CERTIFIED TRANSCRIPT

NATIONAL FEDERAL MILK MARKETING ORDER

PRICING FORMULA HEARING

DOCKET NO.: 23-J-0067; AMS-DA-23-0031

Before the Honorable Jill Clifton, Judge

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Carmel, Indiana

October 11, 2023

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Reported by:

MYRA A. PISH, RPR, C.S.R.
Certificate No. 11613

A P P E A R A N C E S:

FOR THE USDA ORDER FORMULATION AND ENFORCEMENT DIVISION, USDA-AMS DAIRY PROGRAM:

Erin Taylor
Todd Wilson
Brian Hill
Michelle McMurtray

FOR THE MILK INNOVATION GROUP:

Ashley Vulin
Charles "Chip" English
Grace Bulger

FOR THE NATIONAL MILK PRODUCERS FEDERATION:

Nicole Hancock
Brad Prowant

FOR SELECT MILK PRODUCERS, INC.:

Ryan Miltner

FOR INTERNATIONAL DAIRY FOODS ASSOCIATION:

Steve Rosenbaum

FOR THE AMERICAN FARM FEDERATION:

Dr. Roger Cryan

FOR THE MAINE DAIRY INDUSTRY ASSOCIATION:

Dan Smith

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(Please note: Appearances for all parties are subject to change daily, and may not be reported or listed on subsequent days' transcripts.)

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IN CHRONOLOGICAL ORDER:

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WEDNESDAY, OCTOBER 11, 2023 - - MORNING SESSION

THE COURT: Let's go back on record.

We're back on record. It is October 11, 2023. It's a Wednesday, approximately 8:02 in the morning.

I am ready for my next witness, unless there are any preliminary matters.

We can go forward. You may take the witness stand.

Please state and spell your name.

THE WITNESS: Calvin, C-A-L-V-I-N, Covington, C-O-V-I-N-G-T-O-N.

THE COURT: Mr. Covington, welcome back.

THE WITNESS: Thank you, ma'am.

THE COURT: You remain sworn.

THE WITNESS: Yes, ma'am.

THE COURT: And before I ask counsel to introduce herself, I have before me an exhibit that needs its next number.

And what will that number be? 342.

All right. I'm marking as 342 a document that is also marked Exhibit NMPF-44.

(Thereafter, Exhibit Number 342 was marked for identification.)

THE COURT: Ms. Hancock, you may introduce yourself and proceed.

MS. HANCOCK: Thank you, Your Honor.

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CALVIN COVINGTON,

Having been previously sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MS. HANCOCK:

Q. Good morning, Mr. Covington. Welcome back to the stand.

Are you here to present your testimony that's been identified in Exhibit 342?

A. Yes, ma'am.

MS. HANCOCK: And, Your Honor, just so our record includes it in this portion of the testimony as well, Mr. Covington has previously been recognized as an expert in this matter.

THE COURT: Thank you.

BY MS. HANCOCK:

Q. Mr. Covington, would you proceed with your testimony, please.

A. Yes, ma'am. Thank you.

This testimony is presented in support of Proposal 19, update the Class I price differential surface throughout the United States as proposed by National Milk Producers Federation.

I will skip over the next few paragraphs since they have been included in previous testimony, and start with the paragraph at the bottom of page 1.

Previous witnesses provided testimony on the process used in developing the Proposal, updated Class I

differentials. My testimony, in support of updating Class I differentials, focuses on the Florida Federal Milk Marketing Order and will cover fluid demand, milk supply, and proposed Class I differentials.

Demand. Florida is one of the few remaining Class I markets in the Federal Milk Marketing Order system. From 2000 through 2022, average annual Florida Federal Milk Marketing Order Class I utilization has exceeded 82%. Most of the producer milk classified is Class II, III and IV, is cream resulting from standardization of fluid milk products, bulk inventory, and shrink. For 2023, through August, Class I utilization is 83.11%.

Since 2021, Class I disposition in the Florida Federal Milk Marketing Order has increased. 2021 Class I disposition was 1,996,086,644 pounds. In 2022, it was 2,042,133,745 pounds, a 2.3% increase. Through the first eight months of 2023, Class I disposition is 1.6% higher than the same period in 2022.

The Florida Federal Milk Marketing Order covers the entirety of Florida, excluding the four most western counties located in the Panhandle. Florida is the third most populous state in the United States with over 22 million people.

Since 2000, average annual population growth is 1.8%. All current indicators point to continued population growth in the state. The University of Florida projects the state to add another 2 million residents by

2030. The number of potential milk consumers in the Florida Federal Milk Marketing Order has grown and continues to grow.

In the fluid milk market, milk deliveries to pool distributing plants varies from month to month and day to day. Table 1 shows average daily Class I disposition in 2022, by month, in the Florida Federal Milk Marketing Order.

And, again, Table 1 shows each month and the average Class I disposition there in the Florida order.

Note the wide variation in Class I disposition from month to month and how quickly disposition can change. In just a 90-day period from April to July, Class I demand dropped from averaging 5.830 million pounds per day to 4.939 million pounds per day. This is a decline of the equivalent of 18 loads of milk per day in just 90 days. And just 90 days later, July to October, Class I disposition goes back up by 19 loads per day.

There's a wide variation in daily deliveries as well. Using 2022 SMI data, the volume of milk delivered to pool distributing plants on each Monday through 2022 averaged 28% more than milk volume delivered on a Sunday. Similarly, the volume of milk delivered on a Friday averaged 8% less than Thursday deliveries.

There is a cost to managing these swings in milk demand. It requires additional milk tankers, horizontal storage, marketing milk to non-pool plants at below class prices, often when production exceeds demand, purchasing

supplemental milk at above class prices when demand exceeds production, and transporting the milk considerable distances, offering credits to encourage pool distributing plants to receive a consistent milk supply, and working with other cooperatives to balance supply and demand. To adequately serve a fluid milk market, a cooperative must have access to a raw milk supply equal to the maximum milk volume needed by pool distributing plants on a given day.

The nature of consumer buying patterns, schools not operating year round, or seven days per week, marketing milk in a peninsula with a seasonal residential population, and being prone to hurricanes, are reasons for the variation in milk deliveries to pool distributing plants.

Cooperatives continue to improve efficiency of balancing milk supply and demand, and working to control balancing expenses. However, due to the reasons just stated, there will always be variations in the volume of milk required to serve a fluid milk market. It costs money to adequately serve a fluid milk market and ensure there is fluid milk on the shelf for consumers and in school cafeterias. Class I differentials do more than encourage movement of raw milk to fluid markets, they also assist in covering the expenses needed to serve a fluid milk market.

Previous witnesses have provided information documenting the increased costs to turn raw milk into butter, cheese, and milk powders. Costs to transport raw

milk from farm to milk plant have increased as well, which further supports the need to increase Class I differentials. I do not want to duplicate what others have provided in regards to increased milk hauling costs, but I will add information specifically related to the SMI and the Florida market.

Table 2 shows SMI producer hauling rates for the 2003, 2013, and May 2023. These hauling charges are for a producer shipping 49,500 pounds of milk per pickup (one load) and located 175 miles from the producer's assigned milk plant. In 2003, the producer charge was $0.82 per hundredweight or $2.31 per loaded mile. In May of this year, the producer charge was $2.11 per hundredweight or $5.98 per loaded mile. Current producer milk hauling charges are almost double the charges in 2013 as shown in Table 2.

Keep in mind the Class I differentials along the Interstate 4 corridor and the Miami area are the same today as they were in 2013, $5.40 per hundredweight and $6 per hundredweight, respectively.

Table 2 shows the producer milk hauling charges, annual for 2003, annual for 2013, and then just for May 2023. Now, let me explain why I have two annuals and just one month.

In 2003 and 2013, the hauling charge that Southeast Milk charged its members was constant throughout the year. It was established generally in November or December of the previous year, and that held constant

throughout the year.

But what we found out in the last year or so, especially with fuel charges going up, that hasn't worked very well. So starting in January of this year, we have fixed costs per hundredweight, but we have a variable cost that changes each month based upon the price of diesel fuel. So the hauling charge can vary each month here in 2023 based on the price of diesel fuel.

Now, Your Honor, when I get to the first paragraph there on page 4, I would like to strike that first sentence, and replace it with what I'm getting ready to state.

Southeast Milk, Incorporated, owns and operates its own milk hauling fleet. The following are annual changes in recent years for four milk hauling related expenses incurred by SMI. This further shows the increase in milk hauling expenses.

I start there with the average annual diesel fuel cost expressed in dollars per gallon. You can see the increase from 2020 to 2021 and 2022. And so far for the year to date -- and, again, we are on a fiscal year that starts on October 1 -- they have come down to $3.6494 per gallon.

Then we go to average annual milk hauler wages, and this does not include benefits, and it's expressed in dollars per hour, for our current fiscal year, we are at $30.23 per hour.

And then quoted prices to SMI for a Peterbilt day

cab, not including taxes, you can see in 2020, $118,102, the most recent quote we received on June 16th, this would be for a 2024 day cab, gone up to $172,368.

And then quoted prices to SMI for a 6,200-gallon milk tanker, most recent -- 2021, $69,400, and our -- the 2024 models have been quoted to us at $90,000.

Let me emphasize, there are more milk hauling expenses than just fuel, wages, and equipment that have increased. Other expenses, including employee benefits, insurance premiums, tractor and tanker maintenance, tires, repairs, taxes, permits, and highway tolls.

The December 1962 Report to the Secretary of Agriculture by the Federal Milk Order Study Committee, more commonly known as the Nourse report, laid out the objectives of Federal Milk Marketing Orders per the Agricultural Marketing Agreement Act of 1937. One of the objectives is to assure consumers that they will have access to adequate and dependable supplies of high quality milk from sources best suited both technologically and economically to supply these demands. To paraphrase, ensure consumers have an adequate supply of fluid milk for consumption. A growing Florida population, along with the challenges and increased costs to serve the Florida Federal Milk Marketing Order, supports the need to update Class I differentials to meet this FMMO objective.

Supply. Farm milk production within the boundaries of the Florida Federal Milk Marketing Order is declining. Only 76.0% of the order's producer milk was

produced in Florida in 2022, compared to 87.1% just three years earlier. Again, this is shown in Table 3.

Let me interject, Florida Federal Milk Marketing Order producer milk volume numbers track National Agricultural Statistics Service (NASS) milk production numbers for the state of Florida. Of the 24 states in the NASS monthly milk production report, Florida had the largest year-over-year milk production decrease in 2022, down 10.9%. In 2022, Florida reported its lowest milk volume since 1984. For the first half of 2023, Florida production is 6.0% lower than the same period in 2022. Again, of the 24 monthly reporting states, Florida has the largest decline.

Table 3 shows Florida Federal Milk Marketing Order producer milk by state, from 2018 through 2022. And, again, you can see in the third column how the percent of the milk from Florida -- Florida produced as a part of the total order producer milk has declined while other states has increased.

Higher milk production expenses, ongoing environmental challenges and related expenses, opportunity costs, urbanization, and lower on-farm margins are reasons for declining Florida milk production. Compared to most other parts of the country, a higher percent of a Florida dairy farm's operating expense is feed. This is because a high percent of Florida's dairy feed and crop inputs imported into the state.

Due to Market Administrator confidentiality

policies, actual milk volume for each state in the "other states" category, Table 3, is not available. However, based on SMI milk marketings and personal knowledge, I can confidently state over 90% of the "other states" producer milk comes from South Georgia.

Historically, South Georgia served as a reserve milk supply for the Florida Federal Milk Marketing Order. Due to declining Florida milk production and increased milk production in Georgia, South Georgia is now a regular milk supplier to the Florida Federal Milk Marketing Order. Georgia milk production has increased in recent years.

In discussions with Georgia dairy farms, most expanded due to lower margins per unit. No different than dairy farms anywhere, more units of production are needed to cover fixed expenses. Also, South Georgia is more conducive to dairy farming and dairy expansion compared to other parts of the Southeast.

Due to closure of many pool distributing plants, especially in the Southeast Federal Milk Marketing Order, the distance to fluid milk plants and the associated milk hauling costs are major concerns to South Georgia dairy farmers. It will weigh heavily on their decisions for future expansions.

It is about 300 miles from the center of the South Georgia milk supply to the closest Florida Federal Milk Marketing Order pool distributing plant. Using May 2023 SMI farm-to-market producer milk hauling charges, the cost to transport a tanker of farm milk 300 miles is $3.30 per

hundredweight.

The Act states a primary standard for establishing Class I prices is the relationship between milk supply and demand in the marketing areas. Meeting Class I demand is vital to the Federal Milk Marketing Order system to ensure it carries out its primary objectives.

Based on the data presented for the Florida Federal Milk Marketing Order there is:

1. Not an adequate volume of producer milk within the marketing area to meet the Class I demand;

2. An increasing volume of milk located outside the marketing area is regularly transported into the Florida Federal Milk Marketing Order to meet the Class I demand.

These two challenges support updating Class I differentials in the Florida Federal Milk Marketing Order to ensure Class I demand is met and orderly marketing conditions are maintained.

Proposed Class I differentials. Florida Federal Milk Marketing Order pool distributing plants are in three different geographical areas. The areas and their current and proposed Class I differentials are shown in Table 4.

And you see in Table 4, I have the pool distributing plants broken down into three areas. The first is what we call the Interstate 4 corridor. That runs from Daytona Beach on the Atlantic side, runs down southwest to the Gulf to Tampa. Current Class I differential is $5.40 a hundredweight; the proposed is

$7.30 a hundredweight, or an increase of $1.90 a hundredweight.

The second area I have listed is Sarasota. But let me add, for several months now, the one plant in the Sarasota area has not been a fully regulated plant. It's only been a partially regulated plant. The current Class I differential there is $5.80 per hundredweight, proposed is $7.50 per hundredweight, an increase of $1.70.

The other two pool distributing plants in the Florida Federal Milk Marketing Order are what we call the Miami/Palm Beach area. This will be on the southeast coast on Interstate 95, from Deerfield Beach, and about 30 miles down to Miami.

The current Class I differential is $6, we proposed $7.90, proposed increase of $1.90 per hundredweight.

The Interstate 4 Corridor and Miami areas include all but one of the order's pool distributing plants. The proposed increase in these two areas is $1.90 per hundredweight. The proposed differential for the Miami area which includes the area from Palm Beach to Miami/Dade is $7.90 per hundredweight. And the proposed Interstate 4 Corridor differential is $7.30 per hundredweight, which includes the area from Daytona Beach to Tampa.

The results of the University of Wisconsin model suggested more variation in Class I differentials in both the Interstate 4 Corridor and Miami areas. However, the historic pricing structure in each of these geographic

areas should be preserved. Pool distributing plants located within each respective area compete for sales throughout the entire territory.

Having more than one Class I differential in each respective area has the potential to create raw milk price inequities, disrupt flow of raw milk, and create disorderly marketing. To maintain orderly marketing and historical norms, we propose keeping the same Class I differential throughout each of the two respective areas, $7.30 per hundredweight in Miami and $7.90 per hundredweight in the Interstate 4 Corridor.

We also propose preserving the location differential between the Miami and Interstate 4 Corridor Class I differentials. Since May 2008, it has been $0.60 per hundredweight. Experience tells us this is an equitable and workable price difference. There are less pool distributing plants in the Miami area today compared to previous years. Florida's largest milk producing area is located between Miami and the Interstate 4 Corridor. Raw milk from this area moves to pool distributing plants in both geographic areas. The $0.60 per hundredweight differential facilitates a more orderly flow of milk.

