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UNITED STATES DEPARTMENT OF AGRICULTURE

BEFORE THE SECRETARY OF AGRICULTURE

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

VOLUME XXVIII

TRANSCRIPT OF PROCEEDINGS

November 2, 2015

Myra A. Pish, CSR No. 11613
397091

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

Monday, November 2, 2015

9:00 a.m.

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

TRANSCRIPT OF PROCEEDINGS

VOLUME 28

Reported by:

Myra A. Pish CSR
Certificate No. 11613

APPEARANCES:

U.S. DEPARTMENT OF AGRICULTURE:	Office of the General Counsel BY: BRIAN HILL, ESQ.
U.S. DEPARTMENT OF AGRICULTURE:	ERIN TAYLOR, Dairy Product Marketing Specialist LAUREL MAY, Marketing Specialist MEREDITH FRISIUS, Marketing Specialist
CALIFORNIA DAIRIES, INC., DAIRY FARMERS OF AMERICA, INC., LAND O'LAKES, INC.:	Law Offices of Marvin Beshore BY: MARVIN BESHORE, ESQ.
DAIRY INSTITUTE OF CALIFORNIA:	Davis Wright Tremaine BY: CHIP ENGLISH, ESQ. ASHLEY VULIN, ESQ.
LEPRINO FOODS:	SUE TAYLOR, Vice-President Dairy Economics and Policy MIGUEL RAMIREZ
HILMAR CHEESE COMPANY:	JOHN VETNE JAMES DeJONG
CALIFORNIA PRODUCER HANDLERS ASSOCIATION:	Stoel Rives BY: NICOLE HANCOCK, ESQ
SELECT MILK PRODUCERS:	MILTNER LAW FIRM, INC. BY: RYAN MILTNER, ESQ.

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MONDAY, NOVEMBER 2, 2015 - - MORNING SESSION

JUDGE CLIFTON: We're back on record on November 2, 2015. It's Monday. We're in Clovis, California. This is Day 28 of the milk hearing.

My name is Jill Clifton. I'm the United States Administrative Law Judge who is assigned to take in the evidence in this case. I would like to take the appearances of others participating. I would like you to come to a microphone, it looks like you have a choice today. I would like to start with employees of the United States Department of Agriculture, and have them be followed by teams of proponents and opponents.

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

MS. MAY: Good morning, Laurel May, USDA AMS Dairy Program.

MS. TAYLOR: Good morning, Erin Taylor, USDA Dairy Programs.

MR. SCHAEFER: Henry Schaefer, H-E-N-R-Y, S-C-H-A-E-F-E-R, Agricultural Economist for the Upper Midwest Milk Marketing Order Federal Order 30, on detail to USDA Dairy Programs.

MS. SWENSON: Good morning, Virgil Swenson, V-I-R-G-I-L, S-W-E-N-S-O-N, Assistant Market Administrator with the Central Federal Order and on detail with AMS USDA Dairy Program.

MS. FRISIUS: Good morning, Meredith Frisius,

F-R-I-S-I-U-S, and I'm here with Dairy Programs.

MR. HILL: Good morning, my name is Brian B-R-I-A-N, H-I-L-L, with the Office of the General Counsel.

MR. BESHORE: Good morning, Marvin Beshore, M-A-R-V-I-N, B-E-S-H-O-R-E. Counsel for the Proponents of Proposal Number 1, California Dairies, Inc., Dairy Farmers of America, Inc., and Land O'Lakes, Inc.

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

MR. ERBA: Eric Erba, E-R-I-C, E-R-B-A, I'm with California Dairies, Inc.

MR. JABLONSKI: Gary, G-A-R-Y, Jablonski, J-A-B-L-O-N-S-K-I, Consultant for the Cooperatives.

MR. ENGLISH: Good morning, your Honor. Chip English C-H-I-P, E-N-G-L-I-S-H, I am with the law firm of Davis, Wright Tremaine, with my principal office in Washington DC, and I am here on behalf of Proponents of Proposal 2, the Dairy Institute of California.

MS. VULIN: Ashley Vulin, A-S-H-L-E-Y, V -- as in Victor -- U-L-I-N, also co-counsel for the Dairy Institute of California.

DR. SCHIEK: Good morning, William Schiek, S-C-H-I-E-K, Economist with the Dairy Institute of California, Proponents of Proposal 2.

MR. FISH: Good morning, Patrick Fish, F-I-S-H, I work for Saputo, USA.

MR. DeJONG: James DeJong, D-e, J-O-N-G, Dairy Policy Economic Analyst for Hilmar Cheese Company, farmer-owned manufacturer of cheese, whey, and milk powder.

MS. TAYLOR: Good morning, Sue Taylor with Leprino Foods, L-E-P-R-I-N-O.

MR. BRITT: Good morning, Mkulima Britt with Clover Stornetta Farms. Mkulima is M-K-U-L-I-M-A, Britt, B-R-I-T-T, Clover, C-L-O-V-E-R, Stornetta, S-T-O-R-N-E-T-T-A, Farms.

JUDGE CLIFTON: Come back to the microphone, if you would. Please tell me again how to say your name. I have got it down.

MR. BRITT: Mkulima, so you actually pronounce the M, and it's M-K-U-L-I-M-A.

JUDGE CLIFTON: Thank you so much.

MR. ZOLIN: Alan Zolin, A-L-A-N, Z-O-L-I-N, representing Hilmar Cheese.

MR. VETNE: John Vetne, also a representative for Hilmar Cheese.

MR. RAMIREZ: Miguel Ramirez with Leprino Foods.

MS. HANCOCK: Nicole Hancock with Stoel Rives, representing the California Producer Handlers Association and Ponderosa Dairy.

MR. VANDENHEUVEL: Rob Vandenheuvel, V-A-N-D-E-N-H-E-U-V-E-L, here with Milk Producers Council.

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

JUDGE CLIFTON: Is there anyone else who would like to come forward and be recognized who has not yet come to the podium? I see no one.

Let us proceed with preliminary matters and announcements. I would like to begin with those from employees of the United States Department of Agriculture.

MS. MAY: Good morning, Laurel May with USDA. This is awkward. Good morning, again. We have the copier out in the little anteroom here in the corner if you need to use that. And as you know, there's no food and refreshments here in this room. But otherwise, we're glad to see all of you. I have got one kudo on comfortable seating, so I think that's something that we'll all enjoy today, even if everything else is a little bit rough, but we appreciate your patience and indulgence.

The court reporter is doing transcripts, as always, and they are available approximately two weeks after each hearing week on our AMS dairy website.

Tyler is once again doing an audio feed for us and you can access that at www.ams.usda.gov/live.

What else do you need to know? So last week I think we ended with Mr. Blaufuss talking to us about 7(a) plants; is that correct? And today I believe we're going to begin with Mr. Britt from Clover Stornetta, and then Chip is going to fill us in on the rest of the agenda. And that's all I know about.

JUDGE CLIFTON: That's a lot. Thank you. For those of you

who aren't in the room, the comments about the comfortable seats are because we are in the auditorium today. This is at the Clovis Veterans Memorial District Building, where we have been so nicely accommodated, and it's a little awkward because people don't have tables on which to set their laptops and take their notes and so on, they are in auditorium seating, so it is not ideal for working, but we're grateful for the space.

All right. Mr. English, let us hear what you have in mind for evidence for today and beyond, if you wish.

MR. ENGLISH: Chip English. Good morning again, your Honor. So here's where I think we're going today, and I will let you know other things, and we had conversations with various parties over the weekend.

We are going to start with Mr. Britt for Clover Stornetta. Following Mr. Britt, we have Pat Fish from Saputo and Dr. Schiek are going to propose testifying as a panel on pricing issues. We expect that testimony to be substantive and take awhile.

At 11:00 a.m., if the weather doesn't prevent it, Mr. Dolan from Driftwood Dairy is supposed to land. We are not anticipating putting him on until after lunch, and of course, we hope he gets here. In my experience with Fresno, rain like this is like snow in DC. So those are our witnesses for today. As I mentioned off the record to your Honor and to a few other participants, we had some technical difficulties over the

weekend, the Dairy Institute of California's e-mail system went down and actually we had some trouble with the Internet at the hotel this morning as well, so we had some production issues. But my anticipation is that Mr. Fish and Dr. Schiek will, with the other witnesses, fill the day regardless.

I have given assurances to Mr. Beshore, because Mr. Vlahos won't be back until Thursday, that quota won't be discussed until Thursday. That's an assurance I would give based upon the request regardless, but as it turns out, I don't think that was an assurance that was difficult to give, either.

I did inform participants that with two exceptions for next week, and this, of course, could be truly optimistic, but it is theoretically possible that we could be done with most of our case-in-chief by Thursday evening or Friday morning. And so I have contacted the other participants and let them know that. I'll let Ms. Hancock speak for himself, but I understand that if necessary, they would be prepared to go forward starting Friday.

The two issues that will not be ready this week are transportation credits. You are going to hear three times from Mr. Blaufuss anyway this week, once on Class I pricing, once on fortification allowance, and once as a panel on producer-handler. And so with all of that going on, the transportation credit piece just won't be ready until next week. And the other witness that could come next week, and he

may not come back at all, is Mr. Suever for Hood. So that's, that's our anticipation. And again, I may be overly optimistic, but I wanted to make sure that the other participants knew where we were so that we wouldn't have a gap on Friday if it's true that we're done with our most of our case-in-chief on Thursday.

JUDGE CLIFTON: Would you help me with the spelling of the gentleman who is flying in today?

MR. ENGLISH: Sure it's Jim, J-I-M, Dolan, D-O-L-A-N.

JUDGE CLIFTON: And what is the name of his dairy that he --

MR. ENGLISH: Driftwood, D-R-I-F-T-W-O-O-D.

JUDGE CLIFTON: Good. I think you told us about that but I don't look at my old notes.

MR. ENGLISH: That's part of what we said last week, you right, your Honor, and I didn't have the name of Mr. Dolan at the time.

JUDGE CLIFTON: Very good,

MR. ENGLISH: And so that's what we have. We may or may not have dairy farmers, obviously we will, as always, as possible, accede the floor to them.

JUDGE CLIFTON: Excellent. Are there any dairy farmers here now who have not yet come to the podium? I see none.

All right. Are there any other preliminary issues? Does anybody else want to be heard on procedure, timetable,

questions? I really can't go forward with the evidence until we have some comment about the World Series.

MR. SWENSON: Do you want me to lead a Royals cheer? I think the people in Kansas City are very proud today of their Royals, so thank you for bringing that up, your Honor.

JUDGE CLIFTON: And I love your Royals shirt.

MR. SWENSON: I brought it hopeful that I would have a chance to wear it.

JUDGE CLIFTON: I think we did see, I know everybody works hard who plays professional ball, but we really did see the results of continuous hard work and never give up, never give up, never give up. It was pretty inspiring, I thought.

All right. Let's go forward with the evidence, now I'm comfortable. Mr. Britt, you may be seated. I'll be swearing you in in a seated position. Ms. Frisius, is this new exhibit going to be Exhibit 121?

MS. FRISIUS: It is.

(Thereafter, Exhibit Number 121, was marked for identification.)

JUDGE CLIFTON: Thank you. Exhibits are being distributed. If you don't have one and want one, please raise your hand. Exhibit 121. Thank you.

Mr. Britt, I'm going to swear you in now. Would you raise your right hand, please?

Do you solemnly swear or affirm under penalty of

perjury that the evidence you will present will be the truth?

MR. BRITT: I do.

JUDGE CLIFTON: Thank you. I would like you to state and spell your name again, even though you just did.

MR. BRITT: First name is Mkulima, M-K-U-L-I-M-A, last name is Britt, B-R-I-T-T.

JUDGE CLIFTON: Mr. English, you may proceed.

DIRECT EXAMINATION

BY MR. ENGLISH:

Q. Mr. Britt, I'll have additional questions when you are finished, but if you would read your statement, and read it slowly enough for the court reporter to take it all down. Please read your statement that is Exhibit 121.

A. Thank you.

Good morning. My name is Mkulima Britt and I am here to testify on behalf of Clover Stornetta Farms, Incorporated, located in Petaluma, California. Petaluma is P-E-T-A-L-U-M-A. Clover Stornetta is a member of the Dairy Institute, and we generally support the Dairy Institute Proposal 2 for the establishment of a Federal Milk Marketing Order, FMMO, in California. I'm here to comment specifically on the importance of maintaining the exempt producer-handler limit of 3 million pounds per month in the California FMMO as it exists in all other Federal Orders.

/////

Personal Background

I'm a board director and part of the third generation family owners of Clover Stornetta Farms. Clover Stornetta was founded in 1977 by my grandfather Gene Benedetti, with a small group of partners, including his two sons. Benedetti, B-E-N-E-D-E-T-T-I. My current role is the Chief Sourcing Officer, and I have been an employee at Clover for over 19 years. My current responsibilities include oversight of sourcing for all raw ingredients, packaging, and finished goods for all items that are manufactured or sold by Clover Stornetta Farms, CSF. Some of my prior roles within the company include Chief Financial Officer, Vice President of Finance and Operations, and Distribution Route Manager.

Actually, my career experience in dairy dates back over 30 years, when as a young teen, I would scoop ice cream for Clover at the local fairs. During this time, I also had the distinct pleasure of donning the costume of our famous mascot "Clo the Cow." Clo always enjoyed taking pictures with her many fans, but she hated it having her tail pulled. As I got to high school, the summer work became more intense and I became part of the summer relief team working in full-time shifts at the Clover distribution facility loading milk and ice cream trucks. My favorite shift was the 3 a.m. start in the ice cream freezer. No coffee needed to stay awake.

After graduating high school, I chose to leave

California and attend MIT, the Massachusetts Institute of Technology, to study engineering with the idea that I would not return to Clover or the dairy industry. After two short years in Boston, I realized that an engineering career was not for me and I left MIT to find my true passion. I returned to California, worked back at Clover for a time, and then moved to Sacramento to pursue an opportunity in the wine and spirits industry. As much as I enjoyed the wine and spirits industry, after working almost four years in sales for a national distributor, I found Clover and the opportunity to work in the family business pulling me back, and I was ready embrace the dairy industry for good. As I returned to Clover, I also returned to Sonoma State University to complete my BA degree in Business Marketing.

Company Background

In the early 1900's, the Petaluma Cooperative Creamery began distributing Clover brand dairy products to stores and residential customers in the Petaluma, California area. As Petaluma and the rest of Sonoma and Marin counties continued to grow, so did the co-op. Clover brand products began showing up in nearly every store and household in the North Bay. In 1969, Clo the cow first appeared as the official mascot for Clover brand products, and has graced billboards in Northern California ever since, with her magnificent smile and witty puns.

In 1975, disaster hit. The biggest fire the town of Petaluma had ever seen struck the co-op, destroying processing and bottling operations and the cooler. Clover Stornetta Farms, Incorporated, was born from the ashes of that devastating fire. Following a decision by the co-op not to rebuild the facility, my grandfather Gene Benedetti, his team of partners, purchased the wholesale distribution business from the Cal Co-op and Stornetta's Dairy in Sonoma, California in August of 1977. In 1984, the company moved and consolidated all of its distribution back to Petaluma. In June 1991, Clover Stornetta opened a new fluid milk processing facility at the Petaluma location. With the opening of the new bottling facility, Clover was able to abandon the old Stornetta's bottling facility in Sonoma, California.

Even with a new bottling plant, the dairy market in the Bay Area of Northern California remained very competitive in the early 1990's. The owners of Clover knew they had to differentiate from a commodity product in order to continue successfully. Clover began to source milk directly from a small group of select producers. Having its own pool of milk allowed Clover to think differently and to respond to an increasingly demanding and educated consumer base.

In 1994, Clover Stornetta Farms established the North Coast Excellence Certified (NCEC) program, developing some of the most rigorous quality standards in the dairy industry.

I have as an example in parentheses, (Somatic Cell Count, SCC - 160,000 average). At the time, Clover was the first dairy processor in the US to certify all of its producers -- should be did instead of do, did not use the controversial synthetic growth hormone, rBST.

JUDGE CLIFTON: Ms. Frisius, do you see where he's changed the word on page 2, second paragraph from the bottom, the last line? We'll be striking the word "do" and inserting the word "did".

MS. FRISIUS: Yes.

JUDGE CLIFTON: Thank you.

MR. BRITT: And I should clarify, it is still "do" as well, but in this context, "did" is the appropriate.

Clover works together with the dairy families to govern and set goals for the NCEC program. Among its tasks are defining sustainable agriculture and identifying a new requirement the dairies are to meet each year in order to enhance sustainable agriculture practices and continue participating in the program. Clover pays our NCEC dairy producers a premium to produce milk to meet these rigorous standards. Each dairy is also visited at least once a year and judged on its appearance and ranch maintenance practices.

Clover was one of the early leaders in the organic fluid milk industry and became certified organic in 1999. All of Clover's conventional milk standards apply to its organic

milk and dairies as well. Clover's organic sales have increased almost every year and now account for over 50 percent of its volume across all products.

In November 2000, Clover Stornetta Farms became the first and only dairy in the US to be certified by the American Humane Association (AHA) for their animal welfare fair program, American Humane Certified.

This annual certification by the AHA means that one may enjoy Clover products knowing that the lives of our family dairy cows are:

* Free to live and grow in a humane environment under conditions and care that limit stress.
* Free to enjoy a healthy life benefitting from injury and disease prevention and rapid diagnoses and treatment.
* Free to readily access fresh water and a diet that maintains full health and vigor.
* Free to express normal behaviors and live in an appropriate and comfortable environment that includes sufficient space, proper facilities, shelter, a resting area, and the company of its own kind.

Clover Stornetta currently distributes its products primarily throughout Northern California but also, on a smaller scale, in parts of Southern California and in neighboring

western states, including Nevada, Arizona, and Hawaii. Clover Stornetta currently has 29 producers under contract who ship both conventional and organic milk to our plant. Our producers are located primarily in Sonoma, Marin, and Humboldt Counties. Clover sells a full line of both conventional and organic fluid, byproducts, butter, cheese, and ice cream through our distribution areas -- excuse me -- throughout our distribution areas.

Market Challenges

While many of the Clover contracted shippers hold quota, Clover Stornetta does not own any of the dairies or cows and is not a PD, producer-distributor. As a non-exempt fluid milk processor, Clover must pay into the California pool on a monthly basis for all pounds of product used at the reported class values. This places Clover at a significant disadvantage compared to the exempt producer-handlers that are allowed to not account to the pool on the exempt quota portion (volume) that they bring into their bottling plant from their own operations, since they don't have any pool obligation (or credit) on that volume. The PH, producer-handler, pricing advantage depends on how high the regulated Class 1 price that you have to pay is compared to the quota price on that milk for which the exempt PD does not need to report.

That margin plays several roles in the exempt producer-handler's ability to beat regulated handlers in the

market. First and obviously, fluid sales to wholesale customers. Next, that margin is used to secure multiple customers. They can be shifted or segmented from a prospective customer to prospective customer to gain market. Once customers change suppliers, it's very hard to get them back. Exempt producer-handlers may use that margin advantage across other lines of products, cultured, frozen, and have advantages in gaining market beyond fluid milk.

Clover has been successfully building a premium brand ID by taking risks and listening to our customers. We still face these real challenges to be competitive against handlers who enjoy a regulatory advantage. Clover should be able to market products on a level playing field. The USDA has dealt with the issue, with this issue. Clover supports uniform treatment of handlers across California and as they are regulated across the U.S.

Thank you for allowing me to testify today. I'm happy to answer any questions.

BY MR. ENGLISH:

Q. Thank you, sir, Chip English.

So let's start with a few questions more about your family-owned company. How many employees does Clover Stornetta have in all aspect of its business?

A. About 235 employees, both full and part time.

Q. And let's discuss, this is the first time we have

discussed the geographic market in Northern California, and, you know, obviously people might know their geography, but for purposes of dairy marketing, could you describe a little bit about the Northern California market and your relationship to it in Petaluma?

A. Yes. Petaluma is located about 45 miles due north of San Francisco. Petaluma is in the southern portion of Sonoma County. Sonoma County is bordered by Marin County to the south, and Napa County to the east.

Our general marketing area consists of the greater Bay Area, which includes the North Bay, which is generally considered Napa, Sonoma, and Marin Counties, as well as the East Bay Counties and South Bay Counties and San Francisco City.

Q. Now, in your testimony you referred to having sales in Nevada, Arizona, and Hawaii. Are those, do you characterize those as conventional milk sales or primarily organic sales?

A. Those out-of-state sales are primarily organic. And I should also note that most often those sales are done through other distributors or distributor networks, and not direct sales from our company.

Q. Approximately how many distributors does Clover Stornetta support through its business?

A. We have over 50 distributors. They range in size from single truck operators, one-person businesses, to rather large

distributors that have multiple facilities in multiple states.

Q. But a number of those smaller ones would also be small businesses with fewer than 500 employees?

A. Yes, I believe that many of them would be.

Q. Do you regularly purchase out-of-state milk?

A. We do not regularly purchase, but it does happen on occasion, and it is typically organic milk, just due to the nature of the organic milk market and the scarcity of that product at times.

Q. And with an organic milk, do you find it necessary to balance your own supplies?

A. Yes.

Q. And how do you do that?

A. We do that in a number of different ways. We will toll dry skim milk for powder, we will also balance into butter, and then we work with many other smaller manufacturers, including cheese manufacturers, throughout Northern California to take our milk and turn it into other products, byproducts, cheese, ice cream, yogurt, etcetera.

Q. Is it your experience that those entities that are processing into cheese have whey processing facilities?

A. Most of them do not.

Q. Okay. You used a phrase that I think I understand, but the record may not reflect, and not everybody in the room may know. You said I think toll dry?

A. Yes.

Q. So what did you mean by the term toll dry?

A. Toll drying is the process by where we will load out a tanker of skim milk from our facility, we will send it to a drying facility. We maintain ownership of that product as it goes through that plant and is dried and turned into organic nonfat dry milk powder.

Q. Now, given I have a, I'm lucky enough to have an office in San Francisco, I'm not a member of the California Bar, but I come out to San Francisco quite often, and obviously I'm aware of residential housing issues, developmental issues. How, if at all, are those impacting your supply of milk?

A. Supply in the North Bay and the Bay Area is, I would say, similar to what has happened over the previous years in the Southern California area, where as population densities grow into rural areas, it pushes out or dries up the land values for the dairy farmers. Not to mention those grape growers, or similar to the nut growers in the Central Valley, that will also drive up land prices. So it makes is very hard for the dairy farmers to remain in business and remain competitive when there are those types of other uses competing for their land. Not to mention the congestion and other complications that come with these rising populations, just makes it harder for the dairies, and frankly, for other businesses to do business as well.

Q. So how many farmers, dairy farmers are there in the region in which you are located?

A. There is approximately 82, I believe, in Sonoma and Marin County, and many of those dairies, in order to remain viable and competitive, have transitioned to organic. All of them used to be conventional at one point in time. And there used to be, back in the days of the co-op, where Clover originally started, the Petaluma co-op, its membership was at 350 or so dairies, all from the surrounding Marin and Sonoma Counties at one point in time.

Q. So what challenges does that pose for your conventional milk supply going forward?

A. So as our conventional dairies and other conventional dairies either go out of business or convert to organic, it places us in a really tough position to find new conventional milk to replace those that have converted or have gone out of business in the same area. So we are forced to look for conventional sources further and further away from the North Bay area.

Q. So does that give you concerns going forward of, say, how you are going to get that milk supply into your plant?

A. Yes.

Q. Okay.

A. As well as the distance that it has to come from.

Q. Your Honor, I note on page 3 of his testimony at the

top, and if I had spell checked it, my spell check would have caught it because I have eliminated the word diary or diaries in my -- but he read it correctly as dairies on the second line. But as I think many of us sometimes type diary or diaries, he has diaries. I would ask that that be corrected to be as he read and be dairies.

JUDGE CLIFTON: Yes, Ms. Frisius, on page 3, the second line, last word, we'll strike "diaries" and insert "dairies". I myself have found that I am writing it wrong occasionally.

MR. ENGLISH: At this time I move admission of Exhibit 121.

JUDGE CLIFTON: Does anyone wish to question Mr. Britt before determining whether you have any objection to the admission into evidence of Exhibit 121? No one. Are there any objections to the admission into evidence of Exhibit 121? There are none. Exhibit 121 is admitted into evidence.

(Thereafter, Exhibit Number 121, was received into evidence.)

MR. ENGLISH: And the witness is available for further examination.

JUDGE CLIFTON: Thank you, Mr. English. Who will begin with questions for Mr. Britt? Ms. Hancock.

CROSS-EXAMINATION

BY MS. HANCOCK:

Q. Nicole Hancock for the California Producer Handlers Association.

Mr. Britt, you have your business Clover Stornetta, has been part of the California Dairy Industry since, I guess before 1969; is that right?

A. Clover Stornetta is 1977, was formed in 1977. Both the Clover brand name and the Stornetta brand name were in existence prior to 1977.

Q. And what was the entity then? Do you know the name?

A. Clover was the brand name of the co-op in Petaluma, Stornetta was the brand name of Stornetta Dairy located in Sonoma.

