UNITED STATES DEPARTMENT OF AGRICULTURE

BEFORE THE SECRETARY OF AGRICULTURE

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In re:	)	{AO}
	)	Docket No. 15-0071
	)	
Milk in California	)	
_____	)	

VOLUME I

TRANSCRIPT OF PROCEEDINGS

September 22, 2015

1   UNITED STATES DEPARTMENT OF AGRICULTURE

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4 In re:)   {AO}
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5   )
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6 _____)

7

8   BEFORE U.S. ADMINISTRATIVE LAW JUDGE
                   JILL S. CLIFTON
9

10   Tuesday, September 22, 2015
                  9:00 a.m.
11

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

14

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16   TRANSCRIPT OF PROCEEDINGS

17   VOLUME 1

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24 REPORTED BY:
    GRETA GREGORY, C.S.R.
25 Certificate No. 8612

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                             ERIN TAYLOR, Marketing
 6                                 Specialist
                             MEREDITH FRISIUS, Marketing
 7                                 Specialist

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15
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                             Government Relations
17
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19   CALIFORNIA PRODUCER       Stoel Rives
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20                                 BAO VU, ESQ.

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     ASSOCIATION, KENTUCKY
22   DAIRY DEVELOPMENT
     COUNCIL, GEORGIA MILK
23   PRODUCERS, INC.,
     TENNESSEE DAIRY FARMERS
24   ASSOCIATION:

25
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APPEARANCES: (CONT.)

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DAIRYMEN:

SELECT MILK PRODUCERS,   MILTNER LAW FIRM
INC.:   BY: RYAN MILTNER, ESQ.
                                     KRISTINE REED, ESQ.

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1   TUESDAY, SEPTEMBER 22, 2015, 9:00 A.M.

2   CLOVIS, CALIFORNIA

3

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

5   JUDGE CLIFTON: Let's go on record. I don't

6 mean to be that close. This record is being made on

7 September 22nd, 2015. It's a Tuesday and we're in

8 Clovis, California. My name is Jill Clifton. I'm a

9 United States Administrative Law Judge. I work for the

10 United States Department of Agriculture. It is my job

11 at this hearing to preside over the taking in of

12 evidence. There are two kinds of evidence, testimony

13 and exhibits. Once I have certified the record that has

14 identify what the evidence is that we took in, I

15 identify the transcript, identify any corrections that

16 have been submitted and accepted, identify the exhibits,

17 then my work is done.

18   The Secretary of Agriculture has assisted

19 throughout this entire process by those people who work

20 for the United States Department of Agriculture,

21 Agricultural Marketing Service. In a moment I'm going

22 to have the representatives of the United States

23 Department of Agriculture identify themselves, and at

24 that point I would also like the proponents and

25 opponents who have submitted-in-writing positions on

1   California milk and whether it should be governed by a

2   federal regulation agency, I would like them to identify

3   themselves.

4   At that point I'm not asking for any of your

5   preliminary issues, which I will then ask for at a later

6   moment in the hearing. When I'm asking you to identify

7   yourselves I would like you actually to come forward to

8   the podium that's in front of me so that you are facing

9   the group. And I would like you to state your name and

10 spell your name, I would like you to say what your job

11 is and what your connection to this hearing is. The

12 docket number for this case, and this case is on file

13 with the hearing clerk in the United States Department

14 of Agriculture, is AO, that stands for agreements and

15 the orders, docket number 15-0071. And the case caption

16 is "In re," meaning regarding, "milk in California."

17   I have a number of announcements to make, but

18 I'm going to wait until after we've made the

19 introductions for those. I would like to start by just

20 stating what this public hearing is for. This public

21 hearing is being held to consider and take evidence on

22 the proposed establishment of a federal milk marketing

23 order to regulate the handling of milk in California.

24 The proposed marketing area would incorporate the entire

25 state of California. United States Department of

1   Agriculture received four proposals from interested

2   parties, some that include certain milk pricing and

3   pooling provisions not found in current federal milk

4   orders.

5   The proposals incorporate the same dairy

6   product classification system used throughout the

7   federal milk marketing order system. Additional

8   features would recognize California quota premium and

9   fluid milk fortification values. This hearing will

10   consider the four proposals as contained in the federal

11   registered hearing notice published on August 6th,

12   2015.

13   Now, be mindful of two things as you speak.

14   One is the court reporter needs to understand what you

15   are saying, so if you are using the word like pooling,

16   you might pause and say that's P-O-O-L-I-N-G. Not only

17   the court reporter needs to hear you, but so do the

18   people listening just to the audio portion of this at a

19   computer who don't have the benefit of seeing you

20   articulate. So take your time, spell your name and

21   other terms that might be confusing. If you wish you

22   might -- for example, if you are talking about Class I

23   milk you might say whether you mean the one to be a

24   Roman numeral I as it might be found in the federal

25   system or an Arabic one as it might be found in the

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 1    California system.
 2              So at this point I would like those people,
 3    beginning with Mr. Francis, to come forward and face you
 4    and identify themselves.  First, those who work for the
 5    United States Department of Agriculture in the
 6    agricultural marketing service, and then following those
 7    people those who work for the United States Department
 8    of Agriculture, Office of the General Counsel.  Those
 9    are the lawyers.  Mr. Francis.
10              MR. FRANCIS:  Thank you, Judge Clifton.  Good
11    morning, everyone.  Welcome to today's session of the
12    public hearing.  USDA is holding this hearing to gather
13    evidence in the form of testimony and exhibits, and we
14    thank you for your interest and participation in this
15    process.  And we look forward to hearing from you to
16    better understand the California dairy industry
17    throughout this process.
18              So my name is William Francis.  I'm a dairy
19    product marketing specialist with the Agricultural
20    Marketing Service of USDA and I'll invite my AMS
21    colleagues to come forward and be recognized, followed
22    by the Office of the General Counsel.
23              MS. MAY:  Good morning, I'm Laurel May.  I'm
24    the marketing specialist with the AMS dairy programs.
25              MS. TAYLOR:  Good morning, I'm Erin Taylor,
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1 also a marketing specialist in order formulation

2 programs.

3   MS. FRISIUS: Good morning, I'm Meredith

4 Frisius. F-R-I-S-I-U-S. And I'm also a dairy marketing

5 product specialist.

6   MS. ELLIOTT: Good morning, my name is Pamela

7 Elliott, E-L-L-I-O-T-T. I'm a dairy market -- dairy

8 marketing specialist with the AMS USDA.

9   MS. STEENECK: Hello, my name is Amanda

10 Steeneck, S-T-E-E-N-E-C-K, and I'm an agricultural

11 economist with the Ag Marketing Service.

12   MS. WARREN: Good morning, I'm Lorie,

13 L-O-R-I-E, Warren, W-A-R-R-E-N. And I'm chief of the

14 market information branch of AMS USDA dairy programs and

15 I will probably say MIB a lot, that's Market Information

16 Branch.

17   MS. RAGHUNATHAN: Good morning, I'm Uthra

18 Raghunathan. I'll go slow. It's U-T-H-R-A. My last

19 name is R-A-G-H-U-N-A-T-H-A-N. And I'm an economist

20 with the USDA AMS dairy programs.

21   MR. POLLOCK: Good morning, my name is William

22 Pollock. I'm an agricultural economist with Federal

23 Order 33 and I'm on detail with AMS dairy program for

24 this hearing.

25   MR. SCHAEFER: Hello, Henry Schaefer,

11

| 1 | S-C-H-A-E-F-E-R. I'm chief agricultural economist in

| 2 | the upper Midwest, Federal Marketing Order Number 30,

| 3 | and I'm detailed for AMS for the hearing. Thank you.

| 4 | MR. MYKRANTZ: Hello, my name is John

| 5 | Mykrantz. Mykrantz is spelled M-Y-K-R-A-N-T-Z. And I'm

| 6 | an agricultural economist with the Arizona and Pacific

| 7 | Northwest orders in Seattle, and I'm on temporary detail

| 8 | for this hearing. Thank you.

| 9 | MR. CRYAN: Good morning, my name is Roger

| 10 | Cryan. R-O-G-E-R, no D. C-R-Y-A-N. I'm a supervisory

| 11 | agricultural economist with the dairy program,

| 12 | Agricultural Marketing Service, and I'm here to support

| 13 | the presentation of data and economic impact analysis.

| 14 | MR. HILL: Good morning, I'm Brian Hill,

| 15 | B-R-I-A-N, H-I-L-L. I'm with the Office of General

| 16 | Counsel representing the Administrative Agricultural

| 17 | Marketing Service.

| 18 | MS. BECKER: Good morning, I'm Lauren Becker

| 19 | also with the Office of the General Counsel at USDA.

| 20 | MR. FRANCIS: As you can see there are several

| 21 | of us here for this historic event, so those of us that

| 22 | have the name tags, those are the folks that you should

| 23 | talk to if you are interested in testifying or if you

| 24 | have questions about the process. We're I think very

| 25 | friendly, we're approachable. If you have questions

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1 throughout just flag us down, and if you are interested

2 in testifying we will try to help you facilitate getting

3 Judge Clifton to recognize you for that purpose. And it

4 would be helpful if you do have a business card or

5 something with your name written on it correctly so that

6 we can provide that to the court reporter so that you

7 can accurately document the correct spelling.

8   So we hope you are going to feel comfortable

9 testifying at this hearing. We do ask a lot of

10 questions, but they're not intended to confuse or

11 stumble or embarrass anyone. We're simply trying to

12 make sure that we understand everyone's position clear.

13 We do ask questions to clarify for the record. So after

14 that we take all that information, we develop a

15 recommendation following the hearing, and if you need

16 for us to rephrase any of our questions, please don't

17 hesitate to ask. There are no time constraints on this

18 hearing. We will take as long as it takes so that the

19 record is clear and accurate and complete.

20   So any audience members may also ask questions

21 of any witness about their testimony, so following a

22 witness' prepared testimony you can approach this

23 microphone and/or be recognized before you come up so

24 that Judge Clifton can acknowledge you. And please use

25 this microphone so that everyone in the room can hear

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1   your question and so that the court reporter can

        2   accurately record it. So we are providing an audio feed

        3   of this hearing for the convenience of folks who wanted

        4   to listen but can't be with us physically in person

        5   here, so that webcast can be accessed at tiny URL, so

        6   that's all one word, dot, com, slash, CA milk hearing.

        7   And so that's the short URL that will get you to the

        8   Audiocast. So for those that are listening on this on

        9   the web, we welcome you to listen in. So we're not

       10   recording that webcast. It's important to understand

       11   that the court reporter's transcript is the official

       12   documentation of the proceedings at this hearing.

       13   Transcripts and copies of any of the exhibits that are

       14   entered into the record are going to be made available

       15   on our web site approximately two weeks after the week

       16   in which they're presented here, so at the end of this

       17   week, two weeks from Friday, we hope to have complete

       18   transcripts for this week and all the exhibits

       19   associated with this week posted.

       20   So the link for accessing the transcripts and

       21   the exhibits, it's from our California hearing page on

       22   our web site, it's www.ams.usda.gov/caorder. All one

       23   word, CA order. So there are nice handy-dandy cards in

       24   the back at the press tables that have all that

       25   information for the web site and the Audiocast.

                                    14

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1   Finally, we do have some light refreshments

2   that are in the back of the room for everyone to enjoy,

3   so please help yourself. And then what we're going to

4   do is try to give you updates as we can on the

5   proceedings as they develop. So that's our official

6   welcome and we will turn it back to Judge Clifton.

7   JUDGE CLIFTON: Thank you, Mr. Francis. I now

8   would like those people who participated in preparing

9   written statements for the Secretary of Agriculture in

10   advance of this hearing, I would like the whole team to

11   come. And, again, you would follow the examples set by

12   Mr. Francis and his crew as to how you identify

13   yourselves. Who would like to begin?

14   MR. BESHORE: Good morning, everyone. My name

15   is Marvin Beshore, that's M-A-R-V-I-N, Beshore is

16   B-E-S-H-O-R-E. I'm an attorney with an office at 130

17   State Street in Harrisburg, Pennsylvania 17101. And I

18   am representing today the proponents of Proposal No. 1

19   in the hearing notice California Dairies, Inc., Dairy

20   Farmers of America, Inc. and Land O'Lakes, Inc. With me

21   as co-counsel, I will allow them to introduce

22   themselves, attorneys from the law firm Hanson Bridgett

23   here in California. John.

24   MR. VLAHOS: Good morning, my name is John

25   Vlahos, V-L-A-H-O-S, and it's J-O-H-N for John. As

1   Marvin said I'm with the law firm of Hanson Bridgett in

2   San Francisco and we're co-counsel with Mr. Beshore

3   representing California Dairies, Inc., Land O'Lakes and

4   Dairy Farmers of America.

5   MS. THOMPSON: My name is Megan Oliver

6   Thompson, that's M-E-G-A-N, O-L-I-V-E-R,

7   T-H-O-M-P-S-O-N. I'm also an attorney with the law firm

8   of Hanson Bridgett in San Francisco, also representing

9   proponents California Dairies, Inc., Land O'Lakes, Inc.

10   and Dairy Farmers of America, Inc.

11   MR. HOLLON: Good morning, I'm Elvin Hollon.

12   An economist for the Dairy Farmers of America. I'm the

13   director of fluid marketing and economic analysis there

14   and I've prepared testimony and data evidence for the

15   hearing record. I have to get my card so I can read my

16   address. 10220 North Ambassador Drive, Kansas City,

17   Missouri 64153. Thank you. E-L-V-I-N, H-O-L-L-O-N.

18   MR. BESHORE: We always spell Elvin's name

19   wrong in our office till we get it right, so I wanted to

20   make sure he spelled it for everyone. Elvin will be one

21   of the witnesses testifying in support of Proposal No.

22   1. He's the only one present here at the moment, but

23   there will be a number of other agricultural economists,

24   marketing specialists and expert witnesses that we will

25   present in support of our proposal and they'll be

1   introduced at the time when they are here and their

2   testimony is presented.

3   MR. ENGLISH: Good morning. My name is Chip

4   English, C-H-I-P, E-N-G-L-I-S-H. I'm with the law firm

5   of Davis, Wright, Tremaine. My office is in Washington,

6   D.C., 1919 Pennsylvania Avenue Northwest, Suite 800,

7   Washington, D.C. 20006. I'm here on behalf of the Dairy

8   Institute of California, which is a trade association

9   founded in 1939 that represents 28 proprietary companies

10   including processors of fluid milk and manufacturers of

11   cheese, culture and frozen dairy products. The number

12   of companies of the Dairy Institute of California

13   operate 38 dairy plants in California and accounting for

14   approximately 70 percent of the milk products, 85

15   percent of the cultured proposal products and 90 percent

16   of the cheese policy process and manufacturing in the

17   state.

18   We are here principally in opposition to the

19   adoption of the Federal order for California also as

20   supporters of the alternative proposal, which is

21   Proposal 2. With me, I'll let them introduce

22   themselves, my co-counsel from the law firm of Davis,

23   Wright, Tremaine, Ashley Vulin, and our California

24   counsel, John Lemmon from Knox, Lemmon and Anapolsky,

25   and I'll let them spell it for you, because I can't

1   spell it. So anyway, I'll step aside.

2   MS. VULIN: Hi. My name is Ashley Vulin,

3   A-S-H-L-E-Y. Last name is V as in Victor, U-L-I-N. I'm

4   also with the law firm Davis, Wright, Tremaine in our

5   Portland office, which is at 1300 Southwest 5th Avenue,

6   Suite 2400, Portland, Oregon 97201. And I also am

7   co-counsel for the Dairy Institute of California.

8   MR. LEMMON: Thank you and good morning. My

9   name is John Lemmon. That's J-O-H-N, Lemmon is

10   L-E-M-M-O-N. I'm with the law firm of Knox, K-N-O-X,

11   Lemmon and Anapolsky, A-N-A-P-O-L-S-K-Y. We are at 300

12   Capitol Mall, Suite 1125, Sacramento. And I'm general

13   counsel for Dairy Institute of California, and as

14   Mr. English has indicated we are the proponents of the

15   alternative proposal.

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

17   Schiek, that's S-C-H-I-E-K. I'm the economist for the

18   Dairy Institute of California. I will be presenting the

19   bulk of Dairy Institute's testimony later in the

20   hearing, and our offices are at 1127 11th Street, Suite

21   718, Sacramento, California 95814.

22   MS. KALDOR: Good morning, I'm Rachel Kaldor,

23   executive director of Dairy Institute of California.

24   R-A-C-H-E-L, K-A-L-D-O-R. Our offices are located at

25   1127 11th Street, Suite 718, Sacramento, California

18

1   95814.

2   MR. ENGLISH: As with cooperative proponents we

3   will have a number of other dairy economists and company

4   witnesses testifying, but I don't think that we need to

5   introduce them at this time. Thank you, Your Honor.

6   MS. HANCOCK: Good morning, everyone. My name

7   is Nicole Hancock and I'm an attorney with Stoel Rives.

8   My office -- or my name is spelled H-A-N-C-O-C-K, Nicole

9   is N-I-C-O-L-E. My office is located at 101 South

10   Capitol Boulevard, and that's O-L on Capitol, Suite

11   1900, Boise, Idaho 83703. I represent the California

12   Producer-Handlers Association as well as Ponderosa Dairy

13   in this federal milk marketing order.

14   MR. LAI: Good morning, my name is Victor,

15   pronounced Lai but spelled L-A-I. My position is general

16   counsel with Producers Dairy Foods, one of the members

17   of California Producer-Handlers Association. Our street

18   address is 250 East Belmont Avenue in Fresno, California

19   93701.

20   MS. HANCOCK: And as with the other proposals,

21   we will be providing testimony from each of our

22   producer-handlers as well as some additional experts

23   that will be able to talk about their proposals. Our

24   proposal is a little bit different in that it's not a

25   standalone but a supplemental piece of information that

1   goes along with the others. Thank you.

2   JUDGE CLIFTON: Now, the fourth group may not

3   be here today. Is there anyone who can talk about --

4   MS. HANCOCK: I tried to fast track it and

5   blend it all together. Again, I'm Nicole Hancock and I

6   also represent Ponderosa Dairy, which is the fourth

7   supplemental proposal that we'll hear about as far as

8   the written proposals that have been submitted into the

9   USDA matter.

10   JUDGE CLIFTON: Thank you. Is there anyone

11   else who would like to come forward and be recognized at

12   this time? All right. I'm going to make a couple of

13   announcements and then I'm going to ask for you to

14   identify preliminary matters. Not argue them, but

15   identify them. A preliminary matter might be whom do I

16   notify if it's too cold? Whom do I notify if I want to

17   testify? What changes could be made to the tentative

18   agenda and the like? So please don't argue them. With

19   regard to the agenda itself, when we do begin to discuss

20   that I want first and foremost for you to let me know

21   whether it would be all right if we go forward with what

22   the government normally does at the beginning of each of

23   these rule-making hearings, which is to provide the

24   statistics and to provide some analysis of those

25   statistics, that data. And we predict in this case that

                              20

1   may take a few days.

2   So even if you would like to see changes to the

3   tentative agenda, if you would like that part to take

4   place first, perhaps we should get on with that part

5   while you have a little opportunity to discuss among

6   yourselves during break and so on how you might want to

7   modify the proposed agenda. So I will be asking you to

8   identify preliminary matters.

9   Now, some witnesses, of course, we will take

10   out of order. For example, if there's a person who just

11   wants to speak about everything at the same time and has

12   come away from business and cannot be here for the whole

13   hearing and wants to talk about all the issues at one

14   time, we will accommodate that as best we can. I would

15   anticipate that that would be somewhat limited

16   presentation and not go on for a lengthy period of

17   time. So we would like to take those pieces of

18   testimony as quickly as we can to accommodate those

19   witnesses so they may come and go.

20   With regard to the breaks that we'll take, if

21   you are in this room and want to leave at any time and

22   come back in you are welcome to do that. Some of us

23   have to stay for every minute and we will need organized

24   breaks. So I'll be calling them from time to time. I

25   don't know exactly how often. Sometimes in a hearing

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1   like this as soon as we've gotten all the preliminary

 2   matters done, that's a good time to take a break, about

 3   a 15-minute break. It gives people an opportunity to

 4   stretch, talk with one another. An awful lot of the

 5   good of meeting like this is to have parties with

 6   different viewpoints discuss them with each other during

 7   the breaks.

 8   Very often parties can make presentations to

 9   the secretary that are more meaningful because you have

10   talked with each other and you have distilled down what

11   is the contrast between your points of view. You know

12   that the court reporter is making the official record

13   and you know that there's an audio feed. You are also

14   welcome if you wish to record for your own personal use

15   any portion of this hearing. You might do it with your

16   iPhone where you are seated or any other kind of a

17   mobile device. I would ask that you not take pictures,

18   but just capture the audio, and I would ask that you not

19   bring your device up here.

20   The witness stand will be either the little

21   table to my right or if the person who's testifying

22   prefers to be standing at the podium, they're welcome.

23   Either place can serve as a position for a witness and

24   either place can serve as a position for someone who's

25   making an opening statement or making an argument or

                              22

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1   making an objection. The podium in front of me has a

2   wireless mic, so it can be turned at any angle. It can

3   be turned entirely around to question a witness, but to

4   the extent possible for anyone addressing the group to

5   face the group, I would like that. You may want to turn

6   it sideways when you are questioning a witness, but we

7   have flexibility there.

8   So we don't want to distract a witness, so to

9   the extent you might want to have an out-of-the-room

10   discussion about something that's of greater import to

11   you than what's going on right this minute, that's

12   fine. You are welcome to step out and come back in.

13   All right. I think that's all I need to say right now.

14   I don't know when we'll break for lunch. It depends on

15   the flow of things. I defer greatly to the person on

16   the witness stand and that person's counsel as to when

17   might be an ideal time for a break.

18   I would encourage you all if you have testified

19   and you have stepped back into the room and you remember

20   that there was something you should have said or you

21   need to clarify, these are very complex issues and very

22   often you will answer a question with the first thing

23   that needed to be addressed but you didn't say "and on

24   the other hand" or follow up in some way that the

25   secretary will need to understand. So you are welcome

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1 to recall yourself or to be recalled. The purpose of

2 this hearing is to make things as clear as they can be

3 expressed. And so we don't have to insist on getting it

4 all right the first time. Very often your brain will

5 continue to work on the topic and you will think of

6 something else that might be useful.

7   All right. Now, let's find out what

8 preliminary issues you know about today. Now, every day

9 I'm going to ask for them. They change. One of the

10 things that always happens is when is a witness

11 available to testify. And every day that's a different

12 situation. All right. Who would like to go first. Oh,

13 and each time, even though you have already introduced

14 yourself, each time you speak I want your name again.

15   MR. ENGLISH: Good morning again, Your Honor.

16 My name is Chip English and I represent the Dairy

17 Institute of California, and in keeping with your

18 request we do have several preliminary matters we would

19 like to take up. First, as to the proposed schedule, we

20 for our part certainly think that the statistical

21 evidence should go in first. There's no reason for that

22 not to happen. I think everybody needs that before we

23 even start with other witnesses. So we agree to that.

24   The remainder of the tentative schedule, while

25 I'm sympathetic with I think the purpose and the goals,

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1   it is our view that there's a problem with that. I

 2   won't go further since you just said identify, so I'm

 3   identifying that. I would say that rather than waiting

 4   until after the statistical evidence has been put in,

 5   that it would be ideal because of witness scheduling to

 6   try to resolve that today, if possible. Doesn't have to

 7   be resolved this morning, maybe as a matter at the end

 8   of the day. And I guess one question I would like to

 9   confirm, that we talked about we don't know when lunch

10   is, I think we're talking about stopping at 5:00 p.m. or

11   around that time each day; is that correct, Your Honor?

12   Just for people purposes so that they know that.

13   And then finally we have a preliminary matter

14   to raise. When we submitted our final submission to the

15   Department at the end of May we submitted an Attachment

16   3, which was an alternative proposal for Class III under

17   solids price, and the Department decided to turn that

18   down. We appealed internally back to the Department for

19   reconsideration and they again turned us down and we

20   certainly want to resolve that matter, Your Honor.

21   JUDGE CLIFTON: So is my mic on? There we go.

22   I appreciate you turning it off when I'm not speaking.

23   That is helpful.

24   When you say you want to resolve it, are you --

25   again, I'm not asking for your argument. Are you

1 proposing that you be allowed to present on that issue?

2   MR. ENGLISH: Yes, Your Honor. In fact, the

3 Department in its final letter to us on September 9th,

4 the last sentence is -- the last two sentences, the

5 hearing will be administered by an administrative law

6 judge. At the hearing the Dairy Institute of California

7 will have an opportunity to explain to the judge why the

8 WPC under solids pricing content should be included in

9 the hearing record. So, yes, that is what we seek and I

10 have already been prepared on that issue when you are

11 prepared to hear it. And that is all my preliminary

12 issues right.

13   MR. BESHORE: Marvin Beshore for the

14 cooperative components. I probably have more agreement

15 with Chip English on this than we'll have in the whole

16 rest of the hearing. We concur that the statistical and

17 preliminary testimony regarding the economic impact

18 analysis should be presented first. And we also have

19 concerns about the proposed tentative agenda, which he

20 would like to have addressed and I would concur with

21 Chip's thought that the sooner we address that the

22 better. We do not have any other preliminary matters to

23 raise and probably don't have much agreement on that

24 other preliminary matter Chip has.

25   MR. VLAHOS: If I may, we neglected to do

26

1   something in the introductions, which is give our

2   address. If I may do that at this time.

3   JUDGE CLIFTON: State your name.

4   MR. VLAHOS: John Vlahos, and the address for

5   John Vlahos and Megan Oliver Thompson is Hanson

6   Bridgett, H-A-N-S-O-N, B-R-I-D-G-E-T-T, 425 Market

7   Street, 26th Floor, San Francisco, California 94105.

8   Thank you.

9   JUDGE CLIFTON: Are there other preliminary

10   issues? All right. I would like to take a break at

11   this time. I would like to take about a 15-minute

12   break, and so I would like you to be back and ready to

13   go back on record at 9:55. It gives you time to just

14   relax, get lined up. What are we going to do? Well,

15   we're going to hear the details of your proposals

16   starting with how the agenda should be modified. So

17   prepare for that, and that's what we'll hear first when

18   you come back. All right. We'll go off the record.

