UNITED STATES DEPARTMENT OF AGRICULTURE

BEFORE THE SECRETARY OF AGRICULTURE

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

_____

VOLUME XIII

<u>TRANSCRIPT OF PROCEEDINGS</u>

October 8, 2015

Myra A. Pish, CRS No. 11613
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1   UNITED STATES DEPARTMENT OF AGRICULTURE

2   BEFORE THE SECRETARY OF AGRICULTURE

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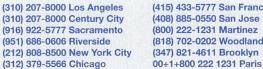4   In re:)   [AO]
)   Docket No. 15-0071
5   )
         Milk in California   )
6   _____)

7

8   BEFORE U.S. ADMINISTRATIVE LAW JUDGE
                      JILL S. CLIFTON
9
                 Thursday, October 8, 2015
10
                        9:01 a.m.
11

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

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16   TRANSCRIPT OF PROCEEDINGS

17   VOLUME 13

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23 Reported by:

24 Myra A. Pish CSR
    Certificate No. 11613
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                        2589

1   I N D E X - V O L U M E 13

2   WITNESSES IN CHRONOLOGICAL ORDER

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DONALD SHIPPELHOUTE

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1   THURSDAY, OCTOBER 8, 2015 - - MORNING SESSION

2   JUDGE CLIFTON: We are back on record. It is October 8th,

3   2015, it's a Thursday, we're in Clovis, California, it's 9:01

4   in the morning. My name is Jill Clifton. I'm the United

5   States Administrative Law Judge who is assigned to receive

6   evidence for this milk hearing. There are two types of

7   evidence, testimony and exhibits, and my function ends when I

8   certify the record stating what testimony and what exhibits

9   were taken in at this hearing. If, by chance, when I do that,

10 there are any briefs filed, I will also itemize those briefs

11 received, but I anticipate the timeline here will perhaps have

12 the briefs come after I certify the record.

13   All right. I would like for the participants to

14 identify themselves by coming to the podium. I'm going to

15 begin with fellow United States Department of Agriculture

16 employees.

17   MR. FRANCIS: Good morning, William Francis, F-R-A-N-C-I-S,

18 United States Department of Agriculture, Agricultural Marketing

19 Service, I'm a Dairy Marketing Specialist.

20   MR. CARMAN: Good morning, Clifford Carman, C-A-R-M-A-N,

21 Assistant to the Deputy Administrator, Dairy Programs, USDA.

22   MS. MAY: Good morning, Laurel May, L-A-U-R-E-L, M-A-Y,

23 USDA AMS Dairy Program Marketing Specialist.

24   MS. FRISIUS: Good morning, Meredith Frisius,

25 M-E-R-E-D-I-T-H, F-R-I-S-I-U-S, I'm a Dairy Products Marketing

2593

1 Specialist.

 2   MR. SCHAEFER: Henry Schaefer, H-E-N-R-Y, S-C-H-A-E-F-E-R,

 3 Agricultural Economist to the Upper Midwest Milk Marketing

 4 Order, Federal Order 30, on detail to USDA Dairy Programs.

 5   MR. MYKRANTZ: John Mykrantz, J-O-H-N, M-Y-K-R-A-N-T-Z,

 6 Agricultural Economist, Pacific Northwest and Arizona Orders,

 7 on detail with Dairy Programs.

 8   MR. HILL: Brian Hill, B-R-I-A-N, H-I-L-L, attorney with

 9 the Office of the General Counsel in Washington DC.

10   MS. BECKER: Lauren Becker, L-A-U-R-E-N, B-E-C-K-E-R,

11 Office of the General Counsel.

12   JUDGE CLIFTON: Now I would like teams who are part of a

13 proponent or opponent group with regard to the proposals.

14   MR. BESHORE: Good morning. Marvin Beshore, M-A-R-V-I-N,

15 B-E-S-H-O-R-E, representing the cooperative proponents of

16 Proposal Number 1, California Dairies, Dairy Farmers of

17 America, and Land O'Lakes.

18   MR. VLAHOS: Good morning, John Vlahos, J-O-H-N,

19 V-L-A-H-O-S, from Hanson Bridgett, H-A-N-S-O-N,

20 B-R-I-D-G-E-T-T, also counsel for the cooperative proponents of

21 Proposal Number 1.

22   MS. OLIVER THOMPSON: Good morning, Megan Oliver Thompson.

23 Megan is M-E-G-A-N. I'm also with the law firm of Hanson

24 Bridgett, co-counsel for the proponents of Proposal Number 1.

25   MR. SCHAD: Good morning, Dennis Schad, S-C-H-A-D. I work

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1 for Land O'Lakes.

2   MR. HOLLON: Good morning, Elvin Hollon, E-L-V-I-N,

3 H-O-L-L-O-N, Dairy Farmers of America.

4   DR. ERBA: Good morning, Eric Erba, E-R-I-C, E-R-B-A,

5 California Dairies, Inc.

6   MR. ENGLISH: Good morning, your Honor, my name is Chip

7 English, C-H-I-P, E-N-G-L-I-S-H, I'm an attorney with the law

8 firm of Davis, Wright, Tremaine, my office is in Washington DC,

9 and I'm here on behalf of the Dairy Institute of California.

10   MS. VULIN: Good morning, Ashley Vulin, A-S-H-L-E-Y,

11 V-U-L-I-N, also with Davis, Wright, Tremaine, co-counsel for

12 the Dairy Institute of California.

13   DR. SCHIEK: Good morning, William Schiek, S-C-H-I-E-K,

14 Economist with the Dairy Institute.

15   MS. KALDOR: Good morning, Rachel Kaldor, R-A-C-H-E-L,

16 K-A-L-D-O-R, Dairy Institute of California.

17   MR. BLAUFUSS: Good morning, Rob Blaufuss, B-L-A-U-F-U-S-S,

18 Dean Foods Company.

19   MS. TAYLOR: Good morning, Sue Taylor, Leprino Foods,

20 L-E-P-R-I-N-O.

21   MR. RAMIREZ: Good morning, Miguel Ramirez, M-I-G-U-E-L,

22 R-A-M-I-R-E-Z, Leprino Foods, Denver, Colorado.

23   MR. DEJONG: James Dejong, J-A-M-E-S, D-E-J-O-N-G, with

24 Hilmar Cheese, a dairy farmer-owned manufacturer cheese, whey

25 products, and milk powder.

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1   MR. VETNE: Good morning, John Vetne. V-E-T-N-E,

 2 representative for Hilmar. Thank you.

 3   MS. HANCOCK: Nicole Hancock, H-A-N-C-O-C-K with Stoel

 4 Rives, S-T-O-E-L, R-I-V-E-S, representing the California

 5 Producer Handlers Association and Ponderosa Dairy.

 6   MR. LAI: Good morning, Victor Lai, V-I-C-T-O-R, L-A-I with

 7 Producers Dairy Foods, a member of California Producers Handler

 8 Association.

 9   JUDGE CLIFTON: Now I would like other participants who may

10 not be associated with a particular proposal to come forward.

11   MS. REED: Good morning, Kristine Reed, K-R-I-S-T-I-N-E,

12 R-E-E-D, I'm an attorney with the Miltner law firm,

13 M-I-L-T-N-E-R, in Ohio, and we represent Select Milk Producers.

14   MR. ESTES: I'm Richard Estes, staff counsel, California

15 Department of Food and Agriculture, Richard, last name

16 E-S-T-E-S. And again, I'm staff counsel with California

17 Department of Food and Agriculture. I'm here today for the

18 purpose of providing a witness that can introduce some

19 informational data into the record.

20   MR. SHIPPELHOUTE: Good morning, I'm Donald Shippelhoute,

21 from the California Department of Food and Agriculture, last

22 name is spelled, S-H-I-P-P-E-L-H-O-U-T-E.

23   JUDGE CLIFTON: That ends with T like Tom, E?

24   MR. SHIPPELHOUTE: T as in Tom, E.

25   JUDGE CLIFTON: And you pronounce it "Shippelhoute?" Thank

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1 you.

2   MS. GATES: Good morning, Candace Gates, C-A-N-D-A-C-E,

3 G-A-T-E-S, California Department of Food and Agriculture.

4   JUDGE CLIFTON: Is there anyone else here who would like to

5 testify today who has not come to the podium? No one else at

6 this point. All right.

7   I would like now to take announcements and preliminary

8 matters, beginning with the USDA, please.

9   MS. MAY: Laurel May. Good morning and welcome to the

10 hearing. We're glad everybody could come this morning to be

11 with us, and we look forward to hearing from those who will

12 testify in this hearing. If you would like to testify, you may

13 contact Meredith, who is over here in the front, and she will

14 put you on a list and let the Judge know that you would like to

15 speak.

16   USDA's role in this hearing is to collect evidence and

17 testimony regarding proposed Marketing Order for milk in

18 California, and so we take no position on the proposals, but we

19 welcome any information that you are willing to provide to us.

20   The audience may question any witness, and if you would

21 like to ask questions, you may approach the podium and the

22 Judge will acknowledge you.

23   We are broadcasting this session of the hearing via

24 live audio feed. We are not recording it, but if anybody would

25 like to tune into it, they may, at tinyurl.com/camilkhearing.

1   The court reporter is recording official transcripts of

2   the hearing, which will be available approximately two weeks

3   after the end of each hearing week. Exhibits that are offered

4   and admitted are numbered in the order of presentation. Copies

5   are available in the files, or on the table in the back of the

6   room over there, if you would like to pick some up. We also

7   have refreshments on that side of the room, and you are welcome

8   to help yourself to those also.

9   Yesterday we ended with the cross-examination of

10 Mr. Paul Christ. This morning we plan to begin with

11 Mr. Donald Shippelhoute from CDFA. And once his testimony is

12 complete, then we believe that Mr. Elvin Hollon will be

13 returning to the stand as a witness.

14   JUDGE CLIFTON: Thank you. I would like Mr. Brian Hill to

15 read into the record the statement from the Colorado Department

16 of Food and Agriculture that we have read into the record a

17 number of times before.

18   MR. ENGLISH: Colorado?

19   JUDGE CLIFTON: Pardon?

20   MR. VLAHOS: California.

21   JUDGE CLIFTON: Oh, thank you. California Department of

22 Food and Agriculture. Thank you. Isn't this an astute

23 audience? They also help me to remember to swear in witnesses.

24   All right. I just want that official statement to be

25 read into the record one more time, if you would, Mr. Hill.

1   MR. HILL: Brian Hill.

2   CDFA will be present on October 8th for the limited

3 purpose of entering reports into the record, hearing record,

4 developed in response to requests from interested parties.

5 CDFA will only answer questions regarding the compilation of

6 the data contained in these reports in order to remain neutral

7 and avoid being associated with a particular proposal.

8   JUDGE CLIFTON: Thank you. And we ask that anyone speaking

9 identify them self first.

10   MR. ESTES: Yes, I'm Richard Estes, Staff Counsel,

11 California Department of Food and Agriculture, I would like to

12 call Don Shippelhoute to testify in relation to authenticating

13 the documents that we would like to have introduced into the

14 record today.

15   JUDGE CLIFTON: Thank you. I would ask that he be seated

16 in the witness stand. I swear witnesses in in a seated

17 position. So please make yourself comfortable.

18   MR. ESTES: And for the rest of the you in the audience, I

19 believe the exhibits are in the process of being passed out or

20 have already been delivered to you.

21   JUDGE CLIFTON: All right. We will need to determine how

22 to mark them, what number to give them, and so we'll be doing

23 that. And so I would ask that Mr. Shippelhoute make himself

24 comfortable. We will do that as a preliminary matter.

25   Let me determine the number and so on first, if you

don't mind. All right. Let me ask, Mr. Estes, we would

anticipate this entire document having one number. Is that

acceptable?

    MR. ESTES: Yes, that would be our preference.

    JUDGE CLIFTON: Good. Then this exhibit will be

Exhibit 61 -- that's 61. Exhibit 61. It's a good

three-quarters of an inch thick of documents.

        (Thereafter, Exhibit Number 61 was marked

        for identification.)

    JUDGE CLIFTON: We may have another exhibit, Mr. Francis is

tracking it down, the copies have already been made. So it is

a one page front and back.

    MR. ESTES: Your Honor, we may have a second exhibit which

is a small chart that's been prepared in association of USDA,

that was not included with the original material. So I think

we'll probably just attempt to proceed and introduce that as an

exhibit of ours, provide it to you as a second exhibit,

although it is just a one-page document.

    JUDGE CLIFTON: Mr. Francis, it was under Mr. Hill's

laptop. I'm marking my copy as Exhibit 62, and I invite the

rest of you to do the same with yours.

        (Thereafter, Exhibit Number 62 was marked

        for identification.)

    JUDGE CLIFTON: There are additional copies of Exhibit 62

for those of you who would like. Excellent. Now, before we go

1 any further, I'm going to swear in the witness.

2 Would you raise your right hand, please? Do you

3 solemnly swear for affirm under penalty of perjury that the

4 evidence you will present will be the truth?

5 MR. SHIPPELHOUTE: I do.

6 JUDGE CLIFTON: Please state and spell your name.

7 MR. SHIPPELHOUTE: My name is Donald Shippelhoute, my last

8 name is spelled S-H-I-P-P-E-L-H-O-U-T-E.

9 JUDGE CLIFTON: Thank you. Mr. Estes, you may proceed.

10 DIRECT EXAMINATION

11 BY MR. ESTES:

12 Q. Good morning, Mr. Shippelhoute.

13 A. Good morning.

14 Q. I understand you have a brief statement you would like

15 to read into the record today?

16 A. I do. My name is Donald Shippelhoute, Branch Chief of

17 Dairy Marketing Branch of California Department of Food and

18 Agriculture. The Dairy Marketing Branch administers minimum

19 class prices, conducts cost analysis of farms and processing

20 plants, enforces unlawful trade practices, and collects and

21 disseminates statistical information relative to the dairy

22 industry.

23 I'm here today at the request of the USDA. I have been

24 authorized by the Secretary to submit CDFA data into the

25 hearing record today. I will limit my testimony to the data

2601

set that we have compiled at the request of various parties in their preparation for the hearing. I will not be entering regularly prepared locations and data sets into the record.

I started in the dairy industry during high school as a relief milker. After which I attended CSU Chico, where I received a Bachelor of Science degree in Agriculture Business. I have been employed with the CDFA Dairy Programs for over 25 years. I started as a Milk Production Cost Analyst in the Dairy Marketing Branch, a job I held for four years before transferring to the Milk Pooling Branch.

In the Milk Pooling Branch I have worked in the operations of the Unit 4 over 20 years, serving as Supervisor for 13 of those years. The Milk Pooling Branch performs three separate functions; administers the Producer Settlement Fund and Quota Program; conducts compliance audits of handlers; maintains records of quota ownership in California; and enforces producer payments and manages producer's dairy trust funds.

In my role I have overseen the collection of analysis data needed to administer the Producer Settlement Fund and the Quota Program. This includes the computation of monthly pool prices, processing of quota transfers, and competing and collecting program assessments.

CDFA has no position relative to the outcome of this hearing. Accordingly, I will limit my comments to the

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compilation of the data contained in these reports in order to

remain neutral and avoid having CDFA associated with any

particular position or proposal.

A footnote. In my testimony today, all numbers that I

use will be Arabic numbers unless otherwise specified. I have

gone through the data sets a number of times and find no Roman

numerals.

Q. Mr. Shippelhoute, before I proceed to work through the

data sets with you, could you just briefly describe the parties

or the organizations that made requests for data from the

Department?

A. We had a number of parties that made requests, the

Cooperatives collectively and individually have made requests;

Ponderosa Dairy made a request; the Producer Handler

Association made a request; the Dairy Institute of California

also made a request. And those requests either came in

directly or via their counsel.

Q. So, let's begin. And before I proceed, I just want to

know, I don't always get out of the office very often, so we'll

try to work through these as effectively as we can. Let's

start with A -- oh, and before I work through A with you, let

me just ask you a couple of questions, again, just to reiterate

for the record.

Why are you here today?

A. I'm here to introduce data sets into the record, data

1 sets that we have generated at the request of various parties.

2   Q. And do you have any opinion as to content of any of the

3 proposals under consideration?

4   A. I do not.

5   Q. So let us begin with A. What is item A?

6   A. Let me start off by stating that this exhibit has

7 several different data sets in it. Each of those data sets you

8 will see an identifier at the top right, it will be CDFA-A,

9 next one CDFA-B, CDFA-C. So references to A, B, C, etcetera

10 will be references to that identifier on the top right hand

11 side. And we also, for ease of reference, have individual page

12 numbers in those data sets.

13   So data set A has a series of prices, both pool and

14 class prices, going back for a number of years. The first four

15 pages of this data set is the Class 1 prices that are

16 announces, or were announced --

17   Q. Mr. Shippelhoute, may I just interject for a moment?

18 You are referencing class prices. Those are California class

19 prices, correct?

20   A. That's correct.

21   Q. Please proceed.

22   A. The first four pages are referencing class prices. It

23 has a class prices that were announced for the Southern

24 California marketing area, as well as the Class 1 prices for

25 Northern California marketing area.

1   In California, we announce class prices or prices on

2   Class 1 for three different components; for pounds of fat,

3   price per pound of solids, and price per pound of fluid

4   carrier. You will also see in this document a price per pound

5   of hundredweight, which is not to be confused with the blend

6   price payment in the Federal Order. For California, that blend

7   price is more of a reference number. Handlers actually pay

8   based on pound of fat, solids not fat, and fluid carrier.

9   The pages 5 through 8 of this document are the Class 2

10 prices. Class 2 prices announced from January of 1995 through

11 September of '15. Class 2 prices are announced for Northern

12 California and Southern California as well.

13   The pages 9 through 13 are Class 3 prices. Again, for

14 a period of time, there was a separate Class 3 price for

15 Northern California and Southern California. At some point, if

16 you will notice, that there is only one Class 3 price for all

17 of California and that starts in January of 2009.

18   Classes, excuse me, pages 15 through 18 of this

19 document have the Class 4a prices announced for California from

20 January of '95 through August of 2015. One uniform Class 4a

21 price for the entire state.

22   Pages 19 through 22 have the Class 4b prices that were

23 announced from January '95 through August of 2015, and one

24 uniform 4b price for the entire state.

25   And finally, pages 23 through 29 have the pool prices

1 that were announced beginning with July 1969, carrying forward

2 through July of 2015.

3 And there's three different pool prices that are

4 announced. There is a quota price announced on the price per

5 pound of fat, price per pound of solids, and then a

6 hundredweight price base fat for, excuse me base price for fat,

7 solids not fat, and fluid carrier, and overbase price for fat,

8 solids not fat and fluid carrier.

9 Q. Now, Mr. Shippelhoute, before I ask you some follow up

10 questions about data set A, could you sort of briefly summarize

11 that the classes of milk that are referenced in the exhibit,

12 for the record?

13 A. Generally speaking, the Class 1 is fluid milk products.

14 Milk put in a bottle for consumption in a glass, or on your

15 breakfast cereal.

16 Class 2, heavy cream, whipping cream, yogurt. Yogurt

17 has not always been Class 2. I believe that change happened in

18 July of, or excuse me, January of 1994.

19 Class 3 is frozen products.

20 Class 4b is hard cheeses.

21 And Class 4a is milk used to make butter and powdered

22 milk.

23 Q. Now, in regard to this document, or this data set, did

24 you compile or supervise the development of this data?

25 A. I did. As a Dairy Marketing Branch Chief, I supervise

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1 the Statistics Unit and we compile that, this document, part of

2 that unit. The only thing that we did different for

3 compilation of this data set for this hearing, was that we

4 extended the pool prices back to 1969, whereas this data set

5 that has been on our website for a number of years did not go

6 back to 1969.

7 Q. And so based on your work in developing the table, you

8 expect this to be an accurate representation of the information

9 presented in it?

10 A. I do.

11 Q. Before I move on to the next exhibit, I would like to

12 turn it over to Brian Hill, counsel for USDA.

13 MR. HILL: Brian Hill. Yes, your Honor, we want to point

14 out for the record and for people listening that this

15 information is on the CDFA website. All of the information

16 requested that we have, will be, are on the website, on CDFA's

17 website right now and in order. So if you go to kind of read

18 the site: http://www.cdfa.ca.gov/dairy/fmmo.html.

19 You can find all of this information in order, so at

20 the top of the page you will have requested data and start with

21 Class 1 Milk, Fat, SNF, which is what they just did. Table B,

22 which would be the next one, will be monthly quota premiums and

23 regional quota adjusters, January 2009 to July 2015, and so on.

24 So just for the record, people listening, they can go to CDFA's

25 website and follow these exhibits, this exhibit in order.

2607

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1   JUDGE CLIFTON: When were these documents placed on that

2 website?

3   MR. ESTES: I believe they were posted to the website as

4 soon as the Dairy Marketing Branch responded to the request, so

5 they have been available for quite some time.

6   MR. SHIPPELHOUTE: I would make one correction, Mr. Hill,

7 the posting on our website is not in the order in which they

8 are going to be presented.

9   MR. HILL: Okay. But they are all on there.

10   MR. SHIPPELHOUTE: They are all on there, that's correct.

11   JUDGE CLIFTON: Good, that's excellent.

12 BY MR. ESTES:

13   Q. So, Mr. Shippelhoute, let's move to data set B.

14   A. Data set B is --

15   Q. So please characterize, please describe data set B.

16   A. Data set B provides the commodity prices that were used

17 in determining the class prices. These commodity prices are

18 fed into an economic formula to determine those prices. The

19 numbers presented here, to begin with January of 2000 and go

20 through June of 2015. You see across the top the headings CME

21 butter, is reference to the Chicago Mercantile Exchange price

22 announced for Grade Double A butter based on the announced, the

23 price of announced, the 25th, excuse me, the 26th of the month

24 prior to the 25th of the month. For example, January 2000, the

25 price of 0.9011 shown there would have been the average butter

2608

1 price for December 19, December 26, 1999, through January 25th

2 of 2000.

3 The prices for the 26th through the 25th are used in

4 the 4a and 4b formula, whereas the price for the 26th through

5 the 10th, which you will see in the next column, are used for

6 the Class 1 formula.

7 So the CME butter is weighed there for the 26th through

8 the 10th; the next column over has the nonfat dry milk price

9 for the 26th through the 25th; the next column over has the,

10 again, nonfat dry milk price for the 26th through the 10th; the

11 next column over has the CME 40-pound block cheddar price for

12 the 26th through the 25th; the next column over has the CME

13 block cheddar, 40-pound cheddar price, for the 26th through the

14 10th; and the last two columns are Dairy Market News Western

15 Whey price, these prices are the average of the most whey price

16 that is published. And the, again, same format, the 26th

17 through the 25th, followed by the column for the price of now

18 26th through the 10th.

19 Q. And Mr. Shippelhoute, what, I don't know if we can

20 accurately say it is a title for the document, but there is a

21 heading for the data set B. Could you read that into the

22 record?

23 A. Commodity Prices Used in California Class Price

24 Formulas.

25 Q. And did you -- did you compile or supervise the

1 development of this data?

2 A. I do supervise the Statistics Unit, which is the unit

3 that updates this.

4 Q. And based upon your review of the data that's been

5 provided in this data set, data set B, do you consider it to be

6 an accurate representation of this data?

7 A. I do.

8 Q. Data set C. Mr. Shippelhoute, could you read the

9 heading on this document and then provide a more detailed

10 description of it?

11 A. The heading on this document reads: Blend Prices by

12 Month, Based on Regulated Minimum Prices, January 2000 through

13 June of 2015.

14 Q. And do you have any further elaboration on the data

15 that's presented in the three pages of this document?

16 A. I do. This document shows the average component test

17 for fat and solids not fat that were in, they were pooled for

18 the month given. It shows the blend price at the actual, based

19 on the actual test of the milk that was in the pool that month,

20 followed by a theoretical blend price, if you, will based on

21 3.5 percent fat and 8.7 percent solids not fat.

22 Q. And did you -- did you compile or supervise the

23 creation of this data?

24 A. I did compile this.

25 Q. Okay. So I guess we can fairly assume you consider it

2610

1 to be accurate?

2   A. I do. I consider it accurate whether you want to

3 assume it or not, whatever.

4   Q. Data set D. Mr. Shippelhoute, there is a heading to

5 this data set that is in very small print. Could you please

6 read it into the record?

7   A. Summary of Pool Pounds, Component Pounds, Producer

8 Handler Exempt Class 1 (All in Pounds.)

9   Q. And could you elaborate upon the data presented in this

10 document?

11   A. In this document, essentially there's three parts to

12 this document.

13   Q. Let me back up for a moment before I ask you about --

14 apologize for the interruption. Let me ask you. It says,

15 Summary of Pool Pounds, Compound Pounds, Producer-Handler

16 Exempt Class 1. As best you can, could you, just since we're

17 making reference to the pool in this document, could you

18 describe the pool?

19   A. The pool is a revenue pool. It's a sharing, if you

20 will, of producer revenues that are generated based on the AMS

21 class prices, so we look at the announced class prices that are

22 announced by the Dairy Marketing Branch. We'll supply those

23 times the usage in the pool every month. And by usage, I mean

24 how many pounds of fat, solids not fat, in the Class 1 fluid

25 carrier were used by pool plants, and to determine a revenue,

1   and then those revenues are allocated between quota base and

2   overbase, and getting us the three separate announced pool

3   prices.

4   Q. And so in relation to this data set, what information

5   does it convey?

6   A. Again, this document is in three separate parts. The

7   first four pages show pounds of milk, pounds of milk, total

8   pounds of milk in the pool, the pounds of milk that was used in

9   Class 1 by producer-handlers that are exempt from the pool, and

10 then also the pounds of components that were pooled by class of

11 fat, solids not fat, and Class 1 for fluid carrier. And that

12 is the first four pages of this document, and that is for years

13 2000 through 2014, as are the other three sections.

14   Pages 5 through 8 show revenues generated by class, by

15 component. So it shows the revenue generated Class 1-fat,

16 2-fat, 3-fat, etcetera. Class 1 fluid carrier, and then Class

17 1, 2, 3, for FOB, solids not fat. Again, that's pages 5

18 through 8.

19   Pages 9 through 12 show the pounds in dollars for

20 fortification purposes. And for fortification in California

21 part of the pool computation is the handlers that use either

22 powder or condensed skim milk to bring their Class 1 products

23 up to California standards are given an allowance out of the

24 pool to use those products, and this section shows how many

25 pounds of solids not fat were used in the form of powder, and

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the dollars associated with the credit received for that

product. And it also shows the pounds of solids not fat in the

condensed skim, and the dollars in allowances for using the

condensed skim. And then another component of the pool is

transportation allowance, which I know has been referenced

prior in this hearing. This shows the dollars paid out via

that transportation allowance system for milk moved into

Northern California and Southern California.

Q. Mr. Shippelhoute, I understand it's been addressed in

earlier stages of the hearing, could you briefly describe,

however, or briefly define the transportation allowance as it

relates to the pool?

A. So one of the -- when you have a pooling system in

place, you want to eliminate some of the incentive to producers

to ship milk to a higher value usage and to encourage

procedures, or at least make them indifferent as to whether or

not they ship their milk to a distant bottling plant versus a

local manufacturing plant. The pool allows transportation for,

provides transportation allowance dollars that are incentives

to move milk to those more distant plants.

Q. Now, in relation to this data set, data set D, did you

compile the data or supervise the people who did so?

A. I did.

Q. Which did you do, did you compile it or supervise?

A. This one I compiled.

1   Q. All right. And so based upon your expertise as

2 explained in your opening statement, you would consider it to

3 be an accurate presentation of the data?

4   A. I would. And I misspoke, by the way, there is a fourth

5 portion of this document as well. And it shows the pool usage

6 percentages for components. It shows what percent of the pool

7 was made up of Class 1, 2, 3, 4a and 4b, fat and solids not

8 fat.

9   Q. And would you state for the record which pages of the

10 data set?

11   A. Yes, that is pages 13 through 15.

12   Q. Thank you. Data set E. Again, there is a heading for

13 this data set in small font, in a small font type. Could you

14 read that into the record?

15   A. I could if I had E in front of me. Thank you.

16   Data set E. The heading reads, Pool Usage by Class as

17 Reported to CDFA by California Milk Handlers by Area, January

18 2010 through January of 2015.

19   Q. Now, for the purposes of this data set, what do you

20 consider to be a handler?

21   A. For the purpose of this data set, a handler is anybody

22 that reported receiving bulk milk and processing it into a

23 finished product.

24   Q. So that would be all the classes that you described

25 earlier?

2614

1   A.   That's correct.

 2   Q.   Okay. Could you elaborate in more detail upon the

 3 information presented in this data set?

 4   A.   So the request for this data set asked for us to break

 5 down the plans by area more than we ordinarily do. They asked

 6 that we use the areas that are used in our hauling survey. And

 7 on the last page of this document, page 5 in the footnotes

 8 there is a reference to our web page where you can find the map

 9 of that, of those areas. Those areas do not follow a county

10 line so it gets a little fuzzy to define them real clearly

11 based on the city of the plant and/or farm. And so for the

12 purpose of confidentiality I had to consolidate some of those

13 areas.

