. I think there's an exception  
5 to that, and that is if he was pooled on another market.

6 Q. Okay.

7 A. There's some issues.

8 Q. So leaving aside the exigencies --

9 A. Yeah.

10 Q. -- of being pooled in other market -- area  
11 market kind of provisions or if you've been degraded  
12 but --

13 A. Yeah.

14 Q. Now, I want to be very careful because we've  
15 used the word "boundaries" in Federal milk orders. Can  
16 milk reside outside the pool but inside the market area?

17 MR. BESHORE: In Order 30?

18 BY MR. ENGLISH:

19 Q. In Order 30.

20 A. Let me try and rephrase the question --

21 Q. Sure.

22 A. -- so I understand it. When you are saying  
23 "reside outside the pool," you mean not participate in  
24 the pool?

25 Q. Exactly.

1 A. And still be located in the marketing area?

2 Q. Yes.

3 A. There is no restriction on Order 30, and -- I  
4 better just stop at Order 30, as to where a producer can  
5 be located and still be a producer on Order 30.

6 Q. The flip side is there's no restriction on  
7 where it can be located and not be pooled, correct?

8 A. Correct. If I got that right.

9 Q. Does milk in Order 30 physically produced in  
10 the marketing area -- is there milk physically produced  
11 in the marketing area that is not pooled on a regular  
12 basis?

13 A. I guess I would -- I would qualify that a  
14 little bit as to a regular basis.

15 Q. Okay.

16 A. Depending on price we may have some milk that  
17 is not -- that they elect to not pool for a number of  
18 months in a row, and so in that case, yes, you've got  
19 milk in the marketing area that would not be pooled.  
20 Now, on a regular basis, if you're talking multiple  
21 years in a row, there may be some, but --

22 Q. Well, let's strike the word "regular" from my  
23 question and you would say yes?

24 A. I would say yes.

25 Q. Has that undermined your ability to administer

1 the Order, Order 30?

2 A. At this point in time I would say no. At one  
3 time it did.

4 Q. Was that time prior to me having -- that we  
5 had a couple of hearings in the mid-2000 timeframe where  
6 we had some issues and we amended the orders?

7 A. That is correct.

8 Q. So since -- since Order 30 was amended, not  
9 once but twice, post-Federal Order Reform to address  
10 some pooling issues, you have not experienced that same  
11 issue?

12 A. I'm going to say I would agree with that. Not  
13 being in the part of the office that looks at the budget  
14 every -- every month, I -- they --

15 Q. Leaving aside the impacts on the Market  
16 Administrator's budget for a moment.

17 A. It does -- it does have an impact on the  
18 Market Administrator's budget. We would -- we have gone  
19 from over three billion pounds pooled this year to we  
20 had I believe a month with under two billion pounds  
21 pooled. And you take a billion pounds off at three  
22 cents a hundredweight, it's a fair amount of money. But  
23 it has not had a -- it has not created the problems that  
24 it did prior to the current provisions we have in our  
25 order.

1 MS. TAYLOR: Your Honor, I just want the  
2 record to be clear that Mr. Schaefer is here to testify  
3 on the provisions as they're currently administered.  
4 There is a hearing record that dealt with the issue Mr.  
5 English has discussed, and they -- parties can make a  
6 decision on whether or not it solved -- you know, it  
7 solved that issue of milk not being pooled.

8 MR. ENGLISH: I don't believe that was the  
9 question, Your Honor.

10 MS. TAYLOR: I don't want -- Mr. Schaefer is  
11 not here to offer his opinion whether or not that  
12 undermines things. He's here to discuss provisions as  
13 they're currently administered.

14 JUDGE CLIFTON: I think this falls into that  
15 category, Ms. Taylor. All right. But your concern is  
16 noted, and it will be helpful to have that -- to take  
17 into consideration.

18 BY MR. ENGLISH:

19 Q. I -- I do want to clarify one thing because --  
20 just so the record is clear. You said it dropped from  
21 three billion pounds to two billion pounds, and that  
22 creates financial implication because of assessments. A  
23 billion pounds didn't just disappear, did it?

24 A. It did not.

25 Q. That would be eligible milk that wasn't

1 pooled, correct?

2 A. That is correct.

3 Q. Turning to 1030.7(h), which is the term pool  
4 plant shall not apply to the following plants, and 7, 7  
5 is provision --

6 JUDGE CLIFTON: Give me the numbers --

7 MR. ENGLISH: Okay.

8 JUDGE CLIFTON: -- just so I write it  
9 correctly.

10 MR. ENGLISH: 1030, so this is an Order 30  
11 provision, to which the witness has testified to, and  
12 it's Section 7, so 1030.7(h), and I'm looking at  
13 paragraph 7 under (h), and I merely said for (h), this  
14 is the term pool plant shall not apply to the following  
15 plants.

16 BY MR. ENGLISH:

17 Q. And paragraph (h)(7) reads "that portion of a  
18 regulated plant designated as a nonpool plant that is  
19 physically separate and operated separately from the  
20 pool portion of each plant. The definition of a portion  
21 of a regulated plant as a nonpool plant must be  
22 requested in advance and in writing by the handler and  
23 must be approved by the Market Administrator."

24 You're familiar with that provision, correct?

25 A. Yes.

1 Q. Is that sometimes known as the split plant  
2 provision?

3 A. Yes.

4 Q. And you've -- split plant provision,  
5 S-P-L-I-T, split plant provision. And it is sometimes  
6 known as a split plant provision because a plant  
7 literally can be both a pool plant and a nonpool plant  
8 at the same time, correct?

9 A. The physical -- the physical portions cannot  
10 be the same, so you cannot have one intake being used --  
11 one single intake being used for both at the same --  
12 both. You would have to split your intake in some  
13 fashion, split the layout, basically lay out your plant  
14 such that you can differentiate to our satisfaction that  
15 one portion of that plant is dealing with your pool milk  
16 and one portion is dealing with your other, we'll say  
17 the other plant really.

18 Q. Now, I'm not looking for confidential  
19 information, but do you presently have plants utilizing  
20 the (h)(7) provision?

21 A. Yes, we do.

22 Q. Thank you. I have no further questions.

23 JUDGE CLIFTON: Who will next question  
24 Mr. Schaefer?

25 ///



1 CROSS-EXAMINATION

2 BY MR. VETNE:

3 Q. John Vetne for Hilmar Cheese Company.

4 While it's fresh on my mind, Mr. English asked  
5 you questions about producers located in the marketing  
6 area that are not pooled on Order 30, and I think your  
7 discussion revolved around producers whose milk was  
8 removed from the pool, not included on the pool report.  
9 Is that -- am I correct?

10 A. That is correct.

11 Q. There are additionally -- there is  
12 additionally milk produced within the geography of the  
13 Order 30 marketing area that is not pooled within Order  
14 30 but instead pooled by handlers marketing milk to  
15 other markets such as the Mid East, the Central  
16 Marketing Area, perhaps elsewhere; is that correct?

17 A. That is correct.

18 Q. And -- and the milk of those producers like  
19 the milk of producers whose production is pooled within  
20 Order 30 might be voluntarily associated with the pool  
21 or disassociated with the pool in a manner similar to,  
22 maybe not identical to Order 30?

23 A. Not knowing the provisions, being as familiar  
24 with the provisions in the other orders, I could not say  
25 for sure.

1 Q. Okay. You're familiar with the publication  
2 called Federal Milk Order Market Statistics?

3 A. Yes.

4 Q. And -- and that has published -- reports  
5 producer milk, among other things, by market, and  
6 frequently there's a footnote in one or more markets  
7 alerting the reader to this volume may reflect some milk  
8 that was disassociated for economic reasons or price  
9 relationship reasons. Are you familiar with that report  
10 and that footnote?

11 A. Yes.

12 Q. I wanted to go back to -- initially to a  
13 discussion of Section 92, which is -- 9(c), rather,  
14 which is a common provision in the marketing orders.  
15 You discussed that on page ten of the rough draft  
16 testimony and you discussed it in dialogue with people  
17 that questioned you before.

18 One of the things that you highlighted there  
19 is that milk marketed by a cooperative association may  
20 by agreement be included on the -- the report as pool  
21 milk on the report of a handler-operated pool plant.  
22 That's -- that was the essence of your -- the thing you  
23 highlighted on page ten.

24 A. Okay.

25 Q. What I'm not sure we're gotten into here is

1 actually the default pooling provision in Section 9(c),  
2 which -- in which a plant operator is not the pooling  
3 handler at all. Do you understand where I'm going? The  
4 handler -- the conventional handler of a 9 -- the  
5 conventional pooling of a 9(c) handler is that the  
6 cooperative is the handler, pools the milk of member  
7 producers in its pool report, and accounts to the Market  
8 Administrator for the classified value of all uses  
9 in that pool report; isn't that correct?

10 A. If a handler -- if a 9(c) handler delivers  
11 milk to a nonpool plant, that would be correct.

12 Q. Okay. Right.

13 A. But at least in Order 30, I am not familiar  
14 with any instances where a 9(c) handler delivering --  
15 delivering milk to a pool plant is the handler on that  
16 milk; the receiving handler would be.

17 Q. Oh, okay. Section 9(c) refers to agreement  
18 between the cooperative association and the handler,  
19 that the -- the plant operator, that the plant operator  
20 will pool the milk. So in Chicago, the custom is that  
21 there are such agreements in all cases?

22 A. I would say since I've never seen a -- a 9(c)  
23 shipment to a handler -- to a pool plant where the  
24 handler of the pool plant did not -- was not the --  
25 settling with the pool on that milk, I would -- well,

1 I'm not going to go there I guess.

2 Q. Okay.

3 A. I haven't seen it, I know what you're asking  
4 there, but I have not seen it in our market, so I -- I  
5 think I'll just leave it at that.

6 Q. Okay. And it's not customary in -- it's not  
7 customary in your market, then, for a 9(c) cooperative  
8 to include in its report of receipts and utilization in  
9 its accounting to the pool shipments to a pool  
10 distributing plant customer?

11 A. The 9(c) report in Order 30 covers both pool  
12 plant movements and nonpool plant movements. Prior to  
13 Order Reform, there was a -- what was called a 9(b)  
14 report as well as the 9(c) report, and the 9(c) report  
15 covered cooperative movements to pool plants, and the  
16 9(b) report covered cooperative movements to nonpool  
17 plants. That was all merged into one category at order  
18 reform, so the 9(c) report can cover both movements to a  
19 pool plant as well as movements to a nonpool plant.

20 In the movements to a pool plant, the handler  
21 at the receiving plant becomes -- the handler of the  
22 receiving plants becomes the handler on that milk. When  
23 the milk goes to a nonpool plant, the cooperative  
24 remains the handler on that report and settles with the  
25 pool on that.

1 Q. All right. Refresh my memory. The -- the  
2 current Order 30 does not have a separate Section 7  
3 whatever, C-D-E-F, provision for plant operated by a  
4 cooperative association. Did it have one before Federal  
5 Order Reform?

6 A. Order 30 did not. I don't recall Order 68 did  
7 either.

8 Q. But you know -- you know what I'm referring  
9 to?

10 A. Yes.

11 Q. Okay. The -- the provisions in aggregate in  
12 Section 7 and Section 13, primarily, state requirements  
13 of performance that determine which producers and what  
14 volume of producer milk gets pooled; is that a correct  
15 statement?

16 A. Which -- it would really -- it sets the  
17 criteria for handlers and producers, the -- it sets the  
18 criteria requirements that they need to meet to be part  
19 of the Order 30 pool.

20 Q. That's true. And you referred to them as  
21 pooling requirements, but they're also referred to as  
22 performance requirements?

23 A. Correct.

24 Q. And the purpose for which is determining what  
25 milk gets pooled, what dairy farmers and what volume of

1 milk produced by dairy farms gets pooled in Order 30?

2 A. If they do not meet the requirements that are  
3 in the regula -- in the provisions of the order, they  
4 would not be able to be pooled on Order 30.

5 Q. Okay. We use the term "they," and sometimes  
6 we've used the term "him" or "his." The -- in most of  
7 these provisions the decision-maker whose decisions  
8 allow a farmer or a dairy farmer's milk production to be  
9 pooled, that decision-maker is a plant operator or a  
10 cooperative association?

11 A. That is correct.

12 Q. The farmer has -- has the ability perhaps to  
13 look at a list of plants or list of handlers that are  
14 pooled to make a decision to market milk to one of those  
15 handlers and expect to be pooled, but does a farmer  
16 beyond that have an active decision-making role in  
17 whether or not his or her milk will be pooled?

18 A. Most farm -- for most farmers, the decision is  
19 made by the pooling handler.

20 Q. Okay. And that pooling handler, to go back,  
21 would be a distributing -- a handler that operates a  
22 distributing plant under Section 7(a)?

23 A. Or (b).

24 Q. Or (b). Or -- and/or operating a supply plant  
25 or a cooperative association qualified to market and

1 divert milk?

2 A. Correct.

3 Q. There are for plant operators performance  
4 requirements in Section 7 that allow the pooling of  
5 milk, and for cooperative associations there's nothing  
6 in Section 7, but there is a cooperate performance  
7 requirement in Section 13 on diversions requiring  
8 certain percentage, I think 10 percent in your market,  
9 to be marketed to distributing plants or kind of  
10 distributing plants; is that correct?

11 A. That's correct.

12 Q. And the converse of that, 90 percent can be  
13 marketed elsewhere including diversions?

14 A. Correct.

15 Q. Okay. And diversion for purposes of milk  
16 speak simply means milk that is sold by the diverting  
17 handler to somebody other than a pool plant?

18 A. Not -- not necessarily. Because the milk that  
19 a cooperative picks up at the farm and delivers to a  
20 pool plant is often termed a diversion.

21 Q. Diverted from?

22 A. The -- basically it's just referred to as a  
23 diversion, I didn't say what it was diverted from, but  
24 just that.

25 Q. Okay. So it was -- it's picked up in the bulk

1 tank a farmer's assembled and delivered to a pool  
2 distributing plant, correct?

3 A. Correct.

4 Q. And that helps the cooperative qualify under  
5 the Section 13(d) cooperative perform requirement,  
6 correct?

7 A. Correct.

8 Q. And then other milk is picked up by 9(c)  
9 cooperatives, assembled in bulk, and maybe sent to a  
10 nonpool manufacturing plant, and that's called a  
11 diversion?

12 A. Correct.

13 Q. Okay. And that is limited in terms of  
14 percentage of total volume to 90 percent?

15 A. Correct.

16 Q. Okay. Milk -- milk of a Section 7 supply  
17 plant may also be picked up by trucks from bulk tanks  
18 and shipped directly to distributing plants to qualify,  
19 correct?

20 A. Correct.

21 Q. Do you call that a diversion, too?

22 A. Yes.

23 Q. Okay. So it's a qualifying diversion?

24 A. You could phrase it that way because they can  
25 use that for qualification to meet their 10 percent



1 shipping requirements.

2 Q. So the 10 percent shipping requirement is a  
3 different form of transaction?

4 A. No, all they have to do is a supply plant has  
5 to ship 10 percent of its receipts to a distributing  
6 plant, and there's a few other types of plants listed in  
7 the regulation, it's basically to a distributing plant.  
8 That milk can either go directly from the farm to the  
9 distributing plant or it can go from the supply plant to  
10 the distributing plant, either one would meet the --  
11 help go to meet the 10 percent total.

12 Q. And -- and the -- I'm losing --

13 JUDGE CLIFTON: Yeah, you may have lost a  
14 battery. Let's take a break. I think we've been  
15 sitting a long time. Please be back and ready to go at  
16 4:20.

17 (Whereupon a break was taken.)

18 JUDGE CLIFTON: All right. We're back on  
19 record now at 4:21.

20 Mr. Vetne, you may resume your questioning of  
21 Mr. Schaefer.

22 BY MR. VETNE:

23 Q. Okay. Mr. Schaefer, before our break we were  
24 talking about performance requirements under Section 13  
25 and Section 7. The performance requirement for a

1 Section 7 pool supply plant, as I understand your order,  
2 is essentially the same as the performance requirement  
3 for a cooperative 9(c) handler under Section 13(d)(2),  
4 both pooling entities must ship 10 percent of their  
5 milk, total milk supply receipts to qualifying  
6 distributing plants.

7 A. That is correct.

8 Q. And both entities may meet those performance  
9 requirements by taking milk directly from farms to their  
10 distributing plant customer?

11 A. That is correct.

12 Q. And in so doing, rather than doing it by  
13 transfer, efficiency is achieved, correct?

14 A. That -- that is why most of them do it, I  
15 believe.

16 Q. Okay. The one -- one small difference is that  
17 pool supply plant operators may not qualify milk to  
18 producers located outside of the geography of the Upper  
19 Midwest and some contiguous states directly from the  
20 farm and qualify.

21 A. Do you want to run that by again, John?

22 Q. Yes, I do. I want to.

23 "The operator of a supply plant located within  
24 the states of Illinois" -- I'm reading from Section  
25 7(c)(2), "supply plant located within states of

1 Illinois, Iowa, Minnesota, North Dakota, South Dakota,  
2 Wisconsin and the Upper Peninsula may include qualifying  
3 shipments directly from farms or from 9(c) handlers to  
4 distributing plants. Handler, however, may not use  
5 shipments pursuant to 9(c) order, Section 13, to qualify  
6 plants outside the marketing area."

7 A. Basically what that's saying is they -- they  
8 can't use those kind of shipments to qualify a plant.  
9 It's not the producer.

10 Q. Producer can be located outside?

11 A. The producer can be located outside.

12 Q. All right. So that -- that is equally true  
13 for supply plant operators that meet the location  
14 requirement and cooperative associations wherever  
15 they're located?

16 A. Correct.

17 Q. Let me go back to a discussion a little bit  
18 earlier on diversion. I want to make sure that every  
19 meaning of diversion is understood by me on this record  
20 because the same word is used in proposal marketing  
21 orders for California. You and I use "diversion" to  
22 refer to a transaction of pool milk to a nonpool plant,  
23 correct?

24 A. Correct.

25 Q. Okay. And the predominant volume is to

1 nonpool manufacturing plants, correct?

2 A. Correct.

3 Q. And in addition, you used "diversion" -- I  
4 don't know if it was new to me or I just don't  
5 remember -- to refer to a transaction of milk sold by a  
6 cooperative association from its member supply to a pool  
7 distributing plant?

8 A. Correct.

9 Q. And you would not use that same term  
10 "diversion" to refer to a transaction from the pool  
11 supply plant operator from farms to its distributing  
12 plant customers?

13 A. Actually we also use it for that.

14 Q. Okay. Okay. This does not get less confusing  
15 as we go along, which is why we're here.

16 In response to questions by Mr. English, you  
17 spoke of the ability of a pool supply or plant operator  
18 for economic reasons to take the plant off the pool in  
19 one month and qualify again on another month. Do you  
20 recall that discussion?

21 A. Yes, I do.

22 Q. In Order 30, many supply plant operators  
23 qualify their plants in aggregate with other supply  
24 plants in a supply plant unit, correct?

25 A. That is correct. Actually, let me make a

1 little correction there. It's a system, and there's a  
2 distributing plant unit.

3 Q. Okay.

4 A. So we -- we -- when we did order reform, and  
5 this is just more for your information, they  
6 flip-flopped the terms. So now we're a supply plant  
7 system and a distributing plant unit.

8 Q. Okay. Used to be supply plant unit and  
9 distributing plant something else. Okay.

10 So -- but, nevertheless, supply plants may  
11 join together in the aggregate, and you call it a  
12 system, and their performance is based on the aggregate  
13 system, correct?

14 A. Correct.

15 Q. And those supply plants must make a decision  
16 once a year and stick to it for the year; is that  
17 correct?

18 A. That is correct.

19 Q. What portion of supply plant milk in Order 30  
20 is part of a system?

21 A. Currently we only have one supply plant system  
22 on Order 30, and so the vast majority of the supply  
23 plants are part of that system.

24 Q. The vast majority of plants, the vast majority  
25 of milk pooled by such plants?

1           A.    That is correct.

2           Q.    And those plants may not on a month-to-month  
3 basis without breaking the system rules simply  
4 disassociate with the pool?

5           A.    They could drop out of the system if they'd  
6 like, and then -- drop and then become a nonpool plant  
7 and come and go monthly as -- if they'd like to do that,  
8 but they cannot go back into the system.  So from the  
9 respect of participation in the system to a standalone  
10 supply plant, there is some considerations that a plant  
11 operator would have to weigh.

12          Q.    Okay.  And there are commitments of the plants  
13 within a system to each other?

14          A.    They have to stay in the system, but once they  
15 drop out, they're out for the --

16          Q.    And --

17          A.    -- rest of the year.

18          Q.    Okay.  And as long as they're in the system,  
19 whether there's a price incentive or not to disassociate  
20 with the pool, some milk, in order to have the plant  
21 stay in the pool, some milk still has to be associated  
22 with that plant in pool?

23          A.    Correct.

24          Q.    Other than -- other than having a plant of  
25 some kind in Section 7 for a supply plant operator, are

1 there any practical differences in performance between  
2 supply plant pooling entities and 9(c) cooperative  
3 pooling entities in Section 13(d)?

4 A. As far as qualification and so forth, I can't  
5 think of any. The bigger difference would be -- the big  
6 difference really is how that milk is handled with  
7 regards to who settles for the pool, on the -- on the  
8 pool.

9 Q. Okay. And so the difference is -- is having a  
10 plant, what kind of physical structure, minimum physical  
11 structure would qualify as a plant? Would a -- simply  
12 having a reload facility that's used once in a while  
13 qualify as a plant?

14 A. A reload would not be considered a plant. It  
15 has to meet the plant definition, and a reload is not  
16 considered a plant.

17 In addition, a supply plant on Order 30 must  
18 wet the tank every month, so you must bring milk in, and  
19 we consider wet the tank a load of milk, every month  
20 into the pool plant, so it has to be functioning.

21 Q. So -- so the primary difference is the one of  
22 the physical structure and pool supply plant operator  
23 must have physical structure that can receive and store  
24 at least one load of milk a month?

25 A. Correct.

1 Q. Okay. I just want to make -- ask a question  
2 from page 4 of your rough draft testimony. To make sure  
3 that context is kind of clear, are you looking at the  
4 difference between a distributing plant and supply plant  
5 in the first full paragraph, "Supply plant receives milk  
6 from dairy farmers and ships bulk milk to distributing  
7 plants." Do you see that?

8 A. Yes.

9 Q. On page 4. And in that description, you did  
10 not mean by "ships bulk milk to distributing plants" to  
11 exclude shipments from farms to distributing plants?

12 A. That is correct, I did not differentiate.

13 Q. Could be from the farm, could be from  
14 transfer -- transfer from the plant?

15 A. That is correct.

16 Q. I don't think I have any more at this point.

17 JUDGE CLIFTON: Mr. Vetne --

18 THE WITNESS: Thank you.

19 JUDGE CLIFTON: -- help me with the  
20 transcript. In your most recent discussion when you  
21 mentioned both Section 7 and you mentioned Section  
22 13(d), which subsection of Section 7 did you reference?  
23 It sounded to me like 7(4)(a), which I don't think is  
24 what I should have written down.

25 MS. VULIN: No, it would be subsection 7(c),



1 subpart (4), subpart (a), which I think is the -- the  
2 section that refers to the kind of distributing plants  
3 to which shipments must be made in order to qualify it  
4 as a supply plant or by cross-reference a cooperative  
5 under Section 13(d).

6 JUDGE CLIFTON: So if I had written down  
7 7(c)(4)(a) I'd have it?

8 MR. VETNE: Let's see. 7(c) -- okay.

9 THE WITNESS: If you -- I think, John, if  
10 you're --

11 MR. VETNE: 7 -- yeah.

12 THE WITNESS: Go ahead.

13 MR. VETNE: 7(c)(1) and then little i is the  
14 one that refers to the kinds of distributing plants to  
15 which supply plants must make shipments in order to  
16 qualify under the 10 percent requirement. And that  
17 subsection in Section 7(c) is cross-referenced as a  
18 requirement of cooperative associations in Section 13 --  
19 make sure I get it right -- Section 13(d)(3) -- no,  
20 13(d)(2), provided not less than 10 percent of such  
21 receipts are delivered to plants described in Section  
22 1030.7(c)(1) little i. So it's the same -- the same  
23 performance reference both for supply plants and  
24 cooperative associations.

25 JUDGE CLIFTON: Thank you.

1                   MR. VETNE:  And I'm -- yeah, I may have been,  
2 like, trying to speak from memory like I actually  
3 memorized these things and gotten them wrong, but those  
4 are the two correct references because I have them in  
5 front of me.

6                   JUDGE CLIFTON:  Thank you.  That's very  
7 helpful.

8                   Who else has questions for Mr. Schaefer?  And  
9 what time is it?  Okay, it's 4:37.  We have a little  
10 more time.

11   CROSS-EXAMINATION

12 BY MR. SMITH:

13           Q.     Dan Smith.

14                   Good afternoon, Mr. Schaefer.

15           A.     Good afternoon.

16           Q.     Just a few brief questions about pooling.

17 The -- with regard to the pooling requirements in Order  
18 30, on what basis were the percentages for each plant,  
19 the -- the threshold requirements, were they established  
20 in the 2000 order reform?

21           A.     Yes, they were.

22           Q.     And on what basis were those, the amounts set?

23           A.     For the supply plants, we looked at the  
24 anticipated volume of milk that would be pooled under  
25 the new order, and we looked at what the utilization

1 would be on the order based on estimates from the old  
2 Order 68 and old Order 30 data. And at that time, in  
3 Order 30, some of our distributing plants had some of  
4 their own producer milk, and so we looked at that  
5 consideration. And then we looked at the -- basically  
6 demand, what we thought the demand for fluid milk would  
7 be in each of the -- you know, in 68 and in 30, so the  
8 combined orders, and based that shipping percentage on  
9 that that would be a reasonable number to supply the  
10 Class I market.

11 Q. So that the -- the amounts are calibrated to  
12 the utilization in that particular --

13 A. What we estimated the utilization to be at the  
14 time we did it, and obviously at -- not obviously, but  
15 at that point in time, the utilization we anticipated to  
16 be somewhat higher, but there was a fair amount of milk  
17 that was pooled by some of the distributing plants  
18 themselves, and so that milk we backed off because we  
19 anticipated that that milk would continue to be pooled  
20 by those handlers, and so there was no sense on making  
21 supply plants ship milk that distributing plants already  
22 had.

23 Q. Very good. Thank you.

24 JUDGE CLIFTON: Other questions for Mr.  
25 Schaefer?

1 CROSS-EXAMINATION

2 BY MR. BESHORE:

3 Q. Marvin Beshore.

4 Henry, I want to go to page 4 of the draft --  
5 rough draft --

6 A. Okay.

7 Q. -- transcript. The paragraph, first full  
8 paragraph at the top, which Mr. Vetne just asked you  
9 about, and in particular, the language about supply  
10 plants at lines 10 to 12 that he also asked you a  
11 question about. And I want to ask -- I want to go into  
12 this in this con -- in the context of the concerns I  
13 expressed and the objections I made to Ms. Vulin's  
14 questions at times, and that is that generalized  
15 statements about order operations may be absolutely  
16 correct in a general sense, but unless taken to  
17 particular circumstances and -- and applied and -- and  
18 inquired into, they can be quite misleading also, so --

19 JUDGE CLIFTON: Comma, is that correct?

20 BY MR. BESHORE:

21 Q. Is that correct? Or do you agree with that?  
22 Well, that's the premise to the question, actually.

23 A. I would not disagree that a general statement  
24 would not apply to all orders.

25 Q. So on lines 10 to 12 you said, this is the

1 last clause in the sentences, distinguishing between  
2 distributing plants and supply plants, "while a supply  
3 plant receives milk from dairy farmers and ships bulk  
4 milk to distributing plants." A supply plant receives  
5 milk from dairy farmers and ships bulk milk to  
6 distributing plants. Okay?

7 A. Okay.

8 Q. Now, that's a general proposition that  
9 probably many people would agree with generally, but in  
10 Order 30, just on a monthly basis in a system of plants,  
11 such as you identified with Mr. Vetne, many of those  
12 plants do not ship any milk to distributing plants,  
13 correct?

14 A. I would not disagree with that.

15 Q. Okay. Because they've got proxy within the  
16 system that covers their requirements in essence?

17 A. That's correct.

18 Q. Okay. And some years ago in Order 68, there  
19 was a provision that defined requirements from supply  
20 plants, it's not there any more, in which a species of  
21 supply plants had absolutely no requirement to ship any  
22 particular volume at any particular time as a general  
23 matter?

24 A. I believe that's correct.

25 Q. Now, that's not in the order now, but that was

1 in --

2 A. No, it's not in the order now. I believe  
3 there was a call -- I can't remember what the name was,  
4 what the category was, but I believe they -- those  
5 supply plants did not have to ship unless the Market  
6 Administrator felt that there was a need for additional  
7 milk in the market that could be shipped, and those  
8 plants were then called on to ship that milk.

9 Q. Right. But with respect to those -- the order  
10 at that time and the regulation at that time and those  
11 supply plants, the general statement that a supply plant  
12 receives milk from dairy farmers and ships bulk milk to  
13 distributing plants didn't really apply, correct?  
14 Doesn't really apply.

15 A. In that specific type of circumstances I  
16 would -- I would agree with you.

17 Q. Okay. And so there could be other  
18 circumstances -- other particular definitions -- well,  
19 let me back up with that.

20 Before the hearings that you referred to in  
21 testimony with Mr. -- questions from Mr. English, okay,  
22 in post-reform in 2002 or 2003 or 2000 -- in that period  
23 of time, before the hearings which amended Order 30 to  
24 address what was -- address depool -- opportunistic  
25 depooling of milk, okay. Before that, there were no

1 provisions in any order that restricted the volume or  
2 percentage of milk that could be repooled -- pooled one  
3 month to the next by handlers, correct?

4 A. Order 30 did not have any restrictions --

5 Q. Okay.

6 A. -- but I believe some other orders did.

7 Q. Some of the other orders were amended prior to  
8 Order 30 in that same cycle?

9 A. I think -- I believe that -- and I'd have to  
10 be corrected on this, I believe Order 1 had a dairy  
11 farmer fluid market provision that restricted repooling.

12 Q. But not on a -- not on a percentage volume?

13 A. Not on a percentage volume, but they had some  
14 restrictions that restricted the -- the ability to  
15 repool.

16 Q. Okay. But my -- I guess my point is prior to  
17 those provisions being crafted by the hearing process,  
18 that language did not appear, the percentage repooling  
19 language didn't appear anywhere in the system, correct?

20 A. I believe that's correct.

21 Q. But it does now because there was a hearing  
22 which -- at which marketing conditions were developed,  
23 were approved or expanded upon or discussed and which --  
24 upon which year-end record, the Secretary determined  
25 that new provisions needed to be crafted relating to

1 repooling to meet the marketing conditions?

2 A. That's correct.

3 Q. Okay. And that's the process that defines the  
4 particular pooling provisions in every order in the  
5 Federal Order System, the hearing record, marketing  
6 conditions in the order, and the regulation which  
7 evolved?

8 A. That's correct.

9 Q. And that applies to depooling or repooling  
10 or -- and all of the concepts regarding who's a supply  
11 plant, who's a producer, all the boundaries of the order  
12 to use that word, that you've discussed in generalities  
13 here in your testimony?

14 A. The fact that it was decided at a -- at a  
15 Federal Order Hearing, and yes, that is correct.

16 Q. There's a hearing record based on the  
17 marketing conditions in that order or orders, and then  
18 the regulations -- whether there were any such  
19 regulations before in the system, those particular  
20 regulations are evolved out of that particular hearing?

21 A. That is correct.

22 Q. By the way, another one that's recently --  
23 recently came up that was new to the system at the time  
24 related to how you could use out out-of-area milk to --  
25 how you could -- yeah, what out-of-area milk you could



1 relate to a supply plant to pool in -- in a distant  
2 order, such as Order 30 -- Order 33, you know what I'm  
3 talking about?

4 A. Correct.

5 Q. Okay. Those provisions didn't exist in the  
6 system until that area, correct?

7 A. Correct.

8 Q. Okay. So we can't always -- whether a --  
9 whether a provision is in the system doesn't necessarily  
10 tell you anything about whether it ought to be in any  
11 particular marketing situation given conditions in  
12 another order, fair?

13 A. That's fair.

14 Q. Okay. Do you have the --

15 JUDGE CLIFTON: Could you just clarify?  
16 Out-of-area was so fast it almost sounded like a  
17 particular brand of milk, but --

18 MR. BESHORE: There are no caps there. Out of  
19 area, three -- three words, sometimes hyphenated in that  
20 context or that usage.

21 BY MR. BESHORE:

22 Q. The sections relating to classification,  
23 treatment of transfers for fortification, have you been  
24 able to identify that?

25 A. We have. There apparently is two.

1 Q. Tell us about them. Tell me about them.

2 Okay. One is 1000.40(d). (d)(3).

3 JUDGE CLIFTON: Now, I'm writing down -- on  
4 1000, I'm writing 1 and then three zeros and then point  
5 40, parentheses, small d, close parentheses?

6 THE WITNESS: Yes, 1000.40, and then a small  
7 (d) with parentheses, and then a small (3) with  
8 parentheses.

9 JUDGE CLIFTON: Thank you.

10 THE WITNESS: And this is in the  
11 classification section where we're -- classes of  
12 utilization where it tells what particular products are  
13 in respective classes. And this is under Class IV milk,  
14 and it says, "In the skim milk equivalent of nonfat milk  
15 solids used to modify a fluid milk product that has been  
16 accounted for in Class I." So that's part of that.

17 And the other --

18 BY MR. BESHORE:

19 Q. Can you --

20 A. Well, I'm going to read the two of them and  
21 then I'll kind of --

22 Q. Thank you.

23 A. -- hopefully will be --

24 Q. Sorry I interrupted.

25 A. -- able to give a full explanation of that.

1 Q. Go ahead.

2 A. And the one is in 15, 1000.15, which is a  
3 fluid milk product definition, and it's in (b)(2) and it  
4 talks about "The quantity of skim milk equivalent in any  
5 modified product specified in paragraph (a) of this  
6 section that is greater than an equal volume of a  
7 unmodified product of the same nature and butterfat  
8 content." And that (b)(2) or (b) is telling us the term  
9 fluid milk product shall not include.

10 And I -- I think a little bit what we're  
11 getting at is -- and this applies to both nonfat dry  
12 milk and condensed milk used for fortification in Order  
13 30, that on the receipt side we bring the product in at  
14 milk equivalent, and on the utilization side, the  
15 portion that was used in fortification is in Class I,  
16 and the remainder is -- in the volume increase in Class  
17 I, and the remainder is in Class IV. And the -- what we  
18 do is take that volume increase and price that at the  
19 difference between Class I and Class IV. So that's how  
20 it's handled in -- in that allocation of pricing  
21 portion.

22 Now that may be a little farther than where  
23 you wanted to go, but that's the --

24 Q. No, that's -- that's fine.

25 So the result of that, then, is factored into

1 the handler's value of milk as calculated under Section  
2 60? Is it 60?

3 A. I believe that's correct.

4 Q. So if we go back to what you described there,  
5 I think you said, correct me if I'm wrong -- and by the  
6 way, these are uniform -- these are in -- these are Part  
7 1000 provisions, correct?

8 A. Yes.

9 Q. Which apply to Order 30 but because Part 1000  
10 is in all of the orders, they apply in all the orders in  
11 the same fashion, correct?

12 A. Let's see here. Yes. I just wanted to make  
13 sure they were in the 1000.

14 Q. Yes, thank you.

15 So when -- if condensed milk comes into a  
16 distributing plant and is used to fortify fluid milk  
17 products, the additional volume that it contributes  
18 to -- the total volume of Class I products going out of  
19 that plant is priced at Class I, correct?

20 A. Correct.

21 Q. Including any incremental volume which the  
22 fortification using the condensed solids added?

23 A. The additional volume -- let me back up.

24 All of the Class I would be basically Class I.  
25 The additional volume that occurred because of the

1 fortification would have a difference between Class I  
2 and IV on it.

3 Q. How are the solids priced?

4 A. Well, in Class -- the solids meaning the  
5 condensed that wasn't --

6 Q. Well, the condensed that -- okay. The  
7 condensed that's not -- what -- yeah, all the condensed?

8 A. Yeah, basically -- basically it -- it's --  
9 it's kind of a -- a -- it comes in at -- and I don't  
10 remember all the -- the nitty-gritty gore there, but it  
11 comes in at X, and you use some of it, you use it to  
12 increase the volume over here, and then that's accounted  
13 for in Class I, but everything else that's not accounted  
14 for over here in this volume increase goes down to Class  
15 IV in the utilization side, and so when you do the  
16 allocation, you basically wipe that out so there is  
17 nothing on the Class IV, but you have a volume increase  
18 which we charge the difference between Class I and Class  
19 IV on.

20 Q. Okay. So -- I'll leave it at that. Thank  
21 you.

22 JUDGE CLIFTON: I do not have the citation,  
23 but a federal judge in reviewing material such as this  
24 commented, "It is rocket science," talking about milk  
25 marketing.

1           Let's see how we're doing on time. We have to  
2 stop. So we have five minutes to 5:00.

3           Mr. Schaefer, do you intend to be here  
4 tomorrow?

5           THE WITNESS: Yes, I do.

6           JUDGE CLIFTON: Very good.

7           So we still have USDA witnesses and their  
8 testimony. Then the next order of business would be to  
9 talk about Mr. English's extra issue. And then opening  
10 statements. And intermixed in all that, any dairy  
11 farmers that might come. And any other preliminary  
12 matters that we need to discuss.

13           Tomorrow is Friday. You're welcome to come  
14 casual, and we will go until 5:00, we'll go until 5:00  
15 every Friday.

16           All right. Is there anything else before we  
17 adjourn for today?

18           All right. There is nothing else. See you  
19 all at -- you're welcome to come in at 8:00 in the  
20 morning, as early as 8:00, but we'll go on record at  
21 9:00. And now recess at 4:57.

22           (Whereupon the proceedings recessed  
23 at 4:57 p.m.)

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I am the reporter that stenographically recorded the testimony in the foregoing proceeding and the foregoing transcript is a true record of the testimony given.