19   (Recess taken.)

20   JUDGE CLIFTON: We're back on the record now.

21   It's 10:02. Some of you probably thought that was going

22   to be a really long break that early in the day, but,

23   look, we used seven minutes more. A couple of items

24   came to mind while we were on break that I would like to

25   address first. None of us has yet said anything about a

27

1   copy machine, so we have an announcement about that.

 2   MR. FRANCIS: Will Francis, USDA. Thanks for

 3   reminding us. We do have a copier in the back if folks

 4   need to make last-minute copies. Just please be

 5   respectful that while things are going on up here it

 6   could get a little noisy back there, but it should work

 7   out fine. Anyone that needs to make copies for any

 8   documents related to this hearing, help yourself. If

 9   you jam it you're on your own. Thank you.

10   JUDGE CLIFTON: Is there anyone here who's

11   really good at unjamming copy machines? We may need to

12   conscript someone. Two people talked to me during the

13   break who made it clear to me that I needed to have some

14   more people identify themselves before we actually get

15   into arguing the agenda. So I would like those people

16   who anticipate being a major player in that you're here

17   for more than one day and you are likely to question

18   witnesses or provide evidence not just on behalf of

19   yourself, but on behalf of a group, I would like you to

20   come forward and identify yourself at this time as the

21   others have, but also being fairly specific about what

22   you think you'll be doing when you testify or when you

23   question, either way. So who would like to come first?

24   MR. McAFEE: Your Honor.

25   JUDGE CLIFTON: Oh, and one more thing, don't

1 try to face me when you are talking. I know Mr. English

2 is a very consummate professional and he kept trying to

3 turn to acknowledge me and get my permission to go

4 forward. Assume that you have my permission. I want

5 you to testify with your back to me, because I want you

6 to be facing the group and your mouth needs to stay

7 uniformly close to the microphone.

8   MR. McAFEE: Thank you for the opportunity. My

9 name is Mark McAfee. I'm the owner and CEO of Organic

10 Pastures Dairy Company here in lovely Fresno County just

11 a few miles west of here. And thank you for attending.

12   JUDGE CLIFTON: Now, start by spelling your

13 first and last name.

14   MR. McAFEE: Mark, M-A-R-K, McAfee,

15 M-C-A-F-E-E, Organic Pastures Dairy Company, Fresno,

16 California. I'm here representing small operators here

17 in the Central Valley, Top O' The Morn, Rosa Brothers,

18 Dairy Goddess and some others, that are very much

19 negatively affected by the current structure of the

20 California dairy pool and we very much support a chain

21 in federal and local which allows an exemption of up to

22 11,000 gallons per day and stops the tithing into that

23 current system. So I would be representing and arguing

24 on that behalf in terms of the Berkeley family

25 operations here in Central California which are heavily

29

1   affected negatively by the current structure but are

2   positively affected by a change in the federal milk

3   pool, so put me down on that list to be here in support

4   of that.

5   JUDGE CLIFTON: Now, would you please be more

6   specific about how McAfee should look in a transcript?

7   MR. McAFEE: M-C-A-F-E-E.

8   JUDGE CLIFTON: Hold on just a second.

9   MR. McAFEE: Mark McAfee, M-C-A-F-E-E.

10   JUDGE CLIFTON: All right. Is it a capital M

11   and a small C?

12   MR. McAFEE: Yes.

13   JUDGE CLIFTON: Is there a space between the

14   M-C and A-F-E-E?

15   MR. McAFEE: No.

16   JUDGE CLIFTON: Thank you.

17   MR. McAFEE: You are very particular.

18   JUDGE CLIFTON: Yes, I am.

19   MR. McAFEE: I am very impressed. Thank you.

20   JUDGE CLIFTON: Now, you heard us say that

21   probably we'll go forward with a few days of

22   statistics. Do you intend to be here for that?

23   MR. McAFEE: I would love to be here any time I

24   have an opportunity to speak on this issue. I can't be

25   here for three or four weeks or three months if that

30

1 occurred, rumor in the room. Although I think it's a

2 wonderful process, I think it would be very hard to be

3 here every day for three months, so if I give you my

4 cell phone I can be back here within a couple of hours.

5   JUDGE CLIFTON: Is your cell phone number on

6 this card?

7   MR. McAFEE: Yes, it is.

8   JUDGE CLIFTON: Okay. So there's only one --

9 no, there are two phone numbers. So the first phone

10 number, the one that starts 559, that's your mobile

11 number?

12   MR. McAFEE: 970-5581. Don't call me after one

13 o'clock in the morning.

14   JUDGE CLIFTON: Whose time? All right. Let's

15 talk now, and I would ask Mr. -- please stay right

16 there, Mr. McAfee. I would like Mr. Francis to come

17 back. Mr. Francis, I know people are approaching

18 Agricultural Marketing Service workers who are here and

19 saying, "I would like to leave my name on a list to

20 testify." I think their easiest way to get here is if

21 when we see a space for them is to call them. Do you

22 agree?

23   MR. FRANCIS: I think that would be fine with

24 us, yes, Your Honor.

25   JUDGE CLIFTON: I know it's not going to be

31

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1 easy. Whose mobile phone should we give them so that if

2 they haven't heard they can check back in?

3   MR. FRANCIS: Well --

4   JUDGE CLIFTON: Be thinking about it. It's a

5 preliminary matter and it's going to become increasingly

6 important because there are a lot of people who came

7 here for the first day who can't just be here every day

8 until we decide it's time to fit them in.

9   MR. FRANCIS: We would be open to scheduling

10 farther out. Today is going to be a little difficult.

11 We'll do the best we can, but if you want to schedule

12 farther out, and, for example, if you can only be here

13 next Tuesday at ten o'clock, the farther out I think the

14 better we're going to be able to accommodate. And then

15 we can be in contact with each other and go from there.

16   JUDGE CLIFTON: All right. May I hand you,

17 Mr. Francis, Mr. McAfee's card. And he wants to be on

18 the list. Thank you very much.

19   MR. FRANCIS: Yes, Your Honor. We have added

20 Mr. McAfee to the list and if there are any others that

21 want to be on the list, please approach us.

22   MR. McAFEE: Specifically I would be interested

23 in being here for the PD discussions,

24 producer-distributor discussions. Thank you very much,

25 Your Honor.

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1   JUDGE CLIFTON: Thank you. All right. Other

2   people who want to be part of this proceeding either by

3   questioning or presenting and would like to be

4   introduced to the group now, even if you are planning to

5   be here every day until you find a good time.

6   MR. VETNE: Good morning, everybody, my name is

7   John Vetne, V-E-T-N-E. My address is George Cole Road,

8   New Portland, Maine, which is in the western mountains

9   of Maine. I'm a retired attorney. I got called out of

10   retirement by Hilmar Cheese to help them along in this

11   process. I hope to be here for the duration. Hilmar

12   has another consultant and a representative.

13   MR. ZOLIN: Good morning. My name is Alan

14   Zolin, A-L-A-N, Z-O-L-I-N. I'm a dairy consultant

15   working with Hilmar Cheese. I plan on testifying at

16   this hearing. I do have one issue. I will be on

17   vacation that I arranged, oh, a year or so ago starting

18   on Friday, returning October 8th, so if I could testify

19   sometime after October 8th I would really appreciate

20   that. Thank you.

21   MR. DEJONG: My name is James DeJong. Last

22   name is spelled D-E-J-O-N-G. I'm the dairy policy and

23   economic analyst for Hilmar Cheese Company, and I plan

24   on testifying at this hearing.

25   JUDGE CLIFTON: Could you spell the name of the

33

1 company, please?

2   THE WITNESS: Sure. Hilmar Cheese is

3 H-I-L-M-A-R, C-H-E-E-S-E, Company.

4   JUDGE CLIFTON: And, Mr. Vetne, would you spell

5 your first name, please?

6   MR. VETNE: J-O-H-N. It was never anything

7 else but that.

8   JUDGE CLIFTON: Who else would like to be able

9 now to identify yourself for the group?

10   MS. TAYLOR: Good morning, I'm Sue Taylor,

11 S-U-E, T-A-Y-L-O-R, representing Leprino Foods Company,

12 L-E-P-R-I-N-O, and I am planning to testify at the

13 hearing and will be here during the bulk of the hearing,

14 not all of it.

15   MR. BLAUFUSS: Morning. My name is Rob

16 Blaufuss, Blaufuss is B-L-A-U-F-U-S-S. I'm here

17 representing Dean Foods Company. I will be here for at

18 least the first two weeks and on and off for the

19 remainder of the hearing.

20   JUDGE CLIFTON: And what would you primarily be

21 doing in the hearing?

22   MR. BLAUFUSS: I will be testifying.

23   MR. AVILA: Hello, my name is Xavier Avila,

24 X-A-V-I-E-R, Avila, A-V-I-L-A, and I'm the producer,

25 Land O'Lakes shipper, Land O'Lakes board member and I'm

34

1 pretty flexible on time, so I'll probably come next

2 week.

3   MR. DRYER: Good morning. My name is Greg

4 Dryer, G-R-E-G, D-R-Y-E-R. I'm here representing

5 Saputo, S-A-P-U-T-O, Inc., and I plan on testifying and

6 spending as much time here as I'm able. Thanks.

7   MR. SMITH: Good morning, Your Honor. I have

8 to admit it's a little difficult to have my back to you,

9 but I take the point. My name is Daniel Smith. I'm an

10 attorney in Montpelier, Vermont. D-A-N-I-E-L,

11 S-M-I-T-H. I'm here representing four producer

12 organizations out of four different states, the Maine

13 Dairy Industry Association, the Kentucky Dairy

14 Development Council, Georgia Milk Producers, Inc. and

15 the Tennessee Dairy Producers Association.

16   We're here to listen to the evidence, ask

17 questions, try to assess the impact of the different

18 proposals on the dairy industries and the different

19 states. I anticipate we will be putting in evidence. I

20 don't anticipate that we're going to be able to be here

21 for the entire hearing. So to be able to work with the

22 schedule would be very helpful. We have some

23 flexibility for sure on time, so I think that the

24 challenge is more where the testimony cuts across

25 different issues as opposed to particular issues and

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1 bringing people out to speak to a number of issues

 2 rather than just one at a time. Did I give you my

 3 address?

 4   MS. AcMOODY: Hi, my name is Annie AcMoody

 5 spelled A-C, capital M, O-O-D-Y. No space. I'm with

 6 Western United Dairymen. I'll be here all week and as

 7 needed, and I plan on testifying on behalf of the

 8 organization. Our address is 1315 K Street, Modesto,

 9 California 95345.

10   MR. VANDENHEUVEL: Good morning. My name is

11 Rob Vandenheuvel, that's V-A-N-D-E-N-H-E-U-V-E-L. I'm a

12 general manager with Milk Producers Council. We're a

13 dairy farmer trade association here in the state of

14 California. I plan to participate via providing

15 testimony as well as possibly asking questions of future

16 witnesses, and my schedule will be -- I'll be here as

17 needed, so in and out. I am local in the state of

18 California and will be spending a lot of time in the

19 Central Valley over the next period of time apparently.

20   MR. MILTNER: Good morning, Your Honor, my name

21 is Ryan Miltner. I'm an attorney from Ohio. It's Ryan,

22 R-Y-A-N, last name is M-I-L-T-N-E-R. My address is 100

23 North Main Street in New Knoxville, Ohio,

24 K-N-O-X-V-I-L-L-E, 45871. I'm here representing Select

25 Milk Producers, Inc. with my partner Kristine Reed.

                              36

1   I'll let her introduce herself. We will be

2   cross-examining witnesses and we may put on testimony of

3   our own with one or two witnesses at the end of the

4   hearing after all proposals have been presented.

5   MS. REED: Good morning. Kristine Reed. It's

6   K-R-I-S-T-I-N-E. Last name is Reed, R-E-E-D. Same

7   address. Thank you.

8   MR. KASBERGEN: Good morning, my name is

9   Cornell Kasbergen, C-O-R-N-E-L-L, K-A-S-B-E-R-G-E-N.

10   Address is 21744 Road 152, Tulare, T-U-L-A-R-E,

11   California. And I'll be testifying on behalf of myself

12   as a producer. Thank you.

13   MR. CARMAN: Good morning. My name is Clifford

14   M. Carman, C-A-R-M-A-N. I'm here on behalf of Dairy

15   Programs, Agricultural Marketing Service, USDA, and I

16   may be involved in some of the co-op cross-examination

17   of witnesses.

18   JUDGE CLIFTON: Who would like to go first with

19   an argument as to the outline of an agenda that you

20   would prefer over what we have suggested?

21   MR. ENGLISH: Your Honor, I see the one thing

22   we can also agree on is -- well, anyway, Chip English,

23   sorry. Again, the tentative schedule that was provided

24   for information for people who aren't aware of this, for

25   sort of the first time my experience in attending

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1   proceedings, the traditional way of these proceedings

2   and the way they've always been run is that the

3   proponents of Proposal 1 will put on their testimony.

4   And you might have opponents come up, but you might then

5   have -- well, the proponents for Proposal 2 and then

6   proponents for Proposal 3 and then proponents for

7   Proposal 4. And then, of course, there's Proposal 5,

8   which is the USDA proposal forming changes. Although

9   I'm not sure, this is a promulgation hearing, I guess

10   that's not the -- forget it.

11   The proposal by AMS Dairy Programs is to break

12   that up by topics and have the topics covered by all the

13   participants, which is to say we would go through a

14   general introduction by the cooperatives, then general

15   introduction by the Dairy Institute of California, a

16   general introduction from the producer-distributors and

17   then from Mr. Degroot or Rocky Dairies, and then we do

18   that repetitively as we cover the various issues. I can

19   understand maybe the goals of that in terms of people's

20   sort of trying to get things resolved as it will include

21   the USDA, but I perceive a number of problems starting

22   with the fact that frankly I think my client, Dairy

23   Institute of California, which opposes the Federal

24   order, whether it is entitled as a matter of due process

25   to hear the co-op's case first. I think we're entitled

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1   to hear the entire case.

2   But leaving aside the due process issue, which

3   is important, I think that there's going to be

4   necessarily just management issues, and I just heard the

5   various people come up and talk about what they want to

6   do. And so, you know, for instance, I heard Mr. Miltner

7   say, "Well, we want to testify, we will testify at the

8   end." And that's frankly the way I think it ought to be

9   done. If they want to testify at the end although I

10   think cooperatives would ultimately give surrebuttal at

11   the very end, but this idea of breaking it up by topics

12   necessarily means that multiple witnesses would be on

13   multiple times.

14   There's at least two problems with that.

15   First, notwithstanding the fact that people are here, a

16   number of the members of Dairy Institute of California

17   will have their own counsel attending the hearing when

18   they testify. So that means they would have to come in

19   multiple times. Beyond that, as I indicated, there are

20   28 member companies in Dairy Institute of California.

21   You have heard from those who are going to be here most

22   of the time. That leaves 23 or 24 who may be here just

23   a day or two and cannot be here the entire time. Beyond

24   that, and I have discussed this with a number of

25   attorneys both participating, but also from others, as a

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1   litigator I conclude that if you put a witness like

2   Mr. Hollon on the stand four, five, six or maybe even

3   eight times, his cross-examination will not be the same

4   length. It will be 40 percent longer. And the same

5   will be true of documents, so I think for efficiency

6   purposes we are literally telling ourselves that this

7   hearing will go -- you know, if you talk about cross-

8   examination being half a hearing, 20 percent. And I

9   don't think that's appropriate, but at the end, you

10   know, the bottom line is that's not the way we have ever

11   run a federal hearing. And I don't think this is the

12   time to start running it differently for what is a

13   promulgation hearing. Uniquely, we haven't had a

14   promulgation hearing for USDA since Idaho I think in

15   1981 or the Carolinas, and this is a lot more and

16   obviously a lot of interest.

17   So we would propose that the traditional method

18   of the proponents going first giving their testimony and

19   then we would go next and then proponents' Proposal 3

20   would go next and then proponents' Proposal 4 would go

21   next with the cooperatives having the opportunity to go

22   at the end for rebuttal is the appropriate way to

23   address this hearing.

24   MR. BESHORE: Marvin Beshore for the

25   cooperatives, proponents of Proposal 1. We reached the

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1 same conclusion as Chip English of Dairy Institute, not

2 quite for the same reasons. I don't think there are any

3 due process legal issues about how the agenda is

4 established here. I think it's clear that the rules of

5 practice commit the order of presentation and the

6 general content of the hearing to Your Honor's

7 discretion, and ultimately I have no doubt that however

8 Your Honor determines the agenda to be, everyone's due

9 process rights will be honored. Our concern, and we

10 recognize that in contemplation of a large hearing

11 record there's an interest in the Department and frankly

12 everyone to have it organized in the best possible way

13 and the way that's most manageable when we're digesting

14 it and attempting to, you know, work through it in the

15 post-hearing briefing and decision-making process.

16   In preparation for the hearing, what we ran

17 into in grappling with the proposed tentative agenda,

18 which is basically structured numerically in terms of

19 the way the order is written, the proposed order is

20 written, which is written in the same format as all the

21 other orders. So essentially the proposed tentative

22 takes -- with introductions it takes, you know, proposed

23 regulations number -- these numbers aren't right, but

24 just to understand it, you know, 1 through 8 as the

25 agenda topic 1, 10 through 20 is agenda topic number 2,

41

1 et cetera.

2   Our problem is that in attempting to fashion

3 testimony in presenting our case and having people

4 address issues that they are most familiar with and will

5 provide most expertise on, it doesn't break down, it

6 didn't break down in the manner the regulations are

7 written, which is corrected that way for, you know,

8 various regulatory reasons over the year. So in order

9 to present in the agenda as tentatively announced,

10 multiple witnesses would have to present multiple times,

11 their testimony would have to be sliced and diced in

12 multiple ways, and in our view wouldn't enable the best

13 presentation of the issues in the hearing, you know,

14 certain stuff.

15   The traditional mode of presentation we're

16 satisfied works, is appropriate, and in terms of the

17 efficiency I think it's going to be as efficient as any

18 way to handle the hearing, so we would respectfully

19 request that the traditional or the practice that has

20 been followed which Chip English has described, that

21 that be followed. We think that would work best.

22   MR. HILL: Thank you, Your Honor. The

23 administrator did not make this --

24   JUDGE CLIFTON: Just a moment.

25   MR. HILL: Oh, sorry. Brian Hill. The

administrator did not come to the suggestion

willy-nilly, for lack of a better term. Mr. English has

talked about efficiency and he's correct in talking

about it and it was for that sake that the administrator

came up with this suggestion. Something that Mr. McAfee

said earlier points to the issue here. Mr. McAfee

earlier said that he just wanted to be involved in the

producer-handler discussions. If we have no idea when

those producer-handler discussions are going to occur

we're going to have a problem that we just came to in

handing out business cards and having to call people

back and trying to find a number. It is going to cause

a very big problem with the hearing record. Our goal

here was never to give the impressions that the

administrator can't or won't make exceptions. We

understand that there are going to be some exceptional

circumstances. There are going to be some witnesses who

are testifying to multiple topics and we understand that

it that it might be best to give them at one time, I

think Your Honor mentioned that earlier, and have them

testify to everything that they can rather than come

back day after day after day, which we admit is not the

best situation.

Also, there are going to be people who are

coming in for a single topic and you can only come at

43

1   one specific time. We will also make exceptions for

2   them, but overall the process here is that we want it to

3   be efficient, we want it to have a hearing record in

4   which even post-hearing people can look at this hearing

5   record, which, Your Honor, we're looking at a hearing

6   record that's going to be thousands of pages. This is

7   looking at to be a very, very long hearing from what I'm

8   hearing. I wish I were wrong about that, but I don't

9   think I'm going to be. And with that type of a hearing

10   on record it would be much easier not just for the

11   Department of Agriculture, not just for AMS, but for

12   anyone, any interested party who is looking to maybe

13   file a brief or make comments. It will be much easier

14   if we have this laid out by topic in which they can look

15   through, know generally where their topic, their

16   interest lies in the hearing record and proceed

17   accordingly.

18   The way it is now we might have a hearing

19   record which is jumbled, going back and forth, topics

20   everywhere. It is going to be very difficult not just

21   for the Department of Agriculture but for everyone

22   attending this hearing, listening in on this hearing,

23   reading the transcript and ultimately all the parties

24   here will want a hearing transcript in which they can

25   find the relevant portions that they need to look at and

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1   file briefs or file briefs accordingly.

2   So from our perspective, Your Honor, we would

3   ask that it be done this way, because we do believe it's

4   efficient, it will be more inclusive. People will know

5   when they can come and testify or when they can come and

6   listen to specific topics and that will help everyone

7   involved.

8   MR. VLAHOS: John Vlahos, co-counsel for

9   Mr. Beshore, for the cooperatives who are proponents of

10   Proposal No. 1. With all due respect to Mr. Hill, I

11   think the procedure that's outlined in the proposed

12   agenda is less efficient. In one sense, with respect to

13   each of the proposals they are integrated proposals so

14   each part relates to the other part. They're not easily

15   broken down into little pieces. And to have a coherent

16   understanding of each proposal and the opposition to

17   various proposals, it would be much more efficient and a

18   much more readable and understandable record if the

19   entire case of the proponent and the objections of the

20   objector be in one piece.

21   So I think it would be a lot more efficient to

22   do it the way that Mr. English and Mr. Beshore have

23   suggested and it's also extremely difficult for the

24   individual witnesses to break up their testimony when

25   parts of their testimony relate to other parts of the

testimony which then may be given days later. So I

would support Mr. English and Mr. Beshore's proposal.

MS. HANCOCK: Nicole Hancock with Stoel Rives

on behalf of the California Producer-Handlers

Association and Ponderosa Dairy. We would support the

proposal by Dairy Institute and the cooperatives, as

well.

With respect to the producer-handlers, with the

current agenda as outlined we would have witnesses on

the stand at least five different times in five of the

different topical areas, and we're not producers, they

simply just don't have time to appear five separate

times to discuss different issues. And, frankly, to

tell the storyline that they want to tell it would be

incredibly disjointed to tell certain segments of it in

one portion of the testimony or the hearing and then

come back again and address another topic. I think that

with the structure of the hearing and Your Honor's

flexibility in allowing people to come up on the stand

and correct prior testimony or come back and make sure

that they have exhausted what information they have, I

think that we have -- with the Dairy Institute's

proposal we have the mechanics in place to be able to

ensure that the full amount of testimony is heard.

I do appreciate your concerns about the record

being clear and concise. We are all trying to operate

within the bounds of a clear record. I do think that

with modern technology and having the ability to search

records with a searchable format, I think we can get

around that. And then I also want to make sure that we

don't have unnecessarily duplicative witnesses appear,

and I'm having a hard time myself in planning our

testimony and structuring it in a way that I can address

these witnesses in the topics that are covered without

trying to repeat information when a witness gets back on

the stand again to cover a different area, because it's

hard to start midstream without kind of starting from

the beginning.

          So I would support allowing the parties to go

by proposal by proposal and let them tell a complete

story at one time and then allow cross-examination to be

had for each individual witness and then any kind of

rebuttal case that would be had after that. Thank you.

          JUDGE CLIFTON: How many of you have looked at

the -- is my mic on? How many of you have looked at the

tentative hearing schedule by topic? Are there copies

on the back table for those that want them?

          MR. FRANCIS: I think there were.

          JUDGE CLIFTON: All right. We may need to make

some more of these. This is an extremely useful tool.

1   It would be very helpful if the lawyers calling

2   witnesses would give us a heads-up, not just call the

3   witness by name, but give us a heads-up as to whether

4   that witness' testimony will relate to nearly every

5   topic on the tentative agenda or perhaps zero in on the

6   producer-handler provisions.

7   I must agree with the proponents' request that

8   this evidence come in the way evidence normally does,

9   which is when a witness is called he testifies until

10   he's done testifying, then cross-examination begins

11   going back to what he said at the beginning all the way

12   until what he said at the end, and the witness may have

13   been on the stand for three days and there may be

14   cross-examination over lots of different topics, but I

15   really believe that's the best way to handle witnesses.

16   But I think -- Mr. Francis, would you come to

17   the microphone, please? I think if counsel will help

18   guide us, this is extremely complex, if they'll help

19   guide us as to which bucket, and there are nine buckets,

20   which bucket of witnesses' testimony addresses -- and a

21   comprehensive witness, an expert, perhaps, will testify

22   about every single topic. Mr. Francis, what do you

23   have?

24   MR. FRANCIS: Will Francis, USDA. I have the

25   document that Judge Clifton has referred to, the

1   tentative hearing schedule by topic. It was posted on

 2   our web site. We are in process of making additional

 3   copies. I put some at the table or in the copier.

 4   JUDGE CLIFTON: Thank you. Mr. English.

 5   MR. ENGLISH: I would emphasize that, Your

 6   Honor, I think that's a very good idea. We actually --

 7   regardless of our disagreement with the order of

 8   witnesses and things, I think that what the Department

 9   has provided is a very useable tool and, you know, I

10   think Mr. Beshore, I think he may very well agree, and

11   to the extent we have witnesses who are going to talk

12   about all the issues, I think we will try to structure

13   the testimony in that way so the transcript will be

14   clear.