14   And, again, in the footnotes you will see that I

15 consolidated Bay Area on this document, will not correspond

16 exactly to what you would see in that map. The Bay Area for

17 this document includes North Bay, South Bay, and Humboldt-Del

18 Norte. Those are the areas that we see in the hauling survey

19 map.

20   Q.   And now I read where it says Humboldt, Del Norte, minus

21 Humboldt Creamery?

22   A.   So again, the Bay Area, for the purposes of this

23 document I had to consolidate some areas. I consolidated the

24 North Bay, the South Bay, and Humboldt-Del Norte. However, I

25 did have to move the volume from Humboldt Creamery out of this

                              2615

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1 area and put it into the North Valley area.

2   Q. And why is, what is the reason for having to do that?

3   A. To protect the proprietary information of Humboldt

4 Creamery. You will also notice the same thing for South

5 Valley. In this document, South Valley includes the South San

6 Joaquin area and Barstow areas, it does not include the

7 production for Producers Dairy. Producers Dairy, production

8 was moved into North Valley as well.

9   Q. And there was no such issue with the South Bay from my

10 reading of the document?

11   A. Well, the South Bay was lumped into the Bay Area.

12 Southern California?

13   Q. Excuse me, there's Southern California here.

14   A. Southern California there was no such issue.

15   Q. All right. Is there anything else that you would like

16 to state about the content of this data?

17   A. No, there's not.

18   Q. Okay. Did you compile this data?

19   A. I did.

20   Q. And based upon your experience, do you consider it to

21 be an accurate compilation of the data?

22   A. I do.

23   Q. Data set F. Could you read the heading of this data

24 set into the record?

25   A. As printed on here, it's says, Annual California Milk

1 Pool Production: Quota Fat and Solids Not Fat As a Percentage

2 by Month.

3   Q. Okay. At the risk in asking an impossible question,

4 could you sort of briefly summarize quota in relation to this

5 data set?

6   A. Producers in California can own quota. The quota that

7 they own is held on a daily basis. And when we compute the

8 pool, we convert that daily quota volume into a monthly figure.

9 The quota fat in this document is a total pounds of milk that

10 were allocated to quota for the given month, followed by the

11 pounds of fat is allocated to the base fat pool, and then the

12 overbase fat pool, followed by the total pounds of fat in the

13 pool for each of the given months.

14   Q. Now, as part of your summarization of the data and

15 additional summarization of the data in the document, could you

16 also describe the period for which the data was developed?

17   A. This information runs from January of 2000 to May of

18 2015.

19   Q. I see. And is there anything further you would like to

20 state about the content of this data set?

21   A. The only piece I did not touch on is that, computed in

22 here is the percent of quota used in the pool or percent of the

23 pool that was quota, both in the fat side as well as the solids

24 not fat pool.

25   Q. Did you compile this data?

1   A. I supervised, I oversaw the compiling of this one.

2   Q. And you have reviewed this data set after it was

3 compiled by another staff person?

4   A. I did.

5   Q. And what was your conclusion?

6   A. That it is an accurate document.

7   Q. Data set G. Could you read the heading of this data

8 set into the record?

9   A. Annual California Milk Pool Production: Quota Fat and

10 Solids not Fat as a Percentage by Year.

11   Q. And what is the time period for which it applies?

12   A. This covers -- the request that came in requested this

13 data from 1969 through 2014. We weren't able to compile 1969

14 to 1974, so where the data has been provided is from 1975

15 through 2014.

16   Q. And can you elaborate upon the data beyond what you

17 have already described?

18   A. I can.

19   Q. The data presented shows on an annual basis, the pounds

20 of product that were pooled -- and by product, a total pounds

21 of milk -- the total pounds of fat included in the pool, the

22 sub pounds of solids not fat in the pool, the average pounds of

23 daily quota for the year, the average pounds of daily quota

24 pounds not fat, the total pounds of quota fat for the month, or

25 excuse me, for the year, the total pounds of quota solids not

2618

fat for the year. And then the bottom two percentages would be

the percent of the pool that was covered by quota in fat and

solids not fat.

Did you compile this data?

A. I reviewed it the day after it was compiled.

Q. All right. And what was your conclusion?

A. That this information is accurate.

Q. There is a, I guess an asterisk; is that correct? An

asterisk at the bottom of the data set? Could you read that

and describe the significance of it?

A. It includes plant gain "overage" and will not match a

total from the monthly tab. So when this was prepared it was

part of the a multi-tab spreadsheet, and I believe CDFA-F was

another tab in that spreadsheet, and so that footnote was to

acknowledge that the monthly totals on CDFA-G, not necessarily,

or excuse me, annual totals on CDFA-G would not necessarily

match the totals if one were to sum up the numbers on CDFA-F.

The difference is due to plants being charged for what we call

plant gain, others refer to as overage. Handlers pay into the

pool for that overage, but it is not paid out to producers

directly because there's not any producer milk to associate

that revenue with.

Q. Data set H. Could you please read the heading into the

record?

A. Summary of Transportation Allowances and Credits for

2619

1 January 2000 through June of 2015.

2   Q. As you have already described the transportation

3 allowance, I won't ask about that again since we have already

4 explained it for the record, but could you elaborate on the

5 data presented in that data set?

6   A. Well, I will elaborate on the transportation credit,

7 since we have not described that yet. This document does show

8 the dollars paid out of the pool for both transportation

9 allowances and credits. I described the transportation

10 allowance which encouraged milk to move from a branch to a

11 plant. The transportation credit similarly encourages movement

12 of milk into processing plants with higher usage, but it moves

13 milk from plant to plant.

14   The document shows the transportation allowance dollars

15 paid out for milk moving into Northern California as well as

16 Southern California, followed by transportation credit section

17 which shows the amount of money paid out of the pool to move

18 fat and solids not fat into Class 1 usage.

19   Q. All right. So higher usage for the purposes of

20 transportation credit is considered to be a higher usage that

21 moves it toward Class 1 utilization?

22   A. Transportation allowances are paid out for milk that is

23 moved into plants that have more than half of their production

24 Class 1, 2, and 3, and so all milk moving into a plant, even if

25 it has, say 51 percent Class 1 usage and 49 percent Class 4b

1   usage, you are not going to find that mix, but hypothetically,

2   all the milk moving branch to plant would qualify for

3   transportation allowance. The reason I state that, is because

4   on transportation credit, we only pay the credit on a portion

5   of the milk moving branch to plant, or excuse me, plant to

6   plant, that is Class 1. And so if milk moves plant to plant

7   under the transportation credit system into that same plant

8   with 51 percent Class 1 usage, it would only receive

9   transportation credit on 51 percent of that milk.

10   Q. Is there anything in addition to what you have -- oh,

11   Candace has drawn my attention to the a footnote at the bottom

12   of the document, some notes. The bottom of page 3, could you

13   explain the, explain the note and its purpose.

14   A. I believe this footnote was probably cut and pasted

15   because this document does not show pounds, this only shows

16   dollars. Again, this was part of a multi-tab spreadsheet at

17   one point.

18   Q. All right.

19   A. So that the bottom part of that footnote is valid where

20   the transportation allowance shows the dollars paid to

21   producers on milk moved to Northern and Southern California.

22   Q. So then we should strike the first sentence starting

23   with the word fortification, but retain the second one starting

24   with transportation allowances?

25   A. That's correct.

2621

1   Q. Thank you. Did you -- did you compile this data?

2   A. I did.

3   Q. Do you consider it, on what basis do you consider it to

4 be an accurate representation of the data developed?

5   A. Based on my experience in pooling and compiling,

6 calculating the pool and paying the credits out of the pool.

7   Q. Data set I. Could you read the heading of this data

8 set into the record?

9   A. Monthly Quota Premiums and Regional Quota Adjusters,

10 January of 2009 to July of 2015.

11   Q. What is a quota premium?

12   A. The quota premium -- let me back up a second.

13   We touched briefly on what quota is. Milk in the pool

14 is allocated quota base and overbase. Quota milk is entitled

15 to a higher revenue than other milk. The premium is based on

16 pound to solids not fat. Quota solids receive 19 and a half

17 cents per pound more out of the pool than non-quota solids.

18 This quota premium simply is the amount of money needed to set

19 aside off the top of the pool to finance that additional $1.70,

20 or 19 and a half cents per pound of solids not fat paid on

21 quota milk.

22   While that is a premium that is announced, not all of

23 that money actually makes it to the producers. There is a

24 regional quota adjuster that adjusts the value of quota milk

25 based on the location of the farm where it's produced, and so

2622

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1 adjusters are deducted off of the payment or the credit out of

2 the pool to the producers. So while we initially need to set

3 aside $13 million using July, January 2009 for an example,

4 $1.1 million of that would have been withheld from producers

5 and so the full $13 million didn't have to come off the top of

6 the pool.

7   Q. All right. In terms of the data presented in this data

8 set, in terms of the information in this data set, is there any

9 additional elaboration that you would like to provide?

10   A. No.

11   Q. Did you compile this data?

12   A. I did.

13   Q. And on what basis do you consider it to be an accurate

14 representation of the data?

15   A. Again, based on my history in the milk pooling and

16 working with these numbers for 20-plus years.

17   Q. Data set J. Could you read the title of the data set

18 or the heading?

19   A. There's a heading, this document or data set is simply

20 a PDF. I made PDF's of tables, various tables, all of them

21 look like Table 6, out of the California Dairy Statistics

22 Annual, so each page summaries, or excuse me, titles can be

23 similar. The title reads: Table 6. Commercial Production of

24 Milk and Milk Fat by Counties and District, California, 1980.

25   Q. So that if you could just pause for a moment. That's

2623

```
 1  page 1?

 2      A.  1980 for page 1.

 3      Q.  Let's read through these in sequence.  Page 2?

 4      A.  Page 2, Table 6.  Commercial Production of Milk and

 5  Milk Fat in Average Milk Fat Test in California by Counties and

 6  District, 1985.

 7      Q.  Page 3?

 8      A.  Page 3, Table 6.  Commercial Production of Milk, Milk

 9  Fat and Average Milk Fat Test in California by Counties and

10  Districts, 1990.

11      Q.  Page 4?

12      A.  Table 6.  Commercial Production of Milk, Milk Fat, and

13  Average Milk Fat Test in California by Counties and District,

14  1995.

15      Q.  Page 5?

16      A.  California Milk Production by County, Table 6.

17  Commercial Production of Bulk Milk, Average Milk Fat, and

18  Solids not Fat Test in California by County and Region, 2000.

19      Q.  Page 6?

20      A.  Commercial Production of Bulk Milk by County,

21  Commercial Production of Bulk Milk, Average Milk Fat, and

22  Solids Not Fat Test in California by County and Region, 2005.

23      Q.  Page 7?

24      A.  Commercial Production of Bulk Milk by County,

25  Commercial Production of Bulk Milk, Average Milk Fat, and
```

1   Solids Not Fat Test in California by County and Region, 2010.

 2   Q. So let's go through this document a little bit. In the

 3   1980 document, could you describe the Table 6 for 1980, could

 4   you describe the data that's included in this document?

 5   A. Included in this document is the total pounds of milk

 6   in thousand pounds, and it is separated into market milk, also

 7   known as Grade A milk, or manufacturing milk, known as Grade B

 8   milk, and the total milk.

 9   The next three columns would be the milk fat in

10   thousand pounds. Again, broken down between market milk and

11   manufacturing milk.

12   And the final three columns, milk fat -- that should be

13   solids not fat. And I'm sorry, no, fat is right. That showed,

14   does not show the pounds, this shows the percentage. So it

15   shows milk fat percentage by area for market milk and

16   manufacturing milk.

17   Q. And so is that summarization accurate through the years

18   of page 2 for the Table 6 for 1985, and page 3, Table 6, for

19   1990?

20   A. It is.

21   Q. Now, page 4, the Table 6 for page 4, is that also

22   likewise the same, or is there any difference?

23   A. The only difference is that the, in the percentage

24   column, the heading indicates pounds, but it's not, it's

25   percentage.

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1   Q.   Now, on page 5 we have solids not fat starting in the

2   year 2000. So is the table, is this Table 6 based on the same

3   principles as the earlier table, except for the additions of

4   solids not fat, or are there other changes that should be

5   noted?

6   A.   I would note that we eliminated the fat pounds in 2000,

7   and simply put the fat test. And then the final three columns,

8   rather than being fat test, are now solids not fat test.

9   Q.   And so this would be true for the 2005 and 2010 tables

10   as well?

11   A.   That's correct.

12   Q.   I believe, is there also a state rank added in these

13   tables starting in 2000?

14   A.   There is.

15   Q.   And what is the state rank?

16   A.   It shows where that county ranks in milk production.

17   So number 1 would be the county that produces the most milk in

18   that year. Number 2, the second, and so on.

19   Q.   So again, is there any additional elaboration that you

20   would like to provide beyond what we have already discussed?

21   A.   No.

22   Q.   And you did not compile or develop this -- well, let me

23   back up for a moment. What is the source of this information?

24   A.   So the source of this information is the monthly

25   reports submitted to the Department. Most of this comes

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1 through the Milk Pooling Branch where handlers report to us

 2 each month or pooling each month, how many pounds of milk were

 3 produced by farm, both for Grade A farms and Grade B. That

 4 information is compiled and then provided to the Dairy

 5 Marketing Branch, who uses it to generate the California Dairy

 6 Statistics Annual, which is the publication that these were

 7 PDF'd out of.

 8   Q. And just generally speaking, how long has the

 9 Statistics Annual been published by the branch?

10   A. I believe going back into the 1950's, 1930's? I stand

11 corrected. It is a very long history.

12   Q. Do you consider this information to be an accurate

13 representation of the data?

14   A. I do.

15   Q. And on what basis?

16   A. Based on my time in Milk Pooling providing this

17 information to dairy marketing. Publication in the annual.

18   Q. Data set K.

19   A. Data set K also has been pulled out of historic

20 California Dairy Statistics Annual. It is from 2000 to 2014,

21 and it shows commercial production all milk in California by

22 county, by month, in pounds. The first two pages are for the

23 year 2000; followed by pages 3 and 4, which are for 2001; pages

24 5 and 6 being for year 2002; 7 and 8 for 2003; 9 and 10 for

25 2004; 11 and 12 for 2005; 13 and 14 for 2006; 15 and 16 for

1   2007; 17 and 18 for 2008; 19 and 20 for 2009. 20, excuse me,

2   21 and 22 for 2010; 23 and 24 for 2011.

3   JUDGE CLIFTON: I'm sorry, I got to stop you. I don't know

4   if everybody else's sets might be missing a page. I go from

5   16, 17, 20 in my set. Am I the only one?

6   MR. ESTES: Your Honor, I have a complete set, I can't

7   speak for others.

8   JUDGE CLIFTON: You keep yours, Mr. Estes. We can do this

9   later, but let's come back and -- so, okay. I'm in K and I,

10   and I am missing 18 and 19. And when Mr. Estes has moved on

11   from this, he can give you a page to copy if you don't have one

12   to copy.

13   MR. ESTES: I believe Candace Gates from the Department

14   will proceed to do that.

15   JUDGE CLIFTON: All right. Very good. Thank you,

16   Mr. Estes, we'll continue on, then.

17   MR. SHIPPELHOUTE: And where would you like me to continue

18   from?

19   JUDGE CLIFTON: Let's see, tell me a little more about what

20   18 and 19 were, since I wasn't paying close attention while I

21   was looking for them.

22   MR. SHIPPELHOUTE: Sure. Page 18 is the second half of the

23   year 2008. Page 19 is the first half of the year 2009. Page

24   20, then, would be the second half of the year 2009. 21 and 22

25   would be for the year 2010; 23 and 24 would be 2011; 25 and 26

1 would be for the year 2012; 27 and 28 would be for 2013; and 29

2 and 30 would be for 2014.

3   I would note that some counties, because of their

4 limited number of producers, there is not an individual county

5 number listed. However, the volume in those counties is

6 included in the regional totals and the statewide totals.

7 BY MR. ESTES:

8   Q. And what is the basis for that omission?

9   A. Again, limited number of producers, to protect

10 proprietary information, confidentiality, and not publish those

11 numbers.

12   Q. And again, please state where you obtained the

13 information?

14   A. This information comes from monthly reports that are

15 submitted to the Department by milk handlers, processors in the

16 state, and they detail to us how much milk they purchase from

17 each individual dairy farm and where they sent it to.

18   Q. Are these published statistics in the annual as well?

19   A. These documents are directly from the California Dairy

20 Statistic Annual.

21   Q. And do you consider these, do you consider this data to

22 be an accurate representation --

23   A. I do.

24   Q. -- of what's contained in the annual? And why is that?

25   A. Again, based on my time in Milk Pooling compiling this

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1   information and providing it to Dairy Marketing for publication

2   in this data set.

3   Q. Data set L. Please read the heading of this data set.

4   A. California Milk Production Fat, Solids not Fat by

5   County, by Month, January 2000 through December of 2014, in

6   pounds.

7   Q. And could you elaborate upon the information contained

8   in this data set?

9   A. The information contained in this data set shows the

10   same or similar information to what we had just gone through,

11   where we break down the pounds of milk produced in each county

12   by month. Not only pounds of milk, but also pounds of fat and

13   pounds of solids not fat.

14   Q. And again we encounter the same issue that some

15   counties are not, do not have a number attributed to them

16   because of trade secret confidentiality?

17   A. That's correct.

18   Q. Is there any additional elaboration you would like to

19   make upon the data contained in this document?

20   A. No, there's not.

21   Q. And did you compile this data?

22   A. I supervised the compilation of this.

23   Q. And what is the source of the data?

24   A. Again, it's based on information provided to the

25   Department from the processors and handlers in the state,

2630

detailing amount of milk they purchased from each individual

farm every month.

Q. I see. And do you consider this, on what basis do you

consider this to be an accurate representation of this data?

A. Based on my time in Milk Pooling compiling the

information and providing it to Dairy Marketing for

publication.

Q. Data set M. Can you please read the heading of this

data set into the record?

A. Monthly Ranch to Plant Movement by Month, by Market

Area, by Transportation Allowance Status, January 2009 through

December of 2014 (In Pounds of Milk.)

Q. And what is the data conveyed in this document?

A. This shows the amount of milk that moved into the

different marketing areas, and it's further differentiated by

how much of that milk moved into plants where the milk

qualified for transportation allowance, which is shown in the

column headed the term qualifying. And milk that went into

plants where the milk did not qualify for transportation

allowance, those numbers will be in columns headed with the

non-qualifying title.

Q. Is there anything further you would like to state about

the data in this document?

A. There is. If you look at the footnotes, there is

8 to 10 million pounds a month that do not show up in this

1　report that we know were produced in the state. When I was

2　querying this data to prepare it for this document, it didn't

3　meet the same criteria of all the other milk, and so while I

4　was able to identify the discrepancy between the total milk

5　pounds in this report versus what we knew, what I know to be

6　the total milk produced in the state, I wasn't able to pull

7　that out on a monthly basis. But this would give a very good

8　indication of the percent of milk moving into each area that

9　qualified for transportation allowance versus those that did

10　not qualify for transportation allowance.

11　　Q. The document makes reference to a Northern California

12　plants and Southern California plants. What is the

13　distinction?

14　　A. Northern California plants are plants that are located

15　in the Northern California marketing area as defined in the

16　stabilization of marketing plans. There is two separate plans

17　in the state, one for Northern California and one for Southern

18　California. The two documents read identical except for a few

19　portions where we're talking about Class 1, 2, and 3 prices.

20　　Q. So the Southern California data would be associated

21　with the stabilization plan for Southern California?

22　　A. That's correct.

23　　Q. All right. Did you compile this data?

24　　A. I did.

25　　Q. And you consider it to be an accurate representation of

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1 this data with the exception noted in relation to the

2 8 to 10 million pounds per month?

3   A. I do.

4   Q. And on what basis do you consider it to be reliable?

5   A. My experience in Milk Pooling compiling this type of

6 information.

7   Q. Okay. Data set N. Could you please read the heading

8 of this document into the record?

9   A. All right. Right after I get my data set E that just

10 popped up out of nowhere.

11   Data set N. Number of California Dairies by Herd Size,

12 by County, July of 2015, Grouped to Match as Closely as

13 Possible to Areas from the CDFA Hauling Survey.

14   Q. And what is -- what does this data represent?

15   A. This data represents the number of farms broken down by

16 herd sizes and by area. If you look to the left, there is

17 titles that show various areas, the first area being

18 Humboldt-Del Norte, North Bay, South Bay. Next area, Northern

19 Sacramento Valley. You can read down and get those areas. And

20 on the right hand side there's further definition of what those

21 areas are.

22   The next column shows the number of herds by size. So

23 for example, at the top left, the number of 453 would indicate

24 that there 153 farms less than 500 cows in that

25 Humboldt-Del Norte, North Bay, South Bay Area.

2633

1   Going across then, you have different herd sizes from

2   500-999 cows; 1000 to 1999 cows; and over 2000 cows.

3   Q. Now, there's a note listed beneath the data. Could you

4   describe that note and its purpose?

5   A. Again, the CDFA hauling survey areas do not follow

6   county lines, and the number of dairies by herd size from this

7   data set is generated by county. As a result, the counties

8   were grouped into the different CDFA hauling survey areas

9   according to their best fit. The counties corresponding to

10 each area are listed above.

11   And again, I mentioned earlier, if you look on the top

12 right in bold is an area heading, and then underneath that

13 would be a list of counties that fall within that area.

14   Q. Now, did you compile this data?

15   A. I did over, I didn't compile it, but I did oversee and

16 I did look at it for, to make sure it was a reasonable number.

17   Q. And what is the source of the data?

18   A. The source of this is the CDFA Animal Health and Food

19 Safety Branch. And the reason that we went to them for this

20 information is that as part of Dairy Marketing and Milk

21 Pooling, we don't collect information on herd sizes, we collect

22 volumes of milk produced. And so a better source of this

23 information was the Animal Health Branch. I was able to use

24 the milk pooling information that we generate each month to

25 kind of, to look at the information provided. And based on

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1 assumptions that we can make regarding herd production, this

2 information does appear to be correct.

3   Q. So you could cross-reference the fact that some areas

4 have larger herds and would, therefore, have larger production

5 amounts?

6   A. Yes.

7   Q. And come to a conclusion that the herd size data

8 conforms to type of milk production data that you have been

9 involved in?

10   A. Yes.

11   Q. Do you have any additional reasons why you consider it

12 to be reliable?

13   A. I do not.

14   Q. Okay. Exhibit O. Could you read the heading of data

15 set O?

16   A. Grade A Milk Used in Manufacturing Classes not Pooled,

17 January 2000 to June of 2015.

18   Q. Before I ask you about the data itself, could you

19 briefly describe the concept of the milk not being pooled?

20   A. So while in California minimum prices do apply to all

21 market milk, not all market milk revenue has to be pooled. If

22 milk is under direct contract with a nonpool plant, while that

23 nonpool plant does have to pay at least the minimum grade,

24 class price for that milk -- again, it doesn't have to be

25 pooled. So this document would show volumes of milk that were

2635

1 under direct contract with a nonpool plant Grade A milk shipped

2 into the nonpool plants, and therefore, not pooled.

3   Q. And what are manufacturing classes?

4   A. Manufacturing classes, primarily Class 4a and 4b, but

5 also Class 3.

6   Q. And please elaborate on what the data in the five pages

7 of this document represents?

8   A. So these five pages represent information from, by

9 month, from January of 2010 to June of 2015. It shows the

10 pounds of Grade A milk, Grade A fat, pound of Grade A solids,

11 with a footnote on the solids, we didn't start collecting the

12 solids number until we updated our computer system in 2008. So

13 again, it shows the pounds of Grade A milk that moved into the

14 nonpool plants. That revenue, any revenue generated by those

15 manufacturers is not in the pool.

16   Q. There's also a double asterisk here about some data

17 being proprietary?

18   A. There is.

19   Q. What is that about?

20   A. For that month, we apparently had so few nonpool plants

21 reporting, that we were not able to publish that number.

22   Q. And lastly, what is Grade A milk?

23   A. Grade A milk is milk that meets the definition of

24 market milk as defined in the California Food and Agriculture

25 Code.

1   Q. Did you compile this data?

2   A. I supervised the compilation of this.

3   Q. And did you review it?

4   A. I did.

5   Q. And what was your conclusion?

6   A. It was correct.

7   Q. And why did you conclude it was correct?

8   A. Based on my years in pooling, I did have some questions

9   on the data set and went back and reviewed the output with the

10   person that was pulling this together, and verified that the

11   numbers that were, the questions to me that were, in fact,

12   correct.

13   Q. Data set P. Please read the heading of data set P.

14   A. Grade B Milk Used in Manufacturing Classes not Pooled,

15   January 2000 through June of 2015.

16   Q. And what is Grade B milk?

17   A. Grade B milk, also known as manufacturing milk, is milk

18   that is produced, for the purpose of this report, milk produced

19   in California that did not meet the definition of market milk.

20   Q. And what is market milk used for primarily in relation

21   to the class utilization?

22   A. Market milk can be used for any products. It can be

23   used for fluid products, manufacturing products, anything and

24   everything. Whereas Grade B milk is limited to use in

25   manufacturing products. It's primarily used, most of it in

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 1  California is used in cheese, but there's also some that goes

 2  into butter and powder.

 3     Q.  Now, in terms of the data set forth in this document,

 4  can you provide some additional elaboration?

 5     A.  Again, the same, similar footnote on the solids not

 6  fat.  Again, we didn't put the solids not fat information on

 7  this through the pooling process until 2009.  As far as the

 8  numbers, they kind of speak for themselves.  You see some

 9  fluctuations from year to year as producers make selection to

10  either switch from Grade A to Grade B, and those selections

11  have to come on the first of the year, which is why you will

12  see large swings in between December and January of some years.

13     Q.  Did you compile this data?

14     A.  I oversaw the compilation of this.

15     Q.  And did you review it upon completion?

16     A.  I did.

17     Q.  And what was your conclusion?

18     A.  That it is accurate.

19     Q.  And on what basis do you consider it to be accurate?

20     A.  Based on my years in pooling, compiling and providing

21  this type of information.