Dated: October 7, 2015

*Shelly A Davis* \_\_\_\_\_

|   |  |  |   |  |
|---|--|--|---|--|
|   | 514:17;552:19,25;<br>564:19  | 541:2;554:16;<br>561:17;595:11;<br>636:6;642:17,23,25  | 513:4;520:20;<br>523:18;528:15,20;<br>546:18;553:22;<br>555:21;557:1,4;<br>558:7;568:5,9;<br>569:15,22,24;<br>578:11;585:2,6;<br>593:23;594:3,10,17;<br>600:24;613:23;<br>617:8;636:6 | 447:14;449:9,14;<br>450:20,23;451:16;<br>452:2;454:14;<br>455:18;458:11;<br>462:15;464:24;<br>465:12,19;469:3,14;<br>471:1,15;490:5;<br>492:18;493:14,21;<br>497:19;499:15;<br>502:15,19;503:24,<br>24;508:19;510:7;<br>511:10;516:10;<br>524:10;533:8;<br>580:14;582:13;<br>588:24;599:9,12;<br>605:15;607:24;<br>624:21;626:19 |
| <b>\$</b>   | <b>account (3)</b><br>486:24;488:18;<br>489:16   | <b>additionally (2)</b><br>615:11,12   | <b>Administrators (2)</b><br>488:1;569:18   | <b>against (2)</b><br>538:13;601:12  |
| <b>\$03 (1)</b><br>570:4  | <b>accounted (3)</b><br>640:16;643:12,13   | <b>address (8)</b><br>421:22;426:24;<br>502:20;516:6;563:4;<br>611:9;636:24,24   | <b>Administrators' (1)</b><br>497:23  | <b>agencies (1)</b><br>568:14  |
| <b>\$12 (1)</b><br>543:8  | <b>accounting (5)</b><br>444:6;488:3;<br>548:10,10;618:9   | <b>adds (1)</b><br>494:21  | <b>Administrator's (8)</b><br>424:11;493:6;<br>546:18;568:15;<br>569:12;570:14;<br>611:16,18  | <b>agency (3)</b><br>580:19;582:18;<br>591:3   |
| <b>\$2 (1)</b><br>605:7   | <b>accounts (13)</b><br>547:15,17;553:20;<br>554:9,22;555:3,10,<br>10,17;556:7,22,23;<br>617:7   | <b>adequate (1)</b><br>515:23  | <b>admission (2)</b><br>455:13;530:16   | <b>agenda (5)</b><br>570:10,14,16,21;<br>571:1   |
| <b>\$20 (1)</b><br>536:8  | <b>accurate (2)</b><br>541:23;543:1  | <b>adjourn (4)</b><br>513:18;514:7;<br>543:19;644:17   | <b>admitted (4)</b><br>530:18,19;537:11,<br>12  | <b>aggregate (9)</b><br>465:22;489:25;<br>525:7;526:9;590:9;<br>619:11;626:23;<br>627:11,12  |
| <b>\$5 (3)</b><br>536:10,11,14  | <b>accurately (1)</b><br>425:25  | <b>adjourned (6)</b><br>513:20,23;514:5,8,<br>15;522:6   | <b>adopt (2)</b><br>572:2;592:16  | <b>aggregated (1)</b><br>462:8   |
| <b>/</b>  | <b>achieved (1)</b><br>624:13  | <b>adjusted (3)</b><br>444:17,19;555:11  | <b>adopted (4)</b><br>471:8;480:4;<br>484:4;543:6   | <b>ago (5)</b><br>471:16;574:19;<br>598:25;604:5;<br>635:18  |
| <b>/// (4)</b><br>422:24,25;546:25;<br>614:25   | <b>ACMOODY (2)</b><br>509:21,21  | <b>adjustment (8)</b><br>439:12;447:9;<br>538:25;547:15;<br>553:20;554:9,22;<br>555:3  | <b>adopting (1)</b><br>572:2  | <b>agree (6)</b><br>560:5;563:10;<br>611:12;634:21;<br>635:9;636:16  |
| <b>A</b>  | <b>acquire (1)</b><br>440:20   | <b>adjustments (5)</b><br>443:11;459:9;<br>554:10;555:4;<br>556:23   | <b>adopts (1)</b><br>586:4  | <b>agreed (1)</b><br>563:9   |
| <b>a1 (1)</b><br>431:15   | <b>across (6)</b><br>573:14;578:18,21,<br>23;579:2;595:2   | <b>administer (13)</b><br>426:14;457:16;<br>467:24;469:5,22;<br>495:1;498:20;502:2;<br>557:3;558:5;568:10;<br>594:11;610:25      | <b>advance (1)</b><br>613:22  | <b>Agreement (6)</b><br>463:25;465:11;<br>549:6;589:25;<br>616:20;617:17   |
| <b>ability (6)</b><br>429:17;592:18;<br>610:25;620:12;<br>626:17;637:14   | <b>Act (5)</b><br>427:16;463:21,22,<br>23,25   | <b>administered (6)</b><br>445:18;446:15;<br>492:24;579:5;612:3,<br>13   | <b>advanced (1)</b><br>556:10   | <b>Agreements (2)</b><br>511:16;617:21   |
| <b>abbreviation (1)</b><br>463:19   | <b>acted (1)</b><br>543:24   | <b>administering (1)</b><br>594:6  | <b>advisement (1)</b><br>535:19   | <b>Agricultural (9)</b><br>504:11,20;505:1,<br>16,22;506:6;510:5;<br>546:4,14  |
| <b>ability (6)</b><br>429:17;592:18;<br>610:25;620:12;<br>626:17;637:14   | <b>active (1)</b><br>620:16  | <b>administers (1)</b><br>485:18   | <b>affected (1)</b><br>472:20   | <b>Agriculture (6)</b><br>463:24;482:8;<br>511:12,13;541:18;<br>559:7  |
| <b>able (18)</b><br>449:2;454:1;<br>477:6;480:25;481:7;<br>514:20;525:8;526:8;<br>533:23;535:2,6,13;<br>541:3;599:8;604:1;<br>620:4;639:24;<br>640:25 | <b>actual (6)</b><br>437:10;482:7,11;<br>494:7;534:17;<br>548:12   | <b>administration (7)</b><br>424:18,21;464:2;<br>471:5;547:19;<br>556:25;594:13  | <b>affirm (3)</b><br>422:8;528:3;<br>545:18   | <b>AgWay (2)</b><br>528:22;529:6   |
| <b>abbreviate (1)</b><br>579:13   | <b>actually (23)</b><br>471:17;479:8,23;<br>480:13,23;481:3,21,<br>22;489:5;498:24;<br>501:18,24;537:9;<br>570:16;572:18;<br>593:6;597:5;604:20;<br>617:1;626:13,25;<br>632:2;634:22 | <b>Administrative (17)</b><br>421:10,11;480:6;<br>514:7;544:13;<br>554:12;556:3;557:4,<br>5,6,16,20;558:1,4,<br>20;569:25;595:25 | <b>afternoon (8)</b><br>524:16,17;547:3;<br>571:15,18;597:3;<br>632:14,15   | <b>A-G-W-A-Y (1)</b><br>529:6  |
| <b>abbreviation (1)</b><br>463:19   | <b>add (10)</b><br>425:9;432:10;<br>435:6;455:15;<br>459:14,16;472:23;<br>473:2;522:12;577:4   | <b>Administrator (38)</b><br>422:20;424:2,5,9;<br>427:24;428:25;<br>430:25;440:2;<br>505:10,13;506:9;                            | <b>afterwards (1)</b><br>472:2  | <b>Ah (2)</b>  |
| <b>ability (6)</b><br>429:17;592:18;<br>610:25;620:12;<br>626:17;637:14   | <b>added (1)</b><br>642:22   |  | <b>Ag (1)</b><br>569:7  |  |
| <b>able (18)</b><br>449:2;454:1;<br>477:6;480:25;481:7;<br>514:20;525:8;526:8;<br>533:23;535:2,6,13;<br>541:3;599:8;604:1;<br>620:4;639:24;<br>640:25 | <b>adding (2)</b><br>473:4,5   |  | <b>again (61)</b><br>428:14;432:25;<br>433:6,17;434:2,5,20;<br>435:10,18;436:9,15;<br>438:5,14;439:14,21;<br>440:12,13;441:18;  |  |
| <b>above (1)</b><br>490:4   | <b>addition (3)</b><br>558:19;626:3;<br>629:17   |  |   |  |
| <b>absence (1)</b><br>532:9   | <b>Additional (13)</b><br>512:9,15;520:12;<br>524:19;540:20;   |  |   |  |
| <b>Absolutely (3)</b><br>464:4;634:15;<br>635:21  |  |  |   |  |
| <b>A-C (1)</b><br>509:21  |  |  |   |  |
| <b>accept (1)</b><br>606:22   |  |  |   |  |
| <b>access (4)</b><br>468:2;474:18;<br>475:17;511:2  |  |  |   |  |
| <b>accommodating (1)</b><br>425:22  |  |  |   |  |
| <b>accordance (1)</b><br>591:6  |  |  |   |  |
| <b>according (4)</b>  |  |  |   |  |



|   |  |  |   |  |
|---|--|--|---|--|
| 425:3;524:5<br><b>ahead (4)</b><br>532:19;579:21;<br>631:12;641:1<br><b>air (1)</b><br>522:22<br><b>airplanes (1)</b><br>522:21<br><b>airport (1)</b><br>455:16<br><b>Alan (1)</b><br>508:22<br><b>A-L-A-N (1)</b><br>508:22<br><b>alerting (1)</b><br>616:7<br><b>all-milk (5)</b><br>539:19,19,24,25;<br>540:2<br><b>allo (1)</b><br>488:25<br><b>allocate (4)</b><br>443:3;494:9,11;<br>563:24<br><b>allocated (22)</b><br>443:8;486:15,21,<br>21,22;487:23,24;<br>488:8,12,14,15;<br>489:9;491:15;496:2;<br>551:20;552:10,12,<br>23;553:7,9;557:22;<br>590:5<br><b>allocating (2)</b><br>488:16;501:19<br><b>allocation (18)</b><br>487:9;488:5;<br>489:10,11;550:4,5,9,<br>20;552:5;553:13;<br>562:9;563:24;<br>565:18,22,25;579:1;<br>641:20;643:16<br><b>allocations (1)</b><br>554:25<br><b>all-or-nothing (1)</b><br>429:20<br><b>allow (6)</b><br>476:7;501:25;<br>502:1;577:3;620:8;<br>621:4<br><b>allowable (6)</b><br>548:6,13,15,24;<br>549:8;550:16<br><b>allowed (3)</b><br>513:11;514:3;<br>601:9<br><b>allows (2)</b><br>514:6;585:1<br><b>alluded (2)</b><br>570:15,25<br><b>alluding (1)</b><br>473:13<br><b>almost (2)</b><br>594:21;639:16 | <b>along (2)</b><br>556:22;626:15<br><b>alternative (1)</b><br>541:4<br><b>Although (2)</b><br>480:9;520:24<br><b>always (6)</b><br>443:19,20;452:22;<br>533:6;578:8;639:8<br><b>Amanda (2)</b><br>529:14,20<br><b>ambiguity (1)</b><br>591:17<br><b>amended (4)</b><br>611:6,8;636:23;<br>637:7<br><b>amendments (2)</b><br>470:19;594:9<br><b>America (3)</b><br>506:21;507:14;<br>529:5<br><b>among (4)</b><br>516:15;522:23;<br>567:13;616:5<br><b>amount (15)</b><br>448:20,24;450:21;<br>451:11;472:25;<br>473:3,13;489:17;<br>498:25;500:25;<br>513:9;519:22;535:4;<br>611:22;633:16<br><b>amounts (3)</b><br>556:4;632:22;<br>633:11<br><b>AMS (12)</b><br>504:24,24;505:4,8,<br>17;506:3,9;511:2;<br>520:25;521:5;<br>534:22;546:3<br><b>Analysis (4)</b><br>506:7;507:14;<br>535:12;543:4<br><b>analyzed (1)</b><br>541:2<br><b>and/or (10)</b><br>465:2,17,22;<br>548:6;549:11;<br>553:10;554:12;<br>603:23;604:8;<br>620:24<br><b>Andy (1)</b><br>509:21<br><b>Angeles (1)</b><br>458:21<br><b>animals (1)</b><br>431:16<br><b>announce (1)</b><br>441:11<br><b>announced (12)</b><br>444:16;449:9,21;<br>501:18;534:22,23;<br>541:8;554:4;604:9,<br>17,23;605:3 | <b>announcement (1)</b><br>441:10<br><b>annual (2)</b><br>526:15;558:4<br><b>annually (3)</b><br>457:24;458:2;<br>526:20<br><b>answerable (1)</b><br>606:17<br><b>anticipate (1)</b><br>514:22<br><b>anticipated (3)</b><br>632:24;633:15,19<br><b>AO (1)</b><br>511:16<br><b>A-O (1)</b><br>509:2<br><b>apologize (12)</b><br>431:7,10;434:15;<br>452:1,15,21,23;<br>464:15;503:10;<br>536:24;537:2;599:4<br><b>apostrophe (1)</b><br>497:23<br><b>apparent (1)</b><br>453:1<br><b>apparently (2)</b><br>537:2;639:25<br><b>appear (2)</b><br>637:18,19<br><b>appeared (1)</b><br>481:10<br><b>appearing (3)</b><br>487:20;508:20,21<br><b>appears (4)</b><br>462:6;483:6,14;<br>538:21<br><b>applicable (11)</b><br>443:9;448:5,7;<br>458:12;459:13,19,<br>23;477:20;482:14;<br>499:20;503:11<br><b>application (1)</b><br>497:24<br><b>applied (2)</b><br>608:23;634:17<br><b>applies (16)</b><br>427:12,14;428:5;<br>447:5;457:6;480:1;<br>494:15;550:21,22,<br>23;592:2,24,25;<br>608:23;638:9;<br>641:11<br><b>apply (19)</b><br>440:24;464:1;<br>466:4,5;467:7,18;<br>477:24;498:10;<br>502:14;558:18;<br>585:20;608:22;<br>613:4,14;634:24;<br>636:13,14;642:9,10<br><b>appointed (1)</b><br>424:4 | <b>appreciate (8)</b><br>426:1;474:15;<br>523:8;526:22;542:6;<br>543:19;577:1;<br>596:20<br><b>appreciated (1)</b><br>532:24<br><b>appreciative (2)</b><br>533:6;537:22<br><b>approach (2)</b><br>429:21;510:19<br><b>appropriate (6)</b><br>485:13;510:20;<br>532:6,12;576:19;<br>601:10<br><b>appropriated (1)</b><br>513:17<br><b>appropriations (1)</b><br>521:13<br><b>approved (7)</b><br>513:10,18;580:18;<br>582:17;591:2;<br>613:23;637:23<br><b>approximately (2)</b><br>511:1;577:20<br><b>April (1)</b><br>608:17<br><b>area (50)</b><br>424:3;425:4;<br>427:19;437:15;<br>446:4;449:23;450:1;<br>454:17;464:25;<br>465:3,23;467:11,11;<br>493:23;499:5,6,8,16;<br>512:2;528:17;<br>539:13;557:17;<br>566:12;573:17;<br>582:8,8;584:11,20;<br>586:25;587:5;<br>598:16,23;599:3;<br>602:17;603:20,25;<br>604:19;605:9;<br>609:10,16;610:1,10,<br>11,19;615:6,13,16;<br>625:6;639:6,19<br><b>areas (3)</b><br>465:4,23;535:25<br><b>argue (2)</b><br>444:9;480:25<br><b>argument (1)</b><br>512:19<br><b>Arizona (11)</b><br>422:20;424:15,19,<br>24;425:6;458:5;<br>467:19;484:2;486:1;<br>505:23;546:5<br><b>arm (1)</b><br>569:1<br><b>around (8)</b><br>425:2;470:3;<br>483:25;484:6;498:4;<br>526:5;575:25;615:7<br><b>arrangement (1)</b> | 438:2<br><b>arrangements (1)</b><br>523:9<br><b>arrived (1)</b><br>532:20<br><b>articulately (1)</b><br>592:23<br><b>Ashley (3)</b><br>507:20;571:15;<br>592:9<br><b>A-S-H-L-E-Y (1)</b><br>507:21<br><b>aside (5)</b><br>483:15;515:10;<br>570:5;609:8;611:15<br><b>aspects (2)</b><br>535:14;589:12<br><b>assembled (2)</b><br>622:1,9<br><b>assess (1)</b><br>543:4<br><b>assessed (10)</b><br>556:2,4,10,12;<br>557:8,11,13,15;<br>558:2,25<br><b>assesses (2)</b><br>557:1;558:7<br><b>assessment (15)</b><br>529:23;547:19;<br>556:25;557:5,5,20;<br>558:3,11,12,15,18,<br>19,20,22,24<br><b>assessments (3)</b><br>554:21;558:1;<br>612:22<br><b>assign (1)</b><br>549:14<br><b>assigned (8)</b><br>421:10;520:22;<br>548:15,17;549:16,<br>23;550:16,18<br><b>assignments (1)</b><br>549:21<br><b>Assistant (4)</b><br>424:8;505:13;<br>528:15,19<br><b>associated (6)</b><br>436:5,8;513:25;<br>557:25;615:20;<br>628:21<br><b>association (11)</b><br>496:16;497:7;<br>509:5,12;558:9;<br>616:19;617:18;<br>619:4;620:10,25;<br>626:6<br><b>associations (6)</b><br>537:9;554:17;<br>621:5;625:14;<br>631:18,24<br><b>assume (7)</b><br>494:18;497:15;<br>520:3;536:2,14; |
|---|--|--|---|--|

|  |          |  |   |  |
|--|----------|--|---|--|
| 553:15;563:2<br><b>assumed (1)</b><br>534:2<br><b>Assuming (5)</b><br>468:4;492:7;<br>502:8;580:7;603:21<br><b>assumption (2)</b><br>497:17;536:5<br><b>assure (1)</b><br>554:18<br><b>attached (1)</b><br>606:19<br><b>attempting (1)</b><br>534:11<br><b>attention (2)</b><br>521:6;523:9<br><b>attorney (3)</b><br>506:13;507:2,22<br><b>attributable (2)</b><br>552:22;553:6<br><b>audience (2)</b><br>510:12,17<br><b>audio (3)</b><br>479:14;510:21;<br>513:1<br><b>audit (20)</b><br>439:5,8;445:6;<br>450:3,3;454:19,22,<br>22;489:13;492:18,<br>22;553:22,23;<br>554:15,24;555:13,<br>16;556:20;568:20,23<br><b>audited (2)</b><br>494:6;554:1<br><b>audits (2)</b><br>553:24;568:18<br><b>August (3)</b><br>478:20;512:14;<br>608:11<br><b>authorities (1)</b><br>523:20<br><b>authority (2)</b><br>441:7;603:6<br><b>authorization (1)</b><br>568:8<br><b>authorized (1)</b><br>558:16<br><b>available (17)</b><br>449:7;474:19,21;<br>488:14;503:22;<br>510:25;511:8;532:8;<br>535:24;550:18;<br>554:24,24;556:19,<br>21;565:22;570:10;<br>595:16<br><b>aware (8)</b><br>446:12;484:11;<br>493:13;497:1,4;<br>540:20;568:22,24<br><b>away (4)</b><br>467:5;482:22;<br>523:21;524:7 | <b>B</b> | 534:10,13,19;<br>535:17;541:16;<br>542:23;543:1,9<br><b>basic (5)</b><br>423:6;441:19;<br>547:4;562:8;598:4<br><b>basically (34)</b><br>432:12;436:10;<br>438:11;440:25;<br>451:13;454:16;<br>462:13;486:18;<br>560:3;562:8;573:13;<br>576:2;577:19;<br>579:12,14;587:25;<br>589:2;593:19;595:6,<br>14,23;597:24;599:5;<br>602:25;608:2;<br>614:13;621:22;<br>623:7;625:7;633:5;<br>642:24;643:8,8,16<br><b>basics (1)</b><br>586:2<br><b>basis (14)</b><br>439:3;450:7;<br>457:21;526:13;<br>549:3,18,24;610:12,<br>14,20;628:3;632:18,<br>22;635:10<br><b>battery (1)</b><br>623:14<br><b>became (2)</b><br>463:24;588:14<br><b>Becker (2)</b><br>506:10,10<br><b>B-E-C-K-E-R (1)</b><br>506:11<br><b>become (2)</b><br>482:6;628:6<br><b>becomes (4)</b><br>554:24;590:1;<br>618:21,22<br><b>began (2)</b><br>477:17;478:24<br><b>begin (8)</b><br>421:19;425:14;<br>463:14;479:23;<br>520:11;547:25;<br>548:3;572:6<br><b>beginning (6)</b><br>504:7,8,10;<br>506:16;551:10;<br>552:16<br><b>begins (3)</b><br>464:16;479:9;<br>550:5<br><b>behalf (4)</b><br>507:18,22;541:12;<br>543:17<br><b>below (1)</b><br>452:24<br><b>benefit (5)</b><br>449:1,1;539:9;<br>558:21;568:21 | <b>BESHORE (60)</b><br>456:5,7,8;463:7,<br>12,16,18;474:15;<br>475:7,10,16,22,24;<br>477:17,22;478:7,10,<br>24;480:20;481:14;<br>483:2,17;485:5;<br>497:22;499:25;<br>500:2,3;506:18,18;<br>516:9;518:13,13;<br>519:14;520:2,14;<br>523:15;539:11,12;<br>545:2;561:19,20;<br>567:19,22;591:14,<br>15;592:22;603:25;<br>604:7;605:22;606:7,<br>10,10,23;609:17;<br>634:2,3,20;639:18,<br>21;640:18<br><b>B-E-S-H-O-R-E (1)</b><br>506:19<br><b>Beshore's (1)</b><br>478:3<br><b>besides (1)</b><br>574:17<br><b>best (7)</b><br>455:24;463:11;<br>468:25;475:23;<br>519:25;537:21;<br>538:7<br><b>bet (1)</b><br>560:5<br><b>better (3)</b><br>427:3;587:23;<br>610:4<br><b>beyond (1)</b><br>620:16<br><b>big (3)</b><br>451:20;452:24;<br>629:5<br><b>bigger (1)</b><br>629:5<br><b>bill (3)</b><br>513:12;574:1,4<br><b>billed (3)</b><br>554:6,15;556:22<br><b>billing (2)</b><br>554:13;600:23<br><b>billion (8)</b><br>575:15,15;611:19,<br>20,21;612:21,21,23<br><b>bingo (1)</b><br>495:17<br><b>bit (17)</b><br>427:2;431:25;<br>432:3;458:3;477:4;<br>528:13;571:24;<br>573:1;576:6;598:3;<br>600:9;602:24;604:6;<br>605:11;610:14;<br>625:17;641:10<br><b>Blauffuss (3)</b><br>508:15,15,16 | <b>B-L-A-U-F-U-S-S (1)</b><br>508:16<br><b>blend (35)</b><br>443:20,21,22,23;<br>444:1,2,12,13,15,16,<br>19,19;449:12,22,23;<br>450:2;488:11;489:2,<br>18,25;501:6;502:24;<br>503:7,8,11,12;<br>539:23;590:11;<br>597:21,22,22,23;<br>604:8,16;605:2<br><b>blends (1)</b><br>554:5<br><b>blessing (1)</b><br>428:20<br><b>book (3)</b><br>426:3;442:12;<br>480:8<br><b>booklet (1)</b><br>475:13<br><b>books (2)</b><br>480:7,7<br><b>boss (1)</b><br>503:21<br><b>both (23)</b><br>428:9;455:2;<br>457:20;458:4,7;<br>480:16;500:13;<br>516:7;530:4;563:9;<br>575:17;580:7;584:5;<br>614:7,11,12;618:11,<br>18;624:4,8;630:21;<br>631:23;641:11<br><b>Bothell (1)</b><br>546:6<br><b>B-O-T-H-E-L-L (1)</b><br>546:8<br><b>bottled (1)</b><br>492:3<br><b>bottling (2)</b><br>598:9,16<br><b>bottom (1)</b><br>438:20<br><b>bought (1)</b><br>451:12<br><b>boundaries (6)</b><br>499:5;597:24;<br>598:18;599:1;<br>609:15;638:11<br><b>boundary (5)</b><br>598:20,23,25;<br>602:17,18<br><b>boy (1)</b><br>509:2<br><b>brackets (1)</b><br>511:15<br><b>Branch (2)</b><br>461:15;504:23<br><b>brand (1)</b><br>639:17<br><b>break (20)</b><br>476:1,4,7,18,22; |
|--|----------|--|---|--|

|   |  |   |  |  |
|---|--|---|--|--|
| 477:2;479:2;515:16;<br>516:1,3,13;523:25;<br>544:21;545:9;<br>567:23,25;604:1;<br>623:14,17,23<br><b>breaking (1)</b><br>628:3<br><b>breaks (1)</b><br>515:22<br><b>Brian (6)</b><br>506:12;524:2,2;<br>540:14;547:3,3<br><b>B-R-I-A-N (1)</b><br>506:12<br><b>Bridgett (2)</b><br>506:23;507:3<br><b>B-R-I-D-G-E-T-T (1)</b><br>506:24<br><b>brief (2)</b><br>531:23;632:16<br><b>brilliant (1)</b><br>522:3<br><b>bring (8)</b><br>423:22;472:24;<br>584:24;608:12,18,<br>21;629:18;641:13<br><b>brings (3)</b><br>472:15;607:8,10<br><b>broad (2)</b><br>442:23;469:10<br><b>broader (1)</b><br>468:19<br><b>broker (1)</b><br>589:10<br><b>brokers (1)</b><br>589:11<br><b>brought (1)</b><br>475:7<br><b>budget (4)</b><br>514:12;611:13,16,<br>18<br><b>buildings (2)</b><br>437:2,3<br><b>built (1)</b><br>534:22<br><b>bulk (16)</b><br>549:4,14;550:15;<br>551:4,9;559:8;<br>563:7;583:2;621:25;<br>622:9,17;630:6,10;<br>635:3,5;636:12<br><b>burden (2)</b><br>441:16;449:24<br><b>buried (1)</b><br>535:15<br><b>business (9)</b><br>427:17;436:5;<br>516:22,25;522:3;<br>523:11;555:25;<br>556:16;644:8<br><b>businesses (1)</b><br>529:2<br><b>butterfat (16)</b> | 500:16;548:7,9,19,<br>20;549:22;550:7,22,<br>23;551:2;552:5,7,12;<br>553:14;554:5;641:7<br><b>butterfats (1)</b><br>553:11<br><b>buy (2)</b><br>432:9;480:11<br><br><b>C</b><br><br><b>c1 (1)</b><br>440:8<br><b>c2 (1)</b><br>435:25<br><b>cab (1)</b><br>447:1<br><b>Cal (2)</b><br>457:14;538:2<br><b>calculable (1)</b><br>521:20<br><b>calculate (10)</b><br>442:6,7;445:4;<br>459:17;460:18,21,<br>22,24;501:15;553:19<br><b>calculated (9)</b><br>501:11,17;502:6;<br>548:13,24;554:3,7;<br>555:16;642:1<br><b>calculating (1)</b><br>435:14<br><b>calculation (11)</b><br>439:14;444:23;<br>448:4;454:8;458:9,<br>11;479:4;501:23;<br>503:12;552:3,4<br><b>calculations (3)</b><br>444:14;548:5,7<br><b>calendar (4)</b><br>447:8;516:21,24;<br>608:3<br><b>caliber (1)</b><br>559:8<br><b>calibrated (1)</b><br>633:11<br><b>CALIFORNIA (71)</b><br>421:2,8;442:2;<br>457:14,15;458:21;<br>459:2;460:7;461:2;<br>462:14,16,18,22;<br>466:15,19,20;467:4,<br>10,10,12;472:6,12,<br>17;481:18,18,20;<br>482:4,8,12;494:22;<br>496:24;497:8,15;<br>506:20;507:11,19,<br>22;508:1,4,7,14;<br>509:5;510:12;<br>511:14;512:2,3,10;<br>524:20;525:5,6;<br>533:19;534:3,9,11,<br>14,15;535:17,22;<br>541:17;542:25; | 543:24;571:16,22;<br>575:4,22;576:9,19;<br>577:24;592:15,16;<br>625:21<br><b>California's (2)</b><br>483:5;543:10<br><b>call (17)</b><br>445:25;454:20;<br>510:4;514:11;<br>527:16;531:15;<br>536:25;537:3;541:1;<br>566:4;589:9;597:25;<br>599:18;604:16;<br>622:21;627:11;<br>636:3<br><b>called (13)</b><br>421:22;423:5;<br>551:16;562:1;<br>566:12;569:25;<br>573:21,23;604:17;<br>616:2;618:13;<br>622:10;636:8<br><b>came (7)</b><br>439:8;445:24;<br>483:20;489:10;<br>495:2;583:11;<br>638:23<br><b>can (109)</b><br>422:13;427:9,12;<br>431:5,17,24;432:3;<br>435:19,20;436:2,2,<br>25;439:20,23;440:2;<br>444:17;445:4;<br>446:14;447:5;451:4;<br>452:4;457:4;458:10;<br>461:1;463:11;<br>468:10;472:23;<br>474:12,18;475:23;<br>481:1;484:18,24;<br>497:15;498:24;<br>500:10;502:20;<br>510:19,22;511:2,7;<br>514:21;518:11,16;<br>519:22;520:20,21;<br>522:19;524:22;<br>528:12;530:25;<br>531:16;540:24;<br>544:1;562:4,19;<br>565:18;566:2,7;<br>567:20,21;572:1,19;<br>575:7;577:12,17;<br>579:18;581:19,21,<br>22;582:2,22;585:21;<br>586:7;588:4,7;<br>589:1;591:13;594:2;<br>595:4,21;596:5;<br>597:17;599:11;<br>602:14;603:4,8;<br>605:5;606:7;608:11,<br>15,18,21;609:15;<br>610:4,7;612:5;614:7,<br>14;618:18;621:12;<br>622:24;623:8,9; | 625:10,11;629:23;<br>634:18;640:19<br><b>canceled (3)</b><br>438:11,12;441:13<br><b>cancellation (5)</b><br>438:15,21;440:6;<br>468:22;483:19<br><b>cap (1)</b><br>471:9<br><b>capital (3)</b><br>509:22;511:15,15<br><b>caps (1)</b><br>639:18<br><b>caption (1)</b><br>511:13<br><b>capture (1)</b><br>477:6<br><b>captured (1)</b><br>499:14<br><b>care (2)</b><br>431:15;568:23<br><b>careful (2)</b><br>480:16;609:14<br><b>Carman (20)</b><br>505:12,12;527:17,<br>25;528:14;531:14;<br>532:4,8,17;533:18;<br>536:19;537:7,16;<br>539:4;540:11,12,21;<br>543:16;544:8,17<br><b>C-A-R-M-A-N (2)</b><br>505:12;528:14<br><b>carried (1)</b><br>602:2<br><b>carry (3)</b><br>565:22;569:22;<br>570:7<br><b>carrying (2)</b><br>569:3;570:16<br><b>carve (1)</b><br>436:19<br><b>Cary (1)</b><br>505:9<br><b>C-A-R-Y (1)</b><br>505:9<br><b>case (9)</b><br>423:15;465:13;<br>466:11;488:11;<br>511:13;542:2;590:6;<br>600:15;610:18<br><b>cases (5)</b><br>461:5;530:4;<br>587:14;600:12;<br>617:21<br><b>casual (1)</b><br>644:14<br><b>categories (2)</b><br>586:13;587:18<br><b>category (5)</b><br>445:20;587:6;<br>612:15;618:17;<br>636:4<br><b>cause (1)</b> | 496:11<br><b>caveat (3)</b><br>513:22;572:4;<br>577:1<br><b>C-D-E-F (1)</b><br>619:3<br><b>CDFA (1)</b><br>534:18<br><b>cease (1)</b><br>555:14<br><b>Central (2)</b><br>499:13;615:15<br><b>cents (1)</b><br>611:22<br><b>certain (16)</b><br>512:5;517:8;<br>521:8,9,15,15;<br>522:20;558:3;<br>562:24;583:23;<br>584:13;587:18;<br>588:8;600:12;<br>607:23;621:8<br><b>certainly (10)</b><br>451:4;458:1;<br>486:5;503:21;<br>517:10;519:20;<br>531:21;532:14;<br>543:19;606:23<br><b>cetera (1)</b><br>539:22<br><b>CFR (8)</b><br>426:9;464:16;<br>468:3;478:21;514:6,<br>16;518:21;572:16<br><b>chair (3)</b><br>531:10;532:20;<br>545:15<br><b>challenged (1)</b><br>533:22<br><b>chance (1)</b><br>571:8<br><b>change (18)</b><br>432:24;433:1,5,<br>17;452:21;455:19;<br>466:21;470:10,14;<br>471:7;472:1;474:5;<br>519:4;536:2,4;<br>542:24;585:2,7<br><b>changed (5)</b><br>442:16;470:25;<br>519:2;585:5;596:5<br><b>changes (14)</b><br>471:13;480:24;<br>481:11;484:14;<br>485:13,22;530:6;<br>535:15;540:2;<br>541:17;543:11;<br>585:10,14,16<br><b>charge (6)</b><br>454:12,12,13;<br>594:17;600:21;<br>643:18<br><b>charged (4)</b> |
|---|--|---|--|--|

|   |  |  |  |  |
|---|--|--|--|--|
| <p>494:9;556:7;<br/>569:25;600:21<br/><b>Charges (7)</b><br/>529:25;547:17;<br/>555:17;556:6,10,15,<br/>22<br/><b>chart (1)</b><br/>559:10<br/><b>cheap (1)</b><br/>449:5<br/><b>Cheese (10)</b><br/>487:21;508:13,21,<br/>24;520:15;564:20,<br/>21,21;580:4;615:3<br/><b>Chicago (6)</b><br/>572:25;574:14,17,<br/>20;604:19;617:20<br/><b>Chief (4)</b><br/>461:14;504:23;<br/>507:10;528:17<br/><b>Chip (9)</b><br/>474:22;479:21;<br/>507:16;515:2,11;<br/>516:12;525:16;<br/>559:22;597:3<br/><b>C-H-I-P (1)</b><br/>507:16<br/><b>choice (5)</b><br/>587:15,21;607:6,<br/>20,22<br/><b>choose (5)</b><br/>454:17;558:2;<br/>572:2;587:12,20<br/><b>chose (1)</b><br/>523:4<br/><b>circumstances (6)</b><br/>488:21;600:6;<br/>602:4;634:17;<br/>636:15,18<br/><b>citation (3)</b><br/>478:17,18;643:22<br/><b>citations (1)</b><br/>476:8<br/><b>cited (1)</b><br/>477:10<br/><b>city (4)</b><br/>604:6,9,11,12<br/><b>claim (3)</b><br/>452:4;454:2,10<br/><b>claimed (1)</b><br/>452:8<br/><b>clarification (6)</b><br/>479:24;520:8;<br/>522:5;536:18;<br/>563:12;606:12<br/><b>clarify (6)</b><br/>518:24;525:17;<br/>538:19,20;612:19;<br/>639:15<br/><b>clarifying (1)</b><br/>518:14<br/><b>Class (128)</b><br/>428:13,16;443:8,9,</p> | <p>19;448:5;449:21;<br/>450:2;451:8,10,11,<br/>17;458:13,22,23,25;<br/>459:9;465:21;<br/>466:10,10;472:16;<br/>482:15;486:22,23,<br/>23,23;487:24;488:8,<br/>20;489:2;490:1;<br/>491:3;494:9,10,11;<br/>500:18,19,20,25;<br/>501:2;503:9,11;<br/>529:25;530:2,3;<br/>548:15,18;549:6,16,<br/>19;550:8,13,14,17,<br/>18,25;551:3,5,6,9,10,<br/>23;552:2,15,17,20,<br/>21,22,25;553:1,3,4,5,<br/>6,9,14;557:16,18,22;<br/>563:8,9;564:1,2,4,<br/>22,22,25;565:7,19,<br/>20,21,24;570:3;<br/>575:10,11,12,17,18,<br/>21,24;576:24;581:5;<br/>584:14;598:10;<br/>600:13,13,18,21;<br/>602:15;633:10;<br/>640:13,16;641:15,<br/>16,17,19,19;642:18,<br/>19,24,24;643:1,4,13,<br/>14,17,18,18<br/><b>classes (10)</b><br/>488:13,14,15,17;<br/>551:11,24;563:11;<br/>565:5;640:11,13<br/><b>classification (26)</b><br/>441:6;447:13,16;<br/>488:3;496:20;512:8;<br/>522:14;525:7;526:9;<br/>547:9,13;548:3,4,21,<br/>22;550:2,3;551:1;<br/>557:9;561:25;<br/>564:10;566:13;<br/>570:22;596:8;<br/>639:22;640:11<br/><b>classified (16)</b><br/>432:7;447:23;<br/>462:16;463:1;491:3;<br/>554:3;555:1;562:20;<br/>564:8,18,19,24;<br/>566:7;581:5;583:9;<br/>617:8<br/><b>classify (1)</b><br/>527:1<br/><b>classifying (2)</b><br/>565:2,18<br/><b>clause (1)</b><br/>635:1<br/><b>clear (15)</b><br/>423:17;480:13;<br/>517:16;523:19;<br/>537:22;538:4;539:8;<br/>542:21;543:14;<br/>592:2,10,12;612:2,</p> | <p>20;630:3<br/><b>cleared (2)</b><br/>517:1;523:21<br/><b>clearly (2)</b><br/>449:17;483:9<br/><b>clerk (3)</b><br/>474:10;519:3;<br/>522:1<br/><b>client (2)</b><br/>427:4;491:19<br/><b>Clifford (3)</b><br/>505:12;527:16;<br/>528:14<br/><b>CLIFTON (145)</b><br/>421:6,9;422:12,18,<br/>22;423:21,25;424:6,<br/>12,17,22;425:3,7,13;<br/>451:23,25;452:11,<br/>12,16;455:20;456:1;<br/>463:13;464:11,17,<br/>21;474:3;475:6,25;<br/>476:6,14,17,21,25;<br/>477:3;478:8,12;<br/>485:15,20;487:17;<br/>499:23;503:4,14,20,<br/>25;504:3;506:14;<br/>509:7,24;510:20;<br/>511:10;515:9,22,25;<br/>516:4;521:7,21;<br/>522:12;523:16;<br/>524:5,9,13;525:13;<br/>526:4,25;527:13,18,<br/>25;528:6,9;529:1;<br/>530:12,21;531:5,9,<br/>12,19;532:18;533:3,<br/>5,12,14;536:18,21;<br/>537:3,12,15;540:10;<br/>543:22;544:12,14,<br/>22;545:3,7,10,22;<br/>546:1,7,9,16,20,23;<br/>559:14,20;560:5,8,<br/>12,14,18,21;561:5,<br/>10,15;567:17,21;<br/>576:11,15,21;577:3,<br/>10,13;592:22;<br/>596:22;597:8;<br/>604:11,13;606:9,21;<br/>612:14;613:6,8;<br/>614:23;623:13,18;<br/>630:17,19;631:6,25;<br/>632:6;633:24;<br/>634:19;639:15;<br/>640:3,9;643:22;<br/>644:6<br/><b>close (10)</b><br/>422:13;481:6;<br/>497:5;549:20;550:1;<br/>553:4;554:5;556:16;<br/>603:24;640:5<br/><b>CLOVIS (2)</b><br/>421:2,8<br/><b>CME (2)</b><br/>534:13,24</p> | <p><b>Coale (15)</b><br/>506:8,8,8;512:20;<br/>513:3,4;515:5;<br/>516:16,23;518:9,19;<br/>519:20;520:8;522:4;<br/>523:13<br/><b>C-O-A-L-E (2)</b><br/>506:9;513:4<br/><b>Co-counsel (2)</b><br/>506:24;507:4<br/><b>Code (1)</b><br/>477:16<br/><b>collected (1)</b><br/>558:23<br/><b>combine (1)</b><br/>578:4<br/><b>combined (3)</b><br/>574:2;577:22;<br/>633:8<br/><b>comfortable (1)</b><br/>422:5<br/><b>coming (6)</b><br/>449:6;515:13;<br/>531:6;562:22;<br/>593:15;595:24<br/><b>Comma (1)</b><br/>634:19<br/><b>comment (3)</b><br/>484:7;513:11;<br/>543:25<br/><b>commented (2)</b><br/>425:23;643:24<br/><b>comments (1)</b><br/>522:25<br/><b>commitments (1)</b><br/>628:12<br/><b>commodity (4)</b><br/>534:9,17;535:17;<br/>538:22<br/><b>common (2)</b><br/>534:5;616:14<br/><b>communications (1)</b><br/>539:7<br/><b>Company (6)</b><br/>487:21;508:18,21,<br/>24;579:18;615:3<br/><b>comparable (2)</b><br/>449:5;576:2<br/><b>compare (3)</b><br/>459:21;460:25;<br/>462:12<br/><b>compared (2)</b><br/>543:9;554:7<br/><b>compares (1)</b><br/>448:7<br/><b>comparison (7)</b><br/>541:16;542:23;<br/>543:1;575:3;576:8,<br/>19,23<br/><b>compensatory (7)</b><br/>445:20;448:3,14;<br/>453:7,16;557:19,24<br/><b>compete (1)</b></p> | <p>573:16<br/><b>competition (1)</b><br/>573:15<br/><b>complaints (1)</b><br/>594:8<br/><b>complete (6)</b><br/>434:6,16;441:22;<br/>454:19;555:13,15<br/><b>completed (1)</b><br/>574:4<br/><b>complex (1)</b><br/>592:20<br/><b>compliance (1)</b><br/>554:19<br/><b>Component (4)</b><br/>500:17,18;501:4;<br/>553:15<br/><b>components (4)</b><br/>500:15;501:20;<br/>549:12;553:16<br/><b>composition (1)</b><br/>534:2<br/><b>computation (1)</b><br/>500:22<br/><b>computations (1)</b><br/>450:22<br/><b>compute (4)</b><br/>451:14;452:5;<br/>453:3;500:18<br/><b>computed (5)</b><br/>450:23;451:1;<br/>453:1,1,1<br/><b>Computer (1)</b><br/>531:11<br/><b>computer's (1)</b><br/>531:12<br/><b>con (1)</b><br/>634:12<br/><b>conceivably (4)</b><br/>519:18;579:5;<br/>580:10;588:21<br/><b>concentrate (4)</b><br/>563:5,12;564:12;<br/>566:3<br/><b>concentrated (13)</b><br/>432:10;435:6;<br/>465:10;549:5,5,14,<br/>19,23;551:4,9;<br/>557:21;563:18;<br/>564:1<br/><b>concept (1)</b><br/>562:4<br/><b>concepts (1)</b><br/>638:10<br/><b>concern (4)</b><br/>474:16;489:7;<br/>577:13;612:15<br/><b>concerned (2)</b><br/>424:19;490:5<br/><b>concerns (2)</b><br/>474:10;634:12<br/><b>conclude (1)</b><br/>526:18</p> |
|---|--|--|--|--|