Q. I see. So through its predecessor, at least through the brand name at that time, and then the entity wasn't formed until you said 1977?

A. 1977.

Q. 1977, okay. So at least since 1977, Clover Stornetta has been part of the California State Order system?

A. Yes.

Q. And you have operated within the California State Order system or the Pooling Act that's been in place since that time?

A. Yes.

Q. And I think that would have been right before there was the first amendment to the Pooling Act in 1978, and then there was another amendment that was done in the 1990's, early 1990's, so you would have operated through all of these changes as well?

A. Yes.

Q. Okay. Have you ever participated in any hearings with the CDFA?

A. I have.

Q. Which hearings have you participated in?

A. It's been probably just within the last ten years, so none prior.

Q. Do you know what they were pertaining to?

A. Transportation allowances and credits. I have attended several others. I don't know that I have participated in any others, besides those on transportation allowances and credits.

Q. Okay. And what was your participation in the one on transportation allowances and credits?

A. To comment on the, on those rates and how they affected our business.

Q. And what was your position at the time, how did they affect your business?

A. Those hearings are regularly held to adjust rates as conditions change throughout the state. And so my position at the time was probably either as Vice President of Finance and Operations, or perhaps the CFO, to comment on the impact of those changes to our business.

Q. And were you asking for an increase, decrease or stay the same?

A. Typically we would ask for increases if they were

merited. Again, we source directly from dairies in our local area, so frequently they, we are advocates on their behalf.

Q. Okay. So you were asking for an increase so that the producers that you sourced from from a farther distance away could receive additional compensation or be incentivized to bring their milk to you?

A. We would ask for increases to be in line with increases in other areas as prices of transportation rose.

Q. Have you ever been involved in any type of legislative amendments or request for legislative amendments to the Pooling Act?

A. I have not.

Q. Have you ever made any reports to the CDFA of any concerns that you had with the way that the Pooling Act was operated?

A. I have not.

Q. Have you ever complained to the CDFA or your legislators or anyone about any type of disorderly market conditions pertaining to how the quota system or the exempt quota operated with in the Pooling Act?

A. I have not personally, but I believe those issues have been pointed out in the past by predecessors at Clover.

Q. And do you know issues were pointed out?

A. I believe there were comments made on the orderly or disorderly marketing of milk in our area or as they would

affect Clover's business.

Q. And do you know who those comments, to whom those comments were made?

A. I don't.

Q. Do you know who made those comments on behalf of your entity?

A. You know, I would have to go back and check records, but I believe they were made most likely by one of the predecessors, CEO's, Mr. Gary Imm.

Q. Okay. As you sit here right now, we don't have the details behind that information?

A. I do not.

Q. Okay.

JUDGE CLIFTON: If I could just interject, how does Mr. Gary Imm spell his last name?

MR. BRITT: I-M-M.

JUDGE CLIFTON: I-M-M, thank you.

BY MS. HANCOCK:

Q. And are you aware of the difference between an Option 66 producer-handlers exemption and the Option 70 producer-handler exempt quota?

A. Yes.

Q. What is your understanding of the difference?

A. So I believe Option 66 producer-handlers, strike that. I will say no. I'll change my answer.

Q. Okay. So in your testimony when you are discussing the affect that the producer-handlers have had on your business, it could be either the Option 66 or the Option 70, depending on how those operate?

A. Yes.

Q. You are not sure which one would have an impact in which way on your business?

A. I have thoughts as to which ones are impacting our business more but I am not going to disclose those specifics at this time.

Q. Okay. You mentioned distribution networks. And I'm just curious, I don't know how that actually works for your business. Can you help me understand how that works?

A. Yes. When talking about out-of-state distribution or distributor, there is types of distributors that we have for the business, so we'll sell product to a distributor like UNFI, which is a national based natural organics product distributor, and so we will sell product to them in California, and that product, once it's sold, once we sell our product to them, we, it could go any number of different places, and they have multiple regions that they serve.

Q. So do you use a distribution network just for your out-of-state shipments or do you use a distributor network for in-state sales as well?

A. Both in-state and out-of-state.

Q. Okay. And do you sell it to them so that, maybe they get some kind of like a volume discount and then they just become the tentacles to additional consumer outlets? Is that how that works?

A. It can -- I'm not going to comment on the discount, but we can sell it to them and they can sell it to other outlets.

Q. Okay. So it gives you greater market distribution opportunities because they touch many more points than you would touch on your own?

A. In some cases, yes.

Q. And you said you have 50 distribution networks; is that right?

A. 50 distribution companies. Some of those are individuals and some of them are larger companies.

Q. Okay. And did you identify what products it is that you are selling?

A. I don't believe I did.

Q. Can you tell me what they are?

A. Do you mean specifically to the distributors?

Q. Well, what products are you manufacturing and distributing?

A. We manufacture fluid products at our processing facility, and then we have other products manufactured at other facilities in Northern California. Those include byproducts, ice cream, cheeses, yogurts, etcetera.

Q. What's the etcetera?

A. Kefir, K-E-F-I-R, buttermilk, nonfat organic powder.

Q. And what percentage of your, what percentage are fluid milk sales?

A. Over 50 percent.

Q. And is that all organic?

A. No.

Q. What percentage is organic?

A. It's approximately 50 percent or just over 50 percent organic, and 50, under 50 percent conventional.

Q. Okay. Thank you. That's all I have.

JUDGE CLIFTON: Who next has questions for Mr. Britt? Mr. Beshore?

CROSS-EXAMINATION

BY MR. BESHORE:

Q. Marvin Beshore.

Good morning, Mr. Britt.

A. Good morning.

Q. I represent the dairy cooperatives that have brought Proposal 1 for this hearing, which is CDI, DFA, and Land O'Lakes, and I just have a couple of questions for you. Are your, is a hundred percent of your milk supply through the 29 dairy farms that are contracted with you?

A. No.

Q. Do you purchase supplemental supplies, I know you have

some organic supplies coming in from further distances, do you purchase any supplemental supplies from cooperatives or from other sources than your independent farms?

A. Yes, we do.

Q. What portion of your supply would come from other sources?

A. The, I don't know that specifically, but one of the key ingredients that we purchase from other sources is condensed skim, so we can fortify on the conventional side. On the organic side, we use the organic nonfat dry milk powder.

Q. Okay. Do you purchase any farm milk raw, raw milk from other sources, other than the organic supplies from distance?

A. We do at times.

Q. Okay. When you purchase from other sources, do you require the same certifications that you have indicated for your own producers?

A. We do as much as we can get them. There are certain times when that type of supply simply isn't available and we, in order to meet the market demands, have to purchase other milk.

Q. Sure. So your 29 producers, I take it, that some of them are organic and some are conventional farms; is that correct?

A. Yes.

Q. Okay. Are all of them, do all of them, whether organic

or conventional, have the Clover certification that the North Coast Excellent Certified Certification that you mentioned on page 2 of your testimony?

A. All of those 29 do.

Q. Okay. And do all of them also have certification through the American Humane Association?

A. Yes.

Q. So I would -- and you pay your producers a premium in order to obtain a milk supply with all those certifications and production requirements, I assume?

A. Yes, we do.

Q. Is it fair to say, then, that your products are sold at a premium in the marketplace?

A. Yes, they are, generally.

Q. Okay. Do you, you mentioned that a number of your producers, do you know what portion of the supply of milk from your 29 producers is under the California quota program?

A. I do not, off the top of my head.

Q. Okay. For those producers that, but you -- you have testified that some of your producers do have quota, you are quite aware of that?

A. Yes.

Q. And that's -- that's helpful to them, would it be your understanding it is helpful to them in maintaining their production and capacities in your region?

A. Yes, I believe depending on the producer, that they view it differently. So the most common difference is those that are organic, I think, because of the difference in organic pay prices to conventional prices have a different viewpoint on their quota holdings as do the conventional shippers.

Q. They don't need it quite as much as the conventional shippers?

A. Correct.

Q. Are you supportive of the producer quota program in California to the extent that it's certainly helpful to your conventional producers?

A. I'm supportive of the, we are supportive of the producers' rights to have quota, and the intent of my testimony was not to, you know, exclude those rights to have quota for the, for those producers.

Q. Do you understand, well, let me just back up. There's been testimony from the, from the Economists at the USDA in Washington, that if Proposal 1 were adopted, it would have the effect of increasing prices for all dairy farmers in California, including, of course, those that supply your dairy. Would you be supportive of that?

A. As I mentioned in my testimony, we are generally supportive of the Dairy Institute Proposal Number 2, but I'm certainly also supportive of the rights of all of our shippers to make the decision on whether they want to adopt whatever

Federal Order is promulgated here.

Q. Okay. And you would -- you would understand that they might be supportive of a program that would bring California dairy farm prices more in line with those around the country?

A. Yes.

Q. I think that's all I have. Thank you very much, Mr. Britt.

A. You're welcome.

JUDGE CLIFTON: Mr. Britt, you identified an organic based, natural and organic based distributor by its initials, and I want to make sure I got the initials right. I wrote down UNFI.

MR. BRITT: That is correct, United Natural Foods, Incorporated.

JUDGE CLIFTON: Thank you. Who next has questions for Mr. Britt? Ms. Taylor?

CROSS-EXAMINATION

BY MS. TAYLOR:

Q. Good morning, Mr. Britt.

A. Good morning.

Q. Erin Taylor with USDA. I want to thank you on behalf of the Department for coming here today and testifying and giving your viewpoint from your company. We appreciate it.

A. Thank you.

Q. Just a few questions. A little bit more about your business, and hopefully I didn't overlook it, but how many

plants do you all own?

A. Just one.

Q. And that's the one in Petaluma?

A. Correct.

Q. Is that primarily fluid processing?

A. Yes.

Q. So where is all your manufacturing done at? Through that plant, too, or you have a --

A. We work with several other plants in Northern California to get the rest of the products made.

Q. Okay. And on your producer suppliers, we did discuss, Mr. English brought up the number of employees you all have in your company, but with your producer suppliers, do you think most of them would fall, or a portion of them would fall under the small business definition as we define it as for producer, $750,000 of gross revenue a year?

A. I do not believe so. I believe some of the distributors may, but not the producers.

Q. Okay. I just want to make sure we capture your main points of why you support the producer-handler exemption of 3 million pounds.

You describe the margin that you think a producer-handler currently in California with exempt quota, their margin benefit if I would say, is the difference between the Class 1 price that all fluid processors must pay for their

fluid milk that they use, and then the announced quota price, which would be what that processor would then pay their producer, so that difference is what you deem the producer-handler advantage?

A. Yes.

Q. Okay. And that is what you deem is what they can use to gain more fluid customers if they so choose, or to use that money to actually gain customers in any of their other product lines, manufacturing product lines?

A. Yes.

Q. Okay. Has your company, do you believe your company has lost a customer to a producer-handler in California because of that advantage that you deemed?

A. Yes, we have had cases where, and I can't disclose names or specific --

Q. Sure. No details.

A. -- situations, but yeah, we have had cases where we have lost long-term customers.

Q. Okay. I had one other question. You had a conversation with Mr. English about balancing. Can you just go into that a little bit more? You have to purchase more out-of-state organic supplies, I guess, to meet your customer contracts?

A. Part of the model that we have is obviously, relies on a pool of both conventional and organic milk that has certain

characteristics, certain values that we have traded up to to differentiate in the marketplace. So we try as much as possible to have all of our supply be, have those same characteristics, and that leaves us with excess supply at times, depending on, you know, how the markets are reacting. And so when we do have excess supply, whether it's on the organic or the conventional side, and we have, you know, paid premiums for that product, we try not to, or try to lose the least amount of premium as possible. And so we will, for the organic product, for example, will balance so we don't lose that premium into organic skim milk or nonfat dry milk powder and butter.

Q. And you said you fortify with organic nonfat dry milk powder for your fluid products, so I --

A. Correct.

Q. Some of that gets used, then?

A. Yes.

Q. Okay.

A. It can be stored and used for fortifying in the future.

Q. One last question. On your fluid sales, I know in here it talks about, I don't know if it was just for your fluid sales or manufacturing that you had a little bit more than half is organic. And the remainder, I didn't know if the breakdown was for fluid sales or was for all of your product lines?

A. As it happens, it's -- it actually applies to both

fluid sales and all product that, as organic sales have been increasing along with trends, that we sell a bit more both organic milk fluid, as well as other products, byproducts, cheeses, butter, and then just a little bit less on the conventional side.

Q. Okay. I think that's it. Thank you very much.

JUDGE CLIFTON: Mr. Britt, it appears to me that your business is quite innovative and quite receptive to customer concerns. How do you find out what those are?

MR. BRITT: We have frequent and direct feedback from our consumers. A lot of it comes via the web and other outreach that we have with our consumers, and we listen to them. And just one, in addition to the program aspects that we have built on both the organic and conventional side, I'll give one brief example. And that is, about six or seven years ago we got a new half gallon bottling machine. That half gallon bottling machine included the ability to put a fitment, a cap, in the top of all of our paper half gallons, which was the way the entire, especially the fresh organic market, was going. And so we put that cap in and got the new product, the new package out to the consumer base, and our consumers in the Bay Area got back to us right away and very vocally and said, "Well, we can't use your paper half gallon for our recycling program anymore or our curbside compost program anymore. So shortly after we had spent extra money to get this new machine in, we

took the fitment cap off, and haven't looked back.

JUDGE CLIFTON: I love that cap. That's the, you just turn it, and then you have got the spout to pour the milk, and you don't have to fold out the corners of the top of the carton.

MR. BRITT: Yes, that's -- that's what we thought consumers wanted, but as it turns out they, in the Bay Area anyway or in our area, the consumers felt that the added inputs were not necessary, as well as particularly the ones that had composting, curbside composting could not use it anymore without cutting out the fitment for the composting. So we -- we got rid of the added inputs and received only positive feedback thereafter.

JUDGE CLIFTON: Very interesting. There's a lot involved in your business, I'm well aware. What would you like to add, if anything, before you step down?

MR. BRITT: Nothing at this time. Thank you all for your time.

JUDGE CLIFTON: Ms. Hancock, yes.

CROSS-EXAMINATION

BY MS. HANCOCK:

Q. Mr. Britt, Ms. Taylor asked you about whether you had lost any sales based on what you perceived to be the advantage that was given to producer-handlers. And is it my understanding you are not willing to share with us which customer it is that you lost the sales to?

A. Correct.

Q. And why would that be?

A. It's actually been several of the producer-handlers over the course of time that we have had instances of losing customers. So I'm, again, can't name specific instances due to confidentiality.

Q. The name of the customer would be confidential to you?

A. Yes.

Q. Okay. And would these be customers that were the recipients of sales through your distribution network or through your direct sales?

A. In some cases they have been distributors themselves, food service distributors. In other cases they have been institutional customers.

Q. And --

A. Meaning restaurants or schools.

Q. Do you know which producer-handlers you lost sales to?

A. Yes. But again, because of the confidential nature of the some of those bids, I'm not going to disclose them.

Q. Well, the name of the producer-handlers wouldn't be confidential, would it?

A. Because of the bid, the bid process is confidential, so I'm not going to disclose that at this time.

Q. So if the bid process is confidential, does that mean that you don't know who it is obtains the customer?

A. Ultimately we do because we will see their trucks making deliveries or see that product in those accounts.

Q. Do you get to see what their bid price is?

A. No.

Q. So you don't know what amounts they bid, you just know that you didn't win the bid to the some customers?

A. Correct.

Q. And do you know how many times this has happened?

A. Several.

Q. What's several?

A. Again, it's -- so I can only speak to recent history, but it's -- it's happened at least three times in the last couple years.

Q. And have you analyzed the volume of milk sales that you have lost as a result of this?

A. Do we know the volume of milk sales?

Q. Right. Have you quantified it or calculated what that is?

A. Yes. We -- yes.

Q. And what was it?

A. Again, I don't have that specifically at hand.

Q. And do you know what was the basis upon which your customers were making their selections? Was it only price driven or were there other factors that were involved as well?

A. Typically, those customers that we lost were, again,

long-standing customers that had actually paid, in some cases, a premium for our product for years, and then, again, that, you know, we ended up losing the business and believe that there were other competitive bids in there from other conventional processors as well that did not have the exempt status, and the ultimate winners were those that did.

Q. And has it been a hundred percent of the bids that you have put out there you have lost to these exempt producers?

A. No.

Q. Do you know what the percentage of the bids that you put out there is that you have lost to these producer-handlers?

A. I do not.

Q. Would it be more than ten percent of the bids that you put out you have lost to producer-handlers?

A. I'm not sure of the amount of bids. I don't necessarily review all the bids that go out, so I can't -- I can't say for certain.

Q. Okay. So you don't know what, even what percentage you would have lost to producer-handlers?

A. I can't give you a percentage right now.

Q. Okay. And so help me understand what it is that you believe is the advantage. You said it was the difference between the Class I payment and the quota premium price?

A. Uh-huh.

Q. Is that right?

A. Correct.

Q. And so that, tell me, help me do the math on that how that would work?

A. So the Class I payment and the quota price, so I believe there's been prior testimony that's calculated that amount to be somewhere in the neighborhood of 70 cents to a dollar a hundredweight.

Q. So the producer, or the distributor side, the handler side, would pay the Class I price? Is that what you are saying?

A. So our obligation is to pay the Class I price into the pool, the exempt producer-handler does not have, does not have to pay the Class I price.

Q. So the handler, if they don't have to pay the Class I price, your argument is that it gives them an advantage for the amount of the Class I price they would have otherwise been obligated to the pool they could put in their pocket and then somehow negotiate a better deal with the customers?

A. They could -- they could use that savings to redistribute in any way they chose.

Q. Okay. And, so if, for example, they paid Class I price for all the milk that they received, you believe then, that it would be neutralized with respect to the competitive advantage that the exempt quota would offer them?

A. If we were all on a level playing field.

Q. And to be on a level playing field, the producer-handlers, at least the handler side of the business, would have to pay at least Class I for the milk that they used to process into fluid milk?

A. Would pay the usage, however that product was used, whether it was Class I or Class II.

Q. And if they did that, it would be a level playing field?

A. Yes.

Q. Okay. Thank you.

JUDGE CLIFTON: Ms. Taylor?

CROSS-EXAMINATION

BY MS. TAYLOR:

Q. Erin Taylor. I knew I had one more question.

A. Yes.

Q. Just so the record, I don't think we went into how big your business is and how much you process in fluid milk a month, if you don't mind just giving us a relative estimate of that?

A. We process approximately 80,000 gallons a day, so about 25,000, or 25 million gallons annually.

Q. Thank you.

JUDGE CLIFTON: Mr. English?

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BY MR. ENGLISH:

Q. At the risk of my own witness telling me that I'm asking for confidential information, I'm going to at least -- without naming names, can you tell me geographically where some of these customers are relative to your plant that you have lost?

A. Yes. The customers are located in the San Francisco Bay Area and sometimes in our own backyard, Marin and Sonoma County.

Q. And the producer-handlers are located where?

A. Generally in the Central Valley, Modesto, Fresno.

Q. Okay. That's all I had.

JUDGE CLIFTON: Are there any other questions for Mr. Britt? I see none. Mr. Mkulima Britt, thank you so much for appearing here and sharing with us your knowledge.

MR. BRITT: Thank you, your Honor. Good pronunciation.

JUDGE CLIFTON: Thank you. I would invite our next witnesses to come forward and be seated. For those of you listening in on the audio feed, we're going to have a panel of two for this next session, so we're setting up the microphones and distributing exhibits or exhibits.

MR. ENGLISH: To be clear, there's one set of testimony, one set of exhibits, they both say Dr. Schiek, but I think they'll explain what they are doing exactly in a moment, who is

reading it, because I don't know from -- okay. All right. Then it changed.

JUDGE CLIFTON: Thank you, Mr. English. Would you like, Mr. English, for the testimony, to get the next number?

MR. ENGLISH: Yes, your Honor.

JUDGE CLIFTON: And Ms. Frisius, will that be Exhibit 122?

MS. FRISIUS: Yes.

JUDGE CLIFTON: All right. That will be Testimony of Dr. William Schiek, Part 3. And then the exhibits will be Exhibit 123.

(Thereafter, Exhibit 122 and Exhibit 123, were marked for identification.)

MR. ENGLISH: So for the record, the statement has got a cover sheet and then 15 pages from Dr. Schiek, and then the exhibit has a cover sheet, and I guess hand number of pages up 1 through 42.

Dr. Schiek, before you give your statement on Exhibit 122, I would like to ask Mr. Fish a few questions.

JUDGE CLIFTON: All right. Let me swear him in.

MR. ENGLISH: Oh, I'm sorry.

JUDGE CLIFTON: Dr. Schiek, you remain sworn. I would like you to state and spell your name, Dr. Schiek.

DR. SCHIEK: Yes, William Schiek, S-C-H-I-E-K.

JUDGE CLIFTON: Thank you. And Mr. Fish, I'll swear you in in a seated position. If you would raise your right hand,

please.

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

MR. FISH: I do.

JUDGE CLIFTON: Thank you. And would you again state and spell your name for us?

MR. FISH: Patrick Fish, F-I-S-H.

JUDGE CLIFTON: Thank you. And now, Mr. English, you may proceed.

MR. ENGLISH: Thank you, your Honor.

DIRECT EXAMINATION

BY MR. ENGLISH:

Q. Mr. Fish, could you tell us by whom are you employed?

A. Saputo Cheese US.

Q. And what is your title?

A. Vice President, US Milk and Byproducts.

Q. And how long have you held that position?

A. The current position, five years.

Q. And before that?

A. Prior to that, I have been with Saputo since their acquisition in the US in 1998, so 17 years. And I have been in the industry a total of 30 years.

Q. So let me backtrack. What's your educational background?

A. I have a degree in Accounting from University of

Wisconsin at Madison. And shortly after college, I worked in healthcare for four years. And then in 1985 I joined the dairy business and essentially worked, in over that 30-year span, I worked in Accounting and Finance for 10 years, I worked in operation, cheese plant operations for 15 years, and in the last 5 years in procurement and byproducts.

Q. So who did you go work for in 1985?

A. In 1985, it was a small cheese company in Reedsburg, Wisconsin by the name of, that was, at the time was called Suemnicht Cheese, which was owned by a meat company at the time.

Q. So I think first could you spell Reedsburg?

A. Reedsburg, R-E-E-D-S-B-U-R-G.

Q. And then the name of the cheese company?

A. Suemnicht, S-U-E-M-N-I-C-H-T.

Q. I would never have gotten close.

JUDGE CLIFTON: S-U-E-M-N-I-C-H-T, Suemnicht. so "nicht" is "night". All right. S-U-E-M-N-I-C-H-T. Okay. Good. Thank you.

BY MR. ENGLISH:

Q. And how long did you work for that entity?

A. So Suemnicht was acquired in 1990 by a larger firm on the East Coast called International Cheese, who, it was their first acquisition in Wisconsin, and subsequent to that they acquired a number of other cheese businesses throughout the,

through over the course of that five-year period, and eventually the company ended up evolving into Stella, S-T-E-L-L-A, Cheese.

Q. And was that the company that was eventually acquired by Saputo in 1998?

A. So, yes. Stella was acquired. I had actually left Stella and went to work for a company called Avonmore in Monroe, Wisconsin. So Stella was acquired by Saputo, and then one year later Avonmore was acquired by Saputo in 1998.

JUDGE CLIFTON: And how is Avonmore spelled?

MR. FISH: Avonmore, A-V-O-N-M-O-R-E.

JUDGE CLIFTON: So glad you are spelling these, I wouldn't have gotten either of them right. And I'm wrong about "nicht", I said it was night, that's "nocht". At any rate, I have got the spelling in my head. Thank you.

BY MR. ENGLISH:

Q. Before we get started, is there anything else about your background that you need us to know for the record?

A. Other than I love the dairy industry, and it's been, it's been a very interesting, evolving, and I have had an opportunity to see different facets of the business, and have been able to gain some knowledge, not only in cheese, but in whey over that time, 30-year period.

Q. Terrific. All right. Dr. Schiek, you are up. If you could read Exhibit 122, please.

DR. SCHIEK:

Introduction

The formulas for determining the component prices in Class III and IV are the foundation of all regulated milk prices under the proposed order. The basic formulas utilizing dairy commodity prices from a designated time period are used to determine the prices for all classes of milk under the Order. The price formulas for Class I and II will be discussed in subsequent testimony. My focus today will be the formulas for determining component values in Classes III and IV.

And I just would like to go off the testimony and say, if I make it easier, any numeric designation I give, you can take to be Roman Numeral rather than the Arabic. If there's an Arabic numeral, I'll note that.

There has been a lot of attention paid to regulated price differences between the classes of milk under the California State Order (CSO's) and those that exist under FMMO's. As Federal Orders have historically been concerned with ensuring adequate supplies of, and the orderly marketing of, milk for fluid uses, it is worth exploring the purpose for which the Orders establish regulated minimum prices for manufacturing classes -- that's (Class III and IV).