The proposed increase in the third area, Sarasota, is $1.70 per hundredweight. Its proximity to the Interstate 4 Corridor area, and there not being a pool distributing plant in that region in May 2008 when Class I differentials were last updated, is the reason for the smaller increase.

Again, as I stated just a few moments ago, the one plant there for most months this year has been only a partially regulated plant, not a fully regulated plant.

Alternative milk supplies are considered when establishing Class I differentials. The closest pool distributing plants to the Florida Federal Milk Marketing Order are in the Atlanta, Georgia, metropolitan area. The NMPF proposal calls for a $5.95 per hundredweight Class I differential in the Atlanta area.

The approximate distance between Atlanta and the Interstate 4 Corridor plants is 440 miles. As of May 2023, a conservative cost estimate to transport a gallon of packaged milk from to Atlanta to the Interstate 4 Corridor is about $0.22 per gallon. The $1.35 per hundredweight difference in the proposed Class I differentials, $7.30 per hundredweight versus $5.95 per hundredweight, equates to $0.12 per gallon, which is $0.10 per gallon less than estimated transportation cost. Said another way, the cost to transport packaged fluid milk from the Atlanta area to the Interstate 4 Corridor is greater than the Class I differential slope.

Five of the top U.S. milk producing states -- Indiana, Kansas, Michigan, Ohio, and Texas -- have the potential to provide alternative raw milk supplies for the Florida market. These were analyzed using March 2022 Federal Milk Marketing Order blend prices, plus the estimated blend price increase resulting from the NMPF proposal updated -- proposed updated Class I

differentials.

Estimated blend price calculations were performed by USDA's Dairy Division. The results show differences between blend prices, along with the cost to transport milk from those states to Florida, would be insufficient to move milk economically.

For both packaged fluid milk and farm milk, my analysis shows --

THE COURT: Mr. Covington?

THE WITNESS: Yes, ma'am.

THE COURT: Re-read that last sentence of that paragraph, please.

THE WITNESS: The results show differences between blend prices, along with the cost to transport milk from those states to Florida, would be insufficient to move milk economically.

For both packaged fluid milk and farm milk, my analysis shows adopting the NMPF proposed Class I differentials in the Florida Federal Milk Marketing Order does not provide a price advantage from alternative suppliers. The Act states, "Milk purchased from producers or associations of producers shall be uniform as to all handlers subject to certain adjustments including location." This vital requirement in the Act helps maintain orderly marketing.

In my experience working with fluid milk buyers, a common concern among them is that their competitors have equal raw milk product costs. This is due to raw milk

being a high percentage of the cost of packaged fluid milk at a plant's loading dock. Granted, there are over-order premiums charged to most fluid buyers throughout the country including Florida. In the Florida Federal Milk Marketing Order, over-order premiums do not adequately cover the expense of serving the market.

Fluid milk buyers are concerned about the impact higher over-order premiums may have in creating unequal raw milk costs, possibly giving one processor an advantage over another processor. This creates a challenge in establishing over-order premiums at an adequate level to cover the expense of serving the fluid milk market.

Increasing the fluid milk price by increasing the Class I differential throughout Federal Milk Marketing Orders provides fluid milk processors greater assurance of equal raw milk costs. Milk buyers have confidence in the enforcement of minimum prices, which helps to maintain orderly milk marketing.

Summary. Current demand and supply conditions in the Florida Federal Milk Marketing Order warrant an update in Class I differentials. Demand exceeds the producer milk supply within the marketing area. More producer milk is being transported into the marketing area to meet fluid demand, in part, a function of the population increasing. Alternative milk supplies would have no price advantage imparted to them by adopting the NMPF proposed Class I differentials.

We are optimistic the NMPF proposed Class I

differentials will help improve the profitability of Florida dairy farms, thus slowing the exodus of dairy farmers within the marketing area. The proposed Class I differentials will help ease the transportation cost burden on farm milk coming into Florida from outside of the marketing area and encourage the continued availability of that milk for the Florida Class I market.

Increasing the Class I price through higher differentials gives fluid milk buyers a greater level of confidence they are competing for raw milk on a level playing field, thus, maintaining orderly milk marketing.

More importantly, the NMPF proposed Class I differentials for the Florida Federal Milk Marketing Order will help provide Florida consumers with an adequate supply of fluid milk for consumption, A fluid milk supply for Florida consumers that does not have to be transported into the marketing area from hundreds of miles away.

Southeast Milk, Incorporated, expresses its appreciation to the Secretary of Agriculture and the Dairy Division for holding this hearing to consider these important proposals. We encourage the Secretary to recommend the adoption of Proposal 19, update Class I differentials throughout the U.S.

Respectively submitted.

BY MS. HANCOCK:

Q. Thank you, Mr. Covington. And I apologize. Mr. Sims said that I misstated your name earlier, so I think my coffee hadn't caught up to me yet.

So I thought I would just follow up with just a couple of items.

You talked about in your -- page 3 of your testimony that there's a cost in managing swings in demands of milk. I'm wondering if you would be willing to share what Southeast Milk's balancing costs are.

A. Yes, ma'am. For -- go back, starting in -- in the year 2000, each month Southeast Milk keeps detailed costs on what it costs to balance its milk supply. And we track those to try to make improvement, and also share each month with the membership and the Board of Directors.

Through January of August of this year, so we're talking about the first eight months of this year, the average balancing cost for Southeast Milk has been $1.33 per hundredweight.

Q. And what does the balancing cost include?

A. The balancing cost includes a number of factors. And let me -- I'll try to get most of them.

If we have to purchase supplemental milk, what that milk costs us compared to what we are paid for it generally is going to be a loss, and so that loss is considered a balancing cost. If for one-tenth of 1% of the time it happened to be a plus for some reason, yeah, it then would be a positive. So, supplemental milk.

Surplus milk. When we have more milk than what we need and what we can hold through horizontal storage for 72 hours, we have to do something with that milk, and that milk has to go to a non-pool plant. And what our goal is

today is try to recover at least the transportation cost of what it takes to get that milk there, a little bit more. If not, we're just going -- unfortunately we end up dumping that milk.

So -- and we compare what we received for that milk to the Federal Order 6 uniform price adjusted for location, and whatever that loss is, goes in -- is considered a balancing expense.

Another big category is what we call diverted milk cost. Each dairy farmer is assigned a primary market, and their hauling cost is calculated from their farm to that market. There are going to be times that that market cannot take that milk, the plant might be closed, we have ups and downs. So that milk has to be diverted to another market, and generally that market's going to be a greater distance. We do not charge that farmer that extra distance. That extra cost goes into our balancing expenses that's shared by all dairy farmers.

Then the next category, and a term I'm going to use, I'm going to call it staging milk. And this is one that we're trying to get better at, and it involves a lot of horizontal storage, buying extra milk tankers.

From when that seal goes on that milk tank at the farm to that seal is removed at the plant, we have 72 hours. And we have tried to help work on improving milk quality, get the milk colder going on the tanks, making sure that they are full, so we can hold that milk the maximum 72 hours if we have to.

So some days, especially on holidays, we might be holding 50, 60, 70 loads of milk. All right? So we have to have extra tanks to do that. All right?

Also -- and that's a cost.

And then also we're encouraging more and more of the dairy farms to have direct load. And what I mean by direct load, they have facilities set up. So when that milk comes out of the milking parlor from the cows to the milking parlor through the pipelines, it is cooled down. It goes directly into a milk tanker. So we don't have to have somebody go there and hook a hose up to the tank and so forth. It is direct load.

So we stage -- excuse me -- we stage tankers at that farm, and that farm has the means to put the tankers in and out. So we have extra tankers there, and that way we don't have to have our driver right there right then to clean that tank so they can start milking again. So that's an extra cost that goes into balancing.

And then, plants today don't -- do not receive milk 24 hours a day. A lot of them will have 8:00 to 4:00, some of them 8:00 to 12:00, and so forth. So what we did a few years ago, we have yard dogs or yard dog drivers.

So plants will buy the -- just call it a fancy day cab with the license taken off of it. They can shuttle tankers back and forth. So we'll have space at the plant, hopefully the plant gives us space, where we can just take tankers down and drop them.

So when that plant opens up and wants to receive milk, we actually have an employee there that gets in the yard dog, picks up the tanker, pulls it into the receiving place, unloads it, washes the tank, takes the empty out, and then our drivers can just shuttle back and forth. But, again, that's a balancing expense, you know, where we just can't take a taker in, unload, and come back.

So all those go up. That's what makes up that $1.33 through the first eight months of this year.

Q. Okay. And how does the $1.33 per hundredweight for balancing costs this year in 2023 compare to years prior?

A. Well, I'll go back to when I was -- my last -- actually being full-time at Southeast Milk was -- is in 2010. And we have to show these costs each year monthly to our board and membership. There's about a membership meeting every month.

And during that period of time when I left, the balancing costs were running -- I don't have it right down to the penny, I didn't bring all that data with me -- somewhere between 75 and $0.80 a hundredweight. So it has gone up, as you would expect. A lot of it's due to freight, and a lot of it's due, again, as the equipment cost I mentioned, we have added more trailers, just trying to use what milk we have so we don't have to buy more or get rid of surplus.

Q. Okay. Thank you for sharing that.

I'm wondering about your milk supply agreements

that you have. Can you tell me about what types of milk supply agreements that Southeast Milk has?

A. I'm not able to give you the details of the agreements.

The best of my knowledge, every customer that Southeast Milk supplies now on a regular basis, there is a written milk supply agreement with, and those agreements will run from a minimum of one year to multiple years.

Q. And have you ever been in a situation where Southeast Milk has not renewed that milk supply agreement?

A. Yes. Yes, ma'am. Unfortunately that took place not quite a year ago. Some milk we were -- we were putting in, through another cooperative, to another pool distributing plant, we did not renew that agreement. And the reason we did not renew that agreement is because our basics -- our supply in Florida was declining, the milk demand was going up, so that milk was actually further up of our membership in South Carolina. So we had to terminate that agreement and turn that milk around to move it south. Again, we were just getting short on milk in Florida, so we needed to turn it around and move it. Plus by doing that, we get a greater return by going south versus going west.

Q. And do you know if that fluid milk plant has found an alternative supply for its milk?

A. I can't -- you know, I -- I don't want to get into somebody's detailed business. But I do know, since the dairy industry is pretty small, you know where milk moves

and so forth. They had to replace that milk because that plant needed it. The plant is still going, they had sales, so they just had to go further north to get that milk.

Q. Okay. And you said that that happened within -- within the year.

Was that in calendar year 2023?

A. We -- get the dates right. We're in 2023 now. We made that decision about November or December of last year. It was an agreement that would start in January of this year.

Q. Okay. Thank you so much for sharing. I appreciate it.

A. Uh-huh.

MS. HANCOCK: Your Honor, we would make Mr. Covington available for cross-examination.

THE COURT: Mr. Covington, you do amaze me.

I want us to make the change that he noted in Exhibit 342. I go to page 4. There's a table at the top of that page, and below that table is the sentence that we will alter.

Now, are you there, Mr. Covington?

THE WITNESS: Yes, ma'am.

THE COURT: All right. I'm going to leave the last words of that sentence just as they were, which are "its own milk hauling fleet." That was the same --

THE WITNESS: Yes, ma'am.

THE COURT: -- even after you inserted different

words for the beginning of that sentence.

Would you slowly tell me what words go in the beginning of that sentence?

THE WITNESS: "SMI owns and operates."

THE COURT: That change has been made on the record copy.

And then there's a tiny little thing I want to go to, and that's page 8, the second paragraph -- one, two, three, four -- five lines down. There's just a little word we can strike, and that's the word "to," just before "Atlanta."

THE WITNESS: Yes, ma'am. I put one too many "to's" in there, didn't I?

THE COURT: That was a tiny thing, but otherwise, the statement is perfect, so --

THE WITNESS: I appreciate that.

THE COURT: So we'll just strike the "to" just before the word "Atlanta."

All right. I invite cross-examination to begin now. Who would like to come forward?

MS. VULIN: Ashley Vulin with the Milk Innovation Group. And I do have a couple of exhibits, Your Honor, if we want to do a quick morning stretch break.

THE COURT: Perfect idea. Thank you.

Let us come back, ready to go on record at 8:50. That's 8-5-0. We go off record at 8:45.

(Whereupon, a break was taken.)

THE COURT: Let's go back on record. It is 8:50.

MS. VULIN: Thank you, Your Honor. Again, Ashley Vulin with the Milk Innovation Group. I have two exhibits that have been distributed.

Have you gotten them yet, Mr. Covington?

THE WITNESS: No, ma'am.

THE COURT: All right. So which one will be 343?

MS. VULIN: I would ask that we mark the map of Florida Exhibit 343, please.

THE COURT: 343 is the map of Florida, and it's a MIG exhibit. Do you want to give it a number, or no?

MS. VULIN: I don't think we need to, Your Honor, unless you do.

THE COURT: Very good.

(Thereafter, Exhibit Number 343 was marked for identification.)

THE COURT: And then the other exhibit will be 344, and it is also Exhibit MIG-33, M-I-G, 33.

(Thereafter, Exhibit Number 344 was marked for identification.)

MS. VULIN: Thank you, Your Honor.

CROSS-EXAMINATION

BY MS. VULIN:

Q. And you can set those aside, but I printed the map for myself than anyone else. I'm sure you know these counties all so well, but I'm a visual person, so I wanted to have that in front of us so that as we talked about the various counties, we could see where they fit within the state.

So, Mr. Covington, on page 2 said that Florida is one of the few remaining Class I markets in the FMMO system.

Do you recall that?

A. Yes, ma'am.

Q. What do you mean by "Class I markets"?

A. The majority of the milk in the particular marketing area is utilized in Class I.

Q. So the utilization within the order is very heavy on Class I?

A. Yes, ma'am. When I refer to being a high Class I market, you take the total volume of milk of all the producer milk that's utilized in Class I, the majority of it is going to be in Class I. So you can express that as pounds or just take the pounds and divide it by the total producer milk to get the percentage number that I refer to in my testimony.

Q. And you said that's one of the few remaining.

So it's different than many of the other Federal Milk Marketing Orders in terms of its high Class I utilization?

A. Historically, the Florida Federal Milk Marketing Order has the highest Class I utilization.

Q. What is the Class I utilization in Florida?

A. I'll refer back to my testimony there on page 2 that you just mentioned. Currently through August, the Class I utilization for this year to date was 83.11%. It's in my testimony.

I'm trying to recall -- September just came out yesterday. You could -- the Market Administrator is here. You can ask him what September was, but it was somewhere, give or take, plus or minus. And as I stated in my testimony that you just referred to, the average annual Class I utilization has exceeded 82% every year since 2000.

Q. Thanks for pointing me back to those numbers.

And we had talked about that being different than other orders. Many other orders have closer to 20 to 30% Class I utilization; is that right?

A. If -- we can do one of two things: You can find many, or I can just give them to you if you would like, if that would be helpful.

Q. Sure. Thank you.

A. And I can be off on some of these, because I'm going from memory now. You know, they are easy to find.

If you go to the Southeast order, the Southeast order is going to be somewhere between 76 and 77% Class I utilization. Again, I can be off two or three points.

The Appalachian order, it stays somewhere just a point or two below the Southeast order. All right?

Then we -- then we go -- then after you leave those three, you are going to start falling below 50%.

The Northeast order, I'm trying to remember, I think it stands somewhere in the 40s, but don't hold me to that.

Then you start coming across to the Mideast order.

You are going to be somewhere in the 30s.

Upper Midwest order, down about 10%.

You're going to come on down to the Central order. You are somewhere in the high 20s to low 30s.

Texas -- excuse me -- Southwest order, you are going to be up, I think in Texas -- again, don't hold me -- I'm going on memory now. It is below 50, somewhere around 40.