15   So the doctor, she testifies, okay, this is

16   what she's testifying, so if somebody wants to go look

17   for that topic they'll be able to find it. I also agree

18   with Ms. Hancock that with modern technology these

19   transcripts are very searchable these days, but -- and I

20   also agree and will commit to the idea that when a

21   witness gets on the stand for the Dairy Institute of

22   California we will announce ahead of time whether it's

23   all the issues or, you know, 1, 5 and 9. And we will do

24   that to make that easier for all the participants, Your

25   Honor.

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1   MR. BESHORE: Thank you. Marvin Beshore. I

2   completely agree that having the witness topics

3   identified and related to the categories on the agenda

4   to the extent that works is very helpful and, you know,

5   we'll certainly do it. Potentially also identifying it

6   by sections of the order, which in terms of searchable

7   transcripts and all that, that I think, you know, may

8   help, too.

9   I would have one thing I want to make clear in

10   terms of Your Honor's comments about the witness coming

11   and being on the stand for a long period of time. We

12   have at least one witness, maybe more than one, who

13   would be called more than one time and his testimony

14   broken up by subject matter on, you know, more than one

15   occasion, so that's going to work in terms of our

16   presentation and I assume that's not precluded by the

17   comments, Your Honor.

18   JUDGE CLIFTON: I would welcome it. I think it

19   will help us all digest it.

20   MR. BESHORE: Thank you. That's all I have.

21   JUDGE CLIFTON: So for those of you listening

22   in on the Audiocast, this document we're talking about

23   is on the web site that was previously identified by

24   Mr. Francis is www.ams.usda.gov/caorder. That's where

25   you can find this tentative hearing schedule by topic.

1   MR. VETNE: John Vetne again, consultant to

2   Hilmar Cheese. I just have a couple questions relating

3   to the order of presentation that Mr. English and

4   Mr. Beshore discussed, which I would agree, because

5   we've been doing that it way for 40 years and it's hard

6   to change.

7   This is an unusually -- presumably an unusually

8   long hearing, and the tentative agenda for folks like

9   Mr. McAfee would give them an opportunity to know in

10   advance when they come and discuss like conventional

11   producer-handler issues and then ask questions of the

12   witnesses that address that issue and present their case

13   all in one bundle. Now, there will presumably be

14   proponent evidence, evidence to that, maybe others, and

15   then they come in at the end.

16   To the extent that there are folks who like

17   that and have an issue they want to address, it might be

18   difficult to anticipate and come here on multiple

19   occasions. So there are a couple of things that might

20   help that I suggest. And one is a request of AMS to

21   take a little time, five minutes before the end of the

22   day and post on their web page what we think the issues

23   for the next day will be so that people listening on the

24   East Coast or wherever they are or people that might

25   come in on a limited basis will sort of, you know --

1   your issue might come up tomorrow or be listening

2   tomorrow. That would help a lot.

3   And what would also help is that the exhibits

4   that are introduced each day, if they could be scanned

5   and put on the web site. It's not like we need to wait

6   for the transcripts a couple of weeks. They'll be

7   available. And thirdly, for somebody that comes in for

8   a specific issue like Mr. McAfee, proponent witnesses

9   and other witnesses may be finished, but if that's the

10   only time they come in they might have questions they

11   weren't here able to ask. I think it would be proper

12   procedure to allow them to recall that proponent witness

13   if they're in the room and available and ask questions

14   that they had when they were absent from the hearing.

15   That's all, thank you.

16   JUDGE CLIFTON: Thank you for your suggestions,

17   Mr. Vetne. Let me talk first about the technology and

18   what's available. As you have heard, the portions of

19   the transcript and the exhibits will go up on the web

20   site about two weeks after they've been live here. That

21   doesn't satisfy what Mr. Vetne would like, which is

22   instant. There's more than one part of USDA that posts

23   to that web site. It's not just a matter of the people

24   who are here at the hearing having access to it, they

25   don't.

1   What those of you who are participating in the

2   hearing can do for your own constituents is get a copy

3   here, scan it yourself and put it on your own web site

4   for your own people to the extent you are able to do

5   that. That's the fastest way to disseminate material to

6   those people who you know have an interest in what's

7   happening. Mr. English had mentioned that I should

8   confirm what our ending time is each day, and our ending

9   time is no later than 5:00 each day. We'll pretty much

10   be a 9:00-to-5:00 operation five days a week. No early

11   closing on Fridays even though some of you have to try

12   to travel and be back here the following Monday.

13   It would be wise of us to interrupt whatever

14   evidence is coming in near the end of each day to

15   discuss what will happen the next day. That way those

16   of us in the room know and those of us who are listening

17   on the Audiocast know and that will help. I don't want

18   to put the Agricultural Marketing Service in a position

19   of trying to forecast of their own volition what's going

20   to happen tomorrow. None of us knows what's going to

21   happen tomorrow, but if we at least as a group discuss

22   it at the end of each day, I think that will be useful.

23   With regard to a person who's coming to provide

24   information who would like to recall one of a

25   proponent's witnesses to ask a specific question, I'll

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1 have to handle that on a case-by-case, issue-by-issue

2 basis. It might be helpful, it might be information

3 that we should have from that witness that nobody else

4 thought to ask. But we'll play that by ear. It will be

5 very difficult for the secretary to choose the exact

6 wording to consider if a proposed regulation is going to

7 be put to a vote. These fine tunings that happen when

8 people have had a chance to digest several days of worth

9 of testimony and they think of something that hasn't

10 been asked, it could be very helpful. So I think it's a

11 good suggestion but I'll handle it on a case-by-case

12 basis. Okay.

13 Now, I'm going to allow the Proposal 1 to be

14 presented as Mr. Beshore and his team will present it.

15 They won't go forward until we've had all the USDA's

16 statistical information, and I would like in between the

17 USDA statistical information and analysis and

18 Mr. Beshore's team going forward, I would like opening

19 statements. I would like opening statements from each

20 proponent group. They don't have to be lengthy. It's

21 just helpful for us to know what to look for. We don't

22 ordinarily have opening statements in rule-making

23 hearings, so it doesn't have to be a grand production,

24 just something to give us a road map of what to expect.

25 In your opening statements it may be helpful,

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1 if you are willing to do it, to identify those areas

 2 that you believe will be most controversial, and it

 3 would be very helpful if you would identify why your

 4 clients believe they should go the way you intend to

 5 present.

 6   All right. Now, the other preliminary

 7 matters. I took notes, I don't remember what they

 8 were. Mr. English, what other preliminary matters did

 9 you want to address?

10   MR. ENGLISH: Your notes indicated somebody

11 else. Your Honor, the issue that I asked to be

12 addressed is that on May 27th of 2015 when final

13 submissions were made to the Department we included --

14 in addition to revised revisions to what we had

15 submitted back in April and which is Attachment 1 and

16 then there was the answering the USDA questions, which

17 was Attachment 2, we included an Attachment 3. And

18 Attachment 3 is entitled, "An Alternative Proposal for

19 Class III Under Solids Price," parenthesis, "7CFR

20 section 1150.50Q." Both we and the cooperatives had

21 used a Proposed Order 50. It's my understanding that

22 the Department used 51 in the hearing notice because

23 there used to be an order 50, but that was what we

24 submitted. And the Department by letter of August 5th

25 after the hearing notice was issued indicated that was

1 not a modification that they thought should be

 2 included.

 3   We appealed that, were passed for

 4 reconsideration on August 17th, and the Department

 5 concluded on September 9th that, no, it would not be

 6 part of the hearing record. I think I have about 25

 7 copies. I'm not sure that's enough. I'm hoping it's

 8 enough for purposes of the exhibits and the principal

 9 players of the various documents. And I would -- I'm

10 prepared to argue that whether or not it's in the

11 hearing notice, that because the Section 50Q is open for

12 consideration, because this is a promulgation hearing,

13 let's say it was mandatory proceeding and all we were

14 looking at was Section 50, that once that section is

15 open, that it is appropriate for any modification at the

16 hearing. And I can give a number of examples of what

17 might happen, but I guess the most sufficient thing by

18 my perspective would be -- and I guess you have not

19 actually indicated what the exhibits are yet, like the

20 hearing notice, so I'm not sure if you want to do that

21 first and then come back to this, but I've got the five

22 documents to remain exhibits and then I'm prepared to

23 make my argument why that section is open, whether or

24 not it's in the hearing notice and why not to be

25 included for consideration.

1   JUDGE CLIFTON: Good.

2   MR. ENGLISH: I defer to you to how do you want

3   to proceed? If you want to proceed first by getting the

4   actual hearing notice in the record as we don't actually

5   have it in the record yet and then proceeding with these

6   five. However you wish to do it. I do think it is an

7   appropriate preliminary matter and ought to be addressed

8   today.

9   JUDGE CLIFTON: Ought to be addressed today,

10 argued today, or just that we're all on alert?

11   MR. ENGLISH: Well, I would prefer that it be

12 argued today, because the decision, whatever that is,

13 will affect the hearing going forward, it will affect

14 testimony of my witnesses. I will say in candor if it's

15 denied we're going to probably put the evidence in

16 anyway and then argue as an alternative the secretary

17 should have concluded if we end up somewhere other than

18 this forum. But also I would like to have it resolved

19 today, because if it's denied it gives an opportunity to

20 appeal the secretary, so I think the sooner it gets

21 resolved, the better for all of the disciplines, Your

22 Honor.

23   JUDGE CLIFTON: All right. I'm going to wait

24 until after the government has given its statistical and

25 analysis evidence and then I'll invite that argument.

1   MR. ENGLISH: All right, Your Honor, thank you.

2   JUDGE CLIFTON: All right. I want you to know,

3   Mr. English, I certainly heard you say that at least

4   gives me grounds to argue that the secretary should have

5   included it. It's difficult for me to countenance in a

6   hearing like this something that was not forewarned in

7   the notice. If you would like to address just that

8   part.

9   MR. ENGLISH: Your Honor, obviously that's why

10   we submitted it and we thought it should be in the

11   notice, but I will argue in the alternative that we have

12   had this plenty of times in hearings over -- I don't

13   know -- 40 years, Mr. Vetne, but I have a number of

14   years and definitely you have opportunities for people

15   to come in and tweak a proposal or make an adjustment to

16   a proposal. And the rule is is the section open, and if

17   the section is open then someone can modify it. So, for

18   instance, try not to do too much of the argument, Your

19   Honor, but if somebody wanted to drop the whey factor

20   entirely, just omit it, I think that's an appropriate

21   modification for a hearing when that section is open.

22   If somebody wants to come in and modify the

23   language of the producer-handler provision, which has a

24   three-million-pound cap and they want to say I want that

25   to be a four-million-pound cap, I think that's an

58

1 appropriate modification when the section has been

 2 opened. If we establish a rule that we can't modify the

 3 provisions, I think we run counter from Judge Posner's

 4 decision of Alto Dairy in which he said this is not

 5 simply a matter of voting on the actual submissions made

 6 by the parties, that the purpose of a rule making is to

 7 discuss it and modify it and come up with an ideal

 8 solution.

 9   So I'll stop now, because otherwise I'll just

10 make the whole argument, but I hear what you have to

11 say, Your Honor, but the alternative is then that we are

12 set in concrete, and if, for instance, the cooperatives

13 decide that, oh, gee, in order to make this work we need

14 to modify a section that points to part 1000 and they

15 instead now want to have a different section, I think a

16 ruling that says we can't do what we want to do would

17 prevent them. And I think we create a straightjacket

18 for this proceeding, and if this is as it is, a

19 promulgation hearing, that's an inappropriate

20 straightjacketing.

21   JUDGE CLIFTON: Before you leave, Mr. English,

22 would you spell the case of Judge Posner for us.

23   MR. ENGLISH: Alto Dairy, A-L-T-O, D-A-I-R-Y

24 versus Veneman, V-E-N-E-M-A-N, but obviously if we're

25 going to go back and forth we can argue it now, Your

1 Honor, but --

2   JUDGE CLIFTON: I don't want you to persuade me

3 absolutely now, but I like what you are doing. You are

4 giving the rest of us a preview of what this is about,

5 which I appreciate.

6   Mr. Beshore.

7   MR. BESHORE: And I'll just give a real quick

8 preview of our position on that. I mean, we support the

9 department's position here. There's never been a line

10 that said the section's open, that anything can be

11 brought in under that section, it's always been in the

12 historically in these hearings, you know, scope of the

13 notice and scope of the hearing. Some things are in and

14 some things are out. So we think that proposal, the

15 alternative proposal with Dairy Institute, was properly

16 refused by the Department.

17   I'll just say one thing about one of the cases

18 that they're relying on which I have deep personal

19 knowledge about. The only time in the history of this

20 program a court has intervened in how the secretary

21 defined the scope of a hearing was in the National

22 Farmers Organization case that was cited in some of the

23 materials that Dairy Institute had made, and in that

24 case what the Department did and the Court found was

25 inappropriate was not rule something out because of the

                          60

1 scope of the subject matter, which is what has been done

2 here. The Department in that case took a pre-hearing

3 poll and determined that National Farmers Organization

4 proposal wasn't going to be supported by anybody else,

5 so they said we're not going to hear it. And the Court

6 did not approve of that procedure, but that's in no way,

7 of course, you know, what's going on here where the

8 Department has stated in two letters the reasons why the

9 request is not appropriate.

10   JUDGE CLIFTON: Mr. Beshore, would you spell

11 the name of your case, please?

12   MR. BESHORE: National, N-A-T-I-O-N-A-L,

13 Farmers, F-A-R-M-E-R-S, Organization. Spelling bee

14 here, I think. O-R-G-A-N-I-Z-A-T-I-O-N versus Lyng,

15 L-Y-N-G. I don't have a cite, but it was a district

16 court of the District of Columbia, 1988 maybe.

17   JUDGE CLIFTON: Very well. All right. What I

18 would like to do next is begin with those

19 representatives of the United States Department of

20 Agriculture proceeding with any further statements they

21 would like to make, introducing any exhibits they would

22 like to make, calling their first witness or however

23 they would like to proceed.

24   MR. HILL: Yes, Your Honor, we do have four

25 foundational exhibits we would like to -- can you hear

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 1    me?

 2             JUDGE CLIFTON:  I can hear you, but I didn't

 3    hear your name.

 4             MR. HILL:  Oh, Brian Hill.  Yes, we do have

 5    four foundational exhibits we would like to enter marked

 6    as exhibits and entered into the record.

 7             JUDGE CLIFTON:  I would like you to go to the

 8    podium and identify those for us.  I would indicate that

 9    all of the exhibit labeling will all be numbers, there

10    will be no letters.  So exhibits will be Exhibit 1, then

11    there will be Exhibit 2, then Exhibit 3.  They'll just

12    be numbered based on when we first hear about them.

13             So when Mr. Hill says he has four, these will

14    be exhibits, 1 through 4.  He'll tell us which is which,

15    but throughout this whole proceeding that's how we'll

16    identify exhibits.  When you have an exhibit to present

17    to the group it's helpful if you have already made

18    photocopies so that everyone can pick up their copies.

19    The court reporter will need one to look on.  I'll need

20    one to look on, if you have a witness looking on.

21             We're going to maintain two separate original

22    records.  One will end up with the hearing clerk, but

23    before it goes to the hearing clerk it will be scanned

24    by the court reporting service, placed on the web site

25    or it will be scanned by the court reporter service and
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1 by the federal agency placed on the web site, so you may

2 want to say more about that process by way of

3 instructing people what to do as they give us exhibits

4 as Mr. Hill is about to do.

5   So, Mr. Hill, you can go ahead and talk about

6 yours and then I'll ask who would like to give more

7 information about that from Agricultural Marketing

8 Service.

9   MR. HILL: Okay. So we have Exhibit No. 1,

10 which is Notice in the Federal Register, which was

11 published August 6th, 2015. We would like to mark that

12 Exhibit No. 1. Exhibit No. 2 would be the Certificate

13 of Notice to Interested Parties. Exhibit 3 is a

14 Certificate of the Press Release, news release. And

15 Exhibit 4 is a Certificate of Officials Notified

16 Governors in the States of Arizona, California,

17 Colorado, Idaho, Nevada, New Mexico, Oregon, Utah and

18 Washington. That would be Exhibit No. 4. And if there

19 are no objections I would like to enter those into the

20 record.

21 (Whereupon, Exhibit 1, Exhibit 2, Exhibit 3, Exhibit 4

22   were marked for identification.)

23   JUDGE CLIFTON: Are there any objections?

24 Well, first of all, has everybody had a chance to see

25 what he's talking about? Let's -- where are they and

1 how can people see them?

2   MS. TAYLOR: Erin Taylor with USDA. These

3 four, we do have copies of the Federal Register, the

4 hearing notice laying over on the exhibit table. The

5 other three are really housekeeping documents, and given

6 the voluminous amounts of photocopying we -- the trees

7 we killed this weekend, we just decided that they're

8 kind of just general documents and not knowing -- no one

9 necessarily needs to see them to participate in the

10 hearing, but they will be up on the web site as exhibits

11 to complete the hearing record if that's okay with you,

12 Judge.

13   JUDGE CLIFTON: So just so you have an idea,

14 I'm going to -- well, Mr. Hill, you have them. Hold

15 them up one at a time. Let people see what you are

16 talking about.

17   MR. HILL: Okay. Exhibit No. 1 is the Federal

18 Register Notice. It's a packet, probably 15, 20 pages

19 long. The second document, Exhibit No. 2, is the

20 Certificate of Officials Notified, interested parties.

21 Exhibit No. 3 is the news release. And Exhibit No. 4 is

22 the Certificate of Officials Notified, notifying various

23 state governors.

24   JUDGE CLIFTON: Is there anyone who wants to

25 question Mr. Hill about any of these documents? Is

1 there any objection to any of these documents being

2 admitted into evidence?

3   There are none. Exhibit 1 is admitted into

4 evidence, Exhibit 2 is admitted into evidence. Exhibit

5 3 is admitted into evidence, and Exhibit 4 is admitted

6 into evidence.

7   (Whereupon, Exhibit 1, Exhibit 2, Exhibit 3, Exhibit 4

8   were admitted into Evidence.)

9   JUDGE CLIFTON: Now, who will make sure the

10 reporter has the requisite number of copies of these?

11   MR. HILL: Those documents will be going to

12 Meredith Frisius. Can you raise your hand, please?

13   JUDGE CLIFTON: Okay. Someone come and speak

14 to me about the path of the exhibits that are admitted

15 into evidence just so we all know.

16   MS. TAYLOR: Just so everyone is clear,

17 Meredith, who has raised her hand, Frisius, will be

18 keeping the official documents in this process, keep

19 them organized. If you can please give her two copies

20 and she will mark them as exhibits and at the end of

21 each day they will go to the court reporter and there is

22 a court reporting company who will scan them and ensure

23 we have the complete record copy so the court reporter

24 doesn't have to flip papers back and forth. That's how

25 we're going to handle it in this proceeding, but please

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1 do give the court reporter her own copy while she

 2 transcribes. If you are reading in a testimony it might

 3 be easier for her if she can read along as she types to

 4 make sure she's not missing anything.

 5   JUDGE CLIFTON: All right. So I'm going to

 6 repeat just to make sure I understood. If I'm a witness

 7 and I have a statement, then two copies of that

 8 statement need to go to the Agricultural Marketing

 9 Service employee who's seated on the third row from the

10 front. Would you stand, please. And she will determine

11 what number it has, because she's keeping the official

12 list, so you do not mark your exhibit with what number

13 it is, you do not guess, she marks it. And then you

14 give a copy of that to the court reporter just for the

15 court reporter's use. It's a courtesy copy. Then at

16 the end of the day the Agricultural Marketing Service

17 delivers to the court reporter two record copies.

18   MS. TAYLOR: Correct.

19   JUDGE CLIFTON: Okay. I've got it. Good. All

20 right. Thank you. Now, what next does -- well, first

21 of all, does anybody want a ten-minute break? Everybody

22 good? No break yet. All right. Everybody is good.

23 What will happen next from USDA?

24   MR. HILL: We want to call Amanda Steeneck.

25   JUDGE CLIFTON: Say it again, the mic wasn't

                              66

1 on.

2   MR. HILL: Amanda Steeneck. We're going to

3 call Amanda Steeneck.

4   JUDGE CLIFTON: All right. Welcome.

5   MS. STEENECK: Hello.

6   JUDGE CLIFTON: Please make yourself

7 comfortable. I'll be swearing you in as you remain

8 seated. Please raise your right hand.

9   AMANDA STEENECK

10   Called as a witness,

11   having been first duly

12   sworn, testified as follows:

13   THE WITNESS: Yes.

14   JUDGE CLIFTON: Please state and spell your

15 name.

16   THE WITNESS: My name is Amanda Steeneck.

17 Amanda, A-M-A-N-D-A, Steeneck, S-T-E-E-N-E-C-K.

18   JUDGE CLIFTON: All right. I'm going to ask

19 you to count from one to five, and I want the people in

20 the back to raise their hands if they can hear you fine.

21   THE WITNESS: One, two, three, four, five.

22   JUDGE CLIFTON: Good. Now, are you comfortable

23 with having that microphone that close?

24   THE WITNESS: Not really.

25   JUDGE CLIFTON: The problem is she can't turn

1   the pages of her notes because the microphone is on

2   them.

3   THE WITNESS: I can adjust myself.

4   JUDGE CLIFTON: Good. Now, try to just be in a

5   comfortable position looking at your notes and tell

6   me -- and count to five.

7   THE WITNESS: One, two, three, four, five.

8   JUDGE CLIFTON: Good. That will work. Thank

9   you.

10   Mr. Hill, you may proceed.

11   DIRECT EXAMINATION

12   BY MR. HILL:

13   Q.   Good morning.

14   A.   Good morning.

15   Q.   So can you tell us what you are going to be

16   testifying to today?

17   A.   I will be testifying today on the preliminary

18   impact analysis.

19   Q.   So did you prepare any documents for this

20   testimony?

21   A.   I prepared the preliminary impact analysis.

22   MR. HILL: We have two documents that we would

23   like to mark as evidence.

24   JUDGE CLIFTON: All right. Describe them for

25   me.

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1   MR. HILL: One is called the Preliminary

2   Regulatory Impact Analysis of Proposals to Establish a

3   California Milk Federal Marketing Order.

4   JUDGE CLIFTON: And would that have the next

5   number?

6   MR. HILL: Yes, it would, Your Honor. We would

7   like that as number 5.

8   (Whereupon, Exhibit 5 was

9   marked for identification.)

10   MR. HILL: Then we would like to mark as number

11   6 USDA Agricultural Marketing Service Dairy Program,

12   Regional Econometric Model Documentation for Model

13   Calibrated to USDA Agricultural Projections to 2024.

14   (Whereupon, Exhibit 6 was

15   marked for identification.)

16   JUDGE CLIFTON: All right. I would like for us

17   to go off record for about five minutes while people

18   obtain copies of these documents. Everyone else, if you

19   don't want to do that, get up and stretch. We'll go

20   back on record at 11:16.

21   (Recess taken.)

22   JUDGE CLIFTON: All right. Let's come to

23   order, please. All right. Let's go back on the

24   record. We're back on record at 11:17. Mr. Hill.

25   MR. HILL: So we've marked Exhibits No. 5 and

1 6. Can you please give your testimony now,

2 Ms. Steeneck.

3   STATEMENT OF AMANDA STEENECK

4   My name is Amanda Steeneck. I'm an

5 agricultural economist on the economic analysis staff in

6 Dairy Program of the Agricultural Marketing Service of

7 the United States Department of Agriculture. I have

8 worked for Dairy Program for five and a half years. I

9 have my Master's in applied agricultural economics from

10 Virginia Tech and have attended the Virginia Tech's

11 Ph.D. econometrics course series.

12   The Preliminary Regulatory Impact Analysis of

13 the Proposals to Establish a California Federal Milk

14 Marketing Order was done by the economic analysis staff

15 at Dairy Program. I led this analysis. The analysis

16 was done using the USDA Agricultural Marketing Service

17 Dairy Program regional econometric model. The model

18 results are consistent with the USDA agricultural

19 projections to 2024. I am not testifying for or against

20 any proposal in this hearing, and the impact analysis

21 and model were not prepared for or against any proposal

22 in this hearing.

23   The model is an annual dynamic regional

24 econometric model of the U.S. dairy industry that uses

25 historic data to define economic relationships. It is

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1   based on an earlier regional model used in the 2000

2   Class III/IV price hearing, and on the national dairy

3   econometric model used in the 2000 Class III/IV price

4   hearing, the 2006 Class III/IV make allowance hearing,

5   the 2006 Class I/II price formula hearing and the 2007

6   Class III and Class IV price formulas hearing as well as

7   used to create the published USDA agricultural

8   projections. The same assumptions of historic weather

9   patterns and current policy used in the national model

10   are used in the regional model. The regional model

11   incorporates the national model's equations and uses

12   similar drivers to those in the previous regional

13   model.

14   For the purpose of using this model to analyze

15   proposals for this hearing, the model was designed to

16   allow California to interact with the other regions in

17   the similar manner to how the other regions interact

18   with each other, instead of standing alone as a smaller

19   system within the larger system.

20   The regional model simultaneously forecasts

21   annual regional milk production, regional fluid milk and

22   national manufactured dairy product consumption,

23   regional dairy class utilization, national dairy product

24   prices and regional farm milk prices from 2014 through

25   2024. The forecasts in the model are based on data

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1   provided by the United States Department of Agriculture,

2   the California Department of Food and Agriculture, the

3   Bureau of Labor Statistics and the Bureau of Economic

4   Analysis. In the model we use economic theory that

5   supply and demand vary based on price, and when the two

6   are equal the intersection is the market clearing

7   price.

8   The model structure is built to consider the

9   U.S. dairy industry from the farm level up through the

10   wholesale level. The model has 14 milk production

11   regions that are groups of states, some of which are

12   closely related to the Federal order boundaries. Milk

13   production in a region is based on its all-milk price.

14   The milk then moves from the production regions to the

15   processing facilities in 12 pools, where the milk is

16   then classified. The 12 pools are the ten federal

17   orders, California, and a pool of the remaining

18   unregulated milk. The model estimates regions of fluid

19   demand that are used to calculate the Class I use.