In order to assure that consumers have access to adequate supplies of fluid milk products, prices for such milk (Class I) need to be established at levels that encourage

production of adequate supplies of fluid grade (Grade A) milk and to attract such milk to Class I uses over other uses. In order to accomplish both of these purposes, Class I prices have been established at levels that are generally higher than the prices of milk for other uses. Given the higher prices paid by Class I handlers, performance standards have been an important pooling mechanism -- have been important pooling mechanisms under the FMMO's to ensure that the Class I market is served. From an economic perspective, the amount by which minimum regulated Class I prices should exceed those of the manufacturing classes under Order regulation today is a debatable point.

If there is a need to set Class I prices higher than those in other classes, then there is also a need to know what those other class prices are. So again, to make sure supplies of milk for consumers were adequate, prices under the Orders for manufacturing uses needed to be established as a basis for determining Class I prices. Establishing manufacturing class prices based on what manufacturing plants were paying for Grade B milk, or establishing them on the basis of finished manufactured prices applicable to the plants of handlers being regulated in the marketing area, implicitly recognizes the role of manufacturing class prices as market clearing prices that capture the balance of supply and demand in the marketing area. It should not establish a new non-market based or enhanced

price for that milk.

In the 1950's and 1960's, as transportation systems and equipment improved, and bulk milk handling became more widely adopted, milk for Class I uses began traveling further distances, moving between FMMO marketing areas rather than merely within a single FMMO marketing area. With these changes it became more important to have a coordinated approach to Class 1 prices between orders, to move milk from geographic areas where milk was in surplus, to areas in deficit, ensuring that the marketing of fluid milk remained orderly. In order to make sure that pricing conditions promoted orderly marketing both within individual order areas and between orders, the idea of a common basis for pricing within all areas began to gain favor.

A Minnesota-Wisconsin (M-W) price series began being used in some orders as the basis for order pricing of all classes of milk. The lowest class uses were generally set at, or very close to the M-W price level. The M-W price was an average of prices paid by dairy product manufacturing plants for Grade B milk in Minnesota and Wisconsin. Over time, the M-W price was chosen as the basis for pricing in more orders, in part because the area had ample supplies of Grade B or unregulated milk, but also because it was the largest reserve supply of milk in the country.

By adopting the M-W as opposed to a manufacturing milk

price from say, Florida, it would be reasonable to assume a common price for manufacturing class milk established on the M-W basis, would be a minimum price that would be market clearing in all FMMO's where it applied, and particularly east of the Rockies, where interregional movements of milk were becoming more common. Today, the states of Minnesota and Wisconsin are no longer the regions where milk used for manufacturing has its lowest spatial value, California now has that distinction.

It is important to keep in mind that under the current FMMO system, the only plants that must be pooled are Class I plants with qualifying levels of route dispositions. The orders require that manufacturing class prices be paid for such milk that is pooled under the order, but do not require that minimum class prices be paid for milk that is not pooled. In addition, the orders do not regulate the transaction between the handler pooling the milk and nonpool plants. This is an important difference from the way minimum pricing is applied under California's state system of pricing. In California, handlers must pay the minimum regulated class prices for all Grade A milk they receive from producers, regardless of whether or not that milk is pooled. In addition, any plant buying milk from a Cooperative is obligated to pay minimum class prices for those purchases. There are no below class sales for any plants buying Cooperative milk in California.

Orders Prices Should be Minimum Prices

To determine minimum prices under the order, the minimum regulated manufacturing class prices, Class III and IV, under a California order should not be set above market clearing levels in California. As we noted in earlier testimony, this disparity between where products are produced and where they are consumed, creates a spatial value for commodity dairy products that is lower in the West and higher in the East. If regulated milk pricing formulas fail to account for differences in spatial value of finished dairy products (and to account for current costs of manufacturing dairy products from milk), the milk will not be properly valued. In considering whether what it means for regulated milk prices to be market clearing, we have to look beyond the balance of supply and demand of finished dairy products in the national marketplace and focus clearly on what is happening in the local (state or region) market for milk. The markets for finished dairy products clear nationally, but the market for milk clears locally. In its final decision from Federal Order Reform, USDA noted -- and there's a cite from the Federal Register (64 Fed. Reg. 16026, 16092 (April 2, 1999)):

"The price handlers can afford to pay for milk is determined by the price for which finished product," should be products, I believe, "can be sold. Therefore, a pricing system that translates finished product prices to a price for raw

milk, results in a representative raw milk price for both producers and handlers."

In order for the preceding statement to be true, the price used in the regulated price formula must be representative of the price at which the handler sells his finished product. Use of a national commodity price average likely results in an assumed achievable product price that will be lower than what some handlers actually receive, and higher than what others can achieve because of their location. Also in the Final Decision, USDA stated, and here's another cite: (64 Fed. Reg. 16026, 16094-16095 (April 2, 1999)):

And now another quote:

"The importance of using minimum prices that are market clearing for milk used to make cheese and butter/nonfat dry milk, cannot be overstated. The prices for milk used in these products must reflect supply and demand, and must not exceed a level that would require handlers to pay more for milk than needed to clear the market and make a profit."

JUDGE CLIFTON: And you've finished that quote.

DR. SCHIEK: Oh, I'm sorry, end quote. Thank you.

In setting regulated milk prices, the danger is not in setting a minimum price that is too low, but in setting it too high. Regulated prices that are set too low, that is, below the market clearing level -- that should be market clearing level, not marketing clearing level -- can be compensated in

the marketplace through competitive premiums. Regulated prices that are set too high, can lead to the milk produced by dairy farmers being left unpurchased or moved out of area to find a processing home. Class III and IV prices in a California FMMO must be set at levels where the plants can clear the market and operate profitably. The end-product pricing formulas used as the basis for determining Class III and IV component values under the order, should reflect the commodity prices actually received by California plants and manufacturing costs that are reflective of current costs. The use of national weighted average commodity price levels and manufacturing costs that don't reflect current conditions in the proposed marketing area are not appropriate for California.

JUDGE CLIFTON: Let's stop there, Dr. Schiek, and make these few tiny little corrections to the statement. So just now you are on page 5, and you are at the end of the first paragraph, and we strike the little "a" just before California?

DR. SCHIEK: Correct.

JUDGE CLIFTON: And let's see, oh, I don't have Ms. Frisius. We could come back and do this later when Ms. Frisius is back. I think that would be best.

DR. SCHIEK: She's back.

JUDGE CLIFTON: Ms. Frisius, we're about to make some tiny changes to -- good. Thank you. This is very timely. We're in Exhibit 122. We are not nearly through with it, but I just

wanted to make the changes we have gotten to so far.

So on page 5, the first full paragraph, the last line should end "not appropriate for California" so we're striking the "a".

MS. FRISIUS: Okay.

JUDGE CLIFTON: All right? Higher on that same page at the end of the second line, in parentheses you see "below the marketing" and that should be "below the market" so we're just striking the "ING". And then Dr. Schiek thought perhaps we had a quote that wasn't quite right. Were you able to tell, Mr. English, whether on page 4, whether the word "product" should be plural?

MR. ENGLISH: I believe I have been advised that the way he has it in the text is correct.

JUDGE CLIFTON: All right.

MR. ENGLISH: I have got multiple nodding of heads from Mr. Hill and Ms. Vulin has advised me as to that. So I think the way it was written is correct, that it was in the singular.

JUDGE CLIFTON: All right. Thank you. And, of course, the way that is said, "finished product", it, of course, could mean "products", but we'll leave it like it is because we want to make sure the quote's correct.

Nos, so far, that's the only thing I had noticed Dr. Schiek. Do you agree, Mr. English, so far?

MR. ENGLISH: I agree. And I was going to suggest that

maybe he finish the next paragraph on page 5, and then we take our morning break. I'm finding that this room is such, and I think others may be finding it that we may need more, maybe shorter, but longer, more breaks, because I think people's voices are drying out without water, and there's also the nutrient management issue. So I would actually suggest that he finish that paragraph and then we take a morning break and that we may just think about, have a 15-minute break now like we traditionally have, but then down the road have a ten-minute break just to give people a chance to get up. Because this room is very difficult to maneuver the way -- we have been lucky to have rooms where the rest rooms are located literally connected to it. And so I think that that would be helpful. But let me have him finish that paragraph on page 5.

JUDGE CLIFTON: I agree with you. All right. Dr. Schiek, you may resume.

DR. SCHIEK: Thank you.

Our proposal calls for USDA to establish Western prices for butter, cheddar cheese block, nonfat dry milk, and dry whey commodity prices, to be used in the Class III and Class IV pricing formulas. Unfortunately, we have been informed that confidentiality concerns will not allow the Department to report the dairy commodity prices paid by western plants. In the order language we submitted, we included default values which adjusted the reported National Dairy Product Sales Report

(NDPSR) prices released by AMS for each of the dairy commodities based on the historical difference between the US NDPSR price and reported California or Western-based prices, for the same commodity. And I reference Table 13.

Manufacturing cost allowances in the formulas were updated based on the most recent weighted average manufacturing cost for each dairy commodity as reported in CDFA's manufacturing cost survey (Attachment 1).

Q. And just before we go off record, both Table 13 and Attachment 1 are referring to Exhibit 123, correct, Dr. Schiek?

A. Correct.

JUDGE CLIFTON: Good. I'm also glad to have this break while people have these exhibits in hand, because, as you promised, this is very meaty information. Okay.

All right. It is 10:42. I don't think we need to go clear to 11:00. I guess we do. It's now 10:43. Please be back and ready to go at 11:00.

MR. ENGLISH: Thank you, your Honor.

(Whereupon a break was taken.)

JUDGE CLIFTON: We're back on record at 11:02. Mr. English?

MR. ENGLISH: Thank you, your Honor. During the break I chatted briefly with my witnesses, and I have also discussed briefly with Mr. Beshore. This is, we have had wonderful accommodations and the chairs are comfortable here, but it

turns out we have been extremely lucky to have water at all times, and I may get my throat dry, or the witness is going to get throat dry, and we may need just like a five-minute break at some point, because that's very tough to go through, and then this material is dry, too. So before we go back to the written testimony on Exhibit 122, on page 5, Dr. Schiek just referenced Table 13 and Attachment 1, which are Exhibits 123. And that will take us through 14 pages of material. And it's going to take a little while, but I want to go through it in detail so that everyone knows what we're doing, how, and then why.

BY MR. ENGLISH:

Q. So, Dr. Schiek, first turning to Table 13, which encompasses the first six pages of Exhibit 123. Why don't you just briefly first summarize, we're going to go through every column, but briefly summarize what Table 13 is intended to show and do.

A. Okay. So Table 13 contains historical price data for a number of different price series, some of which are series that have applied for use in developing pricing under the California State Orders, some of which have been used in developing class prices under the Federal Milk Marketing Orders.

Q. And you've used NDPSR throughout, even though for some of the timeframe it would have been NASS?

A. That's true.

Q. And we just didn't want to create two different headings, correct?

A. Correct.

Q. So, first of all, was this produced under your direction and control?

A. It was.

Q. Okay. So let's start with page 1, and I want you to discuss each of the columns, and since the most convenient month would be the top line, let's look at January 2002, and have you tell us what is in each column.

A. Okay. Well, the first column is obviously is the date, month and year that the prices, the date to which the prices apply or relate.

Column 2, the one that says CME butter, CDFA, that is the simple average of the CME butter prices from the 26th of the prior month to the 25th of the month it applied. So in this case, January 2002, that would be the simple average of the CME butter prices from the 26th of December to the 25th of January. Okay?

Q. Okay.

A. And the second price is the California butter CDFA price. That is a FOB California plants price for butter that was, is collected as part of the ongoing manufacturing cost surveys, which we'll get into later when we talk about Attachment 1. In addition to collecting the cost, they collect

sales price FOB the plant information, and so that's a California price. Now, that data comes out well after, you know, like if you are, if you have January data, it may not come out until the end of 2003. So this is more of a, we go back and look at the sales in the plants of these products, and we, or the State collects data on what that product sold for FOB at the plant. Okay?

JUDGE CLIFTON: And, Dr. Schiek, if you could go back one column. Why does CDFA appear in that CME butter price?

DR. SCHIEK: Because rather than being for a calendar month, it's for the time period that CDFA uses in establishing their prices, which is the 26th, 26th of the prior month to the 25th of the current month.

JUDGE CLIFTON: Thank you. You explained that, but I didn't catch the significance until just now. Thank you.

MR. ENGLISH: Well, your Honor, I thank you, because again, I think this material is extremely dense, and I think no amount of explanation will be enough, so I think that that is very much appreciated.

BY MR. ENGLISH:

Q. All right. So now you have discussed the third column, or the second column of data, which is California butter CDFA. So what is the next column?

A. So the next column is the NASS or NDPSR butter price for the month. The one released by, now by AMS, formerly by

NASS, but the one that's used in establishing or calculating prices under the FMMO's.

Q. And what is the time period for that?

A. I believe it is the most recent four or five weeks of data, depending on the calendar composition, as of the fifth of the month following the month in which the pricing is applicable.

Q. Okay. So what is the fourth column of data, headed CME, 40 pounds, CDFA?

A. Okay. So this is the simple average of the CME 40-pound blocks from the 26th of the prior month to the 25th of the current month. So again, it would be the 26th of December through the 25th of January for this first row in the column. And the next price, similar to what we saw in butter, this is data that CDFA was collecting from cheese plants on FOB prices at the plant in California for sales of 40-pound cheddar blocks.

Q. Okay.

A. All right.

Q. And what is the next column?

A. The next column would be the NASS or NDPSR cheddar cheese block only price. And that would be a weighted average for the month using the same time period that's typically used for all the other commodities.

Q. Again, the last four weeks announced on --

A. Yeah, on or before the 5th, yeah.

Q. We then turn to the next column, which is CME 40 pounds average from CME?

A. Okay. So this is when we get into talking about how we're calculating the basis between the California FOB price and the NDPSR cheddar price, we're going to use this number, which is, which is actually a calendar month CME simple average of the prices for cheddar block.

Q. All right.

A. And then the next column is California plants, nonfat dry milk. This is kind of what we call the California weighted average price for nonfat dry milk. You will sometimes hear the acronym CWAP, California Weighted Average Price, and that is the price for the month of sales at California plants of nonfat dry milk.

Q. And the next column which is NDPSR, I assume or NASS, nonfat dry milk?

A. That's correct. It is the same as the other NASS, NDPSR commodity classes, the same geographic timeframe, or same timeframe in terms of the most recent four or sometimes five weeks of data available as of the fifth of the following month.

Q. And the next column?

A. Okay. So this is the price for western dry whey. It's the average of the Mostly prices. Again, a simple average of the Mostly prices reported in Dairy Market News during the

period of the 26th of the prior month, to the 25th of the current month.

Now, these are weekly prices so you will end up with four, occasionally five weeks of data. Whatever, well, whatever is in the, however many prices are in that calendar timeframe of the 26th to the 25th.

Q. Okay. And did you use the 26th, 25th because that's what you used, what California's used for the other products?

A. Correct.

Q. Okay.

A. And then --

Q. The final column is NDPSR or NASS whey.

A. That's correct. And again, much like the other three commodities, this is the price used in calculating the Class III price, mainly a Class III other solids price under the orders can also be used in calculating the class, well, actually, these are monthly prices, so this wouldn't be used in Class I, this would be just Class III.

Q. So you did that for a number of months starting from January 2002 through, it looks like you have fairly complete data, we'll get to a foot note in a second, through July 2014; is that correct?

A. Well, actually --

Q. I'm sorry.

A. -- there is one set of data that disappears after

August 2011.

Q. I'm sorry. Thank you. So looking at Table 4 we don't actually have the same headings for production issues, but if you took the headings from all the other pages, for instance, you have got the date data for page 4, you have got CME butter, CDFA, at least in September 2011; California butter CDFA for September 2011; NDPSR butter for September 2011; but then you don't have the following two columns which are, CME 40-pound CDFA and California cheddar 40-pounds, correct?

A. That's correct.

Q. 40 pounds?

A. So what happened in that time period is that was the last date, August 2011 was the last date for which CDFA reported the FOB cheddar block price. They stopped reporting that data for confidentiality reasons. And the reason we're not including the CME 26th to the 25th, which would have been Column 5, is because we were using that data to construct a basis between that California FOB and the CME price.

Q. So there was no point to --

A. Right, once one of the series is gone, there's no point continuing it going forward.

Q. And so before I talk about the shaded section in the foot note on page 4 of Table 13 of Exhibit 123, you get to August of 2014, and you have now are not reporting the first, second, third, and fourth column, which is CME Butter, CDFA;

California butter, CDFA; and the NDPSR butter. Is that because of what you said about five or ten minutes ago, that you have to wait for CDFA to issue that data for California butter CDFA and they haven't issued it yet?

A. Correct, they haven't issued it yet, to my knowledge.

Q. Okay. But to your knowledge, they will continue issuing it?

A. For butter, yes.

Q. And so as moving forward to a decision time, USDA could take official notice of that information if they wanted to, and we can start building more of that information, correct?

A. Correct. And I think that would be appropriate.

Q. Okay. So --

JUDGE CLIFTON: I don't understand. We're talking about more than a year ago and they haven't reported it yet?

DR. SCHIEK: Yes. So --

MR. ENGLISH: Let's be very clear about what we're talking about what's not reported. So there's the CME butter CDFA column; there's the California butter CDFA; and there's the NDPSR butter. Which of those, we know the NDPSR butter has been reported since then, but which of those other two columns have not yet been released?

DR. SCHIEK: The only one that hasn't been released is the California butter, CDFA column, which is that FOB price that only gets collected when the auditing staff that goes out and

does the manufacturing cost surveys, goes out and collects retroactively for the prior year or so. So that data, that's the actual California location price data, and that most recent available is from July 2014.

BY MR. ENGLISH:

Q. But in the normal course of events you would expect that audited data, we'll talk about how this is put together in a moment, but that audited data would become available and published by CDFA, correct?

A. Correct.

MR. ENGLISH: Does that help, your Honor?

JUDGE CLIFTON: It does. I understand if you have to go to the farms to make that report, it would take longer.

DR. SCHIEK: Yeah. And in this case, they will be going to the, actually the butter manufacturing plant --

JUDGE CLIFTON: The plant.

DR. SCHIEK: And auditing their sales data.

JUDGE CLIFTON: Okay. So this doesn't go to the farms, this is an audit that goes to the plants.

DR. SCHIEK: Correct.

JUDGE CLIFTON: Okay. That makes sense. Thanks.

BY MR. ENGLISH:

Q. So for the same reason that in September 2011 you just stopped putting in the, I mean, we knew the CME 40 pounds, correct?

A. Correct.

Q. What we didn't get was the California cheddar 40 pounds, because that's what CDFA stopped reporting, correct?

A. Correct.

Q. So that's why you just stopped reporting, including either column in September 2011, because you are not going to use it as a basis, because you don't have all the numbers, correct?

A. Correct.

Q. Now, that's the same thing you have done, but for different reason, starting in August of 2014 as to the butter calculations, correct?

A. That's correct.

Q. And the difference is, then the normal course of events down the road, the missing information would become available and the Department if it so chose, and we ask at the end of the hearing to take official notice, could do so to fill in more recent information, correct?

A. Correct.

Q. Okay. So now we have got sort of in the middle of the page, September 2013 and October 2013, you have a shaded area with foot notes for, I think, is that the CME 40 pounds average, or I'm sorry, is that the NDPSR cheddar block only?

A. That's the NDPSR cheddar block only price.

Q. So what happened there?

A. Well, there was a government shutdown, and as far as we could tell, that block only NDPSR price data was not reported during that timeframe. So we have a series, then, that would end in, I believe it is September, but we're missing the data for October and November. And so we constructed two numbers there, based on changes, percent changes in price levels during that timeframe from September at the CME, and making an assumption that that price change would be close to the price change that would be experienced in the, or that we would see in the NDPSR data if it were available.

Q. I mean, what we looked like we were doing, we were in up market, and by the time, I think we now use the phrase, government funding was restored, I think by that time we ended up with reports, and so we knew what the price was in November, and then so you reconstructed backwards, and it works to be going up in that timeframe, and it is similar to the changes in the CME; is that correct?

A. Correct.

Q. All right.

A. And there's a foot note there that explains kind of how we did that, it's very small writing. So a magnifying glass might be needed.

Q. So turning to page 5 of Table 13, so that takes us just for some of the products then, through September 2015, correct?

A. Correct.

Q. All right. What does table -- what does Table 13, Page 6 do? I see four different charts.

A. So, 15. Okay. 6, so page 6 is the calculation of the price, average price spread between the series that we were looking at under that for a given five-year average. So it is a five-year average of the monthly differences in prices between one series and another. And so we're looking at the, the one I think I would focus on is the California NDPSR butter price spread for that first box or table, and that would be the data from for the year of August through July, or the year ending July for 2009 through 2014. And you see that number is a minus -$0.0218 dollars per pound.

Q. And then you have it similar for cheddar blocks we'll discuss in a moment why it is blocks only, and you have got the whey, and then finally you have nonfat dry milk, and those calculations are all done similarly, correct?

A. Well, the whey and the nonfat dry milk are done very similarly, slightly more recent timeframe for whey and nonfat dry milk because there was more data available.

For cheddar, because the basis using the FOB cheddar block price is getting kind of old because it's back in 2011 is the most recent data we have, because the Department stopped reporting it. We looked at the difference between the California weighted average, the California FOB price for cheddar blocks, and compared it to the CME 40 pound block from

CME, CME 40 pound block price from CDFA, that is the 26th to the 25th. So if you look in that box that has the cheddar prices for 2006 to 2011, we compared column 4 with column 3 and found there to be a 1.68 cent difference. That's between the FOB cheddar price at California plants and the CME price for 40 pound blocks.

Now, because that's older data, we wanted to find a way to update to make more current in order to get a basis between the NDPSR price and the California FOB price, that doesn't, isn't reported anymore. So we compared the NDPSR cheddar block price with a monthly average CME price, which is columns 5 and 6 in the 2009 to 2014 timeframe, and have a difference of .56 cents per pound. And so those two were added together to create a basis for the difference between the NDPSR cheddar block only price and the California FOB value, or California plant value price for cheddar cheese. And so the sum of those two is 2.24 cents per pound.

Q. Okay.

JUDGE CLIFTON: So it ought to be obvious to me, but it is not. Which one is lower?

DR. SCHIEK: So that would say that the California FOB price is lower than the NDPSR price. So any of those ones in parentheses indicate that they are lower than the California price is lower than the NDPSR price.

BY MR. ENGLISH:

Q. All right. So that essentially takes us through Table 13.

So let's turn to Attachment 1. And Attachment 1 takes us from pages 7 through, I think page 14. So let's -- what is Attachment 1?

A. Okay. Attachment 1 is the, what we call the CDFA manufacturing cost exhibit that is released by CDFA after they have completed their audited survey of manufacturing costs in California plants. And it includes manufacturing cost data. Today it includes manufacturing cost data on three products, butter, nonfat dry milk, and cheddar cheese.

Going back to either earlier part of the 2000's there was a period of three years where they included data on dry whey, powder manufacturing costs in California, but those stopped being reported because the number of plants making dry whey in the state dropped below three, so you, if you look at page 8 on Attachment 1, you will see a summary of the weighted average manufacturing cost through time for each of the surveys from the 2004 calendar year through the 2013 calendar year. And you also see a release date for when the data was actually released by the Department in this exhibit form, and that is, you know, it's usually close to anywhere from 9 months to 11 months after the after the year ends that they are able to get the survey audited cost data out. And the first page of Attachment 1, which is page 7, contains a little description

about the exhibit.

Q. And it is signed by a supervising auditor, correct?

A. Correct. Venetta Reed is the supervising auditor who leads the group who go out and do these cost surveys and audit these costs.

Q. So let's look at page 8, a little detail, release date of 11/12/2014, I guess as an aside, do you have any idea from the Department when they expect to release the most recent data?

A. I have not discussed it with them, but I note that the last three years they have released it in November, so I would be expecting it sometime within the month, unless they are having difficulty. A lot of times it depends on the issues and time of the people that they work with in the plants in terms of finishing the audit. They do an audit exit with every sort of plant manager, or whoever the person responsible for helping with the audit, they have to get all those done before they, and have confidence in the numbers before they release it.

Q. So in the first, sort of above the table there's a discussion of what costs are included. And at the very end this has a return on investments at 5.102 percent for 2013.

Do you know where the return for investments comes from?

A. Yeah. That's an allowance that is some kind of return on investment is kind of part of a concept of normal economic

cost that people won't engage in an activity unless there's some sort of return on investment. And I believe further in the exhibit they talk about what, how that is determined. But I believe it is the book value of the assets, times a bond rating, and I guess, oh, yes, Moody's BAA Corporate Bond Index, that's how they calculate that return on investment number.

Q. So is it fair to say now that page 8 is going to be a summary of the pages that follow, 9 through 14?

A. It is.

Q. Okay. So why don't you just go through, for instance, the very first line, which is the study period of '04, released in November of '05 and tell us what, what we're seeing there?