You are going to get over to Arizona. You are going to be somewhere around 20.

California, somewhere probably in 20.

And you get on up into the Pacific Northwest, somewhere probably in the 30s.

But, again, that data is very easily available. I'm going on memory.

Q. And I am just trying to orient us that there is a very wide spread in the utilization amongst all the orders, correct?

A. Ever since there'd been -- if we go back since 1960, when we had the big growth of Federal Milk Marketing Orders, we have had a wide spread in utilization. And because this country is so big, it's got a wide variation in dairy.

Q. And you mentioned Order 30. That sometimes even drops below 10%, right?

A. Again, the number I gave you, I'm going on memory. That data is very easily available if we want to get the exact number. I can't remember it month by month.

Q. And the reason I'm asking this is because when we're talking about using the Class I price in order to attract milk to a marketing area, or otherwise manage price inversions, that's going to play out very differently in orders with very high Class I utilization versus orders with very low Class I utilization, correct?

A. Ma'am, I'm sorry. I don't quite understand your question there.

Q. The reason I wanted to ask about utilization is because we're talking about Class I prices, right?

A. My proposal -- my testimony dealt with Proposal 19, which addresses updating Class I price differentials.

Q. And because you are -- because Order 6 has such high Class I utilization, the Class I price will have more of an effect on the overall pool than it would in an order with low Class I utilization, correct?

A. Yes, ma'am.

Q. And so when we're talking about the prices and the impact they have in Florida, that's going to play out very differently than how Class I prices may impact the order in Order 30, correct?

A. Yes, ma'am.

Q. And are you here today -- is your testimony here today that there are inadequate volumes of producer milk in every order or just in Florida?

A. My testimony concentrated on Florida. That's what I have knowledge about. There will be other witnesses

that's going to address other areas, and I don't want to get into their testimony. And I know you want accurate information. So I feel a lot more comfortable that the people who are actually marketing milk in those areas can do a lot better job of answering that question than I can.

Q. So we'll limit your testimony then to the Florida area.

A. Yes, ma'am. That's what I have more knowledge about.

Q. And you say on page 5, you talk about some of the challenges or expenses that farmers in Florida face. And you say, "Higher milk production expenses, ongoing environmental challenges and related expenses, opportunity costs, urbanization, and lower on-farm margins are reasons for declining Florida milk production."

Do you recall that?

A. Yes, ma'am. That's on page 5 in my testimony, the second paragraph from the bottom.

Q. And so it seems to me that a lot of those challenges are factors that are outside of the FMMO system; is that right?

A. No, ma'am.

Q. Urbanization is not something that is a factor outside of the FMMO system, or is that something you would expect USDA to address?

A. I don't expect USDA to address where a person's going to build a house or put up a warehouse. However -- and you can talk to dairy farmers in Florida. You've got

dairy farmers now that could sell their operations for a housing development, but they are still getting by. And they've got to make a living somehow, and so they are still getting by, you know, potential profit from milking cows. They got to weigh the opportunity costs.

But you get to a point where if milk prices get so low, hey, I got to feed my family, and here's somebody that wants to buy it for development, so they -- neither of them are related. The Federal Milk Marketing Orders are involved in setting milk prices, and milk prices are the main revenue source for dairy farmers in Florida, so that weighs in what I mean by opportunity cost.

Q. And do you expect USDA to set prices based on what the opportunity costs would be to sell the land for development?

A. No, ma'am. That's not what I'm saying. According to the Act, the Class I differentials will help move milk to a Class I market. You got to have a Class I price to help do that.

And if opportunity costs are forcing dairy farmers out of business -- and that's happening all over the world. I mean, that's happening in my little neck of the woods in North Carolina. All right. That's going to happen. Nothing we can do about that. But you got to maintain the milk price if we want to have a food supply in this country. So you got to weigh them together.

So all -- look, all USDA programs are impacting that. They all work together.

Q. And is it your testimony that USDA should maintain the milk price high enough that a farmer will remain profitable or more profitable than selling the land for other use?

A. No, ma'am. That's not what the Federal Order regulations say. The Federal Orders cannot guarantee a dairy farmer a profit. They can't guarantee any farmer a profit. But they need to have programs that will help dairy farmers be profitable. And Federal Milk Marketing Orders, if we go back to why they were established in 1937, that is to help dairy farmers be profitable so they can supply -- see that consumers have an adequate supply of fluid milk.

Q. And you raise other issues like environmental challenges, higher production expenses, and other things.

Do you expect those market conditions to continue in the future?

A. Ma'am, your guess is as good as mine. Seems like throughout my 70-some years of life, costs have always gone up, and they are probably going to keep going up. I could be wrong.

Q. And so when -- when thinking about pricing milk in parts of Florida where there are these competing challenges, right, the value of land for development, environmental concerns, production costs, is there a price or a level of expense at which you would believe it would not make sense to continue raising the price in order to make milk production there profitable?

A. No, ma'am. I couldn't put a number on that. That's going to vary. I don't know how much time you've spent in the agricultural land of Florida, of the state of Florida but -- have you spent much time in Florida?

Q. A little bit. I'm from the other side of the country though.

A. Okay. Well, if you get away from the coast in Florida, and you get away from Disney World, Florida is pretty rural. I mean, there's just not much else you can do with it. It's very, very rural, very -- a lot of agriculture in it.

And so what you have had -- and if you would talk to a lot of dairy farmers, I wouldn't say most, but a number of dairy farmers in Florida, what they have done, they have relocated. They have been in an urban area, and they want to keep farming, and so they just move to a more rural area. I can -- probably half of them are like that down there.

So they can accommodate the situation of all these things, but it is pressure on them. But yet the Federal Order system, we need to have a Class I price that's going to be adequate to help them with income, to make sure we get those 22 million consumers in Florida an adequate supply of fluid milk.

Q. And speaking of that, so you had talked about the milk servicing the Florida market as shifting from coming from Florida to coming more from South Georgia; is that right?

A. Yes, ma'am. I -- I refer to that in my testimony. I got to find the -- I think I talk about that starting on page 5, going into page 6.

Q. And so this shift in production of milk, servicing the Florida market, coming from Florida versus South Georgia, is it a bad thing that it's coming from South Georgia now? Is that something you think USDA should prevent?

A. No, ma'am. I didn't say that was a bad thing in my testimony. I did not say it was a bad thing.

Q. And so then if it's not a bad thing, aren't the current prices doing what they need to do to ensure service of the fluid market in Florida?

A. We have to think long-term. As I had in my testimony there, had in my testimony, that milk moves a long distance. A long distance. And because of the conditions I mentioned in my testimony about South Georgia, for the foreseeable future it is going to be conducive to dairying, but yet there's got to be a profit. Those guys are not going to make milk unless it's profitable. Their big concern is how far their milk has to move, and with costs continuing to go up, especially transportation costs, as I mentioned the balancing costs, which those dairy farmers pay, that concerns them.

So if we want to keep that South Georgia milk supply, we got to assure that the Class I differentials are adequate to encourage them to keep in business to move that milk to the plants.

Q. And why do you believe supply and demand market forces won't do that? You gave us the example of the plant who is now pooling their milk after you cancelled the contract in place, pulling their milk from elsewhere. And why do you believe supply and demand forces won't solve that problem?

A. Ma'am, I want to correct you first. We didn't cancel the contract.

Q. I didn't mean to misstate that. I apologize.

A. I want to get it on the record. You can go back and read. We said we just didn't renew it.

Q. Thank you.

A. And I gave the reasons for that. We did not cancel it.

Q. Okay. Thank you for the clarification. And I -- as I said, I didn't mean to misstate your testimony.

But I would still like to pose the question: Why can't we rely upon supply and demand forces to solve the question of bringing milk down from South Georgia versus having it produced in Florida?

A. We keep on moving milk a greater distance, and the plant where we -- we did not renew the agreement, they have had to go further to get that milk. The more further you move milk, the greater cost it is to do it. And we're better off to have a local supply of that milk. And if we want to have a local supply, we've got to give encouragement to those dairy farmers to keep them in business.

And that's one of the reasons why we're here at this hearing proposing why I'm here, for higher Class I differentials, to help keep dairy farmers in business, so we can supply milk, so we don't have to keep going another hundred miles, 200 miles, 300 miles to transport milk. One of these days we're going to get to a distance where it's just not feasible for a variety of reasons to move milk.

Q. Why isn't it a rational decision, though, to let that plant make that decision, that they can pay more for the local milk or they can pay a higher hauling cost or a premium or a fee to bring the milk in from further? Isn't that a rational economic decision that a plant can make?

A. Well, again, if you look at the economics of it, and I don't know how much you have done on calculating costs, what we're talking -- and, again, I go back to my testimony where I compare it to alternate supplies. And, again, if we look at the impact of increasing these Class I differentials on the Florida market, yes, it raises the farm -- the milk price. No argument there, it raises the milk price.

But you can compare it to alternate supplies where there would be enough availability of milk, and the cost to move that milk or transport that milk is still more economical for the those pool distributing plants to pay this higher -- what we're proposing, higher Class I differential, than the distance it cost -- than the cost to move that milk.

Q. Then if they are rational actors, why wouldn't they then be advocating for higher minimum prices? The plants are saying, no, we'd rather handle it ourselves and pay to move the milk. Doesn't that presume something that there's no facts in the record to support?

A. Ma'am, I -- your question says that the processors say they don't want to pay minimum prices. Again, I guess somewhere I have missed that testimony.

Q. Let me rephrase the question maybe a little bit more clearly. If you are saying that it will be more affordable for processors to pay a minimum price that is higher versus paying for the milk, isn't that something we can leave to a rational processor who is making rational economic decisions to decide and manage through over-order premiums?

A. No, ma'am. I'll go back to my testimony. And, again, I don't know how many large milk processors you have talked with, but I have conversations where -- with a lot of them, as I had in my testimony. But since raw milk is such a high percent of that cost of that finished product at the docket, they want to make sure they have equal raw product cost. And the processors I talk with they know they got to keep farmers in business, because if they don't have milk -- I've never seen a milk plant yet that can run without milk. So they want to have milk. They prefer it locally. So they are comfortable with having that in the order price because they know it has enforcement and they know there's equal raw product cost.

Q. And will any of those processors be testifying here?

A. I don't know.

Q. Do you have any testimony -- any evidence of that to submit for us today?

A. No, ma'am. I presented my testimony. I cannot speak for a processor.

Q. Okay.

A. I can only relay the conversations I had that they allow me to relay.

Q. Well, we can certainly ask them that point when they testify.

So I'd like to talk now about the specific development of Proposal 19. We have kind of learned a bit about how the various committees and all of that work, so I don't want to go through the entire process. But I would like to know about your specific involvement.

So can you tell me kind of how you got involved in helping develop Proposal 19 and which committee you were on and how that worked, please?

A. Well, ma'am, I'm -- I guess you might call me a johnny-come-lately. I didn't get -- the process had already started, the task force had already started before I got involved. I can't give you the exact date, but I got involved in the summer of 2022. All right?

And you asked why I got involved in it. There were management changes at Southeast Milk, and the new management that have experience in Federal Milk Marketing

Orders, and I had just stepped down as their interim CEO, so they came to me and said, hey, Calvin would you represent us and be involved in this? So that's how I got involved.

So I could go back. I don't have it here with me, my calendar, and give you exact first meeting I went to, but it's sometime in the summer of 2022.

Q. Had NMPF already run the USDSS model results, either version 1, 2, or 3 at that point?

A. I cannot give you -- I'm just going to have -- I'll tell you what I know. That's all I can do is tell you what I know.

I think it was already in progress. I can't know whether it was on 1, 2, or 3. It was in progress when I started getting involved because it was already being talked about.

Q. And what committee were you on?

A. Well, that is a good question. I wouldn't quite call them committees. We were given tasks. That's the way I would call it. We were given tasks. And the task I was given to start with was my input on Class I differentials for Florida. And then it was even much later, it was only -- it was up -- it was really this year when I was asked to get involved in the milk composition, what we did on Proposal 1. I wasn't asked to get involved in that, probably it was May or -- April, May, or June of this year, and the same time about the higher-of.

Q. And so you were on the task force or the group

that was tasked with developing the differentials for just Florida?

A. That's where I gave the most input. You know, people looked to me, says, Calvin, hey, you know the Florida market. Again, when we had meetings, there was discussion about others, and I was interested in that, because I had to -- we had to keep price alignment. I had already made my recommendations on Florida, but I had to keep eyes what might been going on in other parts of the country to keep things in line. But as far as getting involved and setting the Class I differential for New York or Pennsylvania or California, no, I wasn't involved in that.

Q. And who else was tasked -- or who else did you work with directly on just the Florida differentials? Who else was focused in that area?

A. I was the main one and also had conversations with Jeff Sims about it, Chris Hoeger. And there was somebody from DFA, and I can't recall if it was a local -- if it was Ed Gallagher or maybe Ed had asked the regional manager down there. And then I think Mike John too. And we just had conversations about it over the telephone. Or, well, now that they use --

Q. Zoom?

A. Yeah. Sometimes I always don't hit the right button on Zoom, so I end up being on the telephone, so...

Q. I think that's happened to all of us.

A. Yeah.

Q. So you mentioned Jeff Sims. Was it Chris Hoeger?
A. Yeah, Chris Hoeger.
Q. Possibly Ed Gallagher or someone else --
A. It was somebody from DFA. And I just can't remember, because Ed's been involved, and Ed stays pretty busy. And I'm trying to think of whether maybe Ed had asked -- but I just -- you'll have to ask Ed Gallagher that question.
Q. Will do. Thank you.
And was anyone else as specialized in Florida or was that kind of more your expertise and these people gave input?
A. Well, you know, some of these others, especially DFA, you know, markets milk in Florida, but they -- they are new to it, and I guess they sort of -- since I have been around a long time, I was the oldest guy, they just said, hey, what do you think, Calvin?
Q. So you were the lead expertise on setting Florida differentials?
A. Well, I wouldn't call it the lead expertise, but I provided input, and the suggestions I made were very close to what we come up with.
Q. And you say the suggestions you made. Like to whom? Who took your suggestions and came up with the map?
A. Well, Jeff Sims was the leader of that, and so Jeff did the spreadsheets. But I don't mean to be critical of Jeff, but I think when it comes to making maps, Jeff might not have much more map expertise than I

do, and I think we found somebody, a younger person, to make the maps for us.

Q. So you provided your input on what the differentials should be to Jeff --

A. Yeah.

Q. -- and then he compiled all of that into the spreadsheet?

A. Yeah. And it was pretty simple for Florida.

Q. Why?

A. Well, we only have seven -- at that time, seven pool distributing plants, and that's what we've had to focus on. And those seven plants are pretty much just in two regions as I testified. Even though there are 67 counties in Florida, you know, people are just in a few of them.

Q. Got it. And then you mentioned Mike John as well. Was that -- was his expertise in regard to Order 7 and how 6 and 7 interacted?

A. Well, he markets milk more in the Appalachian and Southeast orders, and they would have to think about alignment. But that's -- that would be a question you would have to ask Mike John.

Q. Understood.

And so looking at your testimony -- and now would be a good time to bring up these Exhibits 343 and 344. As I said, I printed the map. I know you know all of this in your mind's eye, but the rest of us might just know the Disney World part. So I wanted to make sure that we had

that.

And then Exhibit 344 is the data from the USDSS model, then the average, and the proposal. And then we added the columns the difference and the percentage change. And so to avoid having to do math on the fly, provided that here so we could talk about some of those differences.