22     Q.  Data set Q.  Please read the heading for data set Q.

23     A.  Pounds of Producer Milk and Quota for the Various

24  Hauling Regions by Month, January 2012 through June of 2015.

25     Q.  And there's a, I believe on number 1 here, a footnote
```

that appears at the end of the document on page 6. Could you

read that footnote and explain it?

     A. Again, we made reference to the CDFA Milk Hauling

Survey areas. There are some areas that were designated for

the purposes of the Milk Hauling Survey that we produce twice a

year. Those areas are listed or can be seen on a map that can

be viewed at the website that's provided in that footnote.

     Q. And just to read it for the benefit of people who may

be watching, and all throughout USDA counsel, correct me if I

read, use the wrong web language --

http://www.cdfa.ca.gov/dairy/pdf/haul/2008/MilkMovementMap.pdf.

          I lost my train of thought for a moment, did I ask you

to elaborate on the data in this document?

     A. My train left with yours.

     Q. Hopefully they are both going in the right direction.

          I think we started with heading.

     JUDGE CLIFTON: I think not, because you wanted to get to

the footnote, so now going back.

BY MR. ESTES:

     Q. So let's address the data set itself. What -- what is

contained in the data set?

     A. The data set shows the monthly pounds of milk fat and

solids not fat produced in each of the areas that are shown in

the column headed Hauling Region. It also shows, of that milk,

how many pounds of the fat that were produced in that region

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1 were allocated to quota, and how many pounds of the solids not

2 fat that were produced in that region were allocated to the

3 quota solids not fat.

4   Q. I see. I don't think we addressed this subject

5 earlier, so just for the purposes of completeness, what is

6 solids not fat?

7   A. Milk is made up of many different substances, not just

8 water. You have fat, you have solids not fat, which include

9 protein, lactose, ash, quite a number of other molecules in

10 there.

11   For pricing purposes in California, we price the milk

12 based on pounds of fat, and then the milk, excuse me, the

13 pounds of solids not fat. So any solids that are in the fluid

14 that are not included in the fat pounds. And then again, for

15 fluid carrier touched on earlier, we do price the fluid carrier

16 which is essentially the water in milk that is used in the

17 Class 1 price.

18   Q. Is there anything more that we should know about the

19 data that is contained in this data set?

20   A. No.

21   Q. And did you compile this data set?

22   A. I did.

23   Q. And why do you consider it to be reliable?

24   A. Based on the fact that I compiled it, I reviewed it, I

25 was doing it, and looked at it for reasonableness as I was

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done. And based on my years in milk pooling and compiling this type of information.

Q. Data set R. Could you please read the heading for data set R?

A. Average Number of Market Milk Farms by Area with More than 315,000 Pounds of Milk Production Per Month, by Hauling Area, 2012 to 2015.

Q. And what does this data set convey?

A. This conveys the number of farms in each of the regions that are shown in the column on the left that is titled Hauling Area. It shows the number of farms in each of those areas that produces more than 315,000 pounds per month on an average basis for each of the years indicated in the column heading.

Q. And I would just note again that the map for the hauling survey can be provided at the link that I described earlier I believe in relation to the last data set?

A. That's correct.

Q. Did you compile this data?

A. I did.

Q. Why do you -- do you consider it to be an accurate representation?

A. I do.

Q. Of the data? And why do you consider it to be accurate?

A. Again, based on my years of experience in Milk Pooling

1   and I'm familiar with the information provided regarding the

2   handler, excuse me, handler and producer location and volumes.

3   Q. Exhibit S. Please read the heading of Exhibit S.

4   A. Exhibit S. Bulk Milk from California Cooperatives

5   Diverted to Out-of-State Plants, January 2000 through June of

6   2015.

7   Q. What is bulk milk?

8   A. Bulk milk is milk that has not been diverted into a

9   finished product and has not been put into a consumer-sized

10   package.

11   Q. And what do you consider to be an out-of-state plant?

12   A. Any plant that is not located in California.

13   Q. What is the data presented in this data set?

14   A. This shows diversions. The term diversions means that

15   the milk has moved directly from a farm to a plant other than

16   the company that is contracting with the producer. So in this

17   document, this is milk that was under contract or members of

18   the California Cooperative, the milk has been dispatched by a

19   Cooperative to an out-of-state plant.

20   Q. And there are a couple of asterisks. There's an

21   asterisk here that I think explains a lack of data in solids

22   not fat pounds section. Could you read that footnote?

23   A. Solids not fat pounds not collected prior to

24   September of 2008.

25   Q. And is my assumption correct, does that asterisk

                              2642

1   explain the absence of that information?

2   A. Yes, it does.

3   Q. Is there anything that you would like to add in

4   relation to the data contained in this data set S?

5   A. No, there is not.

6   Q. Did you compile this data?

7   A. I oversaw the compilation of this one.

8   Q. And did you review the data?

9   A. I did.

10   Q. And what was your conclusion?

11   A. That it was accurate.

12   Q. And why do you consider it to be accurate?

13   A. Based on my years of experience in Milk Pooling and

14   reviewing the reports, compiling the information for

15   dissemination.

16   Q. Data set T. Please read the heading for this data set.

17   A. California Handlers Reporting Production at Least One

18   Month of the Year.

19   Q. Please describe the data set.

20   A. This data set reports handlers by city for the years

21   2005 and the year 2015. I queried our data set and looked for

22   any handler that reported any production during those two

23   years, and listed the name of anybody who reported production

24   and the city in which their plant was located.

25   Q. And did you, from what I am hearing you say, you did

2643

1 this personally?

2   A. I did.

3   Q. And do you consider it to be an accurate compilation of

4 the information?

5   A. I do.

6   Q. And why do you consider it to be accurate?

7   A. Again, based on my years of experience in pooling,

8 receiving reports, compiling information and disseminating it.

9   Q. Is it fair to say that you're probably pretty familiar

10 with many of these handlers and their locations?

11   A. Yes.

12   Q. Data set U. Please read the heading.

13   A. California Class 1 Sales Out-of-State, January 2000

14 through December 2014 in gallons.

15   Q. And what is, what does this data set represent?

16   A. That data set represents the pounds, excuse me, the

17 gallons of milk that processors in California reported as

18 having sold outside of the State of California. And it is by

19 month, beginning with the month of January 2000 through

20 December 2014.

21   Q. Now, there's a footnote 1 in the heading. Please read

22 the footnote that is set forth on, at the bottom of page 4.

23   A. Includes all whole, reduced fat, lowfat, and skim

24 market milk product sales.

25   Q. And why has that footnote been included?

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1   A.   This information is provided to the Dairy Marketing

2   Branch Statistical Unit every month when all handlers report to

3   the branch on their monthly statistical report. And when they

4   complete that report, there are various classifications of

5   milk. Included in those classifications is whole milk, reduced

6   fat, lowfat, and skim milk. So this footnote is simply to

7   indicate which products were included in these numbers.

8   Q.   Did you compile this data?

9   A.   I did not. I oversee, supervise the unit that does.

10   Q.   And did you review it?

11   A.   I did review it.

12   Q.   And what did you conclude from your review?

13   A.   It does look accurate.

14   Q.   And why did you reach that conclusion?

15   A.   In my time in Milk Pooling, again, I interacted a lot

16   with the Dairy Marketing Branch providing information, and

17   there have been instances where we, at that time, myself being

18   in Milk Pooling and Dairy Marketing, had to compare milk

19   pooling numbers, dairy marketing numbers, trying to make sure

20   that the numbers on the Class 1 sales as reported to Dairy

21   Marketing, were consistent with what was reported in milk

22   pooling. And so during those reviews, I would, I looked at

23   those MSR's trying to find any discrepancies. And so based on

24   my review of those MSR's during those times, these lock

25   accurate.

1   Q. Data set V. Please read the heading of data set V.

2   A. Bulk milk, skim, or cream transferred by Cooperatives

3 to Out-of-State Plants, January 2000 to June of 2015.

4   Q. Is there anything about skim or cream being included in

5 this data set that we should know?

6   A. This data, the request came in for bulk milk, skim, and

7 cream or condensed skim transferred. The way California treats

8 condensed skim, we treat it as a finished product at the plant

9 that manufactures that condensed. And so we are able to break

10 that out of its plant makes condensed skim and ships it to an

11 out-of-state plant, we don't know that it left the state. And

12 so the reason for this title was to show that it does not

13 include the condensed skim.

14   Q. And what is the information conveyed in this data set?

15   A. This conveys the amount of bulk milk, skim cream as

16 indicated in the title, that cooperative plants transferred to

17 out-of-state plants. That transfer being a movement of product

18 from a plant in California to a plant outside of California.

19 So that term "transfer" differentiates this from the CDFA-S

20 which shows the diversions which would be branch to plant

21 movements of milk.

22   Q. Now, there are, there's a couple of asterisks at the

23 conclusion of this data set on page 5. One of them we have

24 already addressed, which is the data does not include condensed

25 skim. But there is also this recurrent issue with solids not

1 fat pounds. Could you read the first asterisk relating to

2 solids not fat pounds?

3   A. Solids not fat pounds not collected prior to

4 September of 2008.

5   Q. And that's the explanation for the lack of information

6 in the data set?

7   A. That's correct.

8   Q. Where specified?

9   A. Correct.

10   Q. Did you compile this data set?

11   A. I oversaw the compilation of this one.

12   Q. And did you review it?

13   A. I did.

14   Q. And what did you conclude upon your review?

15   A. I concluded that it was an accurate and correct

16 representation of the data.

17   Q. And on what did you base your conclusion?

18   A. Again, based on my years in Milk Pooling, processing

19 reports, compiling information, providing information to the

20 industry.

21   Q. Okay. Data set W. Please read the heading of data set

22 W.

23   A. Bulk Proprietary Milk, Skim or Cream, Transferred to an

24 Out-of-State Plant, January 2001 through June of 2015.

25   Q. Now, an earlier data set referred to bulk milk, and

2647

1 this one refers to bulk proprietary milk. Is there a

2 difference?

3   A. I believe the earlier one referred to bulk milk from

4 California Cooperatives. This one differs in that it shows the

5 amount of bulk milk transferred by plants that are not

6 cooperatively owned, so they are owned by individual

7 corporations or individuals or partnerships, so we refer to

8 those at proprietary plants. And it shows the same

9 information, just the ownership of the shipper is proprietary

10 as opposed to cooperative.

11   Q. And what information is conveyed in this data set?

12   A. This represents the amount of milk skim or cream that

13 was transferred from a plant that was owned proprietary in

14 nature, transferred to an out-of-state plant. Again,

15 out-of-state being a plant outside of California.

16   Q. Did you compile the information?

17   A. I oversaw the compilation of this.

18   Q. And did you review this data set?

19   A. I did.

20   Q. And what did you conclude upon reviewing it?

21   A. That it is accurate. I would add a comment. This is

22 only for pool plants. If there are some milk skim or cream

23 that was moved from a nonpool plant to an out-of-state plant,

24 it is not reflected in this document.

25   Q. Okay. And why do you consider this compilation to be

```
 1   accurate?

 2      A.  Again, based on my years in milk pooling and working

 3   with data.

 4      Q.  Data set X.  Please read the heading of data set X.

 5      A.  Bulk Milk Skim and Cream Received by California Pool

 6   Plant, Condensed Skim Reported at Skim Equivalent.

 7      Q.  What does this data set represent?

 8      A.  This data set, as with CDFA-Y and CDFA-Z, which are to

 9   follow, all have to do with bulk milk that was received in

10   California plants sourced from an out-of-state source.  It

11   breaks that receipt down by the source state.  So for January

12   1995 -- this data is from January of '95 to June of 2015 -- it

13   breaks it down by month.  For example, January 1995 there was a

14   total of 23,250,427 pounds of bulk milk imported into

15   California, and if you follow across on that month, you will

16   see under the individual county, or excuse me, individual

17   states, what state that milk originated from.

18      Q.  Okay.  And did you compile this information?

19      A.  I did.

20      Q.  And why do you consider it to be an accurate

21   representation?

22      A.  Based on my years of experience working with this

23   information and pulling it out for this report that we update

24   more regularly than I can remember.