20   The Class I milk is accounted for in each pool

21   first and the remainder of the milk is allocated to

22   Class II, III and IV based on price relationships. The

23   allocations to each class are summed across the pools to

24   come up with the national supplies for the Class II, III

25   and IV products. When they become equal to the national

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1 demand the market clearing prices are determined. The

2 national market clearing prices for the dairy products

3 used in the Federal Order end-product price formulas are

4 used to calculate the component and class prices. Using

5 the class prices, the blend prices for the orders are

6 calculated, which are then used to calculate the

7 regional all-milk prices. That closes the loop, where

8 the all-milk prices tie back to milk production.

9   The model is used to set benchmark or baseline

10 estimates based on the current California Department of

11 Food and Agriculture and Federal order regulations. The

12 impacts of the four proposals are measured as changes

13 from the baseline estimates. In the model it is assumed

14 if a California Federal Order is adopted, the starting

15 date would be January 1st, 2017.

16   JUDGE CLIFTON: I'm going to interrupt you.

17 Remember where you were. Would you please -- he's not

18 mowing the lawn, he's just blowing things off. Good.

19 All right. You may resume. Thank you.

20   THE WITNESS: The impact analysis is broken

21 down by proposal. For each proposal, deviations from

22 the current California Department of Food and

23 Agriculture regulations are identified and modeled. The

24 California Producer-Handler Association and Ponderosa

25 Dairy's proposals were submitted in response to the

1 cooperatives' proposal. They're addressed in this

2 analysis as proposed modifications to the cooperatives'

3 proposal.

4   In the cooperatives', the producer handler's

5 and Ponderosa's proposals the result showed to a varying

6 degree increases in California prices, which increase

7 milk production in California. The increased production

8 in California increases the U.S. supply of milk used for

9 the major dairy products, which decreases the national

10 product prices for cheddar cheese, butter, nonfat dry

11 milk and dry whey. The decreases in the national

12 product prices decrease class and component prices in

13 the federal orders.

14   In the Dairy Institute's proposal the results

15 show an increase in the national cheddar cheese and dry

16 whey prices and decreases in the butter and nonfat dry

17 milk prices. The changes in the national dairy product

18 prices cause mixed results across the country. In

19 federal orders with more cheese production, the model

20 projects increases in blend prices, and in orders with

21 more butter and nonfat dry milk production, the model

22 projects decreases in blend prices.

23   The full documentation on both the regional

24 model and preliminary impact analysis have been posted

25 on the Dairy Program web site, www.ams.usda.gov/caorder,

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1 and entered as exhibits here. I'm here to answer

2 questions that you may have concerning the preliminary

3 impact analysis.

4   MR. HILL: Brian Hill.

5   RESUMED DIRECT EXAMINATION

6 BY MR. HILL:

7   Q.   I think you addressed this already, but this

8 analysis was produced for the use of all parties in

9 formulating their testimony and not to support a

10 particular proposal or to support a Federal order at

11 all; is that correct?

12   A.   Yes.

13   Q.   Can you please quantify the groups in which you

14 conducted this analysis?

15   A.   I conducted this analysis for the cooperatives,

16 the Dairy Farmers of America, Land O'Lakes and the

17 California Dairies, Incorporated, the Institute or the

18 Dairy Institute of California, the California

19 Producer-Handler Association or as referred to in the

20 analysis as CPHA and Ponderosa Dairy, which is referred

21 to in the analysis.

22   Q.   Thank you. Can you please look at exhibit --

23 what's marked as Exhibit No. 5, which is the preliminary

24 regulatory impact analysis, and go to page 26 I believe

25 it's marked. It starts with the tables. It's appendix

1   B.   Can you please describe -- give us a little
2   description of table B1, please.
3   A.   It is the changes from the baseline in the
4   statistically uniform prices at 3.5 butterfat for the
5   cooperative proposal.
6   Q.   For the cooperative proposal?
7   A.   Right.
8   Q.   B2, can you give us the same, please?
9   A.   It is the changes from the baseline in the
10   blend prices attached for the cooperative proposal.
11   Q.   And that's through year 2024; is that correct?
12   A.   Correct.
13   Q.   Table B3?
14   A.   It is the changes from the baseline in the
15   dairy -- the national dairy product prices under the
16   cooperative proposal.
17   Q.   And, again, through 2024?
18   A.   Correct.
19   Q.   B4?
20   A.   It is the changes from the baseline in the
21   all-milk prices for the cooperative proposal through
22   2024.
23   Q.   Table B5?
24   A.   It is the changes from the baseline in milk
25   production under the cooperative proposal.

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1   Q.   Just in looking at that table, they're all the

2   same, but can you -- looking now it says "U.S. milk

3   production, Northeast milk production." It is showing

4   all the different areas. Can you briefly describe that?

5   A.   So we see the different state regions that are

6   the milk production regions described in the model

7   documentation listed here.

8   Q.   And that was like that for tables B1 through

9   B4; correct?

10   A.   Correct.

11   Q.   Table B6?

12   A.   We see the changes from the baseline in the

13 milk marketing under the cooperative proposal.

14   Q.   Table B7?

15   A.   We see the changes from the baseline in the

16 producer revenues under the cooperative proposal.

17   Q.   I know this is tedious. We're going to make

18 it. Table B8?

19   A.   We see the changes from the baseline for the

20 federal milk marketing order component prices from the

21 cooperative proposal.

22   Q.   Table B9?

23   A.   We see the changes from the baseline in the

24 Federal order milk marketing class prices at 3.5

25 butterfat.

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1   JUDGE CLIFTON: Let me ask you now. Twice you

         2   have said 3.5 butterfat, and what I'm actually looking

         3   at says "3.5" capital "B," capital "F."

         4   THE WITNESS: Correct.

         5   JUDGE CLIFTON: So can you explain to me what

         6   the difference between 3.5 and 3.5 would be?

         7   THE WITNESS: I was using shorthand.

         8   JUDGE CLIFTON: Right, because that's how it's

         9   referred to in the industry; correct?

        10   THE WITNESS: Correct.

        11   JUDGE CLIFTON: And what is 3.5 butterfat

        12   referring to?

        13   THE WITNESS: It's referring to the fat test,

        14   standard test that we use for butterfat in the industry.

        15   JUDGE CLIFTON: Is it a percentage of the

        16   quantity?

        17   THE WITNESS: It's 3.5 percent butterfat.

        18   JUDGE CLIFTON: Is it a percent by weight or by

        19   volume?

        20   THE WITNESS: It's per hundredweight. Per

        21   hundred pounds, sorry.

        22   JUDGE CLIFTON: So a hundredweight is a hundred

        23   pounds of milk?

        24   THE WITNESS: Yes.

        25   JUDGE CLIFTON: So it's a percentage by weight

                                  78

1 of the whole milk, the percentage of the butterfat?

 2   THE WITNESS: Yes.

 3   JUDGE CLIFTON: Okay. Go ahead.

 4   MR. HILL: Q. I think we're up to table B10.

 5   A.   It shows the changes from the baseline from the

 6 California to federal milk marketing order class prices

 7 at 3.5 butterfat under the cooperative proposal.

 8   Q.   And table B11?

 9   A.   It shows the federal milk marketing order class

10 prices at test, they're changes away from the baseline

11 under the cooperative proposal.

12   Q.   Table B12?

13   A.   It shows the California class utilization

14 changes from the baseline under the cooperative

15 proposal.

16   Q.   B13?

17   A.   It shows the national class utilization changes

18 away from the baseline under the cooperative proposal.

19   Q.   B14?

20   A.   It shows the federal milk marketing order Class

21 I revenue changes away from the baseline under the

22 cooperative proposal.

23   Q.   Table B15, please?

24   A.   It shows the import of the major dairy products

25 changes under the cooperative proposal away from the

1   baseline.

2   Q.   And, finally, B16?

3   A.   It also it shows the U.S. major export changes

4   away from the baseline under the cooperative proposal.

5   Q.   And that would wrap up the cooperative proposal

6   analysis that you made there?

7   A.   Correct.

8   Q.   So if you look at B17 to -- B17 to B32, which

9   party does it go to, the Dairy Institute, the California

10   Producer-Handler Association or Ponderosa Dairy?

11   A.   B17 through 32 is for the producer-handlers.

12   Q.   So these next tables from 17 all the way to

13   B64, they're just the same calculations with the other

14   proposals; is that correct?

15   A.   Yes.

16   Q.   So B33 through about B48 is for Ponderosa?

17   A.   Yes.

18   Q.   And is B49 through B64 Dairy Institute?

19   A.   Yes.

20   Q.   Thank you. Also, I believe there's a typo in

21   the analysis write-up that was posted online. Can you

22   please explain that for the record?

23   A.   Yes, there is a typo on page nine of the

24   economic impact analysis. It is for the advanced

25   butterfat price. It said 0.1715, the make allowance,

1   and it is supposed to be and is now 0.1932. This was

2   only a typo in the write-up, so it is correct in the

3   model. It makes no adjustments to our calculations. It

4   has been corrected online and has been corrected in the

5   exhibits that are available here. And I just wanted to

6   clarify that to everybody that's here at the hearing so

7   that they don't --

8   Q.   So to make allowances using a model now is

9   correct, that's correct?

10   A.   Yes.

11   Q.   It was just transcribed incorrectly, the

12   write-up?

13   A.   Correct.

14   Q.   So what you are entering in today as an exhibit

15   had been printed with the correct number?

16   A.   Yes.

17   MR. HILL: That's all the questions I have

18   right now, Your Honor. I would like to move into

19   evidence both Exhibit No. 5 and Exhibit No. 6.

20   JUDGE CLIFTON: Before there is

21   cross-examination of this witness I would invite anyone

22   who has questions of this witness about these exhibits

23   if you wish to ask questions before you decide whether

24   you have any objection to their being admitted into

25   evidence. Does anyone want to ask questions of this

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 1  witness before deciding whether you object?

 2           There is no one.

 3           Is there any objection to Exhibit 5 being

 4  admitted into evidence?

 5           There is none.  Exhibit 5 is admitted into

 6  evidence.

 7              (Whereupon, Exhibit 5 was

 8              admitted into evidence.)

 9           JUDGE CLIFTON:  Does anyone wish to question

10  the witness about Exhibit 6 or her testimony before

11  determining whether you have any objection to it being

12  admitted into evidence?

13           There is no one.

14           Is there any objection to the admission into

15  evidence of Exhibit 6?

16           There is no one.  Exhibit 6 is admitted into

17  evidence.

18              (Whereupon, Exhibit 6 was

19              admitted into evidence.)

20           MR. HILL:  I have no further questions at this

21  time, Your Honor.

22           JUDGE CLIFTON:  I would invite questions from

23  anyone.  Any questions of this witness?

24   / / /

25   / / /
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1   CROSS-EXAMINATION

2   BY MR. BESHORE:

3   Q.   Good morning, ma'am. I have just a couple of

4   questions I think. Let me ask you, generally the tables

5   in the impact analysis show impacts beginning with the

6   year 2017 through 2024, and this -- by your -- the

7   project, the study was done this year, earlier this year

8   I guess during 2015. At that time the data you would

9   have had for your baseline, your starting point for any

10 of the input would have been annual data for 2014; is

11 that correct?

12   A.   The baseline is set every year by USDA, and the

13 baseline uses data from all the way up to 2013 because

14 not all of the data for 2014 has been released yet at

15 that point, so the baseline was officially released

16 during the Ag Outlook Forum, but I believe it was put

17 online much earlier this year, maybe even December.

18   Q.   Okay. So the data that you had that was used

19 in this study was actually 2013 data?

20   A.   It ended in 2013, yes.

21   Q.   Ended in 2013. Okay. So the projections start

22 at 2017. My question is what data is in between there,

23 2014, 2015, 2016?

24   A.   The tables here show the impact analysis

25 changes, so previous to the impact occurring in the

83

1 forecast period there would only be zeros.

2   Q.   There would be zeros for results, but I

3 guess --

4   A.   Exactly.

5   Q.   Do you have any -- let me just be real specific

6 about it. Okay. So you've got 2013 actual production

7 data let's say for California.

8   A.   Correct.

9   Q.   So in the model then, what does the model say

10 the production of milk in California was in 2014?

11   A.   They are forecasts, but specifically what they

12 are I do not have in front of me.

13   Q.   Okay. Do you know whether -- and how about

14 2015, same answer?

15   A.   Yes.

16   Q.   And 2016, same answer?

17   A.   Yes.

18   Q.   So talking about California production then, do

19 you know whether the forecast, for instance, showed an

20 increase in production in 2015 over 2013, an increase in

21 2015 versus 2014 for California production?

22   A.   I don't have that information in front of me at

23 this moment, but I do have it available for me.

24   Q.   So you could at some point in the hearing after

25 lunch or whenever --

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1   A.   Yes.

2   Q.   -- you could provide that information?

3   A.   Yes.

4   Q.   Okay.

5   A.   I will check to make sure that I can provide

6 it.

7   Q.   Okay. So just conceptually then with respect

8 to the information of that sort, we're just talking

9 about California milk production now, conceptually would

10 I be correct to understand that all other things held

11 equally when the model uses greater volumes or sees

12 greater volumes in milk production in California, that

13 the impact on other regions of the country would tend

14 to -- all other things being held equal -- would tend to

15 show reductions in prices?

16   A.   Can you repeat the question?

17   Q.   Yes. I'm going to hold in the model -- hold

18 everything as you ran it except milk production in

19 California. My question is if you input in any given

20 year increased milk production in California, does that

21 tend to then show increased national volume of milk

22 production and, therefore, lower prices nationally in a

23 particular -- in other sections of the country?

24   A.   I did not run a specific analysis just looking

25 at what would happen if I only increased California milk

1   production. I modeled the whole proposals, and so I

2   cannot say specifically one way or another if that would

3   happen and I cannot speculate on it.

4   Q.   Okay. So you are not sure how that would work?

5   A.   I will not speculate on it.

6   Q.   But you can provide us information on what the

7   model assumed production levels of California were for

8   2014, 2015, 2016?

9   A.   I can tell you if they're increasing,

10 decreasing.

11   Q.   And by what amount?

12   A.   I will check, but I believe so.

13   Q.   Good. Thank you. Can you talk about how the

14 depooling in the federal rule system was factored into

15 these -- the model, if it was?

16   A.   Specifically in California or in other

17 regions?

18   Q.   All of that.

19   A.   So for the model milk not pooled in other

20 regions is considered. What we did is we included the

21 data that we have on milk not pooled in the classes for

22 Class II, III and IV, and looked at our estimations for

23 the milk going into Class II, III and IV in each region

24 as if that milk had been pooled. And so the decision to

25 go into II, III and IV is based on not only what milk

1 was actually pooled in II, III and IV, but what milk was

2 typically pooled, and was considered that way.

3   Q. So was there a consideration built in of

4 assuming a particular proportion of the eligible milk

5 would be depooled in?

6   A. No.

7   Q. Well, but there was an assumption that some

8 milk would not be pooled; is that correct?

9   A. We used historic data to -- we used historic

10 data.

11   JUDGE CLIFTON: Excuse me. I don't know where

12 the noise is coming from, but it is interfering with the

13 witness. Thank you. Start again, please.

14   THE WITNESS: We used historic data of milk not

15 pooled and added it to the milk that is pooled in its

16 class and then used that to specify the estimation of

17 the milk going into that class, so the estimation of

18 that milk going into that class --

19   JUDGE CLIFTON: Let me stop you. Where is the

20 noise coming from? Thank you. You may proceed.

21   THE WITNESS: Would you like me to start over?

22   MR. BESHORE: Q. I would.

23   A. So we looked at the historic data of milk going

24 into Class II, III and IV for the other orders, not

25 California, because there has not historically been milk

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1 in our pool, but from other orders and said, okay, this

2 much milk is going into Class II use, Class III use,

3 Class IV use, and estimated it as part of our estimation

4 of what was going into that class for that area or that

5 pool.

6 Q. Okay. And what was the time period and

7 geographic base for the historic data that you used?

8 A. We used the federal orders data.

9 Q. For what time period?

10 A. From 2000 to 2013.

11 Q. And for the entire system?

12 A. For each order, yes.

13 Q. For each order. Okay. And then what was

14 projected for California?

15 A. What we did for California is because there is

16 not historic data available on what would not be pooled,

17 we looked at the upper Midwest monthly milk not pooled

18 data because it has a similar market to California to

19 estimate what milk would not pool in California, and so

20 what we did is we looked at the monthly to annual milk

21 price spreads to convert those monthly differences. So

22 used the monthly prices versus the annual prices in an

23 annual model to say on what frequency milk would not

24 pool on an annual basis.

25 Q. So taking the cooperative's proposal, for

1 instance, you would have projected that milk in

2 California and the California order would have pooled or

3 not pooled proportionate to what had occurred

4 historically, what has occurred historically in

5 Order 30?

6   A.   In the cooperative's proposal we did not see

7 that as a change away from the current CDFA regulations

8 of inclusive pooling and so no change was made for the

9 cooperative.

10   Q.   You consider all milk being pooled?

11   A.   Yes.

12   Q.   With respect to consumer-level impacts of

13 demand for dairy products at the consumer level, can you

14 tell us how the model took that into account, to the

15 extent that it did?

16   A.   Could you clarify your question?

17   Q.   Does the -- are there any assumptions built

18 into the model with respect to how the price changes

19 that you project would be transmitted to the consumer

20 level and, therefore, impact ultimate demand for Class

21 I, Class II, Class III, Class IV products?

22   A.   In the model we look at wholesale prices and

23 demand for those wholesale prices or demand for those

24 products based on those wholesale prices. We do not

25 make any assumptions about how that moves on to the

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1   consumer.

 2   Q.   Okay. So the demand is just measured at the

 3   wholesale level, and however that works out, that's

 4   considered the consumption, the ultimate consumption or

 5   use of the products. Did I restate that correctly or

 6   not?

 7   A.   I'm contemplating it. I believe you stated it

 8   correctly.

 9   Q.   Okay. When you said the model is an annual

10   model, do I understand that to mean that it simply

11   projects -- it projects one change each year in essence?

12   A.   It projects, yes. It projects annually the

13   number for each year.

14   Q.   Okay. So was there anything in the model to --

15   was there any information in the model that took into

16   account known marketplace facts that are not just

17   statistics, such as in California at the production

18   level it's known that there are producer-based plants in

19   effect among the major cooperatives and processors.

20   Would that be taken -- was that taken into effect in any

21   way in the projections?

22   A.   I'm not sure I understand the question.

23   Q.   Okay. If there are private arrangements --

24   A.   Such as?

25   Q.   In the marketplace such as agreements between

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1 cooperatives and their members or both buyers and

2 their -- you know, their suppliers with respect to the

3 volume of production that can be marketed, the private

4 agreements, okay, was that factored in any way into the

5 calculations, projections?

6   A. For example, production agreements, we did

7 incorporate production data historically in California

8 and those agreements would be implicitly reflected in

9 those production numbers.

10   Q. Okay. So you used the numbers and whatever

11 they imply, that's what the model then projected?

12   A. And the relationships that we developed in

13 relation to those numbers.

14   MR. BESHORE: Thank you. I don't have any

15 other questions at this time, Your Honor.

16   CROSS-EXAMINATION

17 BY MR. ENGLISH:

18   Q. I'm not sure, but I think I'm following up on a

19 line of questions from Mr. Beshore, but if I'm not then

20 if I ask you something different then maybe you can help

21 me out here.

22   Do you have the actual California baseline milk

23 production numbers that were used in the model?

24   A. I can check to see if I can get those.

25   Q. Okay. And is that your understanding of what

1   Mr. Beshore was asking about, as well?

2   A.   I thought he was specifically looking for 2014

3   through 2016.

4   Q.   Well, I'm actually looking for 2013, which

5   would say that the volume you used -- that's the real

6   number, right, because I don't think --

7   A.   Correct.

8   Q.   I don't think that number was actually

9   available on the web site from what we could find.

10   Maybe I looked in the wrong place, but --

11   A.   Specifically the baseline number?

12   Q.   For California only.

13   A.   The baseline number for California?

14   Q.   Yes.

15   A.   No, no. I don't think that was available on

16   the web site.

17   Q.   So expanding from Mr. Beshore's request, if we

18   could get the actual 2013 California baseline number and

19   then I would agree with Mr. Beshore also basically

20   throughout the analytic period, which would necessarily

21   include 2014, 2015, 2016, but then forward what those

22   numbers actually were for California for each of the

23   proposals.

24   A.   Okay. I will check to see if that's possible.

25   Q.   I understand that you are not committing to it

1 at the moment. Trying to take the request and it may or

2 may not be that you can answer it today, it may be

3 another day. I think we'll be here for a few.

4   So in a similar vein and looking at the 60, but

5 there's a similar table for usually the other proposals,

6 so it would be California class utilization changes

7 under the Dairy Institute proposal. If those numbers

8 are different from what I just asked for and if they're

9 available if we could get those, the actual California

10 baseline. Now, maybe they're the same, maybe they're

11 not the same, but if we could get those I would

12 appreciate that.

13   So then I would like to take you for a moment

14 to Exhibit 5, pages 13 and 20, page 13 under out of

15 state milk. It's on page 13 of the cooperative

16 proposal. "Under cooperative proposals out-of-state

17 milk currently unregulated under the CDFA order would

18 become regulated under the California FMMO and receive

19 the, quote, non-quota blend price," period, end quote.

20 Do you see that?

21   A.   Yes.

22   Q.   So then on page 20, with respect to the Dairy

23 Institute proposal, this is now the same -- the parallel

24 section as to milk. "The current CDFA systems do not

25 permit out of state milk to be pooled under the

1 Institute's proposal and in the analysis out-of-state

2 milk to be pooled by meeting certain proponents'

3 requirements and qualified out-of-state producers will

4 receive non-quota blend price," no quotes. I take it

5 those are not identical terms, though, because the

6 cooperative proposal and our proposal don't treat

7 out-of-state milk identity; is that correct?

8   A.   First, I would like to say that how the

9 different proposals treat out-of-state milk is not

10 something I'm here to testify on specifically.

11   Q.   Okay.

12   A.   It is, however, my understanding that in the

13 Dairy Institute's proposal that in the writing of the

14 proposal that there are ultimately two pools. There's

15 the traditional Federal order blend pool and the quota

16 and non-quota pool, and in the Dairy Institutes'

17 proposal the exact specification of how the non-quota

18 and quota prices are determined was left to CDFA, to my

19 current understanding.

20   Q.   Well, let me just --

21   JUDGE CLIFTON: Unfortunately you don't get to

22 question him, but that was a --

23   MR. ENGLISH: Q. And I'm not trying to trip

24 you up or anything. I'm just trying -- assume for a

25 moment that the Dairy Institute's proposal creates,

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1   first, a traditional federal blend price and then as to

2   that milk that is the subject to quota and overbase

3   turns that money over to CDFA or otherwise have CDFA

4   administer that, but as a result of that the out-of-

5   state milk would receive -- do you understand that the

6   out-of-state milk would receive sort of traditional

7   federal blend price?

8   A.   Yes.

9   Q.   Yes, so all I'm getting at, I just want to make

10   sure I'm clear for the record that when on page 20 the

11   phrase "non-quota blend prices used," that's what it

12   meant when I just described federal blend price;

13   correct? Is that your understanding?

14   A.   Yes, I understand your --

15   Q.   So the fact that the phrases are identical on

16   pages 13 and 20 was not a misunderstanding by the

17   Department and the two are identical?

18   A.   I thought you had the option to elect out of

19   the quota and non-quota pool whether you were out of

20   state or in state.

21   Q.   Well, out of state doesn't get to elect or not

22   because they're the --

23   A.   Okay.

24   Q.   They don't have quota and they're out of state,

25   and the purpose of the proposal is to account for that?

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1   A.   Okay.

2   Q.   So --

3   A.   Then you could replace the non-quota blend

4 price with the words "traditional Federal order blend

5 price."

6   Q.   And that's how you ran them off?

7   A.   Yes.

8   Q.   Okay. That's what I was trying to get at.

9 Thank you.

10   So I want to now ask some questions, sort of

11 more general for the record, et cetera, of what the

12 preliminary economic analysis is intending to show and

13 what its purpose is. Are economic -- are such models of

14 economic estimated equations used to determine regional

15 supply and demand response to changes in prices?

16   A.   Yes.

17   Q.   And I think you said they're basically tested

18 using time series data; is that correct?

19   A.   Yes.

20   Q.   Do these equations predict changes on regional

21 supply and demand in response to regulated changes in

22 price based on actual historic data on house supply and

23 demand adjusted changes in prices?

24   A.   That was a very awfully long question with

25 nuances in it. Could you parse it down.

1   Q.   I'll try. Do these equations predict changes

2   to regional supply and demand?

3   A.   Yes.

4   Q.   Do they predict those changes in response to a

5   regulated change in price based on actual historical

6   data?

7   A.   Yes.

8   Q.   And do they make those changes on actual

9   historic data based upon house supply and demand

10   adjusted to changes in prices?

11   A.   I believe so.

12   Q.   So I think you testified on this, but in

13   examining impacts of the various proposals do you first

14   establish a baseline for comparison?

15   A.   We do.

16   Q.   And why is establishing a baseline important?

17   A.   So that we have benchmark estimates to prepare

18   the adjustments of each proposal to.

19   Q.   Is this method analysis, using a baseline in

20   comparison of policy and baseline, fairly standard in

21   policy analysis?

22   A.   Yes.

23   Q.   So when you say, for example, that the proposal

24   X, it's a non-specific proposal here, but proposal X

25   leads to an increase in production in a particular

1 region and a decrease in national dairy commodity

2 prices, is that relevant to production and commodity

3 prices today or is it relative to the baseline?

4   A.   It's relative to the baseline.

5   Q.   So further understanding that concept, if the

6 baseline you estimate showed no production declining 3

7 percent from today's level over five years and the milk

8 production levels in response with that proposal X

9 declined 2 percent from today's level over five years,

10 that change would be reported as an increase relative to

11 the baseline; correct?

12   A.   Could you please repeat the question?

13   Q.   Sure. So assume for a moment the baseline

14 estimate shows a milk production declining 3 percent

15 from today's level over five years.