But just wanted to acknowledge, I know you didn't make this chart, and so not asking you to attest to the accuracy necessarily, but wanted to represent where this data came from and why we have got it here.

So if we could start with Miami-Dade County, which I believe is on page 2 of Exhibit 344. In Row 335 -- and I see here the current Class I differential is $6, correct?

A. Yes, ma'am.

Q. And then the USDSS average is $7.90, correct?

A. Yes, ma'am.

Q. And then you -- the proposal is also $7.90, correct?

A. Yes, ma'am.

Q. And we have heard a lot of discussion about this addition of the $0.60 to the base or to raise the minimum price.

And so what I wanted to know is for this county, why did you not add the $0.60 or otherwise increase the USDSS average?

A. We -- I have a lot of confidence in Mark

Stephenson and Chuck Nicholson. I have known them, especially Mark, for a long time, and I have confidence in that model. So when they put that model out, you know, I'm -- my philosophy is you start at the high point and work down, and Miami is going to be the high point. So I was interested where they came out at Miami. So they came out at 7.90. So I had no reason to doubt them that that 7.90 should be the model number for Miami.

And where you are talking about the starting point, I didn't even think about that, the starting point. I mean, the model that they had, the starting point was 7.90, and I had no reason to doubt that. I knew we would get to a hearing. That's going to need to be supported.

And, again, I know if you read their -- what they wrote about it, there's going to be some variations within the county. You got to use local knowledge. But I was very comfortable with that 7.90. I knew it was going to be a $1.90 increase, but just thinking about things, I was comfortable with that being the starting point.

Q. So even given the challenges that we have heard quite a bit about and that you have testified to about, about attracting milk in Florida and keeping milk production in Florida, you feel that the USDSS model is sufficient to meet those needs?

A. The term I would use, it's reasonable. And especially when I consider we had the increase, Miami had the largest increase back in 2008 as well, and putting all those factors together, and I knew there had to be price

alignment, that USDA looks at price alignment, I felt that 7.90 was a reasonable number.

Q. And you mentioned price alignment. So to the extent other places in the country, the differential was being raised by tacking on $0.60, or something around that, why did you not feel for price alignment you needed to do the same in Florida in order to maintain the slope amongst all the areas in the country?

A. I have confidence in the model, and the model results showed that Miami was 7.90, so I was comfortable with that 7.90.

Again, about tacking on numbers, I mean, I'm sure you have already gone through it. We had some ups and downs, just trying to get things in Florida, we weren't exactly on the model number, but to try to be reasonable. And I'm sure in other parts of the country, if they went above or below, they made those same considerations.

Q. And you mentioned going above or below.

Do you have any intent to only go above and below by a certain amount? Were you trying to keep those adjustments minimal or were you willing to adjust however much you thought appropriate?

A. Well, based upon the results in Florida, since they were fairly close, the adjustments we made are relatively small just because of the numbers we had to start with.

Q. Got it. So because you kind of came up with your adjustment philosophy once you saw the USDSS results; is

that right?

A. Well, we had to have a starting point. I mean, I -- we had to have a starting point. So, again, my -- I'm probably a little different than other people. I like to start at the high place, because you can't go much further than Miami when it comes to delivering milk and work your way back.

Q. And then you talk about the Daytona Beach/Tampa area that you describe as the Interstate 4 Corridor, correct?

A. Yes, ma'am.

Q. So for those of us who aren't from Florida, what counties are you referring to when you talk about those?

A. Well, I'll tell you what, if you don't -- can I use this as a cheat sheet?

Q. The map? That's what it is intended for.

A. Well, I don't want to misspeak, and I can get them in line here a little better.

Where -- what side of the -- you want to start on the Gulf or you want to start on the Atlantic?

Q. You get to pick.

A. Well, let's just start up there on the -- on the -- on the Atlantic side. Hang on here just a minute.

THE COURT: And just so everybody knows, the, quote, cheat sheet, the map, is Exhibit 343. That's where we're looking.

THE WITNESS: Okay. If you'll look on up here, Volusia County, the Interstate 4 starts where it

intersects Interstate 95, right somewhere north of Seminole and right east of Lake, Interstate 4 Corridor. And it runs from there, down -- come on down -- and Tampa is Hillsborough. So just come right straight down. It's going to run down through part of Lake, Orange, and Polk, and Hillsborough, and it's going to stop there about Tampa Bay.

BY MS. VULIN:

Q. And what county is Tampa Bay in?

A. Tampa Bay technically is going to be in two counties. It's going to be part of Hillsborough and then part of the Santee County (phonetic).

Q. I don't see a Santee on there. Is it too small for our map?

A. Oh, excuse me. Manatee. I'm sorry.

Q. Manatee.

A. You can see better than I can.

Q. That helps. Thank you.

So I looked at some of those counties. And Hillsborough, the model USDSS average was $7.30, which was also your proposal.

But Polk and Orange and Osceola -- did I say that correctly?

A. Osceola, yes.

Q. -- those had some variations. You can look at Exhibit 344 to confirm, but looking at Polk, the model said 7.35, and you said $7.30. Orange, the model said $7.25, and you moved that to 7.30. So one of those went

up; one of those went down. And then Osceola, the model said $7.40, and you also moved that to 7.30.

And so what I wanted to know is given the trust in the model and all of the data that went into it, why make those changes to all of these counties?

A. Ma'am, first of all, I need you to go back. Did you say Osceola was 7.40?

Q. I said Osceola, the model was 7.40, and you proposed $7.30. Is that correct?

A. No -- no, ma'am. That's not correct, what you said.

Q. Okay. Please tell me what -- what the correct --

A. Go to your sheet there and look at Osceola on your sheet.

Q. Uh-huh. And what -- what do you see as the average?

A. We proposed $7.30.

Q. I thought that was what I said.

A. Well, if I did, I misunderstood.

Q. Apologies. We have had a lot of numbers.

A. And, again, there's no plant in Osceola anyhow.

Q. Okay. So -- but, again, the question stands, given that the model did generate differences in those, why make them all the same?

A. Okay. Well, again, you go back and read Mark Stephenson's work, and Mark says, well -- and I'm paraphrasing him now -- he says, you people who market milk in that area, there are going to be some adjustments

made because you know where the plants are and you know where the milk moves.

And historically, that I-4 Corridor, and all the plants are either a mile or two of that I-4 Corridor. I think the furthest one away might be ten miles. They all are in the same marketing area. They all compete for sales from the same -- in the same area. Historically it's always been the same Class I differential for as long as I can remember. And it's the same milk supply.

So, again, putting the art part of it, to keep orderly marketing, it just made good sense to keep the same differential throughout that area.

Q. But when I look at Hillsborough, which you say is where Tampa is located, right, a population center, much closer than Osceola or Polk. Right? And so when thinking about the price going up the further you are from a population center, that seems to make some sense, correct?

A. No, ma'am. You've got heavy population all that I-4 Corridor, heavy population.

Q. And the model takes that into account, correct?

A. It's my understanding -- you need to ask the experts on the model. I'm no expert. I think it takes in account consumers.

Q. And then thinking, again, about kind of these model inputs and the $0.60, the inputs for the model that generated the differentials in Idaho or California, those are substantively the same inputs or variables that generated Florida differentials, correct?

A. Ma'am, I'm no expert on the model. You'd need to ask the model experts on that. I don't want to misspeak.

Q. But are you aware of any differences in the variables that are taken into account in Idaho or California versus Florida?

A. Ma'am, I would think the fuel cost in Florida -- I know the fuel cost in Florida is different than the fuel cost in Idaho and California, because I know fuel is put in there. But the other variables, I don't want to misspeak. You need to ask the experts on that to get the right answer.

Q. And talking about adjusting these counties so that they are all at the same $7.30, you talk about maintaining the competitive relationship, correct?

A. Not correct. But what I'm talking about, maintaining equal raw product cost.

Q. And why is it important under the FMMOs -- let me -- strike that. Let me restate that.

Is competitors having raw -- different raw product costs disorderly marketing?

A. Well -- well, ma'am, the raw -- raw milk is such a high percent of the packaged price of milk there at the dock. I mean, that is -- that's the highest percent. We're talking about 75 to 80% of that cost. And since milk -- there's a reason milk is priced the four decimal points, because the margins are so small.

And so if you have a variety of difference -- of equal raw product costs, that could give one processor an

advantage over another, or a disadvantage.

Q. And I understand that and appreciate that, but my question is somewhat different. So is that advantage or disadvantage, as generated by the USDSS, is that disorderly marketing?

A. I think we're talking about two different things, and I want to make sure -- and you're -- I guess I disagree with the premise of your question.

The model -- and I can't remember all the big words for the model, but I'll call it the University of Wisconsin model, if that's okay -- it is a model, a guideline. And it's -- again, when I read what Mark Stephenson had wrote -- and, again, when I have had conversations years ago with Mark about the model, he says, Calvin, it's a guideline to use. It's going to be up for you people in the marketing area to make the adjustments that you need to make sure that you can have as orderly a market as possible, including trying to keep equal raw product cost. And that's what I did in what I -- in the proposal that I had input on.

Q. And that's my question, is your decision to adjust the model, right, to reflect what you believe the market should be at, are you doing that because competitors having different prices is, you believe, something that FMMOs should not have or allow?

A. If you go back -- and, again, I'm going on memory. I don't have my copy with me -- but the Agriculture Marketing Agreement Act of 1937 has wording in there --

and I think I quote part of it here, out of the -- from the Nourse report -- that handlers or buyers of milk within the same marketing area, subject to location, need to have equal raw product cost. So that is a fundamental of the Federal Milk Marketing Orders.

Q. But the handlers need to have equal product costs or --

A. Raw product cost.

Q. -- or that the farmers are paid uniform prices for those raw products?

A. Both.

Q. Both.

And so you believe that it's a purpose or goal of FMMOs to ensure that competitors have equal raw product costs within similar areas?

A. No, ma'am. I don't believe. I have strong, very strong -- again, go back and read Federal Milk Marketing Orders, go back and read the Agricultural Marketing Agreement Act, go back and read the 1962 Nourse report, it makes it plain there that purposes of Federal Milk Marketing Orders is to maintain orderly milk marketing. Well, one of the ways that you maintain orderly milk marketing is through the uniform price, the blending, and minimum prices of Class -- minimum prices, so handlers, similar locations, would have equal raw product costs. So I don't believe it, it's there.

Q. So, yes. Yes.

A. Amen, that's what I'll say.

Q. So I would like to talk then about over-order premiums if we could a little bit more. You say in your testimony that in Florida over-order premiums are not adequately covering the expense of serving the market.

Do you recall that?

A. That was in my testimony.

Q. Uh-huh. And has -- has SMI ever negotiated an over-order premium with a Class I plant?

A. Yes, ma'am.

Q. How -- how frequently does that happen? If you could tell me the percentage of agreements that you have, that SMI has with fluid milk plants, 50%, 80, 20? Can you give me a rough estimate, please?

A. All the agreements that Southeast Milk has, has over-order premium in it.

Q. So when --

A. Can I finish?

Q. Oh, please. I'm sorry. I thought you were done.

A. The -- and I don't know how familiar you are with milk agreements. But the milk agreements do not list -- at least the one Southeast Milk is -- does not list a price, per se, and there's a reason for that. It says that the price would be the applicable price for the Federal Milk Marketing Order, and it would be the prevailing over-order premium in the market. Again, we get back to maintaining equal raw product cost.

And so we're constantly working -- again, that's part of the job as a cooperative to try to do the best job

you can to market your members' milk. And since milk covers such a big area now -- again, you have heard previous testimony, cooperatives participate in marketing agencies in common, which is allowed, and we all have to agree on the over-order premium to maintain equal raw product cost.

So, again, the agreements we have that is going to be the prevailing over-order premium, but the cooperative will ensure that that price will not be greater than what the prevailing price is in the market.

Q. So just to make sure I have got the answer, in 100% of SMI's agreements with Class I processors, SMI has negotiated an over-order premium?

A. No, ma'am. That's not what I said.

Q. I thought you had said in every agreement.

A. In every agreement we don't -- every agreement, it has the terminology that I just mentioned, that Federal Order minimum price and then its prevailing over-order premium but not a specific number.

Q. Okay. So in 100% of the agreements that SMI has with Class I plants, SMI has negotiated the concept of an over-order premium but not a specific number?

A. No, ma'am. I wouldn't phrase it that way.

Q. Okay. I'm just trying to get us to some -- some tighter answer so that we can move through on the same page. I'm not trying to misstate your testimony. But didn't you just say that the marketing collective negotiates language regarding the over-order premium -- or

negotiates the price and that you put language in the agreement that ensures that price?

A. No, ma'am. I didn't say that.

Q. Okay. Say it one more time then for me, please.

A. The agreements that we have with our buyers of our milk, we talk about price. It is going to be the applicable Federal Order price there. And then that the prevailing over-order premium -- I think that's the word we have in the language, prevailing. I don't have a copy here in front of me, prevailing. And, again, also we have language that the price we charge them will not be greater than what the prevailing price is in the marketplace, again, to maintain equal raw product cost.

Q. So this language, prevailing over-order premium, is included in the 100% of SMI's agreements?

A. We have -- I'm trying to think -- I -- if we use -- it's been a few years since I wrote one, and I'm trying to think if we use the word prevailing or if it is another word we used. I'd have to go back and look at an agreement to see if that's exact -- it is the same concept as the word prevailing.

Q. And this prevailing over-order premium is some amount above the minimum Class I price?

A. The definition of over-order premium is an amount above the minimum Federal Order price.

Q. And has SMI ever passed along a fuel cost or a hauling fee to a Class I processor plant?

A. It has passed along a few surcharge.

Q. A fuel surcharge.

What percentage of time does SMI pass along -- estimate -- what estimated percent of time does SMI pass along a fuel surcharge to the Class I plants it sells its milk to?

A. For -- for several years, when fuel start going up back in the 2000, 2006, it went on for several years, then it came to a stop -- boy, I'm trying to remember the exact years -- it came to a stop somewhere around the middle of the last decade, then it went several years where there was not one. And it's only been, I think, in the past year where one has gone back in. But I am giving you the approximate dates. I'd have to go back -- I just can't remember those dates from memory.

Q. And when SMI is passing along a fuel surcharge, does it pass along that fuel surcharge to all of the Class I processor plants purchasing its milk?

A. Again, we treat 'em all the same.

Q. Does SMI have any agreements with any Class I processor plant that does not contain a fuel surcharge?

A. Just as I testified, we treat 'em all the same.

Q. So they all do contain a fuel --

A. As I have testified, we treat 'em all the same.

Q. So, yes, they all contain --

A. We treat 'em all the same. I don't know -- yes, we treat 'em all the same.

Q. I -- it is much clearer for the record if I can get a yes or a no to the question, because then we can

read and make sure that we are understanding each other. So I'm not asking repeatedly in order to -- to be difficult. I want to make sure that our record is very clear.

So when you talk about increased hauling expenses, do you intend that testimony to support the $1.60 base in the USDSS, the increase from current differentials to today? How does that fit in with the differentials you are proposing in Florida?

A. My testimony laid out a proposed increase in differentials, again, $7.90, and the Miami market go up $1.90, the I-4 Corridor also going up $1.90. And the transportation information that I included in my testimony was to support that increase.

Q. The $1.90 increase?

A. Yes, ma'am.

Q. And it's not meant to support necessarily a uniform $1.90 increase. It is meant to support the increase in each respective county from the prior differential to the present; is that right? Or is it meant just to support the $1.90 increase in I believe it was Miami-Dade?

A. What my testimony -- I -- I didn't list every county. I focused on the counties where there were pool distributing plants, because I -- which I felt that was the most important to be talking about, because that's where the plants were located at. I realize that every county is assigned a Class I differential.