A. Okay. So it also, that's the study period, and the release date was November of 2005. So again, 11 months after the study period. And the weighted average cost, manufacturing cost per pound of butter as determined by CDFA from the plants in the survey was 13.68 cents per pound. A number of plants in the survey was 8, the next two columns I guess are for nonfat dry milk, the weighted average manufacturing cost in that year, 2004, was 15.43 cents per pound, and there were ten plants in the survey. For cheddar cheese in 2004, the weighted average manufacturing cost was 17.69 cents per pound, and there were 7 plants in the survey. And that year they did do a dry whey powder survey, and the cost, weighted average cost per pound was 26.73 cents, and there were three plants in the survey.

Q. And I think we have heard in the past in this hearing that at some point, well, I guess, we know there's only one now, correct? Dry whey powder?

A. Correct.

Q. So that, there might have been two in, for the January through December 2007 study period, but beginning with the report issued September 2008, we no longer have the information from CDFA for dry whey powder, correct?

A. That's correct.

Q. So if we could turn the page to page 9, can you tell us what -- so this is, we have already said that page 8 was the summary, so now we're looking at butter manufacturing costs, correct?

A. Okay.

Q. So what does this table show? This page show?

A. So this is a breakdown of, rather than just a single overall weighted average manufacturing cost, this breaks down the butter manufacturing costs by labor, non-labor costs, packaging, miscellaneous ingredients, general and administrative costs, and return on investments. And they also break down, because there's enough plants to do this with, they break it down into two groups, what they call a low cost group and a high cost group. And they also report a range of cost from minimum to maximum. And the thing to know about that range is, those, the plants that are in the minimum for any

given category, and the plants that are in the maximum for any given category, can be different plants. So it is not like, you know, the numbers in the minimum are for, all for the lowest cost. Single plant that's the lowest overall total cost is for the plant that's the lowest in that that category, and the maximum, likewise.

Q. And so using this table, the average total cost for current weighted average, that's what gets translated to page 8, the 0.1724, correct?

A. Correct. But it gives information on, it gives a little information on the disbursement of cost, how widely differing costs are in certain categories. And I guess is helpful information from a benchmarking standpoint for the plants that participate in the survey, and also just to understand when looking at a total cost number, how, you know, how that was made up and how it varies.

Q. So then page 10, as I see it, is sort of the back up for page 9, sort of work up to page 9?

A. Correct.

Q. Page 10? And it shows a comparison from 2012 to 2013 as well, correct?

A. Correct. And it breaks down the expenses in even more detail, the, you still have the major categories like processing labor, processing non-labor, but includes things like, I guess it breaks out selected expenses. So you can look

at things like energy, you can look at what's happening with sewer and water charges, property taxes, insurance, and the like, so there's a, there's a, again, a more fine breakdown detail of the weighted average cost by type of expense.

Q. So if you turn to page 11, this is now for nonfat dry milk manufacturing costs. This is done in the same manor, but using obviously, the different numbers as what we just talked about for milk manufacturing cost, correct?

A. Correct.

Q. And the number of plants, well, actually, the plants may very well be different, correct?

A. They may. You know, a lot of times we think of butter powder as being a joint product, and there will be a butter and powder plant kind of located together on one location, and there certainly are operations like that. But certainly it is possible to separate cream and move it to another facility for butter churning, and then do the drying on a different facility. I don't know. Personally, I think most of these locations have butter and powder processing kind of in the same site or general area.

Q. But if you look back at page 8, the number of plants that are surveyed for nonfat dry milk is consistently higher, it's either one or two higher than butter.

A. Correct.

Q. So by definition, there may be overlap, all the butter

plants may be in the NFDM, we just don't know. But we know for sure there are additional facilities for an NFDM that were surveyed, that were clearly not surveyed as part of butter, correct?

A. Correct. Or it could be a situation where there is two drying plants on the same location with one central butter facility.

Q. Okay. And similarly then, page 10 is the break out material for, I'm sorry, page 12 is the break out material for nonfat dry milk similar to page 10 for butter, correct?

A. Correct.

Q. And finally, before we turn to the statement, we have page 13, which is for cheese manufacturing costs. And I note that unlike for butter and powder, we don't have a low cost group, median group, and a high cost group. And I take it that's probably because we're down to four plants; is that correct?

A. Yeah, there are four plants in the survey. And because of that, there's no way to break them into two without breaching confidentiality, because if you had two plants in each group and I knew my cost, I could figure out the other plant in my group from an average, so they have to group all of them together.

Q. Otherwise, to your knowledge, this is done, what's material on page 13 is done similarly to what was done on 9 and

11, for butter and nonfat dry milk?

A. Correct.

Q. Okay. And finally, page 14 is the break out of the cheese cost similar to pages 12 and 10 for nonfat dry milk and butter?

A. Correct.

Q. Okay. Before we return to your statement, which is Exhibit 122, is there anything else you want to say right now about Attachment 1?

A. No.

Q. Okay.

JUDGE CLIFTON: I just have a quick question. The court reporter will find the spelling on page 7 of Venetta Reed, but would you just read it into the record?

DR. SCHIEK: Yes. Her name is Venetta Reed, that's V-E-N-E-T-T-A, R-E-E-D.

JUDGE CLIFTON: And my other question, Dr. Schiek, is whether you know what the four cheese manufacturing plants that are included in this documentation are?

DR. SCHIEK: I have a pretty good idea but no one has ever told me what they are. I think they, you know, there is no announcement over who the participating plants are in the survey.

JUDGE CLIFTON: That's good enough.

DR. SCHIEK: Okay.

BY MR. ENGLISH:

Q. All right. If your throat's not too dry and you want to continue, do you want to continue on page 6 of your statement, Exhibit 122?

A. Okay. On so page 6.

Class III and Class IV Butterfat Price Formula

The butterfat price is calculated by taking the National Dairy Product Sales Report (NDPSR) price for Grade AA butter, less a western value adjuster of -- and I should say here, for all of these there will be a crossed out number and then a new number in bold, the crossed out number is the number that was in the, published in the Federal Register from our proposal. As we got some more recent data and corrected some earlier errors in the spreadsheet, we have a new number that that is represented by what's in bold, and that is what we're proposing. So if I could start that sentence again.

The butterfat price is calculated by taking the National Dairy Product Sales Report NDPSR price for Grade AA butter, less a western value adjuster of, and you strike out $0 .0208 and include in bold, $0.0218 per pound, less manufacturing cost allowance of 17.24 cents per pound, the result multiplied by a yield factor of 1.211. The western value adjuster was created, was calculated as the five-year simple average of the monthly differences (the most recent data available is for the period ending July 2014) between the NDPSR

Grade AA butter price and the California FOB price for butter as reported by the California Department of Food and Agriculture Dairy Marketing Branch collected as part of their annual manufacturing cost summaries. The data can be found on the following website: http://www.cdfa.ca.gov/dairy/uploader/postings/manufacturingcost/

Q. We're going to have a couple here on this page, and on following pages of web sites, and when we get that, we're going to ask those be typed into the record as if read, without going through the painful aspect of trying to read it in and figuring out whether it is a forward slash or reverse slash, if that's acceptable, your Honor?

JUDGE CLIFTON: It is, but I would like Dr. Schiek, not necessarily to read the whole website, but at least indicate what first couple of categories are after the www.

DR. SCHIEK: Okay. It's cdfa.ca.gov/dairy/uploader/postings/manufacturingcost/

JUDGE CLIFTON: Okay. And some of us call those forward slashes, but either way, you have given people an idea of where to look, which I appreciate very much. All right. You may resume.

DR. SCHIEK: Okay. The manufacturing cost allowance is the most recent California weighted average manufacturing cost for butter released in November 2014, which can be found in

Attachment 1, and is also reported at the following web page: And again, this would be https//www.cdfa.ca.gov/dairy/uploader/docs/Exhibit.pdf

Attachment 2 contains a mathematical representation of the butterfat component price formula, as well as the price formulas for all of the other components used in Class I and class -- excuse me, in Class III and Class IV.

JUDGE CLIFTON: Just so it's perfectly clear, please read that sentence again. That's important.

DR. SCHIEK: Okay.

Attachment 2 contains a mathematical representation of the butterfat component price formula, as well as the price formulas for all of the other components used in Class III and Class IV.

BY MR. ENGLISH:

Q. So why don't you briefly turn to Attachment 2, I think you are going to go through these in some detail, but let's just look at Attachment 2, which is page 15 of the Exhibit 123, and just, we're not going to read this into the record, just briefly describe what this shows.

A. Okay. So this is the Class III and Class IV price formulas. And if you look at the Class III section on Attachment 2, and you look at the bottom of that section, you will see there's a butterfat price equal to the butter price, less 2.18 cents, less 0, I should say, less 17.24 cents, times

1.211. And that is the mathematical representation of the butterfat price formula.

Q. And to be clear, and you have got various bolds and you say that anything that's bold is where we have changed that which appears in the Federal Register, which is Exhibit 1, and refers to Proposal 2, Section 1051.50, correct?

A. Correct.

Q. Okay. You are going to, this is not, yet, you will get there a little later in your testimony, the discussion of the alternative proposal?

A. Correct.

Q. Which is now open for consideration, correct?

A. Correct.

Q. Okay. All right. Why don't you return now to your testimony?

A. Class IV Nonfat Solids Formula.

The nonfat solids price is calculated by taking the NDPSR price for Grade A and Extra Grade nonfat dry milk less a western value adjuster of, and then strike out $0.0257 and then insert bold $0.0244 per pound, less the manufacturing allowance of 19.97 cents per pound, with a result multiplied by a yield factor of 0.99. The western value adjuster was calculated as the five-year simple average of monthly differences for the period ending -- and this should say September 2015.

JUDGE CLIFTON: All right. So where it says July, we want

to strike that. Ms. Frisius, are you on page 7? In the first full paragraph, about five lines down, would you strike "July" and insert "September"? Good. You may proceed.

I would like you to go back, not only because this is difficult for me to figure out, but when you first read the first sentence of this section, you referred to "manufacturing allowance" and what's actually written "manufacturing cost allowance". I think everybody knew you were talking about costs. Does, is there a particular proper way that phrase is expressed in these topics?

DR. SCHIEK: Probably the most correct way would be to say manufacturing cost allowance. The other terms people will use in conversation are manufacturing allowance or make allowance. You will also hear the term make allowance used. So those three, in the context of end-product pricing of dairy components are used pretty interchangeably.

JUDGE CLIFTON: That is extremely helpful. Thank you. All right. Would you go back again, go to the top of page 7, and again just read the heading and everything, please.

DR. SCHIEK: Okay.

Class IV Nonfat Solids Formula

The nonfat solids price is calculated by taking the NDPSR price for Grade A and Extra Grade nonfat dry milk, less a western value adjuster of, again, strike $0.0257 and insert $0.0244 per pound, less a manufacturing cost allowance of 19.97

cents per pound, with the result multiplied by a yield factor of 0.99. The western value adjuster was calculated as the five-year simple average of monthly differences for the period ending September 2015, between the monthly NDPSR Grade A and Extra Grade nonfat dry milk price and the monthly California weighted average price for Grade A and Extra Grade nonfat dry milk as reported by CDFA.

The CDFA data for nonfat dry milk or NFDM prices, can be found on the following website: https://www.cdfa.ca.gov/dairy/xls/MonthlyCommodityPrices.xlsx

JUDGE CLIFTON: Thank you. And again, as Mr. English has requested, I ask that the court reporter go to page 7 to put it in exactly as you have it, but I appreciate your reading the categories into the record.

DR. SCHIEK: Okay. The manufacturing cost allowance is the most recent California weighted average manufacturing cost for nonfat dry milk released in November 2014, which can also be found in Attachment 1.

Class III Protein Price Formula

The protein price is calculated by replacing the NDPSR cheddar block/barrel monthly price averaged used in existing FMMO Class III price calculations with the NDPSR weighted average cheddar cheese block price for the month, less an adjuster for, strike out $0.0340, insert $0.0224, and replacing the manufacturing cost allowance currently used in FMMO

Class III price calculations with $0.2291. The western value adjuster was calculated in two steps. First, the five-year simple average of the monthly differences between the simple average of the daily CME 40 pound block cheddar cheese price occurring from the 26th of the prior month to the 25th of the month when the protein price will be effective, and the California FOB price for cheddar blocks as reported by the California Department of Food and Agriculture, CDFA, for the month was calculated. The five-year period of comparison was the one ending in August 2011. The California cheddar cheese FOB prices were collected by CDFA's Dairy Marketing Branch as part of their annual manufacturing cost summaries. Unfortunately, the most recent California cheddar cheese price data available is for that period referenced, I guess. CDFA stopped reporting the cheddar data for confidentiality reasons.

Next, the five-year simple average of the monthly differences between the NDPSR weighted average monthly cheddar cheese block price and the simple average of the daily CME 40 pound block cheddar cheese price -- and that should say for the calendar month, strike occurring from the 26th to the word "of" after the number 25th.

JUDGE CLIFTON: Okay. Ms. Frisius, if you will go with us on page 8 to the middle of the page, third line down of the first full paragraph, and beginning with the word "from", I'm going to have Dr. Schiek read to us what we strike. All the

words that we should strike.

DR. SCHIEK: Okay. You should strike "occurring from the 26th of the prior month to the 25th of", and then insert in that place the word "for" and then after the next word, which is "above" add the word "calendar".

JUDGE CLIFTON: Good. So take that sentence from the top, if you will, please.

DR. SCHIEK: Okay. Next, the five-year simple average of the monthly differences between the NDPSR weighted average monthly cheddar cheese block price and the simple average of the daily CME 40 pound block cheddar cheese price for the calendar month when the protein price will be effective.

MR. ENGLISH: As long as we're here, I think on the previous paragraph you inserted the word "referenced" I believe after that, in the, after period.

JUDGE CLIFTON: Yeah, I don't think it's needed, but what do you think, Mr. English?

MR. ENGLISH: I don't know, I wanted to -- no, he says fine. Never mind.

DR. SCHIEK: That's fine.

MR. ENGLISH: I apologize.

JUDGE CLIFTON: No, you are right. He thought just at first glance it needed to be in there, but I think it's understood that you are talking about that period. Okay.

BY MR. ENGLISH:

Q. Why don't you continue the paragraph then, that you were just in on page 8?

A. This data comparison is for the five-year period ending in August 2014. Consistent on a monthly basis with the period when FOB prices were available and ending, and with an ending date similar to the butter price comparison used to calculate the butter price adjuster used in the butterfat price formula. The differences calculated in each step were added together for the purposes of calculating the cheese price adjuster (Table 13).

So again, if you return back to the exhibit, page 6 of 123, Exhibit 123, you can see how we essentially computed those two differences. I think we described this earlier when we went through this page, the first difference between a negative 1.68 and the second difference being a negative .56, both of those would be cents per pound the way I read them. So that the cumulative difference or basis is 2.24 cents per pound.

While the use of the two price series comparisons to calculate the cheese price adjuster is somewhat complex -- there should be a comma there, and then -- we chose this method in order to have an adjuster that was more representative of current conditions in the market.

JUDGE CLIFTON: Ms. Frisius, do you see where he wants us to make that change?

MS. FRISIUS: Uh-huh.

JUDGE CLIFTON: Good. So we're on page 8 and we have added a comma and made the capital "W" a small "w". All right.

DR. SCHIEK: Class III Other Solids Price Formula

If we are going to use dry whey to represent the other solids value as under the existing FMMO's, then at a minimum, the prices and manufacturing costs used should be appropriate for California. This could be accomplished by subtracting an adjuster to the monthly NDPSR dry whey price for the month of and then strike $0.0084 and insert $0.0063 per pound. This western value adjuster for whey was calculated as the five-year simple average of the monthly differences for the period ending July, again, should be September 2015.

JUDGE CLIFTON: All right. And Ms. Frisius, are you there? Fourth line down on page 9?

MS. FRISIUS: Yes.

JUDGE CLIFTON: We're striking July and inserting September. Thank you.

DR. SCHIEK: I think I'll start that sentence again, if that's all right, your Honor.

JUDGE CLIFTON: Please.

DR. SCHIEK: The western value adjuster for whey was calculated as the five-year simple average of the monthly differences for the period ending September 2015, between the monthly NDPSR dry whey price and the simple average of the weekly western dry whey Mostly prices between the 26th of the

prior month and the 25th of the month to which the NDPSR whey price average would apply.

Unfortunately, CDFA no longer reports a manufacturing cost for dry whey due to confidentiality. However, we believe an appropriate manufacturing cost allowance can be constructed by adding the difference between the FMMO Class III formula dry whey manufacturing allowance of 19.91 cents per pound and the Class IV nonfat solids formula make allowance of 16.78 cents per pound, an amount equal to 3.13 cents per pound, to the most recent weighted average manufacturing cost for nonfat dry milk from CDFA (Attachment 1). The resulting dry whey manufacturing cost allowance would be 23.1 cents per pound.

However, merely updating the western dry whey value and manufacturing cost for dry whey, still does not reflect the bulk of the products made, nor does it reflect the value of whey to the plants that are unable to capture that value, because they don't make finished whey products due to high capital costs and their inability to recover these costs given the scale of their operations.

BY MR. ENGLISH:

Q. Why don't you stop there for a moment. In the previous paragraph you inserted the words per pound twice, once after 19.91 cents and once after 16.78. Do you want that to be in your testimony?

A. I believe so, yes.

Q. Okay. Do you see where that is, your Honor?

JUDGE CLIFTON: I did. So, Ms. Frisius, we're still on page 9, and the first number in the first full paragraph will have per pound inserted. Have you already done it?

MS. FRISIUS: Yes.

JUDGE CLIFTON: And the second number in that paragraph will also have per pound inserted. Thank you. She's just right ahead of things. I like her.

MR. ENGLISH: Your Honor, and before we move to the next section, it's been an hour and I have had two coughing fits without water, and Dr. Schiek I think, would you like a little break for --

DR. SCHIEK: Water would be nice.

JUDGE CLIFTON: You know, I'm going to ask that we ask if the people on stage testifying from a table can have water. They may still have to scrounge to get some, but if they had it and could have it on the table, it would certainly help. For counsel, I'm not asking for anything special, because I think it's just unlikely that you are going to spill at this table, so that's my request. All right. Let's take a break. Do you want ten minutes?

MR. ENGLISH: Let's do ten, that will give somebody a chance to ask that question.

JUDGE CLIFTON: It's 12:03. Let's be back and ready to go at 12:15.

MR. ENGLISH: Thank you, your Honor.

(Whereupon, a break was taken.)

JUDGE CLIFTON: We're back on record at 12:15. Mr. English?

MR. ENGLISH: Thank you. Chip English. Thank you, your Honor.

BY MR. ENGLISH:

Q. So, Dr. Schiek, if you would return to your testimony which is Exhibit 122, and read from the bottom of page 9.

A. I have a new heading.

Alternative Formula for Other Solids Price Calculation

The current Class III component price formulas establish a value for milk based on the price costs yields associated with the plant making cheddar cheese and on the plant converting the whey stream byproduct into dry whey. The problem with this formula construction is that for a plant that does not manufacture dry whey, it's revenues did not match up with a milk cost that is in part driven by movements in dry whey prices. Some plants make other finished whey products that, at times, allow them to capture enough revenue to compensate for the fact that they do not manufacture dry whey. However, as the testimony of Mr. Barry Murphy indicated, there are many cheese plants in California that cannot capture revenues to offset their increased milk cost. For cheese makers that do not have finished whey operations, margins can

become compressed and their financial viability threatened by the manner in which the regulated minimum price is calculated under the current Class III formula.

Investment costs to make finished whey products, that is dry whey, WPC, or WPI, are very high, and the majority of plants do not have enough volume no justify the investment. There are plants that cannot make finished product and which instead are selling liquid whey to others who make the finished product. The value of this sale would be more appropriate for a pricing formula because it is closer to a value that all plants can achieve. The value of the whey contribution should be capped because there will be many cheese plants that cannot find any viable market outlet for their whey and they will capture no value from their whey stream.

The Value of the Whey in the Price of Milk

End-product pricing for milk attempts to represent a market value for milk by capturing the value of the basic commodities that can be produced from milk, less their make cost, plus a reasonable return (ROI) to processors. For cheddar cheese, those factors are reasonably well-known. The byproduct from cheese production is whey, and the value of whey to a cheese maker is much more difficult to establish. The baseline product chosen to represent the value of whey in the FMMO other solids price formula has been dry whey. It is thought by some to be the lowest common denominator among the

wide array of products that can be derived from whey solids. The cost for drying a liquid product from whey containing approximately 6 percent solids have been debated and surveyed and have been used in FMMO regulated pricing. The experience from recent years, however, has shown that dry whey prices are volatile and not necessarily indicative of whey's value to cheese makers or of industry trends.

In order to capture value for whey, it must be dried in some form by someone. That gives it the ability to be stored and shipped at a reasonable cost. The place to start in establishing whey's value to a cheese maker then, is with a finished product in dry form and work backwards from there. The question is, which product is the most representative indicator of the value of whey to a typical cheese maker. USDA reports information on dry whey, whey protein concentrates (WPC), and whey protein isolates (WPI), in its Dairy Products annual summary. The whey protein concentrates are in two categories, 25 to 49.9 percent protein and 50 to 89.9 percent protein. Whey protein isolates contain no less than 90 percent protein. In the US, just 5 percent of cheese plants produce dry whey.

Cheese whey is approximately 6 percent solids. About 12 percent of the solids are protein and 88 percent are other solids, primarily lactose. As measured by protein content (the most valuable whey component) more than three times the amount

of US dry whey products are in the form of WPC/WPI rather than dry whey. Over the past eight years, production of dry whey has been declining, while production of whey protein concentrates and isolates has been increasing. Growth rates over that time based on production data contained in USDA's Dairy Products annual summary for the various categories, are as follows:

WPC 25 - 49.9, +1.1 percent.

WPC 50 - 89.9, +8.3 percent.

WPI, +9.5 percent.

All types of WPC or WPI, +6.1 percent.

Dry whey, -3.3 percent.

The difference in prices on a per pound of protein basis between dry whey and WPC 34, has been extremely volatile over the past eight years. A cheese maker whose whey revenue is derived from the market for WPC 34, while the milk price is tied to the market for dry whey, has likely experienced margin squeezes over that time which periodically have been dramatic.

Cheese Making Versus Whey Processing

The whey business is a completely different line of business from the cheese business. Equipment is different, the technology is different, the target market is different. The sales and marketing effort is different and the products are different. Dry whey and WPC are nutritional ingredient products utilized in a wide range of ancillary products, both

human and animal. Cheese, on the other hand, can be an ingredient product, but the product made by most cheese plants is more likely a consumer product either at a retail or a food service level. It is judged on the basis of flavor, texture, aroma, packaging, and perhaps performance in its intended use. For many cheese makers, making cheese is an art. Whey processing is looked upon more as a science. The capital cost required for a whey processing and drying plant is often larger than that of a comparable cheese plant. To justify the size of investment, a whey processor typically requires a substantial volume of resident whey which may or may not be supplemented by additional sources of external whey. That scale requirement rules out the vast majority of cheese plants in the country. Despite that fact, current milk pricing encourages cheese makers to venture into that line of business in which they may have little interest, no proficiency, and no passion to pursue.

The Valuation of Cheese Whey

In 2012, a survey of all 121 Wisconsin cheese plants (Attachment 3) was conducted by the Wisconsin Agricultural Statistics Service in cooperation with the Wisconsin Department of Agriculture Trade and Consumer protection, found that 80 percent of all respondents either did not process or did some limiting processing, limited processing of the whey they generated. Only 20 percent produced some form of value added dried product. Limited processing results in some degree of

liquid product transport savings. Those savings are required to be retained by the cheese plant to justify the investment in processing equipment and cover the cost of labor and operating expense to perform the processing. Operating expenses include utilities, waste treatment, equipment cleaning, and maintenance, along with depreciation, interest, insurance, taxes, and the like. The limited processing performed by smaller cheese operations is of negligible value to whey processing facilities that dry whey products, and have extra capacity to purchase outside whey. The value of limited processing lies almost exclusively in the concentration of solids and the resulting savings in freight expense.

Q. Why don't you stop, Dr. Schiek, if you don't mind. So Attachment 3, I would like to talk about that for a few minutes. That starts on page 16 of Exhibit 123, and goes through page 41, correct?

A. Correct.

Q. And it appears to be published by the Wisconsin Whey Opportunities Working Group, with an e-mail address of norm.monsen@Wisconsin.gov correct?

A. Correct.

Q. Can one of you summarize what is found in Attachment 3?

JUDGE CLIFTON: And Mr. Fish, again, state your name before you begin.

MR. FISH: Sure. Patrick Fish.

So basically, the study was conducted in an attempt to assess the whey situation in Wisconsin as unlike California, there were a number of very small cheese plants that operate in the state, and the initiative was basically done to gain an understanding of what the plants were doing with their whey, what level of processing was taking place, was the whey being concentrated, was the whey being cooled, where was the whey being shipped?

So the long and short of the study, as Dr. Schiek pointed out just a few minutes ago, was that about 80 percent of the cheese plants in the state are either doing zero processing of their whey or minimal processing at best. So as a result, that whey ends up, in some cases, being dumped. Or in other cases, is transported to a larger whey processing, a centralized whey processing facility, where the remaining value for the whey can be extracted. Along with that comes the cost to get the product from the smaller facilities to the larger facilities for further processing, and someone has to bear the cost of doing that. And it's safe to say that has to be absorbed by the larger processors. It becomes a cost of processing, if you will, to get the whey into a, we'll call it a stable form.