|  |   |  |   |   |
|--|---|--|---|---|
| <p><b>concludes (1)</b><br/>559:12</p> <p><b>conclusion (1)</b><br/>513:16</p> <p><b>concur (1)</b><br/>518:7</p> <p><b>condensed (23)</b><br/>472:15,24;473:9;<br/>494:21;562:19;<br/>563:14,15,17,19;<br/>564:1,4,16;565:6;<br/>566:3;585:21;<br/>603:22;641:12;<br/>642:15,22;643:5,6,7,<br/>7</p> <p><b>conditions (5)</b><br/>637:22;638:1,6,<br/>17;639:11</p> <p><b>conduct (2)</b><br/>518:22;553:24</p> <p><b>conducts (1)</b><br/>428:17</p> <p><b>confer (2)</b><br/>515:17;520:25</p> <p><b>confidential (2)</b><br/>525:9;614:18</p> <p><b>confirm (1)</b><br/>534:1</p> <p><b>confused (1)</b><br/>492:11</p> <p><b>confusing (1)</b><br/>626:14</p> <p><b>Congress (5)</b><br/>513:13,18;574:2;<br/>577:19,21</p> <p><b>connecting (1)</b><br/>598:3</p> <p><b>connotation (1)</b><br/>456:20</p> <p><b>conscious (1)</b><br/>452:22</p> <p><b>consecutively (1)</b><br/>522:7</p> <p><b>consensus (1)</b><br/>544:24</p> <p><b>consequence (1)</b><br/>607:19</p> <p><b>consider (3)</b><br/>511:24;512:12;<br/>629:19</p> <p><b>consideration (4)</b><br/>512:15;518:10;<br/>612:17;633:5</p> <p><b>considerations (1)</b><br/>628:10</p> <p><b>considered (7)</b><br/>437:11;482:13;<br/>539:21;542:19;<br/>564:22;629:14,16</p> <p><b>consistency (1)</b><br/>579:4</p> <p><b>consistent (2)</b><br/>498:22;536:6</p> | <p><b>consisting (1)</b><br/>575:13</p> <p><b>constitute (1)</b><br/>437:9</p> <p><b>constituted (4)</b><br/>472:18;580:19;<br/>582:18;591:3</p> <p><b>construction (1)</b><br/>533:19</p> <p><b>consumer (3)</b><br/>581:7,11,17</p> <p><b>consumers (2)</b><br/>581:12;598:16</p> <p><b>consumer-type (2)</b><br/>491:2;581:4</p> <p><b>consumption (1)</b><br/>591:4</p> <p><b>contact (1)</b><br/>556:16</p> <p><b>contain (1)</b><br/>520:3</p> <p><b>contained (3)</b><br/>457:6;464:8;<br/>512:13</p> <p><b>containing (1)</b><br/>559:6</p> <p><b>contains (1)</b><br/>483:9</p> <p><b>content (3)</b><br/>520:4,25;641:8</p> <p><b>contents (1)</b><br/>519:8</p> <p><b>context (4)</b><br/>427:4;630:3;<br/>634:12;639:20</p> <p><b>contiguous (1)</b><br/>624:19</p> <p><b>contingent (2)</b><br/>431:1;518:5</p> <p><b>continue (10)</b><br/>428:21;433:9;<br/>455:21;456:2;475:8;<br/>479:12;513:7;514:3;<br/>556:5;633:19</p> <p><b>continued (2)</b><br/>433:8;522:6</p> <p><b>continuity (1)</b><br/>594:25</p> <p><b>continuous (1)</b><br/>481:8</p> <p><b>contract (3)</b><br/>568:9,19,25</p> <p><b>contracted (1)</b><br/>569:7</p> <p><b>contracts (1)</b><br/>568:13</p> <p><b>contractural (1)</b><br/>438:2</p> <p><b>contributes (1)</b><br/>642:17</p> <p><b>control (6)</b><br/>431:19;434:7,16;<br/>436:5;438:4;441:22</p> | <p><b>controlled (1)</b><br/>437:25</p> <p><b>controls (1)</b><br/>446:21</p> <p><b>convenience (3)</b><br/>475:13;480:6;<br/>487:22</p> <p><b>conventional (2)</b><br/>617:4,5</p> <p><b>conversation (3)</b><br/>531:23;532:24;<br/>533:2</p> <p><b>conversations (2)</b><br/>511:20;516:14</p> <p><b>converse (1)</b><br/>621:12</p> <p><b>conversion (1)</b><br/>495:7</p> <p><b>convert (1)</b><br/>549:11</p> <p><b>convoluted (1)</b><br/>446:23</p> <p><b>Cook (1)</b><br/>604:18</p> <p><b>cooperate (1)</b><br/>621:6</p> <p><b>Cooperative (34)</b><br/>430:19;483:3,10;<br/>528:22;529:7;549:7;<br/>554:17;558:9;<br/>589:19,20;590:11;<br/>596:15;601:9;<br/>616:19;617:6,18;<br/>618:7,15,16,23;<br/>619:4;620:10,25;<br/>621:5,19;622:4,5;<br/>624:3;625:14;626:6;<br/>629:2;631:4,18,24</p> <p><b>Cooperatives (8)</b><br/>456:23;554:18;<br/>555:19;556:18;<br/>558:20;578:21;<br/>601:8;622:9</p> <p><b>Cooperatives' (1)</b><br/>501:15</p> <p><b>Cooperative's (3)</b><br/>430:10,12,17</p> <p><b>copied (1)</b><br/>474:17</p> <p><b>copies (4)</b><br/>474:17;475:18;<br/>560:10,11</p> <p><b>copy (10)</b><br/>464:16;468:2;<br/>474:6,11;478:22;<br/>530:25;531:4;560:9;<br/>561:2;597:8</p> <p><b>corporation (1)</b><br/>427:17</p> <p><b>corrected (2)</b><br/>439:25;637:10</p> <p><b>correction (1)</b><br/>627:1</p> | <p><b>correctly (6)</b><br/>486:11,12;519:14;<br/>520:19;600:8;613:9</p> <p><b>corresponding (1)</b><br/>556:5</p> <p><b>cost (10)</b><br/>443:19,21,22;<br/>444:1;451:17;453:7,<br/>8,14,18;502:16</p> <p><b>Council (1)</b><br/>509:13</p> <p><b>counsel (11)</b><br/>479:12;504:12;<br/>506:11,13;508:6;<br/>509:18;515:13,17;<br/>516:15;521:2;<br/>523:18</p> <p><b>count (1)</b><br/>462:12</p> <p><b>counted (1)</b><br/>493:19</p> <p><b>counties (1)</b><br/>604:21</p> <p><b>country (3)</b><br/>458:18;598:13;<br/>604:6</p> <p><b>county (10)</b><br/>458:17,21,21,22;<br/>459:11;479:3;<br/>604:18,23,24;605:7</p> <p><b>county's (2)</b><br/>425:1;604:18</p> <p><b>couple (5)</b><br/>480:12;503:7;<br/>539:17;599:9;611:5</p> <p><b>course (7)</b><br/>478:12,13;523:19;<br/>542:24;543:25;<br/>560:16;567:21</p> <p><b>COURT (13)</b><br/>431:3,5,8;434:9,<br/>11,13;476:8,19;<br/>477:4,5;560:19;<br/>593:6;596:5</p> <p><b>cover (1)</b><br/>618:18</p> <p><b>covered (3)</b><br/>559:9;618:15,16</p> <p><b>covering (1)</b><br/>472:11</p> <p><b>covers (3)</b><br/>445:23;618:11;<br/>635:16</p> <p><b>crack (1)</b><br/>492:12</p> <p><b>crafted (2)</b><br/>637:17,25</p> <p><b>cream (1)</b><br/>564:23</p> <p><b>created (9)</b><br/>493:5,5,8,8,11;<br/>572:22,23;578:6;<br/>611:23</p> | <p><b>creates (1)</b><br/>612:22</p> <p><b>credit (2)</b><br/>448:15;489:3</p> <p><b>criteria (12)</b><br/>428:19,22;495:9;<br/>497:10;526:5,8;<br/>527:6;573:13,15;<br/>574:10;619:17,18</p> <p><b>CROSS-EXAMINATION (15)</b><br/>425:15;456:4;<br/>479:19;487:18;<br/>500:1;533:16;<br/>539:10;541:10;<br/>560:2;561:18;<br/>571:13;597:1;615:1;<br/>632:11;634:1</p> <p><b>cross-reference (1)</b><br/>631:4</p> <p><b>cross-referenced (1)</b><br/>631:17</p> <p><b>CRYAN (2)</b><br/>506:4,5</p> <p><b>C-R-Y-A-N (1)</b><br/>506:5</p> <p><b>current (12)</b><br/>469:20;491:17;<br/>493:20;500:20;<br/>512:6;538:23;<br/>555:12;572:23;<br/>576:7;578:9;611:24;<br/>619:2</p> <p><b>currently (15)</b><br/>457:6;458:6;<br/>466:23;474:18;<br/>528:15;534:3;542:9;<br/>543:7,13;550:9;<br/>570:5;574:18;612:3,<br/>13;627:21</p> <p><b>custom (1)</b><br/>617:20</p> <p><b>customary (2)</b><br/>618:6,7</p> <p><b>customer (3)</b><br/>441:21;618:10;<br/>624:10</p> <p><b>customers (1)</b><br/>626:12</p> <p><b>CWAP (1)</b><br/>535:1</p> <p><b>cycle (1)</b><br/>637:8</p> |
|  |   |  |   | <b>D</b>  |
|  |   |  |   | <p><b>d3 (1)</b><br/>640:2</p> <p><b>Dairies (2)</b><br/>507:11;581:12</p> <p><b>Dairy (71)</b><br/>425:18;427:18;<br/>431:15;483:4;493:9,<br/>12;504:20,24;505:2,</p>  |

|   |   |   |   |  |
|---|---|---|---|--|
| 5,8,13,17,19,20,24;<br>506:3,9,21;507:7,14,<br>18,22;508:1,4,6,9,14,<br>17;509:6,12,13,14;<br>510:1;511:3;512:7;<br>513:4;521:6;524:19;<br>525:2,4;528:15,16,<br>20,24;529:5,25;<br>538:2,22;539:1;<br>543:17;546:3;<br>551:16,17;559:7;<br>571:15;573:14;<br>581:20,24;582:7,19,<br>21;619:25;620:1,8;<br>630:6;635:3,5;<br>636:12;637:10;<br>644:10 | 517:20,20,21;<br>518:17,17;519:13<br><b>DC (1)</b><br>507:17<br><b>D-E (1)</b><br>508:23<br><b>deadlines (3)</b><br>596:2,4,5<br><b>deal (4)</b><br>486:1;492:16;<br>495:2,3<br><b>dealing (7)</b><br>448:19;542:13;<br>578:11;579:3;<br>580:11;614:15,16<br><b>deals (2)</b><br>519:8;608:15<br><b>dealt (3)</b><br>446:11;484:13;<br>612:4<br><b>Dean (1)</b><br>508:17<br><b>decide (1)</b><br>428:18<br><b>decided (3)</b><br>588:11;601:10;<br>638:14<br><b>decides (1)</b><br>606:15<br><b>deciding (1)</b><br>598:18<br><b>Decision (8)</b><br>445:25;484:16;<br>573:12;606:5;612:6;<br>620:14,18;627:15<br><b>decision-maker (2)</b><br>620:7,9<br><b>decision-making (1)</b><br>620:16<br><b>decisions (1)</b><br>620:7<br><b>declining (1)</b><br>541:25<br><b>deducted (1)</b><br>492:14<br><b>Deduction (3)</b><br>547:21;558:6,17<br><b>def (1)</b><br>583:16<br><b>default (1)</b><br>617:1<br><b>defined (6)</b><br>427:16;490:20;<br>491:5;499:10,16;<br>635:19<br><b>defines (2)</b><br>586:4;638:3<br><b>defining (1)</b><br>464:24<br><b>definition (33)</b><br>426:10,13;464:9;<br>494:3;499:21;568:5;<br>572:7;579:8;580:25; | 582:6,14,16;583:8,<br>13,16;587:11;<br>588:25;589:3,4,8,14,<br>16;590:20,22,24,25;<br>593:16,23;599:16;<br>603:5;613:20;<br>629:15;641:3<br><b>definitionally (1)</b><br>581:9<br><b>definitions (3)</b><br>469:18;583:8;<br>636:18<br><b>Degraded (4)</b><br>602:22,22,23;<br>609:11<br><b>D-E-G-R-A-D-E-D (1)</b><br>602:22<br><b>degree (3)</b><br>438:4;546:12,14<br><b>Dejong (1)</b><br>508:23<br><b>delighted (1)</b><br>512:20<br><b>deliver (4)</b><br>449:2;590:1;<br>591:24;602:14<br><b>delivered (11)</b><br>440:10;491:10;<br>492:13;517:1,2;<br>590:10,12;604:23;<br>605:7;622:1;631:21<br><b>delivering (5)</b><br>549:7;581:15,16;<br>617:14,15<br><b>delivers (5)</b><br>495:25;589:21;<br>596:16;617:10;<br>621:19<br><b>delivery (3)</b><br>454:13;490:21;<br>580:25<br><b>demand (3)</b><br>585:12;633:6,6<br><b>demarcation (1)</b><br>465:19<br><b>denied (2)</b><br>525:11;527:12<br><b>depart (1)</b><br>514:14<br><b>departing (1)</b><br>514:4<br><b>Department (10)</b><br>482:8;511:12;<br>517:2,15;518:10;<br>541:17,21,25;594:5;<br>605:21<br><b>depend (2)</b><br>439:18;461:6<br><b>Depending (3)</b><br>488:19;585:10;<br>610:16<br><b>depends (2)</b><br>562:21;593:13 | <b>depool (1)</b><br>636:24<br><b>depooling (4)</b><br>605:13,16;636:25;<br>638:9<br><b>D-E-P-O-O-L-I-N-G (1)</b><br>605:16<br><b>Deputy (6)</b><br>505:13;506:9;<br>513:4;520:20;<br>528:15,19<br><b>derived (2)</b><br>440:15,16<br><b>describe (6)</b><br>429:20;547:9;<br>579:10;583:19,20;<br>594:2<br><b>described (12)</b><br>465:1;468:16;<br>487:24;502:10;<br>550:4;553:24;555:8;<br>556:23;565:3;<br>566:22;631:21;<br>642:4<br><b>describes (1)</b><br>580:17<br><b>describing (2)</b><br>425:25;579:14<br><b>description (3)</b><br>559:12;593:20;<br>630:9<br><b>designate (3)</b><br>429:17;433:16;<br>454:1<br><b>designated (17)</b><br>427:24;431:16;<br>432:22,25;434:24;<br>435:2,19,20;436:14,<br>25;437:6;440:9,18;<br>441:12;466:11;<br>477:11;613:18<br><b>designation (17)</b><br>428:21;430:19,24,<br>24;432:5;433:10,19;<br>437:19;438:19;<br>439:7,9,11,17;440:2;<br>450:25;469:23;<br>519:12<br><b>designations (2)</b><br>438:10;441:13<br><b>designed (2)</b><br>435:10;449:3<br><b>detail (4)</b><br>505:2,23;506:2;<br>573:11<br><b>detailed (2)</b><br>468:22;484:16<br><b>details (1)</b><br>573:19<br><b>determination (3)</b><br>428:18;438:23;<br>489:14<br><b>determine (16)</b> | 439:13;450:22,25;<br>458:15;493:14;<br>512:18;514:11;<br>525:8;548:6;559:2;<br>584:17;597:17;<br>599:10;602:13,17;<br>619:13<br><b>determined (5)</b><br>497:20;548:22;<br>555:6;584:9;637:24<br><b>determines (2)</b><br>597:20;603:13<br><b>determining (7)</b><br>427:25;491:9;<br>500:8;521:16;<br>530:14;599:14;<br>619:24<br><b>developed (1)</b><br>637:22<br><b>Development (1)</b><br>509:13<br><b>devote (1)</b><br>523:9<br><b>dialogue (2)</b><br>497:23;616:16<br><b>Diaries (1)</b><br>506:20<br><b>diff (1)</b><br>501:5<br><b>difference (28)</b><br>430:9;443:23;<br>448:9,11;449:11,12,<br>20,23;450:2;453:11;<br>501:5;502:23;503:6,<br>8;538:25;544:1;<br>562:24;598:5;604:8;<br>624:16;629:5,6,9,21;<br>630:4;641:19;643:1,<br>18<br><b>Differences (4)</b><br>554:8;575:20;<br>576:1;629:1<br><b>different (20)</b><br>436:17;443:2;<br>444:14;464:7;467:6;<br>468:15;485:6;<br>497:25;501:19;<br>538:12;573:3,9;<br>579:18;580:10;<br>582:23;583:14;<br>590:7;592:17;601:2;<br>623:3<br><b>differential (16)</b><br>458:22,25;459:14;<br>460:13;500:8,19,25;<br>501:1,8,11,17,23;<br>502:5,25;554:5;<br>588:2<br><b>differentiate (2)</b><br>614:14;630:12<br><b>differently (5)</b><br>486:15;566:20;<br>580:1,3,8 |
|---|---|---|---|--|

|  |   |  |   |   |
|--|---|--|---|---|
| <b>DIRECT (7)</b><br>423:1;524:14;<br>528:10;547:1;<br>563:23;597:4;<br>600:23   | 427:19,20,21;<br>428:3,15;440:21;<br>465:2,17,21;490:14,<br>17,20,21,25;491:4,6,<br>9,19;492:1,15,21,25;<br>493:23,24;494:4;<br>555:1;557:17;<br>580:22,23,24;581:2   | 625:18,19,21;626:3,<br>10<br><b>diversions (6)</b><br>561:25;566:13;<br>570:23;596:8;621:7,<br>13  | 532:25<br><b>draft (6)</b><br>560:17;597:6;<br>616:15;630:2;634:4,<br>5<br><b>drafting (1)</b><br>517:16              | 597:5<br><b>easier (2)</b><br>474:24;477:11<br><b>easiest (1)</b><br>446:23<br><b>East (3)</b><br>544:10,12;615:15      |
| <b>directed (1)</b><br>520:22  | <b>dispositions (3)</b><br>447:25;470:22;<br>491:13   | <b>divert (1)</b><br>621:1   | <b>drawn (1)</b><br>444:3   | <b>Economic (7)</b><br>506:7;507:13;<br>528:23;536:6;543:3;<br>616:8;626:18   |
| <b>directly (18)</b><br>436:4;437:24;<br>438:3;490:24;496:9;<br>536:3;581:1,11,19,<br>24;582:19;591:5;<br>596:10;622:18;<br>623:8;624:9,19;<br>625:3 | <b>disqualified (1)</b><br>494:24   | <b>diverted (7)</b><br>549:2;557:11;<br>591:6;593:21;<br>607:13;621:21,23  | <b>dreams (1)</b><br>544:6  | <b>Economics (4)</b><br>508:17;546:14;<br>587:22;592:20   |
| <b>Director (2)</b><br>507:13;508:3  | <b>disqualify (2)</b><br>473:19;493:19  | <b>diverting (1)</b><br>621:16   | <b>drive (1)</b><br>534:18  | <b>Economist (9)</b><br>505:1,17,22;506:1,<br>6;507:7;508:1;<br>509:22;546:4  |
| <b>directs (1)</b><br>492:23   | <b>distant (1)</b><br>639:1   | <b>diverts (2)</b><br>582:20;607:11  | <b>driver (1)</b><br>539:24   | <b>economists (2)</b><br>533:7;544:1  |
| <b>disagree (2)</b><br>634:23;635:14   | <b>distinction (2)</b><br>598:6,7   | <b>divide (1)</b><br>527:10  | <b>drives (1)</b><br>533:21   | <b>educational (1)</b><br>546:10  |
| <b>disappear (1)</b><br>612:23   | <b>distinguishing (1)</b><br>635:1  | <b>divided (1)</b><br>527:9  | <b>drop (4)</b><br>536:9;628:5,6,15   | <b>effect (2)</b><br>438:10;492:21  |
| <b>Disappointed (1)</b><br>525:25  | <b>distributed (2)</b><br>448:17;495:5  | <b>Division (1)</b><br>505:8   | <b>dropped (1)</b><br>612:20  | <b>effective (4)</b><br>438:16;441:13;<br>458:23;554:6  |
| <b>disassociate (2)</b><br>628:4,19  | <b>distributes (3)</b><br>435:1;494:20;<br>582:24   | <b>docket (3)</b><br>511:14,16,17  | <b>dry (9)</b><br>435:25;473:2,4;<br>534:14,15,16;535:1;<br>603:23;641:11   | <b>effects (1)</b><br>543:7   |
| <b>disassociated (2)</b><br>615:21;616:8   | <b>distributing (92)</b><br>423:11;427:18;<br>431:21;435:3,3;<br>437:23;447:10;<br>451:2;452:25;<br>456:11;457:1;<br>461:25;462:20,21,<br>24;464:25;466:9;<br>486:2,2,6;495:17,19;<br>496:1;566:4,5;580:9,<br>11,14;581:6,19,22;<br>582:2,5,6,24;583:1,<br>3,5,22;584:5,9,11,<br>12;585:7,17;586:17;<br>587:7,16;588:11,17,<br>19;598:5,9,12,19;<br>599:7;600:17,22;<br>618:10;620:21,22;<br>621:9,10;622:2,18;<br>623:5,7,9,10;624:6,<br>10;625:4;626:7,11;<br>627:2,7,9;630:4,6,<br>10,11;631:2,14;<br>633:3,17,21;635:2,4,<br>6,12;636:13;642:16 | <b>document (10)</b><br>492:23;493:4,7;<br>517:1;523:19;<br>527:19;529:15,22,<br>24;530:2  | <b>Dryer (2)</b><br>508:11,11   | <b>effort (10)</b><br>439:2;452:22;<br>458:6;525:25;526:1,<br>13;542:5,12;555:13;<br>556:16                             |
| <b>disband (1)</b><br>595:7  | <b>documenting (2)</b><br>535:4;541:6   | <b>documentation (2)</b><br>535:4;541:6  | <b>D-R-Y-E-R (1)</b><br>508:12  | <b>eight (3)</b><br>552:11;553:3;<br>571:1  |
| <b>disclosure (2)</b><br>427:7;445:16  | <b>documents (4)</b><br>454:21;475:4,14;<br>517:9   | <b>documents (4)</b><br>454:21;475:4,14;<br>517:9  | <b>due (10)</b><br>554:9,10,20;555:3,<br>4,7;556:2,5,15,17  | <b>efficiently (1)</b><br>533:1   |
| <b>discrete (1)</b><br>571:5   | <b>dollar (5)</b><br>604:17,19,22,24;<br>605:10   | <b>dollars (1)</b><br>444:3  | <b>duly (4)</b><br>580:19;582:17;<br>591:3;603:6  | <b>efficiency (1)</b><br>624:13   |
| <b>discretion (1)</b><br>476:5   | <b>dollars (1)</b><br>444:3   | <b>done (11)</b><br>455:21;510:6,7;<br>535:12;540:25;<br>541:24;542:8;<br>568:22;574:4;577:8;<br>594:21  | <b>dumped (1)</b><br>491:25   | <b>effort (10)</b><br>439:2;452:22;<br>458:6;525:25;526:1,<br>13;542:5,12;555:13;<br>556:16                             |
| <b>discuss (5)</b><br>523:17;532:9;<br>605:11;612:12;<br>644:12  | <b>done (11)</b><br>455:21;510:6,7;<br>535:12;540:25;<br>541:24;542:8;<br>568:22;574:4;577:8;<br>594:21   | <b>donut (1)</b><br>499:12   | <b>duplicate (1)</b><br>534:12  | <b>either (15)</b><br>432:1,2;455:23;<br>473:9;485:25;486:4;<br>490:23,24;492:15;<br>581:1,17;583:22;<br>619:7;623:8,10 |
| <b>discussed (9)</b><br>483:16,16;565:23;<br>605:22;612:5;<br>616:15,16;637:23;<br>638:12  | <b>double (1)</b><br>451:13   | <b>double-checking (1)</b><br>455:7  | <b>during (11)</b><br>427:22;438:18;<br>439:24,25;493:25;<br>525:6;526:10;<br>536:25;556:20;<br>578:6;608:16          | <b>election (3)</b><br>454:6;607:14;<br>608:24  |
| <b>discussing (4)</b><br>583:14,16,17;<br>592:20   | <b>double-checking (1)</b><br>455:7   | <b>down (27)</b><br>433:25;452:3;<br>478:2,4,5;486:13,21,<br>21;487:23;500:23;<br>504:1,4;527:15;<br>544:18;560:23;<br>568:21;574:2,7;<br>575:25;577:23;<br>578:4;581:16;599:9;<br>630:24;631:6;640:3;<br>643:14 | <b>duties (3)</b><br>594:10,11;595:12   | <b>elects (2)</b><br>608:9,11   |
| <b>discussion (13)</b><br>465:14;481:13;<br>483:2;490:11;<br>497:13,22;537:1;<br>578:24;615:7;<br>616:13;625:17;<br>626:20;630:20                    | <b>distribution (9)</b><br>437:21;490:12,13,<br>24;580:18;581:2;<br>582:23;596:17;<br>598:16  | <b>Dr (1)</b>  | <b>duty (1)</b><br>514:2  | <b>eleventh (1)</b><br>553:10   |
| <b>dispense (1)</b><br>581:17  | <b>distributions (1)</b><br>467:9   |  | <b>E</b>  | <b>eligibility (1)</b>  |
| <b>dispenser (2)</b><br>491:3;581:4  | <b>disturb (1)</b><br>511:21  |  | <b>earlier (11)</b><br>472:21;478:24;<br>484:10;489:9;<br>497:13;504:16;<br>509:3;566:22;<br>568:20;571:12;<br>625:18 |   |
| <b>disposed (1)</b><br>465:17  | <b>diversion (13)</b><br>596:13,14;621:15,<br>20,23;622:11,21,23;   |  | <b>early (5)</b><br>421:16;424:25;<br>450:14,16;644:20  |   |
| <b>disposition (31)</b>  |   |  | <b>ease (1)</b>   |   |

|   |  |   |   |   |
|---|--|---|---|---|
| <p>493:14<br/><b>eligible (5)</b><br/>428:4;597:22;<br/>605:14;609:3;<br/>612:25<br/><b>Elliott (2)</b><br/>505:3,3<br/><b>E-L-L-I-O-T-T (1)</b><br/>505:4<br/><b>else (21)</b><br/>425:11;436:12;<br/>438:7;455:8;463:3;<br/>476:4;479:24;<br/>509:24;517:24;<br/>520:5;537:16;<br/>540:10,15;542:6;<br/>579:22;585:23;<br/>627:9;632:8;643:13;<br/>644:16,18<br/><b>elsewhere (4)</b><br/>482:5;495:12;<br/>615:16;621:13<br/><b>Elvin (1)</b><br/>507:12<br/><b>E-L-V-I-N (1)</b><br/>507:12<br/><b>e-mail (1)</b><br/>530:25<br/><b>embedded (1)</b><br/>539:3<br/><b>employ (1)</b><br/>554:13<br/><b>employed (2)</b><br/>546:3,17<br/><b>employee (1)</b><br/>504:13<br/><b>employees (7)</b><br/>452:19;504:10;<br/>514:3;522:16,18,21;<br/>570:6<br/><b>end (10)</b><br/>427:7;438:20;<br/>443:5;447:7;475:4,<br/>9;490:23;511:1;<br/>516:19;542:16<br/><b>ended (2)</b><br/>480:20;525:22<br/><b>enforce (6)</b><br/>601:7,13,16,19,23;<br/>602:4<br/><b>enforced (1)</b><br/>554:21<br/><b>Enforcement (2)</b><br/>528:18;601:3<br/><b>engine (1)</b><br/>477:12<br/><b>ENGLISH (65)</b><br/>455:23;474:22,22;<br/>475:11;479:20,21,<br/>22;485:15,19,21,24;<br/>507:15,16;512:16;<br/>515:3,8,9,10,11,24;<br/>516:8,10,12,12;</p> | <p>517:11;523:14;<br/>525:13,15,16;<br/>526:12;527:8;<br/>531:20,21;532:19,<br/>23;533:4,5;537:17;<br/>539:4;559:22,23;<br/>560:11,13,16,19;<br/>596:25;597:2,3,12,<br/>14;604:12,14;605:1;<br/>606:22;607:4;<br/>609:18;612:5,8,18;<br/>613:7,10,16;615:4;<br/>626:16;636:21<br/><b>E-N-G-L-I-S-H (1)</b><br/>507:16<br/><b>English's (1)</b><br/>644:9<br/><b>enough (7)</b><br/>527:5;542:1,2;<br/>544:23;586:25;<br/>603:12,24<br/><b>ensure (1)</b><br/>451:6<br/><b>enter (1)</b><br/>530:10<br/><b>enterprise (6)</b><br/>428:8;431:22;<br/>432:17;434:18;<br/>436:10;438:7<br/><b>entire (6)</b><br/>421:25;422:1;<br/>433:15;454:20;<br/>512:3;515:12<br/><b>entirely (1)</b><br/>444:23<br/><b>entirety (1)</b><br/>429:13<br/><b>entities (10)</b><br/>432:20;436:13;<br/>471:6;481:20;<br/>568:14;601:12;<br/>624:4,8;629:2,3<br/><b>entitled (1)</b><br/>529:24<br/><b>entity (12)</b><br/>432:18;433:3,14,<br/>15,16;434:22;<br/>436:13;441:22;<br/>447:18;484:22,25;<br/>601:24<br/><b>enumerated (1)</b><br/>497:10<br/><b>environment (1)</b><br/>490:3<br/><b>equal (1)</b><br/>641:6<br/><b>equalization (1)</b><br/>441:5<br/><b>equally (1)</b><br/>625:12<br/><b>equate (1)</b><br/>502:23<br/><b>equation (1)</b></p> | <p>500:11<br/><b>equations (2)</b><br/>534:21;542:14<br/><b>equity (2)</b><br/>449:4;463:21<br/><b>equivalent (3)</b><br/>640:14;641:4,14<br/><b>Erba (2)</b><br/>507:9,9<br/><b>E-R-B-A (1)</b><br/>507:10<br/><b>Eric (1)</b><br/>507:9<br/><b>E-R-I-C (1)</b><br/>507:9<br/><b>Erin (2)</b><br/>504:19;576:5<br/><b>E-R-I-N (1)</b><br/>504:19<br/><b>erroneously (1)</b><br/>478:4<br/><b>errors (1)</b><br/>554:1<br/><b>ESL (1)</b><br/>499:11<br/><b>essence (14)</b><br/>431:14,17;434:2;<br/>437:14;439:16;<br/>442:24;443:7;451:5,<br/>16;459:4;466:7;<br/>501:5;616:22;<br/>635:16<br/><b>essential (1)</b><br/>522:15<br/><b>essentially (3)</b><br/>444:7;469:1;624:2<br/><b>establish (2)</b><br/>458:23;559:1<br/><b>established (3)</b><br/>549:20,25;632:19<br/><b>establishing (1)</b><br/>441:16<br/><b>establishment (1)</b><br/>511:25<br/><b>estimate (1)</b><br/>534:21<br/><b>estimated (2)</b><br/>553:1;633:13<br/><b>estimates (1)</b><br/>633:1<br/><b>et (1)</b><br/>539:22<br/><b>evade (1)</b><br/>484:7<br/><b>evaluated (1)</b><br/>450:7<br/><b>evaluates (1)</b><br/>576:17<br/><b>evaluation (1)</b><br/>543:16<br/><b>evasive (2)</b><br/>484:10;502:19<br/><b>Even (12)</b></p> | <p>452:16;456:15;<br/>477:7;480:11;<br/>494:23;513:1;<br/>525:23;566:21;<br/>577:5;601:12;<br/>607:14;608:5<br/><b>event (7)</b><br/>513:7,14;514:14;<br/>517:18;519:2;<br/>550:17;565:12<br/><b>everybody (4)</b><br/>462:15;476:4;<br/>520:23;542:6<br/><b>everyone (4)</b><br/>425:22,24;519:20,<br/>21<br/><b>evidence (12)</b><br/>421:12;422:9;<br/>461:14;483:21;<br/>511:25;528:4;<br/>530:10,17,18,20;<br/>537:13;545:19<br/><b>evident (1)</b><br/>521:17<br/><b>evolved (2)</b><br/>638:7,20<br/><b>ex (1)</b><br/>539:6<br/><b>exact (1)</b><br/>577:21<br/><b>Exactly (10)</b><br/>428:23;430:15;<br/>435:11;494:19;<br/>500:23;530:24;<br/>579:13;606:8,11;<br/>609:25<br/><b>EXAMINATION (8)</b><br/>423:1;524:14;<br/>528:10;531:24;<br/>540:17;547:1;<br/>556:19;598:4<br/><b>example (13)</b><br/>427:2;476:9,11;<br/>477:12,16,18;478:1;<br/>490:2;492:24;<br/>498:16;521:10;<br/>543:7;551:17<br/><b>examples (1)</b><br/>569:5<br/><b>exceed (5)</b><br/>427:22;440:23;<br/>490:14;494:1,10<br/><b>exceeds (5)</b><br/>453:9;494:23;<br/>500:25;501:3;<br/>556:11<br/><b>Excellent (4)</b><br/>422:14;531:5;<br/>539:6;559:16<br/><b>except (9)</b><br/>438:6;440:19;<br/>447:7;470:11;<br/>490:23;520:17;</p> | <p>549:5,19;586:20<br/><b>excepted (2)</b><br/>514:3;522:13<br/><b>exception (1)</b><br/>609:4<br/><b>excess (11)</b><br/>428:3;470:23,23;<br/>548:6,12,17;550:17;<br/>551:24;552:3,10;<br/>553:11<br/><b>exclude (1)</b><br/>630:11<br/><b>excludes (1)</b><br/>465:10<br/><b>exclusions (2)</b><br/>466:1,6<br/><b>exclusive (3)</b><br/>434:7,16;441:22<br/><b>excuse (20)</b><br/>424:10;427:20;<br/>430:3;431:3;434:4,9,<br/>18;436:1;440:15,17;<br/>444:3;448:10;<br/>450:10;490:6;<br/>493:23;500:15,21;<br/>540:23;547:12;<br/>560:1<br/><b>Executive (1)</b><br/>508:3<br/><b>exempt (10)</b><br/>429:5,7,23;441:1;<br/>444:22,22,25;<br/>472:19;551:15;<br/>587:17<br/><b>exempted (1)</b><br/>514:2<br/><b>exemption (6)</b><br/>429:13;433:13;<br/>436:20;485:9,10;<br/>496:11<br/><b>exercises (1)</b><br/>438:3<br/><b>exhibit (21)</b><br/>461:13,16,24;<br/>468:6,6;478:23;<br/>483:7;525:3;527:20,<br/>23;529:10,11;<br/>530:11,13,17,18,19;<br/>532:15;536:22;<br/>584:24,25<br/><b>exhibits (5)</b><br/>421:12;510:25;<br/>511:4,5;605:20<br/><b>exigencies (1)</b><br/>609:8<br/><b>exist (3)</b><br/>478:4;483:17;<br/>639:5<br/><b>existence (1)</b><br/>424:23<br/><b>existing (6)</b><br/>538:1,10;539:1;<br/>541:16,22;543:9</p> |
|---|--|---|---|---|



|   |  |   |   |  |
|---|--|---|---|--|
| <p><b>exists (1)</b><br/>534:12</p> <p><b>expanded (1)</b><br/>637:23</p> <p><b>expect (4)</b><br/>503:17;536:10,12;<br/>620:15</p> <p><b>expedited (3)</b><br/>559:24;560:9;<br/>561:3</p> <p><b>expenditure (1)</b><br/>569:11</p> <p><b>expenses (2)</b><br/>557:2;558:4</p> <p><b>experience (4)</b><br/>452:7,10;546:16;<br/>568:12</p> <p><b>experienced (1)</b><br/>611:10</p> <p><b>experiences (1)</b><br/>550:17</p> <p><b>explain (4)</b><br/>446:23;582:22;<br/>586:7;589:1</p> <p><b>explanation (3)</b><br/>423:6;573:20;<br/>640:25</p> <p><b>exports (1)</b><br/>525:8</p> <p><b>expressed (1)</b><br/>634:13</p> <p><b>extended (2)</b><br/>498:16;538:23</p> <p><b>extent (4)</b><br/>429:22;486:9;<br/>562:25;602:1</p> <p><b>extra (4)</b><br/>431:25;432:3;<br/>556:10;644:9</p> <p><b>extraordinarily (1)</b><br/>503:5</p> <p><b>extraordinary (1)</b><br/>503:5</p> <p><b>extremely (1)</b><br/>475:9</p> | <p>470:21;473:25;<br/>523:8;585:8;589:19;<br/>605:23;638:14</p> <p><b>factor (1)</b><br/>448:23</p> <p><b>factored (2)</b><br/>540:3;641:25</p> <p><b>factors (2)</b><br/>495:7;593:13</p> <p><b>facts (1)</b><br/>483:21</p> <p><b>fair (8)</b><br/>429:21;501:10;<br/>519:19;536:2;<br/>611:22;633:16;<br/>639:12,13</p> <p><b>fairly (6)</b><br/>430:11;431:17;<br/>469:18;498:21;<br/>575:17,17</p> <p><b>fairness (1)</b><br/>448:23</p> <p><b>fall (4)</b><br/>445:20;447:21;<br/>554:14;555:23</p> <p><b>fallen (3)</b><br/>496:15,15;497:6</p> <p><b>falls (1)</b><br/>612:14</p> <p><b>familiar (17)</b><br/>430:11;446:8;<br/>455:13;457:12,12;<br/>469:7;472:9;483:4,<br/>9;485:17;571:25;<br/>603:12;613:24;<br/>615:23;616:1,9;<br/>617:13</p> <p><b>familiarity (1)</b><br/>445:17</p> <p><b>far (8)</b><br/>430:6;433:4;<br/>434:23;449:24;<br/>453:24;544:5;<br/>592:21;629:4</p> <p><b>farm (39)</b><br/>427:18;428:9;<br/>431:19,23,23;<br/>432:14;434:3,20;<br/>435:21;437:16;<br/>440:24;441:8,21;<br/>486:8;488:25,25;<br/>494:23;495:6,11,14,<br/>16;496:9;536:9,10;<br/>548:25;549:3,8;<br/>558:18;574:1,4;<br/>581:25;582:7;<br/>596:15;603:1;<br/>620:18;621:19;<br/>623:8;624:20;<br/>630:13</p> <p><b>farmer (5)</b><br/>581:20;620:8,12,<br/>15;637:11</p> | <p><b>Farmers (17)</b><br/>506:21;507:14;<br/>509:14;510:1;529:5;<br/>551:16,17;582:19;<br/>592:16;598:14;<br/>619:25;620:18;<br/>630:6;635:3,5;<br/>636:12;644:11</p> <p><b>farmer's (2)</b><br/>620:8;622:1</p> <p><b>farms (7)</b><br/>443:14;486:8;<br/>620:1;624:9;625:3;<br/>626:11;630:11</p> <p><b>farther (1)</b><br/>641:22</p> <p><b>fashion (5)</b><br/>424:25;469:2;<br/>580:6;614:13;<br/>642:11</p> <p><b>fast (3)</b><br/>431:9;434:14;<br/>639:16</p> <p><b>fat (1)</b><br/>500:15</p> <p><b>favor (1)</b><br/>522:17</p> <p><b>feasible (1)</b><br/>541:24</p> <p><b>features (1)</b><br/>512:10</p> <p><b>February (3)</b><br/>424:5;438:19;<br/>608:18</p> <p><b>Federal (127)</b><br/>422:21;432:1,3;<br/>435:24;440:22;<br/>446:1;447:25;448:6,<br/>8,10,21;449:11,13,<br/>21;451:9,11;455:5;<br/>457:6;458:12,23;<br/>459:12;460:8,14,14,<br/>15,19,19;461:6,17;<br/>462:23;463:22,23;<br/>464:13;466:8,19,22;<br/>467:4,10,15,16;<br/>468:9;469:8;472:18;<br/>477:10,16,20;<br/>478:15,16,17,18,19,<br/>20,21;479:7,8,10;<br/>480:5;482:15;487:1;<br/>490:19;491:5,6;<br/>498:4;505:1;506:2;<br/>510:11;512:1,6,9,13;<br/>513:8;514:19;517:2,<br/>6;519:12,16;521:8,<br/>18;522:1,2,7,16,20;<br/>534:4;538:1,23,25;<br/>543:5,9,12;546:5;<br/>553:15;555:18;<br/>556:8;559:2;569:1,<br/>10;571:20,25;<br/>573:15;574:1,2;</p> | <p>575:4,9,19;577:16,<br/>20,24;578:7;579:3;<br/>580:5;583:23;<br/>584:18;589:12,16;<br/>595:12;597:18;<br/>599:12,22;603:3;<br/>608:4;609:15;616:2;<br/>619:4;638:5,15;<br/>643:23</p> <p><b>feed (3)</b><br/>479:14;510:21;<br/>513:1</p> <p><b>feel (1)</b><br/>426:7</p> <p><b>fees (4)</b><br/>556:9;557:5;<br/>558:11,23</p> <p><b>fell (1)</b><br/>439:10</p> <p><b>felt (2)</b><br/>579:2;636:6</p> <p><b>few (4)</b><br/>456:8;561:20;<br/>623:6;632:16</p> <p><b>field (1)</b><br/>501:5</p> <p><b>fifth (1)</b><br/>551:25</p> <p><b>fight (1)</b><br/>574:10</p> <p><b>figure (1)</b><br/>515:21</p> <p><b>figured (1)</b><br/>536:24</p> <p><b>file (3)</b><br/>511:4;519:3;600:3</p> <p><b>filed (2)</b><br/>511:6;601:22</p> <p><b>filibuster (1)</b><br/>532:11</p> <p><b>filing (1)</b><br/>519:8</p> <p><b>fill (1)</b><br/>454:20</p> <p><b>final (7)</b><br/>554:8;555:1,16;<br/>556:13;558:17;<br/>573:12;581:7</p> <p><b>finally (2)</b><br/>511:8;551:12</p> <p><b>financed (2)</b><br/>569:12,16</p> <p><b>financial (8)</b><br/>433:18;436:6;<br/>444:10;445:8;557:7;<br/>558:14;589:12;<br/>612:22</p> <p><b>find (19)</b><br/>439:4;459:11;<br/>464:13;475:18;<br/>477:9;478:3,15,22;<br/>479:3,10,11;511:7;<br/>514:9;515:14;</p> | <p>532:22;565:3;<br/>567:18,20;586:15</p> <p><b>Findings (1)</b><br/>554:15</p> <p><b>fine (8)</b><br/>423:25;457:10;<br/>475:10;504:17;<br/>538:4;560:7;567:25;<br/>641:24</p> <p><b>finish (1)</b><br/>544:5</p> <p><b>finished (1)</b><br/>455:17</p> <p><b>Firm (6)</b><br/>507:3,17;509:3,17,<br/>18,20</p> <p><b>first (32)</b><br/>425:21;431:2;<br/>438:16;465:19;<br/>468:1;479:11;481:4;<br/>486:22;487:24;<br/>490:2;504:10;510:4;<br/>516:7,7,17;521:2,9;<br/>530:12;534:1;<br/>536:23;551:1,8;<br/>559:15;561:16;<br/>572:8;584:14;587:6;<br/>589:2;590:21;<br/>599:13;630:5;634:7</p> <p><b>five (10)</b><br/>480:7;514:24;<br/>515:23;516:18;<br/>518:17;552:13,19;<br/>570:22;587:8;644:2</p> <p><b>five- (1)</b><br/>515:16</p> <p><b>fix (1)</b><br/>517:25</p> <p><b>fixed (1)</b><br/>519:1</p> <p><b>flexible (1)</b><br/>455:23</p> <p><b>flip (1)</b><br/>610:6</p> <p><b>flip-flopped (1)</b><br/>627:6</p> <p><b>floor (1)</b><br/>425:10</p> <p><b>fluid (49)</b><br/>427:21;428:14,15;<br/>431:21;432:10;<br/>435:4,7;436:2;<br/>437:23;440:14,21;<br/>465:2,8,16,18;472:7;<br/>491:2;493:16,25;<br/>494:7;507:13;<br/>512:11;549:14,16,<br/>17;550:15;551:3,5,9;<br/>552:8;563:7,7;<br/>566:6;580:20,20,22;<br/>581:3;582:20,25;<br/>584:15;585:20;<br/>587:3;591:3;633:6;</p> |
| <b>F</b>  |  |   |   |  |
| <p><b>face (1)</b><br/>521:18</p> <p><b>facilities (18)</b><br/>434:25;435:3,21;<br/>436:24;437:1,2,9,21,<br/>22;440:9,17,17;<br/>441:3;484:5;553:23;<br/>579:16,19;595:10</p> <p><b>facility (7)</b><br/>490:24;523:12;<br/>579:19,20,25;581:2;<br/>629:12</p> <p><b>fact (11)</b><br/>421:15;428:7;<br/>433:1;456:19;</p>   | <p>427:18;428:9;<br/>431:19,23,23;<br/>432:14;434:3,20;<br/>435:21;437:16;<br/>440:24;441:8,21;<br/>486:8;488:25,25;<br/>494:23;495:6,11,14,<br/>16;496:9;536:9,10;<br/>548:25;549:3,8;<br/>558:18;574:1,4;<br/>581:25;582:7;<br/>596:15;603:1;<br/>620:18;621:19;<br/>623:8;624:20;<br/>630:13</p>  | <p>475:4,9,19;577:16,<br/>20,24;578:7;579:3;<br/>580:5;583:23;<br/>584:18;589:12,16;<br/>595:12;597:18;<br/>599:12,22;603:3;<br/>608:4;609:15;616:2;<br/>619:4;638:5,15;<br/>643:23</p>   | <p>532:22;565:3;<br/>567:18,20;586:15</p>   |  |