And, again, you can look at all 67 of them and Florida. When those were signed, we tried to keep a straight line or whatever going back, because I will have to admit, when they were adjusted in 2008, and also they were adjusted in 2000, you're going to have a few counties you're going to question how they got that particular number, and who knows, it could have been a key punch error or whatever.

So I have full confidence in USDA when they look at this, if we see other counties, especially north of I-4 where there are no pool distributing plants, if we've got one that should have been $0.10 higher or $0.10 lower or whatever, we want it to be feathered properly.

Q. And so you --

THE COURT: I'm sorry, be what?

THE WITNESS: Feathered. Feathered. That's a term we use. Feathered. Yes, ma'am. Yeah, you know how feathers on a bird that are thick and thin, and so we call it feathering.

BY MS. VULIN:

Q. I have heard that before.

So then that's a good question. So you did not talk about every county. And I did want to ask, for example, Broward County, which I see down next to Miami-Dade, and if I look at my --

THE COURT: Ms. Vulin?

MS. VULIN: Yes.

THE COURT: Remember where you are. I would like

to take a ten-minute break.

Please be back ready to go at 9:55. We go off record at 9:44.

(Whereupon, a break was taken.)

THE COURT: We're back on record at 9:54.

Ms. Vulin, you may proceed.

MS. VULIN: Thank you, Your Honor. Ashley Vulin with the Milk Innovation Group.

BY MS. VULIN:

Q. So we were talking about some of the specific counties and how those prices were set in NMPF's proposal. I wanted to revisit briefly, though, you had mentioned that Miami was the highest and that you would kind of build out from there, correct?

A. Yes, ma'am.

Q. Yeah. But Miami was not one of the anchor cities that NMPF used in its anchor city approach, correct?

A. To the best of my knowledge -- and I can't remember the definition of anchor city, but I don't consider Miami -- I guess my term is anchor city. It's the end point or the highest point.

Q. Thank you. I just wanted to clarify that.

And for the anchor cities used in the NMPF anchor city approach to developing differentials, none of those anchor cities are cities in Florida, correct?

A. Again, I don't have that list in front of me, and I know you talked about it -- it was talked about yesterday. But to the best of my memory, all the anchor

cities I'm going to say were up north toward the Mason-Dixon line, that direction.

Q. And were those selected before you joined the task force about Florida?

A. I cannot remember. I just can't remember. But I had really no -- no involvement in that. I just can't remember.

Q. And if you could turn then -- we were going to look at Broward County, which is down just north of Miami-Dade. So if I'm looking on the county map on Exhibit 343, I see it there. And then it's Row 298 in Exhibit 344.

Do you see that?

A. Yes, ma'am.

Q. And this is a county where the USDSS average was $7.80, correct?

A. Yes, ma'am.

Q. And you proposed in Proposal 19, $7.90, correct?

A. Yes, ma'am.

Q. A $0.10 increase for that county --

A. Yes, ma'am.

Q. -- correct?

And I didn't see that discussed anywhere in your testimony. Was it in there, or did I miss it?

A. I didn't give specifics. What I -- now, I'll be glad to give you specifics now. I mentioned in the model -- excuse me -- in my testimony, when we got down to the Miami area -- I call it Miami area. Really the Miami

area runs all the way up to West Palm Beach, which includes Broward County. And I said the model had different numbers for those counties.

There's only -- unfortunately there's only two pool distributing plants left down there, unfortunately. And the model called for one of them being 7.90, one of 'em being 7.80, but they are not that many miles apart as we think of it in Florida. Historically, all that area has been in the same -- has the same Class I differential. There are competing in the same marketing area. It's the same milk that supplies both plants.

And, again, I used the same reasoning I did on the Interstate 4 Corridor. It made good sense to keep that area in the same Class I diff- -- with the same Class I differential, not having variation from county to county, as it has been since the first Federal Orders were implemented down there in the 1950s.

Q. You said there's one plant in Broward that is a pool distributing plant.

Where is the other plant in that area?

A. You've got the -- and I hope I got the right county, it's at Deerfield Beach. All those counties -- and I think that's -- I can't remember Deerfield Beach is in Broward or West Palm -- it's right there on the order -- and then the other one is Miami-Dade. You only have two down there. So you need to look and see. I can't remember if Deerfield Beach is in Broward or West Palm Beach County. Anyhow, they are both next door to

each other. But it was 7.80 what was in the model.

Q. I see. So I'm looking -- just to be clear on kind of what was done there. So Broward was at -- the USDSS average was $7.80, and you moved that up to $7.90, correct?

A. Yes, ma'am. If I'm correct, the plant at Deerfield Beach is in Broward County.

Q. And then if I'm looking at Miami-Dade, the USDSS average is $7.90, and that's what drove the change in Broward County?

A. I wouldn't -- I wouldn't use that terminology. As I said earlier, we started at $7.90 as the high point, and that whole area, what I call the Miami area up through West Palm Beach, if we go back to the late 1950s when the first Federal Milk Marketing Order went down there, that area has had the same Class I differentials. They all serve the same marketing area. It's the same milk supply. So, to me, it provides for more orderly marketing to maintain the same differential. So if Miami is 7.90, I was comfortable with that, bring the other one up $0.10.

Q. And if I'm looking at Palm Beach, the USDSS had that at $7.65, and that was also moved to 7.90, correct?

A. Again, I'll give the same answer I just have. If we go back to the 1950s when Federal Milk Marketing Orders were put in down there, it's -- they have had the same Class I differential because they serve the same -- have the same sales area to market their retail product, and it's the same milk. I didn't mention specifically West

Palm Beach because all they are is multi-million-dollar houses now in West Palm Beach. There's no pool distributing plant.

Q. But so just to -- again, just to be clear on the record, the reason that you adjusted Palm Beach up $0.25 was to remain consistent with the $7.90 that you had chosen for Broward and Miami-Dade, correct?

A. Not correct. I started with 7.90. And historically, again, we go back to the late 1950s when Federal Orders were first implemented there, they have had the -- that whole area up there from Miami-Dade up to West Palm Beach, and maybe might be even a little further up, all had the same Class I differential. They serve -- their sales are in the same area, and it's the same raw milk that serves them. So I wanted to keep -- well, I shouldn't say "I" -- my recommendation was we need to keep that area the same Class I differential to maintain the historical perspective and to maintain orderly marketing.

Q. And I am tracking, and so I just -- to complete the point about what that meant for Palm Beach County, right? When you applied that philosophy based on the historical relationship of those prices, that's why you moved Palm Beach County from the $7.65 under the USDSS to $7.90, so it would remain consistent with those other counties?

A. Again, just like I have testified, we -- we go back to the 1950s. That's maintained the same Class I differential in that area. And those pool distributing

plants, we're now down to just two. And even back when we have more pool distributing plants, their sales were in the same area, and it's the same milk supply that serve them. So that's the reason why my proposal -- or our proposal keeps it all in the same Class I differential.

Q. And this is one of those instances where I am looking for a yes or a no.

So, yes, you changed the Palm Beach USDSS recommendation from $7.65 to $7.90, correct?

A. Yes, I changed it.

Q. And the reason you changed that was to remain --

THE COURT: Let's stop there.

MS. VULIN: Okay.

THE COURT: I have heard the reason that he changed it. And you don't have to get a yes or a no. So we're good. And next topic, please.

MS. VULIN: Okay.

BY MS. VULIN:

Q. Did anyone disagree with any of the recommendations that you made about the Florida counties, all of them, not just the ones we have discussed?

A. No, ma'am, I -- we had -- I think I had similar questions because people weren't as familiar with Florida as I was, just like what you have asked. And we just -- so I gave my reasons, and people were comfortable with it.

Q. And so no one recommended anything different than what you recommended for Florida?

A. No. Again -- no, nobody had any different

recommendations. No.

Q. And I believe you previously testified that in order to be a member of SMI, a farmer has to be certified Grade A, correct?

A. They have to have a Grade A milk license.

Q. And then you talked a little bit earlier about the cost of managing swings in milk demand and the balancing costs that SMI incurred because of that.

Do you recall that?

A. Yes, ma'am. I talked about balancing costs.

Q. And are those costs specific only to serving the Class I market or would SMI incur any of those costs if it was also serving, for example, a Class III plant?

A. Well, first of all, all the markets that SMI serves on a regular basis, they are pool distributing plants. So that means they are going to be -- the majority of the milk is going to be Class I. Okay? So Southeast Milk does not serve any -- any Class III plants.

Now, SMI does serve a plant that is partially regulated. And the reason -- again, you have to ask the Market Administrator specifics on why they are partially regulated, but my thinking is they are partially regulated because they do have some Class II products.

But that plant in years past, we are talking about several years ago when there were other Class II plants, because of the nature -- and we're focused on Class I -- we treated them all the same. And those Class II -- actually the Class II plant, that one that's -- Southeast

Milk is servicing now, they act just like a Class I plant, and so we have the same balancing cost. If you broke it down plant -- it might even be a tad more.

Q. It might be -- the balancing cost to serve the partially regulated plant?

A. It could be a tad more. But we don't -- you get to the point how far you want to break things down.

Q. Uh-huh. And these balancing costs, has SMI ever passed along what it would consider to be a balancing cost to a Class I processor?

A. We hope -- we don't put a line item -- we never have a line item called balancing cost. But what you -- what you hope, that at least some over-order premium will help cover some of those balancing costs.

Q. And you calculated I believe it was $1.33 per hundredweight as the average balancing cost for the first eight months of this contrary, correct?

A. Yes, ma'am.

Q. And that was for SMI?

A. Yes, ma'am.

Q. And this $1.33, did you calculate that as part of developing Proposal 19?

A. No, ma'am. I will tell you how we did it. When I was listening to questions last week where balancing came up quite a bit, I got on the telephone over the weekend with my colleagues back in the Southeast Milk, and I had some of the data. I said, let's -- let's go over everything so we can get the exact number right down to

the penny. So it was -- and, again, we checked them, triple checked them. I mean, I knew pretty close to what it was, but I wanted to have the exact number. So that's when we put it together.

Q. And then you participated in the recent hearing in the Southeast on assembly credits, correct?

A. I participated in the Southeast hearing, yes.

Q. And there you -- I believe you spoke in support of a proposal to establish distributing plant delivery credits or intramarket transportation credits; is that right?

A. Yes, ma'am.

Q. And I have heard those used interchangeably with assembly credit.

Do those terms all mean the same thing or can you describe for me what you specifically believe the credit discussed in that hearing does?

A. Okay. The -- what was proposed there was a distributing plant delivery credit. Okay? I think there were some talk there about assembly credit, and I think that was a little different. We could go back and look at the Federal Register and they can give you more details on assembly credit. But what that was, was that milk that moves on a regular basis to -- that's located within the Florida marketing area, plus certain counties in Georgia, mainly the counties south of Montezuma that regularly serve the Florida market, that that distributing plant delivery credit, it would compensate for a portion of the

transportation cost to move that milk from the farm to the distributing plant.

Q. And those are specific to transportation of milk to Class I plants?

A. The pool distributing plants.

Q. And do you believe that Proposal 19 -- well, sorry. Strike that.

Are you aware of a proposed rule that has been issued in response to that proposal in hearing?

A. I'm aware of a recommended decision.

Q. Thank you. More accurate, recommended decision.

And do you believe that impacts in any way the differentials you are proposing here for Proposal 19?

A. No, ma'am.

Q. Because Proposal 19 was developed before the recommended decision came out, correct?

A. The -- again, I don't have those dates right in front of me, but the recommended decision, I think, came out within the last 30 to 45 days. But you can look in the Federal Register and get the right date. But I can't -- I think it's like 30 or 45 days.

Q. And in light of the recommended decision, do you believe that the Proposal 19 Class I differentials for Florida need to be adjusted in any way?

A. No, ma'am.

Q. Even though -- do you believe that the recommended decision will provide some reimbursement for hauling costs to suppliers in Florida?

A. That's the purpose of it. The distributing plant delivery credit will help pick up portions of the cost to move milk from the farm to the pool distributing plants.

Q. And in light of the fact that you said part of your Class I differentials in Proposal 19 is meant to incorporate those increased hauling costs, you don't believe they need to be adjusted now in light of the fact that there's this recommended decision that would also compensate farmers for hauling costs?

A. No, ma'am, I don't.

MS. VULIN: Nothing further. Thank you for your time.

THE WITNESS: Yes, ma'am.

MR. SMITH: Good morning, Your Honor.

CROSS-EXAMINATION

BY MR. SMITH:

Q. Good morning, Mr. Covington.

A. Good morning, sir.

Q. I'm Dan Smith with the Maine Dairy Industry Association. I'd like to ask you a couple of questions about your table.

On page 5 of Exhibit 342 I think is what your statement's been marked as, in any case, NMPF-44.

A. Excuse me. Are you talking about the table -- you say Table 3 or page 5? I'm --

Q. Table 3 on page 5.

A. Yes, sir. I have it in front of me.

Q. Okay. Great.

The table and your testimony indicated that the percentage of the milk supply sourced from within the marketing area in the past couple of years has reduced from 87% to 76%?

A. Yes, sir.

Q. So the equivalent is that you are now sourcing from the surplus area 13% to 24%?

A. Yes, sir.

Q. Can you just put that in context since 2000? Was -- was the sourcing of milk within the marketing area in the -- in the same range or has it been coming down and it is accelerated in the last few years?

A. It -- again, going back to Table 3, the amount of milk that serves the Florida Federal Milk Marketing Order that comes from out of the marketing area, that number has gone up. And generally what happens, if you look back many, many years in Florida, it -- as I like to tell people, good or bad, Florida is a bellwether state when it comes to dairy farm profitability, and it's because of the nature of dairying in Florida. It's a different type of dairying compared to the rest of the country. And so Florida dairy farmers are going to react quicker when prices are not good or profitability goes down.

And so you see that number started going up from out of state the last few years? That's just a sign of -- you think about milk other than -- when we had the record prices before that, milk prices were low, you know, dairy farmers just went out of business.

Q. I understand that. That's --

A. And they went out of business and we had to bring more milk in.

Q. I'm just trying to get the context going back to 2000. Was there a degree of stability in the milk supply from 2000 to 2015, '16, or was there -- because 87%, you are pretty high, 76%, you are really starting to tail now, right? Correct?

A. Yes, sir. If -- if we go back -- and I keep all those numbers. If we had all those numbers to show, milk production in Florida peaked around 2010, 2011. In fact, we had a pretty good balance back in those years between what we needed to serve the market and what was available, what the demand was and supply. Yeah, we had seasonal variations. We had to manage that. But dairy farm -- we had dairy farmers had expanded. We had some dairy farmers that relocated within the state. And things were better. But since then, the tide has turned.

Q. And that's my next set of questions. The tide has turned in terms, the -- previously farms had been going out of business, but you saw consolidation, you saw farms putting more cows on their operations, expanding, for either tak- -- absorbing cows from farms that went out or buying new cows. Increased production per cow, correct, and that allowed the offset to the loss of farms, correct?

A. Yes, sir. The -- the milk production in Florida has increased, and we have seen the current farms to the best of their ability have expanded. You can see that by

how herd size in Florida has probably gone up by -- probably 2010, I'm going on memory, average herd size was probably 900 to 1,000 cows, and now it's knocking on the door of 1500. The farms have stayed in business. They needed to because the profit margin was smaller, they needed to milk more cows.

Q. And so when you say the tide has turned, what has turned is that that capability to expand, however, is no longer as available for producers in the Florida marketing area?