16   Am I not moving enough?

17   JUDGE CLIFTON: Let's use that as a stopping

18 place. We're going to switch out a microphone.

19 Everybody stretch, stand. Don't go very far. We'll

20 only be off record about two minutes.

21   (Recess taken.)

22   JUDGE CLIFTON: All right. Let's come to order

23 please. Let's come to order, please. We have a

24 different stand for the microphone, so it's a little

25 easier for the witness to see her exhibits and still be

1   speaking into the microphone, so I think that will

2   help. All right.

3   I have a request from the court reporter,

4   Mr. English, you live and breathe these terms and they

5   roll off your tongue so quickly.

6   MR. ENGLISH: I was about to slow down anyway.

7   JUDGE CLIFTON: Oh.

8   MR. ENGLISH: Or I was hoping I was going to

9   slow down, whether I did or not is the question, but I

10   will make an effort to slow down and not only for the

11   court reporter but for the witness.

12   JUDGE CLIFTON: And the people listening.

13   MR. ENGLISH: And the people listening.

14   JUDGE CLIFTON: Do you remember where you

15   were?

16   MR. ENGLISH: I do remember where I was.

17   JUDGE CLIFTON: You may proceed.

18   MR. ENGLISH: In the middle of a very long

19   question, but I'll try to break it down.

20   Q.   So assume for a moment for your baseline that

21   your estimate shows a milk production decline of 3

22   percent from today's level over five years, and then

23   further assume that the milk production levels in

24   response to proposal X declined 2 percent from today's

25   level over five years. Is it true looking at those two

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1   assumptions that the change that would be reported as an

2   increase relative to the baseline?

3   A.   Yes.

4   Q.   So if someone disagrees with the actual numbers

5   predicted in a baseline, that doesn't necessarily

6   undermine the reported results, at least directionally

7   relative to the baseline, does it?

8   A.   That is true.

9   Q.   I'm going to go back to something I just talked

10   about a few minutes ago, but for an entirely different

11   reason, that's the non-quota blend price issue. Under

12   the cooperative proposal, Proposal 1, you refer to

13   something you call a non-quota blend price. What is

14   that as you interpreted it and how does that differ from

15   the way we usually understand a blend price under the

16   federal marketing orders that are currently in

17   operation?

18   A.   If I understand your question correctly, you

19   would like to know the difference between a non-quota

20   blend price and a traditional Federal order blend

21   price?

22   Q.   I think that's an appropriate way of phrasing,

23   yes.

24   A.   On page six of the preliminary impact analysis

25   we define the non-quota blend price at 3.5 percent

1 butterfat. The non-quota blend price is -- uses the

2 non-quota pool value to develop a blend price, which the

3 non-quota pool value is the pool value minus the quota

4 value first. So the quota value is taken off of the top

5 of the pool value and then the non-quota blend price is

6 calculated after that. Whereas in a traditional Federal

7 order pool the traditional or the pool value does not

8 have anything removed first off the top.

9   Q.   So if I could -- the traditional Federal order

10 blend price is just one value for everybody, there's one

11 blend price for everyone?

12   A.   Correct.

13   Q.   Are there any -- first of all, does that

14 effectively mean that the non-quota blend price on page

15 six is a two-tier pricing system?

16   A.   The current California regulations has a quota

17 value that is given to them under the regulations and by

18 quote, "end quota for nonfat solids," and they receive a

19 19 and a half cents additional for their nonfat solids

20 that they hold under quota.

21   Q.   So are there any other systems like that,

22 pricing systems, currently used in any other federal

23 milk order?

24   A.   No.

25   Q.   So with regard to both milk from outside the

1   state, under the cooperative proposal how is that milk

2   priced at the non-quota blend -- I'm sorry, was that

3   milk price the non-quota blend or true FMMO blend price

4   for purposes of your analysis?

5   A.   For the purposes of the analysis we don't --

6   give me a second.

7   Q.   Sure.

8   A.   The production in California is reacting to the

9   all-milk price that is put out by NASS in California,

10   and that all-milk price is tied to the blend price, so

11   that they're always moving in the same direction. You

12   wouldn't want those going off in separate directions in

13   the model. The blend price that is currently used for

14   the historic data is the statewide blend price that

15   California puts out for that to react off of, which is

16   from my understanding the closest thing that California

17   has to the traditional Federal order blend price that

18   they announce. And it is based off of the fat price and

19   the nonfat solids price in California at test.

20   Q.   Let me try to ask it a different way. Was the

21   out-of-state milk treated as unregulated milk or how was

22   it treated in the baseline?

23   A.   It was treat as unregulated milk.

24   Q.   And the assumptions made I believe -- let me

25   first confirm it. Did you make the assumption that bulk

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1 milk from out of state is largely Class I?

2   A.   Yes. We had data from California Department of

3 Food and Agriculture that we based our assumptions off

4 of.

5   Q.   So the assumption was based on an underlying

6 data from CDFA?

7   A.   Correct.

8   Q.   Do you know what percentage you used from the

9 out-of-state milk as being Class I, say, 90, 80 --

10   A.   I don't know that off the top of my head, but

11 it's based off of the California Department of

12 Agriculture's -- Food and Agriculture's most recent

13 three-year average of amount of out-of-state milk, so --

14   Q.   In the model are there any assumptions or

15 predictions that recognize existing regional milk

16 production trends?

17   A.   What do you mean by "predictions"?

18   Q.   Let me use projections.

19   A.   The regional milk production forecasts are

20 based off of historic economic relationships that are

21 statistically significant that we have found that drive

22 milk production in each region.

23   Q.   And what about trends in milk transportation to

24 serve Class I markets, would that be the same kind of

25 issue that's considered?

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1 A. Could you clarify your question?

2 Q. If there had been changes in milk

3 transportation to serve Class I, would that be factored

4 into the model?

5 A. Milk movements from a region to an order to

6 service -- to serve the Class I market would be based on

7 historic data, but it would be all of the milk movements

8 from a region to an order, and then once it's pooled on

9 an order, then it gets divvied out to the individual

10 classes.

11 Q. So if I'm reading the analysis correctly, it

12 suggests under the cooperative proposal dairy farmers in

13 California would receive $700 million in more -- 700

14 million more dollars a year and milk output would grow

15 as compared to the baseline by 540 million pounds or

16 about 1.2 percent of the current California milk

17 production; is that correct?

18 A. I don't have the information in front of me to

19 confirm the percentage, but the rest of it, yes.

20 Q. Okay. Fine. Is it fair to say your analysis

21 predicts that the co-op proposal leads to extra revenue

22 to California dairy farmers who would then respond by

23 producing more milk as compared to the baseline?

24 A. Yes.

25 Q. And that this extra milk then ends up in plants

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1 where it is made into extra dairy products, which in

2 turn increases the supply of dairy products leading to

3 lower dairy commodity prices; is that correct?

4   A.   Yes.

5   Q.   And then the lower dairy commodity prices lead

6 to lower dairy farm revenue in most other regions; is

7 that correct?

8   A.   Yes.

9   Q.   So why on the analysis of the cooperative

10 proposal is dairy farm revenue higher than the

11 unregulated west?

12   A.   So the unregulated west region, which is based

13 on state borders, we have seen a historic relationship

14 between the all-milk price in California and their

15 all-milk price in their region, and that relationship

16 was modeled. So when the all-milk price in California

17 increased, theirs did, as well.

18   Q.   Okay. Thank you. Under the cooperative

19 proposal when there's extra milk being produced in

20 California, how does it in the model get allocated among

21 the different uses?

22   A.   Can you repeat the question?

23   Q.   So under the cooperative proposal when there's

24 extra milk being produced in California, how does the

25 model allocate that milk among Class I, II, III and IV

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1 using traditional FMMO, Roman numerals?

2   A.   So when there's extra milk being produced it

3 then allocates it according to the same relationships

4 that we have historically seen in Class 2, 3, 4a and 4b,

5 because that's all that we have historically in 4, and

6 then we convert that estimation into the traditional

7 Federal order classifications.

8   Q.   And just to be clear for the court reporter,

9 when you said 2, 3, 4a and 4b, that was numeric 2, 3, 4a

10 and 4b?

11   A.   Correct.

12   Q.   Let me see if I can break it down a little

13 bit. How does the model decide, for example, whether

14 the extra milk ends up in butter powder versus cheese or

15 even something else?

16   A.   So first we take Class 1 demand and allow it to

17 take what is demanded from the top of the pool, and then

18 the remaining milk is divided amongst the remaining

19 classes using compositional regression.

20   Q.   Using what?

21   A.   Compositional regression, which is a regression

22 technique using seemingly unrelated regressions that

23 force the milk that is available in the pool. Well,

24 which is left available in the pool to add up to the

25 amount that is available and also doesn't allow it to go

1 | negative, so it places restrictions on the estimations

        2 | based on what is in actuality possible.

        3 | So, for example, you can't have -- say you have

        4 | a hundred pounds of milk left in the pool after you take

        5 | off Class 1, obviously very unrealistic number, but you

        6 | could have 50 pounds going to 4b and then you have 40

        7 | pounds going to 4a and then you have 10 pounds estimated

        8 | going to 3, well, then you are left with nothing for

        9 | Class 2. This forces it to say, okay, there's a hundred

       10 | pounds available, whatever we predict for each of these

       11 | classes is going to total a hundred pounds. And you

       12 | can't have 20 pounds going to Class 3 and then have

       13 | negative 10 pounds going to Class 2 to make up for the

       14 | extra 10 pounds that you are predicting would go to

       15 | Class 3. So it's a non-negativity constraint saying,

       16 | you know, you can't have a residual, and that's

       17 | incorporated in the functional form of the compositional

       18 | regression to force those constraints.

       19 | The actual compositional regression used is in

       20 | the model documentation, and -- give me a second. It is

       21 | table 41 of the model documentation, page 31.

       22 | MR. HILL: For the record, are we talking about

       23 | Exhibit No. 6 now?

       24 | THE WITNESS: Yes.

       25 | MR. ENGLISH: She was talking about Exhibit 6.

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1   She turned to Exhibit 6, page 31. All right.

2   Q.   Now, are 16 plant capacity constraints

3   important or does the model assume the plant capacity

4   will adjust to handle the extra milk output?

5   A.   The plant capacity that is available is

6   implicit in the data, but there are no restrictions put

7   into the model on assumptions of plant capacity.

8   Q.   I'm sorry, I'm not sure I understood the

9   answer. So if it's implicit in the model does that mean

10   it gets -- there are plant capacity limitations of some

11   kind, or --

12   A.   Insofar as that it's reflected in the data.

13   Q.   Do changes in plant margins due to changes in

14   regulated price levels impact what products get made

15   from the extra milk?

16   A.   Can you repeat the question?

17   Q.   Absolutely. Do changes in plant margins due to

18   changes in regulated price levels impact what products

19   get made from that extra milk?

20   A.   So in a number of the orders there is a

21   consideration of the plant margins, although not in

22   California because we do not find the relationship to be

23   statistically significant there. But, for example, in

24   many of them there's the cheddar cheese price over the

25   Class 3 price. Price ratio, we wanted to include both

1   prices, although since they are intrinsically related to

2   each other through the product price formulas we priced

3   them together as a ratio to deal with multicollinearity

4   issues, so in many of the orders that plant margin was

5   found to be statistically significant and used to drive

6   milk into the different classes.

7   Q.   But then you said it was not statistically

8   significant for California?

9   A.   We did not find that relationship there.

10   MR. HILL: Your Honor, I'm not sure how much

11   longer Mr. English is going to question this witness.

12   It's getting a little bit late and this witness has been

13   up for a while. We respectfully request a lunch break

14   at this time.

15   MR. ENGLISH: I actually wanted to do it before

16   we switched the mic, so, you know, I'm fine. That's

17   fine. It's up to the judge, not me.

18   JUDGE CLIFTON: So typically we would take an

19   hour for lunch. Is there any reason why should not take

20   an hour?

21   MR. ENGLISH: Since it's the first day and none

22   of us know where we're going to get lunch, today would

23   be the day where we ought to at least use an hour or an

24   hour and five minutes or something, just to 1:30 or

25   something, because I don't know how quickly we're all

1   going to get lunch from here, so we may learn that we

 2   don't need an hour or we need more than an hour. I just

 3   don't know, Your Honor.

 4   JUDGE CLIFTON: The beauty of going long is

 5   that then we don't have half of us waiting for the rest

 6   to come back. Perhaps today I should go long. Hour and

 7   15 minutes you think or an hour and a half? Some think

 8   an hour and a half.

 9   MR. HILL: That's fine.

10   JUDGE CLIFTON: That might be wise today.

11   These questions are extremely difficult and I would

12   like -- I assume no one objects if this witness confers

13   with the other economists in the department, the other

14   statisticians, whatever expertise is involved here. Is

15   there any objection to that?

16   MR. ENGLISH: Of course not, Your Honor.

17   JUDGE CLIFTON: I think that might be helpful.

18   Let's come back at 2:00. We're going to take an hour

19   and a half today. That may be the last time we need

20   that much time, so we go off record at 12:27, we'll come

21   back at 2:00.

22   (Lunch recess taken.)

23   JUDGE CLIFTON: All right. Let's go back on

24   the record in a moment. Let's come to order first. All

25   right. Let's go back on. All right. This record

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1   resumes at 2:02 in the afternoon, September 22.

2   I neglected to ask if there are any producers

3   who would like to testify. This would be a good time

4   before we resume the testimony with regard to economic

5   analysis, but we can also resume that testimony and

6   interrupt it later on if producers would like to testify

7   yet this afternoon but not right this minute. So let me

8   ask you to come forward if you would like to testify

9   now. All right. As we take breaks from time to time or

10   anyone becomes aware that it's time for us to interrupt

11   this witness in order to take dairy farmers' testimony,

12   I'll be happy to do that.

13   There's one other preliminary matter that I

14   would like to address now, and that is that if we do not

15   secure these outside doors, we are trying to air

16   condition the outside and that is not acceptable to our

17   hosts, so first request is that you not exit by these

18   doors, that you actually go out the main entrance, but

19   the other request is if you go out these doors, make

20   sure they're secured behind you. All right.

21   Are there any other preliminary matters before

22   the witness' testimony continues.

23   There being none, Mr. English.

24   MR. ENGLISH: Q. Good afternoon. So I think

25   we were somewhat in the middle of a topic, and that was

1   the impact of changes and in plant margins and regulated

2   price levels. And before we took the break you had I

3   believe indicated that for California, unlike the

4   federal markets that you evaluated, you didn't see a

5   statistical significance in that relationship; is that

6   correct?

7   A.   Yes.

8   Q.   Would one of the factors that might explain

9   that last statistical significance be historical plant

10   capacity issues in California?

11   A.   I'm unsure. I could not say one way or

12   another.

13   Q.   Would one of the factors in that lack of

14   statistical significance be the inability to depool milk

15   in California?

16   A.   Again, I'm unsure. I cannot answer, if that's

17   reasonable --

18   Q.   In the model are there changes in milk

19   utilization with regular prices between the different

20   classes? Prices vary between the different classes?

21   A.   Can you clarify exactly what you are talking

22   about, the class prices?

23   Q.   The class prices.

24   A.   It depends on the equation, so --

25   Q.   I'm sorry, on the what?

1   A.   It depends on which equation we're looking at.

2   In some cases that is in there explicitly. The

3   compositional regressions are estimated together as sets

4   of seemingly unrelated regressions where their terms are

5   allowed to be correlated, so the coefficients that are

6   estimated are -- the coefficients that are estimated are

7   affected by the fact that they are estimated together in

8   a system. So when, for example, you are estimating the

9   equations for Class 1, 2 and 3 in a compositional

10 regression together, those coefficients are affected by

11 the other equations in the estimation.

12   In some cases there are explicit inclusions of

13 other prices in the equations and some of the Class 3

14 equations, there are Class 2, of other Class 2 products

15 and frozen dairy product prices over the Class 2 price

16 in the equation for Class 3, but that's not true in

17 necessarily all of them. It's included where there's

18 economic relationship found.

19   Q.   So are those the best examples that you can

20 think of right now where it isn't included in the

21 equation?

22   A.   Yes.

23   Q.   Are there any others that come to mind?

24   A.   In California another example would also be the

25 relationships that were defined in those equations. We

1   see a lot of the -- I don't have it in front of me

2   again, sorry.

3   JUDGE CLIFTON: Don't apologize. I mean, this

4   is amazingly complex. You take all the time you want.

5   If you feel like you don't want to find it right now and

6   you want to get back to him, you are welcome to do it

7   that way, but don't feel at all like you are letting us

8   down if you need to look. You are not.

9   THE WITNESS: Thank you. For example, in the

10   California 4a over the Class 2, the drivers for the

11   nonfat dry milk wholesale prices over the cheddar cheese

12   wholesale prices, so there are those tradeoffs between

13   the 4a and 4b prices that are driving those -- that push

14   milk into one class over the other.

15   MR. ENGLISH: Q. Okay. So regardless of

16   whether there's -- going back to the plant margin

17   question, regardless of whether there's a statistical

18   significance there, you nonetheless see some drivers

19   between 4a and 4b relationship issues?

20   A.   Yes.

21   Q.   I want to go back to a couple of things. One,

22   a discussion you had with Mr. Beshore with respect to

23   the estimate of depooling milk, depooled milk for

24   California. Do you remember that discussion with him?

25   A.   Yes.

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1   Q.   The upper Midwest, and I agree this is a

2   similar utilization, but one difference would be in the

3   relative levels of Class IV, Roman numeral IV, the

4   federal, versus 4a, numeric 4a in California. Did the

5   model account for -- did you account for that difference

6   in how the products are used given California's much

7   stronger production of nonfat dry milk?

8   A.   Since historically California has not had milk

9   not pooled, we had no data to base how much milk would

10   not pool in California off of and how much to adjust

11   those numbers by from the upper Midwest to meet

12   California's market. The data is not -- it's not

13   available. It's unknown.

14   Q.   So effectively, no, you didn't. There wasn't

15   an ability to do it?

16   A.   There wasn't the ability to do it.

17   Q.   All right. I believe in your prepared

18   testimony that you read, on more than one occasion you

19   used the term "market clearing price"?

20   A.   Yes.

21   Q.   And I welcome you to refer back to your

22   testimony if you want to. But is that correct, did I --

23   A.   Yes.

24   Q.   Okay. When you used that term "market clearing

25   price" in your prepared testimony, what did you mean?

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1   A.   I mean when the price where -- when supply and

2   demand are equal or the equilibrium price is found by

3   intersecting supply and demand.

4   Q.   In the case of a Federal order the market

5   clearing price may be actually below the regulated

6   price?

7   A.   In the federal orders market clearing prices

8   are found nationally in the national products, and then

9   using those national product prices we then input them

10   into the end product price formulas and the class and

11   component prices are figured or calculated off of those

12   prices just as they are in policy. So a market clearing

13   price isn't found for Class I, II, III or IV in -- by

14   varying supply and demand, they are set by

15   our equations.

16   JUDGE CLIFTON: I'm sorry, they're set by

17   what?

18   THE WITNESS: Our equations, our end product

19   price equations.

20   MR. ENGLISH: Q. So how is that market

21   clearing price used, reflected or determined by the

22   model?

23   A.   The market clearing prices for the national

24   products are used in the end product price formula

25   equations and used to determine when supply and demand

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1   are equal, that's the market clearing price, so the

2   price model varies in the price for the supply and the

3   demand and when it converges on the model the price

4   falls out of that balancing.

5   Q.   And I think what you said about two minutes

6   ago, you are saying that that is one market clearing

7   price, not different market clearing prices, per se,

8   nonfat dry milk versus cheese?

9   A.   There are market clearing prices found for

10   nonfat dry milk, cheese.

11   Q.   I'm sorry?

12   A.   Yes, based on their supply and demand equation.

13   Q.   So there's basically a different market

14   clearing price for each product?

15   A.   Yes.

16   Q.   I'm sorry, I misunderstood. I thought I heard

17   national, so I apologize. And what about -- and

18   maybe --

19   A.   They're national --

20   Q.   Okay.

21   A.   -- prices of nonfat dry milk cheese, they're

22   not regional prices.

23   Q.   They're not. So would there be market clearing

24   prices that are different by region or not?

25   A.   Not that are determined in the model in the

1   sense of varying supply and demand and finding price,

2   no. The regional prices are the class prices that are

3   determined by the end product price formulas that are

4   used to determine the blend price, and then the blend

5   price is used to drive the all-milk price on the farm

6   level.

7   Q.   How quickly do regulated milk prices changes

8   pass through to the retail level in the analysis?

9   A.   This is the annual model, and we don't assume

10   anything about the retail level or passing through to

11   it, but any change that occurs in the model can be seen

12   in that year or the following year depending on whether

13   it's lagged or not, but --

14   Q.   Is there a lag?

15   A.   For certain things there are lags.

16   Q.   So between the farm and retail transition there

17   could be a lag?

18   A.   There aren't retail prices.

19   Q.   In that model at all?

20   A.   In that level.

21   Q.   Do dairy exports increase as a result of more

22   milk or as a result of lower prices in the analysis?

23   A.   I'm sorry, can you repeat the question?

24   Q.   I'm turning to exports now, and I'll certainly

25   repeat the question.

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1   Do dairy exports increase as a result of more

2   milk or as a result of lower prices in the analysis?

3   A.   Which analysis are you specifically --

4   Q.   I'm talking about the model, the preliminary

5   regulatory analysis.

6   A.   So are you --

7   Q.   Let me ask the question a little different

8   way: Are exports more buy-sensitive in domestic sales

9   as used in the model?

10   A.   Oh, that's going to take me a second. So in

11   the model we define exports for American cheese, other

12   cheese and dry whey and butter. Each of them have their

13   own sensitivities associated with them. In those

14   equations we look at the price in the United States

15   versus the price internationally. And as prices in the

16   United States decrease we see more exports leaving the

17   country and more imports, or more exports leaving the

18   country. As to the price sensitivity of exports, the

19   elasticities that we have defined are on price

20   difference, and so to compare them to the own price

21   elasiticities of the model would be difficult.

22   Q.   I'm sorry, I didn't --

23   A.   To compare them to the own price elasticities

24   on demand in the United States, it would be an apples to

25   apples comparison, so I can't specifically answer that

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1 question at this point.

 2   Q.   I think this may be the universe to something

 3 you just said, but help me out. If there is more milk

 4 due to higher regulated prices, does that impact export

 5 versus domestic sales?

 6   A.   I'm sorry, I just want to make sure I'm --

 7 sorry.

 8   Q.   Don't apologize.

 9   A.   I apologize.

10   Q.   I agree with the judge.

11   A.   If the national dairy product prices are

12 higher, there would be fewer exports.

13   Q.   So it would be fair to say that exports are not

14 primarily supply driven that price plays a significant

15 role?

16   A.   Yes, insofar as also the price is --

17 international prices is a product of supply and demand

18 internationally.

19   Q.   So I'm going to switch subjects now and just

20 signal back so you're not --

21   A.   Thanks for the heads-up.

22   Q.   Under the producer-handler proposal analysis,

23 Proposal 3, does the market share of the

24 producer-handlers change versus that of fully regulated

25 handlers in the model?

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1   A.   The producer-handlers market share was assumed

2   exogenous in the forecast years, so their market share

3   would change just based on as there's more milk in

4   California, their market share would be smaller because

5   they're not growing. But it's a fixed amount in the

6   model going through the forecast years.

7   Q.   So now a different subject.

8   A.   Okay.

9   Q.   Under my client's proposal of Dairy Institute

10   of California, in looking at the model results

11   California producer revenue still grows, yesterday is

12   about $70 million relative to the baseline. Which is,

13   you know, approximately 10 percent of the increase under

14   the proposal; is that correct?

15   A.   Yes.

16   Q.   So how does a much smaller increase in the

17   California revenue and impact on consequently -- the

18   impact on California milk outlet nonetheless translate

19   to a more significant revenue impact in some of the

20   federal milk order markets?

21   A.   Can you repeat that question?

22   Q.   Absolutely. Recognizing that our proposal has

23   a smaller impact but still a positive impact on dairy

24   farmers in California, how does that smaller increase in

25   California revenue and its impact on California milk

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1 output relative to the cooperative proposal nonetheless

2 translate into a larger revenue impact in some of the

3 federal milk order markets?

4   A.   I'm going to start off by defining the producer

5 revenue here in tables -- they are the all-milk prices.

6   JUDGE CLIFTON: Which page are you on?

7   THE WITNESS: Page 43. I was looking at Table

8 B55.

9   JUDGE CLIFTON: Let us get there. So you are

10 in Exhibit 5.

11   THE WITNESS: Maybe 6. No, 5.

12   JUDGE CLIFTON: At the top of the page of 43?

13   THE WITNESS: Correct.

14   JUDGE CLIFTON: Okay.

15   THE WITNESS: Statistically Mr. English was

16 referring to. Producer revenues are the all-milk prices

17 in those regions multiplied by milk production or milk

18 marketing. Sorry. So in each region the all-milk

19 price -- the amount of production in each region is

20 affected by its own milk price. And how the production

21 was affected in that region in some cases might be

22 larger and/or smaller than the cooperatives based on its

23 effects on their blend prices, because the all-milk

24 prices are tagged to those blend prices in the order

25 that's most closely associated with the region.

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1   So the movements, the relative movements of,

2   say, there's increase in production and because there is

3   an increase in the all-milk price, if those movements

4   are higher in that region than they were in

5   cooperatives, then there would be a larger impact on

6   those producer revenues in that region. How the

7   all-milk prices would increase or how much they would

8   increase would be based on how much their blend prices

9   increased or decreased. Just using examples here.