|   |   |  |   |  |
|---|---|--|---|--|
| <p>637:11;640:15;<br/>641:3,9;642:16<br/><b>FMMO (1)</b><br/>572:2<br/><b>focusing (1)</b><br/>493:15<br/><b>folks (1)</b><br/>589:6<br/><b>follow (6)</b><br/>481:6;485:4;<br/>487:22;489:3;493:3;<br/>553:17<br/><b>followed (1)</b><br/>504:11<br/><b>following (8)</b><br/>431:1;438:16;<br/>450:22;514:24;<br/>555:6;594:14;613:4,<br/>14<br/><b>follows (2)</b><br/>430:5;564:9<br/><b>followup (1)</b><br/>539:13<br/><b>Food (3)</b><br/>482:8;541:17;<br/>577:6<br/><b>Foods (4)</b><br/>508:10,17;533:11,<br/>11<br/><b>footnote (2)</b><br/>616:6,10<br/><b>forbid (1)</b><br/>517:23<br/><b>forgot (1)</b><br/>500:4<br/><b>forgotten (1)</b><br/>593:7<br/><b>form (8)</b><br/>465:18;484:23;<br/>517:12;558:16;<br/>578:9;583:21;<br/>586:18;623:3<br/><b>forma (1)</b><br/>520:24<br/><b>formal (1)</b><br/>578:3<br/><b>formerly (1)</b><br/>534:23<br/><b>formula (5)</b><br/>501:19;535:14;<br/>536:3,8;543:10<br/><b>formulas (7)</b><br/>534:12;538:1,10,<br/>24,25;541:18;542:25<br/><b>Formulation (2)</b><br/>505:8;528:18<br/><b>forth (5)</b><br/>424:15;570:7;<br/>574:12;595:8;629:4<br/><b>fortification (13)</b><br/>472:7;473:11,14,<br/>19;512:11;566:6,20;<br/>603:23;639:23;</p> | <p>641:12,15;642:22;<br/>643:1<br/><b>fortified (1)</b><br/>473:16<br/><b>fortify (4)</b><br/>436:1,3;472:16;<br/>642:16<br/><b>Fortune (1)</b><br/>529:6<br/><b>forward (10)</b><br/>422:3;426:12;<br/>428:6;474:24;<br/>479:18;504:17;<br/>512:21;532:21;<br/>593:2;602:2<br/><b>found (3)</b><br/>477:23;512:6;<br/>524:22<br/><b>foundation (1)</b><br/>500:10<br/><b>four (8)</b><br/>439:8;445:15;<br/>480:7;512:4,12;<br/>537:8;541:5;552:2<br/><b>four-month (1)</b><br/>439:5<br/><b>fourth (2)</b><br/>551:21;572:4<br/><b>fourth-grader (1)</b><br/>572:3<br/><b>frame (1)</b><br/>555:15<br/><b>Frances (1)</b><br/>463:8<br/><b>Francis (3)</b><br/>531:24;538:18;<br/>541:15<br/><b>Francisco (2)</b><br/>506:24;507:3<br/><b>Frankly (2)</b><br/>517:14;532:2<br/><b>frequently (1)</b><br/>616:6<br/><b>fresh (1)</b><br/>615:4<br/><b>Friday (2)</b><br/>644:13,15<br/><b>FRISIUS (4)</b><br/>505:18,19;510:14;<br/>527:22<br/><b>F-R-I-S-I-U-S (1)</b><br/>505:19<br/><b>front (8)</b><br/>426:3;430:12;<br/>461:7;480:10;<br/>518:20;529:11;<br/>572:16;632:5<br/><b>full (11)</b><br/>427:7;445:16;<br/>448:1,2;449:16,17;<br/>463:2;587:11;630:5;<br/>634:7;640:25<br/><b>fully (28)</b></p> | <p>429:5,7,16;<br/>439:15;440:21;<br/>451:15;452:6;453:5,<br/>8,15,18;454:18,23;<br/>455:1;462:22;466:5;<br/>482:1;486:2,6;<br/>489:16;490:1,8;<br/>494:5;495:25;496:4;<br/>572:1;586:25;<br/>587:10<br/><b>fun (1)</b><br/>517:17<br/><b>function (1)</b><br/>424:20<br/><b>functioning (2)</b><br/>570:8;629:20<br/><b>fund (19)</b><br/>443:24;444:4;<br/>448:9,12;453:12;<br/>513:13;554:11,12,<br/>12;556:3;557:6;<br/>558:4,13;569:25;<br/>570:6;595:25;596:1;<br/>600:5,7<br/><b>funded (1)</b><br/>514:10<br/><b>funding (17)</b><br/>513:8,15,17,22,23;<br/>514:25;516:19;<br/>517:19,22;518:5;<br/>521:4,13,24,25;<br/>522:14;537:4;<br/>570:13<br/><b>funds (6)</b><br/>569:21,21;594:4;<br/>596:1,3,4<br/><b>further (9)</b><br/>487:15;513:24;<br/>514:8,15;526:2;<br/>530:9,9;559:17;<br/>614:22<br/><b>future (5)</b><br/>535:7,8;603:17;<br/>607:19,25</p> | <p><b>general (25)</b><br/>426:4;431:17;<br/>446:6;474:12;<br/>489:12;490:13;<br/>504:12;506:11,13;<br/>510:5;516:15;547:9;<br/>548:3;559:7;571:24;<br/>572:12,16,19;592:1,<br/>14;634:16,23;635:8,<br/>22;636:11<br/><b>generalities (2)</b><br/>592:6;638:12<br/><b>generalized (1)</b><br/>634:14<br/><b>generally (15)</b><br/>461:1;469:11;<br/>472:9;563:23;564:3,<br/>9;585:6,9;590:8;<br/>592:8;594:2,16;<br/>595:21;607:2;635:9<br/><b>generates (1)</b><br/>536:8<br/><b>generic (1)</b><br/>589:4<br/><b>generically (3)</b><br/>605:19;606:15,17<br/><b>genius (1)</b><br/>455:10<br/><b>gentlemen (1)</b><br/>474:9<br/><b>geographic (1)</b><br/>499:5<br/><b>geographically (1)</b><br/>499:3<br/><b>geography (2)</b><br/>615:12;624:18<br/><b>Georgia (1)</b><br/>509:13<br/><b>germane (1)</b><br/>482:21<br/><b>gets (8)</b><br/>488:10;491:19;<br/>531:4;560:20;<br/>600:13;619:14,25;<br/>620:1<br/><b>given (9)</b><br/>460:9,9;519:4;<br/>527:18;540:22;<br/>541:14;542:1;603:9;<br/>639:11<br/><b>Gives (2)</b><br/>459:14;520:23<br/><b>Giving (3)</b><br/>514:18;519:6,10<br/><b>glad (1)</b><br/>478:14<br/><b>glass (1)</b><br/>441:20<br/><b>goal (1)</b><br/>432:12<br/><b>God (1)</b><br/>517:23<br/><b>goes (9)</b></p> | <p>436:11;438:14;<br/>467:5;500:11;<br/>532:14;542:6;<br/>604:20;618:23;<br/>643:14<br/><b>good (48)</b><br/>422:14;423:3,4;<br/>425:3,19,20;426:6;<br/>456:2,6,7;479:21,22;<br/>504:6;506:4;507:1,<br/>15,20,24;508:2,5,11,<br/>15;509:1,16,19,21;<br/>510:9;511:19;513:3;<br/>524:5,16,17;531:13,<br/>19;536:24;544:21;<br/>547:3;561:5;571:15;<br/>575:3;576:8,18,22;<br/>597:3;632:14,15;<br/>633:23;644:6<br/><b>Google (1)</b><br/>477:13<br/><b>gore (1)</b><br/>643:10<br/><b>government (10)</b><br/>441:7;508:13;<br/>513:8,13;514:9,25;<br/>517:4;521:12,14;<br/>569:1<br/><b>governmental (1)</b><br/>568:13<br/><b>government's (2)</b><br/>447:12,16<br/><b>gracious (1)</b><br/>425:23<br/><b>grade (10)</b><br/>452:21;572:4;<br/>580:20;582:18;<br/>591:4;602:14;603:2,<br/>14,17;608:3<br/><b>grass (1)</b><br/>441:20<br/><b>great (3)</b><br/>537:21;542:5;<br/>591:17<br/><b>greater (4)</b><br/>448:13;548:13;<br/>552:11;641:6<br/><b>Greg (1)</b><br/>508:11<br/><b>G-R-E-G (1)</b><br/>508:12<br/><b>gross (10)</b><br/>453:4,7,9;454:24;<br/>481:25;490:6;540:5;<br/>550:5,11,12<br/><b>group (1)</b><br/>425:25<br/><b>grouped (2)</b><br/>573:10,11<br/><b>grouping (1)</b><br/>578:14<br/><b>grown (1)</b><br/>578:20</p> |
|   |   |  | <b>G</b>  |  |
|   |   | <p><b>gain (1)</b><br/>440:2<br/><b>gallons (1)</b><br/>559:10<br/><b>game (1)</b><br/>427:7<br/><b>games (1)</b><br/>538:7<br/><b>gap (1)</b><br/>523:4<br/><b>gather (1)</b><br/>532:21<br/><b>gathering (1)</b><br/>598:14<br/><b>gave (1)</b><br/>516:14</p>   |   |  |

|   |  |   |  |  |
|---|--|---|--|--|
| <p><b>guarantee (1)</b><br/>544:3</p> <p><b>guaranteeing (1)</b><br/>490:3</p> <p><b>guess (18)</b><br/>430:13;442:13;<br/>452:14;457:4;461:7;<br/>462:7;463:5;476:2;<br/>523:23;526:14;<br/>543:1;561:25;563:4;<br/>569:20;605:13;<br/>610:13;618:1;<br/>637:16</p> <p><b>guidance (1)</b><br/>442:7</p> <p><b>guideline (1)</b><br/>493:11</p> <p><b>guidelines (3)</b><br/>492:18,22;510:6</p> <p><b>guides (1)</b><br/>442:20</p> <p><b>guys (2)</b><br/>426:7;455:10</p>   | <p>7,8,13,18,18,19,20,<br/>24;590:1,3,6,12;<br/>595:9,11,12,15,18;<br/>596:14,17,18;<br/>601:15,22;606:6,25;<br/>607:5,7;608:15,16,<br/>23;613:22;617:3,4,4,<br/>5,6,10,10,14,15,16,<br/>18,23,24;618:20,21,<br/>22,24;620:19,20,21;<br/>621:17;624:3;625:4</p> <p><b>handler-operated (1)</b><br/>616:21</p> <p><b>handlers (37)</b><br/>435:23;439:3;<br/>440:22;443:18;<br/>444:4,7,10;453:21;<br/>465:5,24;489:7;<br/>509:5;553:2,23;<br/>555:11,14,18;<br/>556:14;557:8,15,18,<br/>24;558:7,21;563:8,<br/>10;573:16;578:22;<br/>589:1;601:8;615:14;<br/>619:17;620:13,15;<br/>625:3;633:20;637:3</p>  | <p>474:6,11,17;<br/>475:18;538:8;571:4</p> <p><b>Harkening (1)</b><br/>559:23</p> <p><b>hate (2)</b><br/>472:3;504:3</p> <p><b>head (6)</b><br/>430:14;453:25;<br/>471:19;472:3;526:4;<br/>565:9</p> <p><b>headed (1)</b><br/>511:11</p> <p><b>headquartered (2)</b><br/>529:4;574:21</p> <p><b>hear (4)</b><br/>421:10;451:25;<br/>512:19;544:14</p> <p><b>heard (1)</b><br/>510:2</p> <p><b>hearing (75)</b><br/>421:11,23;450:13;<br/>456:22;466:21;<br/>468:2,3;471:2,12;<br/>474:10;475:5;<br/>478:11;483:22;<br/>484:9,17;506:17;<br/>511:2,20,24;512:12,<br/>13;513:19,23;514:1,<br/>4,7,8,13,15,17,20,23;<br/>517:20;518:23,25;<br/>519:1,3,6,9,10,23,23,<br/>24;520:5,10,10,21,<br/>23;521:5,25;522:6,9;<br/>539:6;541:1,5,8;<br/>542:3,9,16;544:4,10,<br/>10,11;568:3;570:10;<br/>591:20,22;592:21;<br/>612:4;637:17,21;<br/>638:5,15,16,20</p> <p><b>hearings (4)</b><br/>483:20;611:5;<br/>636:20,23</p> <p><b>heart (2)</b><br/>426:5,7</p> <p><b>held (5)</b><br/>424:10;450:14;<br/>511:24;518:25;<br/>544:11</p> <p><b>help (11)</b><br/>427:4;430:21;<br/>431:12;464:12;<br/>478:3;479:16;511:9;<br/>521:10;579:3;<br/>623:11;630:19</p> <p><b>helpful (10)</b><br/>475:9;503:5;<br/>535:13;577:6,10;<br/>593:1,2;596:23;<br/>612:16;632:7</p> <p><b>helping (1)</b><br/>602:16</p> <p><b>helps (2)</b><br/>479:11;622:4</p> | <p><b>Henry (4)</b><br/>505:25;561:8,21;<br/>634:4</p> <p><b>H-E-N-R-Y (2)</b><br/>505:25;561:9</p> <p><b>herd (2)</b><br/>435:17;437:2</p> <p><b>herds (1)</b><br/>437:3</p> <p><b>here's (5)</b><br/>447:10,10,10;<br/>472:6;501:13</p> <p><b>herself (1)</b><br/>512:22</p> <p><b>hesitate (4)</b><br/>457:4;461:8;<br/>469:5;567:17</p> <p><b>high (2)</b><br/>455:14;503:23</p> <p><b>higher (11)</b><br/>449:10;460:20;<br/>472:8;488:6,11,15,<br/>17,18,21;551:11;<br/>633:16</p> <p><b>highest (2)</b><br/>548:17;550:18</p> <p><b>highlighted (2)</b><br/>616:18,23</p> <p><b>Hill (39)</b><br/>422:23;423:2,24;<br/>461:22;463:8;<br/>506:12,12;524:2,2,2,<br/>13,15,23;526:2;<br/>527:16,18,20;528:9,<br/>11;529:9;530:8;<br/>531:23;532:16;<br/>538:17;540:13,14,<br/>14,18;544:19,20;<br/>545:6;546:24;547:2,<br/>3,3;559:18,19;<br/>561:10,13</p> <p><b>H-I-L-L (1)</b><br/>506:12</p> <p><b>Hilmar (5)</b><br/>487:21;508:20,24;<br/>520:15;615:3</p> <p><b>himself (1)</b><br/>530:23</p> <p><b>historical (2)</b><br/>474:19,19</p> <p><b>historically (2)</b><br/>534:20;598:13</p> <p><b>history (1)</b><br/>546:13</p> <p><b>hit (1)</b><br/>455:14</p> <p><b>hold (2)</b><br/>424:10;524:2</p> <p><b>holding (1)</b><br/>514:12</p> <p><b>hole (1)</b><br/>499:12</p> <p><b>holiday (1)</b></p> | <p>555:24</p> <p><b>HOLLON (2)</b><br/>507:12,12</p> <p><b>H-O-L-L-O-N (1)</b><br/>507:13</p> <p><b>Honor (24)</b><br/>479:23;480:20;<br/>507:15;516:13;<br/>523:13;524:3;526:3;<br/>530:8;531:3,18;<br/>532:16,23;536:23;<br/>543:21;544:20;<br/>559:19,22;561:13;<br/>568:2;576:3;591:14;<br/>604:3;612:1,9</p> <p><b>Honor's (1)</b><br/>474:15</p> <p><b>hop (1)</b><br/>600:10</p> <p><b>hopeful (1)</b><br/>544:5</p> <p><b>hopefully (2)</b><br/>518:14;640:23</p> <p><b>hour (1)</b><br/>544:22</p> <p><b>housing (1)</b><br/>437:3</p> <p><b>hundredweight (9)</b><br/>536:9,10,11,14;<br/>540:7;543:8;558:10;<br/>570:1;611:22</p> <p><b>Hunter (2)</b><br/>505:9,9</p> <p><b>H-U-N-T-E-R (1)</b><br/>505:10</p> <p><b>Hunter's (1)</b><br/>568:20</p> <p><b>hurt (1)</b><br/>465:14</p> <p><b>hyphen (1)</b><br/>511:17</p> <p><b>hyphenated (1)</b><br/>639:19</p> <p><b>hypothesis (1)</b><br/>471:20</p> <p><b>hypothetical (3)</b><br/>466:17;527:5;<br/>536:7</p> <p><b>hypothetically (1)</b><br/>467:8</p> |
| <b>H</b>  |  |   |  |  |
| <p><b>h7 (2)</b><br/>613:17;614:20</p> <p><b>half (3)</b><br/>494:8;527:2;<br/>575:15</p> <p><b>Hancock (9)</b><br/>421:16;425:16,17;<br/>431:11;435:9;<br/>452:17;453:20;<br/>468:16;509:4</p> <p><b>Hancock's (1)</b><br/>484:6</p> <p><b>hand (4)</b><br/>422:6;528:2;<br/>545:17;579:20</p> <p><b>handed (1)</b><br/>597:12</p> <p><b>handle (2)</b><br/>474:9;502:4</p> <p><b>handled (4)</b><br/>562:25;566:20;<br/>629:6;641:20</p> <p><b>handler (99)</b><br/>423:10;436:8;<br/>439:2;440:11;<br/>441:17;449:4;<br/>451:15;454:9,15,18,<br/>19;456:25;473:24,<br/>25,25;485:12;<br/>488:17,24;489:4,15;<br/>549:20,25;551:22;<br/>553:21,25;554:2,9,<br/>10,16;555:1,2,5;<br/>556:16,21;557:1,10,<br/>12,14;558:1,15;<br/>562:18;579:21,22;<br/>580:4;588:25;589:3,</p> | <p><b>handlers' (2)</b><br/>443:19;485:13</p> <p><b>handler's (17)</b><br/>436:7;442:10;<br/>443:9,13,20;444:1;<br/>450:24;451:17;<br/>500:8,9;502:16;<br/>553:19;557:9;<br/>558:18;562:12;<br/>570:25;642:1</p> <p><b>handles (2)</b><br/>435:1;440:14</p> <p><b>handling (7)</b><br/>435:2;437:20,23;<br/>512:1;580:19;<br/>582:18;589:23</p> <p><b>hands (1)</b><br/>523:1</p> <p><b>Hanson (2)</b><br/>506:23;507:3</p> <p><b>H-A-N-S-O-N (1)</b><br/>506:23</p> <p><b>happen (8)</b><br/>439:18;491:20;<br/>513:14;516:25;<br/>518:12,16;562:7;<br/>595:6</p> <p><b>happened (4)</b><br/>480:25;564:23;<br/>577:18;585:9</p> <p><b>happening (1)</b><br/>603:5</p> <p><b>happens (5)</b><br/>562:7;585:7;<br/>586:10;591:23;<br/>595:7</p> <p><b>hard (6)</b></p> |   | <b>I</b>   |  |
|   |  |   | <p><b>ice (1)</b><br/>564:23</p> <p><b>idea (10)</b><br/>430:15;517:14,16;<br/>521:21,22;559:24;<br/>578:17;583:2;<br/>602:12,16</p> <p><b>identical (5)</b><br/>430:5,8;550:20;<br/>603:24;615:22</p>   |  |

|   |  |  |   |   |
|---|--|--|---|---|
| <p><b>identically (1)</b><br/>489:23</p> <p><b>identification (1)</b><br/>527:24</p> <p><b>identified (2)</b><br/>572:8;635:11</p> <p><b>identify (6)</b><br/>504:14;509:8;<br/>512:22;526:9;537:5;<br/>639:24</p> <p><b>identifying (2)</b><br/>421:14;462:11</p> <p><b>II (25)</b><br/>486:23;487:25;<br/>551:6,6,10,11,23;<br/>552:1,11,13,15,17,<br/>21,22,23;553:1,4,6,<br/>7;564:1,2,4,25;<br/>565:7;575:10</p> <p><b>III (22)</b><br/>486:23;487:25;<br/>500:19;501:2;<br/>551:11,23;552:1,13,<br/>15,17,21,22,23;<br/>553:2,4,6,7;564:13,<br/>22,22;575:10,21</p> <p><b>ill (1)</b><br/>532:3</p> <p><b>Illinois (3)</b><br/>573:8;624:24;<br/>625:1</p> <p><b>illustrative (1)</b><br/>591:21</p> <p><b>immediately (1)</b><br/>556:14</p> <p><b>impact (12)</b><br/>430:22;466:13;<br/>473:10;487:7,9;<br/>506:7;538:22,22;<br/>543:4;606:1;608:25;<br/>611:17</p> <p><b>impacted (1)</b><br/>473:17</p> <p><b>impacts (2)</b><br/>543:11;611:15</p> <p><b>impaired (1)</b><br/>472:20</p> <p><b>implementation (1)</b><br/>481:2</p> <p><b>implemented (1)</b><br/>594:18</p> <p><b>implication (1)</b><br/>612:22</p> <p><b>imply (1)</b><br/>468:19</p> <p><b>import (1)</b><br/>528:22</p> <p><b>important (5)</b><br/>455:9;495:9;<br/>592:21;597:19;<br/>602:10</p> <p><b>importantly (1)</b><br/>562:5</p> | <p><b>impossible (1)</b><br/>518:4</p> <p><b>impute (1)</b><br/>488:1</p> <p><b>imputes (1)</b><br/>488:9</p> <p><b>inadvertently (1)</b><br/>538:10</p> <p><b>Inc (6)</b><br/>506:20,20,21;<br/>507:11;509:14,14</p> <p><b>incentive (1)</b><br/>628:19</p> <p><b>include (10)</b><br/>437:1,21;512:5;<br/>557:20;559:4;<br/>563:19;594:10;<br/>618:8;625:2;641:9</p> <p><b>included (11)</b><br/>520:12;522:23;<br/>539:25;554:22;<br/>555:5;557:6,9;<br/>558:12;573:4;615:8;<br/>616:20</p> <p><b>includes (4)</b><br/>484:23;538:24;<br/>555:5;556:9</p> <p><b>including (11)</b><br/>437:22;438:2;<br/>490:25;539:17,20;<br/>565:13;581:2;<br/>594:13;604:18;<br/>621:13;642:21</p> <p><b>inclusion (1)</b><br/>441:4</p> <p><b>incorporate (3)</b><br/>512:3,7;569:9</p> <p><b>incorporated (1)</b><br/>459:3</p> <p><b>incorporates (2)</b><br/>480:4;491:8</p> <p><b>increase (7)</b><br/>472:23,25;641:16,<br/>18;643:12,14,17</p> <p><b>increased (1)</b><br/>448:24</p> <p><b>increasing (1)</b><br/>473:6</p> <p><b>incremental (1)</b><br/>642:21</p> <p><b>incur (1)</b><br/>453:6</p> <p><b>incurred (1)</b><br/>558:4</p> <p><b>independent (1)</b><br/>578:19</p> <p><b>indicate (2)</b><br/>523:5;602:11</p> <p><b>indicated (3)</b><br/>479:1;504:12;<br/>512:14</p> <p><b>indicates (4)</b><br/>456:24;510:20;</p> | <p>513:19;518:23</p> <p><b>indication (3)</b><br/>479:6;517:7;<br/>518:11</p> <p><b>indirectly (2)</b><br/>436:5;438:3</p> <p><b>individual (7)</b><br/>427:16;432:23;<br/>433:2;477:23;480:1;<br/>558:2;578:20</p> <p><b>Industry (6)</b><br/>508:12;509:12;<br/>528:21;573:14;<br/>578:20;579:3</p> <p><b>ineligible (2)</b><br/>492:14;603:2</p> <p><b>influence (1)</b><br/>492:5</p> <p><b>informal (1)</b><br/>578:2</p> <p><b>information (26)</b><br/>460:1,6;461:15;<br/>462:9,11;474:13;<br/>504:23;512:16,23;<br/>513:10;516:24;<br/>520:12;525:10,21;<br/>527:3;535:16;542:7;<br/>543:3;547:5;553:18;<br/>554:24;559:5,6;<br/>569:9;614:19;627:5</p> <p><b>initial (1)</b><br/>517:14</p> <p><b>initially (1)</b><br/>616:12</p> <p><b>inputs (1)</b><br/>539:17</p> <p><b>input-wise (1)</b><br/>540:3</p> <p><b>inquired (1)</b><br/>634:18</p> <p><b>inquiries (1)</b><br/>532:1</p> <p><b>inquiring (1)</b><br/>433:4</p> <p><b>inside (3)</b><br/>557:17;598:20;<br/>609:16</p> <p><b>instance (17)</b><br/>467:19;468:21;<br/>489:20;562:17;<br/>564:21;570:13;<br/>571:1;581:11;<br/>586:12;587:1;588:9;<br/>589:13;600:16;<br/>603:16;605:22;<br/>606:24;607:5</p> <p><b>instances (4)</b><br/>497:16;568:22,25;<br/>617:14</p> <p><b>instead (6)</b><br/>478:17;482:23;<br/>525:21;590:9,17;<br/>615:14</p> | <p><b>Institute (14)</b><br/>483:4;507:18,22;<br/>508:1,4,6,14;524:19;<br/>525:2;530:1;538:2,<br/>23;539:1;571:16</p> <p><b>instructs (2)</b><br/>549:10,13</p> <p><b>intake (3)</b><br/>614:10,11,12</p> <p><b>integrated (1)</b><br/>484:22</p> <p><b>integrity (2)</b><br/>435:10;436:15</p> <p><b>intend (1)</b><br/>644:3</p> <p><b>intended (1)</b><br/>606:23</p> <p><b>intent (1)</b><br/>520:9</p> <p><b>interact (1)</b><br/>562:6</p> <p><b>interchangeably (1)</b><br/>563:22</p> <p><b>interest (7)</b><br/>436:6;437:16;<br/>438:1,5;512:23;<br/>533:20;538:13</p> <p><b>interested (8)</b><br/>421:17;474:20;<br/>512:4;519:21;<br/>533:24;537:20;<br/>538:16;543:2</p> <p><b>interesting (1)</b><br/>586:15</p> <p><b>interim (1)</b><br/>542:24</p> <p><b>interject (1)</b><br/>576:6</p> <p><b>intermediate (2)</b><br/>564:15;565:2</p> <p><b>intermixed (1)</b><br/>644:10</p> <p><b>internal (5)</b><br/>492:18,22;493:3,4,<br/>7</p> <p><b>interplay (1)</b><br/>535:10</p> <p><b>interpose (2)</b><br/>591:15,16</p> <p><b>interrelate (1)</b><br/>565:14</p> <p><b>interrupt (2)</b><br/>421:18;568:2</p> <p><b>interrupted (2)</b><br/>523:2;640:24</p> <p><b>intimately (1)</b><br/>455:13</p> <p><b>into (67)</b><br/>427:4;435:4;<br/>439:11;443:23;<br/>445:20;447:25;<br/>448:6,9,12,13,17,23;<br/>449:2,13,20;459:4;</p> | <p>461:13;465:6;<br/>466:15;467:6;<br/>475:13;482:17;<br/>483:21;498:12,25;<br/>500:11;530:10,16,<br/>18,20;537:12;540:3;<br/>542:7;543:18;<br/>562:22,23,23,25;<br/>563:8,24;564:10,13,<br/>20,21;569:9;570:11;<br/>572:18;574:24;<br/>576:18;584:14,19;<br/>586:24;587:9;<br/>595:24;604:21;<br/>605:7;607:10;<br/>612:14,17;616:25;<br/>618:17;628:8;<br/>629:20;634:11,18;<br/>641:25;642:15</p> <p><b>introduce (3)</b><br/>504:8;509:25;<br/>530:23</p> <p><b>introduced (1)</b><br/>511:5</p> <p><b>introducing (1)</b><br/>421:14</p> <p><b>introductions (1)</b><br/>510:6</p> <p><b>introductory (1)</b><br/>493:22</p> <p><b>inventory (5)</b><br/>443:11;492:8;<br/>493:18;550:14;<br/>552:16</p> <p><b>investigate (1)</b><br/>594:8</p> <p><b>investment (2)</b><br/>433:18;542:5</p> <p><b>invests (1)</b><br/>594:4</p> <p><b>invite (1)</b><br/>545:14</p> <p><b>invoice (1)</b><br/>556:8</p> <p><b>involve (1)</b><br/>568:13</p> <p><b>involved (6)</b><br/>436:13;438:8;<br/>445:25;471:5;<br/>519:21;527:2</p> <p><b>involvement (2)</b><br/>441:24;484:3</p> <p><b>involves (1)</b><br/>552:4</p> <p><b>Iowa (2)</b><br/>573:7;625:1</p> <p><b>issue (10)</b><br/>483:16;484:4;<br/>515:12;531:22;<br/>532:13;540:16;<br/>611:11;612:4,7;<br/>644:9</p> <p><b>issued (1)</b></p> |
|---|--|--|---|---|

|   |   |  |   |  |
|---|---|--|---|--|
| <p>466:20<br/><b>issues (9)</b><br/>423:9;484:11,15;<br/>532:1;537:25;559:5;<br/>609:7;611:6,10<br/><b>IV (28)</b><br/>486:22;487:24;<br/>488:8;551:10,11,23;<br/>552:1,13,15,17,21,<br/>22,23;553:2,4,6,7;<br/>563:24;564:13;<br/>575:10,24;640:13;<br/>641:17,19;643:2,15,<br/>17,19</p>  | <p>531:5,9,12,19;<br/>532:18;533:3,5,12,<br/>14;536:18,21;537:3,<br/>12,15;540:10;<br/>543:22;544:12,13,<br/>14,22;545:3,7,10,22;<br/>546:1,7,9,16,20,23;<br/>559:14,20;560:5,8,<br/>12,14,18,21;561:5,<br/>10,15;567:17,21;<br/>576:11,15,21;577:3,<br/>10,13;592:22;<br/>596:22;597:8;<br/>604:11,13;606:9,21;<br/>612:14;613:6,8;<br/>614:23;623:13,18;<br/>630:17,19;631:6,25;<br/>632:6;633:24;<br/>634:19;639:15;<br/>640:3,9;643:22,23;<br/>644:6</p>  | <p>621:9;625:8;628:25;<br/>629:10;630:3;631:2;<br/>640:21;643:9<br/><b>kinds (2)</b><br/>522:20;631:14<br/><b>knew (2)</b><br/>530:24;576:23<br/><b>knowing (3)</b><br/>462:15,15;615:23<br/><b>knowledge (5)</b><br/>463:20;469:1,16;<br/>496:24;529:16<br/><b>known (9)</b><br/>450:12,12;500:17;<br/>527:19;551:7;557:4;<br/>558:11;614:1,6<br/><b>Kristine (1)</b><br/>509:16<br/><b>K-R-I-S-T-I-N-E (1)</b><br/>509:17</p>  | <p>597:9;635:1<br/><b>late (4)</b><br/>556:5,8,13,14<br/><b>later (4)</b><br/>531:15;555:19,21;<br/>574:25<br/><b>Laurel (2)</b><br/>505:6;510:9<br/><b>L-A-U-R-E-L (1)</b><br/>505:6<br/><b>Lauren (1)</b><br/>506:10<br/><b>L-A-U-R-E-N (1)</b><br/>506:10<br/><b>Law (12)</b><br/>421:10;463:23;<br/>507:3,17;509:3,17,<br/>17,20;514:1,7;<br/>544:13;577:22<br/><b>lawyers (1)</b><br/>523:7<br/><b>lay (3)</b><br/>428:7;448:22;<br/>614:13<br/><b>laying (1)</b><br/>595:6<br/><b>layman's (1)</b><br/>592:19<br/><b>laymen's (1)</b><br/>586:7<br/><b>layout (1)</b><br/>614:13<br/><b>layperson (3)</b><br/>579:9;583:19;<br/>585:23<br/><b>lays (1)</b><br/>595:14<br/><b>lead (2)</b><br/>479:16;588:1<br/><b>leak (1)</b><br/>491:10<br/><b>least (24)</b><br/>449:4;465:20,21;<br/>466:9,10;483:4;<br/>484:2,5;489:18,24,<br/>24;498:25;518:5;<br/>520:23;522:24;<br/>524:1;526:6;532:13;<br/>542:9;566:15;<br/>584:19;603:24;<br/>617:13;629:24<br/><b>leave (5)</b><br/>421:16;476:5;<br/>530:24;618:5;<br/>643:20<br/><b>leaves (3)</b><br/>450:6,11;493:17<br/><b>leaving (5)</b><br/>483:15;503:19,20;<br/>609:8;611:15<br/><b>left (2)</b><br/>476:23;531:9<br/><b>LEMMON (2)</b></p> | <p>508:5,6<br/><b>L-E-M-M-O-N (1)</b><br/>508:6<br/><b>Leprino (3)</b><br/>508:9;533:2,11<br/><b>L-E-P-R-I-N-O (2)</b><br/>508:10;533:11<br/><b>less (14)</b><br/>440:25;444:1;<br/>448:11;449:10;<br/>454:11;482:19;<br/>491:13,16;548:20;<br/>552:10;575:22;<br/>605:9;626:14;<br/>631:20<br/><b>lesser (1)</b><br/>454:13<br/><b>letter (1)</b><br/>524:24<br/><b>letting (1)</b><br/>455:18<br/><b>level (6)</b><br/>472:23;473:6;<br/>533:6;534:6;536:9,<br/>11<br/><b>life (2)</b><br/>498:16;608:2<br/><b>limit (4)</b><br/>470:15;473:8,13;<br/>494:17<br/><b>limitation (4)</b><br/>433:13;435:24;<br/>440:23;608:25<br/><b>limitations (1)</b><br/>484:21<br/><b>limited (3)</b><br/>463:13;594:13;<br/>622:13<br/><b>limits (2)</b><br/>496:3;597:24<br/><b>line (7)</b><br/>425:12;465:19;<br/>511:15,17;577:8;<br/>598:3;602:8<br/><b>lines (9)</b><br/>511:11,15;597:15;<br/>599:9,9;600:1,2;<br/>634:10,25<br/><b>liquidation (1)</b><br/>595:8<br/><b>list (16)</b><br/>457:20;460:10;<br/>462:17;463:4;<br/>471:21;474:25,25;<br/>475:18;485:10,12;<br/>497:14,17;510:15;<br/>586:20;620:13,13<br/><b>listed (1)</b><br/>623:6<br/><b>listen (1)</b><br/>510:22<br/><b>listened (1)</b><br/>513:1</p> |
| <p style="text-align: center;"><b>J</b></p>   | <p><b>judgment (1)</b><br/>469:6<br/><b>July (1)</b><br/>491:14<br/><b>jump (1)</b><br/>503:23<br/><b>jumped (1)</b><br/>452:1<br/><b>June (11)</b><br/>491:14,18,21,22,<br/>23;492:2,2,3,6,14,20<br/><b>June's (3)</b><br/>492:6,15,21</p>   | <p style="text-align: center;"><b>L</b></p> <p><b>labeled (1)</b><br/>549:17<br/><b>lack (1)</b><br/>521:4<br/><b>lag (1)</b><br/>458:3<br/><b>laid (1)</b><br/>587:18<br/><b>Lake (1)</b><br/>604:20<br/><b>land (3)</b><br/>437:3;506:20;<br/>507:7<br/><b>language (31)</b><br/>430:8;436:11;<br/>441:20;456:13;<br/>468:19,22;469:4,7,9,<br/>12,13,15,21;472:17;<br/>473:8,13;483:23;<br/>489:7;498:21;<br/>501:22;502:1,9;<br/>512:17;515:20;<br/>521:10;559:13;<br/>563:19;565:4;634:9;<br/>637:18,19<br/><b>lapse (11)</b><br/>513:8,15,22;<br/>516:19;517:18,22;<br/>518:5;521:23,24;<br/>522:14;537:3<br/><b>large (2)</b><br/>528:22;575:17<br/><b>larger (1)</b><br/>575:23<br/><b>last (13)</b><br/>441:15;445:16;<br/>487:23;509:2;<br/>524:18;533:12;<br/>544:10;551:19;<br/>593:5;594:22;596:7;</p> | <p><b>law (12)</b><br/>421:10;463:23;<br/>507:3,17;509:3,17,<br/>17,20;514:1,7;<br/>544:13;577:22<br/><b>lawyers (1)</b><br/>523:7<br/><b>lay (3)</b><br/>428:7;448:22;<br/>614:13<br/><b>laying (1)</b><br/>595:6<br/><b>layman's (1)</b><br/>592:19<br/><b>laymen's (1)</b><br/>586:7<br/><b>layout (1)</b><br/>614:13<br/><b>layperson (3)</b><br/>579:9;583:19;<br/>585:23<br/><b>lays (1)</b><br/>595:14<br/><b>lead (2)</b><br/>479:16;588:1<br/><b>leak (1)</b><br/>491:10<br/><b>least (24)</b><br/>449:4;465:20,21;<br/>466:9,10;483:4;<br/>484:2,5;489:18,24,<br/>24;498:25;518:5;<br/>520:23;522:24;<br/>524:1;526:6;532:13;<br/>542:9;566:15;<br/>584:19;603:24;<br/>617:13;629:24<br/><b>leave (5)</b><br/>421:16;476:5;<br/>530:24;618:5;<br/>643:20<br/><b>leaves (3)</b><br/>450:6,11;493:17<br/><b>leaving (5)</b><br/>483:15;503:19,20;<br/>609:8;611:15<br/><b>left (2)</b><br/>476:23;531:9<br/><b>LEMMON (2)</b></p>   | <p><b>less (14)</b><br/>440:25;444:1;<br/>448:11;449:10;<br/>454:11;482:19;<br/>491:13,16;548:20;<br/>552:10;575:22;<br/>605:9;626:14;<br/>631:20<br/><b>lesser (1)</b><br/>454:13<br/><b>letter (1)</b><br/>524:24<br/><b>letting (1)</b><br/>455:18<br/><b>level (6)</b><br/>472:23;473:6;<br/>533:6;534:6;536:9,<br/>11<br/><b>life (2)</b><br/>498:16;608:2<br/><b>limit (4)</b><br/>470:15;473:8,13;<br/>494:17<br/><b>limitation (4)</b><br/>433:13;435:24;<br/>440:23;608:25<br/><b>limitations (1)</b><br/>484:21<br/><b>limited (3)</b><br/>463:13;594:13;<br/>622:13<br/><b>limits (2)</b><br/>496:3;597:24<br/><b>line (7)</b><br/>425:12;465:19;<br/>511:15,17;577:8;<br/>598:3;602:8<br/><b>lines (9)</b><br/>511:11,15;597:15;<br/>599:9,9;600:1,2;<br/>634:10,25<br/><b>liquidation (1)</b><br/>595:8<br/><b>list (16)</b><br/>457:20;460:10;<br/>462:17;463:4;<br/>471:21;474:25,25;<br/>475:18;485:10,12;<br/>497:14,17;510:15;<br/>586:20;620:13,13<br/><b>listed (1)</b><br/>623:6<br/><b>listen (1)</b><br/>510:22<br/><b>listened (1)</b><br/>513:1</p>   |
| <p style="text-align: center;"><b>James (2)</b><br/>508:23,23<br/><b>January (3)</b><br/>438:18;572:23;<br/>574:5<br/><b>Jill (1)</b><br/>421:9<br/><b>job (1)</b><br/>422:18<br/><b>John (11)</b><br/>487:20;505:21;<br/>506:22;508:5,19;<br/>520:15;545:24;<br/>572:3;615:3;624:21;<br/>631:9<br/><b>J-O-H-N (3)</b><br/>505:21;506:22;<br/>545:25<br/><b>join (1)</b><br/>627:11<br/><b>J-O-N-G (1)</b><br/>508:23<br/><b>JUDGE (159)</b><br/>421:6,10;422:12,<br/>18,22;423:21,25;<br/>424:6,12,17,22;<br/>425:3,7,13,23;<br/>451:23,25;452:11,<br/>12,16;455:20;456:1;<br/>463:13;464:11,17,<br/>21;474:3;475:6,25;<br/>476:6,14,17,21,25;<br/>477:3;478:8,12;<br/>485:15,20;487:17;<br/>499:23;503:4,14,20,<br/>25;504:3;506:14;<br/>509:7,24;510:15,19;<br/>511:10;513:18;<br/>514:7;515:9,22,25;<br/>516:4;519:1,3;<br/>520:11,20,22,24,25;<br/>521:3,7,21;522:12;<br/>523:16;524:5,9,13;<br/>525:13;526:4,25;<br/>527:13,18,25;528:6,<br/>9;529:1,530:12,21;</p> | <p style="text-align: center;"><b>K</b></p> <p><b>KALDOR (2)</b><br/>508:2,2<br/><b>K-A-L-D-O-R (1)</b><br/>508:3<br/><b>keep (8)</b><br/>431:17;441:18;<br/>449:4;458:6;466:17;<br/>474:25;476:3,4<br/><b>keeping (1)</b><br/>522:21<br/><b>keeps (3)</b><br/>436:21,21,21<br/><b>Kentucky (1)</b><br/>509:13<br/><b>key (1)</b><br/>447:10<br/><b>kind (31)</b><br/>425:23;426:7;<br/>448:22;455:18;<br/>517:14;562:8;<br/>567:10,10;571:5,23;<br/>572:1;573:13;574:9;<br/>577:17;579:21;<br/>586:15;589:3,9;<br/>590:6;596:4;599:5;<br/>601:21;609:11;</p> | <p style="text-align: center;"><b>L</b></p> <p><b>labeled (1)</b><br/>549:17<br/><b>lack (1)</b><br/>521:4<br/><b>lag (1)</b><br/>458:3<br/><b>laid (1)</b><br/>587:18<br/><b>Lake (1)</b><br/>604:20<br/><b>land (3)</b><br/>437:3;506:20;<br/>507:7<br/><b>language (31)</b><br/>430:8;436:11;<br/>441:20;456:13;<br/>468:19,22;469:4,7,9,<br/>12,13,15,21;472:17;<br/>473:8,13;483:23;<br/>489:7;498:21;<br/>501:22;502:1,9;<br/>512:17;515:20;<br/>521:10;559:13;<br/>563:19;565:4;634:9;<br/>637:18,19<br/><b>lapse (11)</b><br/>513:8,15,22;<br/>516:19;517:18,22;<br/>518:5;521:23,24;<br/>522:14;537:3<br/><b>large (2)</b><br/>528:22;575:17<br/><b>larger (1)</b><br/>575:23<br/><b>last (13)</b><br/>441:15;445:16;<br/>487:23;509:2;<br/>524:18;533:12;<br/>544:10;551:19;<br/>593:5;594:22;596:7;</p> | <p><b>law (12)</b><br/>421:10;463:23;<br/>507:3,17;509:3,17,<br/>17,20;514:1,7;<br/>544:13;577:22<br/><b>lawyers (1)</b><br/>523:7<br/><b>lay (3)</b><br/>428:7;448:22;<br/>614:13<br/><b>laying (1)</b><br/>595:6<br/><b>layman's (1)</b><br/>592:19<br/><b>laymen's (1)</b><br/>586:7<br/><b>layout (1)</b><br/>614:13<br/><b>layperson (3)</b><br/>579:9;583:19;<br/>585:23<br/><b>lays (1)</b><br/>595:14<br/><b>lead (2)</b><br/>479:16;588:1<br/><b>leak (1)</b><br/>491:10<br/><b>least (24)</b><br/>449:4;465:20,21;<br/>466:9,10;483:4;<br/>484:2,5;489:18,24,<br/>24;498:25;518:5;<br/>520:23;522:24;<br/>524:1;526:6;532:13;<br/>542:9;566:15;<br/>584:19;603:24;<br/>617:13;629:24<br/><b>leave (5)</b><br/>421:16;476:5;<br/>530:24;618:5;<br/>643:20<br/><b>leaves (3)</b><br/>450:6,11;493:17<br/><b>leaving (5)</b><br/>483:15;503:19,20;<br/>609:8;611:15<br/><b>left (2)</b><br/>476:23;531:9<br/><b>LEMMON (2)</b></p>   | <p><b>less (14)</b><br/>440:25;444:1;<br/>448:11;449:10;<br/>454:11;482:19;<br/>491:13,16;548:20;<br/>552:10;575:22;<br/>605:9;626:14;<br/>631:20<br/><b>lesser (1)</b><br/>454:13<br/><b>letter (1)</b><br/>524:24<br/><b>letting (1)</b><br/>455:18<br/><b>level (6)</b><br/>472:23;473:6;<br/>533:6;534:6;536:9,<br/>11<br/><b>life (2)</b><br/>498:16;608:2<br/><b>limit (4)</b><br/>470:15;473:8,13;<br/>494:17<br/><b>limitation (4)</b><br/>433:13;435:24;<br/>440:23;608:25<br/><b>limitations (1)</b><br/>484:21<br/><b>limited (3)</b><br/>463:13;594:13;<br/>622:13<br/><b>limits (2)</b><br/>496:3;597:24<br/><b>line (7)</b><br/>425:12;465:19;<br/>511:15,17;577:8;<br/>598:3;602:8<br/><b>lines (9)</b><br/>511:11,15;597:15;<br/>599:9,9;600:1,2;<br/>634:10,25<br/><b>liquidation (1)</b><br/>595:8<br/><b>list (16)</b><br/>457:20;460:10;<br/>462:17;463:4;<br/>471:21;474:25,25;<br/>475:18;485:10,12;<br/>497:14,17;510:15;<br/>586:20;620:13,13<br/><b>listed (1)</b><br/>623:6<br/><b>listen (1)</b><br/>510:22<br/><b>listened (1)</b><br/>513:1</p>   |