Let me just maybe give you an example. You will have a small plant making cheese. The whey gets put in a tank at 90 to 100 degrees, and that whey is only stable for about four

hours. And to keep a food grade quality product, the whey has to either be processed or cooled within a four-hour period if the processor wants to be able to sell that whey as a food grade product. So the small cheese plant ships the whey to the processor. Typically what happens is the processor pays the freight to get it from the small plant to his larger facility, and either upon arrival he has to cool the whey immediately or it has to be concentrated to a higher solids level and cooled, and hopefully within a four-hour timeframe. What you will find is, with the smaller facilities that are either too far from a large processor. In a number of cases they don't have, the distance is too great so that the value for the most part is lost because they can't get it there fast enough, and as a result some of that whey gets dumped. It's a very common situation in the State of Wisconsin, and I think just by, I'm not as familiar with the small cheese plant environment in the State of California. We do transport whey. "We" meaning Saputo, we transport whey from our own cheese plants in the state to a centralized processing plant, and we, too, absorb the cost to get that whey from smaller, our smaller plants to our larger processing facility.

BY MR. ENGLISH:

Q. Thank you very much for that. If you could just turn briefly within the Wisconsin study, and I'm looking at the exhibit pages 24 and 28, study pages 9 and 13. And as I was

looking at it and as you were discussing this, it appears to me on page 24 of the exhibit, which is page 9 of the study, is that table at the bottom effectively what gives rise to the analysis that 80 percent of the whey operations have little or no whey processing capacity?

A. For the most part, yes.

Q. Okay. And then on page 28 of the exhibit, which is page 13 of the study, that is, that appears to be an analysis of the average distance whey is transported for further processing by the percent of plants; is that correct?

A. Yes.

Q. And that would go to your issue about needing to get it somewhere within four hours in order to be able to reap any of the benefits, correct?

A. Correct.

Q. Anything else you would like to say about the Wisconsin study at this point?

A. No.

Q. Okay.

Dr. Schiek, if you would continue then, on the bottom of page 13 of Exhibit 122.

DR. SCHIEK: Am I at the paragraph beginning "in California"?

MR. ENGLISH: Yes, sir.

DR. SCHIEK: In California, according to testimony, only

one plant dries whey on a consistent basis. Only 13 of the 57 cheese plants of the -- okay. Only 13 of the 57 cheese plants process whey in any fashion.

JUDGE CLIFTON: So you probably did the math and that's probably 23 percent.

DR. SCHIEK: Probably is, but it doesn't make sense in the sentence, sorry.

JUDGE CLIFTON: But right now do you want to take the time to figure that out? Like, for example, if that were put into parentheses nothing would need to be stricken.

DR. SCHIEK: Correct. And it is 23 percent so let's put that in parentheses.

JUDGE CLIFTON: All right. Ms. Frisius, at page 13, third line up from the bottom, we'll just place two words in parentheses, only 23 percent. And Dr. Schiek, would you begin again with the "in California".

DR. SCHIEK: In California, according to testimony, only one plant dries whey on a consistent basis. Only 13 of the 57 cheese plants (only 23 percent) process whey in any fashion. Most plants in the state receive no value for the whey from their operation or the value is less than the cost of recovery and transportation.

The alternative amendment to the other solids price formula that we submitted to USDA on May 27th, 2015, was meant to represent the value to a cheese maker of selling liquid WPC

34 to a plant that would then make the liquid product into a finished dry product. The proposal was nearly identical to the one that was presented to CDFA at a Class Arabic 4b hearing, held on June 3rd, 2015. Since that time, we have been able to gather additional information on the market for liquid whey being sold by cheese plants, and have found that there are great variety of different forms of liquid whey being marketed ranging, strike the word from -- ranging from dilute whey to liquid WPC with higher protein concentrations. While there is variation in the products being marketed, the concept of adapting a formula that represents a liquid whey value, rather than a finished dry whey value is one that we feel is appropriate.

JUDGE CLIFTON: And I'll just coordinate with Ms. Frisius. So the first thing you did is strike the word from, from the fourth line up from this first paragraph on page 14. And the second thing you did is on the next line, you just added ED to market, to make it "marketed". So would you begin again, Dr. Schiek, with "since that time"?

DR. SCHIEK: Since that time, we have been able to gather additional information on the market for liquid whey being sold by cheese plants and have found that there are a great variety of different forms of liquid whey being marketed, ranging from dilute whey to liquid WPC with higher protein concentrations. While there is variation in the products being marketed, the

concept of adapting a formula that represents a liquid whey value, rather than a finished whey value, is one that we feel is appropriate.

JUDGE CLIFTON: Just after the word rather, read that again. You left out a word.

DR. SCHIEK: Rather than a finished dry whey value is one that we feel is appropriate.

JUDGE CLIFTON: Thank you.

DR. SCHIEK: The milk price should reflect what the cheese maker can earn by selling his wet separated whey FOB at his cheese plant. The likely buyer is someone devoted to the whey processing business that has extra capacity and lies within a reasonable distance. Ideally, an ongoing survey of prices on a pound of protein basis for which cheese plants sell liquid whey to other plants for further processing, should be the basis for establishing the other solids value for milk used to make cheese, because it more accurately reflects returns achievable by a greater number of plants.

Going off the testimony a minute. Alternatively, probably an even simpler method would be to survey plants that are selling dilute raw whey and on the price that they receive on total solids basis for the whey that they sell.

JUDGE CLIFTON: Selling dilute what?

DR. SCHIEK: Dilute raw whey.

JUDGE CLIFTON: Dilute raw whey.

DR. SCHIEK: Or unprocessed whey.

JUDGE CLIFTON: So it is just the whey stream?

DR. SCHIEK: Correct.

JUDGE CLIFTON: Okay.

DR. SCHIEK: Returning to the testimony.

Unfortunately, no such ongoing survey of liquid whey prices exists.

Instead, the value of whey in the Class III other solids formula should be a function of the WPC 34 market, because that is the predominant buying scheme for liquid whey. Whey processors are interested primarily in the protein portion of the whey. The lactose or permeate portion represents a disposal problem to most cheese makers and is unlikely to be compensated for by a whey processor. By utilizing a WPC 34 reference price and converting it to a dry whey equivalent basis, much of the current other solids pricing methodology can be retained. The costs for drying whey have been surveyed and a dry whey manufacturing allowance, albeit one that is likely outdated, is used in the current Class III formula. The costs of producing WPC 34 are not known, and we know of no publicly available data on these costs. A dry whey equivalent WPC 34 price can be calculated by first dividing the WPC 34 price, by .34, which would express the price on a pound of protein basis. This resulting price would then be multiplied by .12, the assumed proportion of dry whey, that is protein, to complete

the conversion.

The other solids factor would be the dry whey equivalent WPC 34 price, less the make allowance, less a factor to represent the cost of cooling the whey and delivering it to the nearest whey processing facility. The proposed make allowance in the current -- the proposed make allowance is the current California nonfat dry milk weighted average manufacturing cost, plus the difference between the current dry whey make allowance, over the then current NFDM make allowance. The transportation cost allowed is a distance of 50 miles at $3 per mile on 6 percent whey, or 5 cents per pound of whey solids. An allowance of 3 cents per pound of solids is provided to compensate for the cost of cooling the whey. Because the price does not serve to protect small cheese makers when the WPC 34 price is very high, nor dairy prices when it's, when the price is very low --

JUDGE CLIFTON: If you would begin that sentence again, please.

DR. SCHIEK: Okay. Because the price does not serve to protect small cheese makers when the WPC 34 price is very high, nor dairy producers when the price is very low, a floor of 25 cents per hundredweight on a skim milk basis, or 4.24 cents per pound of other solids, and a ceiling price of $1.50 per hundredweight, or 25.42 cents per pound of other solids, is proposed. The order language for this other solids price

calculation proposal is shown in Attachment 4.

BY MR. ENGLISH:

Q. So let's turn to Attachment 4 of Exhibit 123, which is page 42, the last page of the exhibit. And rather than reading in the order language which is in the Exhibit, why don't you, instead, provide what that, all that verbiage is as a mathematical formula, which we have listed at the bottom of the exhibit.

A. So the verbiage basically contains the method for converting a WPC 34 price to a dry whey equivalent, and you see that in the mathematical formula at the bottom. WPC 34 price divided by .34, times .12. That's the conversion to a dry whey equivalent. And then we have got a number 31.1 cents. That includes a 23.1 cent make allowance, 5 cents for transporting the whey, and 3 cents for cooling the whey.

Q. So if you add 23.1, 5, and 3, that gets you to 31.1, correct?

A. Correct.

Q. And then after you have done all of that calculation, you multiply by 1.03, which you find in the current order language, correct?

A. Correct.

Q. Which is what?

A. That is the dry whey yield factor.

Q. The dry whey yield factor. Okay.

JUDGE CLIFTON: And just to be clear, when you were talking about the formula, what do you do with the 31.10 cost?

DR. SCHIEK: You subtract it from the converted WPC 34 price.

BY MR. ENGLISH:

Q. And that's why the mathematical expression has stated "on Attachment 4", correct?

A. Correct.

Q. Okay. Now, you first, of course, have to calculate a WPC 34 price, correct?

A. Correct.

Q. And we have two ways of going about that. The first, and ultimately the preferred way, is to have the National Dairy Product survey report, and it looks like I might have, when I typed this up gotten that backwards, but so, you may want to correct, your Honor, on Attachment 4 of the exhibit, the first reference in the second line, it should be NDPSR, not NDSPR. I converted the letters there.

JUDGE CLIFTON: All right. So we will. So we're in Exhibit 123, we're on page 42, and the proposed language for Section 1051.50(q) will be modified in the second line, we'll strike NDSPR and insert what, Mr. English?

MR. ENGLISH: NDPSR, which appears correctly five lines below.

JUDGE CLIFTON: Good.

BY MR. ENGLISH:

Q. So did we get that? Okay. The preferred mechanism would be to get the product price survey to now include a new product, correct?

A. Correct.

Q. And during Federal Order Reform, USDA proposed the new end-product price formulas, and started collecting that kind of data even before Federal Orders were adopted, correct?

A. That's my understanding, yes.

Q. And so as I think we actually had some conversation some weeks ago now, 7 CFR Part 1170, which is dairy product mandatory reporting, is not subject to this kind of formal rule making we're doing here, but is subject to Notice and Comment rule making, correct?

A. That's my understanding, yes.

Q. Okay. So we'll let the lawyers talk about it eventually, but there's a mechanism in place if the Department wants to move in this direction to start collecting this data.

A. I believe there is.

Q. Okay. Now, if for some reason we don't have that data, you nonetheless have a proposal written in the language at the last sentence to use the Dairy Market News; is that correct?

A. Yes. Right now that is the, as I am aware of, the only publicly available reference price for WPC that's available. And it is the Central/West WPC 34 price, there is a range, and

there's also a Mostly. And my understanding is that in most of the industry works off the average of the Mostly price when they look at examining prices and price tendencies, price trends, and that is quite often, as I have been told by people who are in this business, that's the price that's referenced when people are buying whey. It's usually off of that price series.

Q. And if one looks at the proposal as submitted to the Department which is part of Exhibit 1, and/or the alternative language that was submitted to the Department, this is a lot simpler, right? This is a lot shorter and simpler for calculating other solids price?

A. I believe it is, yes.

JUDGE CLIFTON: And you held up, Mr. English?

MR. ENGLISH: Attachment 4.

JUDGE CLIFTON: Thank you.

BY MR. ENGLISH:

Q. And it also tracks, obviously somewhat different, but it tracks and is more parallel to the language in 1000.50(O), which is the other solids price existing in existing Federal Orders, correct?

A. It's closer, yes, to the language.

Q. So let me ask you a few other questions before asking for the document to be admitted, and then maybe taking our lunch break.

I want to take you back to page 4 of your testimony. When you quoted from Federal Order Reform and you told the story of how we went from the M-W to the end-product pricing, and you referenced, for instance, sort of the Department's movement towards a national price grid, correct?

A. Correct.

Q. Okay. It's not, the Dairy Institute does not object to a national price grid, does it?

A. No, I think there's good economic justification for a national price grid.

Q. But our problem is using a national price grid that is based on data that's 19-years old?

A. That's part of it. And based on just the fact that, you know, regulation of California wasn't explicitly taken into account in setting that price grid.

Q. And whatever the lowest price was in the spatial analysis in 1996, it's our view, and hopefully there will be future testimony on this issue, that it looks more like California's the lowest price as you have testified, correct?

A. Yes. I -- that's my belief. And I have seen earlier studies in the interim since Federal Order Reform that would suggest that's the case.

Q. Anything you would like to add before I move for admission of Exhibit 122 and 123?

A. I don't believe so.

MR. ENGLISH: Your Honor, I move for the admission of Exhibits 122 and 123, and let me just look back at 123 for a moment again, and point out that Table 13 was developed under the direction and control of Dr. Schiek. That Attachment 1 is official documents of CDFA, the kind of documents we have already seen put in this record. Attachment 3 is an official document published by the Wisconsin Department of Agriculture, and Attachment 4, of course, is just language that we are proposing. So I would move the admission of Exhibits 122 and 123 at this time.

JUDGE CLIFTON: Does anyone wish to question either Dr. Schiek or Mr. Fish before determining whether you have any objection to the admission into evidence of Exhibit 122 or 123? No one. Is there any objection to the admission into evidence of Exhibit 122? There are none. Exhibit 122 is admitted into evidence.

(Thereafter, Exhibit Number 122, was received into evidence.)

JUDGE CLIFTON: Are there any objections of the admission into evidence of Exhibit 123? There are none. Exhibit 123 is admitted into evidence.

(Thereafter, Exhibit Number 123, was received into evidence.)

MR. ENGLISH: Your Honor, I note that it's about seven minutes to 1:00. And I think that rather than starting

cross-examination for another reason I'll mention in a second, it would be appropriate to take lunch, and I would point out that Mr. Dolan for Driftwood Dairy managed to, I guess coming from LA was better than coming from San Francisco -- he is here and we would propose that after lunch he go on, and I think that's a little more orderly than continuing these two for 15 or 20 minutes, taking lunch, and then putting him on.

I think it would make more sense if we come back from lunch, Ms. Vulin will handle his direct examination, and obviously the cross will be whatever it is, and then after he's completed so that he can hopefully get back to Los Angeles tonight, these fine gentlemen can return to the stand.

JUDGE CLIFTON: That sounds good to me. Does anybody have anything to bring up before we break for lunch? Nothing. It's almost 1:00. Please be back and ready to go by 2:15. 2:15.

(Whereupon, the lunch recess was taken.)

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MONDAY, NOVEMBER 2, 2015 - - AFTERNOON SESSION

JUDGE CLIFTON: We're back on record at 2:19. Mr. Dolan, you may come forward. And the way you get to where I am is back behind you -- you have already figured that out. Welcome. And you may take either chair. Very good. I'll swear you in in a seated. If you will raise your right hand, please.

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

MR. DOLAN: I do.

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

MR. DOLAN: Good afternoon. MY name is Jim Dolan. It's J-I-M, D-O-L-A-N. I'm here today as a representative of Driftwood Dairy --

JUDGE CLIFTON: Let me stop you just a minute. I want to recognize also Ms. Vulin. Ms. Vulin, if you would identify yourself.

MS. VULIN: Ashley Vulin.

JUDGE CLIFTON: And would you like him to just to begin?

DIRECT EXAMINATION

BY MS. VULIN:

Q. Yeah. So Mr. Dolan, you have a statement you have prepared to make today?

A. Yes, I do.

Q. And but not as an exhibit, just some notes prepared for your statement?

A. That's correct.

Q. And one thing you will want to make sure, it is natural in conversation to talk over each other a little bit, but you will want to wait until I'm done so the court reporter can get me down before she begins writing your answer. So nice and slowly, you will read your statement into the record, please.

A. Okay.

Q. Thank you.

A. Good afternoon. My name is Jim Dolan and I'm here today as a representative of Driftwood Dairy, a regional fluid milk bottling plant located in El Monte, California. Driftwood Dairy was purchase by my family 69 years ago. Driftwood is now owned by the Driftwood Dairy Holding Corporation.

I began working full-time in Sacramento for Crystal Cream and Butter Company. When I began working at the family creamery in El Monte, we owned and milked cows, as well as bottling milk. We sold the cows in the mid-1980's. Today we service mostly schools, institutions, hospitality customers, and the ingredients side the business that is the food business that takes dairy ingredients to, as part of their ingredients, and we fill those needs.

Q. What other products do you specifically sell, Mr. Dolan?

A. We also sell juice products and we sell ice cream mix.

Q. And what fluid milk products do you sell?

A. Basically, all your Class I dairy products.

Q. Thank you.

A. We have very little resale trade, retail trade. Driftwood's marketing area covers pretty much the entire Southern California region from Lancaster on the Northeast, Banning on the Southeast, San Diego and Ventura. We have served, I have served on the CDFA Advisory Committee and also served several terms as a member of the Milk Producers Security Trust Fund and Advisory Board. I am here today to support the proposal submitted by the Dairy Institute, Proposal Number 2.

The largest segment of our business is schools. That business is driven by competitive bidding, making it very cost sensitive. The ability to win customers in this highly challenging market, makes it critical that Driftwood be able to purchase our full, bulk milk supply in efficient and timely manner, at price levels that allow us to be successful in the current California State Marketing Order has been able to perform satisfactory to meet our fluid milk needs. Therefore, if a Federal Marketing Order is designated for California, it is imperative that it contain the performance standards that guarantee the Class I market continues to be served as efficiently as now. We do not believe that the Cooperatives' proposal contains the performance standards necessary to

adequately serve the California price market.

Q. The California class --

A. Class I market, I'm sorry.

Q. Thank you.

A. To further equalize the State fluid price market, Driftwood also supports regulation of California exempt producer distributors as contained in Proposal 1 and Proposal 2.

Class I sales have been declining in the past few years under pressure from competing beverage such as soy, almond, coconut, and a host of other substitutes.

Q. And those sales haven't been declining just in the last few years, but in the last few decades?

A. Decades, yes. Added pressure also goes -- added pressure from increased price levels and potential disruption of the supply of the Class I market due to a lack of performance standards will not help to stop the beverage reverse of this trend. In fact, we believe more efforts should be made to expand Class I sales.

Driftwood's serving our regional schools is on the front lines and is working to gain those lifelong customers. The message that Driftwood would like to leave today is that no regulated milk marketing program will be successful in the long-run unless our customers are served and satisfied. That is the most important job for all of us, no matter what

position we feel along the supply chain.

Thank you for this opportunity to provide our statement for the hearing.

Q. Thank you, Mr. Dolan. So as a Class I handler, you have to pay the highest price for the milk you purchase?

A. Yes, we do.

Q. And you're not allowed to depool that milk, are you?

A. No.

Q. So really the only benefit or the only tool you have to ensure that you are able to serve the Class I markets are performance standards?

A. That's correct.

Q. And it looks like you have been working really hard in order to grow the Class I market, particularly amongst youth?

A. Yes, we have.

Q. And that seems to be an important thing if we're trying to grow a population of children into adults who are used to drinking fluid milk?

A. That's correct.

Q. And in order to ensure that these contracts are always going to be met for places like schools that can't have an interruption in their milk supply, you need the ability to ensure that you have a dedicated, constant stream of fluid milk?

A. Yes, we do.

Q. And you think that that's best served through the performance standards.

A. That's, that is correct.

Q. Is there anything else you would like to add, Mr. Dolan?

A. Not right at the present time, no.

Q. Okay. Thank you.

JUDGE CLIFTON: Thank you. Would you spell El Monte for me.

MR. DOLAN: E-L, M-O-N-T-E.

JUDGE CLIFTON: Now, I recognize the general area in Southern California that you serve. Is your plant located right in El Monte?

MR. DOLAN: Yes, it is.

JUDGE CLIFTON: El Monte.

MR. DOLAN: Right. We're 13 miles straight east of downtown Los Angeles.

JUDGE CLIFTON: Wow. All right. And it's just one plant?

MR. DOLAN: Yes.

JUDGE CLIFTON: And what products do you place in the schools if you are successful with your bid?

MR. DOLAN: Basically we have milk, the regular milk, reduced fat milk, lowfat milk, skim milk, nonfat chocolate milk.

JUDGE CLIFTON: What size containers is that in?

MR. DOLAN: Basically, half pints.

JUDGE CLIFTON: Half pints. And how much of your business is school business?

MR. DOLAN: About 40 percent.

JUDGE CLIFTON: I'm sure the bidding to obtain those contracts is extremely competitive.

MR. DOLAN: Yes, it is.

JUDGE CLIFTON: All right. Ms. Vulin?

BY MS. VULIN:

Q. So one more question, Mr. Dolan. How many employees do you have in your company?

A. Approximately 250.

Q. 250. And are they all located at the plant in El Monte?

A. Yes.

Q. Thank you.

JUDGE CLIFTON: Who next has questions for Mr. Dolan? Welcome. I didn't identify you this morning.

MS. OLIVER THOMPSON: I just arrived right before lunch break.

JUDGE CLIFTON: Very good. Welcome.

CROSS-EXAMINATION

BY MS. OLIVER THOMPSON:

Q. Megan Oliver Thompson.

Good afternoon, Mr. Dolan.

A. Good afternoon.

Q. I'm one of the Attorneys representing the Cooperatives for Proposal Number 1. Just a couple questions for you.

You understand there are no performance standards under California law as it stands right now; is that right?

A. There -- there are call provisions that makes milk available in case it's not.

Q. Okay. So there is a call provision under California law, correct?

A. Yes.

Q. But no performance standards per se, correct?

A. Per se, there's not.

Q. And the call provision is has not been used?

A. It has not been needed.

Q. And hasn't been used, right, therefore? Okay.

Thank you.

JUDGE CLIFTON: Who else has questions for Mr. Dolan? Ms. Taylor?

CROSS-EXAMINATION

BY MS. TAYLOR:

Q. Good afternoon, Mr. Dolan.

A. Good afternoon.

Q. This is Erin Taylor. I'm with the US Department of Agriculture. I want to thank you on behalf of the Department for coming out today and expressing the views of your company.

I just have a few quick questions.

You have 250 employees, but just for the record, could you give us an approximate size of your business, how many pounds of, how much milk do you process a month?

A. We -- our sales are about a little over a hundred million a year.

JUDGE CLIFTON: A hundred million what?

MR. DOLAN: Dollars.

BY MS. TAYLOR:

Q. And since, just, I want to make sure the record's clear in your two main points, since we don't have an exhibit. But your main point for supporting Proposal 2, if I'm correct, was you believe that performance standards are necessary to guarantee that the Class I market is served?

A. Yes. Most of your market, your supplies are leaving Southern California, which is becoming, which is a deficit area, and so we need something to incentivize the movement to Southern California for Class I.

Q. Okay. And currently the transportation credit and allowance program in California helps cover some of those costs?

A. Yes.

Q. Okay. And another point you raised was that you want to regulate exempt producer distributors. Did I write that down correctly?

A. That's just to level the price of milk.

Q. Okay. Can you just elaborate for the record a little bit more about why you want them? I assume when you are saying that, is that you want the 3 million pound producer-handler limit as in all other Federal Orders that has also been proposed as part of Proposal 2?

A. Yes.

Q. Okay. And could you, just so the record is clear, elaborate on why you feel that is necessary?

A. Well, we compete with producer distributors in our business, and we'd just like to compete on a level playing field with the price of milk, price of raw milk.

Q. And you feel they have some advantage?

A. If they are not, if they are not regulated, yes, they would.

Q. And they currently do? I'm trying to -- do they currently have one under the California --

A. They are partially regulated now.

Q. Okay. That's it. Thank you.

JUDGE CLIFTON: Who else has questions for Mr. Dolan? Mr. Beshore, might you have questions for this witness?

MR. BESHORE: I do not have any questions for Mr. Dolan.

JUDGE CLIFTON: All right. Thank you very much. Is there any redirect, Ms. Vulin?

MS. VULIN: No thank you, your Honor.

JUDGE CLIFTON: All right. Thank you so much, Mr. Dolan, I very much appreciate your being here. We'll now invite our team of Dr. Schiek and Mr. Fish.

MR. ENGLISH: And this is Chip English. And they are available for further examination.

JUDGE CLIFTON: Who would like to ask the first cross-examination questions of either Dr. Schiek or Mr. Fish? Mr. Vetne, we would appreciate someone going first. I know there's a lot of material here.

CROSS-EXAMINATION

BY MR. VETNE:

Q. John Vetne. Representative for Hilmar Cheese Company. Thank you very much, gentlemen.

I think either one of you that has an answer can answer, and if one of you thinks the other one's answer is incomplete, jump in.

All right. Start with you, Dr. Schiek, and I think I'll direct my questions to you.

Much of the data, Dr. Schiek, that you rely on for product prices, as well as manufacturing costs or make allowances, is derived from material that is reported or has been at some point, reported by CDFA, correct?