25      Q.  I would just like to note, it's been brought to our
```

1   attention in terms of data set W, that it states Bulk

2   Proprietary Milk, I believe it was the exhibit previous to this

3   one?

4   A.   Uh-huh.

5   Q.   It states the timeframe of January 2001 to June 2015.

6   I would just like to note for the record that it should state,

7   I believe January 2000 to June 2015.

8   A.   Yes, it should have. My error.

9   Q.   Please make note of it. Data set Y. Please read the

10   heading into the record.

11   A.   Bulk Milk Skim and Cream Received by California Pool

12   Plants, January of 2000 through June of 2015, Condensed Skim

13   Reported at Skim Equivalent. This data set is exactly the same

14   as data set CDFA-X, the only difference is that this data

15   request or requested from 2000 through 2015, so it has five

16   less years of information on it than CDFA-X.

17   Q.   Is there any additional elaboration that you would like

18   to provide about this data set?

19   A.   No, there's not.

20   Q.   Did you compile this data set?

21   A.   I did.

22   Q.   And why do you consider it to be an accurate

23   representation of the data?

24   A.   Based on my experience in the Milk Pooling, collecting,

25   processing, disseminating of information.

1   Q. Data set Z. Please read the heading.

2   A. Classification of Bulk Milk Skim and Cream Received by

3 California Pool Plants, Condensed Skim Reported as Skim

4 Equivalent.

5   Q. And what does this -- what information does this data

6 set convey?

7   A. This data set, as I mentioned earlier, is also,

8 represents the milk it receives in California processing plants

9 from out-of-state source. What I have done here is show of

10 that milk that came into California plants, what class it was

11 allocated to for pool settlement purposes.

12   Essentially what we do is we credit the plants the same

13 amount that they are charged for that milk, so that there's no

14 pool obligation on this milk coming into California from

15 out-of-state.

16   Q. And did you compile this data?

17   A. I did.

18   Q. And do you consider it to be accurate?

19   A. I do.

20   Q. And why do you consider it to be accurate?

21   A. Again, based on my years in Milk Pooling, collecting

22 processing this information.

23   Q. Data set AA. Please read the heading.

24   A. Average Market Price for the Transfer of Quota, August

25 1969 through September of 2015.

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1   Q.   And what information does this data set convey?

2   A.   We talked a little bit about quota earlier. I

3 mentioned that producers own quota, or some producers own

4 quota. Those producers that do own quota, own it based on how

5 many pounds of fat and solids not fat quota they have. That

6 ownership is on a daily basis. If they own quota, they also

7 own production base to go with it. That production base in

8 pool quota can, and is, transferred between producers.

9 Transfers occur every month and have since the beginning of

10 milk pooling.

11   This document shows the amount of milk, or excuse me,

12 the amount of quota that was transferred each month and the

13 average price for each of those transfers, as well as the

14 number of people that were selling, the number of people that

15 were buying. And of those sales, how many of those occurred at

16 hundred percent.

17   I would also note that in the sales price, the sales

18 prices are split out between sales with cows and sales without

19 cows. That used to be a bigger issue than it is today. It

20 used to be that because of IRS rules, my understanding is that

21 there was incentive to shift, if somebody were to buy their

22 neighbor's operation and they bought cows, land, and/or quota,

23 IRS rules would encourage them to report more value on

24 depreciable assets, such as the buildings or equipment or cows,

25 and understate the value of their quota. And so that's why we

1 initially started out reporting these sales differently, as

2 with cows and without cows.

3 　　Somewhere in the mid-'90's, IRS changed the rules so

4 quota can be amortized so there's not the same incentive today

5 that there was 30 years ago to move the value from one asset to

6 the other.

7 　Q.　So just to be clear for the record, this is based upon

8 your recollection, not upon any expertise in terms of IRS

9 depreciation rules?

10 　A.　No, that's correct.　I went off on that little rant to

11 indicate why we ever started reporting sales without cows as

12 opposed to with cows.

13 　Q.　So let me say, you are providing the explanation

14 without substantiating the underlying basis?

15 　A.　Yes.　I am not an IRS auditor, I'm not an IRS expert.

16 I think I said early on it was my understanding based on rumor

17 mill, not admissible as evidence, I assume.

18 　Q.　So now that my interruption is over, is there anything

19 more that you would like to say about this data set?

20 　A.　No.

21 　Q.　Did you compile this data set?

22 　A.　At certain times I did compile this when I was in Milk

23 Pooling.　More recently, I have not, but I did review it, and

24 it does appear to be accurate.

25 　Q.　And why do you believe that?

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1   A.   Based on my experience in Milk Pooling, and my time

2 processing quota transfers and preparing this document during

3 that time period.

4   Q.   Data set AB. Please read the heading.

5   A.   Percent of Quota in Shipments for the month of

6 June 2015. This data set has the identical document for the

7 years 1995, 2005, and June 2015.

8   Q.   Other than the changes in processing format that

9 reflect changes from DOS to Windows, is there anything

10 substantively different in this material?

11   A.   No, there's not. And what this document shows is the

12 number of producers in five percent percentage increments,

13 showing how many producers in the -- that have no quota; how

14 many producers have 1 to 5 percent of their production covered

15 by quota; the number of producers producing between 11 and 15

16 percent of the quota, again, five percent increments going on

17 down to producers who produce 96 to, in some instances we have

18 producers that have more quota than they do production, so we

19 can show the number of producers in each of those categories

20 and the pounds of solids that they produce. And of that solids

21 that they produced, how many pounds of that was allocated to

22 quota.

23   Q.   Now, did you compile this information?

24   A.   This is compiled, it's a report that's generated each

25 month out of our Dairy Accounting system.

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1   Q. And do you consider it to be accurate?

2   A. I do.

3   Q. And why is that?

4   A. I oversaw the building of this report when we converted

5   from DOS, or excuse me, the old Kobalt system to the system we

6   have now, and prior to that I interacted with the programmers

7   that generated the other reports. And from time to time I

8   would verify the numbers that were coming out on this report to

9   make sure that there wasn't anything gone astray on the

10 compilation of it.

11   Q. I see. So you don't have any reservations about this

12 document?

13   A. No reservations.

14   Q. Data set AC?

15   JUDGE CLIFTON: Before you go there, this is Judge Clifton.

16 Mr. Shippelhoute, what does the column number and equalization

17 signify? The last column of AB?

18   MR. SHIPPELHOUTE: So producers again, when they own quota,

19 they also own production base. The production base was based

20 on a historical time period, what the total production that a

21 farm had during that time period, and that was their total

22 production base -- you may need Mr. Schiek up here, we have a

23 wild fly -- so that was their production base.

24   They were also issued quota which was based on their

25 Class 1 usage. A producer that is equalized is a producer who

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1 has enough quota to cover at least 95 percent of his production

2 base. It a producer doesn't have sufficient quota to cover 95

3 percent of their production base, they are unequalized. That

4 number is not relevant until such time that we might issue any

5 additional quota, which we have not for about 15 years now. So

6 for pool accounting purposes, that number out on the right hand

7 side numbered equalization, really is not all that important

8 right now.

9   JUDGE CLIFTON: Thank you.

10 BY MR. ESTES:

11   Q. So data set AC. Please read the heading.

12   A. Class 1 Pool Utilization Milk Fat, Solids not Fat,

13 Other Pool Statistics, August of 2015 and Annual 2014.

14   Q. And what information is set forth in this data set?

15   A. So this data request was for information relative to,

16 primarily to producer handlers. In footnote, before I forget

17 to mention this, if anybody has printed this document for

18 August 2015 off of our website prior to yesterday, please go

19 back and print a new version, I found some errors in it

20 yesterday as I was reviewing some information.

21   Let's go back to the top. This document, the top line,

22 shows the total pounds of milk that the four producer-handlers

23 in the state, their total Class 1 utilization.

24   The next line down, which is the next two, show the

25 pounds of milk that those four handlers exempted from the pool.

That milk was Class 1 milk and it was exempt because of the

producer-handlers quota ownership.

The fourth line down shows the total pooled Class 1

utilization for the pool for the month of August.

And then the next line down, total pool milk for the

Month of August. Not only that, we have daily quota pounds for

the producer handlers, and then the daily quota pounds for the

milk, or excuse me, for quota that was not exempt quota owned

by those four producer handlers.

Next line down, daily pounds of pooled milk, pounds of

fat, pounds of solids.

The next section down from there simply shows the class

prices that were announced for Class 1 for pounds of fat,

solids not fat, and fluid carrier, then hundredweight price.

Further down we have January to December of 2014. That

shows a number of pooled producers for December of 2014, the

number of handlers. Handlers for this reporting purposes were

plants that actually processed producer milk or bulk milk into

a finished product. Of those plants, there was 124 plants, 35

of those plants reported some Class 1 usage. Of those 35, 14

reported buying some milk from outside of California, and four

of those were producer-handlers.

Next down, January to December 2014, total pounds of

solids not fat in the pool for the year, of that, excuse me,

next line, total pounds of milk produced by Cooperative

2657

1 members.

2 Next line down, pounds of producer-handler milk that

3 was exempt from the pool. Again, that would be based on the

4 fact that it was Class 1 usage and covered by exempt pool

5 quota.

6 And the last line down, bulk non-California milk

7 packaged in California, so that would be bulk milk that came

8 into California and processed in California.

9 Q. And did you compile this information?

10 A. I did not. I supervised or oversaw and reviewed it

11 when it was done.

12 Q. And do you consider it to be accurate?

13 A. I do.

14 Q. And why so?

15 A. I reviewed the information, checked it for accuracy,

16 made a correction, and the rest of the information based on my

17 time in pooling, my experience, I believe it to be true and

18 correct.

19 Q. Your Honor, with that, I believe we have gone through

20 all of the material presented in Exhibit 61, so we would ask

21 that it be entered into the record.

22 A. I would like to, before we do that, make one additional

23 comment, I'm sorry, on AC this last document that we were

24 looking at.

25 Q. Yes.

2658

1   A.   There's a footnote down here, "Producer-handler, Type

2   70, shall have its quota milk deducted from Class 1 usage, plus

3   an additional 155 pounds of fat and 375 pounds solids not fat,

4   before accounting to the pool. The exemption is based upon the

5   lesser of either herd production, Class 1 usage, or quota

6   pounds."

7   I would just point out that additional 150 pounds of

8   fat and 375 pounds of fat that may be claimed, is conditional.

9   If a producer-handler has sold some of their quota since 1978,

10   they do not get to claim that additional 150 pounds or 375

11   pounds. One producer-handler has sold some quota, and

12   therefore, does not qualify for that additional exemption.

13   Q.   I believe you described the 375 was fat, but it's

14   solids not fat?

15   A.   375 should be solids not fat. Thank you.

16   Q.   And with that, we would like to proceed to have it

17   introduced into the record.

18   JUDGE CLIFTON: Does anyone wish to question the witness

19   before determining whether you have any objection to the

20   admission into evidence of Exhibit 61? There is no one. Is

21   there any objection to the admission into evidence of Exhibit

22   61? There is none. Exhibit 61 is admitted into evidence.

23   (Thereafter, Exhibit Number 61 was

24   received into evidence.)

25   MR. ESTES: Your Honor? If I may, we have one additional

1 item here that was brought to my attention this morning for

 2 introduction into the record that we would like to have

 3 introduced as Exhibit 62. Do you have a copy of it?

 4   JUDGE CLIFTON: I do. I would like to take a 15-minute

 5 break and then address that, if we may. We'll also address the

 6 missing page, and then the witness would be made available for

 7 cross. So let's at this point, rest up. Please be back and

 8 ready to go at 11:15.

 9   (Whereupon, a break was taken.)

10   JUDGE CLIFTON: We are back on record at 11:20. We resume

11 direct examination of Mr. Shippelhoute by Mr. Estes.

12   And Mr. Estes you had just called our attention to

13 Exhibit 62.

14   MR. ESTES: Yes, that's correct. I would like to proceed

15 to ask Mr. Shippelhoute about this document.

16   JUDGE CLIFTON: You may.

17   MR. ESTES: Thank you.

18 BY MR. ESTES:

19   Q. Mr. Shippelhoute, do you have a document in front of

20 you that has a title Classification of Dairy Products?

21   A. I do.

22   Q. Could you briefly summarize this document? I know

23 that's a little bit of a challenge, but if you could do that,

24 would be very help.

25   A. This document lists a number of dairy products on one

                              2660

column. The next column shows what classification those dairy

products fall into for pricing purposes. For example,

acidified Half-and-Half that's listed at the top of the column

on the left, would be classified as a Class 1 product, as

indicated by the numeral 1 in the classification column.

Under the third column, off to the right, there are a

number of text comments relative to the classifications. Those

text comments are indications that the products that they are

pointing to or referring to, are products that while ordinarily

would fall into one classification, if they meet separate

criteria, they can fall into a separate classification. So for

example, the top footnote if you will, that states, "These

products are assigned to Class 2 if packaged in pre-sterilized

containers and meet out-of-state requirements and sold outside

of California."

There's an arrow coming off of that box, pointing to

Half-and-Half. That indicates if Half-and-Half is packaged to

meet the standards out-of-state, outside the state of

California, and are, in fact, sold outside of the State of

California, that Half-and-Half can be claimed as a Class 2

product by the processor, rather than Class 1.

Similarly, if you go on down then, there are four more

boxes that indicate when the products indicated on the left

column could be reclassified. Again, if there's some that

could be reclassified, the rest could be reclassified from

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1 Class 2 down to 4a when they are sold outside of the California

2 or outside of the 48 contiguous states.

3   Q. Do you consider this classification of dairy products

4 document to accurately represent the classification of these

5 dairy products?

6   A. I do. One more clarification, I'm sorry. The four

7 boxes I mentioned were on the first page of that document. If

8 you flip it over, there is a second page, there are three more

9 footnote boxes, if you will, on that -- on that second page, as

10 well as additional products and their classifications.

11   Q. So do you consider this to be an accurate

12 classification of products?

13   A. I do.

14   Q. And why do you have -- why do you believe that?

15   A. In my time at Milk Pooling, handlers report -- let me

16 back up. When handlers report to Milk Pooling, they report not

17 only the volume of milk that they receive and process, but they

18 also report what classification of product that they

19 manufacture in their plant fall into.

20   Often times handlers have questions relative to the

21 products they make and where they sold them to and what

22 classification they would fall into. And so I was a part of

23 conversations within the branch, in determining when milk could

24 be classified, or what classification a product would fall

25 into. And we often referred to this chart and reviewed it and

2662

1 updated it from time to time as laws changed, so I am familiar

2 with it and it is an accurate description.

3   Q. Your Honor, we would like to proceed to introduce this

4 document into the record as Exhibit 62?

5   JUDGE CLIFTON: Is there anyone who would like to question

6 the witness before determining whether you have any objection?

7 There is no one. Are there any objections to the admission

8 into evidence of Exhibit 62? There are none. Exhibit 62 is

9 admitted into evidence.

10   (Thereafter, Exhibit Number 62 was

11   received into evidence.)

12   JUDGE CLIFTON: Did you have anything else, Mr. Estes, for

13 this witness?

14   MR. ESTES: No, I do not.

15   JUDGE CLIFTON: All right. During the break, the

16 substitute pages or additional pages were passed around for the

17 document that is K. I just want to make sure that the record

18 copies include all of the pages for Exhibit K.

19   Now, I would like to open proceeding for questions.

20 All of you know what the guidelines are. This is about how the

21 data was compiled or any clarification as to the meaning of the

22 terms as we have had throughout from the witness, which has

23 been very helpful. Who would like to begin?

24   CROSS-EXAMINATION

25 BY MR. BESHORE:

2663

1   Q.   Good morning, Mr. Shippelhoute.

2   A.   Good morning.

3   Q.   Marvin Beshore.

4   First off, I just have a few questions, but I do want

5   to thank you and your colleagues, Mr. Estes and Ms. Gates,

6   Secretary Ross, everybody, for the work represented here and

7   the effort to, the willingness to come down and participate as

8   you have. It's very much appreciated.

9   Let me ask you a question that's on 62 first, or the

10   concerns 62 and ties to one of the other documents. And that

11   is, how condensed skim is reflected or not reflected in the

12   data sets and with respect to how it's described in the

13   classification document here, 62, one of the foot text notes

14   states that, which goes around condensed here, if I'm reading

15   it right, "products must be assigned to the classification of

16   all usage when utilized in bulk by handlers, but are assigned

17   the 4a when sold to consumers." And if I heard you right when

18   were you describing one of the exhibits relating to shipments

19   out-of-state, you said that condensed skim was not reflected

20   because it's a finished product. So can you help me understand

21   how that all works? Where it's reflected, where it's not here?

22   A.   Sure. The documents that we were referencing earlier

23   were dealing with bulk products. So bulk condensed skim could

24   be condensed skim that, again, is not been put into

25   consumer-sized package, when it is either used within a plant

2664

to either four or five Class 1 product, cheese fat, whatever

the case maybe, that condensed is reported at the plant that

made the condensed, not necessarily the one that took the

condensed one step further and put it into a fluid milk model

or a cheese fat fortification, whatever the case maybe. The

condensing operation reported it based on the receiving plant's

usage of that condensed skim.

In this classification chart, this is referring to

condensed skim that has been put into consumer-sized package,

in little cans, sweetened, whatever the case may be, if you put

it in consumer-sized package and sold to the consumer, then it

is considered 4a.

Q. Okay. So the condensed skim is recorded by the

condenser in terms of how he, to what -- to the customer's use

where he delivered it?

A. That's correct.

Q. Okay. So is condensed skim, shipments out-of-state of

condensed skim, are they reflected on any of those tables that

showed either product either from Cooperative milk, either from

Cooperatives or proprietaries that went out-of-state?

A. No, they are not.

Q. So do I understand that basically those transactions

are just not tracked in the system, or is it just nobody

requests it?

A. They are not tracked in the system. That condensed

skim, if it was processed in a California plant, it is pooled

and those pounds are included in the overall pool pounds based

on the ultimate usage. But the plant that is making that

condensed skim does not show us a detailed item in their report

that says here's how much condensed skim that we sent to X, Y,

or Z, any plant, whether that plant is in California or outside

California.

Q. Okay. Thank you for that. Now I would like to go to

CDFA-C, which is the document titled Blend Prices by Month

Based on Regulated Minimum Prices.

JUDGE CLIFTON: Mr. Beshore, when you are reading from the

document, you go very fast. We're all looking at it, but

please remember the court reporter.

MR. BESHORE: I will make an effort to do that.

BY MR. BESHORE:

Q. So my question is, on CDFA-C, where the blend price was

calculated, in the footnote somewhere it says based on

utilization, I'm sorry. Well, my question is, where you had

for Class 1 you have two regions, two Class 1 prices. And for

many years at least, there are two prices for Class 2, and also

Class 3, I believe. So my question is, in calculating the

blend price of CDFA-C, how were the multiple prices in the

classes factored in?

A. When I compiled C, I used the pool prices as announced.

To get to the pool prices as announced, we calculated or

1 multiplied the usage reported by plants in Southern California

2 by the Southern California class price. The usage in Northern

3 California by the, located in Northern California, by the

4 Northern California class price. And so we, in calculating

5 pool or accumulated pool, we accumulate that revenue based on

6 where it was actually processed. We add that revenue to the

7 pounds, and so at the end of the pool's calculation we had to

8 divide revenue by pounds and get a weighted average, if you

9 will, based on the fact that money going into the pool is based

10 on the locations of the plant processing it.

11   Q. Okay. And my understanding, I believe that someone in

12 our the group that I represent, the Cooperatives, requested the

13 pounds by region for Class 1, in Northern California or

14 Southern California, or by other subregions for Class 1, and my

15 understanding, if that's not published by the CDFA, not

16 available; is that correct?

17   A. That's correct. This, again, was based on money into

18 the pool, money out of the pool.

19   Q. So we know the weighted average of the class values but

20 the geographic break down is not something that's available?

21   A. That's correct. It's not something that is captured

22 and stored in our system.

23   Q. Okay. Thank you. Thank you very much for that.

24   Now, on CDFA-D, and I'm looking at page 9 which has

25 columns showing pounds and values related to fortification.

1   My question is, is the -- for condensed skim, is the

2   allowance -- well, how is the allowance calculated -- the

3   allowance column calculated there? Is that simply the per

4   pound allowance times the pounds shown or are there other

5   elements in that calculation?

6   A.   It's simply the pound of solids not fat used, pounds of

7   solids not fat in condensed skim, used to fortify Class 1

8   products, times the fortification allowance rate.

9   Q.   Which is?

10   A.   I don't have it committed to memory.

11   Q.   987?

12   A.   987, if I were, whatever it comes with that it would be

13   close.

14   Q.   Thank you. Turning to CDFA-M. I'm interested in the

15   footnote which says, "excludes 8 million to 10 million pounds

16   per month of pooled producer-handler milk." And I may have

17   missed it, probably did, but I don't quite understand what that

18   may involve.

19   A.   So what does that involve? This report, as I was

20   compiling this information --

21   JUDGE CLIFTON: I want to make sure I'm on the right one.

22   Which one do you want us on, Mr. Beshore?

23   MR. BESHORE: CDFA-M.

24   JUDGE CLIFTON: Okay.

25   MR. BESHORE: And the footnote on the second, page 2 of

2668

1 CDFA, that was what I was asking about.

2   JUDGE CLIFTON: Thank you.

3   MR. SHIPPELHOUTE: So as I was compiling this information

4 and breaking it down into the different areas, and by

5 qualifying versus non-qualifying, I was cross-referencing a

6 total number that I came up with, with the total number on

7 another report, just making sure that I was capturing all of

8 the milk in the pool. I was consistently off by 8 to 10

9 million pounds. I went digging through the numbers trying to

10 find where it was, and I was able to identify it was some

11 producer-handler milk that was included in the pool, that

12 because of the way it's reported and the way it's processed, I

13 wasn't able to query that and pull that out for inclusion in

14 there. Each month I could go back and see that's where it was

15 coming from, but it was a bit of a challenge to pull that out.

16 BY MR. BESHORE:

17   Q. So are those, like, exempt pounds to which

18 transportation allowance does not apply or is it some other?

19   A. No, those are pounds that were pooled and so it would

20 apply.

21   Q. But they were delivered to producer-handler plants?

22   A. Yes.

23   Q. Okay. Thank you. I would like you to go to CDFA-O,

24 please, which is titled Grade A milk. Actually, that's not the

25 one I want, I'm sorry. Yeah it is, actually. Grade A milk and

2669

1 manufacturing. I'm looking Grade A milk. I'm looking at

2 Grade A milk not pooled.

3   A.   That is O.

4   Q.   This says Grade A milk for manufacturing. Is there --

5 is there Grade A milk not pooled that goes, that is produced in

6 California, that goes to other than manufacturing uses?

7   A.   Well, any plant that manufactures Class 1 or Class 2

8 products -- footnote, mandatory Class 2 -- would have to be a

9 pool plant. The only other option would be Class 3, which is

10 nonpool. Class 3 plants, none of those Class 3 plants buy milk

11 from independent shippers, and so -- could you read your

12 question again?

13   Q.   Well, what I'm -- let me just ask what I'm trying to

14 figure out. There's been reference in the hearing to milk that

15 is produced in California that's delivered to Class 1 plants

16 outside of California, particularly potentially a plant in

17 Arizona. Is that milk reflected on one of these tables or are

18 transactions of that sort, are they reflected, are they

19 captured on one of these?

20   A.   No, they are not.

21   Q.   Okay. Okay. So here's -- if we could turn to CDFA-T,

22 and I'm probably not finding what I was looking for on here. I

23 thought I might ask. There was a witness yesterday, I think

24 earlier this week from Organic Pastures. And I see Organic

25 Pastures listed in 2005, but not on 2015. And I certainly

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1   understood him to be in operation today?

2   A.   They are.

3   Q.   Probably under a different name or something, I guess?

4   A.   It is listed here as McAfee Farms.

5   Q.   In 2015?

6   A.   In 2015.

7   Q.   I see it. Thank you. One other question. This is

8   from CDFA-R, which is titled, Average Number of Market Milk

9   Farms by Area With More Than 315,000 Pounds of Milk Production

10   Per Month by Hauling Area, 2012 and 2015.

11   Question is, is there some setting, some significance

12   within the CDFA pooling or stabilization program of 315,000

13   pounds per month?

14   A.   No, that's no significance to us. That was simply the

15   number that was provided to us in the data reports.

16   Q.   And this is, as well as certain other exhibits here,

17   are compiled by hauling area. My understanding is that those

18   -- and you, the hauling area is, of course, are defined in the

19   footnotes are available. Those areas are not identical to

20   marketing in stabilization plant areas; is that correct?

21   A.   They are not.

22   Q.   Are they -- are there any other areas that match up

23   with hauling areas that are defined in the programs?

24   A.   No.

25   Q.   So they are just areas that are identified for purposes

2671

1   of collecting hauling data, I guess?

2   A. That's why we created them, that's correct. The reason

3   that we pulled so many of these data sets together using those,

4   is because we were requested to do so.

5   Q. So the request asked for the data by hauling area?

6   A. Yes, it did.

7   Q. Okay. Thank you very much, Mr. Shippelhoute. I don't

8   have any other questions at this time.

9   CROSS-EXAMINATION

10   BY MR. ENGLISH:

11   Q. Chip English.

12   And Mr. Shippelhoute, let me start also with a real

13   thank you. This was obviously a large task. We appreciate

14   your work, the work in this case, and the work of Mr. Estes,

15   and we are grateful to have you here today.

16   A. Thank you.

17   Q. So thank you.

18   Let me start with just a couple confidentiality issues.

19   And just, we know how the rule works for Federal, I just want

20   to know what it is with respect to CDFA, so when we're looking

21   at it.

22   A. An awful lot of our reports -- I'm sorry.

23   Q. The issue is, at what point is information

24   confidential? And just byway of reference, we know for Federal

25   Order purposes, for instance, if there's fewer than three

                        2672

1   handlers, we do not provide, the information is not provided

2   because by definition then somebody could figure that out. So

3   I just want to know what that definition is for your purpose.

4   A. Given that a number of our publications are published

5   in partnership with USDA, we generally have just adopted that

6   same definition, and rarely will you see us vary from that.

7   Q. Thank you. Let me turn first, and all my questions

8   will be with respect to Exhibit 61, and I note that going

9   through with your comments and your counsel's questions, and

10   Judge Clifton's question about equalization, that I have thrown

11   away ten pieces of paper of questions. I tried hard.

12   But if we can turn to Exhibit 61, Table H. And that is

13   the Summary of Transportation Allowance and Credits for

14   January 2000 to June 2015. And I have one question. And that

15   is, all the allowance dollars are positive, and all the credit

16   dollars are negative. Can you explain that?

17   A. The transportation allowances are dollars paid out of

18   the pool to producers. That is money that is deducted off the

19   top of the pool or taken out of the pool to finance that

20   transportation allowance system. The credits are actually

21   defined -- the transportation allowances are defined in the

22   pool plan, so those are allowances to producers.

23   The credits are defined in the stabilization and

24   marketing plan, they are a credit against a handler's Class 1

25   price, if you will. And so that's why we show them as a

2673

1 negative, because they are credited to a handler.

2 Q. So in essence, the pool will be a little smaller for

3 those credits than it otherwise would be without those credits?

4 A. That's correct.

5 Q. Turning now to Table S, which is S as in Sam -- the

6 Bulk Milk from California Cooperatives Diverted to Out-of-State

7 Plants, January 2000 to June 2015.

8   I appreciate your having provided the definition of

9 diverted. So my first question is, if milk is diverted to an

10 out-of-state plant, is it still included in the California

11 pool?

12 A. If it is diverted by a California Cooperative, no, it

13 is not.

14 Q. And a second question is, in some of your materials you

15 discussed a slightly different issue with respect to milk

16 received at nonpool plants. Would the price received at that

17 out-of-state plant be subject to California's minimum pricing?

18 A. No, it would not.

19 Q. Now, I note that, and I thought we asked, but if we

20 didn't I'll raise the issue -- there is, of course, you have

21 the bulk milk for California Cooperatives diverted to

22 out-of-state plants, and for transferred milk you have a table

23 for cooperatives and a separate table for proprietaries. There

24 is no table for bulk milk diverted by proprietary handlers,

25 correct?

2674

1   A. There is not.

2   Q. Is that because that is subject to confidential data

3 and therefore you couldn't respond, or that proprietary

4 handlers can't divert, or what?

5   A. Proprietary handlers can divert, and they do divert.

6 But yes, it's because of a proprietary reasons, we just

7 couldn't release that.

8   JUDGE CLIFTON: Now, that's an interesting use of the word

9 "proprietary" in two different contexts.

10 BY MR. ENGLISH:

11   Q. Thank you, your Honor.

12   So what you meant, that private companies, other than

13 Cooperatives, which you defined as proprietary operators, you

14 could not report that data because of the confidentiality rules

15 that were discussed in the beginning of my examination,

16 correct?

17   A. Yes.

18   Q. Thank you?

19   JUDGE CLIFTON: That are in place for proprietary reasons.

20   MR. ESTES: Your Honor, if I may?

21   JUDGE CLIFTON: Yes, Mr. Estes?

22   MR. ESTES: From a legal standpoint we would consider such

23 information to be release of trade secret information, so under

24 the Public Records Act there is an exemption for the release of

25 information that would involve the disclosure of trade secrets.

2675

1   MR. ENGLISH: I appreciate that clarification, and we

2 weren't seeking it. I want to be clear, we are just wanting to

3 know why it wasn't included. We're not challenging the fact

4 that it was not included.

5   MR. ESTES: No, I just want to make sure the record is

6 clear in the sense that I think sometimes confusion can arise

7 between the use of the word proprietary and the legal aspect of

8 disclosure, which is that it must be considered a trade secret.

9   MR. ENGLISH: And I genuinely appreciate that clarification

10 and I know sometimes we are use shorthand here and it is very

11 helpful to have that, Mr. Estes.

12 BY MR. ENGLISH:

13   Q. So turning now to Table V, as in Victor. And that is

14 the bulk milk skim or cream transferred by cooperatives to

15 out-of-state plants.

16   Going back to my similar question -- well, first, let

17 me ask a predicate, because you said transfer, but I want to

18 get down sort of an enhanced definition. To qualify for

19 transfer, does milk have to be physically received into a

20 California plant? Now, I'm generally asking the question as to

21 Cooperatives or proprietary, has to be physically received or

22 can it simply a truck arrive on the property and then the truck

23 move?

24   A. No, we don't acknowledge the drive-through. It does

25 have to be offloaded at the plant and relocated.

1 Q. Thank you. So now having asked that predicate

2 question, I think I know the answer. That since the milk was

3 received at a plant, does that mean that milk is pooled?

4 A. Yes. Assuming that it arrived and it was received at a

5 pool plant.

6 Q. Correct. Yes, obviously, it's, but -- but Table V is

7 milk, I think, that's received at a pool plant in order to

8 qualify as transfer?

9 A. Not necessarily. Some Cooperatives do own some nonpool

10 plants.

11 Q. Would that volume have been revealed then as milk

12 received at nonpool plants in the earlier, in the earlier table

13 or not?

14 A. Which earlier table are you referring to?

15 Q. Well, I was hoping to short cut.

16 A. Well, I'm not trying to be difficult.

17 Q. I know you are not. Table O. Would that kind of

18 volume be in Table O or would that be different?

19 A. There is no coop milk in Table O.

20 Q. Okay. All right. That answers my question, thank you.

21 And going back to my question, if it's pooled, it must also

22 have been subject to the minimum price then, correct?

23 A. The milk that is represented on D?

24 Q. Yes.

25 A. No.

1   Q. No. All right. So all right. Thank you. So it's

2 pooled but the price paid by the out-of-state plant is not

3 regulated?

4   A. Correct.

5   Q. What about the Cooperative, when it imports the milk as

6 having been transferred, is it subject to a minimum? Is it

7 subject to a minimum price based on ultimate use?

8   A. The Cooperative does account to the pool at the

9 announced minimum price. What they receive for it and what

10 they pay their individual producers is not regulated.

11   Q. Thank you. And going to Table W?

12   A. I -- excuse me, let me footnote on that last comment.

13   Q. Yes?

14   A. They do not have to pay their members minimum. If they

15 are receiving milk from nonmembers, then that would be

16 regulated.

17   Q. Thank you. Now, on Table W which is bulk proprietary

18 milk, skim or cream, transferred to on out-of-state plant. Is

19 that milk going to be in the pool?

20   A. Yes.

21   Q. Okay. And when that milk is sold to the operation

22 out-of-state, is it subject to a minimum price?

23   A. No. Nor do minimum prices apply if a proprietary plant

24 chose an entity into it.

25   Q. So when a proprietary sells to what kind of entity in

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1   this? So but they are having to pay the minimum price; is that

2   correct?