|  |  |  |   |   |
|--|--|--|---|---|
| <p><b>listening (1)</b><br/>511:22</p> <p><b>listing (2)</b><br/>475:8;481:8</p> <p><b>lists (8)</b><br/>460:11;473:24,25;<br/>474:1,18,19,20;<br/>480:22</p> <p><b>literally (2)</b><br/>482:7;614:7</p> <p><b>little (38)</b><br/>427:2;431:6,24;<br/>432:3;455:19,22;<br/>458:3;475:25;477:4;<br/>528:13;532:21;<br/>552:6,9,9,10,11,12;<br/>563:12;564:11;<br/>573:1;576:6;588:19;<br/>589:15;590:7;598:3;<br/>600:9;601:2;602:24;<br/>604:6;605:11;<br/>610:14;625:17;<br/>627:1;631:13,22;<br/>632:9;641:10,22</p> <p><b>live (1)</b><br/>510:21</p> <p><b>living (1)</b><br/>502:5</p> <p><b>load (5)</b><br/>563:5;566:23;<br/>596:12;629:19,24</p> <p><b>located (37)</b><br/>424:13;437:4;<br/>447:22;458:19;<br/>462:18,25;464:25;<br/>465:4,23;466:14;<br/>467:12,18;481:16,<br/>17;482:4;497:15;<br/>498:13;499:3,6,6,12,<br/>15;525:4;568:19;<br/>574:21;584:7,18;<br/>610:1,5,7,615:5;<br/>624:18,23,25;<br/>625:10,11,15</p> <p><b>location (16)</b><br/>441:11;444:17,20;<br/>454:3;457:23;<br/>458:13,17;459:7,9;<br/>460:7,11,13;481:18;<br/>517:25;525:3;<br/>625:13</p> <p><b>locations (1)</b><br/>525:20</p> <p><b>locked (2)</b><br/>498:12,25</p> <p><b>locked-in (1)</b><br/>498:24</p> <p><b>long (21)</b><br/>424:2;429:6,10;<br/>431:25;433:8;445:7;<br/>469:20;471:16;<br/>476:23;496:6;497:5;<br/>517:7;526:25;528:8;</p> | <p>546:20;574:13,23;<br/>596:2;607:16;<br/>623:15;628:18</p> <p><b>longer (3)</b><br/>523:4;590:16;<br/>603:4</p> <p><b>look (50)</b><br/>431:14,15;432:25;<br/>433:6;438:22;447:6;<br/>450:1;452:24;<br/>454:11;458:12;<br/>459:6,7;462:10;<br/>464:10;469:15;<br/>471:16,25;472:1;<br/>477:18,25;478:18,<br/>20,20;479:6,16;<br/>480:2,25;481:1,22,<br/>24;482:7,7,14;485:9;<br/>489:14,17,22,23;<br/>492:18;495:4;499:4;<br/>503:8;518:19,21;<br/>526:17;529:22;<br/>536:22;561:22;<br/>576:25;620:13</p> <p><b>look-back (1)</b><br/>438:24</p> <p><b>looked (7)</b><br/>483:3,5,11;632:23,<br/>25;633:4,5</p> <p><b>looking (22)</b><br/>452:17;453:6,17;<br/>461:23;468:4;479:4;<br/>490:5;495:6;538:4;<br/>543:2,3;572:14;<br/>577:6;583:13;<br/>590:13;597:15;<br/>600:12;602:3,5;<br/>613:12;614:18;<br/>630:3</p> <p><b>looks (7)</b><br/>448:5;456:1;<br/>483:12;544:6;<br/>572:11;590:20;<br/>611:13</p> <p><b>Lorie (3)</b><br/>504:22;524:4,11</p> <p><b>L-O-R-I-E (2)</b><br/>504:22;524:11</p> <p><b>Los (1)</b><br/>458:20</p> <p><b>lose (6)</b><br/>432:5;433:13;<br/>437:19;438:19;<br/>439:17,23</p> <p><b>loses (1)</b><br/>608:2</p> <p><b>losing (1)</b><br/>623:12</p> <p><b>loss (3)</b><br/>494:7;496:11;<br/>548:9</p> <p><b>lost (6)</b><br/>429:13,17;439:6;</p> | <p>480:9;603:1;623:13</p> <p><b>lot (9)</b><br/>443:1,2;533:1;<br/>571:20;576:23;<br/>584:22;589:6,16;<br/>592:1</p> <p><b>Louis (1)</b><br/>546:13</p> <p><b>love (5)</b><br/>474:4;515:22;<br/>521:21,22;533:6</p> <p><b>lovely (1)</b><br/>523:20</p> <p><b>low (1)</b><br/>575:17</p> <p><b>lower (8)</b><br/>488:9,13,14;<br/>489:5;494:9,11;<br/>553:5;605:3</p> <p><b>lowest (6)</b><br/>486:22;488:2;<br/>548:16;550:16;<br/>574:8;575:18</p> <p><b>lunch (2)</b><br/>523:24;544:21</p> <p><b>Lunchable (1)</b><br/>463:17</p>   | <p>508:16</p> <p><b>manages (2)</b><br/>443:16;494:18</p> <p><b>mandated (2)</b><br/>574:2;577:22</p> <p><b>mandates (1)</b><br/>577:23</p> <p><b>manner (3)</b><br/>519:4;554:2;<br/>615:21</p> <p><b>manufactures (1)</b><br/>582:21</p> <p><b>manufacturing (4)</b><br/>564:11,14;622:10;<br/>626:1</p> <p><b>many (12)</b><br/>450:12;453:21,25;<br/>466:8;500:24;<br/>503:17;513:6;523:1,<br/>3;626:22;635:9,11</p> <p><b>map (1)</b><br/>479:16</p> <p><b>March (1)</b><br/>608:20</p> <p><b>marked (4)</b><br/>461:24;527:20,23;<br/>529:11</p> <p><b>Market (82)</b><br/>422:19;424:4,8,<br/>11;427:23;428:24;<br/>430:25;440:1;<br/>461:14;463:1,24;<br/>465:23;488:1;493:6;<br/>497:23;498:12;<br/>504:23;505:10;<br/>546:17,18;553:22;<br/>555:21;557:1,2,4;<br/>558:7;559:5,6,9;<br/>564:11;568:4,9,14;<br/>569:12,15,18,21,24;<br/>570:2,4,13;575:14;<br/>578:11,583:24;<br/>584:17;585:2,6,11,<br/>11,12;587:9,21;<br/>588:9;593:23;594:3,<br/>10,17;596:1;599:3;<br/>600:23;602:15,17;<br/>605:8;609:5,10,11,<br/>16;611:15,18;<br/>613:23;616:2,5;<br/>617:7;618:4,7;<br/>620:14,25;621:8;<br/>633:10;636:5,7;<br/>637:11</p> <p><b>marketed (3)</b><br/>616:19;621:9,13</p> <p><b>marketing (65)</b><br/>424:3,18;427:19;<br/>446:4;464:25;465:3;<br/>466:20;467:10;<br/>493:23;499:5,8,13,<br/>14,15;504:11,20;<br/>505:4,7,19;506:2;</p> | <p>507:13;510:5,11;<br/>512:1,2,9;528:17;<br/>546:5;547:21;<br/>554:12;557:17;<br/>558:6,11,12,13,21,<br/>23;578:21;582:8,8;<br/>584:11,20;586:25;<br/>587:5;595:13;596:1;<br/>598:23;605:9;610:1,<br/>10,11,19;615:5,13,<br/>14,16;616:14;625:6,<br/>20;637:22;638:1,5,<br/>17;639:11;643:25</p> <p><b>marketplace (3)</b><br/>598:1,8,10</p> <p><b>markets (6)</b><br/>497:25;551:16;<br/>575:17;579:2;<br/>615:15;616:6</p> <p><b>marketwide (6)</b><br/>441:5;447:11,15,<br/>24;449:8;481:19</p> <p><b>Marvin (9)</b><br/>456:8;500:3;<br/>506:18;518:13;<br/>539:12;561:20;<br/>591:15;606:10;<br/>634:3</p> <p><b>M-A-R-V-I-N (1)</b><br/>506:18</p> <p><b>MA's (3)</b><br/>557:7;558:2,13</p> <p><b>master's (1)</b><br/>546:14</p> <p><b>material (2)</b><br/>430:9;643:23</p> <p><b>mathematical (1)</b><br/>553:25</p> <p><b>matter (6)</b><br/>498:19;520:4;<br/>523:10;582:5,7;<br/>635:23</p> <p><b>matters (7)</b><br/>421:15;455:22;<br/>510:3;523:17,22;<br/>604:8;644:12</p> <p><b>maximum (2)</b><br/>519:22;596:3</p> <p><b>may (93)</b><br/>422:23;426:4;<br/>429:15;439:14,15,<br/>15;440:20;443:10,<br/>11,12;446:15;<br/>463:14,15;464:7;<br/>465:1;479:15;<br/>481:10;486:10;<br/>491:20;492:3,7,13,<br/>15,20;496:4,8;<br/>497:17;498:16;<br/>504:1;505:6,6;510:9,<br/>9,17;517:9;518:3,4,<br/>11,11;524:13;<br/>527:15;528:9;532:4;</p> |
|  |  | <b>M</b>   |   |   |
|  |  | <p><b>MA (23)</b><br/>549:10,13;553:22,<br/>24;554:4,10,10,13;<br/>555:2,12,25;556:3,3,<br/>15,15;557:3;558:5,<br/>10,24;559:1,4,5,8</p> <p><b>machine (2)</b><br/>491:1;581:3</p> <p><b>magnitude (1)</b><br/>543:12</p> <p><b>Maine (1)</b><br/>509:12</p> <p><b>maintain (2)</b><br/>495:9;496:7</p> <p><b>maintaining (2)</b><br/>441:16;595:15</p> <p><b>maintains (1)</b><br/>594:4</p> <p><b>majority (4)</b><br/>526:8;627:22,24,<br/>24</p> <p><b>makes (6)</b><br/>440:25;544:2;<br/>587:7;594:6;595:18;<br/>606:5</p> <p><b>making (4)</b><br/>558:8;578:24;<br/>594:18;633:20</p> <p><b>management (7)</b><br/>431:15;434:7,17;<br/>436:6;438:4;508:17,<br/>24</p> <p><b>Manager (1)</b></p> |   |   |

|   |   |  |   |   |
|---|---|--|---|---|
| 533:14;535:6;537:6;<br>538:12,24;543:12;<br>544:17;547:24;<br>549:11;552:2;554:9,<br>11,13,15,23;555:4;<br>556:11;557:19;<br>558:2;559:1;560:11,<br>23,25;591:21,21;<br>592:9;593:2,17,21;<br>600:4;603:16;607:1,<br>13,19;610:16,21;<br>616:7,19;622:17;<br>623:13,20;624:8,17;<br>625:2,4;627:10;<br>628:2;632:1;634:15;<br>641:22  | 428:21;429:1,3;<br>433:8;445:7;448:1;<br>472:16;473:16;<br>494:3,22;527:6;<br>586:24;588:8;<br>595:15;603:5;<br>619:18;620:2;<br>622:25;623:10,11;<br>624:8;625:13;<br>629:15;638:1   | 581:9  | 557:10,21,21;559:2,<br>8,10;562:12,19;<br>563:7,7,18;564:4,12,<br>21;566:4,6,23;570:1,<br>4,25;573:17;575:10,<br>16;576:23;578:21;<br>579:15,16;580:20,<br>20,22;581:3,5,6,12,<br>17,19,24;582:5,7,19,<br>19,20,25;583:2,10,<br>10,18,25;584:8,15,<br>16;585:11,12,20;<br>586:10;587:3,22;<br>588:20;589:11,20,<br>24;590:1,2,3,4,5,12;<br>591:2,4,4,9,11,12,24;<br>593:12,16,17,20,20;<br>595:12;596:10,15,<br>15;598:9,11,11,14,<br>15;599:17;600:13,<br>14,16,17,20;601:4,6,<br>13,18,22;602:2,14,<br>22,22,23;603:22,23;<br>604:5,23;605:6;<br>606:1,5;607:1,2,8,<br>10,12,12,24;608:3,6,<br>9,19,24;609:1,15,16;<br>610:9,10,16,19;<br>612:7,25;614:15;<br>615:7,12,14,18,19;<br>616:2,5,7,19,21;<br>617:6,11,15,16,20,<br>25;618:22,23;<br>619:14,25;620:1,8,<br>14,17;621:1,5,15,16,<br>18;622:8,16,16;<br>623:8;624:5,5,9,17;<br>625:22;626:5;<br>627:19,25;628:20,<br>21;629:6,18,19,24;<br>630:5,6,10;632:24;<br>633:4,6,16,18,19,21;<br>635:3,4,5,5,12;<br>636:7,8,12,12,25;<br>637:2;638:24,25;<br>639:17;640:13,14,<br>14,15;641:3,4,9,12,<br>12,14;642:1,15,16;<br>643:24 | 12;543:22<br><b>M-I-L-T-N-E-R (1)</b><br>509:20<br><b>mind (3)</b><br>427:9;532:22;<br>615:4<br><b>mindful (1)</b><br>479:13<br><b>minimal (1)</b><br>513:9<br><b>minimum (17)</b><br>465:5,7,24;<br>481:18;489:25,25;<br>490:3;539:22;<br>554:13;559:3;601:3,<br>7,13,20,23;602:4;<br>629:10<br><b>minimums (1)</b><br>556:8<br><b>Minneapolis (1)</b><br>574:22<br><b>Minnesota (3)</b><br>573:5,7;625:1<br><b>minus (1)</b><br>549:4<br><b>minute (3)</b><br>474:4;475:7;515:3<br><b>minutes (4)</b><br>515:23;544:22;<br>598:25;644:2<br><b>miracle (1)</b><br>560:22<br><b>mirky (1)</b><br>592:8<br><b>misleading (1)</b><br>634:18<br><b>missed (2)</b><br>485:4;575:1<br><b>missing (1)</b><br>531:7<br><b>Mississippi (2)</b><br>497:4;499:12<br><b>misstated (1)</b><br>600:11<br><b>mistaken (1)</b><br>576:21<br><b>misunderstood (1)</b><br>470:13<br><b>Mitner (2)</b><br>540:23,23<br><b>Mitt (1)</b><br>540:23<br><b>model (10)</b><br>535:20,23;536:13;<br>539:17;540:2;541:2,<br>6;542:13;543:10;<br>559:16<br><b>modeled (3)</b><br>535:25;536:15;<br>541:22<br><b>modeling (2)</b><br>540:20;541:3<br><b>models (1)</b> |
| <b>M-A-Y (1)</b><br>505:6<br><b>maybe (17)</b><br>430:7;470:5;<br>474:23;475:4;485:4,<br>5;515:16;517:20;<br>518:2;520:17,20;<br>565:14;587:8;592:6;<br>603:25;615:22;<br>622:9<br><b>May's (1)</b><br>492:5<br><b>mean (28)</b><br>423:22;430:15;<br>432:8;433:16;<br>439:16;440:3;<br>471:15;474:16;<br>482:18;486:6;<br>488:19;490:18;<br>503:9;527:4;539:19;<br>566:11;568:17;<br>571:23;575:7;577:5;<br>584:8;590:14;<br>591:24;597:9;<br>599:21;606:13;<br>609:23;630:10<br><b>meaning (2)</b><br>625:19;643:4<br><b>meaningful (1)</b><br>593:1<br><b>means (16)</b><br>427:15;428:2;<br>432:9;486:21;<br>490:21;492:25;<br>503:12;519:16;<br>538:11;550:3;<br>580:18,25;586:10;<br>595:5;599:16;<br>621:16<br><b>meant (3)</b><br>478:3;481:1;<br>485:16<br><b>mechanics (1)</b><br>605:12<br><b>mechanism (1)</b><br>444:6<br><b>meet (24)</b> | <b>meeting (1)</b><br>517:24<br><b>meets (4)</b><br>428:18;497:10;<br>583:22;587:6<br><b>Megan (2)</b><br>507:1,2<br><b>M-E-G-A-N (1)</b><br>507:2<br><b>member (3)</b><br>508:14;617:6;<br>626:6<br><b>members (4)</b><br>510:17;558:8;<br>589:21;601:10<br><b>memorized (1)</b><br>632:3<br><b>memory (2)</b><br>619:1;632:2<br><b>mention (1)</b><br>603:21<br><b>mentioned (5)</b><br>542:22;577:16;<br>586:14;630:21,21<br><b>Meredith (2)</b><br>505:18;510:14<br><b>M-E-R-E-D-I-T-H (1)</b><br>505:18<br><b>merely (1)</b><br>613:13<br><b>merged (7)</b><br>529:5;573:24;<br>574:6,8,9,24;618:17<br><b>merger (1)</b><br>572:24<br><b>met (6)</b><br>428:1;433:6;<br>438:17,23;449:16;<br>496:7<br><b>method (1)</b><br>446:5<br><b>methodology (1)</b><br>533:24<br><b>Michigan (4)</b><br>546:14;573:2;<br>604:20,20<br><b>microphone (1)</b><br>510:19<br><b>Mid (3)</b><br>544:10,12;615:15<br><b>mid-2000 (1)</b><br>611:5<br><b>middleman (1)</b> | <b>Midwest (4)</b><br>506:1;572:25;<br>574:20;624:19<br><b>might (27)</b><br>460:11,12;474:20,<br>20;477:11;484:5;<br>489:4,4;515:8,15;<br>538:10;543:5,11,17,<br>20;544:21;566:14,<br>14;568:19;575:5,20;<br>576:1,8,8;608:24;<br>615:20;644:11<br><b>Milk (450)</b><br>422:19,21;424:2,<br>18;427:21;428:11,<br>14,15;429:4,14;<br>431:21,25;432:1,3,6,<br>10,11,14;434:6,25;<br>435:2,4,5,6,7,19,19,<br>20,21,24,25;436:1,2,<br>25;437:4,6,8,10,12,<br>20,24;440:8,11,14,<br>16,21;441:2,2,2,6,8;<br>443:1,5,6,8,10,14,19,<br>21,22;444:1,2,18;<br>446:1;447:13,16,24;<br>448:6,13,17;449:5;<br>451:6,8;452:9;453:1,<br>4,5,7,8,9,10,14,14,<br>19;454:25;455:1;<br>458:18,20;463:21;<br>465:2,5,7,8,10,16,18,<br>25;467:10;472:7,15,<br>15;473:2,5,6;481:22,<br>25;482:1,19;484:6,<br>13;486:3,7,9,11,14,<br>14,18,20,25;487:4,<br>12,13;488:2,4,6,9,10,<br>12,13,16,25,25;<br>489:5,8,8,17;490:7,<br>8,11;491:2,10,23,24;<br>492:6,7,13,20;<br>493:16,25;494:7,21;<br>495:10,12,16,24;<br>496:1,4,8,9,17;<br>500:14;501:20;<br>502:16;503:9;<br>505:10;506:1;<br>509:13,18;510:11;<br>511:13;512:1,2,5,6,<br>9,11;525:4,5;527:11;<br>533:19;534:16;<br>535:18,25;540:4;<br>541:12;546:5;<br>547:13;548:5,23,25;<br>549:2,4,5,5,7,11,14,<br>15,18;550:2,3,6,6,7,<br>10,13,15;551:2,3,5,5,<br>8,9,14,14,15,15,17,<br>17,19,21,24,25;<br>552:8,8,14,18,24;<br>553:8,14,14,19; | <b>milking (1)</b><br>437:2<br><b>million (22)</b><br>427:23,23;428:4,5,<br>10,13;429:1,7,12,23,<br>24;430:18;470:14,<br>24;472:14;490:14;<br>493:16,17;494:1,19,<br>21,23<br><b>millions (1)</b><br>530:4<br><b>Miltner (9)</b><br>509:17,19,19,20;<br>540:19,23;541:11,   |   |

|  |   |   |  |  |
|--|---|---|--|--|
| <p>540:1<br/><b>modifications (3)</b><br/>451:4,5;520:6<br/><b>modified (4)</b><br/>517:15;525:19;<br/>538:3;641:5<br/><b>modifies (1)</b><br/>555:23<br/><b>modify (1)</b><br/>640:15<br/><b>moment (6)</b><br/>480:19;508:22;<br/>524:3;601:1;604:5;<br/>611:16<br/><b>money (6)</b><br/>446:5;569:25;<br/>570:5;595:24;605:9;<br/>611:22<br/><b>Montana (6)</b><br/>496:16,18,24;<br/>497:7,18,20<br/><b>month (56)</b><br/>427:22;438:16,17,<br/>25;439:2,5,8,10,20,<br/>21,22,24,24,24,25;<br/>440:2;445:6;447:7;<br/>450:8,9;461:6,6;<br/>482:17;491:17;<br/>492:19;493:17,18,<br/>20;494:1;554:6;<br/>556:6;587:22,24;<br/>588:13;601:11;<br/>603:17;605:23,24;<br/>607:19,23,25;608:3,<br/>10,15,16,20,21,21;<br/>611:14,20;626:19,<br/>19;629:18,19,24;<br/>637:3<br/><b>monthly (18)</b><br/>450:7;457:21,24;<br/>458:1,2;485:13;<br/>525:7;526:9,13;<br/>553:21;554:23;<br/>555:6,11;559:5;<br/>588:7,22;628:7;<br/>635:10<br/><b>months (8)</b><br/>461:19;479:15;<br/>481:2;527:6;555:14;<br/>558:3;608:17;<br/>610:18<br/><b>month's (1)</b><br/>500:20<br/><b>month-to-month (1)</b><br/>628:2<br/><b>M-O-O-D-Y (1)</b><br/>509:22<br/><b>more (41)</b><br/>432:4;441:18;<br/>442:24;446:7;448:8,<br/>10,11;449:14;<br/>453:13;461:8;465:4,<br/>8,15,24;466:14;</p> | <p>468:19,20;479:11,<br/>24;483:9,12;488:12;<br/>517:12;522:19;<br/>526:19;527:2,9;<br/>533:1;571:24;<br/>578:18;592:14,19;<br/>593:24;595:1;602:7;<br/>605:8;616:6;627:5;<br/>630:16;632:10;<br/>635:20<br/><b>morning (28)</b><br/>421:8;423:3,4;<br/>425:19,20;456:6,7;<br/>479:21,22;506:4;<br/>507:1,15,20,24;<br/>508:2,5,11,15;509:1,<br/>16,19,21;510:9;<br/>513:3,20;531:24;<br/>584:21;644:20<br/><b>most (15)</b><br/>424:13,14,16;<br/>452:20;461:5,18;<br/>467:17;498:5,11;<br/>513:10;620:6,18,18;<br/>624:14;630:20<br/><b>move (14)</b><br/>428:6;433:25;<br/>435:15;442:4;446:5;<br/>482:22;484:6;510:3;<br/>564:2;565:18;566:1;<br/>588:4;600:16,17<br/><b>moved (3)</b><br/>537:10;564:16;<br/>574:19<br/><b>movement (1)</b><br/>459:15<br/><b>movements (8)</b><br/>550:14;618:12,12,<br/>15,16,18,19,20<br/><b>moves (1)</b><br/>583:18<br/><b>moving (3)</b><br/>564:12;566:19;<br/>593:14<br/><b>MREA (6)</b><br/>463:10,19;464:23;<br/>466:12;481:2,4<br/><b>much (20)</b><br/>424:17;425:8;<br/>443:12;470:9,10;<br/>474:16;478:13;<br/>487:16;496:3;497:4;<br/>503:25;516:13;<br/>528:25;537:14;<br/>541:9;542:12;<br/>546:23;575:1;<br/>587:14;608:15<br/><b>multiple (11)</b><br/>467:16;497:25;<br/>500:17,18;501:4;<br/>539:16,16;578:22,<br/>23;579:23;610:20<br/><b>Multiply (2)</b></p> | <p>500:20,21<br/><b>multiplying (1)</b><br/>552:4<br/><b>must (13)</b><br/>421:16;488:18;<br/>607:3,11;613:21,23;<br/>624:4;627:15;<br/>629:17,18,23;631:3,<br/>15<br/><b>Mykrantz (14)</b><br/>505:21,21;545:3,<br/>24,25;548:2;559:15,<br/>21;560:1,5,23;<br/>565:23;569:20;<br/>570:2<br/><b>M-Y-K-R-A-N-T-Z (2)</b><br/>505:22;545:25<br/><b>myself (3)</b><br/>446:14;452:15;<br/>460:12</p>   | <p>587:11;594:15;<br/>595:16;596:3;<br/>606:18;619:18;<br/>636:6;644:12<br/><b>needed (1)</b><br/>637:25<br/><b>needs (1)</b><br/>606:11<br/><b>negative (2)</b><br/>460:23;554:14<br/><b>neighborhood (2)</b><br/>514:24;543:8<br/><b>neither (2)</b><br/>434:24;436:4<br/><b>net (3)</b><br/>443:4;492:2;555:7<br/><b>Nevada (1)</b><br/>467:22<br/><b>Nevertheless (2)</b><br/>495:4;627:10<br/><b>new (12)</b><br/>433:3,15;456:25;<br/>497:1;529:4;569:10;<br/>572:14;590:6;626:4;<br/>632:25;637:25;<br/>638:23<br/><b>next (29)</b><br/>436:23,23;441:2;<br/>452:3;456:3;475:3;<br/>476:1;479:17;<br/>487:17;493:18;<br/>503:16;511:17,17;<br/>513:20;521:3;<br/>523:23,25;545:3,13;<br/>555:4,24;560:4;<br/>567:23,25;591:22;<br/>596:24;614:23;<br/>637:3;644:8<br/><b>Nicole (2)</b><br/>425:17;509:4<br/><b>nine (4)</b><br/>462:6,7;570:14,15<br/><b>ninth (1)</b><br/>552:24<br/><b>nitty-gritty (1)</b><br/>643:10<br/><b>nod (1)</b><br/>567:1<br/><b>non (1)</b><br/>481:17<br/><b>non-attorney (1)</b><br/>576:13<br/><b>none (2)</b><br/>530:17;540:11<br/><b>non-essential (2)</b><br/>522:15,18<br/><b>nonetheless (2)</b><br/>486:24;487:7<br/><b>Nonfat (12)</b><br/>435:25;436:1;<br/>473:2,4,9;500:15;<br/>534:2,14,16;603:23;<br/>640:14;641:11</p> | <p><b>non-federally (2)</b><br/>465:3,22<br/><b>nonfluid (3)</b><br/>432:6;549:15;<br/>557:21<br/><b>non-Grade (1)</b><br/>551:14<br/><b>nonpool (46)</b><br/>496:10;557:13;<br/>562:24;564:16;<br/>586:5,8,11,12,13,16,<br/>17,18;587:12,18,20;<br/>588:5,17;589:5,21;<br/>593:21;596:16;<br/>599:18,19,21,23;<br/>601:5,7,14,16;602:2,<br/>3;605:24;607:2,12;<br/>613:18,21;614:7;<br/>617:11;618:12,16,<br/>19,23;622:10;<br/>625:22;626:1;628:6<br/><b>nonregulated (1)</b><br/>600:15<br/><b>nor (3)</b><br/>434:25;436:4,6<br/><b>Normally (4)</b><br/>421:13,19;443:2;<br/>449:25<br/><b>North (3)</b><br/>573:6,6;625:1<br/><b>Northeast (4)</b><br/>505:23;528:21;<br/>529:24;530:2<br/><b>Northwest (13)</b><br/>422:20;424:19;<br/>425:1,5;458:5;<br/>464:20;470:8,11;<br/>471:7,14;485:25;<br/>546:5,21<br/><b>note (2)</b><br/>522:8;570:13<br/><b>noted (2)</b><br/>577:14;612:16<br/><b>notes (1)</b><br/>478:5<br/><b>notice (37)</b><br/>456:22;468:2,3;<br/>473:23;474:5,8,11,<br/>12;475:1,4,14;<br/>478:11;479:8;<br/>480:21;484:18;<br/>512:13;514:19;<br/>517:5,17;518:16;<br/>519:1,3,4,6,8,10,25;<br/>520:3,9,13,23;521:3,<br/>4,24;522:8;541:5,8<br/><b>noticed (3)</b><br/>452:11;471:3;<br/>541:5<br/><b>notices (1)</b><br/>475:19<br/><b>notification (8)</b><br/>514:8,15,16,18;</p> |
|  |   | <b>N</b>  |  |  |
|  |   | <b>name (25)</b><br>421:9;422:15;<br>436:16,17;440:10,<br>10;441:11;457:22;<br>460:11;472:3;<br>504:19;506:4;507:9,<br>16;508:5,19;524:10;<br>525:3;528:14;529:1;<br>533:9;545:23,24;<br>561:7;636:3<br><b>namely (1)</b><br>550:7<br><b>names (2)</b><br>441:12;525:19<br><b>narrow (1)</b><br>500:23<br><b>NASS (2)</b><br>534:23;569:8<br><b>National (3)</b><br>445:25;555:24;<br>569:7<br><b>nature (2)</b><br>591:18;641:7<br><b>necessarily (11)</b><br>429:15;576:7;<br>580:4;581:7;583:4;<br>584:8;598:21,22;<br>600:19;621:18;<br>639:9<br><b>necessary (3)</b><br>557:2;559:2;<br>594:11<br><b>need (26)</b><br>432:25;448:24;<br>464:6;475:25;478:3,<br>17;510:13;511:7;<br>517:1,19;521:8,10;<br>523:11;536:18;<br>539:2;543:13;<br>572:15;585:24; |  |  |



|   |  |   |  |   |  |
|---|--|---|--|---|--|
| <p>519:11,13,22,25<br/><b>notified (1)</b><br/>556:14<br/><b>notify (1)</b><br/>555:2<br/><b>Nov (1)</b><br/>542:16<br/><b>November (2)</b><br/>542:9;544:4<br/><b>novices (1)</b><br/>577:5<br/><b>number (40)</b><br/>425:4;428:25;<br/>461:16,18,20,23,24;<br/>471:6;477:14;<br/>478:19;479:11;<br/>506:2,25;507:4;<br/>511:6,14,17,17;<br/>514:10;517:13;<br/>519:13;524:23,25;<br/>525:3;527:19,21;<br/>529:10,11;530:11;<br/>571:1;573:22;574:8,<br/>11;577:21;584:22;<br/>586:13;597:4;<br/>604:21;610:17;<br/>633:9<br/><b>numbers (13)</b><br/>421:24;476:9;<br/>477:8;485:16;<br/>529:19;538:12,15;<br/>584:20,24;585:2,7,9;<br/>613:6<br/><b>nutshell (1)</b><br/>454:24</p> | <p><b>obvious (1)</b><br/>537:19<br/><b>obviously (10)</b><br/>450:3;454:2;<br/>460:21;461:4;486:7;<br/>538:17;587:15;<br/>600:11;633:14,14<br/><b>occasion (1)</b><br/>568:25<br/><b>occasions (1)</b><br/>488:20<br/><b>occur (1)</b><br/>495:1<br/><b>occurred (3)</b><br/>485:22,22;642:25<br/><b>occurs (3)</b><br/>548:19;550:3;<br/>596:14<br/><b>October (6)</b><br/>513:20;514:4;<br/>517:18,23;588:15;<br/>608:12<br/><b>off (15)</b><br/>425:21;430:14;<br/>440:4;453:24;<br/>471:19;472:2;474:3;<br/>522:1;537:18;<br/>538:18;565:9;<br/>600:25;611:21;<br/>626:18;633:18<br/><b>offer (1)</b><br/>612:11<br/><b>offhand (4)</b><br/>566:9;567:6,8,12<br/><b>Office (25)</b><br/>424:11,15;475:19;<br/>490:10;493:6,8,10;<br/>494:15;504:12;<br/>506:11,13;517:2;<br/>546:6,18,18;555:25;<br/>556:19;568:15,20;<br/>569:12;570:6,7,8,14;<br/>611:13<br/><b>Officer (1)</b><br/>507:11<br/><b>offices (2)</b><br/>444:7;554:13<br/><b>official (10)</b><br/>473:23;474:4,8,11,<br/>12;475:1,4,14;<br/>480:21;484:18<br/><b>officially (1)</b><br/>519:23<br/><b>offset (1)</b><br/>451:10<br/><b>often (1)</b><br/>621:20<br/><b>O'Lakes (2)</b><br/>506:20;507:8<br/><b>old (3)</b><br/>574:14;633:1,2<br/><b>Oliver (1)</b><br/>507:1</p> | <p><b>once (10)</b><br/>428:19,19;429:3;<br/>432:21;520:18;<br/>608:1;611:9;627:16;<br/>628:14;629:12<br/><b>one (117)</b><br/>422:1;426:17,17,<br/>18,19;427:1;428:25;<br/>429:12;430:7;431:2;<br/>432:17;434:2;439:6,<br/>20;441:2,22;444:12,<br/>15,19;445:16;<br/>449:14,25;454:16;<br/>456:16;463:13;<br/>465:4,23;466:14,23;<br/>475:2,13;478:9;<br/>480:8;481:1;489:15;<br/>490:12;493:17;<br/>495:9;497:1;498:1,<br/>16;500:4;506:25;<br/>507:5;510:24;<br/>518:14;520:2,2;<br/>524:3;526:7,19,25;<br/>527:1,2,9;530:2,3,<br/>15;534:1;540:16;<br/>551:20;556:2;<br/>560:15;563:10;<br/>565:17;566:23;<br/>573:10,15;575:20;<br/>576:1;577:23,24;<br/>579:18,23,25;580:3,<br/>8;586:15,18;589:15,<br/>24;590:15,20;<br/>592:17;593:19;<br/>596:7;597:9,9,10,11;<br/>602:7;605:16,23;<br/>606:18;611:2;<br/>612:19;614:10,11,<br/>15,16;616:6,18;<br/>618:17;619:4;<br/>620:14;623:10;<br/>624:16,16;626:19;<br/>627:21;629:21,24;<br/>631:14;637:2;<br/>638:22;640:2;641:2<br/><b>ones (4)</b><br/>539:18;541:5;<br/>590:21;594:22<br/><b>only (33)</b><br/>421:21;422:1;<br/>428:5;435:19,20;<br/>446:14;447:5,19;<br/>448:4,16,20;449:7;<br/>462:16;480:1,12;<br/>485:22;494:10;<br/>496:25;497:11;<br/>499:4;502:20;<br/>520:10;543:24;<br/>556:7,21;585:19;<br/>587:8;592:3;593:12;<br/>597:6;608:18,18;<br/>627:21<br/><b>onto (2)</b></p> | <p>568:7;603:18<br/><b>open (5)</b><br/>425:10;549:18;<br/>553:3;554:4;555:25<br/><b>opening (2)</b><br/>561:11;644:9<br/><b>operate (11)</b><br/>430:1;439:4;<br/>441:25;442:21;<br/>455:2,3;457:2;<br/>466:13;469:1;514:3;<br/>565:14<br/><b>operated (6)</b><br/>434:17;437:5,25;<br/>441:6;613:19;619:3<br/><b>operates (7)</b><br/>427:18;431:23;<br/>456:12;589:5;607:5,<br/>7;620:21<br/><b>operating (3)</b><br/>423:10;456:25;<br/>620:24<br/><b>operation (17)</b><br/>431:21;434:5;<br/>436:7,9,22;437:7,11,<br/>13;438:6,9;441:9;<br/>457:13;466:9;<br/>484:23,24;500:9;<br/>579:14<br/><b>operations (5)</b><br/>463:9;472:13;<br/>555:14;578:23;<br/>634:15<br/><b>operator (12)</b><br/>447:9;591:6;<br/>617:2,19,19;620:9;<br/>624:23;626:11,17;<br/>628:11,25;629:22<br/><b>operators (4)</b><br/>621:3;624:17;<br/>625:13;626:22<br/><b>opinion (1)</b><br/>612:11<br/><b>opportunistic (1)</b><br/>636:24<br/><b>opportunity (3)</b><br/>512:18;516:14;<br/>536:22<br/><b>oppose (1)</b><br/>523:3<br/><b>opposed (8)</b><br/>467:11;468:3;<br/>481:16;533:2;534:4;<br/>587:13,24;592:19<br/><b>opposite (1)</b><br/>443:25<br/><b>opposition (1)</b><br/>471:13<br/><b>opt (1)</b><br/>454:7<br/><b>Option (5)</b><br/>450:12,19;462:17;<br/>481:22;497:11</p> | <p><b>order (325)</b><br/>424:18,24;426:14;<br/>427:3;428:23;430:1,<br/>5,6;432:1,2;435:24;<br/>440:22;442:10;<br/>443:3,15;444:16;<br/>445:1;446:2;447:21,<br/>25;448:6,8,10,12,17,<br/>21,25;449:2,8,11,13,<br/>20,21;450:24,25;<br/>451:2;453:21;455:5;<br/>456:21;457:3,15;<br/>458:13,23;459:12;<br/>460:19;461:6,17;<br/>462:16,23,23;464:8,<br/>9,20,22;466:2,3,13,<br/>20,22;467:4,13,15;<br/>468:17;469:4,8,16;<br/>471:5,7;472:2,11,16;<br/>473:12;478:11;<br/>480:1,5,22,22;<br/>481:24;482:15,17,<br/>19;483:23;484:2;<br/>486:1;487:2;491:5,<br/>6;492:24;496:25;<br/>498:4,22,22,25;<br/>499:3,5,10,13,16;<br/>501:9,14,15,22;<br/>502:1,14;505:2,8,10,<br/>23;506:2,2;510:11;<br/>512:1,9;514:9;<br/>520:21;521:3;534:3,<br/>4;538:23,25;544:12;<br/>547:19;551:18;<br/>552:14,24;553:18;<br/>554:21;555:9,18,20,<br/>22;556:1,8,25;557:3,<br/>13,19;558:5,9;559:3,<br/>12;562:5,13;564:15;<br/>565:13;566:8;567:3;<br/>568:10,18;569:3,6;<br/>572:11,15,20,22,23,<br/>24,25,25,25;573:1,2,<br/>4,10,12,15,18,21,23,<br/>24,25;574:11,13,14,<br/>14,15,17,18,20,20,<br/>21,23,24;575:3,4,6,<br/>24;576:7,8,9,18,23;<br/>577:16,24;578:7,16,<br/>17;580:5;583:23;<br/>584:18,20,23;585:5,<br/>13,15,18,24;586:16,<br/>16,17,18;587:1,15,<br/>16;589:12,17;<br/>590:21,23;591:1,19,<br/>24;592:3,5,10,13,24,<br/>25;593:9,11,15;<br/>594:6,7,12,18;595:7,<br/>13;597:23;599:12,<br/>16,20,23;600:4;<br/>601:4;603:3,15;<br/>604:15;606:13,24,<br/>25;608:1,2,4,8,14;</p> |  |
| <b>O</b>  |  |   |  |   |  |
| <p><b>object (2)</b><br/>576:11,14<br/><b>objection (1)</b><br/>591:16<br/><b>objections (4)</b><br/>530:11,14,16;<br/>634:13<br/><b>obligated (1)</b><br/>482:16<br/><b>obligation (27)</b><br/>442:10;443:13;<br/>445:8;447:19;<br/>448:14,15;449:10;<br/>450:15,24;453:12;<br/>460:19,23;487:10,<br/>11;488:17;489:14,<br/>16;500:8;501:25;<br/>502:17;554:3,7,8;<br/>562:12;600:5,6,20<br/><b>obligations (8)</b><br/>452:10;461:2;<br/>489:23;490:1;555:6,<br/>7;569:23;595:21<br/><b>obtain (2)</b><br/>433:19;560:15</p>   |  |   |  |   |  |