A. That's correct.

Q. Okay. And some of the prices that you have averaged includes historical average of prices that will not be reported

in the future, correct?

A. Correct.

Q. Okay. And the manufacturing allowances, the manufacturing allowances are derived exclusively from CDFA periodic audited surveys of manufacturing costs at California plants, correct?

A. Correct.

Q. Okay. Now, you are aware that periodic survey of manufacturing costs is not something that is routinely done by USDA, correct?

A. Correct, I'm aware of that.

Q. You are aware of that. There have been a few hearings since 2000 concerning manufacturing costs, but for those, the industry gathered what they could and presented them at hearings. Did you -- let me precede that. Did you attend any of those hearings, Federal manufacturing cost hearings or were you aware of them and reviewed what happened?

A. I did attend the one in early 2000 after Federal Order Reform came into effect, and testified there about the CDFA manufacturing costs. And I'm aware that there have been other hearings to look at what the manufacturing costs are, what the make allowances should be.

Q. Okay. If a Federal Milk Order were to come to California, do you believe that there would be a need for, in the future, the kind of information on manufacturing costs that

heretofore CDFA has provided by survey and audit of California plants?

A. I do. I think if you are going to use an end-product formula for pricing, it is desirable, probably almost essential I would say, essential to have manufacturing costs that are as current as possible and updated frequently.

Q. Okay. And taking that one step further, do you believe that continuing the kind of survey that CDFA has done in the past would be a good and reasonable, if not necessary, expenditure of the assessments levied by USDA to make the markets work, to run the program?

A. Yeah, I would agree with that. I think that would be a good use of funds.

Q. Okay. Let me go back, then, to prices I started with and digressed. Some of the prices that have been used, average range, to impute a geographic relationship between California and other places, but as time goes by, that averaged price will be less and less useful, correct?

A. Specifically the average prices that I'm reporting today?

Q. Yes.

A. Yes.

Q. Plants, for example, the number of plants that are available to report, the geographic distribution of production may change in the future, correct?

A. Correct.

Q. And with a differing geographic distribution of production, you may get a different price surface, correct?

A. Correct.

Q. Okay. Would you agree with me that if the usefulness of average prices, as you have presented, comes into question, but prices can be surveyed and averaged someplace, that an alternative method that might be considered would be to impute the value back to California or back to the west by surveying transportation costs instead, and using survey transportation costs to impute a value at a location different from the location where survey prices are available?

A. Yes, I do think transportation costs are a key factor in terms of determining the spatial value, location value. Of course, changes as you mentioned earlier, in production, plant capacity at different locations can also affect that value. But transportation is one of the key components that changes, can change rapidly.

Q. And, in fact, an FOB California plant price that has been used by CDFA for several products is, in effect, a survey price that reflects transportation costs to the consuming part of the country where the demand is the greatest?

A. It certainly reflects transportation costs, yes.

Q. Okay. I just, I took my calculator out and calculated one number, I don't want to go through it for all the other

products, but when I looked at the return on investment for butter, in the CDFA manufacturing cost survey, just under 9, just under .9 cents, or just above, less than a penny per pound, and that was for 2013. Then I looked back at prices for 2013, they range about a $1.50 a pound, more or less. That's a return on investment of 6/10's of one percent of the sale price of the product. That seems pretty narrow, pretty small return on investment at the manufacturing source.

Is there some reason why USDA or CDFA should target a small return on investment when, when the process is essentially one of great regulation? Return on investment from the price of the product to the cost of the ingredients?

A. I don't think there's a reason to target a small return on investment. Probably, it bears kind of repeating of how the return on investment is calculated under this cost survey.

They look at the net book value of the assets and apply the corporate Moody's BAA Corporate Bond Index, and that rate, or I should say the actual amount of the return on investment on a per pound of product basis, is going to vary depending on the book value of the asset. So where you have old plants, you could, you would have a lower return on investment number as part of the cost.

Q. So if the survey population were a population where the plants are newer, the return on investment would reasonably be higher then, correct?

A. Yes, that number would be higher, that's correct.

Q. Okay. And at least in, maybe I'm wrong about this, but my sense of information at this hearing is that there's at least one product line in which there are a number of plants that are fairly new and innovative and expensive, and that would be whey products.

A. Yeah, the whey products, and I'll be honest, I don't know the age of the whey plants and how new they are. Typically cheese plants in California, particularly the larger ones who invested more because of the volumes that they deal with, that make those investments feasible, are pretty good at, pretty good is not really the right word. They frequently reinvest in those operations. So they will update the equipment, they will update the processes, they will try to make the, improve efficiencies and things by investing more. So that's kind of a continual process is how I see it. Some of the older plants, at least in the history of California, somebody will build a plant, and you know, if you are going to keep that plant going as an ongoing business and concern, continual reinvestment is usually needed to keep up to spec, to keep the quality and expectations of customers in the marketplace.

Q. Okay. So I'm inferring, and I'm asking if you agree with me, that if a make allowance, manufacturing cost allowance produces a result that relies either on aging plants or a very

small return on investment, that that, in fact, will tend to discourage reinvestment and improvement of existing plants so that cheese can be produced more efficiently and the market can be served better to clear the market, correct?

A. Yeah. I would agree with that statement. I think if you are, if you are looking at an industry that has old plants, and therefore, calculating return on investment this way, results in a low number. You can make the argument from a policy perspective, but I think that that's an industry that's probably in need of investment, and by having a lower return on investment number in the cost structure, or at least in the make allowance, there is probably less incentive to invest. Obviously less margin, less incentive to invest.

JUDGE CLIFTON: If I could interrupt, Mr. Vetne. I would like Dr. Schiek, on page 9 of Exhibit 123, just to read into the record again that full statement of what return on investment is. All the words of it.

DR. SCHIEK: Sure. So reading from the bottom of page 9 of Exhibit 123, Return on Investment:

Calculated by subtracting accumulated depreciation from the original cost of the assets, with the remaining book value multiplied by Moody's "BAA" that's in quotes, Corporate Bond Index.

JUDGE CLIFTON: Thank you. That's exactly what you were talking about, but I just wanted to remind everything that it

is clearly defined.

BY MR. VETNE:

Q. Okay. Let's get a little more information on what Moody's Bond Index is. Looking at Moody's Bond Index produces an interest rate; is that correct?

A. That's my understanding, yes.

Q. Okay. And a fairly conservative interest rate.

A. "BAA" bond rating is not the most conservative. It is not the least conservative, either.

Q. Okay. Okay. Here's Mr. Fish is sitting up there without anything to do for awhile, so this might be directed more towards you, Mr. Fish.

The plants, the whey plants in Wisconsin that specialize in whey products that aggregate whey from, as from cheese plants, take the byproduct, do many of those produce more than one whey product in their plant?

MR. FISH: In some cases.

Q. In some cases? So the plants are capable of adjusting from one whey protein concentrate product to another, or from a whey protein concentrate to a whey protein isolate, as the market for those individual products might signal, like, protein may be achieve its highest value if sold in WP 80 or whey protein isolates, so the plants can select the highest and best use of the whey stream in the marketplace. Is that something that happens at some plants in Wisconsin?

A. I would answer that by saying, in some cases that's true, in a number of other cases it's not.

Q. It's not because some plants just produce one --

A. Correct.

Q. -- kind of whey product? Okay.

JUDGE CLIFTON: You were nodding yes when he finished his question. You were nodding yes. The court reporter can't take down a nod.

MR. FISH: Yes.

BY MR. VETNE:

Q. The plants that have the flexibility to produce one or more alternative products, are they plants that, that produce the concentrated whey protein products rather than dry whey, or are there some that do both?

A. There are some plants that have the capability to do both.

Q. Okay. So for either one of you, the marketing of some form of concentrated wet whey is an unregulated commercial transaction, correct? In the federal system, correct, Mr. Fish?

A. Selling liquid whey?

Q. Yes.

A. Yes.

Q. And in the state system, Dr. Schiek?

DR. SCHIEK: Yes.

Q. Okay. And for that unregulated transaction of unregulated raw product, the buying market decides what to do with them, what to do with that product, correct? That would be the receiving plant, whether they have multiple choices or not, it's the buyer that decides what to do with it, correct?

MR. FISH: Correct.

Q. And isn't this a bit like the M-W used to work? Manufacturers in Minnesota and Wisconsin would buy milk, and in the aggregate, decide what to do with it? What kind of cheese to make, what kind of product, nonfat dry milk, butter, cheese? Eventually it became mostly cheese, but wouldn't it work sort of the same way? You have unregulated raw ingredient put into a product and you try to assess the value of the raw ingredient based upon how that is used? Isn't that somewhat like the M-W used to work?

DR. SCHIEK: I'm not as, I would say familiar with those transactions in Minnesota and Wisconsin in terms of purchases of Grade B milk, but what -- what you are describing would seem to fit the situation.

Q. Okay. And then I have, let's see, one more. For the whey factor, Dr. Schiek, you propose a calculated floor and calculated ceiling. My question to you is, have you looked at that to see if they balance out? The number of times you might encounter a ceiling and a floor so that nobody is left holding too much of the bag?

A. So, yeah, we did look at that, and the number, the one that we proposed, the formula that's in our alternative proposal, I believe hit, during the five-year period that we looked at, which I believe went through August of this year, we did have, over that period, nine months where it hit the ceiling of $1.50 a hundredweight value of skim whey, and then nine months where it hit the floor of 25 cents.

Q. Awesome.

A. Well, yeah.

Q. So at least we have a number of months balanced there.

A. Yeah. And so, you know, what we're trying to achieve there is a number for plants that really aren't able to recover very much value for their whey, if any. If whey prices really take off and get very high, that can create a very difficult, if not untenable, financial position, squeeze, on those cheese makers. So the idea of the ceiling is that there's a limit to how high it will go to kind of blunt the impact on cheese makers of that type in high whey markets. And then it seems appropriate if you are going to have a ceiling, to have a floor, so that when whey markets collapse there is some downside protection at least at some level, on the down side for producers.

Q. Okay. For those cheese plants that a majority of cheese plants perhaps or minority of milk, but for those cheese plants that don't have whey processing, their means of

recovering the cost of disposal of whey, or the imputed, but non-existent revenue stream that they get from whey that is imputed in the regulated price, their way of addressing that is to put that cost or that charge into their cheese price. That's the only place they can recover it from the market, correct?

A. If they are going to recover it, that would be the place where they could recover it. If it's an option to do it.

Q. Yes, if that's an option. But there's a limit for that, because whatever cheese they produce is coming into the marketplace, national marketplace, and there are others that produce cheeses of that kind or similar kinds that compete with their product?

A. That's correct. We had testimony from a cheese maker at, I believe it was the hearing on 4b pricing and whey in 2007. And his point was, you know, even though he was a specialty cheese maker, I believe he was making fresh Mozzarella. That he faced limits in terms of how much he could pass onto customers. Meaning that fresh Mozzarella, I think he said one of the biggest uses of fresh Mozzarella was in restaurants with the salad bars. And his comment was, if my price for fresh Mozz gets too high, or if the price for fresh Mozz gets too high, they simply remove it from the salad bar and put at another product in there, bacon bits, or whatever the other, you know, some sort of alternative product to entice

consumers. So that was his example anyway.

Q. Okay. When you referred to we, hearing, and 2007, you were referring to we here in California to a hearing before CDFA in 2007, the record for which, and decisions for which, are available on the CDFA website in their hearing matrix page, which has the hearings listed chronologically most recent on top, correct?

A. That's correct.

Q. Thank you.

JUDGE CLIFTON: Mr. Beshore?

CROSS-EXAMINATION

BY MR. BESHORE:

Q. Marvin Beshore.

Good afternoon, gentlemen.

A. Good afternoon.

Q. Probably going to jump around in some irrational fashion from topic to topic here, but I do have a couple questions, a couple topics I want to pursue with you. And I think I only have one question or set of questions for Mr. Fish, so I'll start and get those out of the way.

In your -- in your operations here in California, you purchase milk from both independent producers and cooperatives I understand; is that correct?

MR. FISH: That's correct.

Q. Okay. And you pay, without getting into the level, you

pay some level of premium to those producers and cooperatives for your milk supply?

A. That's correct.

Q. Okay. Now, there's been some testimony from, recently, from a Hilmar witness in particular, that there were occurrences in California in 2007 and 2015, I think if I have got the dates about right, when milk was shipped out of California, they had to ship milk out of California and perhaps others did. Although there was capacity in state, it was not willing capacity. So you weren't here for that testimony, but the, my understanding was that there was capacity, but nobody wanted the milk. The people with capacity didn't want the milk. Was Saputo in that circumstance during any periods of time during those periods of time, say in 2007 or 2015, when you had capacity, you knew there was a glut of milk in the state, people were offering you milk and sending it out-of-state, but you didn't, your capacity wasn't willing to accept the milk?

A. 2007 pre-dates me in terms of my responsibilities. In 2015?

Q. Yeah, I think it was 2015 that was referenced.

A. We process -- fortunately, our plants are extremely busy, so we process, we have full supply contracts with two of the larger co-ops and a producer base of our own, so to my knowledge, I have no knowledge of milk leaving the state.

Q. Okay. And there's never been a time when Saputo had capacity to process but you weren't willing to process available milk with your capacity?

A. Not that I'm aware of.

Q. Okay. So Dr. Schiek, at one of the last questions you addressed in response to questions from Mr. English, and this was after your prepared statement. Let me see if I got it right. Something to the effect you have no objection to a national hearing or a national price system for a Federal Order manufactured class prices. Did I get that right or wrong or mix it up or down?

DR. SCHIEK: I think you are -- I guess I'm not sure. I think what I was, we were talking about was this idea of a national price surface or price grid as some have called it. And the question was, are we saying, does Dairy Institute believe that there is or should be a national price surface or a system of prices. And we're not objecting, I think the answer was, we're not objecting to a system of prices, the question is, what those prices look like. Are the ones currently employed in California, the right prices.

Q. Okay. So national system of prices implies to me, a national policy regarding pricing. Is that fair?

A. I suppose the system would be the result of a policy decision, so yeah.

Q. Okay. And presently, you are aware, of course, that

the policy decision, very explicit policy decision by USDA with respect to Class III and Class IV prices, Class II prices for that matter in the Federal Order system, is that there should be one uniform national price for those classes of milk?

A. I'm aware that there's one uniform price for those classes of milk, yeah.

Q. But you are also aware that that's an explicit policy adopted, or I would say articulated, articulated by USDA in the pricing decisions.

A. Yes.

Q. And you, do you disagree with that policy articulation?

A. I think for the Federal Orders as they exist, that policy is probably defensible. I think when you talk about expanding into an area that hasn't previously been regulated, I think you have to look at it again.

Q. Okay. So you are, the policy that you are endorsing today, and in this hearing in Proposal 2, is that there would be one price for the presently existing ten Federal Orders, including the Order in Arizona, and the Order, Pacific Northwest Order including Oregon, Washington, there would be one price for those Orders, then there would be another lower price for California?

A. So that is the result of our proposal, so, yes. But I would say that this is a California hearing, and that's the only thing open for consideration. My view would be that it

would, it would be appropriate to look at the whole national pricing surface if you are going to bring California into the Federal Order system.

Q. So you would, agree then, that the prices in the system for manufactured milk products for Class II, III, and IV, that those prices should be evaluated in the national hearing?

A. I do believe that the overall price system probably would be evaluated in a national hearing. It would be more efficient than doing it case-by-case. But I also believe, so the answer is yes, it probably should be evaluated in a national hearing. But I also believe that since we're in a California hearing and we're promulgating a California Order, we ought to set a price that is correct and right for this order.

Q. Okay. When you are -- you have referenced a number of places to the use of, use of averaging and coming up with regulatory, the factors in regulatory policies, correct?

A. Correct.

Q. Okay. And you have indicated that, you know, that obviously means some transactions are going to have higher prices and some are going to have lower prices, and so some participants are going to experience, you know, different circumstances with respect to those price formulas, correct?

A. Correct.

Q. And is it your, is it your testimony, then, that, and

your position that notwithstanding national average product prices, California should have the lowest price in the national grid for manufactured milk, for milk used for manufactured products?

A. Yes, I think that's my assertion.

Q. Okay. You understand that the current, the prices in the current Federal Order system are averages based on California prices, as well as prices in the rest of the country?

A. I understand that the NDPSR price surveys include California in there, so California is part of the calculation.

Q. And since we don't know, the NDPSR doesn't release regional prices, regional components, or statewide components, we don't know whose high, for certain, with certainty, who is high, who is low, or where those, how those prices are made up?

A. We don't know that from the NDPSR survey, that's correct.

Q. By the way, the NPDSR survey, those prices, the products used in that survey are different products than some of the products that you recommend using for prices in the Proposal 2, are they not?

A. I believe the cheddar price is a block barrel weighted average, with a conversion of the barrel price by adding 3 cents a pound. And we're advocating using a block only price because that's the majority, the great majority of cheddar

cheese made in California is cheddar block.

Q. And -- okay. So there's a difference in the block, in the cheddar price series. There's also a difference in the specifications for the powder prices, are there not?

A. Yes, there is. The CWAP price has products that has been priced as long as 150 days, going back 150 days.

Q. Which is different than the NDPSR?

A. That's correct.

Q. Okay.

JUDGE CLIFTON: Help me with the initials on what you just said, CWAP.

DR. SCHIEK: So the CWAP is the California Weighted Average Price for nonfat dry milk in California.

JUDGE CLIFTON: Simple.

BY MR. BESHORE:

Q. Let me go to a couple of questions with respect to whey pricing. On the top of page 12 of Exhibit 122, I believe you reference that a cheese maker can experience margin squeezes when dry whey prices and WPC 34 prices are not aligned; is that correct?

A. That is on page 12, yes.

Q. Okay. That works both ways, does it not?

A. It does.

Q. So that sometimes there's a squeeze and sometimes there's an up, and a profit, maybe a windfall, I don't know.

A. Yeah. I don't really know if there's a windfall or a loss, but I do know the margins will probably expand and contract, depending on the relationship of those prices if the product price of what they are selling the whey for is based on WPC and the milk cost is based on dry whey.

Q. Okay. So with respect to your formula, or the maybe the alternative formula which is Attachment 4 to Exhibit 123, you know, as I understand it, you are coming up with a value of protein, a gross value of protein based on the WPC prices, which you would hope to have available through a new AMS price survey, correct?

A. That would be the preferred price series.

Q. And then you're basically coming up with a net value by drying that product, converting it to a dry product, using a make allowance for drying, correct?

A. Correct.

Q. So if you are ending up with a price based on dry whey, why don't you just, why -- seems like dry whey would be the, you already have a price for dry whey.

A. Yeah. That's a good question, Mr. Beshore. And so yeah, we do have a price for dry whey. And I think the explanation is that we're trying to back into a value for, that plants selling liquid whey would receive for the product they sell, based on some measure of the value to the buyer. So we're, you know, that's why said, I think our preferred method,

if we could do it, would be to survey prices being paid for liquid whey. That would be the cleanest and the straightest way to get at it. And if USDA were able to undertake such a survey, I think that would be a good thing and a good way to get at the underlying value of whey to cheese makers, particularly smaller cheese makers that don't have the scale or the ability to manufacture products. But if that's not available, then what we we're trying to do is figure out -- okay. Somebody who's buying liquid whey has an economic value in mind that allows them to bid for that whey. And, you know, I think maybe Mr. Fish can give a little more color to this because he's much more knowledgeable about this area than I am. But the sense I have is that somebody's going to have to buy that whey, cool it, transport it, cool it, and then process it. And so that's going to impact what they would be willing to pay the seller of that whey.

Q. Okay. I'm missing something, because I, you are starting in Attachment 4, oh, you are saying you what you would really like is a product, is a price for just raw, absolutely raw, untreated, untreated whey?

A. Liquid whey, liquid dilute whey, yeah.

Q. Would you factor in there the liquid undiluted whey that's just spread on the fields? Is that how you would want to get to that value?

A. I think it would be a selling price that, where there's

an option to sell it.

Q. Okay. But that, okay. You are not proposing that, that's just sort of a pipe dream?

A. Well, I think we would propose it if we thought it could be easily done. And I think, you know, it would be worth USDA considering doing that. That would be one way to get at underlying value for the cheese maker.

Q. So if you look at in that system, you would only be pricing the whey produced by cheese plants that don't have their own whey processing capacity, because you are just, it's, it has to be a sale, so you are only pricing the portion of the whey that is produced by cheese plants that don't have, can't handle it themselves, correct?

A. Yeah, I believe so.

Q. You take that and then extrapolate that value to the universe of whey, including that that's processed by companies like Saputo who process whey, correct?

A. Yeah.

Q. Okay.

A. I believe so.

Q. If you look at Exhibit 96, we don't even have to have it in front of us, I think you know these data. In California, the CDFA data shows that while there are a number of small plants that don't process their own whey, that of the volume of whey produced in all the plants in California, roughly 83, 84,

85 percent of that whey is processed by plants that have whey processing capacity, correct?

A. The bulk of the volume is processed by plants that have why processing capacity. So yes, the bulk of the plants do not have whey processing capacity.

Q. Okay.

JUDGE CLIFTON: I can hand him Exhibit 96 if you want to be more specific.

MR. BESHORE: I don't really -- I don't really need it. I did, I walked through those calculations with one of the other witnesses, and I don't even remember who it was, at some point. And it's, you know it is in the 80's, the percentage of capacity that is shown on there to be, to have whey process. The percentage of the production that's shown to have whey processing capacity. And that sounds about right to you, Dr. Schiek?

JUDGE CLIFTON: Let me hand him the exhibit.

MR. BESHORE: Sure.

DR. SCHIEK: Yeah, that, that looks about right.

BY MR. BESHORE:

Q. Okay. Also on page 12 of your testimony, you say toward the bottom that, it takes a substantial volume of resident whey to justify the investment in the whey processing, I'm paraphrasing. Do you have a number, a volume number that you are referring to there?

A. I don't. Do you have any?

Q. Maybe Mr. Fish does.

MR. FISH: Yeah, like how big, on how much milk a day a plant would need to process to justify whey processing; is that the --

Q. I'm not sure whether Dr. Schiek was referring to the whey volume or the raw milk volume. I guess, one or the other, would be convertible back and forth.

MR. FISH: That's an interesting question. I think earlier we talked about the results of the Wisconsin whey study, and some of the levels of investment required at, for varying size plants. Granted, that data is dated. So I mean, I think the investment level, if anything, is understated. So I don't have any firsthand knowledge of what varying levels of capacity, what that investment is. But, so it's difficult to put a number on at what point it makes sense for the operator.

Q. Okay. Let me ask you, Dr. Schiek, on, I think, you know, Mr. Vetne was going back to the M-W and you have some comments about the M-W, and I think there's probably some nostalgia in for the M-W sometimes when we start talking about some of these pricing challenges.

But on the top of page 3, you're talking about the, you know, the Minnesota, Wisconsin price. And like, in the third line you reference the M-W basis would be a minimum price that would be market clearing in all FMMO's. In your view, did it

work well that way when it was, when it was in place in the Federal Order system?

DR. SCHIEK: When I started in the industry in 1982, to my knowledge, and then through the '80's as I was sort of working on dairy research, the sense that I had was that, yes, it did work well that way because Minnesota and Wisconsin was, first of all, was Grade B milk, so it wasn't Grade A milk, it was a lower value just because of the different nature of Grade A and Grade B. And also because there was so much milk produced up in that part of the country. And so, yeah, I think it worked well from that standpoint for awhile. You know, I kind of left the dairy industry some and then came back in the late '90's, and, you know, what was clear by then was that production of milk, as well as manufacturing plant processing of that milk had been moving farther and farther west, as particularly after the 1985 Farm Bill, when support prices were reduced and milk production in Wisconsin started to fall.

Q. Okay. So later in the next sentence, actually, in the paragraph top of page 3 you say, "Today the states of Minnesota and Wisconsin are no longer the regions where milk used for manufacturing has its lowest spatial value." And then you continue, "California now has that distinction." But I want to focus on the first clause. Is it your understanding that part of the functionality of the Minnesota and Wisconsin price series was that it was pricing milk in a region where milk for

manufacturing had its lowest spatial value?

A. I think when we go back to the -- pricing, the O'Claire pricing rule and the idea of a single base point pricing, the notion was that that's where the Class I base value was its lowest. And there's a certain economic logic to me that manufacturing milk would have its lowest value use, again, because of a need for relationship among the different classes of milk within an area.

Q. Okay. So that's your -- that's your assumption and your understanding in terms of your comments and evaluation of the M-W price?

A. Correct.

Q. Okay. Now, if that were not the case, if, in fact, milk for manufacturing use did not have its lowest spatial value in Minnesota and Wisconsin, would that change your thinking about pricing manufacturing milk on a national basis at all?

A. I still believe, Mr. Beshore, that if you are going to set a price that is going to apply everywhere as a minimum regulated price, if you don't establish it where milk has its lowest value, you are overpricing milk to somebody. And I don't, it is a philosophical, an economic belief that that's a not correct way to price milk.