10   So in some of the federal orders the prices

11   were more affected where their blend price was more

12   affected than in the cooperatives' proposals due to how

13   that order and the price effects that were occurring for

14   it. So the increases in cheddar cheese and dry whey in

15   an order that's very heavily in cheese would be much

16   more affected than an order that maybe has a mixed batch

17   of different products. And so you are seeing more

18   balancing effect of the cheese price increases in the

19   butter, nonfat dry milk price. Does that answer your --

20   MR. ENGLISH: Q. Thank you very much. So

21   subject to whatever data may or may not be available

22   that we requested, and obviously subject to questions

23   after other participants, I am done and I thank you very

24   much.

25   JUDGE CLIFTON: It's a pleasure to watch both

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1   of you in action. All right. Let's talk about whether

2   you want to opine about the actual production of

3   California milk that was used for the modeling for the

4   years -- I said actual, projected, if you have figures,

5   but with regard to 2014, 2015, 2016. Were you able to

6   dig that out in answer to Mr. Beshore's question?

7   THE WITNESS: We are looking into it at this

8   point. I have not dug it out at this point. We need to

9   make sure that all of the data that we would be

10   releasing publicly and is something that we can release

11   publicly and, too, he had to double-check that.

12   So really earliest would be tomorrow. Also, I

13   don't have the tables built that they're asking for, so

14   I would need to have some time to do that.

15   JUDGE CLIFTON: All right. Very good. And

16   then actually California production for 2013.

17   THE WITNESS: Same answer.

18   JUDGE CLIFTON: Very good. Now, before I ask

19   for the next person who would ask you questions, are

20   there any areas you want to go back to based on the

21   territory covered by Mr. English and Mr. Beshore?

22   THE WITNESS: No.

23   JUDGE CLIFTON: Then who else would have

24   questions for this witness?

25   MR. VETNE: John Vetne, representative for

1   Hilmar. What I have are questions which would clarify

2   in my mind, okay, because I feel like a fourth-grader

3   sitting in a college class, so bear with me.

4   CROSS-EXAMINATION

5   BY MR. VETNE:

6   Q.   The question-and-the-answer response to some

7   questions from Mr. Beshore you referred to depooled milk

8   referring to a practice in the Federal order system. Do

9   you recall that?

10   A.   Milk not pooled, yes.

11   Q.   Milk not pooled. Okay. And then I think you

12   answered with respect to that milk that it is assigned

13   or allocated to Class II, III or IV as if pooled?

14   A.   Yes.

15   Q.   Is that correct?

16   A.   Or its counterpart.

17   Q.   Correct me if I'm wrong, but I understood that

18   to mean that you accounted for that milk as if used to

19   produce ice cream or sour cream or butter or powder or

20   cheese. Is that what it means by assigned to Class II,

21   III or IV?

22   A.   Yes.

23   Q.   Okay. And your answer did not include, I hope

24   this is also right, assigning a value. When we refer to

25   Class II my mind frequently moves to, you know, a

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1   regulated price. Is it correct that your answer

 2   referred to how the milk was used and did not also

 3   compute a price for that milk?

 4   A.   I do not recall my answer well enough to say.

 5   Q.   Okay. Well, if I were to ask it originally,

 6   when you refer to milk not pooled and it's assigned,

 7   does the model impute a regulated Class II, III or IV

 8   price to it?

 9   A.   To estimate the amount of milk going to Class

10   II, III and IV for the orders the -- that's a variable

11   word. We're attempting to forecast that variable, that

12   amount includes the depooled milk or the milk not

13   pooled. So in the estimation or what's driving that

14   forecast, they're based on certain economic variables,

15   and in the class allocations those variables for the

16   most part are the price relationships between the

17   national product prices and the class prices, original

18   of them.

19   Q.   The objective, however, in allocating or

20   assigning is the model puts not pooled milk into certain

21   uses, uses which we call Class II, III and IV?

22   A.   Correct.

23   Q.   Tell me if I'm correct again in what I heard,

24   your dialogue with Mr. English. The model assumes no

25   restrictions in plant capacity; is that correct?

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1   A.   The model uses historic data, which how much

2 plant capacity there is limits how much can be produced

3 of any particular product or amount of milk going into a

4 particular class for that product that's related to that

5 class, and so implicitly, yes, that's there, but, no,

6 explicitly there is no constraint.

7   Q.   So if the model observes -- or if the history

8 observes a certain volume going -- of milk used to

9 produce a certain product, the model assumes that

10 capacity is available in that region for that price?

11   A.   It assumes -- I wouldn't say it assumes a

12 capacity, but the growth of a product or amount of milk

13 going into a product that we've seen historically is

14 affected by capacity.

15   Q.   Okay. So the plant capacity may be more than

16 history has observed. Is that in the model, you know?

17 If the period -- what is it, through 2013, you have a

18 month or a year highest use of milk in Class III in a

19 certain region, the model assumes -- tell me I'm wrong

20 or just --

21   A.   I'm just listening to see if I can understand.

22 I'm trying.

23   Q.   Tell me if -- I am too.

24   The model assumes -- and I didn't mean "trying"

25 as a double-meaning word. The model assumes that

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1 there's at least that much capacity for that product in

2 that market, there may be more capacity?

3   A.   I wouldn't even go that far as to say that it's

4 even assuming that.

5   Q.   Okay. Tell me how the model, if at all, would

6 have handled the following scenario. Assume that during

7 that period of, say, '07 and '08 there was a significant

8 volume of California milk that moved out of state to

9 manufacturing plants elsewhere in Mexico, Texas,

10 Arizona, and it wasn't pooled out of state, and it may

11 or may not have been pooled to California. Would the

12 model capture that someplace?

13   A.   Yes. So I'm guessing you would like an

14 explanation.

15   Q.   Well, the production in California, you have

16 that information?

17   A.   Yes. So what we did is we looked at state of

18 origin data for the order, so when it was moving into a

19 Federal order if the movement was greater than 1 percent

20 of the pool that it was moving into or greater than 1

21 percent of the region that it was moving out of we

22 modeled it. And in California's case we had milk

23 moving -- we had milk moving into order 131, an

24 unregulated region, based on past relationships and also

25 obviously going into California.

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1   Q.   You said if it moved into a Federal order a

2 certain percentage, so note and did something. If it

3 moved into a Federal order and wasn't included on any

4 federal handlers --

5   A.   Then it would have been modeled in the

6 unregulated California milk movement.

7   Q.   Okay. So it could have been received in Texas,

8 for example?

9   A.   But if it wasn't regulated then it's an

10 unregulated pool.

11   Q.   So if it wasn't included in a Southwest handler

12 report it would have been included in the unregulated

13 portion?

14   A.   Yes.

15   Q.   Okay. So unregulated means something more than

16 I hope?

17   A.   Yes, it means -- unregulated, there are

18 different levels or this is at least the way I like to

19 think about the model. There's the farm level and the

20 milk moves from that farm level to the processor level

21 where it is classified, so there's kind of

22 classification level and above that there's the national

23 level where we're having these market clearing prices

24 drop out. And on that this was the modeling, the

25 movements from that farm level to that processor level,

1   and the unregulated pool or that twelfth pool that I

2   mentioned, which is not, I know, technically a pool, but

3   for simplicity's sake of giving it a term that is all

4   the unregulated milk in the country. It's not a

5   specific area, it's the unregulated milk in Idaho, it's

6   the unregulated milk in the Northeast, it's all

7   unregulated milk in the country.

8   Q.   Would it be correct or incorrect to say that

9   all unregulated milk includes milk that has been

10 voluntarily depooled or has that previously been

11 accounted for before you get to the unregulated portion?

12   A.   In the case where we had milk not pooled data

13 it was not included in the unregulated part, although I

14 do acknowledge it as unregulated milk, but because we

15 had the data and knew which class it was going into and

16 forecasting milk not pooled on an annual basis is

17 something extraordinarily difficult to do because it's

18 more based on monthly price relationships, that we

19 incorporated it in the model differently as part of the

20 estimations for the Class II, III and IV.

21   And so technically, yes, it's unregulated, but

22 it is accounted for in their respective orders, Class

23 II, III and IV estimations.

24   Q.   All-milk price and blend price, if I recall

25 correctly you answered some questions I think it was by

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1   Mr. English. Your response was the blend price is used

2   to determine the all-milk price at the farm level?

3   A.   Yes.

4   Q.   Are you using the term "blend price," you agree

5   with that? Is blend price in that statement referred to

6   a reported Federal order blend price or something else?

7   A.   It is the Federal order blend price, that's

8   what I'm referring to. The all-milk prices -- the blend

9   prices are based on the federal orders and the all-milk

10   prices are based on NASS's all-milk data that happened

11   at the state levels and those go back to the state

12   boundary milk production level. So while blend price --

13   it's the relationship between the two.

14   JUDGE CLIFTON: Tell us what NASS is and what

15   that stands for and how it should look in the

16   transcript.

17   THE WITNESS: National Agricultural System

18   Service and it should be N-A-S-S.

19   JUDGE CLIFTON: All caps.

20   THE WITNESS: Yes.

21   JUDGE CLIFTON: Capital N, capital A, capital

22   S, capital S and no periods.

23   THE WITNESS: Correct.

24   MR. VETNE: Q. For the all-milk price to which

25   you refer, and which you report some of these tables,

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1 how, if at all, are payments to producers below Federal

2 order blend accounted for?

3   A.   The all-milk price -- it's an estimated

4 relationship between the blend price and the all-milk

5 price. And what that historic relationship is, any --

6 we don't specifically look at payments to producers in

7 the model, we use the all-milk price as a representative

8 price that producers are receiving, and so the

9 difference between the all-milk price and the blend

10 price is representative in that estimation of.

11   Q.   Let me see if now I understand. The all-milk

12 price that your model uses is the all-milk price that

13 NASS reports historically?

14   A.   Yes.

15   Q.   And the NASS all-milk price includes payments

16 to producers of premiums in excess of Federal order

17 blends as well as payments to producers below Federal

18 order blends whenever and wherever that might occur?

19   A.   The all-milk price is the NASS survey price

20 received of representative sales from producers to the

21 first buyer and they include all grades and quantities.

22 The average commodity raw milk, the price from the

23 survey multiplied by the total quantity marketed

24 theoretically should give the total cash receipts to the

25 commodities for the raw milk.

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1   Q.   So you are not responsible for deriving the

2 all-milk price, you use it as a report?

3   A.   Yes.

4   Q.   All right. Market clearing price you described

5 as national market clearing price; correct?

6   A.   Yes.

7   Q.   Which is essentially the Federal Order Class

8 III or IV prices when you come right down to it; is that

9 correct?

10   A.   The market clearing prices are for the national

11 products, the national manufactured products, and those

12 prices are then incorporated in the end product price

13 formulas that move with the end price, the international

14 market clearing prices.

15   Q.   So in your model it's a national price or

16 national prices and it's on an annualized basis?

17   A.   The national prices are used as in our policy

18 to determine the regional or the Federal order class

19 prices and there is an economic relationship between

20 those class prices or between the blend prices and the

21 all-milk prices in the closely related region so that it

22 is regionally -- it's a regional model and then price

23 relationships between -- or the blend price

24 relationships between the different regions that move

25 the milk and then it works its way back up.

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1   So you are talking about a circle, you are

2   talking about starting at the top and going back down,

3   but then it iterates and you come back to the regional

4   all-milk prices which drive the milk movement or the

5   milk production and then the milk movements are driven

6   by the blend price relationships and then that's driven

7   how much milk supply there is. It's an iterative

8   process, it's dynamic.

9   Q.   I wonder if I'm thinking apples and --

10   A.   And I'm thinking oranges.

11   Q.   You are thinking oranges here. The question

12   was really I thought pretty simple.

13   A.   I'm sorry.

14   Q.   Maybe I was trying to complicate it. When you

15   use the term "market clearing prices" a couple times in

16   your description, you are referring to a price that is

17   A, national, and, B, annualized?

18   A.   Yes.

19   Q.   Okay.

20   JUDGE CLIFTON: She gave you so much more,

21   Mr. Vetne.

22   MR. VETNE: Q. And the model -- let's say

23   that, well, in California or Pacific Northwest

24   manufacturers have a hard time getting and they don't

25   get the average Class III or IV price, prices below

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1 class for market clearing prices, the model doesn't

2 factor that in. If there's a regional discount in the

3 national price the model does nothing about that.

4   A.   What the model -- I would say no. Again, this

5 goes back to the other half of the loop. So the

6 all-milk price that we have historically seen in

7 California we use to determine how much milk is being

8 produced, and then based on that price the milk is

9 produced of certain quantity and then it moves into

10 California, the unregulated region or Arizona, based on

11 historic movements, and then from there the milk moves

12 into the classes again based on price relationships and

13 how much -- California, the effects of the California

14 class prices affects the California blend price and the

15 blend price affects the all-milk prices and the all-milk

16 price affects how much production there is. How much

17 production there is affects how much goes into the

18 classes.

19   So those California end product price formula

20 differences that yield different class prices affect

21 that blend price and that blend price affects that

22 all-milk price. And then that affects how much milk is

23 nationally going to be added to Class III or Class IV or

24 Class II to determine how much milk supply there is.

25 And so if there is -- the differences in those class

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1 prices in California versus the class prices in other

 2 federal orders is captured and then how much milk is

 3 produced and allocated to those classes, which affects

 4 the national supply of milk available.

 5   So if as in some of these results we have seen

 6 if there's an increase in the national supply, there's a

 7 decrease in price on those.

 8   Q.   Would it be correct to say that the model for

 9 status quo ante, the way things work?

10   A.   Okay.

11   Q.   Before you added the proposals, that what you

12 had referred to as the market clearing price in

13 California would be the California Class 4a and 4b?

14 Numeric 4a, 4b.

15   A.   Yes, we use those there in California.

16   Q.   And when you measured the changes, say, onto

17 the cooperative proposal, what you referred to as the

18 market clearing price would be the federal Class III and

19 IV prices as proposed?

20   A.   Well, just to clarify, the Class III, Class IV

21 and the 4a and the 4b prices are not market clearing

22 prices, they are the result of the market clearing

23 prices, but -- I'm sorry, what was your question again?

24   Q.   In that case they're the result of -- well,

25 they're determined based on the formulas?

1   A.   Yes.

2   Q.   A equals B, B equals C and then A equals C.

3 One comes before the other, but they're more or less

4 interchangeable?

5   A.   They're related, I think.

6   Q.   Well, once you do the arithmetic and determine

7 what the market clearing price is, you get a bottom

8 line, that bottom line becomes then the regulated price;

9 is that --

10   A.   Yes, but the class prices are a result of

11 multiple changes in market clearing prices, so the last

12 three prices is a result of cheese, whey and butter.

13   Q.   Does your model do anything at all to assess or

14 provide a judgment on whether the market will clear in

15 California with Class III and IV prices that are a

16 dollar or so more than status quo ante, Class 4a and 4b

17 prices?

18   A.   It looks clear nationally.

19   Q.   So it doesn't determine whether the market will

20 clear regionally in California?

21   A.   No.

22   Q.   Thank you.

23   CROSS-EXAMINATION

24 BY MS. HANCOCK:

25   Q.   Good afternoon, Ms. Steeneck, did I say that

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1   right? Steeneck?

2   A.   Yes.

3   Q.   I'm Nicole Hancock, for the record. I

4   represent the California Producer-Handlers Association

5   and Ponderosa, and if it's okay with you I'm just going

6   to kind of jump around a little bit and ask you a couple

7   of questions just so I can understand a little bit

8   better the analysis that you did.

9   And this goes back what probably feels like

10   quite a while ago now when you were talking with

11   Mr. Beshore or I guess with your own counsel, as well,

12   and you were describing the tables in the end of Exhibit

13   5 that are the numeric computation of your analysis; is

14   that right?

15   A.   Yes.

16   Q.   And you had -- I think he walked you -- your

17   counsel walked you through various tables and, for

18   example, B1 on Exhibit 5, that's on page 26. What I

19   wrote in my notes is that you said that that was the

20   statistical uniform prices at 3.5 butterfat changes as

21   compared to baseline proposals; is that right?

22   A.   Baseline results, yes.

23   Q.   Baseline results. And the baseline results is

24   where the numbers are right now under the state order

25   system?

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1   A.   Yes, they're the result that we set in

2   relationship to the USDA Agricultural Service --

3   Q.   Okay. So what the baseline would be projected

4   to be if we continue under the state order system?

5   A.   Yes.

6   Q.   And then so you are projecting out then the

7   Federal order system as overlaid over the baseline for

8   the state order system, what the differences in those

9   values would be?

10   A.   Yes. I think I understand what you are asking,

11   and, yes, I think the answer is yes.

12   Q.   I guess what I'm trying to clarify is you are

13   also making projections of where you believe the state

14   order system would be, your baseline number, where that

15   would be in the future, as well? You are not using a

16   status number as today's valuations and then project

17   comparing that with Federal order numbers at a later

18   date?

19   A.   Correct.

20   Q.   Okay. And you did that for each of the four

21   proposals, the first one being the cooperative proposal,

22   the next one being the producer or the Dairy Institute's

23   proposal, then the Producer-Handlers and then the

24   Ponderosa's proposal; is that right?

25   A.   Yes, the baseline is the same for all.

1   Q.   Do you still have Exhibit 5 in front of you?

2   A.   Yes.

3   Q.   If you turn to page four, and this is under the

4   section two, title and examination of the proposal. So

5   you start off by interpreting what you understood the

6   proposals to be and things that you took into account in

7   making your valuations; is that fair?

8   A.   Yes.

9   Q.   So under producer-handlers you have a paragraph

10   here that discusses -- that you adopted the definitions

11   and pooling regulations for the producer-handlers in the

12   cooperatives' proposal; right? Do you see where I'm at?

13   A.   Yes.

14   Q.   And then you talk about their proposal, they

15   have the small producer-handler proposal for the

16   producer-handlers that would produce less than three

17   million pounds a month; is that right?

18   A.   Can you clarify your question?

19   Q.   So the second sentence you have included in the

20   valuations the numbers that you were quantifying for

21   producer-handlers, the small producer-handlers that were

22   proposed under the cooperatives' proposal?

23   A.   I mean we're still considering any

24   producer-handler or producer-handler under the

25   cooperatives' proposal that fall under the three million

1 pounds per month.

2   Q.   Okay. So would it be producer-handlers that do

3 not exist under the current baseline valuation but would

4 be added in under the cooperatives' proposal for the

5 small producer-handlers' definition?

6   A.   We used the producer-handlers that -- okay.

7 Going to be a little more technical. The

8 producer-handlers that qualified are Option 66 in

9 California for main producer-handlers under the

10 cooperatives' proposal and producer-handlers that

11 qualify as Option 70 are then considered fully regulated

12 under the cooperatives' proposal.

13   Q.   Okay. So the ones that produce less than three

14 million pounds a month, would those be the Option 66?

15   A.   Yes.

16   Q.   Producer-handlers. And the ones that produce

17 more than that that operate with some exemptions and

18 some regular quota and then the rest are regular

19 production, that would be the Option 70?

20   A.   Correct.

21   Q.   So what I just want to clarify is how you net

22 out the numbers here, that you are assuming that there

23 would be some Option 66 producer-handlers in the

24 cooperative proposal?

25   A.   Yes.

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1   Q.   Are you aware of -- did you quantify that based

2 on today's numbers or are you anticipating that there

3 would be additional people, producer-handlers, that

4 would fall within that number?

5   A.   We used today's number.

6   Q.   And then the last sentence there you say some

7 who qualify as producer-handlers under the CDFA

8 regulations would likely be ineligible for regulatory

9 exemptions under the proposed federal milk marketing

10 order, that would be Option 70 producers?

11   A.   Correct.

12   Q.   Let me make sure I have the right section. If

13 you can turn to page 6, and we're still under the

14 summary of the cooperatives' proposal and there's a

15 section there entitled "Quota." It states, "The

16 cooperatives' proposal retains the state's current quota

17 system with joint administration under the USDA CDFA."

18 Do you see that?

19   A.   Yes.

20   Q.   It would be the state's current quota system

21 absent the exempt quota; is that right? It wouldn't be

22 as it is right now?

23   A.   That is true. So under the cooperatives'

24 proposal any exempt quota for Option 70 holders under

25 the way I modeled it would translate into the regular

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1 quota, so --

2 Q. Okay. So when it says, "Retains the state's

3 current quota system," you have taken what is currently

4 under the baseline as exempt quota and converted it into

5 regular quota for the cooperatives' proposal?

6 A. Yes. For those producer-handlers that would

7 fall under that, yes.

8 Q. So all of the Option 70 exempt quota would be

9 converted to regular quota?

10 A. Exactly.

11 Q. And then if we look on -- I moved on to page

12 7. This is where you begin the summary of the

13 California Producer-Handlers Association proposal, do

14 you see under section B there?

15 A. Yes.

16 Q. And it says, "Under the current CDFA provisions

17 producer-handlers do not participate in the marketwide

18 pool on the volume of exempt quota help." Do you see

19 that? The second -- or the first sentence there under

20 "exempt quota"?

21 A. Yes.

22 Q. So does that mean Option 70 producer-handlers?

23 A. Yes.

24 Q. Now, you are not referring to any of the option

25 66?

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1   A.   No.

2   Q.   And then go down under Ponderosa Dairy, the

3   proposal under the cooperatives or under the

4   cooperatives' proposal, it would allow the out-of-state

5   producers supplying the in-state processors to be paid

6   based on the non-quota blend price; is that right?

7   A.   Yes.

8   Q.   So that would be a lower price than what they

9   can -- what they're paid under the current CDFA system?

10   A.   They're -- while I'm trying very hard, the data

11   as to what the current out-of-state producers are being

12   paid is unavailable, so I can't speculate whether that's

13   above or below.

14   Q.   The non-quota blend price first removes away

15   the quota and then takes what's left after quota has

16   been deducted out of the pool, and then it's paid out of

17   that blend price; is that right?

18   A.   Yes, the non-quota price, blend price, is based

19   off of the pool value after the quota value has been

20   taken off the top of the pool.

21   Q.   So I wanted to dig into a little bit further

22   into some of the numbers on your charts to just

23   understand them a little bit better. Just one second.

24   And I can get you an extra copy. I think there's some

25   more over there, if need be, because we want to be able

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1   to put these side by side to just look at what some of

2   these numbers reveal. If you look at, for example,

3   Table B1 in Exhibit 5 on page 26.

4   A.   I'm sorry, B1?

5   Q.   B1, so just start in at the very first table.

6   And is yours double-sided?

7   A.   Yes.

8   Q.   It makes it a little difficult to compare

9   again. Grab another one if you would like. I'm trying

10   to compare it against B33, which is what I understand to

11   be the same -- or, I'm sorry, B17, let's start there.

12   B17 and B1. So the statistical uniform prices at 3.5

13   butterfat under both the cooperatives' proposal and the

14   producer-handlers' proposal? Would it be helpful if I

15   gave you --

16   A.   I got an extra copy.

17   Q.   Okay.

18   A.   Okay.

19   Q.   Can you start off by just telling me what this

20   chart in B1 reflects?

21   A.   It reflects the statistical uniform price

22   changes away from the baseline at 3.5 percent butterfat

23   for the different pools.

24   Q.   So the one in Table 1 is under the

25   cooperatives' proposal, what the numbers would be as

1   compared as to the baseline numbers, what it would be

2   under the state order system?

3   A.   Correct.

4   Q.   And then the same with Table B17, is that the

5   same analysis but with respect to the producer-handlers'

6   proposal?

7   A.   Yes.

8   Q.   Okay. And then if you flip to B33, is that the

9   same analysis, is that the same analysis then with

10   respect to Ponderosa Dairy's proposal?

11   A.   Yes.

12   Q.   So you have just taken each one of the

13   proposals and done the same analysis and put them in

14   their own charts?

15   A.   Well, not the exact same analysis, but

16   essentially I produced the same results in the tables

17   for comparison use. I mean, for each proposal they had

18   different nuances and I analyzed the proposals as

19   written.

20   Q.   So it's an evaluation of the same type of data,

21   but with respect to each proposal that was written,

22   whatever changes that would have an effect on in that

23   specific table?

24   A.   Yes.

25   Q.   So if you were measuring the statistical

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1   uniform prices at 3.5 butterfat, then you look at the

2   proposal and whether that would have any impact on it

3   based on the proposal you are looking at?

4   A.   Yes.

5   Q.   So under Table B1, if we look at the average

6   column, it has a negative 12 cents per hundredweight for

7   the Northeast statistical uniform price? Am I reading

8   that correctly?

9   A.   Yes.

10   Q.   And then it goes all the way down and then you

11   evaluate the California statistical uniform price, and

12   that's 94 cents per hundredweight for the average?

13   A.   Yes.

14   Q.   So then if I look at Table B1 and then I look

15   at the same table for the same analysis for the

16   California Producer-Handlers, which is in Table B17, the

17   numbers -- if you look at the last column that has the

18   average and then the minimum and maximum range, they're

19   identical. Do you see that?

20   A.   Yes.

21   Q.   Can you help me understand why the

22   producer-handlers' proposal would have an identical

23   impact or measurement against the baseline as the

24   cooperatives' proposal?

25   A.   The producer-handlers' proposal was -- it did

1   not have a complete set of order language associated

2   with it and was modeled in this analysis, is a response

3   to the cooperatives' proposal and so an adjustment off

4   the cooperatives' proposal was made for the

5   producer-handlers' analysis where Option 70 producer's

6   milk would be essentially grandfathered in under the

7   producer-handler definition as that is my understanding

8   of the producer-handlers' market. And the differences

9   in the results were so small that the rounded

10   differences between the results are the same.

11   Q.   So when you say the differences in the results

12   were so small, are you referring to the differences

13   between the Producer-Handler Association's proposal as

14   compared to the baseline?

15   A.   Yes.

16   Q.   So when I look at the tables that reflect the

17   Producer-Handlers Association analysis, you have really

18   taken, first, the cooperatives' proposal and then

19   overlay on top of that the difference that would occur

20   with the producer-handlers; is that right?

21   A.   Yes.

22   Q.   So it's not -- if I look at these it's not --

23   if I look at Table B17, this isn't saying it's 12 cents

24   a hundredweight for the average difference as compared

25   to the baseline, is it?