A. If you look at -- at Florida, the milk production area -- remember I mentioned the Interstate 4 Corridor? Think about that dividing the state. You got milk production south around Okeechobee, and you got milk production up what I call west of Gainesville -- northwest of Gainesville, west of the University of Florida, up in that area. That's the two milk production pockets. Everything probably within a hundred miles of the I-4 Corridor, or 75 miles, is gone -- is no longer in business.

And the environmental regulations on South Florida, Lake Okeechobee, the Everglades, it's more difficult to expand down there. A lot more difficult. But you get up that northwest area, I mean, it's still very rural. You know, it's -- if you don't milk cows, it is all pine trees. There are environmental regulations because of the Suwannee River up there, but they are not near as restrictive. So you see more expansion up in that

area.

Q. I have to say, I have had the privilege to do the non-Disney World tour in that area. Wonderful except for the feral hogs. Didn't enjoy the feral hog experience.

A. That --

Q. That part was not so good.

A. Yes, sir. That -- feral hogs is getting to be a challenge, especially for the corn growers.

Q. So my next and last question here is, what do you see as future trend? Do you think that -- that there is a point of stabilization in the milk supply, the number of producers who are going to stay in business? Or do you see what you said, the tide has turned, is it going to continue to recede and farms are going to continue to go out and there will be more milk drawn in from the surplus area than the seventy -- the 24% now?

A. As we speak today, there are only 47 dairy farms in the state of Florida. 47 dairy farms regulated under the Federal Milk Marketing Order. Only 47. That's way down.

And I can tell you, those 47 dairy farmers are looking very closely at the results of this hearing. They are looking very closely at the results of the hearing we had on the distributing plant delivery credit. And they are putting their hope on that, that this was going to give them some additional revenue to stay in business. And I mean this with all sincerity, they are looking at it.

And, in fact, I'll be meeting with them, a group of them, about the end of January. They want to know my opinion what we think might come out of this or whatever, because they are making their future economic decisions. These guys look ahead 12, 24 months. So if they can see some potential improvement coming, that will keep them in business, make some decisions they need to do as far as upkeep of equipment and those type of things. If not, if they can't see the future's going to get any better, a year from now that 47 will be lower.

Q. Thank you.

Mr. Covington, just a couple questions about over-order premiums. Do the premiums reflect procurement or quality or both?

A. Neither.

Q. Okay. And so they reflect -- can you just describe what the purpose is then?

A. Yeah. The purpose is -- when I am talking to our -- again, when I have had to be involved in negotiating over-order premiums, the purpose of those -- we explained the balancing cost, and we would hope over-order premiums would try to help cover a part, if not all, of those balancing costs. Because to try to explain to them, even if you have your own milk supply, you are going to have a balancing cost, I mean, just the nature of a fluid milk plant. But -- but the cooperative is picking up that balancing cost, and if the cooperative can serve several plants, it's like milking more cows, we can spread

those costs over more units and try to make it better for everybody.

Q. Understood.

A. So my term, over-order premiums, is more directed on trying to cover the balancing costs.

Q. So is it correct to say then that procurement and quality premiums aren't available in the marketplace then today?

A. Yeah. There's no -- there's not a -- Southeast Milk does not have a -- a customer that pays any quality premium. What their thing is, hey, each of them has quality requirements that they set, and those quality requirements -- because we want to have good milk that's going to last and taste good for the consumer, and so they think that's a part of the price, hey, you just need to bring -- I mean, that's part of the base price, good quality milk. So we have no quality premiums.

Now, at Southeast Milk, again, we are probably different than other cooperatives. We have some penalty programs, that if a producer's bacteria gets above a certain level, somatic cell count level, we -- we have some pretty hefty deducts for the individual producers, trying to encourage them, or if they have problems keeping the milk cold or those type of things.

MR. SMITH: Okay. Very good. Thank you very much.

THE WITNESS: Uh-huh.

MR. SMITH: Thank you, Your Honor.

MR. SLEPER: Good morning, Your Honor. I just have a few questions. Jim Sleper from Sleper Consulting, S-L-E-P-E-R.

CROSS-EXAMINATION

BY MR. SLEPER:

Q. Good morning, Calvin.

A. Good morning, sir.

Q. Just a few questions.

We have -- the last cross-exam talked about the production changes in terms of milk -- dairy farmers, mama cows, and so forth. Let's get on the record a few of the changes that I believe Florida is unique compared to the rest of the country in terms of the consumption patterns, if we can.

You mentioned Florida has 22 million people?

A. Yes, sir.

Q. Do you know what kind of visitors come to Florida on an annual basis?

A. Millions.

Q. Okay. I know a little bit about Florida. Some of the most recent estimates I see is about 137 to 150 million.

Would you disagree with that?

A. I would not disagree. And it appears that that number -- based upon the numbers coming from the Florida tourism organization, that number keeps going up.

Q. So, in other words, that's four to five times more than what the state of population of Florida contains.

A. Yes, because the number I gave was the resident population.

Q. Okay. Florida, as well as the full Southeast, has these critters called hurricanes, but especially Florida.

Can you go through some examples of how those impact the consumption patterns?

A. Well, unfortunately, I have lived through several very bad hurricanes that's done a lot of destruction. And what happens when the hurricanes hit, right before everything closes down, you have a rush to the grocery stores, and the plants want all the milk that they can get because the stores are cleaned out. And then on some of the hurricanes I have lived through, things are shut down for four or five days. I mean, there was one where our home was without electricity I think for 11 days. And it -- and you think about what it does to the dairy farmers, because we had some that just wiped out and couldn't get the milk, so you got to do something with the milk, because the plants are closed.

But the day that things open back up, the day that electricity comes back on, there is a rush for milk. And I hope it's okay for me to say this, there's no state regulators in the room, but all regu- -- when that happens, all regulations come off, and they want milk as quick as we can get it, to the pool distributing plant. They don't even hardly pull a sample. They unload. They'll wash the tank. We go right back out and get a load of milk and get it back -- back -- back in there. I

mean, it's just -- and then there's been times from some of those hurricanes, back when it's a little easier to get trucks, we would probably have 50 to 75 loads of milk lined up to come in every day, just to fill the pipeline back up.

Q. What about trying to ascertain --

(Court Reporter clarification.)

BY MR. SMITH:

Q. What about trying to get diesel fuel during those periods?

A. Well, that is a -- that's a challenge. And what we do, when those things come, Southeast Milk has large storage tanks just for that. Anything that can be filled up is filled up. We make sure every truck is filled up. And Southeast Milk had a member who was a diesel fuel broker, or had a distribution center, and he would actually stage some trucks for us with diesel fuel at the yards to keep things full. It's a challenge.

Q. I can recall personally going through Hurricane Irma where 5.4 million people left the state, and that creates a considerable situation for milk consumption patterns.

Would you agree with that?

A. Yes, it does.

Q. Okay. We also when -- or in the state of Florida, you also go through the period of the snowbirds come down and so forth.

Can you go through that a little bit and how that

impacts dairy consumption as well?

A. Yes. And you can -- in fact, I had a longtime colleague of mine -- unfortunately, he's no longer with us -- who was our chief dispatcher, and he could pick the week when milk would go up, and the week would go down -- milk would go down. And it was when people come, there's two patterns. One was right after Thanksgiving, people celebrate Thanksgiving with their family, then came to Florida, and those people stayed. Or the week right after Christmas, the ones that wanted to stay home up north for Christmas.

And then when they returned, I don't care what day of the year Easter fell on, they left the week before Easter. And we always would hope that Easter would come late in the year because it helped our milk sales, because they left the week -- and you could just -- it was on the calendar, you could pick by milk orders that seasonality.

Q. Thank you, Calvin.

I'm going to piggyback a little bit on Dan Smith's question but ask it in just a little bit different way. When you started with SMI, I would make the assumption that they imported -- that is getting supplemental milk -- from, oh, I'm guessing, seven, eight months of the year?

A. Yes. When I started with Southeast Milk, even though we had 200 dairy farmers at that time, there was a lot more seasonality in milk production in Florida, so we had to get a lot more supplemental milk. And trucking was so much easier back then. It wasn't as major concern as

it is today on trucking. Getting somebody just to get on the truck and with the reduced hours of service, it just makes it a greater challenge to move milk.

But, yeah, it would be common back then, especially when school cranks up, we would have coming in anywhere from 40 to 50 loads of milk a day.

Q. So if it was -- let's just pull a number, seven months of the year you were importing back then, compared to recent, meaning this last year or two years, I would assume it would be many more months than seven?

A. Yeah. It -- again, it's almost -- again, since Florida production has declined so much, every month, milk's coming in.

Q. Very good.

Would you agree with me, Calvin, basically the bottom line is Florida dairy farmers are paying the way in terms of balancing to service the Class I market?

A. Yes, they are because the over-order premiums do not cover it today.

MR. SLEPER: Thank you, Calvin.

THE COURT: Are there other questions before I turn to the Agricultural Marketing Service for their questions?

Then I now turn to the Agricultural Marketing Service.

MS. TAYLOR: Thank you.

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CROSS-EXAMINATION

BY MS. TAYLOR:

Q. Good morning, Mr. Covington.

A. Good morning.

Q. Just a few quick questions. I wanted to start on page 3 of your statement, Exhibit 342.

At the bottom paragraph you give some hauling data on the cost to haul milk down there?

A. Yes, ma'am.

Q. And you used 175 -- a producer and a plant that's 175 miles apart.

A. Yes, ma'am.

Q. Is that a representative haul or representative of the -- a producer's nearest plant down there?

A. Yes, ma'am. If I just take the Southeast Milk members just within Florida, the Florida marketing area -- and we did this calculation. And I rounded off of a few miles there. We just did a weighted average for 2022, how far their milk moved, and it came out to be approximately 175 miles. That's the producers within Florida.

Q. If we can go to page 7. I think I wanted to ask one clarification, that there might be an additional change in your testimony.

So I'm on the middle paragraph there. In the bottom sentence, and where it says 7.30 per hundredweight in Miami and 7.90 per hundredweight in the Interstate 4 Corridor, I'm thinking those two numbers should be flipped.

A. Ms. Taylor, thank you so much for catching that. I don't know how many times I read that and it -- as my wife says, my dyslexia, whatever you call it, has showed up there or whatever.

Q. That is -- I won't attribute it to that because I know this experience very well.

A. Thank you so much. Even reading it aloud I missed it. Thank you.

MS. TAYLOR: So if I could ask that that gets changed on the record copy, Your Honor.

THE COURT: So I'm going to ask you to guide us. I am going to ask that we make a change on Exhibit 342, page 7, in the paragraph that's below Table 4. And now I'm going to have you guide us, if you will, Mr. Covington, to what we're changing.

THE WITNESS: Okay. I am going to start with the second from bottom line, that paragraph, that starts --

MS. TAYLOR: If I could just make sure we're clear for Your Honor. It is the second paragraph below the table. So it's in the paragraph that starts "the results of the University of Wisconsin."

THE COURT: Thank you. I was in the wrong paragraph.

MS. TAYLOR: Okay.

THE COURT: All right. So now direct me, Mr. Covington.

THE WITNESS: I'm going to come on down to the -- one, two, three, four, five, six -- the eighth line. It

starts with the word "each."

THE COURT: Yes.

THE WITNESS: Okay. "Each of the two respective areas, $7.90 per hundredweight in Miami and $7.30 per hundredweight in the Interstate 4 Corridor."

And thank you so much for catching that. Appreciate it.

THE COURT: Good catch. And those changes have been made on the record copy.

And I just -- this Agricultural Marketing Service team is amazing. I think they can even feather whatever.

THE WITNESS: Your Honor, if I can -- can say so, they do an excellent job of feathering those differentials back up. They can do a lot -- they can do better than the model, and especially do better than me.

BY MS. TAYLOR:

Q. I wanted to follow up with a question that Ms. Vulin asked you in regards to the distributing plant delivery credits that have been recommended by the Secretary in the Florida order.

So, currently, there's no transportation assistance in the Florida order; is that correct?

A. That is correct.

Q. So these credits would be something new down there?

A. They will be new.

Q. And I think she asked you about were those considered when you guys came up with Proposal 19, and you

indicated they were not and that you didn't think they needed to be considered when looking at differentials.

And I wanted to follow up with, why do you think that that is appropriate?

A. Well, first of all, there are two separate things. You have got the Class I differentials. Again, that sets the minimum Class I price. And then the distributing plant delivery credit is just focused just on transportation, to help offset a portion of that transportation cost.

And being optimistic that the recommended decision for -- on the distributing plant delivery credits would end up being a Final Decision and be approved by producers, and being optimistic that Proposal 19 would eventually be implemented, and thinking about the additional help that would help to the Florida market, both of them are needed to keep serving that market.

Q. So from that, I can -- I'm inferring your opinion is that the costs down there are so great, that even increasing the differentials, I think it was at a max of $1.90 over the current levels in some areas, that wouldn't cover -- that still does not cover the cost down there, and you do need additional transportation credits?

A. Yes. And, again, you -- part of my responsibility still at Southeast Milk is trying to project ahead. And, you know, sometimes, you know, that's difficult to do. But if you look at the -- you know, I gave disposition numbers. We had a dip in disposition in Florida, but it

is starting to come back up. And it appears that disposition is going to probably keep going up in Florida, I'm going to say somewhere 1%, 1.5% a year, but there's going to be milk -- those milk needs there.

And so the Florida market is going to continue to look more north towards Georgia to get that milk. And, again, you think Georgia right next to Florida, but since Florida is so long, it is quite a distance to cover.

So that transportation number, if I had done -- all the milk had been much higher than this 175-mile number, that number is going to keep growing. And because of the nature of the dairy farmers in South Georgia, the size of their operations, and they are very young and have an entrepreneurial spirit, if we can't keep them competitive to serve the fluid markets in Florida, I think longer-term they could look for other alternatives.

Q. Okay. If we could turn to page 8.

In that middle paragraph, here you are talking about moving in milk -- alternative milk supplies in Florida from more distant states, and you conclude that even with the differentials as proposed and the impact that they would have on blend prices for milk pooled in Florida, that it still would be insufficient to move that distant milk into Florida. And I wondered if you could for the record just elaborate on why that would be.

A. Yes, ma'am.

I cannot remember the exhibit number, but the dairy division prepared -- or calculated what blend prices

would do in the various orders by increasing the differentials. And, again, I can't remember what exhibit that number is, but I think you are familiar with that, whatever.

What I did, I just looked at those blend prices, and I looked at the various areas. And the one that comes the closest -- and, again, this might not be a reserve supply now, but I know a few years back Southeast Milk was able to get some supplemental milk from Eastern Ohio around the Canton, Ohio, area. And that was the most economical one to move for those five years. So I just looked at the difference in blend price and what it would cost to move that milk down there.

And when I ran those numbers, the haul cost would need to be $2 hundredweight to move that milk from Canton, Ohio, down to Orlando, Florida, to break even. And I just don't think you can move milk for $2 hundredweight from Canton, Ohio, to Orlando, Florida. But I did it with all areas, and that's what I did.

Q. Okay. I missed a question.

In your statement you talk about the milk supply in Georgia and how it's growing, and you state that it's more -- Georgia's -- South Georgia is more conducive to dairy farming and dairy expansion than other areas in the region. Just wondering if you could talk a little bit about why that is.

A. And I don't mean any offense to anybody that's living in South Georgia now. Okay? But South Georgia is

very, very rural. Very, very rural. And there's not many people there. Pine trees, some crop farming. Georgia has not been very strict on environmental regulations. It's day and night between environmental regulations in Florida and Georgia. Day and night. I wouldn't say you can do most anything in Georgia, but it's much more lenient there in South Georgia. The land costs much, much lower. Much, much lower, because there's just nothing else that can be done with it. Okay.