|  |   |  |  |  |
|--|---|--|--|--|
| 609:17,19;610:3,4,5,<br>9;611:1,1,8,9,25;<br>613:10;615:6,13,13,<br>20,22;616:2;617:13;<br>618:11,13,17;619:2,<br>5,6,6,19;620:1,3,4;<br>624:1;625:5;626:22;<br>627:4,19,22;628:20;<br>629:17;631:3,15;<br>632:17,20,25;633:1,<br>2,2,3;634:15;635:10,<br>18,25;636:2,9,23;<br>637:1,4,8,10;638:4,<br>5,6,11,15,17;639:2,2,<br>2,12;641:12;642:9;<br>644:8 | <b>others (6)</b><br>481:20;498:17;<br>512:19;543:20;<br>561:12;565:14<br><b>otherwise (5)</b><br>430:8;457:20;<br>468:25;488:11;<br>551:20<br><b>ought (1)</b><br>639:10<br><b>Ours (1)</b><br>584:20<br><b>ourselves (2)</b><br>475:18;516:15<br><b>out (57)</b><br>428:7;431:12;<br>436:19;439:4,10,13;<br>443:4;444:3,13;<br>445:24;454:20;<br>476:23;480:9;484:5;<br>489:11,11;499:2;<br>502:18;511:20,22;<br>514:9;515:21;<br>522:16;532:22;<br>536:7,25;544:23;<br>564:4;565:22;569:3,<br>16,22;570:2,16;<br>576:24;581:6;587:3,<br>18;588:20;592:23;<br>595:6,7,14,24;<br>598:13;599:14,18;<br>602:18;614:13;<br>628:5,15,15;638:20,<br>24;639:18;642:18;<br>643:16<br><b>outlet (2)</b><br>490:22;581:1<br><b>outlets (1)</b><br>437:22<br><b>outlining (1)</b><br>493:4<br><b>Outlook (1)</b><br>528:24<br><b>out-of-area (3)</b><br>638:24,25;639:16<br><b>outside (13)</b><br>444:23;447:21;<br>449:6;481:20;525:4;<br>577:6;594:4;609:16,<br>23;624:18;625:6,10,<br>11<br><b>outstanding (1)</b><br>555:14<br><b>Over (16)</b><br>429:24;433:17;<br>438:2;443:22;<br>461:11;465:12;<br>483:8;484:4;490:4;<br>511:6;539:22;<br>560:10;574:11;<br>611:19;643:12,14<br><b>overage (5)</b><br>443:12;548:7,19, | 21;550:15<br><b>overages (1)</b><br>553:12<br><b>overdue (4)</b><br>547:17;555:17;<br>556:6,22<br><b>overly (1)</b><br>483:8<br><b>overview (2)</b><br>571:24;577:17<br><b>owe (2)</b><br>451:18,19<br><b>own (23)</b><br>434:18,18,19;<br>435:17,21;438:6,6;<br>440:24;455:13;<br>492:19;493:2,4;<br>498:3;544:1;558:18;<br>581:12;590:21,24,<br>24;601:18;607:9,9;<br>633:4<br><b>owned (2)</b><br>437:5,24<br><b>owned/operated (1)</b><br>434:21<br><b>owner (1)</b><br>432:14<br><b>ownership (6)</b><br>431:20;432:20;<br>433:5;434:7,16;<br>483:19<br><b>owns (1)</b><br>431:23 | 483:6;597:6,15;<br>598:2,2;599:10,13,<br>25;602:8;616:15,23;<br>630:2,9;634:4<br><b>pages (1)</b><br>480:12<br><b>paid (17)</b><br>449:11;453:18;<br>461:9;481:22;<br>482:11,12,19;<br>486:25;487:12;<br>489:3,5,17,23;490:4;<br>554:16;559:3;590:8<br><b>paint (1)</b><br>455:17<br><b>Pamela (1)</b><br>505:3<br><b>P-A-M-E-L-A (1)</b><br>505:3<br><b>para (1)</b><br>436:23<br><b>paragraph (34)</b><br>431:16;437:8;<br>440:18;450:21;<br>453:2;464:7;467:1;<br>481:14,15,21;482:5,<br>6,13,18,22;493:22;<br>500:22;518:21;<br>519:7,9,11;549:10,<br>13;550:21,22,23;<br>552:6,9;613:13,17;<br>630:5;634:7,8;641:5<br><b>paragraphs (3)</b><br>451:12;483:10;<br>550:24<br><b>pardon (2)</b><br>534:14;569:14<br><b>paren (2)</b><br>519:5,6<br><b>parentheses (10)</b><br>549:18,21;553:3,<br>4;554:4,6;640:5,5,7,<br>8<br><b>parenthetical (5)</b><br>465:10,12;490:22,<br>23,25<br><b>part (62)</b><br>421:21;437:12;<br>441:9,15;452:9,9;<br>456:13,16,18;457:3,<br>11,13;458:25;459:6,<br>8;463:24;474:6;<br>478:21;480:4,5,9,11;<br>499:13;500:5,6;<br>501:8;502:2;503:14;<br>514:6,6,16,18;<br>518:21,23;524:1;<br>529:13;534:9;<br>547:12;551:8,13,19;<br>569:11;570:17;<br>573:18,20;576:16;<br>578:16,16;583:23;<br>589:3;591:25;592:5; | 598:17;602:13;<br>606:14;611:13;<br>619:18;627:20,23;<br>640:16;642:6,9<br><b>parte (1)</b><br>539:7<br><b>partial (5)</b><br>445:10;448:19;<br>449:3,15;462:21<br><b>partially (40)</b><br>423:10;439:15;<br>445:9;447:9;448:2;<br>451:2,7;452:25;<br>453:22,25;456:10;<br>457:1,16;458:13;<br>461:16,25;462:11,<br>19,21,24;463:2;<br>473:25;481:17;<br>482:6,12;486:4,5;<br>489:21;497:14;<br>499:18;500:9;<br>557:15,23;570:3,3;<br>586:19,21,23;<br>587:10,17<br><b>participant (1)</b><br>597:10<br><b>participants (6)</b><br>504:8;506:15;<br>509:8;516:15;518:6;<br>537:20<br><b>participle (7)</b><br>453:22;597:18,25;<br>599:8,12;603:3;<br>609:23<br><b>participated (1)</b><br>471:12<br><b>participates (1)</b><br>597:20<br><b>participation (2)</b><br>441:5;628:9<br><b>particular (28)</b><br>448:21;456:15;<br>464:22;479:8;<br>482:17;500:6;570:4;<br>573:17;587:22;<br>588:13;592:3,13;<br>599:12;606:16,18;<br>607:23;633:12;<br>634:9,17;635:22,22;<br>636:18;638:4,19,20;<br>639:11,17;640:12<br><b>particularly (3)</b><br>421:16;523:7;<br>570:12<br><b>parties (6)</b><br>512:5;521:4;<br>539:9;543:2,25;<br>612:5<br><b>partly (1)</b><br>537:17<br><b>partner (1)</b><br>433:2<br><b>partnership (2)</b> |
|  |   | <b>P</b>   |  |  |
|  |   | <b>Pacific (14)</b><br>422:20;424:19;<br>425:1,5;458:5;<br>464:19;470:8,11;<br>471:7,14;485:25;<br>505:23;546:4,21<br><b>package (3)</b><br>475:3;491:23;<br>495:5<br><b>packaged (20)</b><br>427:21;428:3,14,<br>15;447:24;448:20;<br>449:13;465:2,18;<br>492:7,13;493:24;<br>494:22;495:8;<br>550:14;551:3;<br>580:21,22;582:25;<br>587:3<br><b>packages (5)</b><br>434:6;491:2;<br>493:16;494:20;<br>581:4<br><b>page (23)</b><br>422:1;426:8;<br>442:13;445:14;<br>456:16;464:16;<br>468:9;479:7,11;   |  |  |

|  |   |   |  |   |
|--|---|---|--|---|
| <p>427:16;432:22<br/><b>parts (8)</b><br/>550:21;573:6,7,7,<br/>8,8;589:9;593:19<br/><b>party (2)</b><br/>556:20;590:2<br/><b>pass (3)</b><br/>526:21;558:15;<br/>600:22<br/><b>passed (5)</b><br/>513:12,17;514:12;<br/>572:5;577:22<br/><b>past (5)</b><br/>441:20;474:5;<br/>483:21;522:5,10<br/><b>pattern (1)</b><br/>439:19<br/><b>pay (27)</b><br/>433:23;439:11,13;<br/>443:18,21,22,23;<br/>444:2,4,14;447:4;<br/>448:8,11,24;449:20;<br/>453:9;461:8;465:5,<br/>24;487:8;489:7;<br/>521:6;570:6;590:11;<br/>596:3;600:18;601:9<br/><b>payable (1)</b><br/>556:3<br/><b>paying (7)</b><br/>451:18;453:13;<br/>501:18;522:18;<br/>539:14;590:4,9<br/><b>payment (20)</b><br/>445:21;447:19;<br/>448:4;450:20;453:7,<br/>9,16;482:7,17;555:3,<br/>4,7,8,23;556:8,11,13,<br/>17;558:17;601:7<br/><b>payments (25)</b><br/>423:10;442:5,6,7;<br/>443:16;453:4;<br/>454:25;456:25;<br/>465:6;481:25;<br/>489:15;490:6;<br/>539:15,18,20;<br/>554:16,18,20;<br/>555:19;556:1,15,17;<br/>557:19,24;558:8<br/><b>pays (1)</b><br/>489:1<br/><b>penalty (6)</b><br/>422:8;528:3;<br/>545:18;556:2,4,12<br/><b>Peninsula (2)</b><br/>573:2;625:2<br/><b>people (18)</b><br/>421:14;428:5;<br/>432:13;450:18;<br/>452:20;464:12;<br/>476:5;477:9;479:13,<br/>14;504:9;511:19;<br/>517:13;518:4;<br/>571:25;574:10;</p> | <p>616:16;635:9<br/><b>per (6)</b><br/>540:6,6,7;558:10;<br/>570:1;591:20<br/><b>perceived (1)</b><br/>484:4<br/><b>percent (42)</b><br/>465:8,15,20,21;<br/>466:10,11,15;494:8,<br/>10,11;534:4;548:25;<br/>549:1,2,4,9;556:2;<br/>575:11,12,21,25;<br/>584:17,19;587:2,4,6,<br/>6,8;588:10,12;<br/>608:19,20;621:8,12;<br/>622:14,25;623:2,5,<br/>11;624:4;631:16,20<br/><b>percentage (14)</b><br/>552:22;553:6;<br/>575:10;584:13,16;<br/>585:17;593:13;<br/>621:8;622:14;633:8;<br/>637:2,12,13,18<br/><b>percentages (3)</b><br/>585:17,19;632:18<br/><b>perform (4)</b><br/>568:20;594:11;<br/>598:8;622:5<br/><b>performance (11)</b><br/>619:13,22;621:3,<br/>6;623:24,25;624:2,8;<br/>627:12;629:1;<br/>631:23<br/><b>performed (1)</b><br/>548:5<br/><b>perhaps (3)</b><br/>482:4;615:16;<br/>620:12<br/><b>period (6)</b><br/>438:25;523:10;<br/>549:25;569:7;<br/>608:16;636:22<br/><b>periodic (1)</b><br/>457:21<br/><b>perjury (3)</b><br/>422:9;528:3;<br/>545:19<br/><b>person (14)</b><br/>427:15,15,17;<br/>428:8,24;430:25;<br/>431:20,22;440:11;<br/>441:11;561:16;<br/>589:4;591:2;594:17<br/><b>personnel (1)</b><br/>513:25<br/><b>persons (1)</b><br/>441:12<br/><b>person's (1)</b><br/>436:22<br/><b>pertain (2)</b><br/>520:10;580:2<br/><b>pertained (1)</b><br/>578:14</p> | <p><b>Phoenix (2)</b><br/>424:15,16<br/><b>phrase (9)</b><br/>465:10,13;490:22,<br/>23,25;503:6;516:20,<br/>21;622:24<br/><b>phrased (1)</b><br/>522:19<br/><b>phraseology (1)</b><br/>522:16<br/><b>phrases (1)</b><br/>477:7<br/><b>phrasing (1)</b><br/>517:19<br/><b>physical (8)</b><br/>548:25;566:23;<br/>614:9,9;629:10,10,<br/>22,23<br/><b>physically (9)</b><br/>424:12;465:9,16;<br/>467:11;607:10,16;<br/>610:9,10;613:19<br/><b>pick (1)</b><br/>500:4<br/><b>picked (5)</b><br/>536:24;574:9;<br/>621:25;622:8,17<br/><b>picks (4)</b><br/>589:6,20;596:15;<br/>621:19<br/><b>pieces (1)</b><br/>539:3<br/><b>pipes (1)</b><br/>494:8<br/><b>Place (4)</b><br/>518:22;519:1,2;<br/>520:6<br/><b>placed (1)</b><br/>461:13<br/><b>places (2)</b><br/>478:22;489:13<br/><b>plan (7)</b><br/>441:6;489:22;<br/>514:22;518:5;532:5;<br/>572:7;588:16<br/><b>plant (365)</b><br/>423:11;427:18;<br/>428:9;431:21;<br/>432:15;434:4,21;<br/>435:20;436:7,17;<br/>437:7;440:20;441:1,<br/>11;443:1;444:17;<br/>446:1,3,3,4;447:10,<br/>11,14;449:19,22,24;<br/>450:5;451:3,3,3,7,9,<br/>15,21;452:8;453:5;<br/>454:3,23;455:1;<br/>456:11;457:1,22;<br/>458:14,19;459:7,13;<br/>460:10;462:17;<br/>464:8,10,25;465:9,<br/>11,14,16,20;466:2,<br/>16,23,23;467:8,14;</p> | <p>480:21;481:16,17;<br/>482:1,12,16;485:12;<br/>486:7,14,24;488:11;<br/>489:16,21,25;490:8,<br/>23;491:1,20,24;<br/>492:1,14;493:18,20;<br/>494:7,24;495:15,17,<br/>20;496:1,5,10,10,10;<br/>497:14,15,24;<br/>498:24;499:11,13,<br/>19;525:5;527:2;<br/>549:1,3,7;550:6,12,<br/>13,14,17,19;551:22;<br/>552:1;555:2;557:11,<br/>12,13;562:21,21;<br/>563:3,8;564:20,21,<br/>23,24;565:19;566:4,<br/>5,24;568:18;579:8,<br/>15,18,19,20,23,23;<br/>580:9,10,12,12,14,<br/>18,18;581:3,6,15,19,<br/>22;582:3,6,6,16,17,<br/>17,22,23,24;583:1,2,<br/>3,5,8,9,14,15,17,20,<br/>22,22;584:12,16;<br/>585:7,9,17,21,25;<br/>586:5,8,9,9,11,16,16,<br/>17,17,18,22,23,23;<br/>587:2,5,7,11,12,13,<br/>13,16,16,17;588:4,4,<br/>5,9,11,12,14,17,18;<br/>589:5,5;590:5,9,25;<br/>591:5,6,9,11;593:12,<br/>21;596:10,11,11,12,<br/>16;598:9,10,12,15,<br/>19,19,22;599:6,7,11;<br/>600:15,17,17,19,22,<br/>24;601:5,7,14,17,18;<br/>602:2,3,5,14;605:23,<br/>24;606:2;607:2,3,6,<br/>7,8,10,11,12,17;<br/>613:4,14,18,18,20,<br/>21,21;614:1,4,5,6,6,<br/>7,7,13,15,17;616:21;<br/>617:2,11,15,19,19,<br/>23,24;618:10,12,12,<br/>19,19,20,21,23;<br/>619:3;620:9,22,24;<br/>621:3,17,20;622:2,<br/>10,17;623:4,6,7,9,9,<br/>10;624:1,10,17,23,<br/>25;625:8,13,22;<br/>626:7,11,12,17,18,<br/>22,24;627:2,6,7,8,9,<br/>19,21;628:6,10,10,<br/>20,22,24,25;629:2,<br/>10,11,13,14,15,16,<br/>17,20,22;630:4,4,5,<br/>14;631:4;632:18;<br/>635:3,4;636:11;<br/>638:11;639:1;<br/>642:16,19<br/><b>plants (143)</b></p> | <p>427:22;435:23;<br/>440:22;441:8;442:8,<br/>9;449:7,15;452:7;<br/>457:14,21;458:10,<br/>18,19;460:18;461:2,<br/>17,20,25;462:12,13,<br/>20,21,25;464:24;<br/>465:19;466:9,14;<br/>467:18;481:8;482:4;<br/>486:2,3;490:16;<br/>493:25;494:6;<br/>496:14,15;497:6,11,<br/>16;498:10,10,15,16;<br/>525:4;527:5;551:15;<br/>552:9;553:9;557:23;<br/>562:19,23,24;563:1;<br/>564:12,13,16;<br/>578:22;579:23;<br/>580:2,4,7,23;582:21;<br/>583:1;584:5,5,9;<br/>586:12,13,19;<br/>587:17,18,19,20,20;<br/>588:19;589:22,25;<br/>597:17;598:5,6,12;<br/>599:11,17,18,19,19,<br/>22,23;600:2;613:4,<br/>15;614:19;618:15,<br/>17,22;620:13;621:9,<br/>10;622:18;623:6;<br/>624:6;625:4,6;626:1,<br/>23,24;627:10,15,23,<br/>24,25;628:2,12;<br/>630:7,10,11;631:2,<br/>14,15,21,23;632:23;<br/>633:3,17,21,21;<br/>634:10;635:2,2,4,6,<br/>10,12,12,20,21;<br/>636:5,8,11,13<br/><b>plant's (4)</b><br/>452:25;487:3;<br/>548:18;584:12<br/><b>play (3)</b><br/>433:23;538:6;<br/>590:11<br/><b>playing (1)</b><br/>501:5<br/><b>please (21)</b><br/>422:3,4,7,12,15;<br/>479:16;504:14;<br/>506:17;511:9;515:9;<br/>516:1;521:22;<br/>524:22;528:2,12;<br/>529:22;537:6;<br/>544:25;545:17,22;<br/>623:15<br/><b>pleased (1)</b><br/>512:25<br/><b>plunked (1)</b><br/>590:18<br/><b>plurality (2)</b><br/>467:9;497:25<br/><b>plus (2)</b><br/>549:1,1</p> |
|--|---|---|--|---|

|   |  |  |  |  |
|---|--|--|--|--|
| <p><b>pm (2)</b><br/>545:11;644:23</p> <p><b>point (26)</b><br/>429:5;480:9;<br/>499:2;500:4;513:24;<br/>522:12;527:7;538:6,<br/>14,14;540:11;<br/>542:12;547:12;<br/>560:3;562:9;565:24;<br/>566:14,22;590:15;<br/>591:17;601:1;611:2;<br/>630:16;633:15;<br/>637:16;640:4</p> <p><b>pointed (4)</b><br/>456:15;570:2;<br/>576:24;592:23</p> <p><b>pointing (1)</b><br/>531:9</p> <p><b>points (2)</b><br/>455:14;480:3</p> <p><b>policy (3)</b><br/>492:24;493:1;<br/>508:9</p> <p><b>POLLOCK (2)</b><br/>504:25;505:1</p> <p><b>P-O-L-L-O-C-K (1)</b><br/>505:1</p> <p><b>Ponderosa (2)</b><br/>425:18;509:6</p> <p><b>Pool (136)</b><br/>435:23;439:7,11;<br/>441:5;442:8,9;<br/>445:5;451:3,8;<br/>460:19;464:8,10,24;<br/>466:8,23;486:1,2,6,<br/>25;488:18;489:13;<br/>490:16;495:25;<br/>496:10,17;502:17;<br/>552:8;554:2,7;555:6,<br/>16;557:11;562:23;<br/>563:2,8;564:11,13;<br/>566:4;575:13,14;<br/>580:7;583:8,13,15,<br/>17,20,24;585:24;<br/>586:9,15,17;587:13,<br/>16,17,24,24;588:4,<br/>12,14,16;589:5,21,<br/>25;590:25;591:5,9,<br/>11;593:12;596:16;<br/>597:21;599:11;<br/>600:20;601:18;<br/>602:5,14,14;603:18;<br/>606:5;607:1,3,13,23;<br/>608:9,11,15,18,24;<br/>609:16,23,24;<br/>610:17;613:3,14,20;<br/>614:7,15;615:8,8,20,<br/>21;616:20,21;617:7,<br/>9,15,20,23,24,25;<br/>618:9,9,11,15,19,20,<br/>25;619:19;621:17,<br/>20;622:1;624:1,17;<br/>625:22;626:6,10,17,</p> | <p>18;628:4,20,21,22;<br/>629:7,8,20,22;639:1</p> <p><b>pooled (49)</b><br/>439:25;467:16;<br/>498:5;551:18;570:2;<br/>584:8;591:12;601:4,<br/>6,13,15,19,22;602:6;<br/>605:14,15,23;606:2;<br/>607:3,11;608:4,19;<br/>609:3,5,10;610:7,11,<br/>19;611:19,21;612:7;<br/>613:1;615:6,13,14,<br/>19;619:14,25;620:1,<br/>4,9,14,15,17;627:25;<br/>632:24;633:17,19;<br/>637:2</p> <p><b>pooling (31)</b><br/>444:25;447:12,15,<br/>24;481:19;496:14,<br/>23;497:24;512:6;<br/>584:9;587:22;588:3;<br/>597:16;602:18;<br/>605:12,15;608:25;<br/>611:10;617:1,2,5;<br/>619:21;620:19,20;<br/>621:4;624:4;629:2,<br/>3;632:16,17;638:4</p> <p><b>P-O-O-L-I-N-G (1)</b><br/>605:15</p> <p><b>pools (3)</b><br/>555:11;599:1;<br/>617:6</p> <p><b>portion (17)</b><br/>448:16;477:21,24;<br/>486:3;495:10;<br/>548:12;549:17;<br/>608:13,14;613:17,<br/>20,20;614:15,16;<br/>627:19;641:15,21</p> <p><b>portions (1)</b><br/>614:9</p> <p><b>position (4)</b><br/>422:6;528:1,19;<br/>545:16</p> <p><b>positions (2)</b><br/>424:11;427:5</p> <p><b>positive (4)</b><br/>453:11;460:23;<br/>461:2;554:14</p> <p><b>possibility (2)</b><br/>441:23;537:25</p> <p><b>possible (8)</b><br/>458:7;488:2;<br/>523:3,6;538:7;<br/>541:24;542:1,7</p> <p><b>possibly (1)</b><br/>555:15</p> <p><b>posted (2)</b><br/>521:5;541:7</p> <p><b>post-Federal (1)</b><br/>611:9</p> <p><b>post-reform (1)</b><br/>636:22</p> | <p><b>potential (2)</b><br/>437:10;575:4</p> <p><b>pound (1)</b><br/>470:12</p> <p><b>poundage (1)</b><br/>473:9</p> <p><b>pounds (32)</b><br/>427:23;428:10,13;<br/>429:1,13;431:25;<br/>443:8;470:14,24;<br/>490:14;493:16;<br/>494:19,21,23;<br/>500:21,21,24;530:4;<br/>540:6;550:24;552:5,<br/>7;557:18,25;559:10;<br/>575:15;611:19,20,<br/>21;612:21,21,23</p> <p><b>powder (6)</b><br/>432:9;435:6;<br/>446:2,2,5;575:23</p> <p><b>powdered (1)</b><br/>472:15</p> <p><b>PPD (5)</b><br/>604:7,9,16,25;<br/>605:2</p> <p><b>practical (1)</b><br/>629:1</p> <p><b>Practice (2)</b><br/>515:7;523:8</p> <p><b>preamble (7)</b><br/>427:13;430:4,4;<br/>447:6,6;470:12,13</p> <p><b>preceding (1)</b><br/>438:25</p> <p><b>precisely (2)</b><br/>479:15;566:10</p> <p><b>preclusions (1)</b><br/>497:24</p> <p><b>predated (1)</b><br/>574:17</p> <p><b>predecessor (1)</b><br/>425:2</p> <p><b>predominant (1)</b><br/>625:25</p> <p><b>predominantly (4)</b><br/>424:16;578:10;<br/>583:1;587:21</p> <p><b>preference (1)</b><br/>523:5</p> <p><b>preliminary (13)</b><br/>421:15,21;424:1;<br/>455:22;510:3;<br/>523:17,22;541:7;<br/>543:3;545:12;548:4;<br/>561:11;644:11</p> <p><b>premise (1)</b><br/>634:22</p> <p><b>premises (1)</b><br/>582:21</p> <p><b>premium (5)</b><br/>512:10;535:22,24;<br/>539:15,22</p> <p><b>premiums (4)</b></p> | <p>482:12;535:21;<br/>539:25;556:9</p> <p><b>prepare (1)</b><br/>423:15</p> <p><b>prepared (3)</b><br/>475:20;547:9,23</p> <p><b>preponderance (1)</b><br/>467:9</p> <p><b>present (6)</b><br/>422:9;457:15;<br/>473:7;528:4;544:11;<br/>545:19</p> <p><b>presented (1)</b><br/>543:13</p> <p><b>presently (6)</b><br/>466:13;468:17;<br/>472:18;474:21;<br/>570:15;614:19</p> <p><b>presumably (1)</b><br/>502:13</p> <p><b>pretend (1)</b><br/>452:18</p> <p><b>pretty (6)</b><br/>443:12;470:9;<br/>522:23;536:24;<br/>571:4;589:6</p> <p><b>prevent (3)</b><br/>432:16,16;475:11</p> <p><b>previous (3)</b><br/>513:2;555:11;<br/>608:19</p> <p><b>Previously (6)</b><br/>528:16;551:2;<br/>552:18;555:10;<br/>571:21;583:8</p> <p><b>price (114)</b><br/>439:12;443:20,22;<br/>444:1,2,13,14,15,17,<br/>19,19;448:5,7,10,11,<br/>13;449:9,9,21,22,22;<br/>450:2;451:17;<br/>458:13,23;459:12,<br/>19,22,24;460:8,8,20,<br/>20,25,25;461:4,6;<br/>481:19;482:9,11,15,<br/>15,18;487:8;488:19;<br/>489:2,3,18;490:1,4;<br/>500:7,14,15,19,19,<br/>20,25;501:1,2,3,7,11,<br/>16,23;502:5,25;<br/>503:11,13;533:19;<br/>534:15,24;535:1,3;<br/>536:3,8,10,11;538:1,<br/>2;539:19,19,22,24,<br/>25;540:3,4;541:18;<br/>542:25;548:16;<br/>550:16;554:5;559:3;<br/>569:8;588:1;597:22,<br/>23;601:4,10,11,13,<br/>16,20,23;602:4;<br/>604:8,9,15,16,22;<br/>605:2;610:16;616:8;<br/>628:19;641:18</p> | <p><b>priced (10)</b><br/>432:1;451:6,8;<br/>458:19;486:10;<br/>551:3;600:13;605:8;<br/>642:19;643:3</p> <p><b>prices (21)</b><br/>443:9,19;465:5,7,<br/>24;503:9;534:9,13,<br/>16,18,23,23;535:18;<br/>536:4;538:22;<br/>539:23;554:3,4;<br/>559:6;587:23;588:1</p> <p><b>pricing (20)</b><br/>429:24;441:6,8;<br/>442:25;444:25;<br/>447:13,17,23;449:8;<br/>451:13;462:16;<br/>463:1;496:13;<br/>500:17,18,24;512:5;<br/>534:12;553:15;<br/>641:20</p> <p><b>primarily (2)</b><br/>592:4;619:12</p> <p><b>primary (2)</b><br/>424:20;629:21</p> <p><b>principal (1)</b><br/>605:3</p> <p><b>principle (1)</b><br/>539:24</p> <p><b>printer (1)</b><br/>531:11</p> <p><b>prior (19)</b><br/>470:7,11,15,18;<br/>472:1;485:7;517:17;<br/>519:17;528:20;<br/>529:6;549:21;<br/>573:25;577:19;<br/>578:10;611:4,24;<br/>618:12;637:7,16</p> <p><b>priority (2)</b><br/>488:7;517:10</p> <p><b>private (1)</b><br/>523:7</p> <p><b>pro (4)</b><br/>520:24;549:18,24;<br/>557:2</p> <p><b>probably (10)</b><br/>437:17,18;478:17;<br/>492:17;572:4;<br/>583:21;586:1;<br/>590:15;602:25;<br/>635:9</p> <p><b>problem (5)</b><br/>440:1;474:14,16;<br/>478:23;525:20</p> <p><b>problematic (2)</b><br/>474:8;543:23</p> <p><b>problems (1)</b><br/>611:23</p> <p><b>procedural (4)</b><br/>531:23;553:25;<br/>593:24;595:1</p> <p><b>procedure (1)</b></p> |
|---|--|--|--|--|

|  |  |  |   |  |
|--|--|--|---|--|
| <p>563:25<br/><b>procedures (2)</b><br/>493:3,4<br/><b>proceed (5)</b><br/>422:23;524:13;<br/>528:9;532:17;<br/>533:14<br/><b>proceeding (5)</b><br/>421:25;422:2;<br/>513:7;519:21;522:8<br/><b>proceedings (4)</b><br/>522:5;576:20;<br/>596:6;644:22<br/><b>process (24)</b><br/>487:10;488:1,5;<br/>489:10,11,14;<br/>495:16;518:3;550:4,<br/>5,10,20;556:21;<br/>562:10;565:1,23,25;<br/>574:3;578:1,2,3;<br/>579:15;637:17;<br/>638:3<br/><b>processed (4)</b><br/>428:11;492:20;<br/>554:1;580:21<br/><b>processes (5)</b><br/>434:6;435:1;<br/>494:20;562:11;<br/>579:17<br/><b>processing (7)</b><br/>432:15;435:2,12;<br/>437:20,23;494:7;<br/>566:6<br/><b>Procurement (1)</b><br/>508:9<br/><b>produce (3)</b><br/>494:19;539:15;<br/>584:14<br/><b>produced (11)</b><br/>443:1,5,8,10;<br/>446:2;455:1;495:11;<br/>610:9,10;615:12;<br/>620:1<br/><b>producer (96)</b><br/>440:11;443:5,21,<br/>24;444:3,21;447:12,<br/>15;448:9,12;453:5,<br/>10;482:1;486:11,14;<br/>487:1,1,13;488:3,10,<br/>13,16;489:8;490:7;<br/>495:12,13,18,19;<br/>496:8;500:7;501:1,7,<br/>11,16,23;502:5,25;<br/>509:5;536:4;537:8;<br/>539:18;547:13;<br/>548:5,23;550:2,3,7,<br/>10;551:2,10;552:8;<br/>553:13,14;554:4,11;<br/>557:8,10;558:16;<br/>584:7,10;588:1;<br/>590:3,5,10,20;591:1,<br/>5,8,23;593:11,16,17,<br/>20;595:25;598:22;</p> | <p>602:12,13;603:4,9,<br/>16;604:9;605:2;<br/>608:1,10,12,22;<br/>609:2;610:4,5;<br/>616:5;619:14;625:9,<br/>10,11;633:4;638:11<br/><b>producer-handler (56)</b><br/>423:9;426:11,12;<br/>427:15,24;428:4,18,<br/>20;429:16,18;<br/>430:25;432:5;434:5,<br/>8,17,24;436:14;<br/>437:5,14,25;438:1,3,<br/>15;439:4,17;440:9,<br/>14;441:4,9,12;<br/>444:22,24;466:4;<br/>468:13;469:9,17;<br/>470:7;471:8,14,21;<br/>472:5,12,14;482:24;<br/>484:21;485:9;<br/>490:13;493:15,15;<br/>494:18;495:10,14,<br/>21,22,25;496:7<br/><b>producer-handlers (16)</b><br/>425:18;426:24;<br/>436:4;468:1,7;<br/>469:21;470:18,22;<br/>471:12;472:1;<br/>473:10;484:13;<br/>485:7;490:11;<br/>494:15;551:15<br/><b>producer-handler's (8)</b><br/>434:18;436:9;<br/>437:7,11,12;440:24;<br/>495:11,15<br/><b>producers (43)</b><br/>443:15,17,20,23;<br/>444:2,4,11,14;<br/>445:10;451:18;<br/>486:9;489:15,24;<br/>501:18,25;509:14,<br/>18;539:15,20;540:5;<br/>541:13;554:17,18;<br/>555:19;556:18;<br/>558:8,25;559:3,9;<br/>590:4,8;597:17;<br/>601:19;607:9;609:1;<br/>615:5,7,18,19;617:7;<br/>619:13,17;624:18<br/><b>producer's (4)</b><br/>453:19;558:17;<br/>559:2;607:24<br/><b>produces (1)</b><br/>591:2<br/><b>producing (1)</b><br/>435:12<br/><b>product (29)</b><br/>435:7;448:8;<br/>459:24;491:2;505:4,<br/>19;512:8;525:4;<br/>550:24;554:25;<br/>557:18;564:2,5,7,10;<br/>565:2,19,21,22,24;</p> | <p>566:1,6;581:4;<br/>640:15;641:3,5,7,9,<br/>13<br/><b>production (19)</b><br/>434:25;435:21,22;<br/>437:1,4,8,12;440:8,<br/>12,16,25;441:3;<br/>494:24;536:1;<br/>558:19;575:23;<br/>576:2;615:19;620:8<br/><b>products (43)</b><br/>427:21;428:14,15;<br/>435:4,5;436:2;<br/>437:24;440:15,21;<br/>465:3,9,16,18;472:8,<br/>16;493:16,17,25;<br/>495:8;549:11,15,18;<br/>550:6,13;551:3,5,9;<br/>552:8;557:21,21,25;<br/>564:15;566:19;<br/>580:20,22;582:20,<br/>21,25;584:15;<br/>589:11;640:12;<br/>642:17,18<br/><b>program (10)</b><br/>447:13,17;459:24;<br/>504:21,24;505:2,5,8,<br/>17;506:9<br/><b>Programs (12)</b><br/>493:9,12;505:14,<br/>20,24;506:3;513:5;<br/>521:6;528:16,16;<br/>543:17;546:4<br/><b>prohibit (3)</b><br/>485:1,2,3<br/><b>project (1)</b><br/>544:1<br/><b>promulgated (1)</b><br/>457:3<br/><b>proof (1)</b><br/>483:18<br/><b>proper (1)</b><br/>523:20<br/><b>proponents (3)</b><br/>506:19,25;507:4<br/><b>Proposal (26)</b><br/>430:10,12,17,19;<br/>456:23,23;468:5,6;<br/>469:12;483:3,5,6,10;<br/>501:14;506:19,25;<br/>507:4;509:10;<br/>510:11;530:1;<br/>535:13;538:3,23;<br/>539:2;542:19;<br/>625:20<br/><b>proposals (11)</b><br/>506:16;512:4,7,<br/>12;520:6;540:25;<br/>541:2,6,23;543:5;<br/>576:17<br/><b>proposed (13)</b><br/>468:12;478:10,16;<br/>479:10;501:14,15,</p> | <p>16;511:25;512:2,17;<br/>539:1;576:9,19<br/><b>proposing (1)</b><br/>456:24<br/><b>proposition (2)</b><br/>606:4;635:8<br/><b>proprietary (5)</b><br/>454:5;589:19;<br/>596:17;601:8,12<br/><b>propriatorship (1)</b><br/>432:23<br/><b>proration (3)</b><br/>552:19,25;553:2<br/><b>protect (3)</b><br/>435:10;436:15;<br/>449:3<br/><b>protein (2)</b><br/>500:16;553:16<br/><b>protocols (1)</b><br/>490:10<br/><b>provide (21)</b><br/>423:6;475:22;<br/>513:9,21;514:10,16;<br/>516:23;519:25;<br/>522:4;525:10,21;<br/>527:3,7;535:2,7,16;<br/>541:21;547:4;<br/>553:23;558:24;<br/>559:10<br/><b>provided (8)</b><br/>428:21;447:8;<br/>465:7;519:5,16;<br/>521:13;559:4;<br/>631:20<br/><b>provides (3)</b><br/>456:22;474:13;<br/>501:22<br/><b>providing (3)</b><br/>432:14;474:17;<br/>511:4<br/><b>provision (30)</b><br/>427:10,12,14;<br/>431:24;446:13;<br/>482:3;499:14,17;<br/>572:12;585:1;<br/>590:16;593:18,24;<br/>595:1,5,22;613:5,11,<br/>24;614:2,4,5,6,20;<br/>616:14;617:1;619:3;<br/>635:19;637:11;<br/>639:9<br/><b>provisions (45)</b><br/>426:22;429:11,25;<br/>431:1;433:3;444:25;<br/>456:11;468:13;<br/>470:6,7;482:25;<br/>483:17;484:3,20;<br/>512:6;555:18;<br/>572:16;576:7;<br/>578:10,18,20,25;<br/>579:1,5;591:19;<br/>592:14;594:7,12;<br/>595:1;597:16;</p> | <p>609:11;611:24;<br/>612:3,12;615:23,24;<br/>619:11;620:3,7;<br/>637:1,17,25;638:4;<br/>639:5;642:7<br/><b>proxy (2)</b><br/>503:1;635:15<br/><b>public (5)</b><br/>441:10;457:22;<br/>511:24;519:16;<br/>555:25<br/><b>publication (4)</b><br/>517:5;518:15;<br/>559:5;616:1<br/><b>publicity (1)</b><br/>519:10<br/><b>publicly (1)</b><br/>441:11<br/><b>publish (5)</b><br/>457:19,22;460:4,<br/>15;514:18<br/><b>published (12)</b><br/>460:7,8;471:22;<br/>512:14;517:17;<br/>519:17,19,24;521:3;<br/>522:7;534:18;616:4<br/><b>pull (1)</b><br/>525:8<br/><b>purpose (6)</b><br/>477:8;488:5;<br/>569:2;594:5;597:16;<br/>619:24<br/><b>purposes (10)</b><br/>437:8;475:13;<br/>481:21;486:17;<br/>500:10;520:8;566:5;<br/>602:18;603:23;<br/>621:15<br/><b>pursuant (7)</b><br/>450:23;451:1,21;<br/>453:2,3;497:21;<br/>625:5<br/><b>Push (1)</b><br/>515:10<br/><b>put (11)</b><br/>427:4;460:12;<br/>469:5;475:3;477:13;<br/>483:21;510:14;<br/>521:4;529:14,16;<br/>543:18<br/><b>putting (3)</b><br/>475:2,13;598:15</p> |
| <b>Q</b>   |  |  |   |  |
|  |  |  |   | <p><b>qual (1)</b><br/>467:5<br/><b>qualification (10)</b><br/>429:2,3;439:24;<br/>473:10;583:17;<br/>585:22;592:7;<br/>608:13;622:25;<br/>629:4</p>   |