3   A. They have -- that's correct. The proprietary plant

4   receiving that milk from producers is obligated to the producer

5   at the minimum price. What they sell that, if they want to

6   sell the bulk milk to anybody, we don't care what price they

7   receive for it.

8   Q. I may have misunderstood that, so that's an important

9   clarification. Thank you. Let me go to Table AC, if I may.

10   And I want to look at near the bottom under January, December,

11   2014, but the set above the very bottom where you have listed

12   "number of Class 1 handlers buying non-California milk."

13   Do you see that?

14   A. I do.

15   Q. Would that include handlers purchasing condensed skim

16   from out-of-state?

17   A. It could, yes. The condensed skim is reported at skim

18   equivalent.

19   Q. So if all the purchasing is condensed skim, they would

20   be included in that number 14?

21   A. Yes.

22   Q. So finally, and this really is just, I couldn't figure

23   it out and I'm sure there is a very good explanation. So I

24   want to look at Table AB, page 2, of 2005, and compare with a

25   comparison valid to CDFA-F, page 2. So for the record,

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1   CDFA-AB, page 2, is the State of California Department of Food

2   and Agriculture Milk Pooling Branch percent of quota and

3   shipment for the month on June 2005. And under quota solids,

4   I, my real question is, is that solids nonfat only or solids

5   nonfat and butterfat for the middle column, which is quota

6   solids?

7   A. Solids not fat.

8   Q. Okay. That was my assumption. So the total at the

9   bottom for June 2005, 65,800,125, and back on Table F, page 2,

10   which is Annual California Milk Pool Production Quota Fat and

11   Solids Not Fat as Presented by Month.

12   If you look for 2005, '06, which is June, under quota

13   fat, I see, under quota S and F, I see 64,557,690. And I was

14   just wondering, is this a rounding issue going on here or am I

15   making invalid comparison between F and AB? I'm genuinely just

16   trying to understand for the record. No other -- just trying

17   to --

18   A. There could be -- I would have expected those to be

19   closer. There are times when quota solids are owned by a

20   producer and for some reason that producer is in the process of

21   selling their quota, they don't have any production that month,

22   and so that quota would show up on this 120-17 report, but not

23   be included in the pool. So that is a possible explanation

24   there.

25   Q. Okay. Thank you. That really is all I have, and

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1   again, very much appreciate your participation.

2   CROSS-EXAMINATION

3   BY MR. VETNE:

4   Q. John Vetne, representative for Hilmar Cheese Company.

5   Mr. Shippelhoute, I join others in their thanks, and I

6   want to add. I want to thank CDFA for having an

7   extraordinarily user-friendly website, where information can be

8   found and tracked. And I have done so for years.

9   Mr. Beshore asked you some questions about condensed

10   skim sold in bulk out-of-state, and you indicated you do not

11   track it. But nevertheless, it is included in the pool, that

12   volume of milk?

13   A. That's correct.

14   Q. Okay. And it's classified by pool values based on what

15   the reporting handler, the Cooperative or proprietary

16   transferring, tells you it is used for at a receiving plant

17   out-of-state?

18   A. That's correct. And let me -- I said we do not track

19   that. We don't keep -- we don't collect a separate line item

20   detail of that on a monthly basis, and therefore, we don't have

21   it stored in our data base for tracking purposes. But when our

22   audit staff go out and perform a compliance audit at the plant

23   level, they do look at those sales out-of-state, and they will

24   get a certificate of usage for any out-of-state sales, whether

25   it be of condensed skim, bulk milk, cream, whatever the case

may be, and if the certificate of usage doesn't look

reasonable, we may, by all means, will do whatever we can to

verify the actual usage if it doesn't seem to be an

unreasonable claim by the processor.

Q. Okay. So for verification purposes, you rely on a

representation contained in a document called Certificate of

Usage, by the reporting handler as to the use of that milk at

out-of-state receiving plants?

A. We don't rely solely on that. We look at that

Certificate of Usage. If they say this certificate is what we

are using to claim the classification for this product that we

sent out. An example I can think of, many years ago, there was

a time when the Class 1 fat price was lower than the Class 3 or

Federal Order Class II price, a plant reported to us that they

sent some cream to an out-of-state processing plant to put in

Class 1. Not likely you are going to be putting cream into a

Class 1 plant. Usually Class 1 plants have excess cream. So

the plant just so happened to have an ice cream plant on the

same property, and they were trying to claim the drive-through

option that Mr. English made reference to.

       We disallowed that and reclassified that cream to

Class 3. So no, we don't just simply take that Certificate of

Usage and say, good enough, we actually try and follow through.

Q. Okay. Thank you. In response to Mr. English, you

indicated, and correct me if I'm wrong, that Cooperative

1 diversions of milk, transactions of milk from a farm to an

2 out-of-state plant, is not included in the pool? Did I

3 understand that correctly?

4   A. That's correct.

5   Q. Okay. Is there -- is there no option by which it may

6 be included in the pool or is it automatically excluded?

7   A. I can't think of a reason. Well, I can't think of a

8 situation where it could be pooled.

9   Q. Okay. And the same would be true for a proprietary

10 handler responsible for a milk supply that may direct some of

11 its shippers' milk be shipped from a farm in California to an

12 out-of-state vendor. Same thing would happen, not pooled; is

13 that correct?

14   A. Could you restate that?

15   Q. Okay. If it is not a Cooperative, same transaction --

16   A. Okay.

17   Q. California plant operator with an independent milk

18 supply directs some of that independent milk to go from a

19 California farm to an out-of-state buyer. That also would not

20 be included?

21   A. That milk is included in the pool.

22   Q. It is included in?

23   A. It is included in the pool.

24   Q. For proprietary handlers? Essentially the same

25 transaction in one case, another case not included?

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1   A. Correct.

2   Q. Okay. And the proprietary handler does not have the

3 option that might exist under federal law, I don't know if you

4 are familiar, but Federal reports some diversion and some elect

5 to include or not include it in your pool report. In the

6 California system, proprietary handler must include those

7 diversions in a pool report correct?

8   A. Well, I am not qualified to compare the Federal Order,

9 but --

10   Q. In your order, it must be included?

11   A. If the California company is moving that milk anywhere

12 under their own account, then the California company has to

13 account to the pool and it is regulated.

14   Q. Okay. But if the farmer on his or her own decides to

15 find a buyer out-of-state, that milk is not included in the

16 pool, correct?

17   A. That's correct.

18   Q. And is that milk included in the Exhibits for I, J --

19 no, J, K, and L, commercial milk production, and various

20 assembled commercial milk production in California data.

21   A. Yes, it is.

22   Q. And a slightly different use of milk that we have had

23 questions about here, but haven't had an answer to. If milk

24 cannot find a home in California and ends up, say on a heifer

25 replacement farm as feed, can that be included in the

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1 California pool in some circumstances?

2   A. Yes.

3   MR. ESTES: Your Honor. If I may, I think the question --

4   JUDGE CLIFTON: Start again, Mr. Estes, because your mic

5 wasn't on.

6   MR. ESTES: Your Honor, if I may. I think the question is

7 getting a little bit far afield from the data that's been

8 presented, so I'm going to instruct the witness not to answer

9 hypotheticals that are unrelated to the data, since it is an

10 admitted exhibit.

11   JUDGE CLIFTON: And specifically you object to the last

12 question?

13   MR. ESTES: Well, actually, I'm not objecting. He hasn't

14 been authorized to answer questions of this kind today. We

15 have -- we basically had to get authorization for the witness

16 to appear today from the Executive Office. He's not authorized

17 to speak on these matters.

18   JUDGE CLIFTON: Can you repeat that last question for me,

19 Mr. Vetne, so that I can determine whether it flows from the

20 data?

21   MR. VETNE: Yes. The question was whether milk that is

22 directed by a California handler, regulated handler, to, for

23 example, a heifer replacement farm, can be included in the

24 pool. And my next question would be, you know, in what tables

25 would you find that kind of information? Not the information

1 about heifer farm use, but where that volume would be included?

2   JUDGE CLIFTON: Mr. Estes, do you think that question

3 fairly addresses data that we have been examining?

4   MR. ESTES: I don't have an issue with that.

5   JUDGE CLIFTON: All right.

6   MR. SHIPPELHOUTE: You could find that milk included in any

7 of the tables where we show pool usage broken out by

8 components.

9 BY MR. VETNE:

10   Q. And also classification, would that receive a

11 classification of use?

12   A. It does. You would not be able to see what

13 classification it was in, you wouldn't be able to pick that out

14 of the table.

15   Q. Would it be included in the volume of the lowest price

16 class?

17   A. I don't recall the answer to that right off hand.

18   Q. Okay. Now, again, I'm looking for where I might look

19 in the tables for something. Section 801 and 802 of the

20 Pooling Plan use, a third category of milk, there's, we talked

21 about Grade A milk or market milk as it's called in California,

22 Grade B milk, and the third term is introduced there called

23 restricted use market milk. Is milk in that category included

24 in volume data in Exhibit 61?

25   A. It is, or could be. In one of my answers I indicated

1   that the milk on that table would be any milk that did not meet

2   market milk definition, so it could be in CDFA-P.

3   Q.   Okay.

4   JUDGE CLIFTON: CDFA-P?

5   MR. SHIPPELHOUTE: P as in Paul.

6   MR. VETNE: CDFA Exhibit 61, Tab P.

7   JUDGE CLIFTON:

8   BY MR. VETNE:

9   Q.   Is there a circumstance in which restricted use market

10   milk can be included in the pool?

11   MR. ESTES: Again, he's not authorized to answer questions

12   of that kind.   He's not authorized to speculate upon when

13   certain types of milk could be included in the pool.   We're

14   talking about the pool as something different that the data set

15   that's been introduced today.

16   MR. VETNE: Let me rephrase the question, your Honor, I

17   don't want to create angst.

18   BY MR. VETNE:

19   Q.   In the volume of milk by classification of use in your

20   data sets, does that include any volume that, in your process,

21   would be restricted-use market milk?

22   A.   The only milk that my numbers would have would be

23   market milk -- excuse me, the only -- my numbers where I am

24   representing pool pounds, would only include market milk.

25   Q.   Yes.   Okay.   Thank you.   I can't remember which tab it

2687

1 is, the list of California plants with any production in any

2 month. Do you recall that?

3   A. Exhibit P? Oh, yeah. California Handlers. T it is.

4   Q. Milk produced at least one month. I just want to make

5 sure we're not going to confuse the record with our use of

6 terms. In that exhibit, the word produced is synonymous with

7 processed; am I correct?

8   A. I'm sorry, I don't see produced.

9   Q. California handlers reporting milk produced at least

10 one month of the year?

11   A. Production.

12   Q. Production, yes. Production is synonymous with having

13 processed raw milk into something, correct?

14   A. Correct.

15   Q. Okay. It doesn't mean specifically does not include

16 milk production as we would attribute to a farmer?

17   A. Correct.

18   Q. Maybe this was asked, but I just want to make sure I

19 have a note. Tab X, X and Y, actually, bulk milk, skim and

20 cream received from out-of-state, that -- that those data sets

21 X and Y, include bulk milk received both from an out-of-state

22 farm as well as transfers from out-of-state plants, correct?

23   A. It could.

24   Q. Her aggregated there to the extent?

25   A. We don't know when we receive the number, we just get a

2688

1 number.

2   Q. Okay. Oh, then I have a question about Tab H,

3 transportation allowances. You described this as the

4 allowances as reflecting shipments that qualify for allowance,

5 which you further described as to a plant where at least 50

6 percent is Class 1, 2, and 3.

7   A. Correct.

8   Q. Okay. If a producer's milk went to a plant that had 49

9 percent Class 1, 2, and 3, would all of that producer's milk be

10 excluded from the data in Tab H, or would it be prorated so

11 that it came down to 50 percent?

12   A. Our transportation allowance, milk moving into a plant

13 either qualifies in total or it doesn't qualify.

14   Q. All or none.

15   A. All or none.

16   Q. Good. I do understand it, then. And also on

17 transportation allowances, so that our Eastern brethren

18 understand, it's referred in your system to as ranch-to-plant,

19 and that means the same as dairy farm to plant, correct?

20   A. I know what I use the term ranch-to-plant for. What

21 anybody else uses other terminology, it sounds right, but I

22 don't know.

23   Q. The colloquialism in California refer to dairy farm

24 locations as ranches, correct?

25   A. That's correct.

1   Q. Thank you.

2   JUDGE CLIFTON: Dr. Schiek?

3

4   CROSS-EXAMINATION

5   BY DR. SCHIEK:

6   Q. Bill Schiek.

7   Mr. Shippelhoute, I just have three, probably will be

8   quick clarification questions.

9   A. I'll hold you to that.

10   Q. Please do. Please do.

11   Exhibit 61, CDFA-B, where you list commodity prices

12   used in California Class Price Formulas, I just want to clarify

13   that you have listed these commodity prices irrespective of

14   whether in that particular timeframe where they were listed,

15   they were actually listed in the formulas; is that correct?

16   A. That's correct.

17   Q. So for example, the Western dry whey prices from the

18   26th to the 25th, and the 26th to the 10th, may not have been

19   used during certain parts of this time?

20   A. That's correct. We list down so that if folks want to

21   go back and do some analysis using current formulas going

22   backwards. They have the raw data to feed into the formulas.

23   Q. Thank you, and that's helpful, I appreciate that.

24   CDFA, same exhibit, CDFA-O, Table O. So this is titled

25   Grade A Milk Used in Manufacturing Classes, Not Pooled, and I

1 believe in your explanation you had mentioned that it's direct

2 contract with a nonpool plant in Classes 4a and 4b, and

3 possibly Class 3, if one of those plants, nonpool plants, was

4 receiving Grade A milk from a Cooperative, would that milk be

5 pooled?

6   A. It would be.

7   Q. Okay. And I think lastly, CDFA Table P, P as in Peter,

8 Grade B Milk Used in Manufacturing Classes, Not Pooled, and in,

9 again, in your discussion you talked about the selection to

10 switch from Grade A to Grade B can only occur on the first of

11 the year, so I just want to make sure I fully understand that.

12 So when that election or selection is made, they can't shift

13 back to Grade A during that calendar year, can they? They have

14 to wait until the next year; is that correct?

15   A. That's correct.

16   Q. Okay. Thank you. That's all the questions I have.

17   CROSS-EXAMINATION

18 BY MR. VLAHOS:

19   Q. John Vlahos.

20   I have a few questions, Mr. Shippelhoute, but decline

21 for purposes of self-protection to specify the number, so have

22 some leeway there.

23   First, in your testimony you refer to market milk,

24 Grade A milk, and manufacturing milk, and I think we need some

25 clarification so the record is clear. In California, there is

1 a thing called marketing milk, as shown in your tables,

2 correct?

3   A. There is.

4   Q. And is that exactly the equivalent to Grade A milk?

5   A. For the purposes of my discussion here today, yes.

6 Technically, no. And I say that because lawyers in the crowd

7 want to go to Food Man, Co., and do a search for Grade A milk,

8 there is a Code Section in there that defines Grade A milk, and

9 it is a subset of something else. So from, again, the purpose

10 of my discussion I used Grade A interactively with the term

11 market milk.

12   Q. And those are the terms used in the Stabilization

13 Marketing Act, Chapter 2, and in the Pooling Act, Chapter 3, as

14 I understand it?

15   A. Yes.

16   Q. Now, I think in your testimony you had indicated that

17 market milk that's used for Class 1 must be pooled.

18   A. Yes.

19   Q. Does that include, also include certain what they call

20 mandatory Class 2 products?

21   A. Mandatory Class 2, any plant that manufactures a

22 mandatory Class 2 product, must be pooled at a pool plant as

23 well.

24   Q. Okay. Now, by use of your table in Exhibit 62, can you

25 identify what the mandatory Class 2 products are?

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1   A. I would say, well, all of the Class 2 products except

2 for eggnog.

3   Q. So eggnog is the only one that isn't mandatory?

4   A. Yes.

5   Q. Thank you. You referred to in your Table I of

6 Exhibit 61 to market whey in terms of quota adjusters. I, for

7 one, have never been completely clear about those. Could you

8 explain what they are and why?

9   A. You know, I don't want to go too far off of the path.

10   MR. ESTES: Your Honor, if I may? My understanding is the

11 regional quota adjusters are set forth under the Stabilization

12 of the Pool Plan, aren't they?

13   MR. SHIPPELHOUTE: The regional quota adjusters are defined

14 in the pool plan for market milk. The origin of those --

15   MR. ESTES: Well, just, the question was that he didn't

16 understand them. So if they are not understood, then I would

17 just direct Mr. Vlahos to the appropriate references.

18   MR. VLAHOS: Sure. Mr. Shippelhoute was about to say the

19 origin, that's all I wanted to know.

20   MR. SHIPPELHOUTE: So on our web page there is quite a

21 number of documents out there, historical documents, and the

22 regional quota adjusters came about in 1981 or '82, when we

23 transitioned from one milk, one method of encouraging milk to

24 do the higher class to the current system of transportation

25 allowances in RQA's. I would just refer you to the historical

2693

1 document where there's quite a bit of discussion of how we

2 transitioned from one system to the other, and there's some

3 discussion of regional price adjusters in there, and I would

4 kind of let that document kind of speak for itself.

5 BY MR. VLAHOS:

6   Q. Thank you very much. And finally, going again to

7 Table H of Exhibit 61, Transportation Allowances they found in

8 the Stabilization and Marketing Act?

9   A. No. The Transportation Allowances are found in the

10 pool plant or market milk.

11   Q. And what about the credits?

12   A. They are in the stabilization and marketing plans.

13   Q. I think you explained in your direct testimony that the

14 allowances, ranch-to-plant, and that is an allowance that is

15 paid to the to the ranch.

16   A. Correct.

17   Q. And that comes out of the pool, right?

18   A. Correct.

19   Q. So the cost of that, then, is a reduction of the pool

20 that was in their own cost and shared by everybody in the pool?

21   A. Correct. So if the cost of the transportation

22 allowance goes up in a given month, then the announced pool

23 price goes down.

24   Q. So any blend price that sells from also goes down?

25   A. Yes.

1   Q. And what about credits?

2   A. What about them?

3   Q. Well, credits -- good point. Credits are a, as you

4 explained it, paid for plant-to-plant transfers, correct?

5   A. Correct.

6   Q. And those are all of the negative numbers you referred

7 to? What effect do they have in the pool, then?

8   A. Similar to transportation allowance, as the cost of the

9 transportation credits go up, the pool, announced pool prices,

10 go down.

11   The distinction between the credits and the allowances

12 is that the allowances are paid out to producers, so the total

13 money paid out to the overall producer pool doesn't change with

14 the allowances. Whereas with the credits, the credits are paid

15 to the manufacturer and so the higher the credit out of the

16 pool, the less money to the overall producer community.

17   Q. Thank you very much.

18   JUDGE CLIFTON: Mr. Shippelhoute, I would like you to look

19 at Exhibit 62, and just help me understand if there's a

20 distinction between fat-free and skim. I don't see the word

21 skim in this classification, but we use it.

22   MR. SHIPPELHOUTE: In some product definitions it does

23 specifically mention maybe flavored or low fat. So your

24 question is, is there a distinction here for this table, I

25 don't see that distinction made in any of the products.

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1   With UHT, ultra high temperature products, if you go to

2 page 2, there is some reference to whole, lowfat, and fat-free,

3 as there are gallon of frozen. And you will note that even

4 though that distinction is there, all fluid flavored milk, for

5 example, on the top line, whether it be whole, lowfat, or

6 fat-free, is Class 1.

7   JUDGE CLIFTON: For my purposes, I could regard as

8 equivalent fat-free, nonfat, and skim?

9   MR. SHIPPELHOUTE: Yes.

10   JUDGE CLIFTON: And as I look at, again, Exhibit 62, and I

11 notice that fluid milk products can include both reduced fat

12 and lowfat, is there any distinction between those terms?

13   MR. SHIPPELHOUTE: The percentage of fat in those products,

14 and while I don't know those definitions specifically, I know

15 there is a difference between, say, milk that contains two

16 percent fat versus one percent fat in the bottle. And so it's

17 a reference to that. Again, I don't know those definitions

18 well enough to say exactly which one is which.

19   MR. ESTES: Your Honor, if I just may --

20   JUDGE CLIFTON: Mr. Estes?

21   MR. ESTES: -- comment briefly. I believe your question is

22 getting to some milk composition issues, which are more within

23 the purview of Milk Dairy Food and Safety Branch than they are

24 with the Dairy Marketing and Milk Pooling.

25   JUDGE CLIFTON: Thank you. And then I would like to go to

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1 Exhibit 61, Table AA. Help me understand the column that says

2 Number of Sales at 100 Percent.

3   MR. SHIPPELHOUTE: So when a producer sells their quota, or

4 sells some quota, they don't have to sell all that they own,

5 but if they do sell all of it in a given month, then that is

6 considered a hundred percent sale. And so, for example, the

7 first month on AA, 1969, August, of those transfers, of the

8 sellers, there were 23 sellers in August of '69, 19 of those

9 sellers sold all of the quota that they owned.

10   JUDGE CLIFTON: In the same month?

11   MR. SHIPPELHOUTE: In the same month.

12   JUDGE CLIFTON: My last question relates to Table T. And I

13 love this table which could have solved a lot of our spelling

14 problems all through two and a half weeks. Would you spell

15 into the record Stremicks Heritage Foods?

16   MR. SHIPPELHOUTE: So you are assuming that my spelling is

17 correct on this document?

18   JUDGE CLIFTON: I am.

19   MR. SHIPPELHOUTE: Stremicks is spelled on my document,

20 S-T-R-E-M-I-C-K-S.

21   JUDGE CLIFTON: Thank you. Who else has questions?

22 Ms. Hancock, why don't you go before Mr. Francis?

23   CROSS-EXAMINATION

24 BY MS. HANCOCK:

25   Q. Nicole Hancock.

1   Can we turn on Exhibit 61, turn to Table C. This is

2   the blend price by month.

3   A. Got it.

4   Q. Can you tell me again what blend price includes? Is

5   that the total pool or is that some adjusted amount?

6   A. This is based on the total pool, the pay out to the

7   producers. It was based on the announced prices on the pool.

8   Q. And are the quota prices or the Class 1 prices included

9   in that as well, or is that an amount after the quota has been

10   paid out?

11   A. So the quota price, all the pool prices under our

12   current system, include some Class 1 revenue. So Class 1

13   revenue would be included in the quota price, as well as a base

14   price, as well as the overbase price. The price that I used to

15   generate this document is the weighted average price coming out

16   of the pool, so it would be a weighted average on the quota

17   base and overbase prices.

18   Q. Okay. So does that mean that you have already taken

19   the Class 1 quota prices out and you are looking at what was

20   left?

21   A. First, Class 1 and quota, your use of Class 1 and quota

22   are correct. There is Class 1 and then there is quota, they

23   are not the same. Well, they may be, given your client. Let

24   me make sure I understand your question.

25   Are you asking if it's the 4 PD handler Class 1 exempt

1 quota is deducted?

2   Q. Well, let's clarify that. So there is no PD exempt

3 quota that would be even factored into this credits, correct?

4   A. That's correct.

5   Q. And then there is regular quota that would be Class 1

6 quota?

7   A. No.

8   Q. That's not factored into this price either?

9   A. Quota is not Class 1.

10   Q. Okay. So, sorry. So then there's, is quota, is

11 regular quota factored into this price?

12   A. The revenue that's being paid out to the quota is

13 included in this price, yes.

14   Q. Some of these are already answered. Let me see if I

15 can skip ahead.

16   If you look at Table H in Exhibit 61, this is back on

17 the transportation allowances.

18   A. Okay.

19   Q. I just want to be clear. For s producer-handler such

20 as my clients who hold exempt quota, they would never qualify

21 for any transportation allowances or credits. Is that your

22 understanding?

23   A. Their exempt milk can never qualify for transportation

24 allowance.

25   Q. But any regular quota that they hold, or other

2699

1 production, could qualify?

2   A. Yes, it could, assuming that their plant was in a

3 deficit area. You do have some clients whose plants are not,

4 and therefore, would not qualify for transportation allowances.

5   Q. Right. So regular quota or any other production, it

6 would still have to meet the other transportation allowance

7 criteria?

8   A. Yes.

9   Q. Okay. If you look at Exhibit K, or Table K in

10 Exhibit 61. This is the commercial production of all milk in

11 California by county, by month, in pounds, for various years

12 identified throughout that chart.

13   A. Yes.

14   Q. Would this table include any out-of-state production?

15   A. No, it would not.

16   Q. Any in-state production that would fall into exempt

17 quota would be included, though?

18   A. Yes, it would.

19   Q. If you turn to Exhibit 61, Table X. So this is the

20 out-of-state production received by an in-state handler; is

21 that right?

22   A. Yes.

23   Q. And this milk is not currently calculated in your pool

24 in California?

25   A. The milk pounds are not included in our pool, nor is

2700

the revenue. The reason I answered that, you said is it

computed. That is reported to us and it goes through our

system and it goes through the computations, that at the end of

all those computations, it gets kicked out or left out of the

pool.

Q. If we look at Exhibit 61, Table AC, on the last page of

the exhibit. And you said that you had made a correction from

what had been originally posted onto the CDFA website, to what

was then corrected as of yesterday. Can you tell me what

number changed on there just so I make sure I have the correct

version?

A. The daily pounds of fat for producer-handler, that

stayed the same. It was the regular quota pounds for fat and

solids not fat that was corrected.

Q. So the regular quota, daily pounds of fat, should be

909,196.87?

A. Yes.

Q. And for the daily pounds of solid nonfat regular quota

should be 2,215,977.26?

A. Yes.

Q. Okay. And when you were walking through this chart

with your counsel, I thought I heard you say the daily fat, the

daily pounds of fat and solid nonfat for regular quota was what

was held by the producer-handlers. But --

A. If I said that, and I won't deny I said that, but if I

1 did say that, that was not correct.

2   Q. Okay. So it's correct that what you have reported for

3 daily pounds of fat and solid nonfat for regular quota is the

4 total regular quota for all of your producers?

5   A. Correct.

6   Q. Okay. And then, so if I look at and I compare, well

7 let me back up for one second. Why do you have it broken down

8 into fats and solids nonfat?

9   A. Because the Legislature said to do it that way.

10   Q. But the numbers aren't in proportion to one another.

11 So, for example, the producer-handler quota fat, isn't the same

12 percentage as if I compare the relationship between the fat of

13 producer-handler quota and regular quota, compared to the solid

14 nonfat percentages, to regular quota.

15   Do you understand what I'm saying?

16   A. Yes, I do.

17   Q. Okay. Can you help me understand why those

18 relationships are not equal?

19   A. Some people milk Jerseys, some milk Holsteins. Let me

20 elaborate on that. When quota was initially issued, it was

21 issued based on an individual's historical production base and

22 their Class 1 usage. And if we look at their historic fat and

23 solids not fat, so that back to that one Jersey versus

24 Holstein. And if you have a Jersey herd, your ratio between

25 your fat and solids not fat was different than a Holstein herd.

2702

1 Your quota that you received was based on your ratio. And so

2 for whatever reason, the quota that these four

3 producer-handlers have accumulated over the years has a

4 different ratio than the others. And again, it is all based on

5 who initially received the quota and what kind of milk they had

6 and how much they had. It doesn't surprise me that there's a

7 difference.

8   Q. And the CDFA tracks the volumes that were acquired from

9 all the way back to the end, back to the origination of the

10 quota system; is that right?

11   A. Yes.

12   Q. And so it was back, it was based on the historical

13 production and sales all the way back to 1967?

14   A. Most of it. And there's been some quota that was

15 issued subsequent to '67, but the majority was some of the

16 original issued quota.

17   MR. ESTES: Your Honor, if I may?

18   JUDGE CLIFTON: Start again, Mr. Estes, your mic wasn't on.

19   MR. ESTES: Yes, your Honor, if I may. As Mr. Shippelhoute

20 eluded to earlier on another issue, there's an extensive amount

21 of historical information available, I believe, on the CDFA

22 website that discusses the origination of quota as evolutional

23 to time.

24   JUDGE CLIFTON: Thank you, Mr. Estes, that's very helpful,

25 too.

2703

BY MS. HANCOCK:

Q. Under, still staying with Exhibit 61, Table AC. Under the last section that's titled January through December 2014, and you have it starts with a calculation of total pounds based upon solid nonfat, and there's numbers in there. The next line down says, Total Cooperative Pounds (Product).

Why is it that that is broken down just by product and not by the fats and solid not fats?

A. Because that's the way it was requested, or at least that's the way we understood the request.

Q. And then under the next line item, Producer Handler Option 70 Pounds Exempt. We have also had testimony on the Option 66 Producer-Handlers. Do you have any Option 66 producer-handlers?

A. There are two.

Q. Okay. And is it not on here just because it wasn't requested?

A. That's correct.

Q. But that Option 70 producer-handlers, that would be what you understand is the four producer-handlers that I represent?

A. Yes.

Q. Okay. And that's the total calculations of what you calculate as their exempt quota?

A. On the, which number are you referring to? The

2704

1 243,733,051 line?

2   Q. That's correct, under product.

3   A. So that's the total pounds that they had exempt based

4 not only on the actual quota that they owned, but also the

5 additional 150 pounds of fat and 375 pounds of solids not fat

6 that they could qualify for.

7   Q. The three of the four would qualify for?

8   A. Yes.

9   Q. Okay. And I just want to make sure, and then in

10 addition, if they hold regular quota, that is, that just gets

11 calculate under what we have seen in Exhibit 61 is just your

12 normal quota calculations?

13   A. Yes.

14   Q. And then the bulk non-California milk packaged in

15 California, is that the volume for out-of-state milk?

16   A. I'm sorry, one more time?

17   Q. Under four line item, under that same section.

18   A. Yes. That's the bulk milk that was received from

19 outside of California that was packaged in California.

20   Q. Okay. So when you said yes, you mean yes it is

21 out-of-state?

22   A. Yes, it did originate from out-of-state.

23   Q. Okay. And then under your asterisk, just so I'm clear,

24 there's list asterisks that says, and it refers back to at the

25 top, Total Producer-Handler Class 1 Pool Utilization, and then

2705

1 it is also at the end of the section titled Total

2 Producer-Handler Exempt Class 1 Utilization-Quota.

3   In there, for the asterisk it says, Producer-Handler

4 Type 70 shall have its quota milk deducted. When you say it

5 quota milk deducted, are you referring to exempt quota?

6   A. Yes.

7   Q. Okay. So not all of its quota, just the exempt quota

8 deducted?

9   A. Correct.

10   Q. Okay. That's all I have. Thank you.

11   CROSS-EXAMINATION

12 BY MS. REED:

13   Q. Mr. Shippelhoute, Kristine Reed with Select Milk

14 Producers. Thank you for being so patient and cooperative with

15 our many questions. I promise when I get up, you are very

16 close to the end.

17   Okay. Just drawing your attention to Table J. My

18 questions are fairly broad and mostly stem from the fact that

19 I'm not that familiar with how and when CDFA reports its data.

20 So in J, this is Commercial Production Milk and Milk Fat by

21 Counties and District, California, and you started with 1980,

22 and then we have five-year increments through 2010. Is the

23 data in each of those pages a snapshot for that particular year

24 as opposed to the five years prior?

25   A. It's a one-year snapshot.

1 Q. Okay. So if I wanted to, obviously we're still in

2 2015, I think you mentioned it's California Dairies Specific

3 Annual that publishes this. When might the 2015 data, when is

4 that publicly available?

5 A. The monthly information through August is already

6 available.

7 Q. Okay.

8 A. So you could get, again, the month-by-month through

9 August. It would not be in a location titled California Dairy

10 Specific Annual, but it is available on our website.

11 Q. Okay. So, and then for the annual, is the data then

12 compiled then, compiled and made publicly available at a

13 certain time of the year?

14 A. It comes out in April, May -- February.

15 Q. February?

16 MS. GATES: The end of February.

17 MR. SHIPPELHOUTE: So definitely by April or May.

18 BY MS. REED:

19 Q. April would give you a good window there.

20 And then in Exhibit Q, which is Pounds of Producer Milk

21 and Quota for the Various Hauling Regions by Month, 2012,

22 January 2012 through June 2015. You, I wrote it down when you

23 were describing this exhibit, that CDFA completes the milk

24 hauling survey twice a year. You were discussing, so I think

25 you mentioned that, so it looks like that you compiled the data

2707

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1 through April and October of each year?

2   A. Not through, but for.

3   Q. For? Okay.

4   A. In April.

5   Q. Okay. And then the April data for at least 2014, which

6 was on the website, was published in September of 2014?

7   A. Yes.

8   Q. The April, the data for April of 2015, then, I didn't

9 see that on the website. Is that available yet?

10   A. I saw a copy of that floating around the office being

11 verified and getting ready for publication. I'm sure it will

12 be on our -- I think it will be on our web page next week.

13   Q. Stay tuned, then?

14   A. Stay tuned. And definitely by April or May.

15   Q. Okay. Finally, then, on Exhibit, Table AC, I thought

16 Ms. Hancock was going to ask this, but I just wanted to make

17 sure, with the issue of the error and the website version, if I

18 was looking at the website version today, has that also been

19 corrected?

20   JUDGE CLIFTON: Now, you are referring to Table AC. The

21 variation was on a different table.

22   MS. REED: I thought it was AC.

23   MR. SHIPPELHOUTE: AC, she's correct.

24 BY MS. REED:

25   Q. So I guess what I'm saying is, I was looking at the

1 monthly exhibits that are on the CDFA website, and as well as

2 the paper exhibits that we received today. Is it correct in

3 both places now?

4   A. I believe so. I was not able to verify that before I

5 left the office last night, but I believe they had it updated.

6   Q. I didn't have a chance to actually compare the numbers,

7 so I wasn't sure.

8   A. If it's not, it will definitely, it should be by Friday

9 -- and it will definitely be by April or May -- by Wednesday

10 when we get back.

11   Q. Okay. I just didn't want to rely, if I was looking at

12 something on the website. Okay. That's it. Thanks.

13   JUDGE CLIFTON: I'm going to call on Mr. Francis unless

14 anyone else also has questions.

15   CROSS-EXAMINATION

16 BY MR. FRANCIS:

17   Q. Will Francis, USDA.

18   This will be very quick, I hope, and hopefully we will

19 get you out of here. I just want to say, we certainly do

20 appreciate all the hard work that CDFA has been doing over the