Q. Okay. So I understand you're articulating a philosophical and economic belief. But if, in fact, the record

demonstrates that during the time when the M-W price applied throughout the Federal Order system and did the job, as you have acknowledged, that Grade B milk did not have its lowest spatial value in the Upper Midwest, wouldn't that be important for the Secretary to consider?

A. I think it would be important for the Secretary to consider. I don't think it would change my conclusion.

Q. Well, your conclusion is based on theory, which is hard to change, right?

A. Yeah.

Q. Okay. If, as a result of this hearing, if the Secretary adopted your Proposal 2, the Dairy Institute's suggestion that California have a lower price than the rest of the orders, should each order have its own? Should the Pacific Northwest then have a different separate price from the rest of the country, and Arizona the same way?

A. Yeah, that's a good question, Mr. Beshore. You know, my view is that you would, you would either want to have a regulated price surface for manufacturing milk, where you might have zones where you have a lowest price zone, and maybe a middle price zone, and a higher price zone, but probably the clearer, clearest way to set a minimum price that would apply everywhere, is to set it at where it has its lowest value. So my view would be that you probably would still have a minimum regulated price that was the same everywhere, it just would

need to be --

Q. It would be the California price.

A. It would be the California price.

Q. Yeah. Do you have any idea what impact that would have on dairy farmer income in the rest of the US?

A. I don't, really. I think where market prices are already higher, there's -- there's a chance that it won't have significant impact, because the market's setting those prices above Order minimums anyway.

Q. Okay. Thank you, Dr. Schiek, Mr. Fish. I don't have any other questions at this time, your Honor.

JUDGE CLIFTON: Thank you, Mr. Beshore. Dr. Schiek, I was intrigued when Mr. Beshore said, well, if you were trying to get a price, for example, with the raw, unprocessed liquid whey, the leftover whey stream, you wouldn't be including in that survey, cheese plants that do their own processing of that whey. That intrigued me because the testimony that we have had so far seems to indicate that when cheese manufacturers go into the business of doing something with that whey stream, it's partly because dealing with that whey stream is an expense and a nuisance. So your formula values the whey, but does it adequately address the problem that the whey is for the manufacturer that can't make money from it?

DR. SCHIEK: So that's a good question. And I think what we're doing here is trying to strike a balance between the

cheese plants where there's a complete disposal cost associated with the whey that they're not able to get anything for it, and the fact that, you know, some plants are able to recover value for that whey. And then there's plants in the middle that are selling whey and maybe offsetting some of their costs or maybe getting some value for selling the liquid whey. And that group seems to be kind of in the middle, between the ones who are really not able to get any value and those that are getting more value. And the idea of having the brackets of maximum value and a minimum value is taking into account those plants that don't have any ability to capture value from whey.

JUDGE CLIFTON: We had the one gentleman who testified that he pays the tanker trucks to come haul that product away.

DR. SCHIEK: Correct.

JUDGE CLIFTON: And if it is perishable within four hours, it is a rather unwieldy product.

DR. SCHIEK: It is, it's a conundrum for -- I mean, it's a difficult problem from a policy perspective, because cheese plants are so different, and what they are doing with the whey is different. And so I think we're trying to figure out how to strike a balance and represent some value for the whey. But we feel like, you know, there's a lot of cheese plants that aren't recovering value, or enough value to compensate for the added milk costs associated with the current Class III formula.

JUDGE CLIFTON: Mr. Fish, can you help?

MR. FISH: If I would just maybe add a few comments. I think the gist of what the, on the other solids value, there's a few things that I think need to be recognized and kind of the background of what's actually going on.

Number 1, as we all know, the small cheese, we have an other solids value that's based on a whey price, assuming that people generating the whey are drying it. And we know from the Wisconsin survey that that's not the case. There's 80 percent of them do not dry whey. So, number 1.

Number 2, one has to question the value or the using, is dry whey the right product to use as a basis for the other solids value? Because what's been going on in the industry, at the introduction I mentioned, I talked about evolution, and there's been a significant movement in the whey industry to higher protein products, WPC 34, WPC 80, WPC 90, protein across the world is in vogue. And so you have cheese makers and whey processors that are trying to produce more products of higher protein because that's where the value is.

So what was the -- what's proposed here is that if, is whey is, whey is still being produced, but to keep it in perspective and that protein is really the product of the future and we need an other solids value that is based on a finished product, in this case, the only published market we have is for WPC 34. Maybe in time there will be published markets for 80 and isolate and higher levels, but the best we

have right now is WPC 34. So, again, what we're attempting to do is create the value for a pound of protein, and rather than we have no good information surveyed on what does it cost to make a pound of protein, so let's take the value of protein in WPC 34 and convert it back to dried whey, which we have, we have costing data on. And at the same time, in doing that, compensate the aggregators who are paying to haul the product, who are cooling the product, and get that built into a make allowance so they can be kept whole.

JUDGE CLIFTON: Thank you. Who else has questions for Dr. Schiek and Mr. Fish? Mr. Miltner?

CROSS-EXAMINATION

BY MR. MILTNER:

Q. Thank you. Ryan Miltner, counsel for Select Milk Producers.

Mr. Fish, did I hear you say that part of your job responsibilities include finance and things along those lines?

A. Not any longer.

Q. Okay. They did at one point?

A. Yes.

Q. So I didn't hear you completely incorrectly.

Do you recall questions from Mr. Vetne about return on investment? Do you recall hearing those? I think they were directed to Dr. Schiek, but did you hear them?

A. Yes.

Q. As I heard the question from Mr. Vetne, he -- he expressed a return on investment as a fraction where the numerator was the return on investment in dollar terms, and the denominator was the sales price for butter. Do you recall that?

A. I remember the conversation, I wasn't, I don't recall the specifics.

Q. Okay. In your finance experience, would that the same way would you calculate a return on investment, where you would calculate it as a return on sales?

A. I do know this, people view return on an investment in different ways. But I guess I can't comment. It is not part of what I do right now, so I, I can't comment on it, I guess.

Q. Okay. Thank you.

Dr. Schiek, you testified about the appropriate levels for a minimum price and expressed your concern that setting a minimum price too high would be problematic and then, essentially, you can't set a minimum price too low, correct?

DR. SCHIEK: Yeah, that's a good question. I, you know, I think you can take a statement like that to its extreme. You know, it's, if you set a minimum price at zero, then you are basically saying let the market determine the price, right? So in a sense we know that a lot of industries, markets do set price. So I think what I'm saying is, yeah, you could set the price, regulated price at zero, and then the market would

figure out what that price level ought to be. You know, I think I said in earlier testimony that, you know, the regulated minimum price should serve to undergird the market, and I think that's more the concept. That you are, you are somewhere near the market clearing price, but not above it so you're providing that sort of undergirding of the marketplace if you are going to have regulated pricing.

Q. Well, in your opinion, what would be the purpose of undergirding the market?

A. I think it's a way to provide some stability in the marketplace.

Q. You would agree with me that one the purposes of milk market regulation is to provide for protection of producers in the absence of bargaining power, correct?

A. Yeah, I believe that is one the goals.

Q. And that if that is one the goals, that setting a minimum price too low could be detrimental to producers in the absence of bargaining power?

A. I tend to view that there's a -- there's a market price out there that is needed to supply all the demand at any given price level, and if that demand at a particular price level exceeds the supply, then the price is going to rise to meet that demand until the equilibrium market clearing price is reached.

So -- so I guess I'm -- I'm believing that the market

will determine the correct price. I think if you, if you were to set regular price well below kind of what has been experienced, it may take awhile for that market to find that market clearing price.

Q. In order to find any market price, you require willing buyers and willing sellers, correct?

A. Correct.

Q. And you also, you have to have the absence of compulsion, correct? Neither side must be compelled to transact, correct?

A. Correct.

Q. I think we talked over each other there.

A. Correct.

Q. We both said correct. And despite all of our technological improvements and what not, milk and whey for that matter, remain highly perishable products which adds an element to the compulsion that must be considered, correct?

A. Correct.

Q. I want to change directions a little bit and try and get a good handle on the cheese manufacturing prices, and particularly how they are reported to USDA. So for these questions let's just assume that the NDPSR price for cheddar is $1.70, which I think is pretty close to where we are, but it is a good round number. Okay?

A. Uh-huh.

Q. So if a cheese manufacturer in California is selling its cheese for $1.60 at its dock, is it your understanding that that price at $1.60 is what gets reported to USDA?

A. I guess the answer is I don't really know how those reports are filled out.

Q. Okay. Is it your understanding that those prices are FOB the plant?

A. That was my understanding.

Q. Okay. It is my understanding also, so let's work from our understandings and take that for what it's worth.

A. Okay.

Q. If that same California plant sells the cheese to a purchaser in Wisconsin or in the Mideast let's say, and the price is $1.60 FOB the plant, and I think the record evidence suggests that it may be ten cents per pound to haul the cheese that far, and let's assume that's the price. So in that, in that instance, our understanding, I think mutually, is that the price that gets reported there is still $1.60 to USDA.

A. That would be my understanding.

Q. Okay. And one would assume that that's a profitable sale for the cheese manufacturer or else rational, you know, rational manufacturers wouldn't make that sale, correct?

A. That would be the assumption, yeah.

Q. Okay. If that cheese manufacturer is able to sell the cheese at $1.60 and then pay the freight cost to Wisconsin,

would not that suggest that there's ten cents of profit for every pound of cheese that's sold in California by the same manufacturer?

A. I'm not following that. I would, my answer would be no, I'm assuming that somebody's paying that transportation cost, so -- so I guess I'm not seeing it. That there's ten cents profit.

Q. Okay. So I guess your assumption is that then the buyer is paying the freight in that hypothetical and that's why there would not be profit for the sale made in California?

A. I'm having trouble getting my mind around it this afternoon. So the plant, FOB price the plant is $1.60?

Q. Correct.

A. And that's what's being reported. I guess I'm assuming they are selling it for $1.70 in Chicago, and then the freight cost is ten cents. Am I -- that's -- that would be my understanding.

Q. Sure. So in that -- and your understanding, then, if they are selling it for $1.70, that's what the purchaser of the cheese is paying, correct?

A. Yes.

Q. $1.60 of that essentially goes to the manufacturer, correct?

A. Correct.

Q. And ten cents goes to pay for the freight truck?

A. Right. Correct.

Q. If that's a profitable sale, doesn't it follow that the sale in California at $1.60 leaves ten cents on the table, or essentially there's ten cents of profit not recognized there?

A. I'm not seeing it that way, Mr. Miltner, sorry.

JUDGE CLIFTON: Mr. Miltner, in both cases the cheese is priced at $1.60 FOB?

MR. MILTNER: Yes.

JUDGE CLIFTON: So how is it different whether it goes a foot or whether it goes to Chicago?

MR. MILTNER: I guess because there's an additional ten cents that the purchaser is willing to transact there that's not accounted for in California.

JUDGE CLIFTON: But from the viewpoint of what it cost to make that $1.60 worth of cheese, it is the same. So I don't see -- I don't see what --

MR. MILTNER: Apparently I'm not conveying this well.

JUDGE CLIFTON: You are not, because this is not, I mean, your questions are very inciteful, and this one I'm not following.

MR. MILTNER: Then let me retire, and if I have the opportunity to think this through again, I'll represent it.

JUDGE CLIFTON: That sounds good. I think we could all use a break. There's not as much oxygen in this room as there had been in the others. This is going to be a relatively short

break. It's now 3:48. Please be back and ready to go at 4:00.

(Whereupon, a break was taken.)

JUDGE CLIFTON: We're back on record at 4:03. Mr. Miltner?

MR. MILTNER: Thank you, your Honor. I think I have found the error of my logic, or at least my presentation, Dr. Schiek, so we'll try again.

DR. SCHIEK: Okay.

BY MR. MILTNER:

Q. Easy question. You are familiar with this thing called Dairy Market News?

A. Yes.

Q. Okay. Among the useful pieces of information that they include are reports on cheese sales. Are you generally familiar with those?

A. Which cheese sales are we talking about?

Q. I'm talking specifically about the regional reports on wholesale cheese transactions?

A. Yeah, I think I'm familiar with that section of the report.

Q. Okay. Do you normally look at the relative, I guess, the relative sales prices of cheese in the west versus other parts of the country?

A. No, I don't normally look at that.

Q. Okay. In the most recent edition, I'll report what's here and let's just use that as a point for our discussion,

rather than for the truth of what I'm going to tell you, even though I'll be honest. Okay?

So 40 pound cheddar blocks in the Midwest are reported at 1.7250 dollars through 2.1200 per pound.

A. 2.120?

Q. Uh-huh. So $1.72 to $2.12.

A. Okay.

Q. For the west, cheddar 40 pound blocks are reported at $1.73 up through $2.17 and a half cents.

A. Through what again?

Q. $2.17 and a half.

A. Okay.

Q. Now, to eliminate any selection as far as ranges, let's just look at those low figures. So $1.72 and a half cents in Midwest and $1.73 in the West, okay?

A. Uh-huh.

Q. Now, let's assume we have our California plant and it manufactures 40 pound cheddar blocks, and it sells them to a purchaser in Wisconsin for $1.73. And based on our understanding that we had discussed before, I picture that as $1.63 return to the manufacturer and ten cents or so for freight, okay?

JUDGE CLIFTON: You had started the hypothetical, though, with the assuming that the prices were FOB. Are the Dairy Market News prices FOB? Did you establish any kind of

understanding about that?

MR. MILTNER: I guess we haven't established that.

BY MR. MILTNER:

Q. Do we know, Dr. Schiek, do you know if the prices in Dairy Market News are reported as the prices for the plant or the prices for the purchasing entity?

A. For this section, I don't know. And I have a recollection, so Mr. Miltner, I, again, I don't have the document in front of me. I have a recollection that wholesale prices on the regional basis are often reported in less than carload lots, so mixed lots. And there can be a lot of variation in those prices. So again, I don't know, you know, I tend to think of, particularly when I think of the spatial value and the bulk of product that's moving, I tend to think of full carloads that move as opposed to mixed lots. And you might be referring to something that's full carloads, I don't know. But I'm, without seeing it I can't really get a mind on what prices and what products it's actually referencing.

Q. Okay. Well, rather than try to get around that. I'll just leave it as it is. Thank you.

JUDGE CLIFTON: Certainly something to look into. You have raised an interesting issue.

MR. MILTNER: Thank you.

JUDGE CLIFTON: Who else has questions for Dr. Schiek and Mr. Fish. Mr. Beshore?

BY MR. BESHORE:

Q. Marvin Beshore.

Thank you for indulging me for a few more questions, your Honor.

JUDGE CLIFTON: Of course.

BY MR. BESHORE:

Q. Dr. Schiek, have you done any calculations estimating the amount below the Federal Class III price the Dairy Institute's proposal for Class III milk would be?

A. Yeah, I have some rough numbers, but I will say there's a witness who is going to be testifying on the impacts of the proposal, and maybe more appropriate to talk to them when they appear.

Q. Okay. As long as they are going to have a witness.

A. We are going to have a witness.

Q. I'll be satisfied.

JUDGE CLIFTON: Do you know who that is, Dr. Schiek?

DR. SCHIEK: Yeah, that will be Sue Taylor.

BY MR. BESHORE:

Q. Okay. And I think this is, this is for Mr. Fish. I have a lot to learn about whey, the whey business. And I have heard WPC 34 and the higher concentrations referred to both as intermediate products, and I think you have referred to them as finished products. What's right? Are they -- are they

finished products or are they, in case condensed whey, like condensed milk, mainly an intermediate product that's used in another product?

MR. FISH: Let's, maybe the best way to look at that is whey is much like milk, you can buy it in powder form, you can buy it in condensed form, UF form, RO form, whatever. WPC in this case, is much the same way. What's traded, what's published and traded on the Dairy Market News is a powdered product. There are liquid versions of WPC that are sold below market levels to kind of, because there's no drying cost involved in the processing. So does that answer your question?

Q. Is it proper to refer to them as intermediate products or finished products, what's most descriptive?

A. I would say that the, if you are referring to the products that are published in the Dairy Market News, those are finished products.

Q. The dry whey.

A. Correct.

Q. Okay. Now, I'm referring to the, you know, the wet whey products, including WPC 34 and higher levels of WPC 80, 70 whatever.

A. So, okay. So when you say WPC 34, WPC 80, WPC or WPI, whey protein isolate, for the, finished those are finished powder products. Any one of those three can be sold, I would call an intermediate product in a liquid form.

Q. Okay. So they are not actually powder, they are liquid, right? Is WPI a powder?

A. Yes. But it, so, yes. But it, so, when you start, when you start with the whey and run it through a process to concentrate the protein, it's in a concentrated liquid form prior to being dried. At any one of those protein levels, 34, 80 or isolate.

Q. Okay. And when they are talked about, they are talked about as concentrated liquids, is that --

A. Talked about in?

Q. When you say, WPC 80?

A. That's a powder.

Q. When you say WPC 34?

A. That's a powder.

Q. So, okay. So what's the moisture level in WPC 34?

A. In powder form it is about three percent.

JUDGE CLIFTON: I'm confused. How do you know without him telling you -- okay. So if he just said is WPC 34 powder or liquid. Would your answer be, could be either?

MR. FISH: It could be either.

JUDGE CLIFTON: Okay. Is that also true of WPC 80 and WPC 90?

MR. FISH: Yes.

JUDGE CLIFTON: Okay.

MR. FISH: I apologize. I thought he was making reference

to the, when people talk about, typically speaking, when people talk about the markets, WPC 34, 80, or isolate, they are referring to the market in powdered form.

BY MR. BESHORE:

Q. So this is for Dr. Schiek. Is that the market that is the start point for the formula on Attachment 4?

A. Correct, it's a powder price, powder form price that's published.

Q. Okay. Thank you. One final question. The, for Dr. Schiek, in Proposal 2, in various of the product price formulas, you propose taking the CDFA cost study information and essentially dropping it into a price formula, correct?

A. Yes.

Q. Okay. That's not how CDFA uses this is cost study information however, is it?

A. That's correct. They will sometimes set the manufacturing cost allowance at the weighted average price, sometimes they won't. And some of the reasons for that may, might be, they might look at the dispersion of the costs and say, well, the weighted average cost is kind of in the middle of a very big range, and there's some plants at the very low end that are, would be perhaps experiencing a windfall. And they may decide to set it a little bit lower than the weighted average cost. That's a policy decision that they make. We were just trying to be consistent with our, with our proposal.

Q. Okay. By being consistent, you mean you are just going to apply the numbers without any application of policy to them?

A. We're, yeah, we're proposal those numbers as being appropriate.

Q. Okay. Thank you.

JUDGE CLIFTON: Dr. Schiek, as we look at Attachment 4 in Exhibit 123, what portions of it are periodically updated with new information?

DR. SCHIEK: Well, the WPC 34 price is one that would change monthly by the, with the market, so that's the only sort of automatic change. And then the 3110 is an aggregate of a manufacturing cost allowance of, I think 2310, a cooling cost of 3 cents per pound of solids, and then a transport cost of 5 cents per pound of solids. So any one of those could be updated periodically by a hearing.

Mr. Vetne's questioning of me was suggesting, or he asked if I thought it would be a good idea to have some kind of regular cost survey that could be used to update those formulas more frequently, and I think I responded I thought that would be a good idea.

JUDGE CLIFTON: One of the witnesses who testified about how the market fell out with various whey products and more than one of these products, he thought some sort of a composite price of whey protein products would be good. Is it a problem that there is no available published data on any product but

the WPC 34 in powder form?

DR. SCHIEK: That is the only one we have, but I think I would like to let Mr. Fish respond to the question, because he has a better understanding of the markets than me.

MR. FISH: So weekly there's a published --

JUDGE CLIFTON: Now, so that you don't break your neck, rather than talking to me, just talk to the microphone, but I appreciate it.

MR. FISH: So there is a Dairy Market News publishes weekly the WPC 34 and the dry whey price. So both products are, again, are reported every week. And what, I think what the point that is trying to be made, and I'll just repeat this, to your point, your Honor, you could use an average of the two. Our feeling is that given the movement in the industry, and if you looked at, I can't remember what page it is, Bill, in one of the other charts, the whey production's actually decreasing in the country. WPC and WPI are increasing. So it's our recommendation that, and the only reported WPC product currently is WPC 34. At some point in time, perhaps, WPC 88 or isolate will be reported as well, but for now, the only concentrated protein that's reported is a 34 percent protein.

So we're, what we're suggesting is to determine the value for a pound of that protein, and then, and convert it back to a value in dry whey, because, just so you know, the 12 in that formula comes from the fact that whey powder has 12

percent protein. So we're trying to take a product at 34 percent protein and determine its value and apply that to a product called whey powder that has 12 percent protein. And then, as you keep moving ahead in the formula, we're saying that the make allowance, which needs to be considered, the current 19.1 cents is not reflective of the true cost of producing it, and that the correct number is 31.1, when you take into account the cost that Bill mentioned about, the whey getting transported and the whey getting cooled to a point where it can be processed as a food grade product.

JUDGE CLIFTON: Thank you, that's very helpful.

Who else has questions for Dr. Schiek and Mr. Fish? It's this -- this stuff is complicated enough, that if each of you tell me three times the same thing, I'm beginning to get it. Ms. Taylor?

CROSS-EXAMINATION

BY MS. TAYLOR:

Q. Good afternoon. This is Erin Taylor with the USDA, Mr. Fish, I have not introduced myself to you, so thank you very much for coming up here and testifying today. The same, of course, goes for you, Dr. Schiek.

So you will have to indulge me a little bit. I'm sure some of the questions I ask in general might be things that got discussed in the previous two weeks I was not here. And I'm also one of those people who needs a little time to process, so

my questions would probably be a little more logical if I got to ask them tomorrow. But since I don't, Mr. Fish, just for the record is clear, you are not, are you the first witness to testify on behalf of Saputo? I want to make sure in the record there's some discussion somewhere about Saputo.

MR. FISH: I believe Greg Dryer testified, who is also a Saputo employee.

Q. Okay. Great. Where should we start? Okay.

I kind of want to start big picture. In coming up with your prices, in general, you want to make an adjustment to the prices currently used in Federal Orders for California, and that adjustment, you have kind of calculated, is taking the national price that's reported by the National Dairy Product Sales Report and subtracting off the California price, taking that five-year average.

A. Correct.

Q. How come you decided to use five years? Why is that an appropriate average to compute?

DR. SCHIEK: In trying to, essentially what we're trying to do is estimate a basis by location, a difference between those price series. And there is some movement in those series, so if you use too short a timeframe, you could end up with, because of timing in the market and somewhat, you know, differences in terms of the timing of how those prices are constructed, you might not get an accurate read, so we want a

bit longer timeframe.

Using something like ten years, then you run the risk of you're capturing a relationship that really is outdated, things change, supply and demand change, production changes, costs of moving product change, and so we kind of felt like five years was an appropriate range because it was current enough to reflect, large enough to kind of get a better picture of the true basis between those price series, but current enough to be relevant.

Q. And along those same lines, we would be putting in the regs, the regulations, a fixed adjustment, and you would be using a price series, to get to that adjustment, you are using a price series now that's collected by CDFA.

A. Correct.

Q. So going in the future, how would we make an appropriate adjustment to that adjustment, if that, assuming that those price series would no longer be published?

A. Yeah. That's a good question, and thank you for bringing it up. I think that, you know, to keep that price, those price adjusters updated, just like Mr. Vetne asked me about manufacturing cost allowances, surveying the plants on the actual FOB prices received would also be something that would be valuable and probably necessary to keep that, to have information to update that price adjuster as needed.

Q. Okay. But part of your proposal doesn't include such a

survey by USDA?

A. Yeah, we didn't, we didn't include that. That's right.

Q. Maybe next go round?

A. Yeah.

Q. And the same thing for make allowances, I would assume?

A. Yes.

Q. Okay. So you want an adjustment for, you're asking for an adjustment to the California prices, an adjustment to the California make allowances, but there's a third part of the formula of yields.

A. Uh-huh.

Q. Did you consider adjustment for California yields? I don't have a clue what it would be, if it would be, your yield is higher or lower, but with that, was that something you considered?

A. Didn't really consider adjusting the yields. I don't know what those yields are. Again, there's no, currently no public data available on plant yields, but you raise an interesting point.

Q. Okay. Let's turn to, I think your exhibits, which is Exhibit number 123, page 6, please. And I'm on the second box, second table. So I do understand what numbers you come up with. You take the, I'm talking about the third column from the right. California, minus CME CDFA 40 pounds. I understand how you come up with this adjustment that's .0168, and I also

understand how you, for a different time series you come up with the adjustment of .0056. I'm lost on why those two numbers should be added together and applied to the cheese prices, the final adjustment of .0224.

A. Okay. So that's a good question. Thank you. So what we're trying to do is establish, what we're really trying to do is establish a basis between NDPSR cheddar blocks and the actual price for cheddar cheese blocks received by California plants. So we have this problem that the observations of those prices received by California plants FOB the plant, that data is older. And we're trying to estimate that basis by, first, looking at the difference between -- okay.