Then you have plenty of water for irrigation. A good water source for irrigation. And relatively cheaper electricity to run the irrigation. So a lot of those farmers now are able in that area to triple crop for forage. I mean, I'm talking about not double cropping, I'm talking about triple cropping. So they've got good forage.

And then probably what the -- the most important thing is, it's really helped, there's only -- I'm going to say there's three key dairy farmers in that South Georgia area. And I'm not trying -- I say three key ones, the ones I'm most familiar with. And they have multiple farms. They are very young, smart. They know how to make milk. They know how to make money. They just know how to manage a dairy farm, and they are passionate about dairy. So you put all that together, that's the reason why you have had growth.

I'll give you one example, one that's real good friends of mine. He is many, many years younger. I have

a conversation with him face to face once a year. And I'm always behind on how many cows he's milking. He has farms and 2500 cow units. He is -- his philosophy is the 2500-cow unit is the most profitable.

And every year I see him -- I think the last time I saw him, I says, "What are you milking, 10,000?"

"No, you missed one. I added another 2500 cows."

And he has another one on the drawing board to keep adding if the economics are there. So there's growth potential there, because there's no other opportunities in that area.

MS. TAYLOR: That's it for AMS. Thank you so much.

THE WITNESS: Yes, ma'am.

REDIRECT EXAMINATION

BY MS. HANCOCK:

Q. Thank you, Mr. Covington. Just a couple of follow-up questions.

You were asked about the recommended decisions in Orders 5, 6, and 7, and I just wanted to be clear about other factors that might have come into your explanation about why it doesn't impact the differentials that National Milk has proposed.

Is another reason that a portion of those additional charges accounted for, for farm-to-plant deliveries that are south to north or west to east?

A. Yes. And I forgot about that. That's a very, very important part of that decision. As you know, under

Federal Milk Marketing Orders, the differentials increase as you go south and as you go east. So that helped -- the higher differential helps pick up part of that transportation cost. But since we have lost quite a few pool distributing plants, especially in the Southeast order, and if you look where the milk pockets are, we have more and more milk moving south to north, so actually, the Class I differential works against that milk. And we are having more milk move from east to west that the Class I differential works against.

But the distributing plant delivery credit doesn't penalize you from going south to north or going from east to west. So that is a big improvement that helps, which we don't get the benefit from with Class I differentials.

Q. So the south to north shipments in Florida actually lose value under the Class I grid, even though the milk is needed to the north, and the transportation costs is the same with the grid?

A. I guess I can best answer that question by giving you an example.

In my testimony I mention a large pocket of milk in Florida is located around Lake Okeechobee, and that's between the Miami market and the I-4 Corridor. In the past, almost all that milk went to Miami because we had more pool distributing plants. Today since there's only two distributing plants, you have more milk in that area has to come up the I-4 Corridor. So instead of moving with the grain to a market that has a $0.60 higher Class I

differential than the I-4 Corridor, it has today come uphill or against the grain. So from where they are located at, they are actually moving to a lower milk price. The distributing plant delivery credit would provide some assistance to that milk to move up there.

Q. Okay. Thank you for that.

You also talked a little bit about the purposes of the Federal Order. I just want to take a step back for a second.

Can you tell us what you understand to be the purposes of the Federal Order?

A. I'll try to keep it -- keep it brief.

The Federal Milk Marketing Orders assist both dairy farmers and processors of milk. We have minimum prices, so dairy farmers know that when they sell milk to a pool distributing plant they are going to get a minimum price, or that milk is going to be pooled and they are going to have a uniform price, and that uniform price is going to be the same whether that plant happens to be 90% Class I utilization or 70% Class I utilization. It provides for some orderly marketing.

It also provides -- and I think it's one that we often forget -- payment. I mean, I have been through cases where dairy farmers haven't got paid, but -- but Federal Orders enforce payment, and they know what date that check is going to come.

They also monitor, you know, tests.

Then, likewise, when the plants themselves, as I

put in my testimony, since the raw milk is such a high percent of that package cost, they want to ensure that it's, you know, the same location that their raw product cost is going to be the same.

And, again, I don't mean to reminisce, and you stop me if I go too far on this, but I still remember, good friends of mine in the late 1950s were producing milk in South Florida for the Miami market. There was no Federal Milk Marketing Order. They didn't know when they were going to get paid, whether they were going to get paid, if the milk volume they delivered was going to be correct, if their butterfat was going to be correct. They did not know. And so they asked for a Federal Milk Marketing Order to help ensure that.

And so -- and those people, it helped instill into me, says, "Calvin, you might think we don't need one, but let me tell you all this, and if we don't have one, those things can happen again."

Q. Okay. So it is -- is it fair to say that you understand that a Federal Order is also to help achieve equality in the bargaining power that producers have in negotiating and achieving the sale of their milk?

A. Yes. Yes, it aids in that. Because, again, you have minimum prices, you have uniform prices, both to producers and to the processors as well. And then as you negotiate for -- and, again, I don't know how many processors and retailers have told me how important it is those minimum payment provisions, because the processor

tells me, "I can take this to the major box store that I'm selling packaged milk to and show, 'Hey, here's a federal regulation, I got to pay my milk suppliers on so and so day, so you've got to pay me by then so I can pay them.'" I mean, that is so important.

And then by having a minimum price and the audit procedures and so forth, it helps as cooperatives try to negotiate contracts, including over-order premiums.

Q. Okay. And in an effort to try and equalize that bargaining power between the dairy farmers and the buyers of their milk, the handlers, isn't it fair to say that that disparity in bargaining power that drove some of the justification for having a Federal Order put in place is also that disparity in bargaining power that happens when a dairy farmer is trying to achieve an over-order premium?

A. I hope I'm understanding your question there, that, yeah, when it comes to bargaining for over-order premiums, it is just the cooperative for the producer and the plant. I mean, there's no -- any kind of regulations. You know, that over-order premium can be here today, it can be there tomorrow. I have had cases where the processor got upset about something, he paid us the Federal Order minimum, but wouldn't pay us the over-order premium. And so the only way we could go get that is just, you know, had to go and have a conversation with him, because nobody is enforcing him to pay that. And that can just drop overnight.

Q. And so it's fair to say that we can't just rely on

the supply and demand conditions to fix the pricing for us, we still need that minimum price that's regulated by the Federal Order in order to protect and equalize the bargaining power in negotiating those prices?

A. Again, you come back to all agriculture. There's few buyers, a lot of sellers. And so dairy farmers need that protection assistance that Federal Orders provide. I go back to the example of those dairy farmers that started in the late '50s, what happened to them and why they asked for a Federal Milk Marketing Order. And so it's so important.

But most importantly, you know, we're in the business to make sure consumers are fed milk, and the whole process helps us dairy farmers to ensure that that happens.

Q. Thank you so much for your time.

MS. HANCOCK: Your Honor, we would move to admit Exhibit 342.

And just to maybe expedite this, I don't have any objection to Exhibit 343.

But Exhibit 344 is, again, a worksheet that MIG prepared. And they had something kind of off to the side that says "prepared by MIG," but the title over the top of it identifies it as a "National Milk Final Class differentials," and I think that the title should be corrected to reflect that it's an MIG working document, not a National Milk document. And with that correction, I wouldn't have any objection to its admission.

MS. VULIN: The title is meant to indicate that these are NMPF's final Class I differentials, and so that's why it's there. We did add "prepared by MIG" based on conversations yesterday. We thought that would solve the issue. They are not MIG's Class I differentials, and so I would not like to change the title in that regard.

THE COURT: Let me look at what we did in the similar document yesterday where I had Mr. English read the title, but he didn't have the new version, that one.

Can somebody tell me which exhibit that was?

MS. VULIN: Is it Exhibit 323, Your Honor?

THE COURT: No wonder I'm digging so deep in my stack.

Indeed. Good job.

All right. So let me compare the top of Exhibit 323 with the top of Exhibit 344.

So what --

MS. HANCOCK: I haven't actually seen a hard copy of it. And I have an electronic version, but I can't see what the title looks like in print.

This is the corrected one?

MS. VULIN: No. This is what the title yesterday, and then it has this --

MS. HANCOCK: Okay. So, Your Honor, I haven't seen the hard copy. They sent me an electronic copy, but I can't tell on the electronic copy what the title looks like. It was my understanding yesterday that when we made that agreement that it would be put with the title so that

it's clear from the title of the document that it's MIG's working workbook on utilizing National Milk's numbers. But my concern is, is that just having it off to the side doesn't make it clear that it's not National Milk's document.

THE COURT: Could you approach me, Ms. Hancock? Let me show you. I like the way 323 came out.

MS. HANCOCK: Well, that's because you have your -- let's go off --

THE COURT: Yes, we're still on record. I would like to stay on record.

MS. HANCOCK: Okay. So I think it's because your exhibit is there.

But what I'm concerned about is that it looks like this (indicating) when there's nothing on there. So if somebody grabs this and they just look at the title, and they are not over here -- I mean, it says that they prepared it, but it is called "National Milk." None of this is National Milk's.

MS. VULIN: All of the differentials are National Milk's, and these -- this data was added, and it does indicate prepared by MIG. If we change the title, then it's going to indicate that these are MIG's Class I differentials, and they are not. The title came from the source document --

MS. HANCOCK: I'm not trying to say -- it doesn't have to be MIG's Class I. It just has to say MIG's, you know, workbook 4, or something to that effect, in

conjunction with the title. I think it should be attached to the title. What do you care?

THE COURT: Okay. I'm ready to rule.

With regard to Exhibit 342, is there any objection to the admission into evidence of Exhibit 342?

There is none. Exhibit 342 is admitted into evidence.

(Thereafter, Exhibit Number 342 was received into evidence.)

THE COURT: Is there any objection to the admission into evidence of Exhibit 343, which is the map of Florida with the counties?

There is none. Exhibit 343 is admitted into evidence.

(Thereafter, Exhibit Number 343 was received into evidence.)

THE COURT: With regard to Exhibit 344, it will suffice if the document is altered in similar fashion to the way Exhibit 323 was altered. And that results in "MIG" being in three places across the top of the document. First of all, in the left top, it will say, "prepared by MIG"; then in the title of the document, it will say, "Exhibit 344, MIG-33"; and then it will pick up the title it has, and after the word "Florida," in all caps, will be "CORRECTED HEADER," and those changes will suffice for me to admit it into evidence.

So how soon can the corrections be made? I know we're leaving here today. It's fine with me if there's

assurance that those corrections are made as promptly as they can be, and I can verify that number back in November.

MS. VULIN: I'm sorry, Your Honor. I'm not understanding the header correction. So the title saying "NMPF Final Class I Differentials, June 2023, Florida," how do you want that to read?

THE COURT: Approach me, please.

MS. VULIN: Okay.

THE COURT: And stay on the record.

All right. So I'm using as the perfect template our corrected header for Exhibit 323. So when we compare that, the header in the middle of Exhibit 344 will have some addition. It will say "Exhibit 344, MIG-33," then it will pick up with what the header says, and then it will say, in all caps, "CORRECTED HEADER," and that will suffice.

MS. VULIN: Thank you, Your Honor. We'll work offline. Given the timing, it would be probably difficult to get these reprinted today, but we certainly can have them when we return.

THE COURT: Excellent.

All right. With that provision, with that required correction, Exhibit -- I now ask if there are any objections to the admission into evidence of Exhibit 344?

There are none. Exhibit 344 is admitted into evidence, requiring the recorded changes to the top portion of the document.

(Thereafter, Exhibit Number 344 was received into evidence.)

THE COURT: To me, that makes it clear that MIG did this. And so we have to check, the accuracy of the document, and everyone can do that.

All right. I think a break would be good. Let's take a ten-minute break. Please be back at 11:15. We go off record at 11:03. The witness may step down.

(Whereupon, a break was taken.)

THE COURT: Let's go back on record. We're back on record at 11:16. We have a new exhibit and a new witness.

I'd like the witness in the witness chair to state and spell his name.

THE WITNESS: Rob Vandenheuvel, R-O-B, and the last name is V-A-N-D-E-N-H-E-U-V-E-L.

THE COURT: Ms. Hancock, if you will identify yourself, and then we'll number these exhibits.

MS. HANCOCK: Thank you, Your Honor. Nicole Hancock for National Milk. And we should have a written statement and three attachments.

THE COURT: Very good. I see them.

All right. So the testimony will be Exhibit 345.

(Thereafter, Exhibit Number 345 was marked for identification.)

THE COURT: Attachment 1 -- oh, and let me mention. 345 is also Exhibit NMPF-39.

The next one is NMPF-39A. That will be 346.

(Thereafter, Exhibit Number 346 was marked for identification.)

THE COURT: Exhibit NMPF-39B will be 347.

(Thereafter, Exhibit Number 347 was marked for identification.)

THE COURT: And the Exhibit NMPF-39C will be 348.

(Thereafter, Exhibit Number 348 was marked for identification.)

THE COURT: Mr. Vandenheuvel, have you previously testified in this proceeding?

THE WITNESS: Yes, I have.

THE COURT: You remain sworn. Ms. Hancock, you may proceed.

MS. HANCOCK: Thank you, Your Honor.

ROB VANDENHEUVEL,

Having been previously sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MS. HANCOCK:

Q. Mr. Vandenheuvel, did you prepare Exhibit 345 as your written testimony in support of your statements today?

A. Yes.

Q. And to support that testimony, you have also included Exhibits 346, 347, and 348?

A. Yes.

Q. Okay. Would you proceed with your testimony, please?

A. All right. Thank you.

This testimony is presented on behalf of California Dairies, Inc., hereafter CDI, and is submitted in support of Proposal Number 19.

Because I have testified prior, I will skip the next paragraph and go directly to the section under "Class I Differentials."

By comparison to other regions of the country, California is fairly new to the issue of Class I differentials, as the California Federal Order began in November 2018. Included in that promulgation of a new California Order was the current Class I differential map that existed in its current form since the early 2000s. No updates to that differential map were requested during the course of the California Federal Order promulgation hearing, but the experience the past four years has revealed opportunities for updates and improvements that will be further described in this testimony.

Prior to entering the Federal Order system, California dairy farmers and milk handlers operated under a California State Order that used a different method to establish Class I prices. The California county-by-county Class I differential map developed in 2000 was therefore dormant until the implementation of the California Federal Order in November 2018.

While operating under that State Order, California experienced significant imports of bulk raw milk, with increased prevalence up to 2018. These long-distance

movements of bulk raw milk into California-based bottling facilities were largely the result of financially beneficial milk price differences, made possible because of California's inability to regulate interstate commerce under the Commerce Clause of the U.S. Constitution. Therefore, milk originating outside of California could be marketed to California-based bottlers without the need for that milk to participate in the State-run milk pricing and pooling program.

At the time, the savings associated with avoiding minimum California state milk prices and any pooling obligations that would otherwise be required for purchases from a California-based farm or milk handler served as an offset against the additional cost associated with hauling milk from farms located out of state.

In the more than four years since California has operated under the Federal Order system, interstate movements of raw milk have been greatly reduced. The regulatory gap that existed in the California State Order with respect to milk originating outside of California no longer exists. The limited volume of interstate milk movements into and out of California that remain are now driven by either temporary or long-term business-related issues, as opposed to a function of the milk pricing and pooling regulations.

In light of these facts, CDI supports a general continuation of the current regional relationships between California and surrounding states. In other words, CDI

supports Proposal Number 19, in part, because it maintains a relatively consistent relationship between California's Class I differentials and those of surrounding states.