21 last two years to help us get to this point. It's been

22 extensive, and I'd just comment that the staff have been

23 extremely wonderful to work with. They have been professional,

24 considerate, cordial. Your technical expertise is outstanding.

25 And I just wanted the dairy industry in California to recognize

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that they have a tremendous asset in the staff that work for

CDFA, and we thank you.

So I do have a question. So in Exhibit 1 we've

referenced the Regulatory Flexibility Act, so we have a

responsibility to look at the impact on small businesses. My

question is this. Would you have data that would be available

that could help us identify or estimate the number of

California dairies that meet the definition of small business?

A. No.

Q. No. Okay. That's all I have. Thank you.

MR. ESTES: I think we have clarified the situation with

the website version of Exhibit 61, A and C. And from what I am

being told here, it's been corrected so that now it is

accurate.

JUDGE CLIFTON: Thank you. I'd just like to ask, because

you have such a wealth of experience and knowledge,

Mr. Shippelhoute, is there any other agency within California

that might keep track of the small businesses who are in the

dairy business? This is off the top of your head.

MR. SHIPPELHOUTE: Off the top of my head, no.

JUDGE CLIFTON: All right. Thank you.

MR. SHIPPELHOUTE: Part of the struggle is, so many of our

producers have more than just dairy farms, and so they may

employ a number of people, but they may not necessarily be one

hundred percent dairy. It is a whole bunch of variables is

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1 what make that nearly impossible to come up with.

2   JUDGE CLIFTON: That actually is very helpful for us to

3 remember that. We're looking at only the dairy operation,

4 we're neglecting perhaps the remainder of the business.

5   MR. SHIPPELHOUTE: It could be the majority of the

6 business.

7   JUDGE CLIFTON: Mr. Shippelhoute, is there anything you

8 would like to add that would clarify anything that has already

9 been presented today?

10   MR. SHIPPELHOUTE: No clarification. Just a thank you for

11 your, the comments and the appreciation that is shown. We have

12 been thankful for you guys who are here, and I want to

13 acknowledge the staff that are still in Sacramento that have

14 been helpful in getting this information together for us.

15   JUDGE CLIFTON: Thank you. It has been a phenomenal

16 presentation. I thank you very much.

17   If there are no other questions, I'll allow this

18 witness to step down and be excused. You may do so. Thank you

19 so much.

20   It is almost 1:00, would this be a good time to break

21 for lunch? All right. Please be back and ready to go at 2:15.

22   (Whereupon, the lunch recess was taken.)

23   ---o0o---

24

25

                              2711

1   THURSDAY, OCTOBER 8, 2015 - - AFTERNOON SESSION

2   JUDGE CLIFTON: We're back on record at 2:16. I have one

3 preliminary item and then I would ask if anyone else has any

4 preliminary items before we have our next witness.

5   Mine is to remind you that tomorrow is casual Friday

6 and that we will stop no later than 12:00 noon tomorrow. And

7 that when we resume, it will be the following Wednesday morning

8 at 9:00 a.m.

9   Does anyone else have any preliminary matters? I see

10 none. Mr. Beshore?

11   MR. BESHORE: Marvin Beshore. We'd ask that Mr. Hollon

12 resume the stand.

13   JUDGE CLIFTON: Mr. Hollon, you remain sworn. I would like

14 you again to state and spell your name, please.

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

16   JUDGE CLIFTON: Thank you. And I have been handed a couple

17 of documents. Mr. Beshore, do you want to identify what's

18 being distributed?

19   MR. BESHORE: Yes, I would like to have two documents

20 marked for purposes of identification. The first, which is

21 identified as Cooperatives' Exhibit 5, is the testimony of

22 Elvin Hollon, Second Statement, which is a 34-page document.

23 The second document that we would ask to be marked for

24 identification is titled Exhibits of Elvin Hollon, Second

25 Statement, and it has attached, documents identified as tables

2712

1 5.A through 5.E. I would ask that they be given the next two

2 numbers.

3   JUDGE CLIFTON: Ms. Frisius, will the statement be Exhibit

4 63?

5   MS. FRISIUS: Correct.

6   JUDGE CLIFTON: The statement, which is also marked as

7 Cooperatives' Exhibit 5, will be Exhibit 63. The exhibits will

8 be Exhibit 64.

9   (Thereafter, Exhibit Numbers 63 and 64

10   were marked for identification.)

11   MR. BESHORE: Thank you, your Honor. And I won't -- I

12 assume Mr. Hollon is proceeding subject to his identification

13 and background and qualifications the first time, and I would

14 not propose to go through that again. But I'd ask him to

15 simply proceed to present at this time, your statement that's

16 been marked as Exhibit 63, with your Honor's consent.

17   JUDGE CLIFTON: Yes. Mr. Hollon, is there anything you

18 want to say preliminary to beginning to read into the record

19 your statement?

20   MR. HOLLON: No.

21   JUDGE CLIFTON: You may proceed.

22   MR. HOLLON: My testimony today concerns the pooling

23 provisions contained in the Cooperatives' proposal, Proposal 1.

24 It will explain those pooling provisions, demonstrate how they

25 operate, and indicate why the Cooperatives believe those

2713

provisions are both proper and necessary for inclusion into the

California Federal Milk Marketing Order, ("FMMO"). Our

proposal is designed to address the wide disparity in producer

and handler prices that we have identified in previous

testimony and exhibits, and to restore equity and fairness to

both producers and handlers.

I.   Designing the Proposal Which Addresses the California

Marketplace.

    Q. Mr. Hollon, may I suggest, as has been the practice

with some previous witnesses, where you are reading a heading,

indicate that when you read it, and that will perhaps help the

explain the text of the transcript.

    A. I. Designing a Proposal Which Addresses the

California Marketplace.

        In order to design the proper pooling provisions, we

start our analysis with estimated historical pool blends using

the California State Order ("CSO") class utilizations and

prices and FMMO prices.

        A. Methodology for Blend Price Estimation.

        We have converted the published price series and use

stated into estimated --

    JUDGE CLIFTON: I'm sorry, you are going 90 miles an hour,

Mr. Hollon. Go way slower.

    MR. HOLLON: We have converted the published price and use

data into estimated producer blend prices for the period

1 January 2000 to July of 2015, using the following methodology.

2   1. We used prices as published by the Federal

3 Milk Marketing Order.

4   a. Cooperatives' Table 5.A (6 pages),

5 "Announced Class Prices FMMO and CSO 2000 to July 2015" recaps

6 the FMMO Class I Mover prices, a population weighted Class I

7 differential for California and the Class II/III/IV prices used

8 in this process.

9   Q. Okay. Would you stop at that point with the text of

10 the Exhibit 63, and turn to table 5.A in Exhibit 64? Now, you

11 have just identified this table. Could you please, first of

12 all, did you prepare this, Mr. Hollon?

13   A. I did.

14   Q. And could you just walk us through it and explain what

15 it shows and how it was prepared?

16   A. Table 5.A is simply a listing of the various prices as

17 they were downloaded, extracted out of the Federal Milk

18 Marketing Order website and the California State Order website.

19 I'll walk across the columns and indicate what they represent,

20 or how they are -- well, there's no calculations -- yes there

21 are -- calculations that are on this page.

22   Column A is the month and year.

23   Column B is the published Federal Milk Marketing Order

24 Class I Mover.

25   Column C is the Federal Milk Order Class I differential

2715

estimated for California, and I'll explain the estimation

process in the second table.

Class D would be then, the resulting Federal Milk Order

Class I price used in our blend estimate calculation.

Column E is the announced California State Order Class

I price for Southern California.

Column F, California State Order price, Class I for

Northern California.

And Column G is the weighted average of those prices,

assigning a weight of 52 percent to Southern California and 48

percent to Northern California.

Q. How did you derive those percentages?

A. Those percentages were derived in using data that's

shown in Table 5.B, so looking to Table --

Q. Do you want to go to that?

A. I prefer to go across the columns then go there.

Q. Let's finish the columns in 5.A.

A. Okay. Column H is the Federal Milk Order Class II

price.

Column I, the California State Order Class 2 price for

Southern California.

Column J, the California State Order price for Northern

California.

Column K, the weighted average Class 2 or California

State Order, Class 2 price, using again, 52 percent weighting

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1 for Southern California and 48 percent for Northern California.

2   Column L is the California State Order Class 3 price

3 for Southern California.

4   Column M, California State Order Class 3 price for

5 Northern California. And as pointed out by Mr. Shippelhoute

6 earlier today, for a number of months there was a different

7 price, and I think in 2009 it was only one published price for

8 Class 3, for California Class 3.

9   Q. Prior to that time there were separate prices in many

10 months?

11   A. Correct.

12   Column N is the weighted average California State Order

13 Class 3 price, again using the 52 percent, 48 percent weight.

14   Column O is the Federal Milk Order Class III price.

15   Column P, the California State Order 4b price.

16   Column Q, the Federal Milk Order Class IV price.

17   And Column R, the California State Order 4a price.

18   So in order to compute comparable blend prices, we try

19 to make the best comparable method that we could. I had

20 several conversations with CDFA staff early in the process,

21 talking about how to make some of these computations, and as

22 they pointed out this morning, certain of the data would be

23 confidential and simply not available. They indicated they

24 couldn't release the data, and they also would be unable to

25 compute the data.

1   And so -- and in order to make an estimate, first of

2   all, for Class 1 price, we needed a single number for the

3   state, so I'll explain the population weighted differential,

4   but that's why we computed what's in Column C. And we needed

5   single numbers for the Federal Order side of the calculation

6   for Class II and Class III to combine those into a single

7   number to compare with Federal Order Class II.

8   And the Federal Milk Order Class III and California

9   State Order 4b would be comparable. And the Federal Milk Order

10   Class IV and 4a would be comparable without some type of

11   adjustment

12   Q. So Table 5.A which is six pages, is the set of these

13   various class prices for the time period January 2000 through

14   July 2015, correct?

15   A. Correct.

16   Q. Okay. So then if you would go back to back to your

17   text on page 1 of 63 and continue that narrative, starting on

18   b.

19   A. b. We used California State Order published class

20   usage on a total solids basis for each monthly estimated blend

21   price calculation. (Cooperatives' Table 5.C.)

22   Q. So let's turn to 5.C at that point and walk us through

23   that data set which is sort of your second data set that's

24   going into the blend price estimates.

25   A. Cooperatives' Table 5.C.1 are blend price estimates we

2718

1 made using California State Order utilization rates on a total

2 solids basis, and California State Order in Federal Milk Order

3 Class prices, 2000 through July 2015. The utilization rates I

4 just spoke of are in columns C, D, E, F, and G, and those are

5 taken, again, directly from the California State CDFA regular

6 website. They were not in any table that Mr. Shippelhoute,

7 that Mr. Shippelhoute published this morning, but there's a

8 standard table of those utilization rates that's regularly

9 published by CDFA.

10   Q. Okay.

11   A. So going back to testimony.

12   c. We constructed a weighted average statewide Class 1

13 differential of $1.92 per hundredweight by using each county's

14 population as a percentage of the total population, multiplying

15 each county weighting, times the county's Class 1 differential,

16 and then summing the total rates of per hundredweight values

17 for the state. We also computed weightings for both the

18 Northern California pricing zone and the Southern California

19 pricing zone. The detail of this calculation is outlined in

20 Cooperatives' Table 5.B (2 pages) "Calculation of Population

21 Weighted Average FMMO Class I Differential, California

22 Marketing Area, 2015."

23   Q. Could you turn to 5, Table 5.B, then, and just walk us

24 through that two-page table where you calculated the population

25 weighted average Class I differential?

2719

1   A.   Column -- there are Columns A is simply a count of the

 2   counties.

 3   Column B, just a notice they are all California

 4   counties.

 5   Column C, the county name, and all counties through row

 6   49 would be in the Northern California zone as published by the

 7   Department -- California Department of Food and Agriculture. I

 8   would note that not all of the counties are wholly

 9   incorporated. Some of the boundaries are less than counties

10   known, so I looked and made the best estimate of which two

11   zones it should be in for the purposes of this table.

12   Column D is the differential that's associated with

13   each county.

14   Q.   What's the source of the differential?

15   A.   The Federal Order website and Federal Order data, and

16   those are published for every county in the United States.

17   Q.   Part of the Uniform Order Provisions in Section 51

18   perhaps?

19   A.   Correct.

20   Q.   Okay. Column E is a population for each county taken

21   from the Census Bureau, my recollection is it's a 2015 number.

22   Column F is the percentage of that county's population

23   as the percentage of the total state population. So, for

24   example, in Alameda County, 1,594,569 persons is 4.12 percent

25   of the 38.7 million total state population.

1   So by multiplying the population percentage times the

2   differential for that county that is assigned a dollar weight

3   for that county, and adding them all up, is how we arrived at

4   the $1.92 as an estimated Class I differential for the state.

5   In order to estimate a population, sorry, in order to estimate

6   a blend price, and summing those population weights for

7   Northern and Southern California, arrived in the calculation of

8   48 percent for Northern California, and 52 percent for Southern

9   California.

10   So absent another way of assigning those weights and

11   not being able to get any information from either of the two

12   regulatory agencies, this was our best estimate to weight those

13   prices.

14   Q.   What's the second page of Table 5.B?

15   A.   The second page is the listing out of the state

16   regulations for the definitions of the marketing area for each

17   county. And in some cases, for example, in the middle of the

18   section, the Southern California marketing area definition,

19   there is a phrase that says "and that portion of Ventura County

20   Line, South of the standard parallel between township 5 North

21   and township 6 North," so that would be an example of where a

22   line didn't exactly parallel the county, so I made an

23   assignment of Ventura County to be put in the Southern

24   California pricing zone.

25   Q.   Okay. That covers Table 5.B?

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1   A. Correct.

2   Q. So return to your description of the blend price

3 estimates in your statement.

4   JUDGE CLIFTON: If I might ask, Mr. Hollon, I notice on

5 page 1 of 5.B there are only a few counties shown for the

6 Northern portion is -- or for the Southern portion; is that

7 correct?

8   MR. HOLLON: Yes, ma'am.

9   JUDGE CLIFTON: Okay. And that's all that they show, isn't

10 it, on the next page?

11   MR. HOLLON: I'm glad that you confirmed that.

12   JUDGE CLIFTON: Okay. Thank you.

13   MR. HOLLON: You're welcome.

14   Returning to the testimony of page 2.d.

15   An estimated FMMO blend price was calculated by

16 multiplying each Class price by a California State Order, Class

17 Use Percentage. This is shown in Cooperatives' Table 5.C

18 "Blend Price Estimate Calculation Using California State Order

19 Utilization Rates (Total Solids) and California State Order in

20 Federal Milk Marketing Order Class Prices -- 2000 through July

21 2015."

22   Q. Why don't you continue in your text through number 2,

23 just identify the source of some of the other information on

24 Tables 5.A, 5.B, 5.C and talk about 5.C further.

25   A. 2. We used prices as published by the State Order.

2722

1   a. We used Class 1, Class 2, and Class 3 for

2   Northern and Southern California and Class 4a and Class 4b

3   prices. (Cooperatives' Table 5.A).

4   b. We used California State Order published Class

5   Usage (total solids basis) for each monthly estimated blend

6   price calculation (Cooperatives' Table 5.C).

7   c. We used population data to weight the Class 1,

8   2, and 3 uses by the two California pricing zones.

9   (Cooperatives' Table 5.B).

10   d. The weighted average result was 52 percent for

11   Southern California and 48 percent for Northern California.

12   (Cooperatives' Table 5.B)

13   e. An estimated California State Order blend

14   price was calculated by multiplying each Class price by its

15   Class Use Percentage. (Cooperatives' Table 5.C)

16   Q. Continue with the first paragraph there of page 2, and

17   then get back to the table, if you would.

18   A. B. Results of Blend Price Estimates.

19   Cooperatives' Table 5.C (6 pages), "Blend Price

20   Estimate Calculation Using California State Order Utilization

21   Rates (Total Solids) and California State Order and FMMO Class

22   Prices, 2000 through July 2015," displays the results of the

23   estimated blend prices that result from the price multiplied by

24   utilization process.

25   Q. So if you turn to Table 5.C and just talk about the

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1 Columns H, I, and J, which are how they were derived and what

2 calculations are in those columns.

3   A.   Using, for example, January of 2000 of table 5.C.1, the

4 estimated California State Order blend price, Column H, was

5 composed by taking the weighted average California price times

6 its utilization, plus the weighted average Class 2 price times

7 its utilization; plus the weighted average Class 3 price times

8 its utilization; plus the weighted average 4a price and 4b

9 price times their respective utilizations. So if you

10 multiplied those out, you would get $10.65.

11   The Federal Milk Order blend price was computed by

12 taking the Class I price as published by the Federal Order,

13 plus the population-weighted differential estimate of $1.92,

14 times Class 1 use that's published by California Department of

15 Food and Agriculture; the Federal Order Class II price times

16 the combined Class 2 and 3 usage, times the utilization, I'm

17 sorry, times the weighted price, no, sorry, that's not the

18 weighted price, that's times the Federal Order price. The

19 Federal Order Class III price times its use, and the Federal

20 Order Class IV price times its use. And if you perform those

21 multiplications and added them up, you should get $10.97. And

22 there may be a rounding of a penny off of each one, depending

23 on how the spreadsheet calculation.

24   And Column J is a subtraction of Federal Milk Order

25 minus California State Order.

1   Q.   And that calculation is then shown for each month,

2   January 200 through July 2015, on the 6 pages of Table 5.C,

3   correct?

4   A.   It is.

5   Q.   And at the end of the table you have some averages and

6   other analysis of the data, correct?

7   A.   Correct.

8   Q.   Okay. So go back to the narrative then and describe

9   which relates to Table 5.C?

10   A.   These calculations are "top line" prices with no

11   deductions for any reason applied to either California State

12   Order blend or the Federal Milk Marketing Order blend.

13   Note that the Class 1 (Column C) use averages 15.2

14   percent for the entire 2000 to July of 2015 period, and in

15   recent months it has fallen to near 12 percent. Class II use

16   (California State Order Class 2 and 3 -- Columns D and E)

17   averaged 8.69 percent; below the 12 percent average for all

18   Federal Milk Orders. So the higher use classes represent a

19   small proportion of the total pool usage.

20   There is a calculation for each month. Our summary

21   calculations show that the 2000 through July 2015 blend price,

22   using California State Order pricing (Column H) results in a

23    $14.65 per hundredweight blend price and a Federal Milk

24   Marketing Order blend price (Column I) estimate of $15.22. The

25   average difference (FMMO less CSO) is an increase in the

2725

1   producer price of 57 cents per hundredweight -- Column J. We

2   have provided summary totals for ten periods on this table,

3   including annual summaries for each year 2010 through 2014, and

4   a year-to-date summary through July of 2015. The California

5   State Order estimated blend price has always been lower than

6   the proposed Federal Order or FMMO price for each period

7   measured.

8   These differences are not trivial. For the period

9   August 2012 to July 2015, a period of much higher than average

10 whey prices, the average difference between the estimated blend

11 prices resulting from the use/price calculation of the two

12 systems is $1.02 for hundredweight. The peak monthly

13 difference for this period occurred in May 2014 at $1.58 per

14 hundredweight. As whey prices have declined, the differences

15 have narrow, and year-to-date through July 2015, the spread has

16 been 86 cents -- and I note that the 88 cents in the text

17 should be corrected to 86 cents.

18   JUDGE CLIFTON: We will make that change on the record

19 copies as well. This is the very last figure on page 3,

20 instead of showing 88 cents, the record copies will show 86

21 cents.

22   MR. BESHORE: Thank you, your Honor.

23   MR. HOLLON: Of these 36 months, there were no times that

24 the CSO estimated blend prices were above the FMMO estimated

25 prices. Every month, the difference was more than 25 cents per

2726

1   hundredweight; 35 times more than 50 cents per hundredweight;

2   and 17 -- half the period observations, the difference was more

3   than $1.00 per hundredweight.

4   Based on the estimated blend prices calculated, the

5   California FMMO will bring California milk prices into

6   alignment with the national grid, as they will be computed

7   using similar product price formulas, announced based on the

8   same timing sequence, derived from the same underlying national

9   commodity prices, and computed on methods similar to all other

10 FMMO's. In order to achieve these blend prices, the proposed

11 California FMMO's pooling provisions must include all of the

12 class price values.

13   Q. Could I interrupt you right there? Mr. Shippelhoute

14 testified this morning and presented some -- a document that he

15 identified as California blend prices. Do you recall that?

16   A. Yes.

17   Q. Okay. Is that the same blend price you used?

18   A. No.

19   Q. Okay. Can you just, at this point, since we have

20 talked about this calculation, explain why not? Just, in one,

21 at one place here.

22   A. In order to have a comparable comparison, California

23 versus State Order, I wanted to try to have as many of the

24 factors be the same. And the utilizations were published, the

25 prices were published, but I didn't have a way to get a

2727

1 comparable price, so that's why I used the weighting sequence

2 to get a Class 1 price that I thought could, that would be

3 representative, and a Class 2 price, and a Class 3 price. When

4 Mr. Shippelhoute discussed his calculation, he mentioned

5 several of those factors, and when I talked with him, you know,

6 months ago and we discussed what could be done and what

7 couldn't be done, he did not indicate that the State Order can

8 publish or provide me with any other further break down so that

9 I could get comparable volumes and comparable weight and

10 comparable prices.

11   MR. ENGLISH: I do object to the extent that testimony is

12 viewed as evidence of statements of truth made by

13 Mr. Shippelhoute.

14   JUDGE CLIFTON: That's fine. The objection is noted.

15   MR. HOLLON: I would say those were inquiries about data

16 and would be similar to inquiries, so --

17   MR. ENGLISH: But my point is, what was said as being truth

18 and assertion.

19   JUDGE CLIFTON: He's just saying that that witness is not

20 here to verify exactly what he told you, and it's hearsay, and

21 that's fine. And it doesn't change a thing about the evidence

22 you have presented, but it does note the hearsay objection.

23 BY MR. BESHORE:

24   Q. Okay. So, in any event, that's the rationale behind

25 the blend price calculations that you made?

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1   A.   It is.

        2   Q.   Comparisons? Okay. Go on then.

        3   A.   C.   Impact of the Quota Program on Blend Prices.

        4   The California FMMO must recognize the integration of

        5   the state's quota program.

        6   MR. ENGLISH: Your Honor, I'm not sure this is a statement

        7   of what the law is, we have had so many of them. To the extent

        8   this is an attempt to state what the law is, I object for

        9   previous reasons. And I know what you are going to rule, but I

       10   object.

       11   JUDGE CLIFTON: Your objection is noted.

       12   MR. BESHORE: Please proceed, Mr. Hollon.

       13   MR. HOLLON: Based on calendar year 2015 calculations, the

       14   payments to quota holders will reduce monies available to pay

       15   through the market-wide pool by approximately 37 cents per

       16   hundredweight each month. The proposed California FMMO

       17   presents a combination of low utilization in the higher use

       18   classes, and the presence of the California quota system. No

       19   other FMMO has this combination of marketing factors.

       20   In order to grasp the monetary impact of the quota and

       21   other marketing programs on the proposed California FMMO blend

       22   price, we will first review historical CSO pool and price

       23   results.

       24   Cooperatives' Table 5.D (6 pages) "Comparison

       25   California State CSO announced Class 4a, 4b, and Overbase

                                      2729

1 Price -- 2000 through July of 2015." The overbase price is

2 comparable to the FMMO blend price. Columns C, D, and E of the

3 California State Order Class 4a and 4b price and overbase price

4 as announced each month from July of 2000 to July 2015. Of the

5 187 months of published data, the overbase price is greater

6 than both the 4a and 4b price only 17 times or 9 percent of the

7 time.

8   Of the 91 percent of the months in which the overbase

9 is lower than either 4a or 4b, that is 171 observations, 78

10 times Class 4 is higher than the overbase price, and 92 times

11 4a is higher than the overbase price.

12   Absent California's current strict pooling

13 requirements, significant volumes of milk would exit the pool

14 an estimated 91 percent of the time, resulting in different

15 minimum prices to producers depending on which Class was

16 higher.

17   Q. So let me interrupt you there, and ask you to turn to

18 5.D which you have described in text. And let's just go

19 through that column by column to show how it depicts what you

20 have just testified to.

21   A. Cooperatives' Table 5.D, and I'm looking on page 1;

22 Column A, months.

23   Column B, years.

24   Column C, the published 4a price.

25   Column D, the published 4b price.

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1   Column E, the overbase, the published overbase price.

2   Column F, a calculation of which is higher, Column C-4a

3   price or Column D-4b price.

4   Column G, would be a choice of would the higher of

5   those two prices choose to pool or depool. And;

6   Column H is which of those classes chose to pool or

7   depool.

8   Q. So just for clarity, the last two columns, G, the

9   choice of depool means that either 4a or 4b is higher than

10 overbase; is that correct?

11   A. Correct. One of the two are higher.

12   Q. And H identifies which one?

13   A. H identifies which one.

14   Q. Very good. Is there summary data at the end of the

15 table or is that just in the text?

16   A. It is only in the text.

17   Q. So return to the text, then, please.

18   A. When the overbase price (or in the FMMO, the blend

19 price) is greater than the manufacturing prices, the

20 manufacturing milk will benefit from being pooled. That is, it

21 draws money from the blend pool to meet producer payment

22 obligations. If the manufacturing class price is higher than

23 the blend price pool, the incentive is to exit the pool, if

24 that is an option, and retain the gained value. This situation

25 creates unequal minimum prices among handlers. The exited use

1 class would be able to pay a higher standardized blend price

2 than the milk remaining in the pool, and the prices paid to

3 similarly situated producers would not be uniform. Because of

4 the likely frequency of depooling and the attendant negative

5 impact on marketing conditions, our proposed pooling provisions

6 are the only solution.

7   There is a common misconception that in the FMMOs, milk

8 is depooled to clear the market of distressed milk when prices

9 are low. That is never true. If possible, a handler will

10 always try to pool distressed or lowest priced milk in order to

11 obtain the pool draw. Milk is depooled in FMMO markets due to

12 the loss of Grade A status or the failure of meeting some level

13 of performance standards or to retain the higher class value

14 when manufacturing class value is greater than the estimated

15 blend price.

16   D. Pooling Incentives and Disincentives

17   To further define what pooling provisions are required

18 for the proposed California FMMO, we evaluated the incentives

19 to pool milk by analyzing the differences between the

20 calculated blend prices as shown in Cooperatives' Table 5.E

21 (8 pages) "Blend Price Estimate Calculation Using CSO

22 Utilization Rates (Total Solids) and CSO and FMMO Class

23 Prices -- 2000 through July of 2015, Columns L, M, and N,

24 Adjusted for Quota Premium Payment (estimated 37 cents per

25 hundredweight) and the Transportation Allowance (estimated 9

1   cents per hundredweight), and the RQA Adjuster (estimated at 3

2   cents per hundredweight)."

3   Looking to Table 5.E, we can evaluate the expected

4   incentive to pool or not pool milk for the manufacturing

5   classes in the California FMMO pool by looking at Columns K, L,

6   and M, which compare the blend prices to the Class II, III, and

7   IV prices.

8   Column C is the FMMO estimated blend price obtained by

9   multiplying the FMMO class price times the class utilization

10   for the Cooperatives' Table 5.C.1-6. Columns E, F, and G are

11   the FMMO class prices for the Class II, III and IV.

12   Columns K, L and M represent the estimated price, less

13   an average 37 cents per hundredweight estimated cost to pay for

14   the quota premium (Column H), and 9 cents per hundredweight

15   estimated cost to pay for the transportation pool (Column I)

16   and adding back 3 cents per hundredweight for the value of the

17   RQA's (Column J). 37 cents per hundredweight represents the

18   average cost to fund the quota premium the first seven months

19   of 2015, and 9 cents the cost of the transportation allowance

20   system. The 3 cents per hundredweight is added back to the

21   pool to reflect contribution of the RQA's. The negative

22   difference in the table indicates that if allowed, the class

23   will choose not to pool.

24   As shown on page 8 of the Cooperatives' Table 5.E, for

25   the 187 months from January 2000 to July 2015, 130 months or 70

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1 percent of the time, Class II would choose not to pool. In 111

2 months or 59 percent of the time, Class III would choose not to

3 pool. And in 80 months or 43 percent of the time, Class IV

4 would choose not to pool.

5   Looking to the 36-month period from August 2012 to July

6 2015, the number and percentages of the time that a particular

7 use class would choose to depool are shown. In 24 of the 36

8 months, (67 percent of the time), Class II would choose not to

9 pool. In 19 of the 36 months (53 percent of the time)

10 Class III would choose not to pool. And in 17 of the 36 months

11 (47 percent of the time) Class IV would choose not to pool.

12   Over the entire period, 34 percent of the 36 months --

13   JUDGE CLIFTON: Read that again from the beginning, "over

14 the entire period."

15   MR. HOLLON: Over the entire period, 34 of the 36 months

16 (94 percent of the time) either Class III or Class IV would

17 choose to be out of the monthly pool.

18   The Class 4a/IV utilization for the 36 month period was

19 33 percent, and the 4b/III utilization was 46 percent. Thus,

20 there would be significant volumes of milk (one or the other

21 class) choosing to exit the pool 94 percent of the time (34 out

22 of 36 months). The result of this constant in and out decision

23 making would make producer pricing very unstable and the goal

24 of uniform prices to producers unlikely.

25   Q. You missed a word in that sentence I think. Could you

2734

1   just re-read it, Mr. Hollon?

2   A.   The result of this constant in and out decision making

3   would make producer milk pricing very unstable and the goal of

4   uniform minimum prices to producers unlikely.

5   Q.   Thank you.

6   A.   Additionally, without the proposed pooling provisions

7   and with the high frequency of incentives for Class III and IV

8   to be out of the pool, the situation is prime for gaming the

9   pool by creating a permanent "non-pool class of producers." In

10 the milk dense counties of the marketing area, there are

11 significant volumes of producer milk produced on farms with

12 nearly identical delivery cost to Class III and Class IV plant

13 or plants owned by the same handler (or perhaps a pair of

14 different handlers." With little or no additional cost, these

15 handlers could designate a block of producer milk to deliver to

16 whichever plant/use class, that was incented not to pool each

17 month and switch that block back and forth depending on the

18 price relationship. This would be relatively easy to arrange

19 and for the pooling handler to financially correct marketing

20 decision. Handlers without the easy ability to game would

21 likely seek some type of arrangement with the second handler to

22 create a gaming situation to gain a portion of the incentive

23 monies through likely -- though likely at a lesser rate, as

24 they may have to share a portion of the gain.

25   The Midwestern Orders provisions that establish pooling

1 limits based on prior month pooling volumes, would not in any

2 way prevent this gaming scenario from occurring, because this

3 milk would never seek to return to the pool.

4   E. Necessary Pooling Provisions.

5   The combination of low FMMO Class I and II use, and the

6 very high and near equal volumes of Class III and IV use, and

7 the unique presence the quota system, combine for very

8 different market conditions that calls for specific and unique

9 solutions. In order to accumulate and retain all the revenues

10 necessary to provide for the blend prices proposed and to

11 create an orderly milk market, this proposal requires that all

12 milk delivered to plants located in the marketing area from

13 farms located in California, must be pooled each month.

14 Without the proposed pooling provisions, the incentives to

15 depool would be so great as to render blend prices unstable at

16 best. Month-to-month milk pricing would have significant

17 variation --

18   JUDGE CLIFTON: Let me have you start that sentence again,

19 month-to-month.

20   MR. HOLLON: Month-to-month producer milk pricing would

21 have significant variation as the majority of months either

22 Class III or Class IV would elect to depool and then repool in

23 a subsequent month. Producer prices would vary depending on

24 the volatility of class pricing and reduce the desired benefits

25 of market-wide pooling tremendously. The ability to forecast

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1 prices would be extremely difficult and impact business

2 planning for producers, processors, lenders, and those desiring

3 an improved risk management strategy. Unstable market

4 conditions would prevail.

5 II.   Proposed Pooling Compared to Other Orders:

6   The Commonality and Uniqueness of Pooling Provisions

7   and FMMO's.

8   The FMMO system has shown it is capable of creative,

9 innovative, and necessary solutions to unique and changing

10 market conditions over time in different regions of the

11 country, and that the system-wide level when necessary. The

12 proposed pooling provisions will make the California FMMO

13 different from any existing order, but they are necessary in

14 order for the California FMMO to operate in an orderly manner.

15   Pooling standards are common and necessary in all

16 orders, but they differ in their exact specification in each

17 order, as they establish the terms and trade necessary to fit

18 the unique marketing conditions -- I'm sorry, unique marketing

19 characteristics of a given marketplace. For example, the

20 Southeastern Orders have high number of touch base days per