1   A.   Yes, the 12 cent per hundredweight is the

 2   difference from the baseline.

 3   Q.   With the cooperative proposal; right?

 4   A.   B17 also includes the adjustments from

 5   including Option 70 producer-handlers as

 6   producer-handlers under the Federal order.

 7   Q.   Okay. So can that also then be stated as it

 8   has a zero impact as compared -- the producer-handlers'

 9   proposal itself has a zero impact against the baseline

10   if you account for the cooperatives' impact?

11   A.   I wouldn't necessarily say zero, because when I

12   compared them they aren't exactly the same, but when you

13   round them they are.

14   Q.   Okay. So what do you mean -- because the

15   numbers look exactly the same to me.

16   A.   So, for example, if I got a result of .045 that

17   would result or that would be rounded to .05, and if I

18   got a result of .047, that would also be rounded to .05,

19   so while they might not be exactly the same, when

20   they're rounded they're the same.

21   Q.   So if you take the decimal point out far enough

22   there might be differences, but for statistical purposes

23   and the rounding here --

24   A.   They're the same.

25   Q.   They're the same? So I just want to clarify,

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1 so if the way that I can say this -- I'm trying to

2 figure out the correct verbiage. Is the way I can say

3 this is that there's no -- if I'm looking at Table B1

4 with the cooperative proposal and Table B17 with the

5 producer-handler proposal, is the way I can explain this

6 to say that there is -- the producer-handlers do not

7 have any statistical -- wait. Producer-handlers do not

8 have any additional statistical impact beyond what the

9 cooperatives' proposal would be?

10   A.   I cannot say whether that's the statistical

11 impact. I haven't necessarily run that analysis to say

12 whether they're statistically different from one

13 another, so --

14   Q.   I guess what I'm trying to dig into is are

15 there other factors that would create -- that would

16 affect these numbers that I'm not thinking of here? So

17 if there's 12 cents per hundredweight impact with the

18 cooperatives' proposal and there's a 12 cent per

19 hundredweight impact with the producer-handlers'

20 proposal, is it fair to say that they're one and the

21 same impact?

22   A.   Well, I mean, that 12-cent impact could be

23 anywhere from 11.5 cents on -- for example, let's just

24 say it's 11.5 cents on the cooperative. I don't know if

25 that's the case, but just for the sake of this let's say

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1   it's 11.5 cents. And then for the producer-handler one

2   that could be 12.45 cents. Are those statistically

3   different numbers? I haven't run that analysis, but do

4   they round both to 12 cents, yes.

5   Q.   Okay. So let me look down to the next table,

6   because maybe this helps give an example of what I think

7   you are describing.

8   So if you look at Table B2 and Table B18, and

9   if we look at the Southeast blend price, so the fourth

10   line down.

11   A.   B18 and --

12   Q.   B2 and B18.

13   A.   Okay.

14   Q.   And the average under the cooperatives'

15   proposal for the Southeast blend price at the test

16   change is negative .26 cents and negative 26 cents per

17   hundredweight; is that correct?

18   A.   Yes.

19   Q.   And then if we look at the producer-handlers'

20   proposal it's negative 25 cents per hundredweight?

21   A.   Yes.

22   Q.   So 1/100 -- do I have my decimals right?

23   1/100th would be the difference?

24   A.   Yes.

25   Q.   So is that what you mean when there could be

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1   rounding, price variations that have some rounding

2   differences, but generally they would be within the same

3   range?

4   A.   Again, that would be one is 25.5 cents and so

5   it's rounding to 26 and the other one could be 25.45

6   cents and it's rounding to 25. So they could be very

7   close or they could be very far away. Not very far

8   away, but the opposite end of the rounding spectrum.

9   Q.   Can you move to Table B12? And this is the

10 California Class Utilization Changes. Can you tell me

11 what this number implies, what this chart implied in

12 B12?

13   A.   It shows the California Class Utilization

14 Changes under the cooperative proposal away from the

15 baseline.

16   Q.   Wait. I'm sorry. Say that one more time.

17   A.   So these are the changes from the baseline in

18 the California Class Utilization under the cooperatives'

19 proposal.

20   Q.   So it would be 8 per Class I, the average would

21 be 848 million pounds?

22   A.   Correct.

23   Q.   As compared to what's currently --

24   A.   Yes.

25   Q.   -- under the state order system?

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1   A.   Yes.

2   Q.   Or what would be projected under those years?

3   A.   Yes.

4   Q.   And then the table before that, Table B11, at

5   that point we're looking at Class I prices. If you look

6   at under the Class I prices comparing baseline to what's

7   in these charts, that's showing what -- for the

8   cooperative proposal that would show once the exempt

9   quota if it was converted into regular quota; is that

10   right?

11   A.   Yes, it would include that change and all of

12   the other changes proposed by the cooperatives'

13   proposal.

14   Q.   Did you do any -- we're talking about the

15   wholesale -- impact on the wholesale prices.

16   Do you know how you took into account or did

17   you take into account any of the producers or any of the

18   exempt quota production? Do you know how you accounted

19   for any of that?

20   A.   Exempt quota. So production in California in

21   total is accounted for in the region, so that would

22   include any milk produced state, whether it be all of it

23   or the whole kit and caboodle including

24   producer-handlers.

25   Q.   Look one more time at the charts. If we move

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1   to Ponderosa's charts, which begin on page 36 at Table

2   B33.

3   A.   Okay.

4   Q.   And, again, is that similar to the

5   producer-handler analysis where you have overlaid the

6   Ponderosa proposal over the cooperative proposal?

7   A.   Yes.

8   Q.   So it would be any additional impact on the

9   analysis looking through the lens of just the Ponderosa

10   proposal up against the backdrop of the cooperatives'

11   proposal?

12   A.   Yes.

13   Q.   And you didn't do any of that same overlaying

14   over the Dairy Institute proposal?

15   A.   The Dairy Institute submitted their own

16   separate language in total.

17   Q.   So nothing that allowed us to do that analysis

18   if there was some preservation -- if there was some

19   preservation of quota in the Dairy Institute's proposal,

20   as well; is that right?

21   A.   They preserve a quota and a non-quota pool is

22   my understanding, so --

23   Q.   But we don't -- there is no analysis that's

24   been done for any -- and I guess I'm saying this from

25   the producer-handler side and Ponderosa. We've asked to

1   have the quota, the exact quota preserved as part of any

2   quota system, whether it be in the Dairy Institute's

3   proposal or under the cooperatives' proposal, so the

4   data that we have just allows us to look at the impact

5   versus the cooperatives, but not Dairy Institute?

6   A.   That is correct, because it was modeled as a

7   response to the cooperatives' proposal, not the Dairy

8   Institute's.

9   Q.   Okay. Thank you.

10   JUDGE CLIFTON: Yes.

11   REDIRECT EXAMINATION

12   BY MS. TAYLOR:

13   Q.   This is Erin Taylor. Ms. Steeneck, I just want

14   to ask a clarifying question on the record so everyone

15   is clear in regards to Table B12, that title California

16   Class Utilization Changes under the cooperative

17   proposal. I just want to make sure it's clear for

18   everyone what is incorporated in the utilization

19   number. In the baseline the utilization numbers that

20   you used were from CDFA, and that was their class

21   utilization based on what was in the pool?

22   A.   Correct.

23   Q.   So that doesn't include any milk, out-of-state

24   milk, for example, that might be sold in California but

25   not fall under their regulations that might be Class I?

1   A.   Correct.

2   Q.   So the changes to the baseline, then an

3 increase might be because you are incorporating those

4 Class I sales now as regulated?

5   A.   Correct. Those Class I sales, that large

6 increase in Class I sales that you are saying is due to

7 the producer-handler milk, that's Class I and out-of-

8 state Class I milk being regulated under California

9 instead of falling into the unregulated pool as Class

10 I.

11   Q.   So not necessarily any additional actual Class

12 I sales?

13   A.   No.

14   JUDGE CLIFTON: I always have trouble when the

15 question said "so not" and the answer was yes. So let's

16 try that again just so I'm sure.

17   THE WITNESS: I can answer the whole question

18 with a statement instead of a one-word answer. The

19 Class I sales in B12, Table B12, represent the increase

20 in Class I sales and that increase is due to milk now

21 being pooled under the California regulations that was

22 not previously pooled under the California regulations.

23   JUDGE CLIFTON: Now, I propose that we take a

24 break, but I want to find out if there are producers

25 here who would like to testify prior to our resuming

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1 this witness' testimony. If you are such a person would

2 you come to the microphone now and say so. If you are a

3 producer who would like to get his or her testimony in

4 today. I was promised two. Where are you? Did we lose

5 them at lunch?

6   MR. FRANCIS: I think they left.

7   JUDGE CLIFTON: I'm sorry, I hope they'll come

8 back. I should have earlier in the day identified

9 producers who wanted to get on that day and I neglected

10 to do that. Mr. English.

11   MR. ENGLISH: Your Honor, if you'll indulge me,

12 I know you want to take a break, but I want to follow

13 immediately on that before we do.

14   RECROSS-EXAMINATION

15 BY MR. ENGLISH:

16   Q. I really appreciate that last answer and I

17 think it suggests something, that what's in B12 includes

18 a couple of different things, I think. One, it would

19 include out-of-state milk that is today received at

20 Class I bottlers in California?

21   A. Yes.

22   Q. Correct?

23   A. Yes.

24   Q. And, two, it would include milk that might be

25 received at a plant that today is either not subject to

1   California, not regulated at all and may become a plant

2   under the -- pool plant under the cooperatives'

3   proposal. There's a plant in Clark County. I mean not

4   Clark County, that's the wrong county. In Nevada that's

5   included in the cooperatives' proposal that could become

6   a pool plant; correct?

7   A.   It includes the out-of-state Class I sales that

8   are coming to California that would then be regulated.

9   Q.   And that could include not just milk that's

10   being received by California plants, but milk that's

11   being received in plants outside of California that

12   could become regulated under the cooperative proposal?

13   A.   Let me think about that. I need to think about

14   that example.

15   Q.   I'm not looking for confidential information.

16   I'm just trying to get a general answer. All right.

17   Thank you.

18   JUDGE CLIFTON: You're welcome. So we'll

19   either taken 10 minutes or 15 and then we'll come back

20   and we'll come right here where we left off. I want a

21   show of hands. How many would prefer 10 minutes, how

22   many would 15? 15. All right. Please be back and

23   ready to go at 3:45.

24   (Recess taken.)

25   JUDGE CLIFTON: It's time, folks. If you don't

1 want to sit down just please be quiet. All right.

2 Let's go back on the record. We are back on the record

3 at 3:46.

4   I have a hypothetical question for everyone

5 from the Agricultural Marketing Service. You decide

6 among yourselves who will respond. If Ms. Hancock

7 wanted the production of a table that would reflect what

8 she wishes she had, which would be the Ponderosa's

9 proposal laid over the second proposal, to whom would

10 she address that question? I'm not saying it can be

11 done. I'm merely saying if she wanted to ask for that,

12 to whom would she address that request?

13   MR. FRANCIS: This is Will Francis,

14 Agricultural Marketing Service. You can talk to me and

15 we can talk about it.

16   JUDGE CLIFTON: All right. Are there any dairy

17 farmers, producers who would like to be heard yet

18 today?

19   There are none.

20   I would like the witness to have the

21 opportunity to clarify anything that she would like to

22 at this point before we go on with further questions.

23   THE WITNESS: Two things. First, the last time

24 right as we were finishing the questioning before the

25 break I was referring to Class I sales when I meant to

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1 refer to Class I utilization. Furthermore, the Class I

2 sales increase also would include any decreases or it

3 would include also changes relative to the price

4 response in the region, not just producer-handler sales

5 coming, being regulated and out-of-state milk being

6 regulated.

7   JUDGE CLIFTON: Who would like to ask any

8 questions just on those items, just on that

9 information?

10   No one.

11   All right. Who would be the next person to

12 question this witness?

13   MR. VLAHOS: John Vlahos.

14   CROSS-EXAMINATION

15 BY MR. VLAHOS:

16   Q.   Good afternoon. I represent with Mark Beshore

17 and the co-ops the proponents of Proposal No. 1. I just

18 have a couple few clarifying questions. In response to

19 some questioning by Mr. English, I believe that you

20 testified in essence that the non-quota blend price in

21 the co-ops' proposal was calculated after deduction of

22 the quota premiums; correct?

23   A.   Yes.

24   Q.   Mr. English I think then asked you whether you

25 were familiar with any similar deduction in any other

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1   federal marketing orders, and I believe you answered you

2   were not; correct?

3   A.   Yes, I believe that was my answer.

4   Q.   Now, you were probably, I'm quite sure,

5   familiar with the provisions with Section 1410D on the

6   2014 Farm Bill, and just I'm not going to ask you to

7   repeat it or anything, but I'm going to read that to you

8   and ask you a couple questions about it. That's

9   actually provided, "Upon petition approval California

10   dairy producers in the matter provided in section 8C of

11   the Agricultural Adjustment Act Citation reenacted with

12   the amendments by the Agriculture Marketing Improvement

13   Act of 1937, the Secretary shall designate the state of

14   California as a separate federal milk marketing order."

15   Now, I'm going to focus on the next sentence.

16   The next sentence says, "The order covering California

17   shall have the right to reblend and distribute order

18   receipts to recognize quota value." Are you familiar

19   with that language?

20   A.   Yes.

21   Q.   Now, to your knowledge are there any other

22   federal milk marketing orders that are subject to a

23   similar congressional direction?

24   A.   I'm not here to testify on whether or not there

25   are or there aren't, I'm here to testify on the model.

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1   Q.   Are you familiar, yourself, personally, with

2 them, whether you are prepared to testify or not?

3   A.   Am I familiar with any --

4   Q.   Yes. Do you know of any other similar

5 congressional direction applied to other federal milk

6 marketing orders?

7   A.   Not that I'm aware of.

8   MR. VLAHOS: Thank you. That's all the

9 questions I have.

10   JUDGE CLIFTON: Is there anyone else who has

11 questions for this witness?

12   MR. MILTNER: Yes, please.

13   CROSS-EXAMINATION

14 BY MR. MILTNER:

15   Q.   I'm Ryan Miltner on behalf of Select Milk

16 Producers, and I have a whole list of questions, some of

17 which have already been addressed, so if you'll bear

18 with me while I cull through them.

19   Ms. Steeneck, when you were giving your opening

20 statement you described this model as annual, regional

21 and dynamic, so let me I guess state my understanding of

22 those three modifiers and you can tell me where I'm

23 wrong. Okay?

24   A.   Okay.

25   Q.   So an annual model just means that we don't see

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1 month-to-month changes. Even though the prices are set

2 monthly, this model only shows us the annual changes for

3 the different variables and outputs; is that correct?

4   A. Yes, it uses annual time.

5   Q. Tell me what is regional about this model? I

6 understand it creates output for each of the different

7 milk zones that you have described, the various federal

8 zones, California and the unregulated region, but I

9 guess when I see regional or I hear you describe it as

10 regional, are the individual impacts measurable region

11 by region, first of all?

12   A. Most of them are. Some of them are only

13 nationally.

14   Q. Specifically looking at regional impacts, does

15 this model measure the responsive producers in each

16 individual region to the changes that are input into the

17 model?

18   A. Yes.

19   Q. Specifically with respect to existing Federal

20 orders, when a change is made to the California pool,

21 let's say, can your model describe specifically the

22 responses that producers will make in terms of not just

23 the volume of milk produced, but the marketing decisions

24 that the aggregate -- that's getting convoluted.

25   A. Let's do one question at a time.

1   Q.   Yeah, let's back that up. You input changes

2 into the California pool?

3   A.   Well, I make adjustments based on the proposal

4 and then those changes cause different results, which

5 then simultaneously are sought for in the model.

6   Q.   Okay. So when you are looking at any

7 individual Federal order after you have modified the

8 model, can you see specifically and isolate the producer

9 response, production response changes order by order?

10   A.   That is what we have done here.

11   Q.   Okay. Let me walk through then some specific

12 changes in the model, or I guess correct me if I'm

13 inarticulate, but the changes you make to the California

14 pool based on the proposals and how they work their way

15 through the other orders.

16   A.   Sure.

17   Q.   You have described that the cooperative

18 proposal results in more producer revenue to the

19 California producers, which the model projects

20 additional milk production and responds to that;

21 correct?

22   A.   Additional milk production, yes.

23   Q.   Which results in?

24   A.   But just to clarify, the additional production

25 is in California.

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1   Q.   It is in California?

2   A.   Mainly.

3   Q.   Mainly, right. So when that additional

4 production works its way through the model we have

5 additional production of milk products including those

6 that are surveyed by AMS; correct?

7   A.   Correct.

8   Q.   And that is what is driving the lower prices

9 reflected in the tables you have put into evidence;

10 correct?

11   A.   Correct.

12   Q.   So taking that an additional step, I guess, the

13 additional -- the increase in the minimum prices that

14 California handlers will pay for milk, does that

15 increase in milk cost show up in the model anywhere?

16   A.   Can you repeat the question?

17   Q.   Sure. Let's take a plant manufacturing cheese

18 right now located in California, sourcing its milk from

19 California farms. Under the cooperative proposal is it

20 your understanding that that plant will pay the Federal

21 Class III price for their milk?

22   A.   Under the cooperative proposal the

23 cheese-processing plant would pay at minimum the Class

24 III price.

25   Q.   Okay. When that is put into the model, when

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1   the cooperative proposal is put into the model, how does

2   the model reflect that those plants will have a higher

3   milk acquisition cost?

4   A.   Because we do not find a statistically

5   significant relationship between the California class

6   prices as they are currently under the CDFA regulations

7   and the class utilizations, they were not included in

8   the amount of milk that was driven into those classes.

9   However, in California the Class III price under the

10   federal milk marketing orders at 3.5 would decrease on

11   average due to the larger amount of -- in your example

12   cheese being produced, so the decrease in the cheddar

13   cheese price versus the decrease in the nonfat dry milk

14   prices is what is driving the milk.

15   So how that relationship, which I don't have in

16   front of me, is how it gets incorporated on a national

17   level, but California specifically, how much is going

18   into Class III based on the class prices is -- I

19   couldn't find a statistical relationship.

20   Q.   Would you say that the California Class 3 price

21   decreases, is that a decrease relative to the Federal

22   Class III price in the absence of these proposals or?

23   A.   The California Class 3 price for the Federal

24   orders now versus under the proposals, it increases.

25   Q.   So that's using the current federal formulas

1 and you are not comparing that to the California 4b

2 price?

3   A.   Correct.

4   Q.   If a plant is currently paying the California

5 4b price and will be paying the Federal Class III price,

6 does your model -- does the model take -- I guess does

7 the model report any increase in the surveyed cheddar

8 cheese price as a result of that?

9   A.   The surveyed cheddar cheese price is a national

10 price and we're showing a decrease in that price due to

11 the increase in production in cheddar cheese. I forgot

12 your question.

13   Q.   So forget my question, maybe I can break it

14 down.

15   A.   Okay.

16   Q.   You are showing, you said, that it shows a

17 decrease in the reported cheddar cheese price because of

18 additional production?

19   A.   Correct.

20   Q.   Does the model show any offsetting increase in

21 the cheddar cheese price as a result of plants in

22 California paying more for their low milk supply?

23   A.   Explicitly, no; implicitly, all of it is. All

24 of the effects come through the model, so -- but the

25 amount of milk going into Class 3 and moving on to

1 cheddar cheese production in the model from California

2 is driven by I believe it's either nonfat dry milk over

3 cheddar cheese prices, and so how much additional milk

4 is going into Class 3 in California is based off of

5 those price changes and that relationship.

6   Q.   Based on what you just answered, is it fair to

7 say that the change in the surveyed cheddar cheese

8 price, the decrease in that price that in the model

9 shows is the net result, or -- yeah, is the net result

10 of increased production of milk, but also takes into

11 account any litany of factors that the model takes into

12 account and that you cannot separate out any individual

13 impact on that net price decrease?

14   A.   Yes.

15   Q.   Okay. I'm going to completely change gears

16 now.

17   A.   Okay.

18   Q.   Are you at least generally aware of the recent

19 price formula adjustment adopted by CDFA?

20   A.   I am aware.

21   Q.   Does that price adjustment factor into the

22 model in any way, whatsoever?

23   A.   The adjustment occurred after we had already

24 done our analysis, and, furthermore, it's a temporary

25 adjustment that only lasts my understanding is a year,

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1   and so our analysis doesn't start until 2017 for the

2   impact analysis, so it wouldn't have been started by the

3   time our analysis starts.

4   Q.   So no?

5   A.   Correct.

6   Q.   Hypothetically would the model be able to

7   presume or be set up in such a way that the price

8   adjustment recently adopted by California would be

9   assumed to continue on indefinitely and, therefore,

10   measure the proposals against a baseline that includes

11   the current price formulas for California?

12   A.   I think we -- off the top of my head my answer

13   would be that would be something that we could model,

14   but I really haven't thoroughly thought it through,

15   so -- but it would take an extensive amount of work.

16   Q.   Okay. That's fair. I guess if one -- if a

17   participant in the hearing, or someone otherwise

18   affected by these proposals, wanted to measure the

19   impact of the cooperative proposal or the Dairy

20   Institute proposal against what otherwise would be the

21   reality and we were to assume that the price changes

22   adopted by CDFA were to continue past the stated

23   one-year period, is there a good method that you might

24   suggest one could make that comparison using the data we

25   have available to us right now?

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1   A.   Would it be all right if I spoke to one of my

2   assistants for a moment or Roger Cryan?

3   Q.   Please.

4   JUDGE CLIFTON: Yes, now you don't necessarily

5   have to answer that question tonight -- today. You are

6   here again tomorrow.

7   MR. VLAHOS: We'll be here a lot.

8   JUDGE CLIFTON: So you are welcome to stop and

9   confer with them, but this is not something that you can

10 eyeball and figure out in ten minutes, so I think you've

11 laid it out there, Mr. Miltner, and now I think you

12 should go on to your next questions. And, yes, you may

13 talk with them, but not right this minute.

14   THE WITNESS: All right. I will get back to

15 you.

16   MR. VLAHOS: Okay. Thank you.

17   JUDGE CLIFTON: I was thinking his next

18 question would be to ask how many man hours went into

19 the production of Exhibits 5 and 6.

20   THE WITNESS: Multiple years.

21   JUDGE CLIFTON: Multiple years.

22   THE WITNESS: Yes, the development of those

23 models, a significant amount of time.

24   MR. VLAHOS: Q. Okay. Changing gears again.

25 Table B11, it's page 29 on Exhibit 5. And we're both in

1   agreement that other than Class I prices, the other

2   classified prices for the federal orders are identical

3   across the orders?

4   A.   At 3.5?

5   Q.   At 3.5, yes. So Table B11 is at test?

6   A.   Correct.

7   Q.   Can you offer any insight for us as to the wide

8   discrepancy in the impacts that test across the classes?

9   A.   We used historic test data, fat and nonfat or

10   where data was available to come up with the at test in

11   each class and adjusted the dry -- not adjusted,

12   calculated the class 30 or the at test prices based on

13   those historic averages of the test, so --

14   MR. VLAHOS: I think that's all I have right

15   now, Your Honor, and if you have any questions of me

16   about the issues we've deferred just let me know.

17   THE WITNESS: Okay.

18   MR. VLAHOS: Thank you very much.

19   JUDGE CLIFTON: Who else has questions for this

20   witness? Mr. Beshore. And, yes, you are welcome to go

21   again even though you have had an opportunity to

22   question.

23   MR. BESHORE: Thank you, and I do have a few

24   questions that were mostly raised by some of the other

25   questioners after me.

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1   RECROSS-EXAMINATION

2   BY MR. BESHORE:

3   Q.   So, Ms. Steeneck, you were asked I think by --

4   you were asked by Chip English about changes in the

5   Western unregulated area under some of the proposals.

6   UW area I think or the FW area, or both, I'm not sure.

7   So my question, what that led to in my mind, is

8   could you describe -- I couldn't find it anywhere,

9   although it might be in your exhibits, graphically or

10   however they were determined, what universe of

11   production is represented in the FW, which is I think

12   former Western milk pool versus the UW, which is the

13   unregulated Western milk pool?

14   A.   So if you go to Exhibit 6, page 2, back to -- I

15   can't remember at this point who was asking me about

16   this, but I was talking about the different levels, at

17   least how I like to think about the levels in the

18   model. This would be a farm level. What I refer to

19   typically as pools is more at the processor order

20   level. So there's only an unregulated pool with the

21   pools or orders at that point. But at production on a

22   farm level point it's broken out by region according to

23   state as you can see here in Figure 1.

24   Q.   And so this Figure 1 represents production

25   areas?

                          172

1   A.   Yes.

 2   Q.   And my eyes aren't sharp enough, but I don't

 3 think --

 4   A.   The unregulated region is Montana and Wyoming

 5 and the former Western is Idaho, Nevada and Utah.

 6   Q.   Thank you. So with respect to the producer,

 7 you're projecting impacts of the producer-handler

 8 proposal, Mr. English again asked you some questions

 9 about the Class I, if I understood it right, the Class I

10 volumes that were projected there. And the

11 characterization of a fixed amount or volume came up in

12 that colloquy as I understood it. Can you clarify or

13 explain what you kept fixed if you did in fact use that

14 descriptor?

15   A.   I did use that descriptor.

16   Q.   Okay. So what was fixed in that analysis?

17   A.   So during the forecast years what we assumed

18 was an amount of out-of-state milk moving into

19 California that remained the same throughout the time

20 period because we didn't have information on how to

21 forecast how much milk would be entering the state. So

22 that was assumed a three-year average of the most recent

23 three years of the data. And then also the

24 producer-handler milk and how much there has been

25 historically, we used again a three-year average of the

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1   most recent three years to say, okay, looking back,

 2   Option 70 producer-handler milk has been approximately

 3   this much on average for the last three years and we

 4   have to use that as our then forecast, which forecast

 5   was fixed for this.