Ideally, what you would want to do if you had current data on the FOB price for California plants, is you would compare it to the data on NDPSR data on cheddar blocks, that would be ideal. Well, we don't have that, so we are trying to figure out a way, how can we approximate that given the data that we do have? And so we looked at the comparison, kind of using the CME as our sort of hinge here to swing on, or point of reference, common point of reference. And so we're taking the comparison between the FOB California plant price and the CME to get that basis. And granted it's a historical basis, it may have changed. I think there's been some testimony in the hearing already that suggests it may be larger today, but that's the data, the objective data that we have is that data

at the end of 2011. Then we're looking at the basis between the NPPSR block only place and the CME. And the reasons those are slightly different timeframes, is because we, it's a bit of a judgment call as to whether the 26 to the 25th CME price, or the monthly average is a better approximation for NDPSR. I guess our feeling was that the monthly average was probably closer. It's difficult because of the way the NDPSR is constructed, it doesn't include a set proportion of the month, you know, that's constant across time. So -- so we, but we -- we looked at the comparison in between the NDPSR cheddar block and the CME monthly average to get that relationship. So we have the connection between California FOB prices in CME, and then we also have the connection between CME and NDPSR. And so we're kind of trying to string that NDPSR California FOB by going through the middle and looking at one side and then the other and then adding them together. Does that make sense?

Q. Yes, I now can understand your logic.

A. Okay.

Q. So you are working through a midpoint to get to your end game.

A. Right.

Q. Gotcha. I don't know if I would have figured that out in three months from now. Okay.

What else did I have for you? Let's turn to page 15 of your Exhibit 123. First, a few, what I think will be

corrections to the record, and I'm under the Class IV price formulas, nonfat solids price. You have nonfat dry milk price at, I think the at should be deleted and it's just nonfat dry milk price, minus the .0244, minus, and you have .1678. I believe this should be .1997, which in my notes said see page 7 of your testimony.

A. Okay. You know, as you say that, I think you are absolutely correct, it should be .1997.

Q. Yeah. So I think we might need to get that corrected on the official copies.

JUDGE CLIFTON: Yeah, I'm going to need your help again. So let's see. Let me hear it from Dr. Schiek. So we'll start, Ms. Frisius, you and I will be on page 15 of Exhibit 123, and we'll be looking at the Class IV calculation the third bullet. And Dr. Schiek, how should it read?

DR. SCHIEK: So it's nonfat solids price equals (nonfat dry milk price - 0.0244 - 0.1997) times 0.99.

JUDGE CLIFTON: So, Ms. Frisius, were you able to follow?

MS. FRISIUS: Is it two or three 9's? 1997?

DR. SCHIEK: 1997, that's correct.

JUDGE CLIFTON: So we strike the "at", we strike 0.1678, and insert 0.1997. Dr. Schiek, will that do?

DR. SCHIEK: I think that's, that's correct.

JUDGE CLIFTON: Ms. Taylor is amazing.

DR. SCHIEK: She is.

MS. TAYLOR: Thank you. I like that to be on the record. I'm just kidding. We need a little humor, it's late on this Monday.

BY MR. TAYLOR:

Q. Let's see, let's go to page 9 of your testimony, please. Second, well, the first full paragraph really, that starts with the word "unfortunately". And this is where we're, you are discussing the dry whey make allowance, not in your alternative proposal, but would be in your first other solid's price?

A. Correct.

Q. Okay. You make the statement, "However, we believe an appropriate manufacturing cost allowance can be constructed by adding the difference," well, I won't read the whole very long sentence, but you are discussing why the appropriate dry whey make allowance is constructed the way you have outlined in this paragraph. And my question is can you just elaborate more on why that is appropriate?

A. Well, both dry, probably Mr. Fish should chime in here, so feel free to, but both milk powder production and dry whey production are drying processes. So there's some similarities in just the kind of activity that's going on. Dry, or whey solids are more dilute, so there is an added cost to drying whey above manufacturing classes or the, excuse me, above nonfat dry milk. And, you know, the kind of the rule of thumb

number is, I have heard tossed around is 3 cents a pound extra drying cost. And you know, when you look at the difference between the current manufacturing allowances in the Federal Order Class III and Class IV formulas, there is a difference that's a little more, 3.13 cents per pound. And so what we, we don't have a, from the California weighted average manufacturing costs survey, we don't have a dry whey number, but we do have a nonfat dry milk number. And so we're essentially applying that difference that we think is relevant. We think that's in the ballpark to what it is to update a dry whey manufacturing cost to something that's more indicative of current cost.

Q. Okay. So when you say dilute, for the record, that just means there is more water in your dry whey so it takes longer to, more cost to get all that water out?

A. Correct. But Mr. Fish could elaborate on that if he --

MR. FISH: We have a tendency to make assumptions that people understand the cheese business. Sometimes, when cheese is made and you separate the curd from the whey, the whey that's left, sometimes we refer to that as either dilute whey or raw whey. At that point it has about 6 percent solids and about 94 percent water. So --

Q. Okay. And so the Class IV nonfat solids make allowance you have in here .1678, that's the current make allowance for

in California?

DR. SCHIEK: I believe --

Q. Or that's --

A. -- go ahead.

Q. I'm sorry. Is it the current make allowance or is it currently what's in the survey, because Mr. -- and I don't know if they are the same or not, but Mr. Beshore eluded to sometime what's in the survey is not what's actually in the formula.

A. I believe that that is not the California number, the 1678, or .1678 dollars per pound, I believe that's in the Federal Class IV formula for nonfat solids, as is the dry whey make allowance of 19.91. Those are both Federal numbers.

Q. And then you are adding the .313 to the --

A. Yes.

Q. Back to the --

A. Okay. So then --

Q. I'm sorry.

A. No, this is good, I'm glad you are asking these questions. So this is the difference between the two Federal make allowances in the Federal Milk Marketing Orders, is that 3.13. So if you take 1991 and subtract 1678, you get 0313. Okay. And then we're taking that difference, that 0313, and we're adding it to the California nonfat dry milk manufacturing cost. And I, yeah, I should have put that step in here, you're right.

Q. .1997 I had it on my notes, but I had the scribble in front of it?

A. Yes. Sorry, we're talking over each other. I apologize.

JUDGE CLIFTON: Yeah, you are both geniuses, and I need you to go step by step, each of you. So, Dr. Schiek, you go first, and then she can ask more questions. So tell me what numbers you should have put in that you didn't show us?

DR. SCHIEK: Yeah, I didn't show the last step, which was to take the difference between those two federal make allowances, the make allowance for dry whey and the make allowance for nonfat dry milk, that difference is .0313 dollars per pound. And I add that to the California weighted average make allowance for dry whey from the most recent survey, which was .1997 dollars per pound. And if I did the math right, that should get me to .2310 dollars per pound, as our proposed make allowance for dry whey.

JUDGE CLIFTON: So as we look at page 9, the first full paragraph, the missing number that could be in this paragraph so that we could see it, has the 1997 in it, but tell me again that whole number?

DR. SCHIEK: Which whole number, your Honor?

JUDGE CLIFTON: I guess I could get it by subtracting. I know it has 1997 in it. Is it 0 --

DR. SCHIEK: Correct. It is 0.1997 dollars per pound.

JUDGE CLIFTON: All right. And that relates to page 15 of your other exhibit.

DR. SCHIEK: Correct.

JUDGE CLIFTON: Exhibit 123. Okay. Now, back to Ms. Taylor.

BY MS. TAYLOR:

Q. Thank you. A few additional questions on just in general make allowances. The make allowances that you propose if they are also used in say advanced pricing, you would want those same numbers. If they are not, and I'm not sure I would have to look, but if they are not in your formula, proposal that way, that is where would you like them, also.

A. That is where we want them also, yeah. And there will be another witness to talk about Class I, II prices, I believe.

Q. Okay. Now, I want to go back, I want to focus on whey. And I have a lot to learn when it comes to whey, and, etcetera. So if you could, and I'm sure some of this has been discussed in the past couple of weeks, so if you could indulge me a little bit, and just give me, if you could, for the record, a summary of the whey market in California. As I have looked at Exhibit 96, which someone referred to, there is, according to this, 13 plants that process whey. And in your testimony, only one plant in California processes dry whey. But could you put some volume -- do you have the ability to put some volume numbers behind that and give us just an idea of --

A. Yeah, I don't have the ability to put volume numbers specifically on those. The one plant is not among the largest plants, but it's larger than the majority, if that makes --

Q. Not along the largest plants that process whey?

A. That process whey.

Q. Okay.

A. So, you know, there's one plant, I believe it actually was entered into the record that it's the Kraft plant in Tulare that makes Parmesan cheese.

Q. Okay. On page 11 of your testimony, the last sentence, in the middle paragraph, says, "In the US, just five percent of cheese plants produce dry whey." Does that come out of the Dairy Products summary that you referenced in the previous sentence?

A. Yes.

Q. Okay.

A. I believe so, yes.

Q. Okay. And Mr. Fish, you discussed the Wisconsin survey, and what I took away from that generally, is in Wisconsin there's plants, 80 percent of the plants in Wisconsin don't process whey; is that correct?

MR. FISH: Either don't process it, or there's minimal at best.

Q. Do you think the Wisconsin market for whey is appropriate, in cheese market, is also appropriate to compare

to California? And I don't know the answer, but by the number of plants, the size of plants, the type of cheese they produce, etcetera, to deduce that maybe that same problem exists in California?

A. Yes, I do. I think -- I think Wisconsin's more magnified only because you have a large number of very small plants that have no form of whey processing, as compared to California where there are some smaller plants, but comparing the two percentage wise, the California plants are larger. But you still have whey being transported. It is just that there's more plants in Wisconsin that have whey to get transported.

Q. Okay. On page 14, the last paragraph reads, the first sentence, "instead, the value of whey in the Class III other solids formula should be a function of the WPC 34 market because that is the predominant buying scheme for liquid whey." I guess there's been some discussion, so this might be repetitive, but I kind of had that circled and wanted you to elaborate a little more on that market. I know it's the only published series that we have on whey protein concentrate products.

I don't know what I'm trying to ask, but I'm trying to get, for the record, just the, how, why that is appropriate. And I know other data you have put in here shows that dry whey's declining. I don't know if there's just anything you can add just to make that clear. And I will state that in

previous you have done a very good job of summarizing why the Dairy Institute is seeking this proposal and what it is trying to do, so I'm hoping you can add some clarity here.

MR. FISH: So maybe the best way to look at it is when you, let's take one of these, let's take a cheese plant that's generating 6 percent solids whey and it is going to ship the whey to somebody that's going to process it. For a number of years, when that whey arrived at a processing plant, the whey was used to make whey powder. What we're finding now is that 6 percent whey is still being shipped to these processing plants, but the majority of the product that's being made is a WPC product. So I think dry whey served the industry well for a number of years, and it, if there was a, if there was a fallacy in the other solids formula relative to dry whey, is that it did not, maybe these whey movements and the costs, the cost of the whey, moving the whey and the cooling involved in whey wasn't recognized.

So, again, we're trying to address that in the proposal. But the as significant part is the fact that we feel that the, the other solids value should be attached to a whey protein product, and the only one that's available for publication is 34.

Q. Okay. And I don't know if this is a question for Dr. Schiek or you, Mr. Fish. In the other Federal Order price formulas, we use the National Dairy Product Sales Report

prices, and these are verified prices. And Dairy Market News are reported prices, but not necessarily somebody goes out to the plant to verify that that indeed was the actual price. Can you speak to perhaps how that issue?

MR. FISH: I would, that, only because I don't actually report the surveyed numbers myself, but I happen to know the person at Saputo that does. And in this case, she happens to handle the pricing for both. So the format that's used for the whey sales reporting could certainly be used for the WPC 34 reporting, and I think it would be, the accuracy would be as good as what we have for dry whey.

Q. If the -- if we expanded the National Dairy Product Sales Report to include WPC?

A. Correct.

Q. Okay. Okay. I want to talk about some of the details of the actual alternative proposal and the numbers that you used. So on page 42 of your Exhibit 123, where you lay out your alternative other solids price. On the, this might be just to clarify for the record, you say, it says, "the other solids price per pound rounded to the nearest cent." I think that might need to be hundredth of a cent. We usually do four decimal places.

DR. SCHIEK: That's correct.

JUDGE CLIFTON: Do we want to make that change on the document?

DR. SCHIEK: I believe so, yes.

JUDGE CLIFTON: Direct us, Dr. Schiek, Ms. Frisius and I.

DR. SCHIEK: This is on Attachment 4, after the line that begins with Section 1051.50(q), toward the end of that line there's the words rounded to the nearest cent. Insert between "nearest" and "cent", the word "hundredth". Mr. English.

MR. ENGLISH: Your Honor? Excuse me, Ms. Taylor, if I may. Having been the Scribner who caused this error, and I think if you look in the text that I intended to use, it's one-hundredth, so if we're going to correct it, let's correct it correctly. So one-hundredth, and that was the Scribner and, he shall remain nameless.

JUDGE CLIFTON: You know, I don't see -- I don't see why I don't see it. We're on Attachment 4 right?

DR. SCHIEK: Attachment 4.

MR. ENGLISH: Your Honor, it is the very first line of Section 1051.50(q) at the end there's the comma rounded to the nearest, it reads cent with a comma, and Ms. Taylor is absolutely correct, between nearest and cent we need to insert one-hundredth.

JUDGE CLIFTON: Ms. Frisius, have you found it and have you done it already? Good. Thank you so much. I now have found it.

MS. TAYLOR: I think that's my last one.

BY MS. TAYLOR:

Q. Okay. I'm just going to kind of work through as we go down this and try to just make sure that the logic behind it is clear and the Department understands what you intend to do.

JUDGE CLIFTON: Now, let me ask a question. Is each of you also going to be here at 9:00 tomorrow morning?

DR. SCHIEK: I will be.

MR. FISH: I'm not scheduled to be here tomorrow, but if you would like me here, I'll change my flight plans

MS. TAYLOR: Your Honor, I will state that I'm really almost done, and I probably will be done in five minutes. I realize it's getting towards 5:00.

JUDGE CLIFTON: Well, that would be great, if you can, but I do not want you to rush through this.

MS. TAYLOR: This is the very last.

JUDGE CLIFTON: Is your redirect, Mr. English, for Mr. Fish? So far?

MR. ENGLISH: Probably not.

JUDGE CLIFTON: All right. I don't want to keep Mr. Fish unnecessarily overnight, but if we need him, I would like him to be here tomorrow. So, all right. Go ahead, Ms. Taylor.

BY MS. TAYLOR:

Q. Okay. So you want to, the first option is to take a survey price that we survey and it's reported in the National Dairy Product Sales Report.

A. Correct.

Q. For whey protein concentrate. And the big picture idea is to take that and then convert it back to some dry whey value. So to do that, you first divide the number by .34, and the way I was thinking that for every pound of, I think I messed this up. For every pound of whey protein concentrate there's .34 pounds of protein, so you are kind of coming up with a per pound value of protein?

A. Correct.

Q. Then you take that value and multiply it by .12 because for every pound of dry whey, in it is .12 pounds of protein. So that kind of takes the whey protein concentrate and brings it down to a dry whey value based on protein.

A. Exactly.

Q. And then you subtract the make allowance of .3110. And I wanted to talk about that for a second. So that's taking the dry whey make allowance, adjusting for cooling and adjusting for a transportation cost. For your transportation cost you have a distance of 50 miles at $3.00 per mile on 6 percent solids to come up with .05 dollars per pound of whey solids. I'm just asking, why 50 miles? Where does this $3.00 per mile come from, etcetera?

DR. SCHIEK: You want to go ahead?

MR FISH: So what we did there is we took a, we surveyed our own facilities, to be honest. And pretty much --

Q. Can you elaborate on your own facility? Your own

Saputo or your own Dairy Institute?

A. Okay. Because we're in the same situation where we have -- we have a central facility in California to process whey and one in Wisconsin, and we have outlet plants that ship whey to the central locations. So we surveyed our own, and this is, this is one of the surveys, Bill, I don't know if it was the entire survey, but we used our numbers as part of that survey.

DR. SCHIEK: If I can add to that. There was testimony on Friday by a whey consultant, Barry Murphy, and he was talking about hauling costs, and he had some numbers in there on different haul costs. And I would say that he had a primary haul over a fairly long distance that was about, based on the numbers he presented, if you did the math, it was about $4 a mile. But he also said there was some whey that was being back hauled, which is a cheaper haul because somebody's already paid some of the freight, and if you can do a backhaul people will take less for the haul because it beats driving the truck back empty and getting nothing for it, and that was somewhat less than $3. So $3 seemed to be an appropriate number that kind of represented the range, sort of what haul costs per mile.

Q. So we can look to that exhibit of Mr. Murphy for that $3?

A. Yes.

Q. Give or take how you came up with the $3, numbers came

out of there?

A. Right. I would say that the numbers would show that the $3 was sort of consistent in the range of what he reported.

Q. And the 50 miles?

MR. FISH: Again, I think that was what you will find if you called, if you picked up the phone and called a trucking company that hauls liquid products and asked them what their cost for running mile is, they would tell you it is about $3 to $4 it could be some cases less, but we used, that's where the $3 came. From it's a pretty consistent value used in the industry.

Q. But the distance of 50 miles, is that supposed to, is that representing generally how much you move from one of your smaller plants to your larger processing whey processing facility?

A. In our case, and again, I wasn't here for Barry Murphy's testimony so I can't speak to that, but it would represent a Saputo cost from a number of locations on average.

Q. Okay.

DR. SCHIEK: Also, if you look at Exhibit 123, page 28, there's a chart that talks about, this is Wisconsin numbers that shows how far a product moves in Wisconsin. And 50 miles isn't quite the midpoint, but it is reasonably close. I think, you know, the testimony of Mr. Murphy suggested that whey moving long distances, a tremendous amount of the value gets

eaten up, so it's kind of a judgment in terms of a number that would represent the fact that whey does need to be hauled, but we're not trying to pick the longest hauls, we're trying to come up with a number that seems reasonably representative.

Q. And kind of the same questions for your cooling costs of .03 dollars per pound of solids, where did that number come from?

MR. FISH: That was actually run through a -- we use a modeling spreadsheet that you -- you enter in data that how many pounds of whey you are trying to cool per hour, the starting temperature and the end temperature, and it will calculate how many kilowatts of electricity it will take to run an ammonia, in this case ammonia compressor, to cool the product down. I think in the example we used like a hundred degrees down to 45.

Q. And since that is standard, then this cost would be pretty much standardized between whey processing plants?

A. I would say that's pretty representative, because if it was, it is not, it is a pretty straightforward engineering calculation.

Q. Okay.

JUDGE CLIFTON: That was s hundred degrees down to what?

MR. FISH: 45.

JUDGE CLIFTON: 45?

MR. FISH: I don't have the -- it was either a hundred to

45, I know 45 was the cool temperature. We either started at 100 or 110, I can't remember exactly.

BY MS. TAYLOR:

Q. But this is a calculation you did for your Saputo plants?

A. Yeah, I --

Q. Just so the record is clear. We're not wondering five months from now where did .03 come from?

A. And you, as part of this spreadsheet, you can put in utility costs for different parts of the country. If it is 12 cents in California and 10 cents in Wisconsin, it will adjust that -- that cost accordingly.

Q. Okay. And last question, I hope, you have the floor price of .25, of 25 cents, and a ceiling of $1.50. I'm not familiar with CDFA, but is that the floor and the ceiling they currently have in their system, or where did those numbers come from, and why are they appropriate?

DR. SCHIEK: Yeah. That number is in, frankly, it is a judgment about what -- what would be a level that, you know, a smaller cheese plant might be able to tolerate if they aren't getting value for their whey before, you know, really, they fell under extreme stress. And I think another thing is, we were trying to kind of come up with a number that hit the ceiling and the floor roughly the same amount of time.

So currently there's a temporary number at CDFA, I

think it's $2 that the Secretary put in. That's a temporary number. That's higher than it's been, I think the top end CDFA was 75 cents until this temporary factor went into place. The hearing panel recommended a top ceiling of $1.50 as part of their recommendation for the temporary change. Those are some of the numbers that are out there. We just felt like $1.50 was a reasonable number because we're, again, we're trying to provide some limit that when whey prices or WPC prices get really high, it's not going to cause so much stress that we see cheese plants going out of business because of it.

Q. And when you say it gives a range where it hit the floor an equal number of times as it hit the ceiling, what price series are you talking about?

A. Talking about when you apply that whole formula and run it through, it hit the ceiling of $1.50 nine times over the five-year period and it hit the floor nine times over the five-year period.

Q. Of the data that you presented in your exhibit?

A. Right. Correct.

Q. I have one more question I need to ask. You talked about the dairy, at the bottom it talks about using the "Central West WPC 34 Mostly price as reported by Dairy Market News between the 26th of the prior month and the 25th of the month in which the price being computed will be effective."

Usually, in Federal Orders we use the announced price

after the month on or before the 5th. How come this is a different price series and we're not just using the announced Dairy Market News average price for the month?

A. That's a good question. In my experience, when you what we tend to see reflected in the NDPSR, sometimes the observation is that it tends to follow what's happening in the primary market that people are using to price off of. So you will see the CME, movements in the CME will be reflected in the NDPSR a lot of times the follow week. So I guess by using the 25th and the 26th you kind of capture that same period. Obviously, if we had an NDPSR price for WPC 34, I think we would want it the same pricing period that is currently used for consistency. I guess we think if we're using the Central West WPC 34 Mostly price from Dairy Market News, by having a slightly earlier time period because of the reference, the way that's referenced in pricing whey, it would come out, represent the actual prices people are paying more in the following week, and so it would kind of match up with the NDPSR from a timing perspective. I maybe muddled that, but that's the idea.

Q. Okay. And now I'm finished. Thank you very much for indulging me a few extra minutes.

JUDGE CLIFTON: Let me ask, just for questions for Mr. Fish, and Dr. Schiek will continue cross-examination tomorrow. But -- but I would like Mr. Fish not to stay overnight just for cross-examination. Let's ask any Mr. Fish

questions now. Mr. Beshore? And Mr. English, you may also save your redirect until tomorrow, unless you have some for Mr. Fish.

MR. ENGLISH: I'm not gonna have time for a preview, then, so --

JUDGE CLIFTON: No, we have to have a preview. Go ahead, Mr. Beshore.

MR. BESHORE: These are technical, I think they are for Mr. Fish.

CROSS-EXAMINATION

BY MR. BESHORE:

Q. When we're talking about these, this whey processing, we're talking about whey that's already been separated, where the cream's already been separated?

MR. FISH: Yes.

Q. Okay. When you are processing it in your own plant, does, is there any reason that it needs to be cooled?

A. No, it does not. Not unless it's, if the, if you would process it and then store it for more than four hours, but typically speaking it's not, because it's processed within the appropriate timeframe.

Q. Okay. So cooling and transportation are basically functions that only relate to whey that's being aggregated from other sources?

A. For the most part, yes.

Q. Okay. What do you do with your lactose from the, or the permeate from the WPC process? I mean, is there value that's captured in that?

A. There -- there can be. Some of it's, and I can only speak for Saputo, some of it's dried as permeate and dried as lactose, some of it is animal fat, and all depends on market conditions at the present time. Drying permeate and lactose is not a profitable business, so -- but there's times when it is profitable when the markets are in the right position.

Q. So it tends to relate to the lactose market and those prices? Is that --

A. Yes.

Q. -- fair? Okay. I think this is, I guess this is for Dr. Schiek.

JUDGE CLIFTON: Can you save that until tomorrow?

MR. BESHORE: I can. I can. Absolutely.

JUDGE CLIFTON: Mr. Fish, we will be able to let you catch your plane. And thank you so much, you have added a great deal of understanding.

And Dr. Schiek, we'll continue with cross and direct tomorrow.

I would like some preview. I know Mr. English has to leave, I know we're quite late for your obligation.

MR. ENGLISH: I will do the best I can, but, yeah, I'm running up against a situation here. Tomorrow, I don't know

the name, I'm sorry.

JUDGE CLIFTON: That's okay, just give us an idea.

MR. ENGLISH: We have a fluid processor tomorrow, and then we have got two Wisconsin cheese makers, Steve Buholzer, B-U-H-O-L-Z-E-R, for Klondike, and Steve Stettler, S-T-E-T-T-L-E-R, for Decatur Dairy. And I think there's an Al Michaels - - what's his company name, Rachel? Mike Anthony, I'm sorry, from Unified Grocers.

JUDGE CLIFTON: Thank you. And I know you have to run.

MR. ENGLISH: Yes, I really do. Thank you.

JUDGE CLIFTON: Good. And we'll have more of a thorough preview tomorrow morning when it is -- when we're back here. All right.

See you all at 9:00 tomorrow morning, we'll be in the Independence Room. I presume we remove everything from this room tonight.

MS. MAY: We have to move it over there now.

JUDGE CLIFTON: Oh, we have to move it over there now.

MS. MAY: But just set it up against the wall because there's a band practice there at 6:00.

JUDGE CLIFTON: There's a band practice there at 6:00 so we just move it out of here and over against the wall in the Independence Room. All right. Good.

We go off record at 5:09.

(Whereupon, the evening recess was taken.)

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DATED: December 16, 2015

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