21 month, while the Upper Midwest Order has "once per ever" so

22 long as the farm does not get pooled on another order. Several

23 orders prevent pooling of a diversion of producer milk "until"

24 that producer has "touched base" while other orders prevent a

25 pooling diversion "unless" there's been a touch base delivery.

1   The result of this language is very different for the pooling

2   handler. The Northeast, Central, Mideast and Upper Midwest

3   Orders have provisions, have special pooling provisions which

4   apply solely to milk supplies located outside the marketing

5   area.

6   While the pooling terms of each Order stand on their

7   own and are developed to meet the needs of the particular

8   Order, there is consensus in the industry that completely

9   unstrained depooling destabilize --

10   Q. Now, could you stop there and read starting with "there

11   is consensus."

12   A. There is consensus in the industry that completely

13   unrestrained depooling destabilizes the marketplace, is not

14   orderly, and should not be allowed. So the question becomes,

15   what are the correct provisions for the particular order?

16   Therefore, the proposed California Federal Milk Marketing

17   Order, the answer is the pooling provisions we have proposed.

18   Limitations on depooling vary from Order to Order in system.

19   All Orders have addressed the issue of proper pooling

20   provisions and have crafted provisions that were proposed,

21   heard and accepted for those orders.

22   Some examples of those would include,

23   dairy-farmer-for-other markets provision in Orders 1, 124, and

24   131 as well as the state unit pooling provisions of Order 1.

25   Orders 30, 32, and 33 have percentages limiting the amount of

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milk that can be pooled in any given month to a percentage of

the milk pooled in the previous month. Additionally, these

same orders have provisions (different from all the other

Orders) that further govern the ability of an out-of-area plant

to pool milk by requiring deliveries for the qualifying volumes

associated with that plant be delivered directly from the

supply plant attempting to qualify producer milk and not allow

any 1000(9)(c) diversions to be included in the calculations

qualifying the plant. Order 124 chose instead of the

percentage limitation provision to increase the touch base days

for regaining pool status whose milk was depooled.

JUDGE CLIFTON: Missed a phrase there. "For regaining pool

status -- "

MR. HOLLON: For a producer whose milk was depooled.

BY MR. BESHORE:

Q. And that should be singular producer rather than --

A. Should be singular producer, that's correct.

Q. As it was typed.

JUDGE CLIFTON: I would like for us to note that change on

the record copies. We're on page 10, we're in the middle of

the page of the last line of the first full paragraph. There's

a word there "producers" plural, which we will make singular

simply by striking the S.

MR. BESHORE: Thank you, your Honor.

MR. HOLLON: While some of these provisions are rooted in

market conditions that predate the FMMO Reform process, the

provisions for percentage limitations and not allowing (9)(c)

diversions to assist in qualifying a plant were "new" and

"unprecedented" in the system of post-Reform orders. In a

similar vein, the pooling provisions proposed here are

necessary for the California FMMO to function properly and

should in no way be dismissed simply because they are new or

unusual.

III.   Order Language Which Fits California Marketing

        Conditions, Pool Plant, Producer and Producer Milk

        Provisions

        A. Section 1051.7-Pool Plants.

        The specific language necessary to define the pool

plant definitions is found in Section 11.57 --

        JUDGE CLIFTON: Start again with the number.

        MR. HOLLON: 1151.7.

BY MR. BESHORE:

    Q. Let me interrupt you there, should that be 1051.7,

Mr. Hollon?

    A. It should be.

    Q. Thank you. Could we have that correction shown on the

record copy, your Honor?

        JUDGE CLIFTON: Yes, let us do that. We'll correct the

record copy at the very bottom of page 10, second line up from

the bottom, beginning of that line should read 1051.7(a)

through (f). So the only change is to strike 1151 and insert

above it 1051.

     MR. HOLLON: I'll start with that sentence starting over

again.

          The specific language necessary to define the pool

plant definitions is found in Section 1051.7(a) through (f),

titled "Pool Plant". These provisions define which plants are

regulated in the proposed California FMMO. Pool plants serve

different functions. All serve to process milk from producers

who will share in the market-wide pool, and thus generate

revenues to be shared by producers. These plants are involved

in the production of Class I and fluid associated products and

are also plants that produce Class II, Class III, and Class IV

products.

          Some plants may provide a mix of uses and also serve to

balance the needs of other plants across all the class uses in

the market. As plants become more specialized and process

larger volumes, the need to have plant capacity dedicated whole

or in part to balancing all sectors of the market, becomes more

common and necessary.

          Our proposal pools all Grade A milk delivered to a

plant in the marketing area and produced on a farm located in

the marketing area. The inclusion of performance standards for

in area milk is found in many Orders such as touch base

requirements, free-ride periods, or diversion limits, is not

needed. With limited exception, all Grade A milk produced in

the market area is pooled, no matter to which type of plant it

delivers. In addition, there are provisions that provide for

milk delivered from outside the marketing area to be pooled.

Further, milk from outside the marketing area may be associated

with the pool even if not delivered to the marketing area, as

such milk is substantially related to deliveries to Section

1051(7)(a) and (b) plants.

JUDGE CLIFTON: Now, I would like to stop you there so that

we can take a five-minute stretch break. We don't need to go

far, but I just want everybody to move around a little.

MR. VLAHOS: Your Honor?

JUDGE CLIFTON: Mr. Vlahos?

MR. VLAHOS: John Vlahos.

Your Honor, it's so hard for a witnesses when they are

reading testimony to catch every word. If I may, for the

clarity of the record, I caught a few others that we missed a

couple that --

JUDGE CLIFTON: All right. Could we do it after the break?

I'll call you up first. So please be back and ready to go on

record at 3:17. Gives you about five minutes.

(Whereupon, a break was taken.)

JUDGE CLIFTON: We're back on record at 3:19. We'll accept

those proposed corrections from Mr. Vlahos at a later time.

Mr. Beshore, if you would resume near the bottom of

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1 page 11.

2 BY MR. BESHORE:

3   Q. Yes, thank you, your Honor. And Mr. Hollon, I want you

4 to resume at the bottom of page 11 where there's quoted

5 material, and there's a number of, in the text here, if I

6 could, your Honor, just indicate there's -- Mr. Hollon quotes

7 the proposed language and then explains the proposed language

8 of some these order provisions. And I've asked him to identify

9 the proposed language when he's quoting it at the beginning and

10 the end of the quote, although that is not -- there's not

11 language printed on the Exhibit 63, per se, but to help the

12 transcript, you can just say when you start the quote and when

13 he's ending it, perhaps it will be useful.

14   JUDGE CLIFTON: I'm sorry, do you have a suggestion,

15 Mr. English? No? Okay. All right. I think that's good. So

16 we're about to go into such quoted language, and Mr. Hollon,

17 you may proceed.

18   MR. HOLLON: So this would be quoted language from the

19 proposal:

20   Section 1051.7, pool plant:

21   Pool plant means a plant as specified in paragraph
             (a) through (d) of this section, but excluding a
22   plant specified in paragraph (f) of this section.
             The pooling standards described in paragraphs (d)
23   of this section are subject to further
             modification pursuant to paragraph (e) of this
24   section.

25   JUDGE CLIFTON: And you added the word "further", is that

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1 because that's in the proposal?

2   MR. HOLLON: It is not.

3   JUDGE CLIFTON: Okay.

4   MR. HOLLON: Where did I add the word further?

5   JUDGE CLIFTON: Just before "modification."

6   MR. HOLLON: The last sentence should read:

7   The pooling standards described in paragraphs (d)
               of this section are subject to modification
8   pursuant to paragraph (e) of this section. (a) a
               distributing plant, other an a plant qualified as
9   as pool plant pursuant to paragraph (b) of this
               section, or Section ----.7(b) of any or more of
10   the total quantity of fluid --

11   MR. BESHORE: You missed a line.

12   MR. HOLLON:

13   Any other Federal Milk Order from which during the
               month 25 percent or more of the total quantity of
14   fluid milk products physically received at the
               plant, (excluding concentrated milk received from
15   another plant by agreement for other than Class 1
               use) are disposed of as route disposition or
16   transfer in the form of packaged fluid milk
               products to other distributing plants.

17

18   JUDGE CLIFTON: There was just one word that you left out

19 and that's the word "are". I don't know where you want to

20 begin, that was a long sentence.

21   MR. HOLLON:

22   (a) a distributing plant other than a plant
               qualified as a pool plant pursuant to paragraph
23   (b) of this section, or Section ----.7 (b) of any
               other Federal Milk Order from which during the
24   month, 25 percent or more of the total quantity of
               fluid milk products physically received at the
25   plant (excluding concentrated milk received from

2744

1   use) are disposed of as route disposition or are
           transferred in the form of packaged fluid milk
2   products to other distributing plants. At least
           25 percent of such route disposition and transfers
3   must be to outlets in the marketing area.

4

5   BY MR. BESHORE:

6   Q. Mr. Hollon, "in the marketing area" ended the proposed

7   language, correct?

8   A. Correct.

9   Q. Okay. Back to the text of your testimony.

10   A. This language outlines how a plant becomes qualified as

11 a pool distributing plant. The proposal requires that during

12 the month, 25 percent or more of the total quantity of fluid

13 milk products physically received at the plant (excluding

14 concentrated milk received from another plant by agreement for

15 other than Class 1 use) are disposed of as route disposition or

16 are transferred in the form of packaged fluid milk products to

17 other distributing plants. Proponents consider the 25 percent

18 packaged fluid milk standard to be reasonable for this market

19 the plants meeting this standard, if at least 25 percent of the

20 deliveries are made in the marketing area, the plant will be a

21 pool distributing plant in the California FMMO. This standard

22 should be sufficient to pool plants with a significant

23 distribution presence in the marketing area, but will not

24 capture plants that do not have significant sales in the

25 marketing area.

2745

1   Reading from the proposed language again:

2   (b) any distributing plant located in the
                  marketing area which during the month processed at
3   least 15 percent of the total quantity of fluid
                  milk products physically received at the plant
4   (excluding concentrated milk received from another
                  plant by agreement for other than Class 1 use)
5   into ultra-pasteurized or aseptically-processed
                  fluid milk products.

6

7   This is the end of the language cite.

8   This language serves to lock a plant located in the

9   marketing area that processes at least 15 percent of the total

10   quantity of fluid milk products physically received at the

11   plant (excluding concentrated milk received from another plant

12   by agreement for other than Class 1 use) ultra-pasteurized or

13   aseptically-processed fluid milk products. These types of

14   plants generally have much more diverse distribution patterns

15   due to the extended shelf life of the product. It is not

16   uncommon for these types of plants to have significant

17   production for a specific geographic distribution in one month,

18   and then have much less to none for the next month. It is

19   difficult to supply plants with this type of

20   production/distribution as the FMMO blend price may change

21   depending on the area (or Order) in which the plant may become

22   regulated and the milk supplier would be faced with the

23   unforeseen consequence of a lower minimum price for milk or the

24   buyer, a higher price than expected. Additionally,

25   California's proximity to the Pacific Rim export markets makes

1 it more likely to have business in those markets and perhaps

2 the greater need for this provision to have a reasonable

3 standard and a consistent raw materials cost.

4   Again reading from the proposal language:

5
            (c) A plant that is located in the marketing area
6   which during the month, receives milk from a
            producer located in the marketing area.
7

8   MR. HOLLON: This provision provides that all other plants

9 located in the marketing --

10   JUDGE CLIFTON: I'm sorry, you have already finished the

11 quote from the proposal and now back to your statement. It

12 begins with?

13   MR. HOLLON: This provision provides that all other plants

14 located in the marketing area that receive milk from a producer

15 located in the marketing area be pooled. There is no allowance

16 for this type of plant not to pool all the milk it receives.

17 This is the key provision to provide for orderly market of milk

18 in the proposed California FMMO. With this provision, the

19 operation of the California FMMO will be more orderly.

20   There is at this spot a reference to footnote 1. And

21 footnote 1 says, "the presence of the word underline and bold

22 indicates a proposed language modification from the Hearing

23 Notice.

24   Now back to reading proposal language.

25

1
                    (d) A plant located in Churchill County, Nevada,
2   strike the word that, insert the words which
             during the month receives milk from, insert the
3   word producer(s) in Churchill County or in the
             marketing area.
4

5   MR. HOLLON: This is the end of the proposed language.

6   This provision allows for the deliveries to a plant

7 located in Churchill County, Nevada to also be fully pooled on

8 the California Federal Milk Marketing Order by receiving milk

9 from producers located in the marketing order and/or from

10 Churchill County.

11 BY MR. BESHORE:

12   Q. Just read the last clause of that -- of that sentence,

13 "by receiving milk from producers."

14   A. From producers located in the marketing area and/or

15 from Churchill County.

16   Q. Thank you.

17   A. Any milk delivered to this plant will be pooled and

18 paid announced California FMMO producer prices. The producers

19 in this Nevada milkshed have been affiliated with the

20 California market for many years and still ship milk to a

21 distributing plant that has distribution in the proposed

22 marketing area. Any milk pooled would be subject to the full

23 pooling provisions as called for in Section 7(c).

24   Reading again from the proposal language:

25

2748

1   (e) A supply plant located outside the marketing
           area (except the plants subject to (7)(c)(1)) from
2   which the quantity of bulk fluid milk products
           shipped to (and physically unloaded into) plants
3   described in paragraphs (a) and (b) of this
           section is not less than 50 percent of the Grade A
4   milk received from dairy, insert the word farmers
           and handlers described in Section 1000.9(c)
5   including milk diverted pursuant to Section
           1051.13, subject to the following conditions:
6
           (1) If milk is delivered directly from producers
7   farms that are located outside of the marketing
           area, such producers must be grouped by state into
8   reporting units and each reporting unit must
           independently meet the shipping requirements of
9   this paragraph.

10   (2) Concentrated milk transferred from a supply
           plant located outside the marketing area to a
11   distributing plant shall be excluded from the
           supply plants shipments in computing the
12   percentages in paragraphs (d)(1).

13

14   MR. HOLLON: This is the end of the language cite.

15   JUDGE CLIFTON: Mr. Hollon, before you go further, when you

16   read the word "paragraph" as plural "paragraphs" in Subsection

17   E, I thought that was best. Mr. Beshore, I'm asking you.

18   MR. BESHORE: I thought it was appropriate, also when read.

19   It could -- could be either way. I'm satisfied with the

20   plural.

21   JUDGE CLIFTON: All right. I'm going to ask then, that

22   this change be made on the record copies. This is page 14 of

23   Exhibit 63, we're at the top, we're four lines down in the

24   italicized, indented portion which shows proposed language.

25   And we're just making the word "paragraph" plural, we're just

2749

1   adding an S, that's all. Good. Now, Mr. Hollon, you are

2   about in the middle of page 14, and you may continue.

3   MR. HOLLON: This provision provides for the qualification

4   of a supply plant on the proposed California FMMO. A

5   California FMMO will have low Class 1 utilization.

6   Nevertheless, where a plant located outside the marketing area

7   provides a substantial and consistent supply to a California

8   FMMO, Section 7(a) and (b) plants, it should be in the pool.

9   The shipping requirements for supply plant establish that if

10   milk is truly needed and economically justified, it will be

11   accommodated.

12   Q. Could you stop there and begin that sentence again?

13   You missed a word, Mr. Hollon.

14   A. The shipping requirements for a supply plant establish

15   that if the milk supply --

16   MR. HILL: Your Honor, Brian Hill. I would like to stop

17   the witness for just a second. We found a little problem that

18   I think needs to be addressed.

19   MR. FRANCIS: Okay. Will Francis, USDA.

20   On page 13 where you are talking about Churchill

21   County, Nevada, we have a (d). If you have Exhibit 1, which I

22   can hand you, and I think we are on page 47, 211, I'm sorry,

23   47, 212 of Exhibit 1. It reads:

24   I. And I think that begins a sort of out of sequence

25   labeling in your printed testimony compared to what was in the

2750

1 Notice of Hearing, and we're worried that's going to carry

2 through. So we would rather address it now.

3   MR. HILL: Brian Hill. And it does carry through, because

4 if you look at the top of page 15, he cited to Section (e),

5 which talks supply plant, and that's actually Section (d), page

6 14 -- and so it's kind of missing a number, and it continues

7 down from there.

8   JUDGE CLIFTON: I'm very glad you brought this up when you

9 did, because we do want, unless there's an intended departure

10 from the numbering in the proposal, then we do want to fix it

11 now.

12   MR. BESHORE: There's not an intended departure from the

13 numbering. The language in mine is identical, I think, and

14 I'm, we're certainly willing to conform to the numbering in the

15 Hearing Notice.

16   JUDGE CLIFTON: What might be a good idea, Mr. Beshore, is

17 for us to take about a five, ten-minute break while you and

18 Mr. Hollon get his copy right, and then we can conform ours as

19 he reads to us from his corrected copy. It puts a little more

20 burden on Ms. Frisius in making those changes on the record

21 copies, unless you want to --

22   MR. BESHORE: Well, we can do that in a minute.

23   JUDGE CLIFTON: Okay. All right. So let -- I think it's

24 going to take you at least ten minutes, don't you, Mr. Beshore?

25   MR. BESHORE: We'll take ten.

1   JUDGE CLIFTON: Okay. Everybody be back and ready to go at

2   about 3:48. That gives you about 10 or 11 minutes.

3   (Whereupon, a break was taken.)

4   JUDGE CLIFTON: It's 3:47. Everybody's back, so we'll

5   proceed. Mr. Hollon?

6   Do you -- Mr. Beshore, did you want to start?

7   BY MR. BESHORE:

8   Q. Well, I will, if I could.

9   Mr. Hollon, do you have some corrections to the

10   identifying subparts of part 7 that some of the languages in

11   your testimony, number 63, something got mislabeled, not in

12   conformity with the Hearing Notice.

13   So if you start with the, on page 13 of Exhibit 63, the

14   text of 7, the pool plant text that was labeled (d) in the

15   printed exhibit, should be what?

16   A. (c)(1), (c) rather than (d).

17   Q. Okay. So on the next page, page 14, the provision for

18   supply plant which was labeled (e) should be what?

19   A. Should be (d).

20   Q. Okay. Going on, then to page 15, those paragraph that

21   was labeled (f) should be?

22   A. (e).

23   Q. And the paragraph at the bottom that is labeled (g)

24   should be?

25   A. (f).

1   Q. Okay. You didn't reach that point yet in your

2   testimony, but we'll correct them in advance, and when you get

3   to page 16, it continues with (g) which is correct; is that

4   right?

5   A. That is correct.

6   JUDGE CLIFTON: It is my understanding that the record

7   copies have been so corrected; is that right, Ms. Frisius?

8   MS. FRISIUS: Correct.

9   JUDGE CLIFTON: Thank you.

10   BY MR. BESHORE:

11   Q. With those corrections, could you then resume

12   presenting your testimony in Exhibit 63, and I think you were

13   at the paragraph beginning with "furthermore" on page 14.

14   A. That is correct, page 14.

15   Q. Okay.

16   A. Furthermore, if the milk that is delivered from

17   producers' farms that are located outside of the marketing area

18   and in more than one state, the producers and milk supplies

19   must be accounted for individually by state, and independently

20   meet the shipping requirements described in Section 1051.7(d).

21   Also, we do not want to allow concentrated milk transferred

22   from the supply plant located outside the marketing area to a

23   distributing plant to be a part of any computation made to

24   determine if the supply plant can meet the requirements of this

25   section.

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1   Our language does not allow for a supply plant for

2   which we see no economically justified function.

3   JUDGE CLIFTON: May I interrupt, Mr. Hollon? We've just

4   gotten through page 14, and I would like to go up about five

5   lines from the bottom, and just ask whether there should be a

6   dot inserted in the section reference?

7   MR. HOLLON: Section 10517(d).

8   JUDGE CLIFTON: Should be dot 7.

9   MR. HOLLON: Oh, I was looking at the dot at the end of the

10   (d). Okay. Section 1051.7(d).

11   JUDGE CLIFTON: All right. And I would like the record

12   copies to reflect the addition of the dot. Thank you.

13   All right. So we have completed page 14, and

14   Mr. Hollon, you may resume.

15   MR. HOLLON: Reading again from the proposal language:

16   (e) The applicable shipping percentages of
                paragraphs (d) of this section and section 1051.13
17   (d)(2) and (d)(3) may be increased or decreased
                for all or part of the marketing area by the
18   Market Administrator. If the Market Administrator
                finds that such adjustment is necessary to
19   encourage needed shipments or to prevent
                uneconomic shipments. Before making such a
20   finding, the Market Administrator shall
                investigate the need for adjustment either on the
21   Market Administrator's own initiative, or at the
                request of interested parties if a request is made
22   in writing at least 15 days prior to the month for
                which the requested revision is desired effective.
23   If the investigation shows that an adjustment of
                the shipping percentages might be appropriate, the
24   Market Administrator shall issue a notice stating
                that an adjustment is being considered and invite
25   data, views, and arguments. Any decision to

2754

1   percentage must be issued in writing at least one
         day for the effective date.
2

3   End of the language cite.

4   This provision allows for modification of the shipping

5   percentages by the Market Administrator if needed to best serve

6   the market and warranted by an investigation of market

7   conditions. We support this provision and the methodology

8   outlined.

9   Reading again from proposal language:

10   (f) The term pool plant shall not apply to the
              following plants:
11
              (1) A producer-handler as defined under any
12   Federal Order.

13   (2) An exempt plant as defined in Section
              1000.8(e).
14
              (3) A plant located within the marketing area and
15   qualified pursuant to paragraph (a) of this
              section which meets the pooling requirements of
16   another Federal Order and from which more than 50
              percent of its route disposition has been in the
17   other Federal Order marketing area for three
              consecutive months.
18
              (4) A plant located outside any Federal Order
19   marketing area and qualified pursuant to paragraph
              (a) of this section that meets the pooling
20   requirements of another Federal Order and has had
              greater route disposition and such other Federal
21   orders marketing area for three consecutive
              months.
22
              (5) A plant located in another Federal Order
23   marketing area and qualified pursuant to paragraph
              (a) of this section that meets the pooling
24   requirements of such other Federal Order and does
              not have a majority of its route disposition in
25   this marketing area for three consecutive months,

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1   such other Federal Order without regard to its
           route disposition in any other Federal Order
2   marketing area.

3   JUDGE CLIFTON: You read, I believe, "distribution" as

4 "disposition". I would like you to go back, and I'm sorry to

5 have you do the whole thing, but re-read Section 5.

6   MR. HOLLON:

7   (5) A plant located in another Federal Order
           marketing area and qualified pursuant to paragraph
8   (a) of this section that meets the pooling
           requirements of such other Federal Order, and does
9   not have a majority of its route disposition in
           this marketing area --

10

11   MR. BESHORE: Distribution.

12   MR. HOLLON:

13   -- distribution in this marketing area for three
           consecutive months or if the plant is required to
14   be regulated under such other Federal Order
           without regard to its route disposition and any
15   other Federal Order marketing area;

16   A plant qualified pursuant to paragraph -- sorry
           -- start over.
17
           (6) a plant qualified pursuant to paragraph (c) of
18   this section which also meets the pooling
           requirements of another Federal Order and from
19   which greater qualifying shipments are made to
           plants regulated under the other Federal Order
20   then are made to plants regulated under the order
           in this part or the plant has automatic pooling
21   status under the other Federal Order -- and that
           is the end of this quote or this cite reference.
22

23   Paragraph (f) describes the special situations for

24 which pool plant status does not apply. We support the

25 situations as listed. The situation of a producer-handler in

2756

1 section (f)(1) and as described in Section 1051.10 would not be

2 a pool plant. A producer-handler plant that has special

3 provisions -- I'm sorry -- a producer plant has special

4 provisions --

5   Q. Producer-handler. Start that sentence again,

6 Mr. Hollon, please.

7   A. A producer-handler plant has special provisions

8 relative to its ownership, operation, milk supply, milk

9 processing and distribution, and does not qualify as a pool

10 plant. An exempt plant as described in Section (f)(2) and as

11 described in Section 1000.8(e) has special provisions that

12 describe its ownership, operation, milk supply, milk processing

13 and distribution, and does not qualify as a pool plant. The

14 unique situation set forth in Sections (f)(3) through (6)

15 describe plants designated individually by location, regulatory

16 status, and the length of regulatory status, and refer to

17 situations which cause the plant that has been regulated as a

18 pool plant on this proposal order, to lose its pool plant

19 status and become regulated on another order. In each case, we

20 support the provision and concept as outlined.

21   Reading again from the proposal language:

22
              (G) any plant that qualifies as a pool plant in
23   each of the immediately preceding three months,
              pursuant to paragraph (a) of this section or the
24   percentages in paragraph (c) of this section that
              is unable to meet such performance standards for
25   the current month because of unavoidable

2757

1   Administrator to be beyond the control of the
           handler operating the plant, such as a natural
2   disaster (ice storm, wind, storm, flood) fire,
           breakdown of equipment or work stoppage, shall be
3   considered to have met the minimum performance
           standards during the period of such unavoidable
4   circumstances, but such relief shall not be
           granted for more than two consecutive months.
5

6   Paragraph (g) describes the situation which

7   circumstances beyond the control of the handler--

8   JUDGE CLIFTON: I'm sorry, you wanted to tell us that at

9   the bottom of page 14 you had finished reading the proposed

10 language and you were about to return to your statements about

11 it.

12   MR. HOLLON: That is correct.

13   JUDGE CLIFTON: Okay.

14   MR. HOLLON: Returning to the testimony:

15   Paragraph (g) describes the situation where

16 circumstances beyond the control of the handler prevents the

17 handler from complying with the regulations that establish pool

18 plant status and, accordingly, allow the Market Administrator

19 to make special accommodations under the given circumstances.

20   B. Section 1051.12-Producer

21   The language and testimony -- this language and

22 testimony outlines our proposal for the definition of a

23 producer.

24   Reading from the language cite:

25

2758

1   (a) except as provided in paragraph (b) of this
           section, producer means any person who produces
2   milk approved by a duly constituted regulatory
           agency for fluid consumption as Grade A milk, and
3   whose milk (or components of milk) is:
           (1) Received at a pool plant directly from the
4   producer or diverted by the plant operator in
           accordance with section -- sorry -- start over
5   again.

6   (1) received at a pool plant directly from the
           producer or diverted by the plant operator in
7   accordance with Section 1051.13; or
           (2) received by a handler described in Section
8   1000.9 (c).

9   This is the end of the language cite.

10   The term "producer" defines those dairy farms whose

11 milk is a part of the pool.

12   JUDGE CLIFTON: I'm sorry, say it again, please?

13   MR. HOLLON: The term "producer" defines those dairy

14 farmers whose milk is a part of the pool. Producer status

15 under the California FMMO should be provided to any California

16 dairy farmer who produces milk pooled by duly constituted

17 regulatory agency for fluid consumption as Grade A milk, and

18 whose milk or components of milk is received at a pool plant

19 directly from the producer's farm or is marketed by a

20 cooperative.

21   Producer status also should be according to dairy

22 farmers located outside the state of California who deliver

23 milk to pool plants as defined by Section 1051.7 and whose milk

24 meets the requirements of 1051.13.

25   Reading again from the language cite:

2759

1

2   (b) Producer shall not include a dairy farmer
          described in paragraphs (b)(1) through (5) of this
          section. A dairy farmer described in (b) (5) --
3   start over again.

4   (b) Producer shall not include a dairy farm
          described in paragraphs (b)(1) through (5) of this
5   section. A dairy farmer described in paragraph
          (b)(5) of this section shall be known as a dairy
6   farmer for other markets.

7   (1) A producer-handler as defined in any Federal
          Order.
8

9   MR. BESHORE: Well, you want to close the paren after 1.

10 Read that again.

11   MR. HOLLON:

12   (1) A producer-handler as defined in any Federal
          Order.
13
          (2) A dairy farmer whose milk is received at an
14   exempt plant excluding producer milk diverted to
          the exempt plant pursuant to Section 1051.13(d).
15
          (3) A dairy farmer whose milk is received by
16   diversion at a pool plant from a handler regulated
          under another Federal Order if the other Federal
17   Order designates the dairy farmer as a producer
          under that order and that milk is allocated by
18   request to a utilization other than Class 1.

19   (4) A dairy farmer whose milk is reported as
          diverted to a plant fully regulated under another
20   Federal Order with respect to that portion of the
          milk so diverted as assigned to Class 1 under the
21   provisions of such other order; and

22   (5) A dairy farmer who having had the Grade A
          permit has marketed milk as other than Grade A for
23   more than 30 consecutive days shall not be a
          producer until twelve consecutive months have
24   passed until from time non-Grade A status started.

25   MR. BESHORE: Could you read that provision 5 once more?

2760

TRANSCRIPT OF PROCEEDINGS - VOLUME XIII

1 You missed a word on the second line.

2   MR. HOLLON:

3
                (5) A dairy farmer who having had a Grade A permit
4   has marketed milk as other than Grade A milk for
                more than 30 consecutive days shall not be a
5   producer until twelve consecutive months have
                passed from the time non-Grade A status started.

6

7   This is the end of the language cite.

8   JUDGE CLIFTON: May I interrupt just a moment? We're about

9 in the middle of page 18. I just want for the transcript, for

10 the court reporter to know that when the witness is telling us

11 where to open and close parentheses, it is all right to use the

12 exhibit to close the parentheses if the witness forgot to. And

13 this is supposed to be a verbatim transcript, yes. But what

14 we're trying to capture here is the layout that is shown in the

15 exhibit. And to the extent, you know, the witness refers to

16 dot, we don't expect you to type D-O-T, we just expect the

17 number to show in it with a period. So, yes, it's a verbatim

18 transcript, but this is a -- this witness is doing an excellent

19 job with the punctuation, but just punctuation. And the

20 exhibit will be very helpful as far as formatting the

21 transcript appropriately.

22   All right. Back to you, Mr. Hollon, you're beginning

23 now with your statement again.

24   MR. HOLLON: The producer definition proposed specifically

25 excludes producer-handlers as defined in any Federal Order, and

dairy farmers whose milk is delivered to exempt plants (unless

the milk is diverted in accordance with Section 1051.13(d)).

Since these operations are exempt from the proposed California

FMMO pricing and pooling provisions, milk which is in excess of

the needs of these operators should not be treated as producer

milk when it is moved directly from the farms of these

operators to a pool plant. Milk delivered to a pool plant from

such operations would be other source milk.

In addition, provision is made to preclude the

possibility of a dairy farmer being a producer under two orders

with respect to the same milk. The producer definition

excludes a dairy farmer with respect to milk which is received

at a pool plant under this proposed order by diversion from a

pool plant under another order, if the dairy farmer is a

producer under the other order with respect to such milk and

the milk is allocated to Class II or Class III use under this

order. Also, the definition excludes a dairy farmer with

respect to milk which is converted to a pool plant under

another order from a pool plant under this order, with respect

to the portion of such person's milk assigned to Class I under

the other order.

BY MR. BESHORE:

   Q. Class I milk?

   A. Class I milk under the other order.

   Q. Thank you.

2762

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1   A. A dairy farmer for other market provision is added to

2 ensure that a producer who loses his Grade A permit for less

3 than 30 days does not lose his pool status upon the

4 reinstatement of his permit. However, where a permit is given

5 up for more than 30 days, the producer is not eligible for pool

6 status until twelve consecutive months have passed.

7   Section (12) close --

8   Q. Should that be 13? 13(b)(5)?

9   A. It is 12.

10   Section 12. Start the paragraph over. Section open

11 paren --

12   Q. Sorry, 12.

13   A. -- (12)(b)(5) has been inserted to deal with the

14 historical practice in the California market of producers

15 volunteering to give up their Grade A status to avoid being

16 pooled. Producers who voluntarily degrade must remain out of

17 the pool for at least twelve consecutive months. Producers can

18 lose Grade A status occasionally due to issues beyond their

19 control, and therefore, we want to allow the producer the

20 ability to regain pool status when this occurs. It is our

21 expectation that such incidents are correctible in a 30-day

22 period.

23   C. Section 1051.13-Producer Milk.

24   This language and testimony outlines our proposal for

25 the definition of producer milk.