 6   Q.   So that Option 70 volume then, was that just

 7   the volume related to the exempt quota or the aggregate

 8   volume of the producer-handlers, you know, their total

 9   volume of producer-handlers who operate under Option 70

10   with exempt quota?

11   A.   We looked at the total volume of the amount of

12   milk that operates under Option 70 of the exempt quota

13   and then we also looked for the cooperatives' proposal,

14   how much nonfat solids that is, and said this much would

15   then be turned into regular quota or additional regular

16   quota, if I'm understanding your question.

17   Q.   Okay. Thank you. Now, there was some

18   questions again by Mr. English I think, maybe Mr. Vetne

19   also, with respect to market clearing prices or what was

20   market clearing, and you made, if I understood it, a

21   distinction between -- that the market clearing prices

22   were, if I understood you, determined by the product

23   prices and the national product price quantity price

24   surveys?

25   A.   The market clearing prices are the national

1   product prices.

2   Q.   Yes. Thank you. Okay. So the market clearing

3   prices are the national prices as reported of those

4   commodities, dairy commodities; correct?

5   A.   Some of them, yes.

6   Q.   Some of them. The ones that are surveyed and

7   reported?

8   A.   Yes.

9   Q.   And then the class prices are derivative of

10   that?

11   A.   Correct.

12   Q.   Determined after the fact?

13   A.   Yes.

14   Q.   Under the federal orders?

15   A.   Yes.

16   Q.   Correct. So that when you were asked, you

17   know, are the Class III prices market clearing prices or

18   Class IV prices market clearing prices and you made that

19   distinction that they were -- that the product prices

20   were the actual factual market clearing prices set in

21   the marketplace at which the prices are freely

22   determined by supply and demand; correct?

23   A.   Yes.

24   Q.   And then after those prices have been

25   determined and the unregulated free marketplace federal

1   formulas after the end of the month determined what

 2   those prices were at a 3.5 or at a regulated -- for the

 3   regulated minimums?

 4   A.   Well, in this case not the end of the month,

 5   but for the full year, but, yes.

 6   Q.   Okay. So a full year in your model, but in the

 7   month --

 8   A.   Yes.

 9   Q.   -- cycle.

10   A.   That's how, yeah.

11   Q.   Okay. I probably shouldn't go into this, but

12   I'm going to try anyway. Statistically significant, the

13   inability to identify statistically significant

14   relationship between the California current CDFA minimum

15   prices and volume used in those manufactured products of

16   California, is that what you tried to relate

17   statistically and could not?

18   A.   I did look for that relationship and could not

19   find it.

20   Q.   Okay. And you know as an economist and

21   econometrician, I guess, just tell me what that means

22   what you look for a relationship and you can't find it.

23   A.   Well, first of all, as an econometrician we

24   turn to economic theory to help guide us as to where we

25   should be looking for relationships, and according to

                            176

1   economic theory the -- okay. This is going to be

2   difficult. I'm not allowed to draw pictures.

3   Q.   Actually, if you have a picture to draw I would

4   propose that you make it an exhibit if it helps.

5   A.   No, I don't want to. I'll try to explain it.

6   Q.   If it helps, you know, clarify what you are

7   describing.

8   A.   So one moment. I want to give you a clear

9   explanation. Okay. According to economic theory, when

10   we're looking at different levels of the supply chain,

11   so in this case the farm level and then the processor

12   level, we would say that the farm level demand is equal

13   to the processor level supply, because the processors

14   are the ones demanding the farm level demand. Okay.

15   And typically for those drivers you would expect to see

16   prices that the processors are paying and/or getting

17   paid for the product and then also in this case the

18   prices that -- their input costs, so and in this case

19   their input cost is the cost of milk.

20   So when we were modeling this we used that

21   economic theory to say, okay, what price will the

22   processor receive for their -- to drive milk in, so

23   cheddar cheese price and then the Class III price would

24   be their input cost. Now, those two are intrinsically

25   related to each other to that end product price

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1 formulas, which is why they were combined together and

2 include the same terms to deal with multicollinearity,

3 which creates all sorts of statistical problems, so -- I

4 can't remember what your initial question was. I knew

5 this was part of the answer, but --

6   Q.   Well, I was asking you to tell us what you were

7 looking for when you were looking for a statistically

8 significant relationship. I think you are telling me

9 why you were looking at certain things to see how they

10 were statistically related; correct?

11   A.   Yes.

12   Q.   I mean why is the theory -- theory tells you

13 what to look for for a relationship?

14   A.   Thank you.

15   Q.   Okay.

16   A.   I can't remember why I was telling you this.

17   Q.   And the theory told you to look for a

18 relationship and to expect to find a relationship

19 between two things in terms of the price in California

20 and the production of milk products. So what did theory

21 tell you to look for and what didn't you find?

22   A.   So that's what theory told me to look for,

23 and --

24   Q.   Well, tell us what that is again.

25   A.   So I --

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1   Q.   Theory told you to look for a relationship

2 between what and what?

3   A.   The price that they would receive and the price

4 of their input cost, the price of milk that they paid.

5   Q.   The price they would receive being the --

6   A.   The wholesale price.

7   Q.   The wholesale price. And their input cost

8 being the regulated --

9   A.   Cost price.

10   Q.   CDFA price?

11   A.   Yes.

12   Q.   Okay.

13   A.   And when I tried that I couldn't find a

14 statistically significant relationship, and so --

15   Q.   Did you in fact calculate it up? And is that

16 sometimes to referred to as an R square or is R square

17 something that --

18   A.   We do have R squares, but in this case I think

19 you're -- what we use to tell if something is

20 statistically significant are the p specifics or

21 p-values.

22   Q.   I see. Okay. And so that t-value --

23   A.   The p-value.

24   Q.   The p-value, I'm sorry. The p-value came up

25 short of anything that was meaningful?

1   A.   That's what we found. So we didn't include

2   that relationship because we couldn't prove -- we

3   couldn't accept the -- or we couldn't reject the

4   non-hypothesis. I'm sorry, we're getting into very deep

5   economics.

6   So there are two hypotheses. There's the null

7   hypothesis and the alternative hypothesis. The null

8   hypothesis is that it isn't significant and the

9   alternative is that it is. And we don't ever say we

10 accept the -- so we -- sorry, when we're looking at it

11 we want to show when -- let's not make this too

12 technical, although I think I already have. We want to

13 show within a certain statistical level that we believe

14 the null hypothesis and to say that the -- or that we

15 believe the alternative hypothesis and not the -- we can

16 say, okay, we don't believe the null hypothesis, that it

17 isn't, but we err on the side of caution in economics,

18 but we're more inclined to say something isn't

19 statistically significant before we say that it is,

20 because we want to really be sure that something is

21 statistically significant.

22   Q.   So when you were making this comparison when

23 you were attempting to find this relationship, what

24 universe of data were you using on the -- you know, on

25 the product side and on the price side? I mean, is it

1   one year's data, two years' data, three years' data, or,

2   you know, what time series or --

3   A.   For all of the orders we only went back to 2000

4   because of the order form, and for consistency even in

5   California that's where we cut it off.

6   Q.   So when you were trying to find this

7   relationship in California, you were using data from

8   2000 through 2013?

9   A.   Correct.

10   Q.   Which is quite a broad base of data.

11   A.   It is.

12   Q.   Okay. Do you have any thoughts why that broad

13   base of data would not yield a statistically significant

14   relationship that economic theory tells you shouldn't be

15   present?

16   A.   I can't speculate on that.

17   Q.   Just it wasn't there?

18   A.   It wasn't there. I don't believe in forcing

19   things to show you things that, you know, I --

20   Q.   Thank you. But that kind of relationship

21   was -- statistically significant relationship was there

22   in the Federal order data?

23   A.   It was.

24   Q.   I have one --

25   A.   In some of them. I mean, each -- we're talking

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1 about -- and so we're talking about ten different

2 Federal order compositional regressions for each of

3 them, so each of them have varying drivers for each of

4 those equations. But in general, generally speaking we

5 don't have that relationship frequently.

6   Q.   And in the major manufacturing areas where you

7 were looking at that kind of relationship did you find

8 it?

9   A.   What do you term as major manufacturing areas?

10   Q.   The orders, the federal orders that have the

11 largest volumes of, you know, manufacturing production,

12 Class III and IV production.

13   A.   So, for example, in order 30, Class III, we

14 found that relationship for cheddar cheese over the

15 Class III price in order 30 and also for nonfat dry milk

16 over the Class IV prices, order 30, and butter over the

17 Class IV pricing, order 30.

18   JUDGE CLIFTON: And you are looking at one of

19 the charts of Exhibit 6. Which page are you on?

20   THE WITNESS: 28.

21   JUDGE CLIFTON: 28. Thank you.

22   MR. BESHORE: Thank you.

23   Q.   Now, one final area. Could you go to page 21

24 of Exhibit 5.

25   A.   Yes.

1   Q.   And I'm addressing the top-hand page, the four

2 paragraphs of description under the subheading "Quota."

3   A.   Yes.

4   Q.   Okay. Now, does that language -- I'm not going

5 to read it or have you read it, does that describe

6 your -- that is you being the USDA economy -- the AMS

7 economics team's analysis of how the quota under the

8 Dairy Institute proposal would work?

9   A.   Yes.

10   Q.   Okay. And, again, without reading it all, you

11 concluded, if I'm reading it correctly and I'll just

12 read the last sentence, "After the 3rd decision point,"

13 which is, what, the third month of the proposal, "the

14 analysis predicts that all California producers would

15 choose the California FMMO blend price over the weighted

16 quota blend price."

17   A.   I wouldn't necessarily say that the 3rd

18 decision point is the third month, but I would say, for

19 example, the 1st decision point would be before the

20 program starts. The 2nd decision point would be once

21 the producers that remained in the quota, non-quota pool

22 had the opportunity to compare the weighted non-quota to

23 quota price to the traditional Federal order blend

24 price.

25   Q.   Okay.

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1   A.   And would then make a decision for the

2   following month, so keep track, January they would be

3   in, February they would have the opportunity to compare,

4   for March they would then choose whether or not to

5   remain, that would be the 2nd decision point. And then

6   similarly the producers that remained in the pool would

7   then have the opportunity to compare their weighted

8   non-quota, quota, that blend price to the traditional

9   Federal order blend in April and that would be the 3rd

10 decision point, the starting point of May 17th.

11   Q.   So after four months there would be no more

12 quota holders in California because they would choose

13 the blend price, which is an irrevocable decision and

14 there would be no longer the quota pool after about the

15 fourth month, and whether it's the third or fourth or

16 fifth, I'm not trying to quibble about that.

17   A.   Producers that would hold a hundred percent

18 quota would essentially have the same price as the

19 traditional Federal order blend price due to the fact

20 that there wouldn't be any additional value remaining in

21 the quota and non-quota pool to pay the quota price.

22   Q.   So at that point in essence there would be no

23 quota value? If you held the quota you wouldn't get any

24 more than the blend price?

25   A.   There would be no additional value in that pool

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1   to pay the quota price.

 2   Q.   So there would be no quota premium to the quota

 3   holders? No money over and above the blend price paid

 4   to the quota holders?

 5   A.   There would be no -- there would be no value to

 6   pay the quota premium to.

 7   Q.   Now, did your model -- assume with me for a

 8   moment that quota in California at its market value is

 9   changed and reported on a monthly basis represents about

10   $1.2 billion capitalized on California dairy farmers'

11   balance sheets. Just assume that with me for a moment.

12   Okay?

13   A.   Yes.

14   Q.   Okay. Did your model, your economic model,

15   project or calculate in any way the impact of the

16   evaporation of that $1.2 billion off of California dairy

17   farmers' balance sheets in four or five months?

18   A.   What the model does currently under both the

19   baseline and under any and all of the proposals is it

20   looks at the whole pool and it doesn't look at specific

21   decision-makers within the pool.

22   Q.   Okay.

23   A.   So it has and always has run off of something

24   close to a traditional Federal order blend price on its

25   production decisions. I calculated the non-quota and

1 quota prices for informational use, but it's not

2 affecting the production decisions because it's based on

3 the entire state, not broken down. I don't have

4 production decisions for quota holders separated out

5 from production decisions by non-quota holders.

6   Q.   Or regulatory impacts factored out by quota

7 holders versus non-quota holders.

8   A.   Exactly, so, no, we don't look at the

9 evaporation.

10   Q.   Right. Okay Thank you. No further questions.

11   JUDGE CLIFTON: Before you leave, Mr. Beshore,

12 if you go back to the microphone.

13   THE WITNESS: Can I clarify something?

14   JUDGE CLIFTON: Yes, you may. Just one

15 moment. For some reason both Mr. English and

16 Mr. Beshore, when they are saying FMMO it goes quite

17 quickly and I'm quite sure that the person typing this

18 has no idea what you said. So when you just look at

19 this last sentence, would you make clear what you were

20 saying in those two choices? First choice begins with

21 the word California, and how should this phrase be

22 typed?

23   MR. BESHORE: "California FMMO," four capital

24 letters, "blend price."

25   JUDGE CLIFTON: All right. And the

1   alternative?

2   MR. BESHORE: "Weighted quota blend price."

3   JUDGE CLIFTON: Thank you. Yes, you may.

4   THE WITNESS: In response to what you were just

5   saying, the change in the value of the quota will

6   obviously be affected by the proposal, but how it is

7   affected is something I can't speculate on.

8   MR. BESHORE: Q. Right, it's outside the scope

9   of what you modeled.

10   A.   I know, but --

11   Q.   I'm not asking you to speculate on it, just to

12   confirm that it's outside the scope of what you

13   modeled.

14   A.   But the value of it that I -- in how it changes

15   the marketplace for that quota value or the quota being

16   exchanged and the value that farmers can receive for it

17   is not something I could speculate on, how that will

18   change exactly.

19   Q.   Because you didn't study that at all?

20   A.   I didn't study that.

21   MR. BESHORE: That's all. Thank you.

22   JUDGE CLIFTON: Who will be the next

23   questioner?

24   MR. ENGLISH: Chip English for the Dairy

25   Institute of California.

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1   FURTHER RECROSS-EXAMINATION

2   BY MR. ENGLISH:

3   Q.   So treading in waters that a number of us

4   treaded in, I did first, I'm just going to try to see if

5   I could figure something out. And this has to do with

6   the statistical significance in the plant margins. So

7   let's first talk about the federal orders where you did

8   find that statistical significance. All right.

9   In those cases do changes in plant margins due

10   to changes in regulated price levels impact what

11   products get made from the milk?

12   A.   Yes.

13   Q.   Since you didn't find that statistical

14   significance of California, what did you do instead?

15   A.   It is on page -- I think I said already 28.

16   Q.   It's 5 or 6?

17   A.   6. On page 31, Table 41. We found a

18   relationship, for example, the amount of milk going into

19   4a over the amount going into Class 2, these are Arabic,

20   based on the nonfat dry milk wholesale price over the

21   cheddar cheese price. And the reverse to be true for

22   the amount going --

23   Q.   So what did the model then -- did you allocate

24   the Class 1 first and then the remainder or -- I'm just

25   trying to get at what happened that was different for

1 California?

2   A.   So we estimated Class 1 as we did with all of

3 the others and took it off the top of the pool.

4   Q.   Okay.

5   A.   And then the remainder was allocated to Class

6 2, 3, 4a, 4b based on these equations, which are

7 compositional regression where the amount going, for

8 example, into 4a would increase as the cheddar cheese

9 price goes up compared to the nonfat dry milk price. So

10 as the value of cheese is increasing compared to the

11 value of nonfat dry milk, more milk is going to go into

12 the class that --

13   Q.   So the relative class prices did matter, but

14 the plant margins did not?

15   A.   The relative class allocations are the

16 different variables.

17   Q.   Thank you. And I'm really going to leave

18 that. So instead I would like to go back to Exhibit 5,

19 and some of these questions were generated from

20 Ms. Hancock and I want to -- slightly different amounts

21 so see if I got this. So I'm going to compare Tables

22 B12 on page 30 to B28 on page 3.5. So, again, if you

23 had a second one with you and you still do, it would be

24 easier because it's again sort of on opposite pages.

25   A.   B12 and what was the other one?

1   Q.   B12 on page 30 to B28 on page 3.5. So it's the

2   Class -- California Class Utilization Changes under the

3   cooperative proposal as compared to the CPHA proposal.

4   And I want to start with your questions with Ms. Hancock

5   in which it appeared that there's relative -- other than

6   rounding changes, the overall pricing paths between

7   proposal and proposal are relatively the same; correct?

8   A.   Can you repeat the question?

9   Q.   That in comparing the cooperative proposal

10   impacts to the CPHA proposal impacts, the various price

11   changes are within maybe a penny or very, very close?

12   A.   Yes.

13   Q.   And you talk about the whole rounding issue;

14   correct?

15   A.   Yes.

16   Q.   So while that's the case, when you look at B12

17   compared to B28, there actually is a very significant

18   difference and I would just look at the average for a

19   moment, the average under B12 is that there would be

20   class utilization of 848 million pounds versus 604

21   million pounds under the CPHA proposal?

22   A.   Correct.

23   Q.   Would it be fair to say that almost all that

24   difference is the exempt quota that they would retain

25   under their proposal, CPHA's proposal?

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1   A.   Yes, so that would be the producer-handler

2   Class I milk that would continue to not participate in

3   the California pool.

4   Q.   Okay. So now we can segregate out that piece

5   of it. So that still leaves 604 million pounds that --

6   leaving aside the producer-handler of the direct quota

7   under Section 70 is out-of-state milk of some kind?

8   A.   And/or changes.

9   Q.   And/or changes in utilization?

10   A.   Due to price changes.

11   Q.   Price changes.

12   JUDGE CLIFTON: Mr. English, slow down. Even

13   though you have caught where she's going, let her say

14   it.

15   MR. ENGLISH: Q. I'm just trying to get to

16   five o'clock.

17   A.   Me, too.

18   Q.   So let's then compare B12 and 28 to B44, which

19   is on page 40. So this now is the California Class

20   Utilization Changes under the Ponderosa Dairy proposal?

21   A.   Correct.

22   Q.   And again I think if we did the analysis that

23   you do with Ms. Hancock, the overall price changes are

24   relatively small; correct?

25   A.   The price changes and the effects that it has

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1   on the class utilization changes.

2   Q.   Are relatively small?

3   A.   Relatively.

4   Q.   So would it be fair to say then that when you

5   compare the average of 260 million in B44 to the 604 in

6   B28, that that difference of 344 million pounds is

7   out-of-state milk?

8   A.   Not the 604, the 844 and the --

9   Q.   Well, okay, what I took is I took the 848 from

10 B12 and I compared it to the 604 in 28, and I thought we

11 agreed that that was likely -- that difference was

12 between the 604 and the 848 was producer-handler. All

13 right. You're right. So producer-handler isn't

14 included in the Ponderosa?

15   A.   So this 206 is mainly the producer-handler milk

16 being included.

17   Q.   Right. All right. I agree.

18   A.   Sorry, not 206, 260.

19   Q.   Okay. Let me try it again. I now can't

20 compare B44 to B28, I think B44 to B12, and we've agreed

21 that there's going to be little class utilization

22 impacts?

23   A.   Yes.

24   Q.   So the difference between the 260 and the

25 848 --

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1   A.   Yes.

2   Q.   -- would be Class I milk coming in from -- the

3   out-of-state milk into the state or not?

4   A.   Yes. Close.

5   Q.   It's approximate.

6   A.   Approximately. I mean, it's not exactly

7   because there are other changes, small changes in there

8   I guess.

9   Q.   And that milk could be milk that is either

10   received at a plant in California which is regulated by

11   the California order or a plant located outside of

12   California that for whatever reason is --

13   A.   That I am still unsure of.

14   Q.   All right. So subject to getting clarity on

15   that if we can and subject to whatever discussions there

16   are about the data that we discussed throughout today, I

17   thank this witness and conclude my cross-examination.

18   JUDGE CLIFTON: Do you have questions of this

19   witness? Oh, did it become 4:50?

20   MR. HILL: Yes.

21   JUDGE CLIFTON: I think -- would you identify

22   yourself, please.

23   MR. SMITH: I'm Dan Smith. I represent the

24   four producer associations from the states of Maine,

25   Kentucky, Tennessee and Georgia. And my address is 16

1   State Street in Montpelier, Vermont 05602.

        2   JUDGE CLIFTON: Will you be here tomorrow

        3   morning?

        4   MR. SMITH: I will.

        5   JUDGE CLIFTON: I think what we should do now

        6   is we should talk quickly about what we think we're

        7   going to work on tomorrow so we can finish promptly at

        8   5:00, and we will expect this witness to resume the

        9   witness stand tomorrow, and when her testimony is

       10   completed either because everything is covered or

       11   because much of it needs to be deferred to a later day,

       12   what would be the next thing that the USDA would do?

       13   MR. HILL: Brian Hill. We're going to be

       14   calling Lorie Warren.

       15   JUDGE CLIFTON: And would you spell her name?

       16   MR. HILL: W-A-R-R-E-N.

       17   JUDGE CLIFTON: And Lorie?

       18   MR. HILL: L-O-R-I-E.

       19   JUDGE CLIFTON: And what's the nature of her

       20   testimony, just in general?

       21   MR. HILL: There are some -- a data set that

       22   she's going to be talking about tomorrow.

       23   JUDGE CLIFTON: A data set you said?

       24   MR. HILL: Yes.

       25   JUDGE CLIFTON: We talked about whether you

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1   need a microphone stand like this one. You really do.

 2   That's way too far from you.

 3   MR. HILL: Okay.

 4   JUDGE CLIFTON: Okay. Good. Help me to

 5   remember to ask if there are dairy farmers that would

 6   like to be heard, and right now do we need to know

 7   anything more about what's likely to happen tomorrow?

 8   Is that adequate for everyone's planning?

 9   MR. BESHORE: Is that all the government

10   witnesses if we were to reach the end of the day?

11   MS. TAYLOR: Your Honor, this is Erin Taylor.

12   This is the government witnesses, those are our two that

13   we have prepared exhibits for. There's been some

14   request by parties to have a USDA witness just discuss

15   some provisions and how they're currently administered

16   in federal orders. I don't know -- now that our

17   schedule has changed we need to evaluate this evening

18   how we think it's best to have them on the stand. So we

19   may or may not have additional ones tomorrow, we just

20   need to kind of discuss that this evening.

21   MR. ENGLISH: We're grabbing the bull by the

22   horns. I think that if that is the last witness or once

23   we have the last witness, then my understanding is that

24   you defer out then the discussion about the whey factor

25   proposal that we submitted, and I would like to have

                            195

1   that argument sooner rather than later.

2   JUDGE CLIFTON: All right. I called it a

3   discussion. I liked it better when it was a discussion,

4   but I'm aware --

5   MR. ENGLISH: I will call it an argument of

6   discussion. Okay. I'll call it a discussion. And that

7   it seems to me that we are from your request earlier

8   today, we return to opening statements, so that's -- I

9   mean, this is hardly for the benefit of the people in

10   the back and for people who are on the web, that I think

11   that is sort of the order of events and if we get

12   through with USDA witnesses and the discussion about the

13   whey factor and the opening statements and still have

14   time, then I guess we're going to see the first witness

15   for the cooperatives.

16   MR. BESHORE: I agree.

17   JUDGE CLIFTON: That sounds good. Now, what

18   materials, Mr. English, will you have for those of us

19   who want to get the gist of your argument and either

20   oppose it or decide it?

21   MR. ENGLISH: There will be 25 copies, I hope

22   that's sufficient, of the May letter. The attachment to

23   the May letter that matters, I don't want to include

24   the hearing notice, the department's initial response,

25   our request for reconsideration and the department's

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1   final response are the written materials, so I think

2   that's five documents.

3   JUDGE CLIFTON: Very good.

4   MR. SMITH: Dan Smith. Just a quick point of

5   clarification on the schedule. If I understand it you

6   are going to go through the proposals in series. I

7   didn't whether you are going to go -- what the order is

8   1, 2, 3, 4 as set out in the notice. Is that the plan?

9   JUDGE CLIFTON: That's what I would do unless

10   someone persuades me that there's a better plan.

11   MR. SMITH: Okay. And assuming that, for folks

12   in my circumstances this obviously pushes -- I assume

13   pushes back witnesses along the line of what Mr. Miltner

14   proposed, that you'll hear from the witnesses with

15   regard to the specific proposals put on by the

16   proponents and then you'll hear witnesses from those of

17   us who haven't put a proposal forward.

18   JUDGE CLIFTON: Every hearing is affected by

19   when witnesses are available, and I'm always receptive

20   if someone needs to testify and would prefer to hear all

21   of the other evidence first but cannot because of other

22   commitments and want to go ahead, I take them out of

23   order. But I have to juggle everyone's needs, but I'm

24   always receptive to when a witness is available, and --

25   MR. SMITH: Quite frankly it makes it easier,

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 1   as Will said it makes it a little easier to schedule out

 2   ahead at this point, so that works well.

 3              JUDGE CLIFTON:  Okay.

 4              MR. SMITH:  At least from my perspective.

 5              JUDGE CLIFTON:  All right.

 6              MR. SMITH:  Thank you.

 7              JUDGE CLIFTON:  And you have the first

 8   opportunity to question this witness when we return

 9   tomorrow.

10              MR. SMITH:  I feel like I'm a little bit like

11   in church, stand up and sit down, but they're the

12   proponents and I defer to them.  It's not a problem.

13              JUDGE CLIFTON:  You know, it's wise to let them

14   go first.  They know the vocabulary, which is very

15   difficult in this field.  All right.  I'll see you all

16   at -- you can come -- all right.  I think you can come

17   into this room as early as 8:00.  We won't go on the

18   record until 9:00, but feel free to use this place to

19   discuss things and to enjoy some refreshments.  There

20   was one complaint.  I have only heard one complaint this

21   whole time.  There is no milk on the table.  All right.

22   We'll go off the record at 4:57.

23

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