|   |   |   |  |   |
|---|---|---|--|---|
| <p><b>qualifications (4)</b><br/>445:7;583:23,25;<br/>584:3</p> <p><b>qualified (10)</b><br/>443:14;453:10;<br/>472:14;473:15;<br/>485:8;551:18;558:9;<br/>608:1,10;620:25</p> <p><b>qualifies (7)</b><br/>467:15;489:1;<br/>495:18,19,21;<br/>497:21;584:13</p> <p><b>qualify (28)</b><br/>437:19;439:20,21,<br/>21;466:8;482:5;<br/>485:10;486:8,10;<br/>489:8;495:11;<br/>499:18;585:22;<br/>586:25;607:24;<br/>610:13;622:4,18;<br/>624:17,20;625:5,8;<br/>626:19,23;629:11,<br/>13;631:3,16</p> <p><b>qualifying (7)</b><br/>451:12;462:14;<br/>489:21;490:15;<br/>622:23;624:5;625:2</p> <p><b>quantify (1)</b><br/>445:4</p> <p><b>quantity (4)</b><br/>465:8,15;549:2;<br/>641:4</p> <p><b>quarter (1)</b><br/>556:11</p> <p><b>questioner (2)</b><br/>476:1;479:18</p> <p><b>queue (1)</b><br/>522:2</p> <p><b>quickly (4)</b><br/>477:7;479:11;<br/>480:17;514:20</p> <p><b>quite (2)</b><br/>592:8;634:18</p> <p><b>quota (2)</b><br/>442:1;512:10</p> <p><b>quote (2)</b><br/>549:14;550:1</p> <p><b>quotes (1)</b><br/>498:4</p> | <p><b>raised (4)</b><br/>484:12;532:2;<br/>577:1;603:25</p> <p><b>ran (1)</b><br/>541:4</p> <p><b>ranch (1)</b><br/>525:5</p> <p><b>range (1)</b><br/>575:11</p> <p><b>rare (1)</b><br/>488:20</p> <p><b>rarely (1)</b><br/>585:8</p> <p><b>rata (3)</b><br/>549:18,24;557:2</p> <p><b>rate (6)</b><br/>556:4;557:3,16;<br/>558:10,11;570:1</p> <p><b>rather (8)</b><br/>475:1;477:23;<br/>489:3;567:1;568:2;<br/>574:10;616:13;<br/>624:12</p> <p><b>raw (3)</b><br/>465:5,7,25</p> <p><b>Re (1)</b><br/>511:13</p> <p><b>read (17)</b><br/>427:13;430:10;<br/>431:6;447:5,14;<br/>469:3,15;515:4;<br/>518:24;521:1;<br/>525:18;547:7;<br/>580:24;593:7,8;<br/>594:16;640:20</p> <p><b>reader (1)</b><br/>616:7</p> <p><b>reading (8)</b><br/>431:5;434:13;<br/>452:2;464:12;<br/>515:20;521:2;<br/>559:11;624:24</p> <p><b>readjourned (1)</b><br/>520:11</p> <p><b>reads (3)</b><br/>490:21;597:16;<br/>613:17</p> <p><b>ready (9)</b><br/>456:1;476:1,3;<br/>477:1;516:1;517:3;<br/>523:23;544:25;<br/>623:15</p> <p><b>real (1)</b><br/>430:9</p> <p><b>realize (2)</b><br/>504:15;523:24</p> <p><b>really (26)</b><br/>428:7;445:18,19,<br/>19;446:6;479:1;<br/>480:2;502:6,19;<br/>504:3;523:8;563:4;<br/>570:11;571:3;<br/>589:16;591:20;</p> | <p>592:21;597:20;<br/>598:7;600:12;<br/>602:11;614:17;<br/>619:16;629:6;<br/>636:13,14</p> <p><b>reapplication (1)</b><br/>468:22</p> <p><b>reask (1)</b><br/>593:5</p> <p><b>reason (7)</b><br/>473:20;491:11;<br/>498:12;542:21;<br/>569:2;573:9,21</p> <p><b>reasonable (2)</b><br/>437:17;633:9</p> <p><b>reasons (5)</b><br/>537:19;575:5;<br/>616:8,9;626:18</p> <p><b>re-audited (1)</b><br/>554:23</p> <p><b>recall (12)</b><br/>445:24;470:3;<br/>498:1,5;524:4;<br/>560:1;566:9;567:8;<br/>573:19;600:8;619:6;<br/>626:20</p> <p><b>recalled (1)</b><br/>532:9</p> <p><b>receipt (4)</b><br/>488:2;492:4;<br/>540:5;641:13</p> <p><b>receipts (31)</b><br/>432:6;434:23;<br/>435:16;440:23;<br/>443:2,4;454:21;<br/>465:20;487:3;540:5;<br/>548:10,20,25;549:1,<br/>14,20,23,25;552:7;<br/>553:11;557:9,10,12,<br/>22;587:3;588:10;<br/>600:4;618:8;623:5;<br/>624:5;631:21</p> <p><b>receive (14)</b><br/>433:9;435:20;<br/>440:20;449:1;<br/>484:24;486:8;<br/>557:24;579:15;<br/>581:24;582:2;594:8;<br/>596:3;597:22;<br/>629:23</p> <p><b>received (22)</b><br/>432:4;443:1;<br/>444:18;465:9,14,16;<br/>492:6;512:4;525:5;<br/>553:8;556:17;<br/>584:16;591:5;601:5,<br/>6,14;602:2;606:2;<br/>607:1,2,11,16</p> <p><b>receiver (1)</b><br/>495:19</p> <p><b>receives (15)</b><br/>428:19,20;434:24,<br/>25;451:8;486:14;</p> | <p>488:24;582:19;<br/>596:15;597:21,21;<br/>630:5;635:3,4;<br/>636:12</p> <p><b>receiving (7)</b><br/>551:22;557:11;<br/>562:18;590:2;<br/>617:16;618:21,22</p> <p><b>recent (3)</b><br/>541:16;543:10;<br/>630:20</p> <p><b>recently (3)</b><br/>535:24;638:22,23</p> <p><b>recess (1)</b><br/>644:21</p> <p><b>recessed (1)</b><br/>644:22</p> <p><b>recognize (1)</b><br/>512:10</p> <p><b>recognized (1)</b><br/>535:23</p> <p><b>recommend (1)</b><br/>594:9</p> <p><b>reconstitute (3)</b><br/>432:7;436:3;<br/>472:22</p> <p><b>reconstituted (4)</b><br/>446:3;549:15,17,<br/>17</p> <p><b>reconstituting (4)</b><br/>446:1;472:25;<br/>473:3,5</p> <p><b>reconstitution (2)</b><br/>432:11;435:4</p> <p><b>reconvene (12)</b><br/>514:19,23;517:6,<br/>20;518:16;519:18,<br/>23,24;521:5,11;<br/>522:8,10</p> <p><b>reconvened (3)</b><br/>514:17;520:11,22</p> <p><b>reconvening (4)</b><br/>519:15;520:3,9,18</p> <p><b>record (41)</b><br/>421:6;442:12;<br/>460:15;471:2;474:7,<br/>10,17;477:3,5;<br/>479:15;484:16,17;<br/>516:4;522:5;525:11;<br/>537:18,19;538:8,15,<br/>18;541:15;542:17,<br/>20;543:15,18;<br/>545:10;560:20;<br/>577:14;592:12;<br/>593:8;605:20;<br/>606:11;612:2,4,20;<br/>623:19;625:19;<br/>637:24;638:5,16;<br/>644:20</p> <p><b>recorded (1)</b><br/>510:22</p> <p><b>recordkeeping (1)</b><br/>595:11</p> | <p><b>records (6)</b><br/>553:23;556:19,21;<br/>595:10,15,16</p> <p><b>RE-CROSS-EXAMINATION (1)</b><br/>525:14</p> <p><b>REDIRECT (1)</b><br/>540:17</p> <p><b>reduce (3)</b><br/>451:10;492:5,6</p> <p><b>reduction (2)</b><br/>556:12;604:24</p> <p><b>Reed (2)</b><br/>509:16,16</p> <p><b>R-E-E-D (1)</b><br/>509:17</p> <p><b>refer (4)</b><br/>519:7;625:22;<br/>626:5,10</p> <p><b>reference (10)</b><br/>442:13;459:4;<br/>478:25;480:4;500:7;<br/>521:18;525:2;<br/>571:10;630:22;<br/>631:23</p> <p><b>references (7)</b><br/>456:20;515:6;<br/>571:9;572:11;<br/>582:13;588:24;<br/>632:4</p> <p><b>referred (9)</b><br/>477:18;492:22;<br/>563:16;565:13;<br/>589:18;619:20,21;<br/>621:22;636:20</p> <p><b>referring (7)</b><br/>592:11;593:18;<br/>598:2;599:3;600:1;<br/>603:1;619:8</p> <p><b>refers (5)</b><br/>491:6;580:14;<br/>617:17;631:2,14</p> <p><b>reflect (2)</b><br/>542:21;616:7</p> <p><b>reflected (1)</b><br/>536:3</p> <p><b>reflects (1)</b><br/>539:19</p> <p><b>Reform (17)</b><br/>480:5;569:6;<br/>572:24;573:12,24,<br/>25;577:16;578:7,16,<br/>17;585:18;611:9;<br/>618:13,18;619:5;<br/>627:4;632:20</p> <p><b>Refresh (1)</b><br/>619:1</p> <p><b>refreshments (1)</b><br/>511:8</p> <p><b>regard (3)</b><br/>460:16;488:6;<br/>632:17</p> <p><b>regarding (3)</b><br/>483:18;570:22;</p> |
| <b>R</b>  |   |   |  |   |
| <p><b>Rachel (1)</b><br/>508:2</p> <p><b>R-A-C-H-E-L (1)</b><br/>508:3</p> <p><b>Raghunathan (2)</b><br/>505:15,15</p> <p><b>R-A-G-H-U-N-A-T-H-A-N (1)</b><br/>505:16</p> <p><b>raise (3)</b><br/>422:6;528:2;<br/>545:17</p>   |   |   |  |   |

|   |   |  |  |   |
|---|---|--|--|---|
| 638:10<br><b>regardless (5)</b><br>487:5;498:11;<br>501:24;525:22;<br>555:12<br><b>regards (6)</b><br>513:6,11;516:24;<br>517:5;520:1;629:7<br><b>Region (2)</b><br>546:21;573:14<br><b>Regional (3)</b><br>493:5;572:25;<br>574:14<br><b>regions (3)</b><br>497:25;578:22,23<br><b>Register (19)</b><br>468:9;478:17,18,<br>19,20,21;479:8,10;<br>512:13;514:19;<br>517:3,6;519:12,17;<br>521:8,18;522:1,2,8<br><b>regula (1)</b><br>620:3<br><b>regular (5)</b><br>439:3;610:11,14,<br>20,22<br><b>regulate (1)</b><br>512:1<br><b>regulated (96)</b><br>423:11;429:16;<br>435:23;439:15,16;<br>440:21;445:9,10,10;<br>447:9;448:3;451:2,7,<br>15;452:6,25;453:5,8,<br>15,18,22;454:1,18,<br>23;455:1;456:11;<br>457:1,14,16;458:14;<br>461:17,25;462:11,<br>20,21,23,24;463:2;<br>465:3,23;466:5;<br>467:12;473:25;<br>481:17;482:2,6,8,13;<br>486:2,4,4,5,6;487:8;<br>489:16,21;490:1,2,8;<br>494:5,6;495:25;<br>496:4;497:14;499:2,<br>19;500:9;536:3,8,9;<br>539:22;557:8,15,17,<br>23,23,25;570:3,3;<br>573:17;580:1,3,6,8;<br>586:19,21,23;587:1,<br>10,10,17;588:11;<br>599:22;603:6;<br>613:18,21<br><b>regulation (21)</b><br>426:3;448:1,2,19;<br>449:3,15,16,18;<br>463:3;464:13;<br>466:13;471:8;<br>477:16;478:16,16;<br>481:3,4;601:4;<br>623:7;636:10;638:6<br><b>regulations (17)</b> | 455:14;459:1;<br>460:3;470:25;<br>477:10,24;479:7;<br>481:19;490:19;<br>501:16;580:2,11;<br>588:8;594:6;638:18,<br>19,20<br><b>regulator (1)</b><br>450:4<br><b>regulatory (13)</b><br>429:25;449:4,24;<br>450:4;463:21;471:7;<br>485:14;489:6;<br>555:12;571:22;<br>580:19;582:18;<br>591:3<br><b>reject (1)</b><br>521:7<br><b>rejected (1)</b><br>512:17<br><b>relate (2)</b><br>561:22;639:1<br><b>related (2)</b><br>533:19;638:24<br><b>relating (3)</b><br>519:5;637:25;<br>639:22<br><b>Relations (1)</b><br>508:13<br><b>relationship (2)</b><br>534:22;616:9<br><b>relationships (3)</b><br>488:19;534:24;<br>587:25<br><b>relatively (1)</b><br>578:14<br><b>release (1)</b><br>423:19<br><b>reload (3)</b><br>629:12,14,15<br><b>rely (2)</b><br>520:17;562:6<br><b>remain (5)</b><br>438:10;524:9;<br>552:2,5;561:6<br><b>remained (1)</b><br>471:13<br><b>remaining (5)</b><br>500:21,22;549:22;<br>552:20;553:3<br><b>remains (1)</b><br>618:24<br><b>remember (9)</b><br>524:20;534:21;<br>565:9;567:11;<br>577:21;593:3;626:5;<br>636:3;643:10<br><b>reminder (2)</b><br>641:16,17<br><b>removed (3)</b><br>549:12;550:10;<br>615:8<br><b>removes (14)</b> | 551:2,4,7,8,14,19,<br>21,25;552:14,16,18,<br>24;553:8,10<br><b>rent (1)</b><br>570:6<br><b>renumbered (1)</b><br>574:8<br><b>renumbering (1)</b><br>590:17<br><b>reopening (1)</b><br>520:18<br><b>repercussions (1)</b><br>535:11<br><b>rephrase (1)</b><br>609:20<br><b>replicate (4)</b><br>533:23;535:14;<br>537:24;538:5<br><b>replicating (1)</b><br>533:21<br><b>repool (1)</b><br>637:15<br><b>repooled (1)</b><br>637:2<br><b>repooling (4)</b><br>637:11,18;638:1,9<br><b>report (28)</b><br>445:5,6;454:19,<br>20;487:3,4;528:24;<br>554:2,23;555:1;<br>590:3;594:8;600:3;<br>601:22;615:8;616:9,<br>20,21;617:7,9;618:8,<br>11,14,14,14,16,18,24<br><b>reported (4)</b><br>557:6,10,12;<br>558:13<br><b>REPORTER (12)</b><br>431:3,5,8;434:9,<br>11,13;476:8,19;<br>477:5,6;560:19;<br>593:7<br><b>reporting (2)</b><br>444:5;445:2<br><b>reports (5)</b><br>445:7;449:19;<br>553:21,25;616:4<br><b>represent (2)</b><br>456:24;509:4<br><b>representative (3)</b><br>487:20;508:20;<br>510:4<br><b>representing (3)</b><br>425:17;506:19;<br>509:12<br><b>represents (3)</b><br>540:4;550:12;<br>553:5<br><b>requalify (1)</b><br>608:5<br><b>request (21)</b><br>473:23;480:21;<br>517:13;518:1,2,8,9; | 524:19;525:3,11,17;<br>529:13;535:16;<br>539:5;540:19,22;<br>541:14;542:18,21;<br>553:9;559:8<br><b>requested (12)</b><br>423:6;463:7,9;<br>536:19;537:9;541:4,<br>15;547:4;552:2,15,<br>25;613:22<br><b>requests (1)</b><br>551:23<br><b>require (4)</b><br>433:6;465:4,24;<br>555:18<br><b>required (11)</b><br>454:21;474:6;<br>503:24;514:1;<br>518:15;519:11,13;<br>554:20;556:1,7;<br>568:10<br><b>requirement (13)</b><br>429:4;430:24;<br>433:19;602:13;<br>621:7;622:5;623:2,<br>25;624:2;625:14;<br>631:16,18;635:21<br><b>requirements (28)</b><br>427:25;428:7;<br>429:2;433:7,9;<br>438:17;484:7;496:6;<br>553:22;556:11;<br>595:14,15;602:9,9,<br>11;619:12,18,21,22;<br>620:2;621:4;623:1,<br>24;624:9;632:17,19;<br>635:16,19<br><b>requires (7)</b><br>465:6;472:6;<br>481:24;501:8;502:8,<br>10;514:16<br><b>requiring (1)</b><br>621:7<br><b>research (1)</b><br>528:23<br><b>reserve (1)</b><br>435:16<br><b>reserved (3)</b><br>590:14,17,18<br><b>reside (2)</b><br>609:16,23<br><b>resource (1)</b><br>437:1<br><b>resources (15)</b><br>431:16;434:25;<br>435:3,21;436:24;<br>437:2,9,21,22;440:8,<br>17,18;441:3;542:2,3<br><b>respect (20)</b><br>456:10;458:4,9;<br>460:18;481:14;<br>482:3;484:5,12,22;<br>500:4;516:19;520:4; | 531:22;597:18;<br>599:14;600:2,7;<br>606:12;628:9;636:9<br><b>respective (5)</b><br>555:9,20,22;<br>597:23;640:13<br><b>respectively (1)</b><br>552:7<br><b>respond (2)</b><br>592:9;604:1<br><b>responding (1)</b><br>452:17<br><b>response (2)</b><br>543:14;626:16<br><b>responsibilities (3)</b><br>512:22;569:22;<br>570:16<br><b>responsibility (1)</b><br>595:10<br><b>responsible (5)</b><br>487:5;556:20;<br>570:18;590:2,4<br><b>rest (9)</b><br>429:1;430:7,20;<br>442:14;469:17,18;<br>504:13;518:6;<br>628:17<br><b>restarting (1)</b><br>517:8<br><b>restrict (1)</b><br>451:13<br><b>restricted (5)</b><br>525:9;526:16;<br>637:1,11,14<br><b>restriction (4)</b><br>433:12;608:21;<br>610:3,6<br><b>restrictions (3)</b><br>432:19;637:4,14<br><b>result (19)</b><br>448:1;450:13;<br>464:23;466:21;<br>467:1;481:15;<br>483:20;484:9;<br>487:10;488:10;<br>525:9;541:3;552:9,<br>11;553:13;554:8,16;<br>556:11;641:25<br><b>resulted (1)</b><br>484:14<br><b>resulting (3)</b><br>450:21;554:21;<br>555:7<br><b>results (5)</b><br>538:21;540:1;<br>541:7;550:7;562:11<br><b>resume (1)</b><br>623:20<br><b>resumes (1)</b><br>477:3<br><b>retail (4)</b><br>484:23,24;490:22;<br>580:25 |
|---|---|--|--|---|

|   |   |   |  |   |
|---|---|---|--|---|
| <p><b>retailer (1)</b><br/>581:18<br/><b>retrieve (1)</b><br/>571:8<br/><b>return (7)</b><br/>491:14;492:11,12,<br/>19;514:1;516:19;<br/>588:2<br/><b>returned (4)</b><br/>491:11,24;492:1,<br/>13<br/><b>returns (7)</b><br/>447:12,16;491:13,<br/>16,19;492:2,9<br/><b>reverse (1)</b><br/>453:13<br/><b>review (1)</b><br/>512:17<br/><b>reviewing (2)</b><br/>479:14;643:23<br/><b>revolved (1)</b><br/>615:7<br/><b>right (90)</b><br/>422:6;423:21,25;<br/>424:17,22;425:7;<br/>428:12,13,23;<br/>429:14;430:20;<br/>435:18;436:18,22;<br/>440:3,7;442:18;<br/>444:24;447:2;<br/>448:23;454:9;455:6;<br/>459:15,20;461:19;<br/>462:3;464:13;<br/>466:17,18;468:8,15;<br/>472:5;474:3;476:25;<br/>478:13,23;479:17,<br/>25;485:20;488:8;<br/>492:10;499:2,9;<br/>501:12;504:16,18;<br/>512:20;516:1,8;<br/>523:16,21,22,23;<br/>526:24;527:4;528:2;<br/>531:7,13,15;537:5;<br/>538:11,15;544:7,15,<br/>17,25;545:4,7,17;<br/>560:14,18,23;565:9;<br/>566:9;567:8,11;<br/>568:17;572:18;<br/>577:11;608:17;<br/>610:8;612:15;<br/>617:12;619:1;<br/>623:18;625:12;<br/>631:19;636:9;<br/>644:16,18<br/><b>risk (14)</b><br/>428:8;431:20,22;<br/>432:17,17;434:18,<br/>19;436:10;438:6,8;<br/>440:13;441:16,23;<br/>508:17<br/><b>Rives (1)</b><br/>509:3<br/><b>road (1)</b></p> | <p>479:16<br/><b>Rob (1)</b><br/>508:15<br/><b>rocket (1)</b><br/>643:24<br/><b>Roger (1)</b><br/>506:4<br/><b>R-O-G-E-R (1)</b><br/>506:5<br/><b>role (3)</b><br/>421:11;576:20;<br/>620:16<br/><b>rolls (1)</b><br/>534:3<br/><b>room (8)</b><br/>504:16,17;508:22;<br/>510:23;511:7,21;<br/>531:14;600:10<br/><b>rooted (1)</b><br/>533:20<br/><b>rough (5)</b><br/>560:16;597:6;<br/>616:15;630:2;634:5<br/><b>Roughly (2)</b><br/>470:2;573:25<br/><b>route (45)</b><br/>427:19,20;428:3,<br/>14;440:20;447:25;<br/>448:20;449:13,19;<br/>465:1,17;470:22;<br/>472:13;490:12,13,<br/>14,17,20,21;491:4,6,<br/>9,13,19;492:1,15,21,<br/>25;493:22,24;494:3;<br/>557:16;580:21,23,<br/>24;581:14,16;<br/>584:10,12,19;<br/>586:24;587:4,8,9;<br/>604:17<br/><b>routes (6)</b><br/>465:21;581:12;<br/>582:25;584:15;<br/>587:3;588:20<br/><b>routine (1)</b><br/>421:13<br/><b>row (2)</b><br/>610:18,21<br/><b>rudimentary (1)</b><br/>582:12<br/><b>rule (4)</b><br/>466:7;479:10;<br/>494:14;505:7<br/><b>ruled (1)</b><br/>577:19<br/><b>rulemaking (1)</b><br/>578:3<br/><b>rule-making (1)</b><br/>578:3<br/><b>Rules (7)</b><br/>515:6;539:5,6;<br/>547:10;548:4;594:6;<br/>628:3<br/><b>run (2)</b></p> | <p>541:3;624:21<br/><b>running (2)</b><br/>474:25;517:4<br/><b>Ryan (2)</b><br/>509:19;541:12<br/><br/><b>S</b><br/><br/><b>sale (2)</b><br/>491:14,16<br/><b>sales (39)</b><br/>427:21;428:3,14,<br/>15;439:18;447:24;<br/>448:20;449:13,20,<br/>23;450:1,4;451:9,11;<br/>454:17;465:6;467:6,<br/>15;470:17,22;<br/>472:13;491:13,18;<br/>492:2;493:25;498:5,<br/>11;499:1;573:17;<br/>581:14;584:10,12,<br/>19;586:24,24,25;<br/>587:4,8,9<br/><b>same (47)</b><br/>428:8;430:1;<br/>431:22;433:9;<br/>434:21;441:22;<br/>450:24;451:6;455:2;<br/>456:17,20;463:4;<br/>469:1;470:9;490:18;<br/>492:25;495:14;<br/>501:4;512:7;516:10;<br/>519:4,18;554:1;<br/>556:4;557:16;<br/>571:23;573:18;<br/>580:5,6;584:11;<br/>585:1;593:24;595:2;<br/>601:3;607:6;611:10;<br/>614:8,10,11;624:2;<br/>625:20;626:9;<br/>631:22,22;637:8;<br/>641:7;642:11<br/><b>San (2)</b><br/>506:24;507:3<br/><b>Saputo (1)</b><br/>508:13<br/><b>satisfaction (3)</b><br/>428:25;440:1;<br/>614:14<br/><b>Saturday (1)</b><br/>555:24<br/><b>saying (7)</b><br/>452:20;464:14;<br/>525:23;542:20;<br/>598:17;609:22;<br/>625:7<br/><b>scenarios (1)</b><br/>539:16<br/><b>Schaefer (24)</b><br/>505:25,25;559:25;<br/>560:1,25;561:2,6,8,<br/>11,17;571:17;576:6;<br/>596:20,24;597:3;</p> | <p>612:2,10;614:24;<br/>623:21,23;632:8,14;<br/>633:25;644:3<br/><b>S-C-H-A-E-F-E-R (2)</b><br/>506:1;561:9<br/><b>schedule (2)</b><br/>455:19;570:10<br/><b>scheduled (1)</b><br/>542:10<br/><b>schedules (1)</b><br/>517:21<br/><b>scheme (2)</b><br/>449:4;489:12<br/><b>SCHIEK (4)</b><br/>507:24,25,25;<br/>532:25<br/><b>S-C-H-I-E-K (1)</b><br/>507:25<br/><b>science (1)</b><br/>643:24<br/><b>scoot (1)</b><br/>422:12<br/><b>scream (1)</b><br/>600:11<br/><b>screw (1)</b><br/>517:25<br/><b>script (1)</b><br/>600:25<br/><b>se (1)</b><br/>591:21<br/><b>search (1)</b><br/>477:12<br/><b>seated (5)</b><br/>422:4,6;528:1;<br/>545:14,16<br/><b>Seattle (1)</b><br/>437:15<br/><b>second (3)</b><br/>517:12;551:4,13<br/><b>Secondly (1)</b><br/>592:15<br/><b>Secretary (3)</b><br/>511:12;594:9;<br/>637:24<br/><b>Section (146)</b><br/>426:10;427:25;<br/>436:24;440:10,19;<br/>442:10,19,20;443:3;<br/>445:11,24;447:3,5;<br/>450:23,25;451:1;<br/>453:2;455:4;456:10,<br/>12,25;458:10;459:8;<br/>461:18;464:14,23;<br/>468:7;477:8,13,19,<br/>23;478:1,25;480:2,3,<br/>13,14;489:21;<br/>490:11,15;491:5;<br/>496:13,16;497:7,9;<br/>498:15;500:5,5,24;<br/>501:8;518:20,21;<br/>519:5,7;534:11;<br/>548:22;549:21;<br/>553:18,19,20;555:8,</p> | <p>20,22;556:23;558:6;<br/>561:22;562:9,9,15;<br/>565:4,6;567:4,7,11,<br/>13;568:7;572:6,8,12;<br/>578:6,8,9;579:7,11;<br/>580:13,14,17;<br/>582:10,13,13;583:7;<br/>585:1;586:3,4,4;<br/>588:23,24;589:8,9,<br/>10;590:13,14,19;<br/>591:7;592:11,11;<br/>593:14,20,22;<br/>594:23;595:9,20;<br/>596:7;613:12;<br/>616:13;617:1,17;<br/>619:2,12,12;620:22;<br/>621:4,6,7;622:5,16;<br/>623:24,25;624:1,3,<br/>24;625:5;628:25;<br/>629:3;630:21,21,22;<br/>631:2,5,17,18,19,21;<br/>640:11;641:6;642:1<br/><b>sections (9)</b><br/>430:22;452:8;<br/>477:9;515:4,14;<br/>562:5,6;565:12;<br/>639:22<br/><b>seems (1)</b><br/>544:24<br/><b>Select (2)</b><br/>509:18;541:12<br/><b>sell (7)</b><br/>458:20;584:10,18;<br/>587:8;591:8,11;<br/>593:17<br/><b>seller (1)</b><br/>491:11<br/><b>selling (4)</b><br/>448:6,13;466:14;<br/>584:13<br/><b>send (4)</b><br/>449:25;581:10;<br/>596:12;598:15<br/><b>sending (1)</b><br/>496:9<br/><b>sends (2)</b><br/>495:17;581:6<br/><b>Senior (4)</b><br/>505:7;507:10;<br/>508:12,16<br/><b>sense (5)</b><br/>469:10;475:15;<br/>515:18;633:20;<br/>634:16<br/><b>sent (3)</b><br/>495:12;496:4;<br/>622:9<br/><b>sentences (1)</b><br/>635:1<br/><b>separability (1)</b><br/>594:25<br/><b>separate (11)</b><br/>432:14,14,15;</p> |
|---|---|---|--|---|



|  |   |   |   |   |
|--|---|---|---|---|
| 433:14;444:13;<br>511:20;558:19;<br>570:5;571:5;613:19;<br>619:2<br><b>separated (1)</b><br>569:18<br><b>separately (2)</b><br>548:8;613:19<br><b>SEPTEMBER (9)</b><br>421:1,7;513:16;<br>514:10;588:15;<br>607:20,23;608:10,11<br><b>sequence (6)</b><br>421:24;551:23;<br>552:1,13,15,17<br><b>seriatim (2)</b><br>475:2,12<br><b>series (1)</b><br>483:20<br><b>seriously (1)</b><br>452:23<br><b>seriousness (1)</b><br>503:23<br><b>Service (14)</b><br>504:11,20;510:5;<br>554:12;558:11,12,<br>13,21,23;559:9;<br>569:8,11;596:1;<br>598:8<br><b>services (6)</b><br>547:21;558:7,25;<br>559:4;568:9,21<br><b>sessions (1)</b><br>511:2<br><b>set (6)</b><br>490:19;519:15;<br>543:24;570:5;596:4;<br>632:22<br><b>sets (5)</b><br>427:13;596:4;<br>597:23;619:16,17<br><b>setting (1)</b><br>434:20<br><b>settled (1)</b><br>444:6<br><b>settlement (9)</b><br>443:24;444:4;<br>448:9,12;453:12;<br>554:11;595:25;<br>600:5,7<br><b>settles (2)</b><br>618:24;629:7<br><b>settling (2)</b><br>595:24;617:25<br><b>seven (3)</b><br>514:24;516:18;<br>552:20<br><b>seventh (1)</b><br>552:16<br><b>shall (19)</b><br>431:1;437:1,11,<br>21;438:15;440:24;<br>450:21;518:25; | 519:2,3,4;527:1,1;<br>549:16,23;594:10;<br>613:4,14;641:9<br><b>share (3)</b><br>513:11,13;557:2<br><b>shared (2)</b><br>432:16;441:23<br><b>sharing (1)</b><br>438:8<br><b>sheet (2)</b><br>449:25;454:16<br><b>shelf (1)</b><br>498:16<br><b>shelves (1)</b><br>493:18<br><b>ship (13)</b><br>585:21;588:10,12,<br>16;589:25;599:7;<br>623:5;624:4;633:21;<br>635:12,21;636:5,8<br><b>shipment (1)</b><br>617:23<br><b>shipments (8)</b><br>588:17;618:9;<br>625:3,5,8;630:11;<br>631:3,15<br><b>shipped (4)</b><br>557:12;599:17;<br>622:18;636:7<br><b>shipping (7)</b><br>562:22;565:20;<br>585:16,19;623:1,2;<br>633:8<br><b>ships (6)</b><br>596:10;630:6,10;<br>635:3,5;636:12<br><b>short (1)</b><br>476:7<br><b>shortcuts (1)</b><br>476:10<br><b>shot (1)</b><br>566:11<br><b>show (8)</b><br>428:24,24;460:6;<br>485:13;523:1;<br>538:14;540:2;543:7<br><b>showed (2)</b><br>461:16;526:6<br><b>showing (1)</b><br>538:21<br><b>shown (2)</b><br>511:14;532:10<br><b>shows (2)</b><br>454:16;462:17<br><b>shrinkage (16)</b><br>494:6,7;548:6,6,9,<br>12,13,14,15,17,24;<br>549:9;550:6,15,16,<br>18<br><b>shutdown (2)</b><br>537:1,1<br><b>sick (1)</b><br>529:20 | <b>side (7)</b><br>511:6;516:10;<br>600:10;610:6;<br>641:13,14;643:15<br><b>significance (1)</b><br>573:22<br><b>significant (2)</b><br>470:14;578:24<br><b>similar (15)</b><br>426:21,23;430:17;<br>442:1;468:15,18;<br>469:19;483:12;<br>489:22;493:11;<br>494:14;497:17;<br>571:20;575:6;<br>615:21<br><b>simple (1)</b><br>441:19<br><b>simplest (1)</b><br>583:21<br><b>simply (5)</b><br>535:16;541:25;<br>621:16;628:3;<br>629:11<br><b>single (1)</b><br>614:11<br><b>site (1)</b><br>542:3<br><b>sitting (2)</b><br>515:20;623:15<br><b>situation (4)</b><br>495:1;527:5;<br>528:24;639:11<br><b>six (1)</b><br>475:3<br><b>sixth (2)</b><br>551:13;552:14<br><b>size (1)</b><br>576:2<br><b>skim (21)</b><br>500:14;502:24;<br>548:7,9,19,20;<br>549:22;550:7,21,22;<br>551:2;552:4,7,12;<br>553:10,14,16,17;<br>554:5;640:14;641:4<br><b>skipping (2)</b><br>465:12;579:21<br><b>slight (2)</b><br>444:18;451:4<br><b>slightly (1)</b><br>488:10<br><b>slips (1)</b><br>492:12<br><b>slower (2)</b><br>431:6;434:4<br><b>slowing (1)</b><br>431:4<br><b>slowly (2)</b><br>452:12;504:5<br><b>small (6)</b><br>575:24;578:14;<br>624:16;640:5,6,7 | <b>Smith (16)</b><br>509:11,11;529:14;<br>530:23;531:16;<br>532:2,10,15,19;<br>536:21,23;537:8,8,<br>14;632:12,13<br><b>S-M-I-T-H (1)</b><br>509:11<br><b>SNF (1)</b><br>534:4<br><b>sold (6)</b><br>433:2;446:3;<br>584:15;593:12;<br>621:16;626:5<br><b>sole (8)</b><br>428:8;431:19,22;<br>432:17;436:10,22;<br>438:6;440:13<br><b>solely (2)</b><br>437:5,24<br><b>solemnly (3)</b><br>422:8;528:3;<br>545:18<br><b>solid (2)</b><br>534:2,6<br><b>solids (14)</b><br>436:1;472:7,23,<br>25;473:2,6,6,9;<br>500:16;553:17;<br>640:15;642:22;<br>643:3,4<br><b>solved (2)</b><br>612:6,7<br><b>solves (1)</b><br>478:23<br><b>somebody (4)</b><br>475:11;589:11;<br>600:10;621:17<br><b>somebody's (1)</b><br>472:3<br><b>somehow (1)</b><br>437:15<br><b>someone (3)</b><br>455:12;530:25;<br>595:18<br><b>sometime (1)</b><br>450:14<br><b>sometimes (13)</b><br>443:25;450:16;<br>458:3;474:8;479:9;<br>563:23;568:13,17;<br>605:12;614:1,5;<br>620:5;639:19<br><b>somewhat (7)</b><br>543:23;563:22;<br>566:20;575:22;<br>578:2;593:24;<br>633:16<br><b>somewhere (3)</b><br>514:23;517:24;<br>540:3<br><b>soon (3)</b><br>523:3,6;596:2 | <b>sorry (18)</b><br>431:4;434:10,11;<br>451:22,23,24;455:7;<br>460:11;467:20;<br>468:11;470:12;<br>472:2;481:12;<br>482:24;500:6;<br>540:13;598:24;<br>640:24<br><b>sort (7)</b><br>442:23;474:23;<br>480:5;484:6,7;<br>522:22;601:2<br><b>sorts (1)</b><br>557:22<br><b>sound (2)</b><br>461:19;477:6<br><b>sounded (3)</b><br>476:14;630:23;<br>639:16<br><b>source (16)</b><br>435:4,16;437:6,10,<br>17;459:25;486:18,<br>20;488:6,12,25;<br>489:1;496:1,4;551:5,<br>8<br><b>sources (3)</b><br>440:15,16;452:4<br><b>South (3)</b><br>573:6,7;625:1<br><b>Southeast (2)</b><br>529:25;530:3<br><b>Southwest (1)</b><br>505:10<br><b>space (1)</b><br>508:23<br><b>speak (15)</b><br>445:19;446:7,14;<br>463:9;480:16;504:4;<br>510:13,13,16;<br>540:24;547:24;<br>566:24;572:8;<br>621:16;632:2<br><b>speaking (5)</b><br>430:13;563:23;<br>564:9;592:13;607:2<br><b>speaks (1)</b><br>462:7<br><b>special (4)</b><br>589:9,10,13,23<br><b>Specialist (4)</b><br>505:4,7,20;528:17<br><b>species (1)</b><br>635:20<br><b>specific (13)</b><br>442:24;468:20;<br>497:9;516:24;522:9;<br>533:18;549:19,24;<br>558:24;563:5;592:7;<br>608:22;636:15<br><b>specifically (6)</b><br>502:20;518:20;<br>519:9;563:4;566:16; |
|--|---|---|---|---|

|   |   |   |   |   |
|---|---|---|---|---|
| 567:3<br><b>specifications (1)</b><br>535:9<br><b>specificity (1)</b><br>606:12<br><b>specifics (2)</b><br>520:9;572:19<br><b>specified (6)</b><br>435:24;555:20,22;<br>557:3;558:10;641:5<br><b>speculate (1)</b><br>542:11<br><b>speculation (1)</b><br>542:15<br><b>speed (2)</b><br>518:2;597:13<br><b>spell (6)</b><br>422:15;524:10;<br>529:1;533:8;545:23;<br>561:7<br><b>spelled (3)</b><br>533:12;545:25;<br>546:7<br><b>spelling (1)</b><br>508:8<br><b>spent (1)</b><br>477:4<br><b>split (6)</b><br>614:1,4,5,6,12,13<br><b>S-P-L-I-T (1)</b><br>614:5<br><b>spoke (3)</b><br>457:5;477:7;<br>626:17<br><b>spreadsheet (1)</b><br>533:23<br><b>spring (1)</b><br>485:8<br><b>St (1)</b><br>546:13<br><b>stab (1)</b><br>526:19<br><b>staff (1)</b><br>505:11<br><b>stand (11)</b><br>422:4;463:20;<br>510:14;521:22;<br>528:7;531:22;<br>542:23;544:11;<br>545:13;561:1;<br>576:10<br><b>standalone (1)</b><br>628:9<br><b>standard (7)</b><br>508:8;534:6,6;<br>554:14,15;578:18;<br>579:2<br><b>standardization (1)</b><br>578:24<br><b>standards (5)</b><br>472:7,17;473:16,<br>18;494:22<br><b>standpoint (1)</b> | 450:5<br><b>stands (2)</b><br>492:19;511:16<br><b>start (11)</b><br>425:21;427:10;<br>430:23;431:4;<br>433:17;463:17;<br>476:22;480:20;<br>481:12;504:9;536:7<br><b>started (1)</b><br>574:3<br><b>starting (3)</b><br>425:21;562:8;<br>566:14<br><b>starts (1)</b><br>564:4<br><b>state (49)</b><br>422:15;441:7,8;<br>447:12,16,23;448:7,<br>10,11,13;449:8,9;<br>457:15;459:23,24;<br>460:2,2,8,16,20;<br>462:25;465:6;<br>466:11,15,19,20;<br>467:6,10;472:12;<br>482:14;496:13,13,<br>20,23;497:10,10;<br>512:3;524:10;533:8;<br>542:17;545:22;<br>546:15;561:7;569:1;<br>571:22;592:15;<br>603:13,13;619:12<br><b>stated (4)</b><br>502:14;534:5;<br>541:20,22<br><b>statement (10)</b><br>423:23,24;513:19;<br>537:17;548:2;555:5;<br>599:13;619:15;<br>634:23;636:11<br><b>statements (4)</b><br>557:7;558:14;<br>634:15;644:10<br><b>state-operated (1)</b><br>466:3<br><b>States (15)</b><br>421:10;462:22;<br>465:4,24;467:23;<br>472:8;496:25;<br>511:12;573:3,9;<br>592:19;603:16;<br>624:19,24,25<br><b>static (1)</b><br>474:14<br><b>stations (1)</b><br>514:2<br><b>statistical (1)</b><br>474:13<br><b>Statistics (2)</b><br>569:8;616:2<br><b>status (17)</b><br>438:15;441:16;<br>461:18;471:6,7; | 472:19;473:16;<br>484:21;485:14;<br>487:6;495:10;496:7;<br>528:16;555:12;<br>603:2,17;608:3<br><b>stay (7)</b><br>429:7;436:19;<br>524:7;565:21,25;<br>628:14,21<br><b>Steenek (6)</b><br>529:14,18;532:3,8,<br>25;542:22<br><b>step (30)</b><br>504:1,4;527:15;<br>536:25;544:18;<br>548:4,22;551:1,4,7,<br>8,14,19,21,25;552:2,<br>5,11,12,14,16,18,19,<br>20,24;553:3,8,10;<br>560:23;599:10<br><b>steps (2)</b><br>550:9;551:20<br><b>stick (2)</b><br>559:11;627:16<br><b>still (16)</b><br>442:17;445:2;<br>475:17;476:21;<br>515:17;526:16;<br>527:12;531:12;<br>593:11,17;600:20;<br>609:2;610:1,5;<br>628:21;644:7<br><b>Stoel (1)</b><br>509:3<br><b>stop (4)</b><br>577:12;594:15;<br>610:4;644:2<br><b>store (5)</b><br>437:22;491:1,10;<br>581:3;629:23<br><b>straight (1)</b><br>421:18<br><b>Strategy (1)</b><br>507:10<br><b>stretch (1)</b><br>600:9<br><b>Strike (2)</b><br>550:22;610:22<br><b>strikes (1)</b><br>475:12<br><b>structure (5)</b><br>432:24;629:10,11,<br>22,23<br><b>structured (2)</b><br>430:22;433:3<br><b>sub (1)</b><br>530:1<br><b>subject (29)</b><br>429:24;439:14;<br>441:4,8;447:11,15,<br>19,19;449:17;<br>454:19;463:2;466:2,<br>3;499:16,20;517:22; | 520:4;553:21;<br>557:18,19,24;558:1,<br>22;560:2;571:8;<br>589:12;591:20,22;<br>604:4<br><b>subjected (1)</b><br>448:3<br><b>subjects (2)</b><br>570:12;571:5<br><b>submitted (5)</b><br>506:16;509:9;<br>537:21;553:21;<br>556:20<br><b>subpart (2)</b><br>631:1,1<br><b>subsection (5)</b><br>445:23;453:23;<br>630:22,25;631:17<br><b>subsections (1)</b><br>445:15<br><b>subsequent (1)</b><br>556:13<br><b>substantially (1)</b><br>470:23<br><b>subtract (2)</b><br>453:3;491:19<br><b>subtracted (1)</b><br>552:19<br><b>subtracting (2)</b><br>500:19;552:6<br><b>succ (1)</b><br>556:6<br><b>succeeding (1)</b><br>556:6<br><b>Sue (2)</b><br>508:8;533:10<br><b>S-U-E (1)</b><br>533:10<br><b>suggest (2)</b><br>474:24;515:15<br><b>suggestion (1)</b><br>474:23<br><b>suitable (1)</b><br>555:15<br><b>sum (2)</b><br>550:23;552:21<br><b>summarize (4)</b><br>579:9,14;595:4,21<br><b>summarizes (1)</b><br>595:11<br><b>Sunday (1)</b><br>555:24<br><b>Supervisor (1)</b><br>506:5<br><b>supplemental (1)</b><br>519:10<br><b>supplied (2)</b><br>496:9;526:7<br><b>supplies (4)</b><br>454:15;570:7;<br>583:3;598:14<br><b>supply (86)</b><br>435:16;437:6,10, | 18;451:21;452:4,8,9;<br>453:10,14;484:24;<br>528:22;551:22;<br>552:1;580:9,12;<br>582:16,17,22,24;<br>583:1,2,4,22;584:5;<br>585:9,11,21;588:9;<br>598:5,10,12,19;<br>599:6;600:2,15,19,<br>24;607:7;620:24;<br>622:16;623:4,9;<br>624:1,5,17,23,25;<br>625:13;626:6,11,17,<br>22,23,24;627:6,8,10,<br>15,19,21,22;628:10,<br>25;629:2,17,22;<br>630:4,5;631:4,15,23;<br>632:23;633:9,21;<br>634:9;635:2,2,4,19,<br>21;636:5,11,11;<br>638:10;639:1<br><b>supplying (3)</b><br>598:9,11,11<br><b>support (3)</b><br>505:11;506:7;<br>516:8<br><b>suppose (1)</b><br>521:11<br><b>Sure (30)</b><br>426:6;432:12;<br>433:1;436:12,16;<br>450:18;460:13;<br>463:8;471:2;474:21;<br>475:21,23;489:17,<br>24;517:24;520:19;<br>531:3;533:10;<br>560:20;567:6;<br>571:22;582:11;<br>594:18;609:21;<br>615:25;616:25;<br>625:18;630:2;<br>631:19;642:13<br><b>surprise (1)</b><br>515:12<br><b>survey (1)</b><br>534:15<br><b>surveys (1)</b><br>569:8<br><b>suspect (1)</b><br>537:25<br><b>swear (5)</b><br>422:8;527:25;<br>528:3;545:16,18<br><b>swearing (1)</b><br>422:5<br><b>sworn (2)</b><br>524:9;561:6<br><b>Syracuse (1)</b><br>529:4<br><b>system (45)</b><br>427:3;432:13;<br>435:11;436:16;<br>442:1;448:18,23; |
|---|---|---|---|---|