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1   Reading from the cite:

2
               Section 1051.13 Producer Milk.

3
               Except as provided for in paragraph (e) of this
4   section, producer milk means the skim milk (or the
               skim equivalent of components of skim milk)
5   including nonfat components and butterfat in milk
               of a producer that is;
6
               (a) Received by the operator of a pool plant
7   directly from a producer or handler described in
               Section 1000.9 (c). All milk received pursuant to
8   this paragraph shall be priced at the location of
               the plant where it is first physically received.
9   End of the language cite.

10   This provision defines the status of the majority of

11   milk included in the pool. It defines milk received directly

12   at pool plants, whether directly from producers or marketed by

13   Cooperatives. It is our intention that no location value be

14   applied to payments for producer milk, but location prices will

15   apply to the handler value of milk used as Class I.

16   Reading again from the language cite:

17
               (b) Received by a handler described in Section
18   1000.9(c) in excess of the quantity delivered to
               pool plants;
19

20   This provision allows Cooperatives to pool milk not

21   delivered to pool plants, provided all the other requirements

22   of producer milk are met.

23   Reading from the language cite:

24
               (c) Diverted by a pool plant operator to another
25   pool plant. Milk so diverted shall be priced to

                              2764

1   diverted; or

2   Q.   Now, you want to note that there's language added there

3 which was not in the submitted proposal?

4   A.   That is true. The words "to the handler" are added to

5 the language now, it was not in the original proposal.

6   Q.   Thank you. And now?

7   A.   And now I'm finished with the language cite.

8   This provision allows pool plant operators to pool milk

9 not delivered to their own pool plant, provided all other

10 requirements of producer milk are met. This will allow the

11 operator of any pool plant to divert milk supplies to another

12 pool plant and retain the producer milk status and payroll

13 responsibility for such milk. Without this provision, a plant

14 operator who wants to retain regular producers on the plant's

15 payroll for the entire month, would have to physically receive

16 milk of such producers into the plant (so that it will be

17 considered "producer milk"), then pump it back into the truck

18 and deliver it to another pool plant. Such milk would then be

19 considered a transfer from one plant to another, with the

20 transferor-handler accounting to the pool for the milk and

21 paying those producers as well. This practice is obviously

22 uneconomic, resulting in unnecessary costly movements of milk.

23 In addition, the unnecessary pumping of milk is damaging to its

24 quality. Permitting diversions between pool plants will

25 promote the efficient handling --

1   JUDGE CLIFTON: That sentence again, please.

2   MR. HOLLON: Permitting diversions of milk between pool

3 plants will promote the efficient handling of milk.

4   Reading again from the proposal language:

5

6   (d) Diverted by the operator of a pool plant or
             cooperative association described in Section
             1000.9(c) to a nonpool plant subject to the

7   following conditions:

8   This provision, which defines the qualifications for

9 diversions to nonpool plants, concerns primarily deliveries to

10 plants located outside the marketing area, as any delivery from

11 a producer located inside the marketing area to a plant located

12 in the marketing area, is to a pool plant. Diverted milk must

13 meet all of the criteria, (paragraphs 1 through 5) --

14 BY MR. BESHORE:

15   Q. Read that again, Mr. Hollon.

16   A. Diverted milk must meet all of the following criteria

17 (paragraphs 1 through 5) as applicable.

18   Reading from the language cite:

19   (1) Milk of a dairy farmer shall not be eligible
             for diversion until at least five days production
20   of such dairy farmer is physically received as
             producer milk at a pool plant during the first
21   month the dairy farmer is a producer. If a dairy
             farmer loses producer status under the order in
22   this part (except as a result of a temporary loss
             of Grade A approval or as a result of the handler
23   of the dairy farmer's milk failing to pool the
             milk under any order), the dairy farmer's milk
24   shall not be eligible for diversion until at least
             five days production the dairy farmer has been
25   physically received as producer milk at a pool

1   reassociated with the market.

2   This is the end of the language quote.

3   To be eligible for diversion, five days production of a

4   dairy farmer's milk must first be received at a pool plant.

5   Reading again from the language cite:

6   (2) The quantity of milk diverted by a handler
                described in Section 1000.9(c) may not exceed 50
7   percent of the producer milk receipts reported by
                the handler pursuant to Section 1051.30(c)
8   provided that the quantity of milk diverted may
                not exceed delete the language not less than, 50
9   percent of such Cooperative's receipts delivered
                to plants described in Section 1051.7(a) or --
10   start that sentence over again.

11   (2) The quantity of milk diverted by a handler
                described in Section 1000.9 (c) may not exceed 50
12   percent of the producer milk receipts reported by
                the handler pursuant to Section 1051.30(c)
13   provided that the quantity of milk diverted may
                not exceed 50 percent of such Cooperative's
14   receipts delivered to plants described in Section
                1051.7(a) or (b). These percentages are subject
15   to any adjustments that may be made pursuant to
                Section 1051.7(e); and

16
                (3) The quantity of milk diverted to nonpool
17   plants by the operator of the pool plant described
                in Section 1051.7(a) or (b) may not exceed 50
18   percent of the Grade A milk received from the
                dairy farmers (except dairy farmers described in
19   Section 1051.12(b)) including milk diverted
                pursuant to Section 1051.13; and

20

21   And that's the end of the language cite.

22   Diversions defined by (2) and (3) above --

23   JUDGE CLIFTON: I know what you read means practically the

24   same, but go ahead and start again.

25   MR. HOLLON: Diversions as defined by (2) and (3) above are

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limited by the producer receipts reported and the shipments to

plants described in Section 1051.7(a) or (b)--pool distributing

plants. We choose this measure as the best choice to

demonstrate the need for reserve supplies in the California

market. Deliveries to these plants --

JUDGE CLIFTON: One more time on that sentence.

MR. HOLLON: We choose this measure the best -- we chose

this measure as the best choice to demonstrate a need for

reserve milk supplies in the California market. Deliveries to

these plants usually contribute the highest value to the pool,

and thus, are a valid measure that the milk is needed by the

market. The standards as proposed will insure that these

deliveries are truly needed as the cost of meeting the

standards will not be trivial.

However, the diversion standard of 50 percent does

recognize a balancing component of the Class I and II market

and would not require uneconomical shipments of milk in order

to qualify for the sharing of market proceeds. The need would

have to be present and met each month. This is a strict

requirement that the California market appears to have an

adequate reserve supply for the Class I market, the chosen

standard for measure, and so the demonstration of the need must

also be strict. The combination of an initial five-day touch

base and the 50 percent diversion limit should be a valid

measure. The performance standards can be modified by the

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1 discretion of the Market Administrator if needed. As evidenced

2 by this hearing, the California market is well represented by

3 both producer and processor interests, so the investigation

4 required by the provision would be well researched and

5 reviewed.

6   Reading from the proposal language:

7   (4) Further, such --

8   MR. HILL: Your Honor, I think we have another issue in the

9 same vein.

10   JUDGE CLIFTON: All right. Thank you, Mr. Hill.

11   MR. HILL: If you look here, I think he's actually reading

12 from section, from subsection paragraph 3 at the bottom. If

13 you look at the Federal Register, he has it marked as 4 here.

14 Yes, it's on the middle column of page 4713 of the Federal

15 Register, 1051.13(d)(3), if you look at the bottom of that

16 section.

17   JUDGE CLIFTON: Yeah, we do have some numbering issues. I

18 think the easiest way to do this is what we did last time.

19 Have Mr. Beshore --

20   MR. FRANCIS: Is he changing, sorry, we jumped the gun. He

21 explains it. My fault.

22   MR. HILL: Yes, I think he may be explained this.

23   MR. HOLLON: Can you tell me where I was?

24   MR. BESHORE: You are on page 22, number 4.

25   JUDGE CLIFTON: I'm not -- I'm not matching up entirely.

1   MR. HILL: Next paragraph.

2   MR. FRANCIS: It is in the text.

3   JUDGE CLIFTON: Mr. Beshore, take us back to where we

4   should be on page 22.

5   MR. BESHORE: If I only knew.

6   MR. HILL: We're at paragraph 4.

7   MR. BESHORE: The quoted paragraph 4, Mr. Hollon.

8   MR. HOLLON: Reading section language:

9
                (4) further, such diverted milk is subject to the
10   pooling requirements of Section 1051(7)(d)(1);
                and,
11

12   That's the end of the section cite.

13   Diverted milk is subject to the state unit provisions

14 as described in section --

15   JUDGE CLIFTON: I'm sorry, I need help. How come I don't

16 have a dot?

17   MR. HOLLON: Because there's not one there.

18   JUDGE CLIFTON: Okay.

19   MR. BESHORE: After 1051.

20   JUDGE CLIFTON: Right. So if I don't have a dot, then what

21 section do I go to, the very beginning?

22   MR. HOLLON: No, there should be one there.

23   MR. BESHORE: There should be one after 1051.

24   JUDGE CLIFTON: What follows the dot? Is it paren 7 or am

25 I still in --

MR. BESHORE: We're in -- that should be .7 instead of

   2   paren 7.

   3   JUDGE CLIFTON: All right. So if I'm in .7 then I'm still

   4   with pool plants.

   5   MR. BESHORE: Correct.

   6   JUDGE CLIFTON: I don't need the parentheses around the 7.

   7   MR. BESHORE: Correct.

   8   JUDGE CLIFTON: Okay.

   9   MS. FRISIUS: Your Honor, that's in two locations.

  10   MR. BESHORE: It's on two consecutive lines.

  11   JUDGE CLIFTON: Well, and it's in the quote. I still think

  12   the best way to do this is have Mr. Beshore stand by the

  13   witness and the two of them figure it out and then they will

  14   tell us, like you did last time. What are you thinking,

  15   Mr. Beshore?

  16   MR. BESHORE: The parens are not -- it's not correctly

  17   punctuated as per the proposed text. It should be .7 rather

  18   than (7), however, the label, the text in the next sentence

  19   describes the fact that the subparagraph divider "4" should

  20   have been inserted, "was not inserted correctly before the

  21   foregoing language of "(5)" when submitted for the Hearing

  22   Notice." And therefore, we're inserting here a (4).

  23   JUDGE CLIFTON: All right. Let me try it then. Let's,

  24   Mr. Beshore and Mr. Hollon, listen to what I'm saying and tell

  25   me if this is correct. When Mr. Hollon, on page 22 of his

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testimony, cited subsection 4, it should have read as follows:

(4) further, such, insert diverted milk is subject to the pooling requirements of Section 1051.7(d)(1); and,

That completes the cited proposed text. Returning to Mr. Hollon's statement, the next line would read:

Diverted milk is subject to the state unit provisions as described in Section 1051.7(d)(1).

Are we good so far, Mr. Beshore and Mr. Hollon?

MR. BESHORE: We are. Yes.

JUDGE CLIFTON: Okay. Before you go next, then I would like the record copies to reflect those changes, and Ms. Frisius is way ahead of me, she's already said it's in two places, so she's already identified it, that's great.

Now, Mr. Beshore, you may go ahead with what you are concerned about after that.

MR. BESHORE: Well, there's a bracketed sentence next, and maybe to the facilitate things, I just -- I would like to just explain what the bracketed sentence says.

In the Hearing Notice, the last clause of (3), which is: "And further, such milk is subject to the pooling requirements of 1051.7(b)(1)" has been moved into a new paren (4), that's what the bracketed sentence says. It just makes the provision cleaner that way, although there was no language, per se, added there, other than the word diverted, as Mr. Hollon noted.

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1   Then what's paren (5) in the text on page 22, is paren

2 (4) in the Hearing Notice. So the clause at the end of 3 was

3 just moved to create a (4) for better text of the language, we

4 felt.

5   JUDGE CLIFTON: That is very helpful. And so I see why

6 Mr. Francis said, oh, they've already taken care of it, but I

7 wouldn't have known that until you had just explained it,

8 Mr. Beshore. All right. Good. Thank you.

9   So now, Mr. Hollon, you can go back and even though

10 Mr. Beshore has explained the gist of it, you may read your

11 testimony on page 2, excuse me, 22, beginning with "diverted

12 milk."

13   MR. BESHORE: Begin with the sentence in brackets. I think

14 we corrected through there.

15   JUDGE CLIFTON: You are right. Thank you.

16   MR. BESHORE: Thank you, your Honor.

17   MR. HOLLON: [The sub-paragraph divider "(4)" was not

18 inserted correctly before the foregoing language of "(5)" when

19 submitted for the Hearing Notice. It was incorrectly placed at

20 the end of (3) and the word "diverted" was omitted.]

21   Reading again from the language cite:

22

            (5) Diverted milk shall be priced to the handler
23   at the location the plant to which diverted.

24   (e) Producer milk shall not include milk of a
                producer that is subject to inclusion and
25   participation in a market-wide equalization pool

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1   imposed under the authority of the state
               government maintaining market wide pooling of
2   returns.

3   That's the end of the language cite.

4   This provision denies producer milk status to milk that

5   could possibly be dual pooled in both a State Order and an

6   FMMO. This provision is included in all FMMO's.

7   Returning to the language cite:

8   The quantity of milk reported by a handler
               pursuant to either Section 1051.30(a)(1) or
9   Section 1051.30(c)(1) may not exceed 115 percent
               of the producer milk receipts pooled by the
10   handler during the prior month. Milk diverted to
               nonpool plants reported in excess of this limit
11   shall be removed from the pool. Milk in excess of
               this limit received at pool plants other than pool
12   distributing plants shall be classified pursuant
               to Section 1000.44(a)(3)(v) and Section
13   1000.44(b). The handler must designate by
               producer pick up which milk is to be removed from
14   the pool. If the handler fails to provide this
               information, the Market Administrator will make
15   the determination.

16   The following provisions apply:

17   (1) Milk shipped to and physically received at
               pool distributing plants in excess of the previous
18   month's pool volume shall not be subject to the
               115 percent limitation.
19
               The Market Administrator may waive the --
20

21   JUDGE CLIFTON: Go ahead and give me a number before you

22   start that paragraph.

23   MR. HOLLON:
               (2) the Market Administrator may waive the 115
24   percent limitation:
               (i) For a new handler on the order, subject to the
25   provisions of Section 1051.13(f)(3), or

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1   changed milk supply conditions due to unusual
        circumstances;
2   (3) A bloc of milk may be considered ineligible
        for pooling if the Market Administrator determines
3   that handlers altered the reporting requirements
        of such milk for the purpose of evading the
4   provisions of this paragraph.

5   This is the end of the language cite.

6   JUDGE CLIFTON: Now, is bloc, B-L-O-C, is that a term

7   that's commonly used in the industry? Is that supposed to be

8   spelled that way?

9   MR. HOLLON: That's the way it is spelled in the other

10 Orders.

11   JUDGE CLIFTON: Okay. Good. Thank you.

12   MR. HOLLON: Section 1051.3(f) --

13   JUDGE CLIFTON: I'm sorry, for the record, how is it

14 spelled there, Mr. Hollon -- bloc?

15   MR. HOLLON: B-L-O-C

16   JUDGE CLIFTON: Yes, thank you.

17   MR. HOLLON: Section 1051.3(f) regulates the volumes of

18 milk that this type of handler may pool on the proposed Order

19 from month-to-month. The provision --

20   MR. BESHORE: Could you stop there? The reference at the

21 beginning of that sentence you just read, Ms. Frisius has

22 called to my attention should be 1051.13, rather than just 3.

23   MR. HOLLON: Thank you.

24   Section 1051.13(f) regulates the volumes of milk that

25 this type of handler may pool on a proposed order from

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1   month-to-month. The provision limits the volumes to be pooled

2   to not more than 115 percent of the volume pooled in the

3   previous month, unless the Market Administrator waives the

4   limitation, provides for an allowance for a new handler, or

5   determines that the supply conditions of the reporting handler

6   had a significant change.

7   Section 1051.13(f) prescribes procedures to be followed

8   in case a handler reports milk in excess of the percentages

9   allowed by the proposed order. The excess quantity of milk

10 would not qualify as producer milk, and would not be priced

11 under the Order, or would be down allocated for pricing

12 purposes. Where possible, the reporting handler would be

13 required to designate the dairy farmer deliveries that should

14 not be considered producer milk. Absent such designation, the

15 Market Administrator will make the determination.

16   D.   Pooling of Milk from Outside the Marketing Area

17   The proposed Order primarily involves the marketing and

18 pooling of milk in the State of California and the requirements

19 for equal pricing to producers and handlers. Producers and

20 plants outside the state can clearly participate in the pool,

21 but as in other Orders, with different benefits and burdens.

22 Benefits may include the price improvement generated by the

23 California FMMO pool versus the local market, and burdens may

24 include the high level of delivery necessary to share in those

25 returns.

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1   Qualified distant reserve supplies may choose to pool

2   or not pool, depending on advantageous price relationships,

3   without causing the extent of disorderly marketing conditions

4   that such behavior would result in if practiced within the

5   marketing area.

6   E. Section 1051.11 -- Grade A Milk and Market Milk

7   MR. BESHORE: Mr. Hollon, should that be 1051.11?

8   JUDGE CLIFTON: That's what it is.

9   MR. BESHORE: I'm sorry, when you get to the text of the

10   proposed, it is incorrect. I'm sorry.

11   MR. HOLLON: Yes.

12   MR. BESHORE: But maybe we can pre-mark that and read it

13   correctly, the textual language should be 1051.11 when it says

14   1050.

15   MR. HOLLON: E. Section 1051.11--Grade A Milk and Market

16   Milk

17   We propose to utilize the reserved Section 1051.11 to

18   add a definition of Grade A milk and market milk in order to

19   assure that these terms which are used in the proposed order

20   and in California law and regulations, are properly interpreted

21   in the FMMO.

22   Referring back to proposed language:

23

             Section 1051.11 Grade A Milk
24   "Grade A milk" shall mean milk approved by a duly
             constituted regulatory agency for fluid
25   consumption as Grade A milk, or as market milk as

1

2   End of the proposed language.

3   Under California --

4   JUDGE CLIFTON: Now, I'd just like to point out,

5 Mr. Hollon, the heading in your proposal just says "reserved".

6 So even your heading "Grade A milk" is actually to be inserted.

7   MR. HOLLON: Yes, that's correct.

8   JUDGE CLIFTON: Okay.

9   MR. HOLLON: Under California law, the term "market milk"

10 is the term used to define milk eligible for fluid consumption

11 and is generally synonymous with the FMMO term "Grade A milk".

12 Section 11 was a reserve section of the proposed order, and to

13 prevent any possible conflicts with terms and definitions going

14 forward, the Cooperatives proposed to insert this language for

15 the proposed California FMMO into Section 1051.11.

16 IV.   Examples of Major Changes in Federal Order Regulations

17 Over the Years.

18   The adoption of pooling terms from California Order

19 which are different from any permanently existing in other

20 Federal orders --

21 BY MR. BESHORE:

22   Q. Read that again, please, Mr. Hollon.

23   A. The adoption of pooling terms for the California Order

24 which are different from any presently existing in other

25 FMMO's, is just one example of how Federal Orders under the

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1 AMAA are able to meet the needs of the marketplace as it

2 inevitably changes over time. We note here just a few

3 significant changes in FMMO regulations over the past several

4 years.

5   A. The Elimination of Individual Handler Pools in

6 Favor of Market-wide Pools

7   In the early periods of Milk Order regulation, the use

8 of individual handler pooling regulation was neither unusual

9 nor rare. For example, in 1961, there were 67 Federal Order

10 markets with market-wide pools, and 14 Federal Order markets

11 with individual handler pools. However, as the FMMO system

12 evolved, the presumed benefit of individual handler pools, as

13 viewed through the lens of orderly marketing, became less

14 acceptable and the number of individual handler pools decreased

15 over time.

16   The Secretary discussed individual handler pools

17 extensively in the Final Decision of the 2010 Producer-Handler

18 hearing, noting their place and use in the Orders and the

19 ultimate elimination of that class of handlers:

20   The market-wide sharing of the classified use
             values of milk among all producers supplying a
21   marketing area is an essential feature of the
             Federal Milk Marketing Order system. It ensures
22   that producers supplying a given marketing area
             receive the same uniform price for their milk,
23   regardless of its end use. In combination with
             classified pricing, market-wide pooling has, among
24   other things, successfully mitigated price
             competition between producers seeking the
25   higher-valued fluid outlets for their milk.

favor of an individual handler pool system would
                    reverse the stability achieved by its adoption in
                    all Federal Milk Marketing Orders.
                    ...
                    Over the years, USDA has repeatedly concluded that
                    market-wide pooling promotes orderly marketing
                    conditions more completely and is one of the most
                    important marketing order tools used to ensure
                    uniformity in prices to producers.
                    In markets where much of the milk is handled by
                    operating Cooperatives and large surpluses of milk
                    are unevenly distributed among handlers,
                    conditions observable today, market-wide pooling
                    best ensures orderly marketing.

(75 Fed. Reg. 10122, 10148 (2010))(emphasis added).

        Individual handler pools had been a viable part of the

FMMO system for many years. As individual handler pools

gradually fell out of favor due to the rise of larger markets

and more complex pooling issues, the Secretary concluded that

they no longer served the purpose of orderly marketing and made

the significant decision to eliminate them. The last

individual handler pool was in the Michigan Upper Peninsula

Order (Order 44) and was eliminated in Order Reform.

Undoubtedly, the handler in this Individual Handler pool was

very opposed to the change in no small part due to the economic

implications it brought. But the Secretary, nevertheless,

concluded that the broader benefits to orderly marketing

outweighed any negative consequences, and thus made the change.

        Similarly, as we have documented, without the pooling

provisions proposed by the Cooperatives, the benefits of

market-wide pooling will be greatly impaired. In the many

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1   months where either Class III or Class IV would not be pooled,

2   the resulting scenario would greatly resemble the deficiencies

3   of an individual handler pooling system.

4   B. Regulation of Large Producer-Handlers

5   In 2010, the Secretary issued a Final Decision that

6   substantially changed the FMMO regulations governing

7   producer-handlers. In particular, the Final Decision amended

8   "the producer-handler definitions of all Federal Milk Marketing

9   Orders to limit exemption from pooling and pricing provisions

10 to those with total route disposition and sales of packaged

11 fluid milk products to other plants of three million pounds or

12 less per month." (75 Fed. Reg. 21157 (2010).)

13   The Producer-Handler hearing was lengthy with

14 substantial testimony, noting there was a longstanding

15 tradition of treatment of producer-handlers that was

16 significantly different from what was being proposed; that the

17 discussion of the issue was legitimate; and that the

18 proponents' proposal would have significant negative economic

19 impacts on the opponents (large producer-handlers). The

20 Secretary recognized these points in the Final Decision, noting

21 that the historical exempt status provided to producer-handlers

22 had been "based on the premise that the declared policy and

23 objectives of the AMAA, namely orderly marketing, could be

24 achieved without the extension of full regulation of this

25 category of handler."

1 (75 Fed. Reg. 10122, 10146 (2010).) The Secretary determined

2 that this significant change was necessary because "USDA found

3 the activity of large scale producer-handlers to be a source of

4 significant and measurable disorder in the Arizona and Pacific

5 Northwest marketing areas." (Id. At 10147.)

6   With regard to economic impact, the Secretary noted:

7 "While this may cause an economic impact on those entities with

8 more than three million pounds of total monthly sales that are

9 currently considered producer-handlers under the Federal Order

10 system, the impact is offset by the benefit to other small

11 businesses."

12 (Id. At 10122.)

13   Of course, the economic impact referenced by the

14 Secretary would be a negative impact. The results of the

15 Hearing Decision would increase some costs to the largest

16 producer-handlers. But the overall effects of the change were

17 deemed by the Secretary to be beneficial to the market as a

18 whole, in part because the new provisions made the operations

19 of producer-handlers more similar to the other pool

20 distributing plants that competed within the market for sales.

21 The decision thus resulted in more orderly marketing

22 conditions.

23   JUDGE CLIFTON: Now, I would like to stop you because you

24 are about to begin with page 28 of Exhibit 63, and you can not

25 finish your getting through this exhibit before we have to

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1 leave tonight, so I would like us to stop and talk about what

2 we'll do tomorrow.

3   And Mr. Vlahos, you have a number of corrections that

4 you also had caught in what we have done thus far. I'm going

5 to invite you to suggest those at this time.

6   MR. VLAHOS: Thank you, your Honor. John Vlahos. I

7 completely sympathize with the witness having to read through

8 the myriad of testimony and the fact that you are here and what

9 they do is quite amazing to me.

10   Your Honor I had some of the opening and closing

11 parentheses which your Honor has already indicated would be

12 corrected, so we won't deal with those, but on page 9, at eh

13 bottom line, Mr. Hollon was reading the testimony, the word

14 "currently" in the text was omitted.

15   JUDGE CLIFTON: All right. Mr. Hollon, would you read the

16 last full sentence that shows the bottom of page 9 beginning

17 with the word limitations?

18   MR. HOLLON: Limitations on depooling currently vary from

19 Order to Order in the system.

20   JUDGE CLIFTON: All right. So the exhibit is fine, is that

21 correct, Mr. Hollon? That is a correct statement?

22   MR. HOLLON: Yes.

23   JUDGE CLIFTON: And if in reading it you left out the word

24 currently, you meant to include it?

25   MR. HOLLON: Yes.

1   JUDGE CLIFTON: All right. Thank you.

2   MR. VLAHOS: On page 13, the footnote indicates that the

3   presence of an underline and bold indicates proposed language

4   modification. In the, just below the middle of that page,

5   there is a paragraph that in the proponent's proposal, the way

6   the witness read it, did not indicate the underline and bold

7   were indeed the words that were inserted. He just read it as

8   is, without saying inserted, insert that which during the month

9   and insert producers, he just read it as it is without that

10   information.

11   JUDGE CLIFTON: All right. Then, Mr. Hollon, with regard

12   to page 13 of Exhibit 63 in about the center of the page, the

13   provision would read as follows, with you showing what's been

14   inserted.

15   MR. HOLLON: A plant located in Churchill County, Nevada,

16   strike the word that, and insert the words which during the

17   month, then the next receives milk is correct, then insert the

18   word producer(s) in Churchill County.

19   JUDGE CLIFTON: Thank you.

20   MR. VLAHOS: The same thing happened on page 14, he omitted

21   the quoted language, the proposed language, the word farmers,

22   that if underlined and boldfaced in that text was just read,

23   indicating it was an insertion.

24   JUDGE CLIFTON: All right. Then, Mr. Hollon, looking at

25   the top of page 14 of your testimony, subsection "d", what word

1 is inserted in that section?

2   MR. HOLLON: In the fifth row, beginning with the words 50

3 percent of the Grade A milk received from dairy, insert the

4 word farmers, and that's the only word that's inserted.

5   JUDGE CLIFTON: All right. Thank you.

6   MR. VLAHOS: In the next paragraph of the text, while the

7 second to the bottom line of that paragraph, beginning with the

8 word plan, establishe4d that, Mr. Hollon was reading did not

9 read the word supply, he read that if the milk distributed.

10   JUDGE CLIFTON: All right. So Mr. Hollon, on page 14, in

11 the middle of the page, will you read the last sentence, the

12 first full paragraph following the proposed order language?

13   MR. HOLLON: Shipping requirements for a supply plant

14 establish that if the milk supply is truly needed and

15 economically justified, it will be accommodated.

16   MR. VLAHOS: On page 16, a very tiny insert but to make the

17 record totally accurate, the full paragraph after the middle of

18 the page ending seventh line, the line beginning with

19 processing and distributing.

20   THE COURT: It says, not that, but we're looking in the

21 right place.

22   MR. VLAHOS: Have I got the right page? 16?

23   THE COURT: What it says is milk processing and

24 distribution.

25   MR. VLAHOS: Thank you. I made a mistake, distribution and

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the witness did not read the following work "it", tiny point.

JUDGE CLIFTON: Okay. Mr. Hollon, on page 16, the middle of the page, would you please read the sentence in full that begins an exempt plant?

MR. HOLLON: An exempt plant as described in Section (f)(2) and as described in Section 1000.8(e) has special provisions that describe its ownership, operation, milk supply, milk processing and distribution and it does not qualify as a pool plant.

MR. VLAHOS: Your Honor, on page 17, the quotation of the proposed language under the heading B. Section 1051.12--Producer. In the middle of the quoted language, the proposed language that is underlined and bold, again this is a situation where the witness read it without indicating that that was conservative language.

JUDGE CLIFTON: All right. Mr. Hollon, with regard to page 17 of Exhibit 63, would you read subsection (a) and point out to us what words are added?

MR. HOLLON: (a) except as provided in paragraph (b) of this section, producer means any person who produces milk approved by a duly constituted regulatory agency for fluid consumption as Grade A milk and whose milk insert the words (or components of milk).

JUDGE CLIFTON: Thank you.

MR. VLAHOS: On page 20, in the proposed language from the

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1 proposal under the paragraph that began at near the top of the

2 page, this provision allows Cooperatives to pool milk, in the

3 quoted language the words "to the handler" there are bold and

4 underlined. Again, were not indicated by Mr. Hollon.

5   JUDGE CLIFTON: All right. On page 20 of Exhibit 63, Mr.

6 Hollon, will you read into the record, again, the subsection

7 (c) in the top half of page 20?

8   MR. HOLLON: (c) Diverted by a pool plant operator to

9 another pool plant. Milk so diverted shall be priced, insert

10 the words "to the handler" at the location of the plant to

11 which diverted; or

12   JUDGE CLIFTON: Thank you.

13   MR. VLAHOS: And I think, your Honor that from that point

14 on Mr. Hollon actually indicated each time that there was an

15 insert or a revision. He read it correctly in his testimony.

16   Oh, one final thing, I think It's final, that on page

17 25, at the bottom, carries over to page 26, there's some

18 language that is in the text as boldfaced and the, he made the

19 citation to the Federal Register, and he states emphasis added.

20 Mr. Hollon, in his testimony, literally indicated it was the

21 bottom paragraph, the bottom of page 25, started, Over the

22 years, and the language carrying over to the next page was the

23 language that was emphasized.

24   JUDGE CLIFTON: All right. Thank you. I would ask the

25 court reporter, when you are utilizing the Exhibit 63 to assist

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with punctuation and the like for Mr. Hollon's testimony, that

when you get to the bottom of page 25 and you see that the

second paragraph 9 of that citation from the final decision of

the 2010 producer-handler hearing is contained in bold and the

exhibit bold, the second of the two paragraphs.

Would that suffice with regard to that, Mr. Vlahos?

MR. VLAHOS: I think so. And I think that's most of the

things that I noticed, your Honor. Thank you for allowing the

corrections.

JUDGE CLIFTON: Thank you. I do really appreciate how

everyone is so vigilant. It's been very helpful.

MR. HILL: Brian Hill. I don't want to belabor this, I

just want to make you aware of this, on page 13, the two cites

to 1051.7(c) and what are not (c)(1) in his testimony, those

citations are not complete. They do not encompass the entirety

of what's in the Hearing Notice. I just want to make sure that

we're not changing or shortening those up.

MR. BESHORE: We're aware of that. Thank you.

JUDGE CLIFTON: Good. All right. Now, so my question was,

what will we do tomorrow? I know we'll finish Mr. Hollon's

direct testimony.

MR. BESHORE   I suggest we finish his direct, finish his

cross, and --

JUDGE CLIFTON: Doesn't that give some incentive to finish

his cross so we can go? Because you might got to go prior to

noon.

MR. ENGLISH: My cross will be very lengthy.

JUDGE CLIFTON: Mr. English says his cross will be very

lengthy. Hard to give that man a good incentive.

All right. So is there anyone who is ho9peful that Mr.

Beshore will call another witness tomorrow once we finish Mr.

Hollon's testimony about pooling? Thank you, Mr. Hollon.

Mr. Hill?

MR. HILL: Brian Hill. We do have one point to make

everyone aware of. We have one potential witness coming in on

October 14th, it could be the first day that we return from our

break. I believe that's a Wednesday. Al Zolin. So I just

want to -- No?

JUDGE CLIFTON: How do you spell his last name?

MR. HILL: Z-O-L-I-N.

THE COURT: Okay. Thank you. All right. Is there

anything else preliminary to our closing for the day? There is

nothing. We go off record at 5:03. I'll see you tomorrow

morning.

(Whereupon, the evening recess was taken.)

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BARKLEY
Court Reporters

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                                 )   ss.
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 4

 5

 6         I, MYRA A. PISH, hereby certify:

 7         I am a duly qualified Certified Shorthand

 8    Reporter, in the State of California, holder of

 9    Certificate Number CSR 11613 issued by the Court

10    Reporters Board of California and which is in full

11    force and effect.

12         I am not financially interested in this

13    action and am not a relative or employee of any

14    attorney of the parties, or of any of the parties.

15         I am the reporter that stenographically

16    recorded the testimony in the foregoing

17    proceeding and the foregoing transcript is a true

18    record of the testimony given.

19

20    Dated:  October 26, 2015

21

22

23    _____

24

25
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