|  |  |  |  |  |
|--|--|--|--|--|
| 457:15;461:17;<br>469:8;488:3;489:2;<br>496:14;497:20;<br>512:8,9;571:20,22,<br>25;572:1,14;592:16,<br>18;627:1,7,12,13,20,<br>21,23;628:3,5,8,9,13,<br>14,18;635:10,16;<br>637:19;638:5,19,23;<br>639:6,9   | 5,5,13,16;577:2;<br>612:1,10,15<br><b>T-A-Y-L-O-R (3)</b><br>504:20;533:11,13<br><b>team (2)</b><br>506:17;576:16<br><b>technical (2)</b><br>431:18;476:19<br><b>telling (1)</b><br>641:8<br><b>tells (6)</b><br>443:3;459:12,16;<br>479:3;503:21;<br>640:12<br><b>Temporarily (3)</b><br>516:11;543:24;<br>560:1<br><b>ten (10)</b><br>461:19;462:6,6;<br>574:3,7;577:23,25;<br>578:5;616:15,23<br><b>tend (1)</b><br>431:9<br><b>tendency (1)</b><br>480:16<br><b>ten-minute (1)</b><br>515:16<br><b>Tennessee (1)</b><br>509:14<br><b>tentative (1)</b><br>570:10<br><b>tentatively (1)</b><br>514:23<br><b>tenth (1)</b><br>553:8<br><b>term (13)</b><br>487:23;490:16;<br>598:24;602:8,21,25;<br>605:13;613:3,14;<br>620:5,6;626:9;641:8<br><b>termed (1)</b><br>621:20<br><b>terminate (1)</b><br>542:10<br><b>termination (1)</b><br>595:20<br><b>terms (18)</b><br>433:5;448:22;<br>461:19;490:9,10,12;<br>535:25;538:13,21;<br>539:14;571:21,24;<br>586:7;592:19;594:7,<br>11;622:13;627:6<br><b>test (1)</b><br>526:23<br><b>testified (7)</b><br>456:18;457:12;<br>458:8;471:17;<br>567:14;570:21;<br>613:11<br><b>testify (6)</b><br>461:1;544:14;<br>570:20;576:10; | 592:5;612:2<br><b>testifying (1)</b><br>529:19<br><b>testimony (25)</b><br>421:12,17,18;<br>423:15,16,20,22;<br>456:12;472:22;<br>566:22;570:11;<br>586:14;591:18;<br>592:1;597:5;599:25;<br>602:7,21;605:20;<br>606:19;616:16;<br>630:2;636:21;<br>638:13;644:8<br><b>tests (4)</b><br>549:1,3,8;559:1<br><b>Texas (1)</b><br>568:19<br><b>thanking (1)</b><br>425:22<br><b>Thanks (1)</b><br>468:11<br><b>theory (1)</b><br>536:6<br><b>thereafter (1)</b><br>481:3<br><b>therefore (5)</b><br>480:24;488:15;<br>540:1;599:11;603:2<br><b>thinking (1)</b><br>602:24<br><b>thinner (1)</b><br>480:8<br><b>third (8)</b><br>421:23;439:22;<br>452:21;521:12;<br>551:7,8,13;599:10<br><b>Thomas (1)</b><br>507:6<br><b>T-H-O-M-A-S (1)</b><br>507:6<br><b>THOMPSON (2)</b><br>507:1,2<br><b>though (9)</b><br>452:16;456:15;<br>477:7;480:11;<br>494:23;498:9;513:1;<br>566:21;575:20<br><b>thought (8)</b><br>475:5,7;559:23;<br>566:14;575:16;<br>576:22;577:7;633:6<br><b>three (38)</b><br>427:23,23;428:3,5,<br>10,13;429:1,7,9,12,<br>23,24;430:18;439:8;<br>470:14,24;472:14;<br>490:14;494:1,19,21,<br>23;517:20;518:17;<br>526:7;551:19;<br>570:17;575:13,15,<br>15;588:25;598:25;<br>611:19,21;612:21; | 639:19,19;640:4<br><b>three-million (1)</b><br>470:11<br><b>three-million-pound (5)</b><br>430:18;436:20;<br>471:9;483:15;<br>494:17<br><b>threshold (4)</b><br>438:24;448:2;<br>449:16;632:19<br><b>throughout (3)</b><br>422:1;512:8;<br>593:25<br><b>thumb (1)</b><br>494:14<br><b>THURSDAY (2)</b><br>421:1,7<br><b>tie (1)</b><br>601:21<br><b>tied (1)</b><br>571:3<br><b>timeframe (1)</b><br>611:5<br><b>timeframes (1)</b><br>595:24<br><b>Timely (2)</b><br>554:17;556:10<br><b>times (4)</b><br>450:12;503:7;<br>602:19;634:14<br><b>tiny (1)</b><br>518:14<br>tinyurl.com/camilkhearing (1)<br>510:24<br><b>Title (4)</b><br>426:9;477:15;<br>512:22;528:12<br><b>today (10)</b><br>421:16;425:22;<br>475:2;509:4;510:2,<br>8;513:9;515:13;<br>532:4;644:17<br><b>together (9)</b><br>509:4;529:14,16;<br>565:15;568:23;<br>571:4;573:10;<br>601:21;627:11<br><b>tomorrow (5)</b><br>475:3;503:19,20;<br>644:4,13<br><b>took (4)</b><br>474:7,11;479:1;<br>528:19<br><b>top (7)</b><br>430:14;453:25;<br>471:19;472:2;<br>511:15;565:9;634:8<br><b>topic (8)</b><br>544:8;570:14,14,<br>17,21;571:1;603:20,<br>25<br><b>topics (7)</b><br>423:6,9;547:7,7,8, | 24;559:7<br><b>total (16)</b><br>427:20;451:18,19;<br>465:8,15;486:25;<br>489:15,17,23;<br>493:24;540:5;<br>575:14;622:14;<br>623:11;624:5;<br>642:18<br><b>totally (1)</b><br>592:17<br><b>touch (4)</b><br>602:8,9,11,12<br><b>tougher (1)</b><br>588:19<br><b>towards (4)</b><br>438:20,20;572:9;<br>592:13<br><b>trace (1)</b><br>487:12<br><b>track (1)</b><br>440:4<br><b>tracks (1)</b><br>469:13<br><b>traditional (1)</b><br>445:20<br><b>traditionally (2)</b><br>573:16;598:11<br><b>trail (1)</b><br>481:8<br><b>trained (1)</b><br>504:4<br><b>transaction (7)</b><br>444:10;569:19;<br>602:1;623:3;625:22;<br>626:5,10<br><b>transcript (10)</b><br>421:24;464:12,13;<br>503:7;511:11;<br>559:24;560:9;561:3;<br>630:20;634:7<br><b>Transcripts (1)</b><br>510:25<br><b>transfer (11)</b><br>432:19;433:13;<br>562:18;566:3,23;<br>567:2;596:9,10;<br>624:13;630:14,14<br><b>transferred (2)</b><br>465:17;549:5<br><b>transferring (1)</b><br>563:2<br><b>transfers (12)</b><br>465:2,22;549:4;<br>561:24,25;562:23;<br>566:13;570:22;<br>580:22;582:20;<br>596:8;639:23<br><b>travel (1)</b><br>517:21<br><b>Treasury (1)</b><br>594:5<br><b>treated (5)</b> |
| <b>T</b>   |  |  |  |  |
| <b>table (14)</b><br>422:13;427:13;<br>434:20;461:15,23;<br>531:4;535:10,11,15;<br>538:20,24;539:3;<br>560:12,15<br><b>tables (6)</b><br>530:1;533:21,21;<br>540:2;543:7,13<br><b>talk (26)</b><br>431:9;434:4,23;<br>446:17;449:15,15;<br>450:10,19;457:11;<br>474:3;477:10;501:2;<br>510:10;562:18,19;<br>565:18;566:2,16;<br>573:24;575:8;576:7;<br>604:3;605:18;606:4,<br>18;644:9<br><b>talked (6)</b><br>438:13;568:4;<br>571:12;604:5,6;<br>606:13<br><b>talking (24)</b><br>434:3;435:5;<br>436:9;450:19;<br>452:15,18;465:6;<br>477:22;491:7;492:8,<br>9;532:10;544:9;<br>575:9;592:23,24;<br>593:4;595:23;<br>606:15,16;610:20;<br>623:24;639:3;<br>643:24<br><b>talks (8)</b><br>436:11,11,24;<br>452:12,12;519:9;<br>565:6;641:4<br><b>tank (3)</b><br>622:1;629:18,19<br><b>tanks (2)</b><br>559:9;622:17<br><b>taxpayers (1)</b><br>522:17<br><b>TAYLOR (25)</b><br>455:25;504:19,19;<br>508:8,8;533:1,10,10,<br>13,15,17;537:23;<br>538:20;539:14;<br>545:5;560:10;576:3, |  |  |  |  |

|   |   |  |   |   |
|---|---|--|---|---|
| <p>486:3,18,20;<br/>491:12,15<br/><b>treatment (4)</b><br/>567:3;572:3;<br/>603:22;639:23<br/><b>Tremaine (1)</b><br/>507:17<br/><b>trends (1)</b><br/>559:6<br/><b>tried (1)</b><br/>592:10<br/><b>truck (2)</b><br/>596:12;598:15<br/><b>trucks (1)</b><br/>622:17<br/><b>true (8)</b><br/>423:7;443:25;<br/>448:25;453:13;<br/>498:9;601:8;619:20;<br/>625:12<br/><b>truth (3)</b><br/>422:10;528:4;<br/>545:20<br/><b>try (10)</b><br/>436:19;443:4;<br/>451:6,13;484:7;<br/>515:14;517:10;<br/>518:7;527:9;609:20<br/><b>trying (26)</b><br/>431:12;432:13,16;<br/>469:6;471:1;479:9;<br/>484:10;485:4;<br/>502:15,19,23;515:4,<br/>20;517:16;526:4;<br/>535:11;537:24;<br/>538:5,13;539:5,8,8;<br/>543:4;597:13;<br/>605:18;632:2<br/><b>turn (9)</b><br/>426:8,9;445:12;<br/>464:3;482:23;579:7;<br/>582:10;586:3;<br/>588:23<br/><b>turning (5)</b><br/>580:13,17;598:2;<br/>599:25;613:3<br/><b>twice (2)</b><br/>451:6;611:9<br/><b>two (33)</b><br/>424:21;433:16;<br/>439:8;466:24;<br/>467:25;471:21;<br/>475:2;480:18;<br/>485:16;489:13;<br/>494:10,11;496:25;<br/>510:7;511:1,11,14;<br/>516:17;518:14;<br/>530:1;531:1;533:7;<br/>534:24;548:25;<br/>550:20;551:20;<br/>574:24;580:4;<br/>611:20;612:21;<br/>632:4;639:25;</p> | <p>640:20<br/><b>tying (1)</b><br/>570:11<br/><b>type (10)</b><br/>433:5;442:1;<br/>451:13;473:13,19;<br/>562:21;567:2;576:4;<br/>583:9;636:15<br/><b>types (4)</b><br/>562:23;588:25;<br/>589:1;623:6<br/><b>typically (4)</b><br/>513:21;554:25;<br/>558:15;564:16</p>  | <p>620:22;622:4;<br/>623:24;624:3;631:5,<br/>16;632:24;640:13;<br/>642:1<br/><b>undermined (1)</b><br/>610:25<br/><b>undermines (1)</b><br/>612:12<br/><b>understood (2)</b><br/>486:12;625:19<br/><b>unfinished (1)</b><br/>522:2<br/><b>Unfortunately (1)</b><br/>516:23<br/><b>UNIDENTIFIED (3)</b><br/>516:11;531:11;<br/>551:14<br/><b>uniform (7)</b><br/>492:23;493:1;<br/>498:21;501:3;<br/>503:13;573:14;<br/>642:6<br/><b>unintended (1)</b><br/>532:11<br/><b>unique (1)</b><br/>578:2<br/><b>unit (4)</b><br/>626:24;627:2,7,8<br/><b>United (4)</b><br/>421:9;427:17;<br/>509:23;511:11<br/><b>units (2)</b><br/>491:3;581:4<br/><b>universally (1)</b><br/>578:15<br/><b>University (2)</b><br/>546:13,15<br/><b>unless (7)</b><br/>476:3;519:1;<br/>549:24;563:8;608:2;<br/>634:16;636:5<br/><b>unlike (1)</b><br/>482:3<br/><b>unlikely (1)</b><br/>522:23<br/><b>unmodified (1)</b><br/>641:7<br/><b>unravel (1)</b><br/>571:4<br/><b>unregulated (6)</b><br/>451:21;551:22;<br/>552:1;600:2,19,24<br/><b>up (45)</b><br/>431:25;435:17;<br/>444:6;448:25;<br/>462:12;475:7;<br/>487:22;495:2;500:4;<br/>515:13;517:4,9,25;<br/>518:3;525:22;<br/>527:10;532:7,10;<br/>534:3;535:24;<br/>549:16;565:17;<br/>573:8;575:12;</p> | <p>576:10;581:13;<br/>584:6;587:1;589:6,<br/>20;596:15;597:13,<br/>24;600:10;603:9,16;<br/>604:20;605:6;<br/>621:19,25;622:8,17;<br/>636:19;638:23;<br/>642:23<br/><b>updated (1)</b><br/>458:2<br/><b>updating (1)</b><br/>458:1<br/><b>upfront (1)</b><br/>445:16<br/><b>upon (4)</b><br/>483:21;559:8;<br/>637:23,24<br/><b>Upper (6)</b><br/>506:1;572:24;<br/>573:2;574:20;<br/>624:18;625:2<br/><b>urban (1)</b><br/>598:16<br/><b>urge (1)</b><br/>515:19<br/><b>USA (1)</b><br/>508:13<br/><b>usage (2)</b><br/>564:20;639:20<br/><b>USDA (22)</b><br/>428:17;504:10,13,<br/>24;505:4,17;506:9,<br/>17;512:4;513:4,25;<br/>523:24,25;528:23;<br/>535:6,16;538:8;<br/>545:13;546:2,3;<br/>576:16;644:7<br/><b>USDA's (1)</b><br/>428:20<br/><b>use (40)</b><br/>432:7;468:18;<br/>473:2;476:9;486:22;<br/>489:9;500:7;501:7,<br/>9;502:10;516:21;<br/>517:19;525:7;526:9;<br/>527:10,10;549:6,16,<br/>16,19,24;563:22;<br/>566:5;570:6;602:15,<br/>21;605:12,13,15;<br/>620:5;622:25;625:4,<br/>8,21;626:9,13;<br/>638:12,24;643:11,11<br/><b>used (55)</b><br/>436:1;437:4,22;<br/>441:20;443:6,14;<br/>452:7,9;463:19;<br/>473:11;480:7;487:5,<br/>23;490:9,10,12,15,<br/>18;501:18,24;503:6;<br/>512:8;522:13;<br/>533:25;534:9,18,20;<br/>535:17;538:1,9,10;<br/>551:5,9;558:24;</p> | <p>564:7;571:21;<br/>578:19;589:16;<br/>598:25;600:13;<br/>602:8,19,20;609:15;<br/>614:10,11;620:6;<br/>625:20;626:3;627:8;<br/>629:12;640:15;<br/>641:12,15;642:16<br/><b>useful (3)</b><br/>480:10;542:24;<br/>543:2<br/><b>uses (6)</b><br/>472:14,15;549:23;<br/>553:18;571:20;<br/>617:8<br/><b>using (14)</b><br/>427:1;446:12;<br/>461:25;465:20;<br/>477:12;526:5,8;<br/>541:2;554:3;563:25;<br/>566:5;592:18;<br/>598:24;642:22<br/><b>usually (3)</b><br/>454:16;491:25;<br/>575:9<br/><b>Uthra (1)</b><br/>505:15<br/><b>U-T-H-R-A (1)</b><br/>505:16<br/><b>utilization (34)</b><br/>443:2;454:21;<br/>487:4;529:25;530:2,<br/>3;548:18;550:5,11,<br/>12;551:10;552:20;<br/>553:1,2,5;565:6,20;<br/>575:6,8,12,12,18,18,<br/>21,25;585:10;618:8;<br/>632:25;633:12,13,<br/>15;640:12;641:14;<br/>643:15<br/><b>utilizations (4)</b><br/>443:4;548:11,21;<br/>600:4<br/><b>utilized (1)</b><br/>522:10<br/><b>utilizing (1)</b><br/>614:19</p> |
|   | <b>U</b>  |  |   |   |
|   | <p><b>U-L-I-N (1)</b><br/>507:21<br/><b>unanimous (1)</b><br/>523:5<br/><b>uncomfortable (1)</b><br/>430:13<br/><b>uncooperative (2)</b><br/>469:6;471:1<br/><b>uncover (1)</b><br/>553:25<br/><b>under (109)</b><br/>422:8;427:15;<br/>428:5;429:1,6,7,23;<br/>431:19;432:1;433:3;<br/>434:6;435:23;<br/>436:19;440:22;<br/>441:5,6,21;442:1,7;<br/>443:15;444:6;<br/>447:12,16;448:4,6,<br/>25;449:19;450:20;<br/>452:3;453:22;455:2;<br/>457:14;458:10;<br/>459:24;461:18;<br/>462:14,23;466:5;<br/>467:12,15;470:10;<br/>471:6;472:13,13,17;<br/>473:7;482:5,6,18;<br/>485:7;487:3;488:2;<br/>489:21;490:15;<br/>496:16;497:6;<br/>499:10,14,19;500:5;<br/>501:3,4;502:6;<br/>512:15;514:1;<br/>518:22;528:3;<br/>529:25;530:1;<br/>534:12;535:19;<br/>538:22;545:18;<br/>549:21,23;557:19;<br/>558:9;562:12;564:5;<br/>567:3;570:16,21;<br/>571:21;573:10;<br/>579:11;591:1,24,25,<br/>25;593:11;594:12;<br/>595:12;600:5;602:3;<br/>603:15;606:13,14,<br/>14;611:20;613:13;</p> |  |   |   |
|   |   |  |   | <b>V</b>  |
|   |   |  |   | <p><b>validation (1)</b><br/>455:16<br/><b>valuable (1)</b><br/>576:25<br/><b>value (31)</b><br/>442:25;443:10,13,<br/>14;450:22;451:1,14,<br/>20;452:5;453:1,3;<br/>469:5;482:19;<br/>486:25;488:2,7,9;<br/>489:4;501:9,17,20;<br/>502:9,11,13;553:19;<br/>556:7,12;570:25;</p>  |

|   |  |   |  |   |
|---|--|---|--|---|
| 590:11;617:8;642:1<br><b>values (3)</b><br>443:10;512:11;<br>554:14<br><b>variables (1)</b><br>542:14<br><b>variances (1)</b><br>461:4<br><b>variation (2)</b><br>430:7;444:18<br><b>variations (1)</b><br>444:13<br><b>varies (1)</b><br>430:6<br><b>variety (1)</b><br>573:3<br><b>various (6)</b><br>424:10;474:13;<br>477:9;504:8;562:23;<br>565:12<br><b>vary (3)</b><br>461:5;584:20,23<br><b>vast (3)</b><br>627:22,24,24<br><b>vein (1)</b><br>601:3<br><b>vending (2)</b><br>491:1;581:3<br><b>vendor (2)</b><br>491:1;581:3<br><b>verbatim (1)</b><br>426:5<br><b>verified (2)</b><br>554:19;556:18<br><b>verifies (1)</b><br>559:1<br><b>versa (1)</b><br>588:5<br><b>versus (8)</b><br>450:5;482:15;<br>497:7;502:16;<br>552:21;553:1,4;<br>580:12<br><b>vertically (1)</b><br>484:22<br><b>VETNE (20)</b><br>487:19,20;508:19,<br>19;520:15,15;<br>521:20;522:5;572:3;<br>615:2,3;623:20,22;<br>630:17;631:8,11,13;<br>632:1;634:8;635:11<br><b>V-E-T-N-E (1)</b><br>508:20<br><b>vice (1)</b><br>588:5<br><b>Vice-President (3)</b><br>507:10;508:9,12<br><b>Victor (2)</b><br>507:21;509:2<br><b>view (2)</b><br>421:15;442:23<br><b>violate (3)</b> | 429:10;438:12,18<br><b>violations (1)</b><br>594:9<br><b>Virginia (1)</b><br>437:16<br><b>visit (2)</b><br>439:1,3<br><b>Vlahos (2)</b><br>506:22,22<br><b>V-L-A-H-O-S (1)</b><br>506:23<br><b>voice (3)</b><br>477:6;516:11;<br>531:11<br><b>volume (37)</b><br>428:11;438:24;<br>470:17;478:19;<br>494:9,22;495:4,5,6,<br>7;525:7,21;526:9;<br>549:12;557:16;<br>608:15;616:7;<br>619:14,25;622:14;<br>625:25;632:24;<br>635:22;637:1,12,13;<br>641:6,16,18;642:17,<br>18,21,23,25;643:12,<br>14,17<br><b>volumes (1)</b><br>527:11<br><b>voluntarily (2)</b><br>603:9;615:20<br><b>voted (1)</b><br>595:7<br><b>Vu (3)</b><br>509:1,1,2<br><b>Vulin (17)</b><br>507:20,20;517:14;<br>521:22;571:14,15;<br>577:8,12,15;592:9,<br>10;593:6,10;596:22;<br>597:11;605:22;<br>630:25<br><b>Vulin's (2)</b><br>598:4;634:13 | <b>Warren (8)</b><br>461:15;504:22,22;<br>524:4,11;526:5;<br>527:14,15<br><b>W-A-R-R-E-N (2)</b><br>504:23;524:12<br><b>Washington (9)</b><br>424:16;467:23;<br>493:9,12;506:6;<br>507:17;546:6,13;<br>569:16<br><b>water (5)</b><br>432:10;435:6;<br>473:4;528:18;<br>549:11<br><b>wave (1)</b><br>600:10<br><b>way (29)</b><br>430:1;434:13;<br>438:1,8;446:23,23;<br>455:4,23;471:4;<br>473:15;476:12;<br>485:6;493:19;497:5;<br>502:14;518:23;<br>521:15;525:18;<br>532:20;573:11;<br>581:14;592:4;<br>598:17;602:4,19,20;<br>622:24;638:22;<br>642:6<br><b>ways (1)</b><br>604:20<br><b>web (1)</b><br>541:7<br><b>website (8)</b><br>457:20;460:5;<br>462:9;471:22;511:3;<br>521:6,19;531:2<br><b>websites (2)</b><br>474:5,13<br><b>wedges (1)</b><br>535:3<br><b>weeds (2)</b><br>486:13;605:18<br><b>week (2)</b><br>475:3;521:4<br><b>weeks (2)</b><br>511:1;531:2<br><b>week's (1)</b><br>511:1<br><b>Wegner (3)</b><br>507:6,6,7<br><b>W-E-G-N-E-R (1)</b><br>507:7<br><b>weigh (1)</b><br>628:11<br><b>weight (3)</b><br>495:7;502:24;<br>549:1<br><b>weights (4)</b><br>548:25;549:3,8;<br>559:1<br><b>welcome (10)</b> | 510:12;514:11;<br>524:6;528:6;537:15;<br>545:7;571:19;<br>596:21;644:13,19<br><b>welcoming (1)</b><br>426:1<br><b>weren't (1)</b><br>463:2<br><b>West (2)</b><br>484:5;497:4<br><b>Western (6)</b><br>497:1;509:22;<br>528:17;534:14,15;<br>535:1<br><b>wet (2)</b><br>629:18,19<br><b>what's (9)</b><br>438:24;459:25;<br>569:24;579:13;<br>596:8,13;603:5;<br>604:17;606:12<br><b>whereas (2)</b><br>570:15;598:10<br><b>Whereupon (8)</b><br>477:2;516:3;<br>527:23;530:19;<br>545:9;593:8;623:17;<br>644:22<br><b>wherever (2)</b><br>490:18;625:14<br><b>whew (1)</b><br>534:15;535:1<br><b>whichever (1)</b><br>553:4<br><b>whole (3)</b><br>518:3;573:19;<br>589:6<br><b>wholesale (2)</b><br>490:22;581:1<br><b>wholesaler (1)</b><br>581:18<br><b>who's (9)</b><br>421:10;594:17;<br>599:14,14;602:18,<br>18;608:23;638:10,11<br><b>whose (6)</b><br>441:13;551:17;<br>591:4;615:7,19;<br>620:7<br><b>Wichita (6)</b><br>450:12,15,15,18;<br>481:21;489:22<br><b>William (3)</b><br>422:16;504:25;<br>507:24<br><b>W-I-L-L-I-A-M (3)</b><br>422:16;504:25;<br>507:25<br><b>willing (2)</b><br>518:4;532:14<br><b>wipe (1)</b><br>643:16<br><b>Wisconsin (3)</b> | 573:6;604:21;<br>625:2<br><b>Wise (23)</b><br>421:22;422:3,16;<br>423:3;425:19;426:2;<br>456:3,6;463:10;<br>473:21;475:16,25;<br>476:7;477:4,17;<br>479:17;480:15;<br>481:4;499:24;503:4,<br>16,17;584:21<br><b>W-I-S-E (1)</b><br>422:17<br><b>Wise's (1)</b><br>421:17<br><b>wish (1)</b><br>532:17<br><b>within (21)</b><br>435:24;464:25;<br>465:4,23;484:12,20;<br>538:3;546:1;554:14;<br>555:15;568:8;582:8;<br>598:23;607:16;<br>615:12,13,19;<br>624:23,25;628:13;<br>635:15<br><b>without (6)</b><br>431:18;449:14;<br>461:7;521:18;582:8;<br>628:3<br><b>witness (96)</b><br>421:22;422:4,11,<br>16,19;423:19;424:4,<br>8,14,20,24;425:5,11;<br>431:4,7,9;434:10,12,<br>15;451:24;452:1,14,<br>19;455:21,24;456:1;<br>463:9,10,11,14,14,<br>15;464:15,19,22;<br>475:21,23;476:2,12,<br>16,20,23;485:17;<br>503:5,10,19,21;<br>504:2;523:24,25;<br>524:7,11;526:11;<br>527:4;528:5,6,8;<br>529:3;530:13;531:3,<br>8,17;535:7,8;536:20;<br>544:9;545:13,14,15,<br>21,24;546:3,8,12,17,<br>22;559:18;560:7,25;<br>561:4,8;576:4;<br>591:19;592:4,12;<br>593:9;604:15;<br>606:24,25;613:11;<br>630:18;631:9,12;<br>640:6,10;644:5<br><b>witnesses (6)</b><br>479:13;510:12,18;<br>511:21,22;644:7<br><b>wondered (1)</b><br>522:17<br><b>wonderful (2)</b><br>516:20;523:12 |
|   | <b>W</b>   |   |  |   |
|   | <b>wait (3)</b><br>521:23;531:1;<br>532:6<br><b>waiting (1)</b><br>540:14<br><b>waive (1)</b><br>558:2<br><b>walk (2)</b><br>430:20;442:19<br><b>walking (1)</b><br>440:6<br><b>wants (3)</b><br>476:4;532:15;<br>560:19<br><b>warning (1)</b><br>576:12   |   |  |   |

|  |   |  |   |   |
|--|---|--|---|---|
| <p><b>word (10)</b><br/>483:11,11;490:15;<br/>510:24;605:12,16;<br/>609:15;610:22;<br/>625:20;638:12</p> <p><b>words (3)</b><br/>436:7;470:15;<br/>639:19</p> <p><b>work (19)</b><br/>424:13;432:13;<br/>445:9;449:6;476:8,<br/>18;489:10;502:18;<br/>522:21;538:12;<br/>540:20;542:6;<br/>544:23;546:1,6,10,<br/>16;568:23;574:23</p> <p><b>worked (11)</b><br/>489:11;511:22;<br/>528:20;529:2,7;<br/>531:25;538:8;<br/>546:20;574:13,16;<br/>592:19</p> <p><b>working (4)</b><br/>521:9,12;523:18;<br/>574:15</p> <p><b>works (7)</b><br/>427:3;430:21;<br/>442:20;444:8;<br/>446:21;500:11;<br/>566:8</p> <p><b>world (1)</b><br/>502:4</p> <p><b>wrap (1)</b><br/>526:4</p> <p><b>Wright (1)</b><br/>507:17</p> <p><b>write (2)</b><br/>478:8;613:8</p> <p><b>Writer (1)</b><br/>505:7</p> <p><b>writing (3)</b><br/>613:22;640:3,4</p> <p><b>written (18)</b><br/>423:16,22,24;<br/>476:11;478:6;<br/>481:15;498:3;502:2,<br/>3,4,21;506:16;509:9;<br/>525:18;579:5;<br/>594:19;630:24;<br/>631:6</p> <p><b>wrong (6)</b><br/>478:5;537:24;<br/>538:3;568:18;632:3;<br/>642:5</p> <p><b>wrote (5)</b><br/>478:2,4,5,14;<br/>528:23</p> <p>www.AMSUSDAGOV/caorder (1)<br/>511:3</p> | <p>462:2;611:19;<br/>627:16,16;628:17</p> <p><b>year-end (1)</b><br/>637:24</p> <p><b>years (9)</b><br/>461:11;520:16,16;<br/>530:4;574:15,19,24;<br/>610:21;635:18</p> <p><b>yell (1)</b><br/>600:11</p> <p><b>yeses (1)</b><br/>455:22</p> <p><b>yesterday (14)</b><br/>421:25;423:18;<br/>461:14;512:15;<br/>525:18;531:25;<br/>532:2,24;544:23;<br/>559:23;576:22;<br/>586:14;597:5,7</p> <p><b>yield (1)</b><br/>532:14</p> <p><b>York (2)</b><br/>497:1;529:4</p> | <p><b>10 (17)</b><br/>468:7;490:11;<br/>525:3;533:21;<br/>575:25;588:10,12;<br/>621:8;622:25;623:2,<br/>5,11;624:4;631:16,<br/>20;634:10,25</p> <p><b>10:25 (1)</b><br/>477:1</p> <p><b>10:32 (1)</b><br/>477:3</p> <p><b>100 (2)</b><br/>529:7;540:6</p> <p><b>1000 (24)</b><br/>455:4;456:16,19;<br/>457:6;459:1,6,8;<br/>480:4;547:12;578:6,<br/>8,9;580:14;582:14;<br/>586:4;591:25;592:5,<br/>11,14;606:14;640:4;<br/>642:7,9,13</p> <p><b>1-0-0-0 (1)</b><br/>477:21</p> <p><b>1000.15 (1)</b><br/>641:2</p> <p><b>1000.25 (2)</b><br/>578:12;593:22</p> <p><b>1000.26 (1)</b><br/>594:23</p> <p><b>1000.27 (2)</b><br/>553:24;595:9</p> <p><b>1000.28 (1)</b><br/>595:20</p> <p><b>1000.3 (1)</b><br/>490:20</p> <p><b>1000.4 (3)</b><br/>572:12;579:7,11</p> <p><b>1000.40 (1)</b><br/>640:6</p> <p><b>1000.40d (1)</b><br/>640:2</p> <p><b>1000.42 (1)</b><br/>596:7</p> <p><b>1000.43 (4)</b><br/>547:9;548:3;<br/>549:10,13</p> <p><b>1000.44 (6)</b><br/>548:4,22;549:22,<br/>24;550:2,4</p> <p><b>1000.5 (1)</b><br/>580:17</p> <p><b>1000.52 (1)</b><br/>479:4</p> <p><b>1000.6 (1)</b><br/>582:10</p> <p><b>1000.7 (1)</b><br/>590:25</p> <p><b>1000.76 (15)</b><br/>446:21;456:13,18;<br/>457:1,8;476:11;<br/>477:19;479:2,25;<br/>480:3;481:12;<br/>482:22;490:5;500:5;</p> | <p>502:2</p> <p><b>1000.77 (3)</b><br/>547:15;553:20;<br/>556:24</p> <p><b>1000.78 (3)</b><br/>547:17;554:19;<br/>555:17</p> <p><b>1000.8 (1)</b><br/>586:4</p> <p><b>1000.85 (2)</b><br/>547:19;556:25</p> <p><b>1000.86 (2)</b><br/>547:21;558:6</p> <p><b>1000.9 (1)</b><br/>588:24</p> <p><b>1000.90 (1)</b><br/>555:23</p> <p><b>1000's (1)</b><br/>579:1</p> <p><b>1024.7 (1)</b><br/>464:14</p> <p><b>1028 (1)</b><br/>595:23</p> <p><b>1030 (2)</b><br/>592:11;613:10</p> <p><b>1030.11 (1)</b><br/>590:13</p> <p><b>1030.12 (1)</b><br/>590:19</p> <p><b>1030.13 (3)</b><br/>591:7;593:14,20</p> <p><b>1030.4 (1)</b><br/>572:6</p> <p><b>1030.5 (1)</b><br/>580:13</p> <p><b>1030.6 (1)</b><br/>582:13</p> <p><b>1030.7 (1)</b><br/>583:7</p> <p><b>1030.7c1 (1)</b><br/>631:22</p> <p><b>1030.7h (2)</b><br/>613:3,12</p> <p><b>1030.8 (1)</b><br/>586:3</p> <p><b>1030.9 (1)</b><br/>588:23</p> <p><b>1051 (3)</b><br/>478:7,8,21</p> <p><b>1051.76 (2)</b><br/>456:25;478:5</p> <p><b>1076 (3)</b><br/>445:11;476:11;<br/>478:25</p> <p><b>1090 (1)</b><br/>447:8</p> <p><b>11 (6)</b><br/>462:7;482:23;<br/>548:22;550:9;<br/>575:11;602:8</p> <p><b>11:55 (2)</b><br/>516:2,5</p> <p><b>1121 (1)</b></p> | <p>483:18</p> <p><b>1124 (3)</b><br/>480:1,22;485:7</p> <p><b>1124.10 (3)</b><br/>426:10;427:10;<br/>482:23</p> <p><b>1124.60 (2)</b><br/>442:19;478:1</p> <p><b>1124.7 (1)</b><br/>464:15</p> <p><b>1124.76 (5)</b><br/>480:2,2,13;<br/>481:13;482:23</p> <p><b>1131 (4)</b><br/>480:23;482:17;<br/>483:18;485:7</p> <p><b>1131.10 (1)</b><br/>482:24</p> <p><b>1131.60 (1)</b><br/>478:1</p> <p><b>1131.76 (3)</b><br/>480:14;481:13;<br/>482:23</p> <p><b>1151 (1)</b><br/>478:7</p> <p><b>12 (2)</b><br/>634:10,25</p> <p><b>12:40 (1)</b><br/>544:20</p> <p><b>1200 (1)</b><br/>542:14</p> <p><b>124 (22)</b><br/>425:5;426:12,13,<br/>16;428:23;430:8;<br/>442:17;462:3,10;<br/>464:10,19;468:17,<br/>19,23;469:17,22;<br/>473:12,24;480:22;<br/>484:20;485:1;<br/>493:21</p> <p><b>1-2-4 (1)</b><br/>464:19</p> <p><b>124.60 (1)</b><br/>442:11</p> <p><b>125 (1)</b><br/>608:19</p> <p><b>126 (1)</b><br/>505:11</p> <p><b>13 (21)</b><br/>527:21,23;529:11,<br/>11;530:11,17,18,19;<br/>532:16;536:22;<br/>574:3,7;577:23,25;<br/>599:9;602:8;619:12;<br/>621:7;623:24;625:5;<br/>631:18</p> <p><b>131 (14)</b><br/>425:6;426:16;<br/>430:6;462:3,10;<br/>468:19;469:17,22;<br/>473:12,24;480:22;<br/>484:20;485:1;<br/>493:21</p> |
| <b>Y</b>   |   |  |   |   |
| <p><b>year (5)</b></p>   | <p><b>1.25 (1)</b><br/>552:6</p> <p><b>1.5 (2)</b><br/>549:1,4</p>  |  |   |   |

|   |   |  |   |   |
|---|---|--|---|---|
| 135 (1)<br>608:20   | 452:3,25;500:13;<br>501:4;552:9,9,11  |  | 640:5   | 478:21;514:6,15;<br>590:25;598:3;613:4,<br>4,12,13;619:2,12;<br>621:4,6;622:16;<br>623:25;624:1;<br>628:25;630:21,22;<br>631:11 |
| 13d (4)<br>622:5;629:3;<br>630:22;631:5   | 2:00 (2)<br>545:1,8   | 3  | 42 (8)<br>561:22,24;562:7;<br>565:4,13;566:12,16;<br>567:4  | 71 (2)<br>555:8,22  |
| 13d2 (2)<br>624:3;631:20  | 2:04 (1)<br>545:11  | 3 (4)<br>500:13;597:15;<br>599:13;640:7  | 43 (3)<br>562:9;565:10,13   | 72 (1)<br>555:8   |
| 13d3 (1)<br>631:19  | 2000 (9)<br>572:24;573:25;<br>574:1,5,5;577:16,20;<br>632:20;636:22                               | 30 (86)<br>430:1,2;491:23,<br>24;492:13;506:2;<br>572:11,15,22,23;<br>573:1,4,21,23;<br>574:13,15,15,15,18,<br>24;575:3,24;576:8,<br>18,23;585:5,14;<br>586:18;587:2;<br>590:21,23;591:1,20,<br>24;592:13,24,25;<br>593:9,11,15;599:16,<br>20;601:4;603:15;<br>604:15;606:24,25;<br>608:1,8,14;609:17,<br>19;610:3,4,5,9;<br>611:1,8;613:10;<br>615:6,13,14,20,22;<br>617:13;618:11;<br>619:2,6,19;620:1,4;<br>626:22;627:19,22;<br>629:17;632:18;<br>633:2,3,7;635:10;<br>636:23;637:4,8;<br>639:2;641:13;642:9 | 44 (7)<br>445:14;547:12;<br>553:19;562:9;<br>565:10,14;573:2  | 73 (1)<br>555:20  |
| 15 (12)<br>511:17;515:24;<br>544:22;574:19;<br>575:12;584:17,21;<br>587:2,6,6;599:9;<br>641:2 | 2002 (1)<br>636:22  |  | 47210 (2)<br>479:9,11   | 74a (1)<br>630:23   |
| 150 (1)<br>440:19   | 2003 (1)<br>636:22  |  | 47212 (2)<br>468:9;479:7  | 76 (9)<br>445:15;447:6;<br>456:10;477:18,19;<br>481:12;497:11,21;<br>501:8  |
| 150,000 (6)<br>431:25;435:17,25;<br>440:19,23,25  | 2004 (3)<br>469:23;470:1,3  |  | 47221 (1)<br>483:6  | 76a (4)<br>449:12,19;461:25;<br>498:21  |
| 151 (1)<br>478:19   | 2005 (1)<br>480:23  |  | 5   | 76b (6)<br>450:19,20;452:4;<br>453:17;498:21;<br>499:19   |
| 156 (1)<br>464:16   | 2006 (6)<br>465:1;470:5;<br>480:24;485:8,22;<br>528:18  |  | 5 (1)<br>492:14   | 76c (10)<br>447:17,20;457:13;<br>458:10;461:18;<br>496:13;497:6,9,15,<br>17   |
| 158 (1)<br>426:8  | 2010 (2)<br>525:6;526:10  |  | 5:00 (3)<br>644:2,14,14   | 76d (2)<br>445:17,19  |
| 15-minute (1)<br>515:25   | 2011 (2)<br>424:5,9   |  | 50's (2)<br>424:25;425:2  | 7a (5)<br>490:15;607:6,8,<br>17;620:22  |
| 16 (1)<br>600:1   | 2014 (1)<br>474:1   |  | 52 (3)<br>459:8,10,11   | 7b (2)<br>490:15;498:15   |
| 164 (2)<br>442:15,18  | 2015 (6)<br>421:1,7;478:20;<br>512:14;525:6;<br>526:10  |  | 54 (1)<br>459:8   | 7c (3)<br>630:25;631:8,17   |
| 174 (1)<br>442:13   | 2017 (1)<br>530:4   | 301 (1)<br>493:16  | 55 (2)<br>450:17,17   | 7c1 (1)<br>631:13   |
| 19 (1)<br>600:3   | 2024 (1)<br>530:5   | 30's (2)<br>450:14,16  | 57 (2)<br>535:11;538:20   | 7c2 (1)<br>624:25   |
| 1955 (1)<br>450:14  | 21 (5)<br>461:15,23;597:15;<br>600:1,3  | 30th (2)<br>513:16;514:10  | 58 (4)<br>533:22;535:11;<br>538:24;539:3  | 7c4a (1)<br>631:7   |
| 1980 (1)<br>424:10  | 23 (1)<br>597:15  | 31 (3)<br>430:3,4;568:18   | 6   | 8   |
| 1981 (1)<br>424:9   | 23rd (1)<br>517:23  | 32 (3)<br>573:25;577:20;<br>586:17   | 6 (1)<br>478:20   | 8 (2)<br>518:21;598:3   |
| 1985 (1)<br>483:25  | 24 (2)<br>421:1,7   | 33 (4)<br>450:5;505:2;<br>572:20;639:2   | 60 (17)<br>442:10;450:23,25;<br>451:2,14,21;452:10;<br>453:3;456:20;<br>477:23;553:18;<br>562:15,16,17;<br>565:13;642:2,2 | 8,000 (1)<br>542:14   |
| 1990 (2)<br>445:25;546:19   | 247 (1)<br>464:10   | 37 (1)<br>450:5  | 61 (1)<br>562:15  | 8,685 (1)<br>534:5  |
| 1994 (1)<br>546:22  | 25 (16)<br>465:8,15,20,21;<br>466:10,11,15;<br>524:25;525:1,3;<br>568:5;584:19,21,21,<br>22;587:4 | 4  | 6th (3)<br>512:14;542:9;<br>544:4   | 8,7 (1)<br>534:4  |
| 1995 (3)<br>424:9,10,23   | 25/25 (1)<br>466:7  | 4 (6)<br>598:2;599:10;<br>630:2,9;631:1;634:4  | 7   | 8:00 (2)<br>644:19,20   |
| 1996 (1)<br>574:1   | 25th (1)<br>447:7   | 4:20 (1)<br>623:16   | 7 (22)<br>426:9;477:15;   | 80 (7)<br>478:19;575:21;<br>604:17,19,22,24;  |
| 1998 (1)<br>574:19  | 26 (1)<br>578:12  | 4:21 (1)<br>623:19   |   |   |
| 1st (7)<br>513:20;514:4,13,<br>14;517:18;572:23;<br>574:5                                     | 27 (1)<br>578:12  | 4:37 (1)<br>632:9  |   |   |
| 2   | 28 (1)<br>578:13  | 4:57 (2)<br>644:21,23  |   |   |
| 2 (9)<br>434:3;451:22;  |   | 40 (4)<br>520:16,16;565:11;  |   |   |

|  |  |  |  |  |
|--|--|--|--|--|
| <p>605:10<br/>81 (2)<br/>484:1,2</p>   |  |  |  |  |
| <p style="text-align: center;"><b>9</b></p>  |  |  |  |  |
| <p><b>9 (5)</b><br/>461:16;584:25,25;<br/>599:25;617:4<br/><b>9:00 (4)</b><br/>421:1,7;513:21;<br/>644:21<br/><b>90 (2)</b><br/>621:12;622:14<br/><b>900 (4)</b><br/>480:10,11;514:6;<br/>518:21<br/><b>900.4 (2)</b><br/>519:5,7<br/><b>900.4b (2)</b><br/>514:18;515:6<br/><b>900.6b2 (2)</b><br/>514:6;515:5<br/><b>900.8a (2)</b><br/>514:16;515:5<br/><b>92 (1)</b><br/>616:13<br/><b>98 (1)</b><br/>569:6<br/><b>99 (1)</b><br/>569:6<br/><b>9b (2)</b><br/>618:13,16<br/><b>9c (27)</b><br/>549:7;557:10,12,<br/>13;589:18,18,20,24;<br/>590:10;596:17;<br/>616:13;617:1,5,10,<br/>14,17,22;618:7,11,<br/>14,14,18;622:8;<br/>624:3;625:3,5;629:2</p> |  |  |  |  |