As for proposed updates to the Class I differentials, testimony has been provided by -- and I wrote this prior to that testimony -- by one author of the University of Wisconsin Madison report entitled "Spatial Price Relationships in Class I Markets," using a model referred to as The U.S. Dairy Sector Simulator, or USDSS.

This dynamic model has many variables taken into account as it generates county-by-county spatial relationship recommendations and should be considered when proposing an updated Class I differential map. However, it should not be the only consideration, as all models have limitations. For example, the USDSS does not and cannot take into account:

Regional competitiveness at the farm level, an important consideration for USDA and for the industry when updating any element of the Federal Order program, including the Class I differential map;

Pool stability and maintaining a robust incentive for handlers and farms to serve as available supply for the Class I market, another critical consideration;

Limitations or cost drivers created by region-specific factors, such as geography (for example, mountain ranges), chronic traffic congestion, and differences in regional cost structures and operational costs.

These comments are not intended to diminish the value of USDSS or any other model used to evaluate various proposals. Economic modeling can serve a critical purpose as a tool that should be a factor among real-life considerations, as opposed to the sole and absolute tool in crafting or evaluating a proposal.

The proposed updates being considered in this hearing, including Proposal Number 19, are not conceived in a vacuum, but rather in the context of promoting stable marketing relationships for handlers and producers, based on real life data and experience. As such, the model results must be supplemented with considerations that are beyond the scope of the model.

Specific to regional competitiveness, while virtually no milk moves between California's primary milk supply region of the Central Valley and the major Upper Midwest milk sheds of Wisconsin, Minnesota, and South Dakota, these regions have some functional similarities.

First, both regions share a profile as large milk-producing regions with a vast majority of milk marketed to local non-Class I manufacturers and serving as a reserve supply for the relatively small portion of Class I bottlers in the region. In total, about 10 to 12% of California's milk production ends up in a Class I facility, but a majority of that Class I demand is from bottlers outside the Central Valley. While the Central Valley is home to approximately 90% of the total milk production in the state, only five of California's 20

current pool distributing plants are located in the area.

The on-farm competitiveness of similar regions across the U.S. is not something the USDSS model is designed to solve for, but it is an important factor for USDA and the industry to consider. Dairies across the country participate in the same federal safety net programs, such as the Dairy Margin Coverage, Dairy Revenue Protection, and Livestock Gross Margin Dairy programs, all of which rely on national -- not regional --milk and dairy markets in triggering distributions or indemnities. Those same dairies compete for animal feed and other supplies sourced throughout the United States.

The current Class I differentials reflect the similarities between California's Central Valley and the Upper Midwest regions, as the Class I differentials in California's Central Valley range from $1.60 to $1.80 per hundredweight, while the current Class I differentials in Wisconsin, Minnesota, and South Dakota range from $1.65 to $1.80 per hundredweight.

In light of these facts, Proposal Number 19 establishes updated Class I differentials in California's Central Valley ranging from $2.50 to $2.60 per hundredweight. Proposed Class I differentials in Wisconsin, Minnesota, and South Dakota range from $2.55 to $3.00 per hundredweight. The gap is wider than exists today, but CDI supports Proposal 19 and believes it represents a reasonable relationship in the Class I differentials between these two regions.

Pool stability is another critical consideration in structuring any update to Federal Orders, but is another variable that the USDSS is not designed to consider. In the more than four years that California has operated within the Federal Order program, our state's industry has received a graduate-level education on the farm level impacts of pooling and depooling large volumes of milk in any given month.

While one might point to the COVID-19 pandemic as a contributing factor in driving volatile classified milk prices that contributed to significant depooling, California actually saw its lowest volume of pooled milk in July 2022, at 1.65 billion pounds of milk, followed by its highest volume of pooled milk in March 2023, at 2.84 billion pounds of milk. Comparing those volumes to USDA's Milk Production Report, July 2022 verified that less than half, or 47%, of all California milk production was associated with the Federal Order pool. That figure grew to 78% of all California milk production associating with the Federal Order pool in March 2023.

The decision of whether to pool or not to pool milk on a Federal Order can be driven by many things, including both price and non-price considerations. Specific to price considerations, one can reasonably claim that large and sustained gaps between the Class III and Class IV monthly milk prices are a major contributor to the swings we have seen in the volume of milk pooled on Federal Orders across the U.S.

However, there is no doubt that specific policies related to Class I pricing can also have a meaningful impact on those pooling decisions. Elimination of the "higher-of" Class I mover in 2019, as mandated in the 2018 Farm Bill, also known as the Agriculture Improvement Act of 2018, reduced the incentive to pool milk in certain months over the four-year history of that change.

Previous testimony given at this hearing has demonstrated that Federal Orders across the U.S. saw nearly $1 billion less pool revenue over the past four years as a direct result of that formula change. Likewise, a lack of updates to the Class I differential levels to recognize incremental increases in the cost of supplying Class I markets over the past two decades has also suppressed the pool revenues that could otherwise have been available as a further incentive for more farms and milk handlers to associate regularly with their respective Federal Order pool.

While there is no silver bullet that will incentivize more milk to associate with a Federal Order pool, other than a mandatory requirement to pool all Grade A milk handled, restoring the "higher of" Class I mover (Proposal Number 13) and updating the Class I differential map (Proposal Number 19) will help to increase the incentive by growing overall pool revenues. Not only does an increased incentive to pool milk help ensure that more farms and milk handlers are willing to supply Class I needs, but it also creates more stability

at the producer level, as blended prices paid for milk produced across a Federal Order are more consistent from farm to farm.

The third consideration to supplement the USDSS model results are regional cost drivers that are not reasonably captured by a national model. California has undergone significant shifts in population centers and milk sheds since 2000, which has meaningfully impacted the cost of hauling bulk milk generally, and the cost of supplying urban-centered Class I bottlers specifically.

In 2001, the California Department of Food and Agriculture, or CDFA, reported that there were 295 dairy farms in Southern California, housing an estimated 266,672 cows. And that would be in Attachment A, which was labeled Exhibit 346.

That same report indicated that between the five milk-producing counties surrounding the Bay Area -- Sonoma, Marin, Solano, Contra Costa, and Santa Clara Counties -- there were 125 dairies in 2001, housing an estimated 42,031 cows.

In 2017, the last such report published by CDFA, those numbers had fallen to 92 dairy farms in Southern California, housing an estimated 90,675 cows, and had fallen to 87 dairy farms in the five counties surrounding the Bay Area, housing an estimated 37,928 cows. And that would be Exhibit 347, Attachment B.

Meanwhile, those respective regions also experienced population increases. The Southern California

population centers of Los Angeles, Orange, San Bernardino, Riverside, and San Diego Counties grew from 18.43 million residents in the 2000 Census to 21.10 million residents in the 2020 Census, a 14.5% increase; and the Bay Area population centers of San Francisco, Contra Costa, Alameda, and Santa Clara Counties grew from 4.85 million residents in the 2000 Census to 5.66 million residents in the 2020 Census, a 16.6% increase. And the reference there to Attachment C is Exhibit 348.

These two trends of a shrinking local milk supply and a shifting and growing population has resulted in the need for bulk raw milk to be sourced from further distances to meet the needs of milk bottlers located near the population centers. Extreme traffic congestion that is generally the rule, rather than the exception, and these metropolitan regions adds further complexity and cost that cannot be captured by current economic modeling.

In addition, while cooperatives, including CDI, previously operated manufacturing plants available for balancing purposes in Southern California, those plants have since been closed. The nearest cooperative-owned balancing plant to the urban population center of Los Angeles County is CDI's butter and milk powder manufacturing facility in Tipton, California, roughly 150 miles -- and over the Tehachapi Mountain Range -- from the Southern California bottlers that need milk on a specific schedule in specific and varying quantities throughout the week.

Further, there is only one primary path to travel between the milk shed in California's Central Valley and the urban centers of Southern California, Interstate 5, a highly travelled interstate highway with significant commuter and other business traffic in both directions crossing over the Tehachapi Mountains. Two alternative routes -- one through the desert and one via the coast -- are utilized only in emergency situations, as they are significantly longer routes.

Taken together -- the closure of nearby balancing assets in 2019 and the logistical challenges associated with navigating extreme traffic conditions -- has simply increased the cost and complexity associated with serving those urban Class I markets, a dynamic that the USDSS model is simply not designed to capture.

Proposal 19 includes the following updated Class I differentials in California. And I will not read that table into the record, but it is consistent with National Milk's Proposal 19.

In addition to an overall increase in Class I differentials for reasons stated earlier in this testimony, Proposal Number 19 also includes necessary adjustments to some of the county-by-county relationships. As previously alluded to in this testimony, there are generally three distinct regions of California, each with unique supply/demand dynamics.

As mentioned earlier, the Central Valley makes up approximately 90% of the state's milk supply. Southern

California, made up of counties south of the Tehachapi Mountain Range, has a limited and shrinking milk supply, representing less than 5% of the state's total supply, but is home to ten of the 20 total pool distributing plants in the state. As such, bulk raw milk from the Central Valley is regularly exported to Southern California.

Finally, the Bay Area is a region of extremely limited and shrinking milk supply, representing less than 3% of the state's total supply, and is home to five of the 20 total pool distributing plants in the state. As such, bulk raw milk from the Central Valley is also regularly exported to the Bay Area.

Proposal Number 19 incorporates a "slope" in the Class I differentials between the Central Valley and Southern California and between the Central Valley and the Bay Area at levels intended to incentivize dairies and milk handlers to serve the Class I needs in those urban regions.

Specific to Southern California, the current Class I differential map incorporates a $0.30 per hundredweight slope between Kern and Los Angeles Counties, with a significant volume of Kern County milk regularly supplying Los Angeles County Class I needs, as it is the nearest available milk other than local farms located in Southern California. Proposal Number 19 includes a $0.40 per hundredweight slope between Kern and Los Angeles Counties as a more appropriate slope.

The average cost incurred by CDI in 2022 for

delivering bulk milk from Kern County to Los Angeles County ranged from $1.39 to $1.50 per hundredweight. Meanwhile, the average cost incurred by CDI in 2022 for delivering bulk milk from those same farms in Kern County to the nearest local manufacturing plant in Tulare County was $0.68 to $0.81 per hundredweight.

Simply put, the $0.40 per hundredweight slope in Proposal 19 provides an additional pool draw for those farms and milk handlers that is needed to at least partially offset the incentive that otherwise exists to simply deliver all milk to the local manufacturing plant in the Central Valley.

Proposal 19 includes a $0.50 per hundredweight slope between the remaining counties in the Central Valley and Los Angeles County. While that slope exists throughout the Central Valley north of Kern County, the slope is most important for Tulare and Kings Counties, as farms in those counties represent the next logical reserve milk supplies in the event Kern County milk is not sufficient to supply Class I needs in Southern California. This $0.50 per hundredweight slope is consistent with the current spread between the differential levels in Tulare and Kings Counties and Los Angeles County.

The cost incurred by CDI in 2022 for delivering bulk milk from Tulare County to Los Angeles County ranged from $1.68 to $1.88 per hundredweight. Meanwhile, the average cost incurred by CDI in 2022 for delivering bulk milk from those same farms in Tulare County to the nearest

local manufacturing plant in Tulare County was $0.44 to $0.54 per hundredweight. While that gap is more than the $0.50 per hundredweight provided by the slope in the proposed differential map, it is consistent with the current slope for this reserve supply of milk available for Southern California Class I usage.

In addition, Proposal Number 19 includes some adjustments in the county-to-county relationships within the three distinct regions mentioned earlier in this testimony. Under the proposal, Class I bottlers in all counties in Southern California are subject to the same Class I differential, as they procure milk from a combination of locally-produced milk and milk produced in the Central Valley. They also participate in a common market without significant logistical advantages in any parts of Southern California. This updated structure promotes a competitive landscape for all bottlers and handlers.

Further, the proposal establishes a common Class I differential for most of the counties within the Central Valley, as the regions represent a collective milk shed. The one exception is Kern County, which Proposal Number 19 brings closer to, but not equal to, the differential levels in the other counties within the Central Valley.

Specific to the Bay Area, the current Class I differential map incorporates a $0.10 per hundredweight slope between the coastal regions of San Francisco and the nearby milk sheds of Sacramento, Stanislaus, and San

Joaquin Counties, an insufficient differential when looking at the cost of servicing that market and attracting a long-term milk supply.

Proposal Number 19 includes a more appropriate $0.40 per hundredweight slope between these same counties. The cost incurred by CDI 2022 for delivering bulk milk from San Joaquin County to Alameda County, which includes Class I utilization and borders the San Francisco Bay, ranged from $1.08 to $1.29 per hundredweight.

Meanwhile, the average cost incurred by CDI in 2022 for delivering bulk milk from those same farms in San Joaquin County to the nearest local manufacturing plant in Stanislaus County was $0.45 to $0.65 per hundredweight. As with the earlier reference to Southern California, the $0.40 per hundredweight slope proposed for the Bay Area would provide an additional pool draw to partially offset the incentive that otherwise exists to simply deliver all milk to the local manufacturing plant in the Central Valley.

For the reasons outlined in this testimony, which reach beyond a strict spatial analysis as conducted by the University of Wisconsin and incorporates broad-based policy considerations, CDI urges the Secretary to adopt Proposal Number 19.

Q. Thank you, Mr. Vandenheuvel. Just a couple of questions.

Your California proposal for Class I differentials, it looks a little bit different than what

we've just heard when we were talking about the Southeast markets, and I'm wondering if you can just maybe take a step back and address that.

A. Absolutely. If I could show my -- what's on my screen here. This is -- this is from Exhibit 303, which was Dr. Nicholson's testimony at this hearing, I guess last week. And this is Figure 1 on page 4.

And as you can see from this, what this map is -- and I -- I didn't hear all of Dr. Nicholson's testimony, so it's -- he may have explained this in detail. But just to make sure, this is -- this is titled "Milk Assembly At Fluid Plants and Packaged Milk Flows, May 2021." On this table -- and this is explained in Exhibit 303 -- the green line represents the incoming milk to Class I bottling plants. And this is just looking at the supply and demand of milk across the country and how far that plant would need to go to find available milk to supply those Class I needs. The yellow lines are the outgoing distribution lines, where that milk coming out of that bottling plant would be going to find a market.

Without digging into each individual line, what struck me in reviewing Dr. Nicholson's work is that you have got two very different dynamics going on in this country. You have got east of the Rockies, largely, serving, to some extent, as available supply to the Southeast, ranging all the way almost up to the Upper Midwest regions that I talked about there, of Wisconsin, Minnesota, and South Dakota. They are just outside of

where most of that green line activity occurs.

On the west side of the Rockies you have got a very different looking model, very different milk movement, different supply/demand dynamics.

And so how does this fit into the testimony I just gave? What this demonstrates to me is that that one region is not impacting the other region. Dr. Nicholson's and Dr. Stephenson's analysis takes a national look, and that makes a lot of sense, and I understand why they did it.

But I -- I believe that because of the considerations that I mentioned in my testimony, we needed to keep a regional reasonable relationship for competitive reasons, from the bottom of the slope in the West to the bottom of the slope on the east side of the country, which is the Upper Midwest.

While that may look odd when you compare it and overlay it to Dr. Stephenson and Dr. Nicholson's study, given this -- this dynamic expressed in the chart, I don't believe taking that different approach in the western U.S. in any way impacts what is needed on the eastern part of the country because they are dealing with almost a separate pool of supply/demand relationships over there.

Q. So when you say "taking a different approach," what are you referring to?

A. Well, Mr. Covington testified, and I think others have testified, Mr. Sims as well, about the approach that was taken to identify the high point, where the milk needs

to go, Miami has been referenced, and then working -- feathering it out from there.

Through my testimony, what I have made pretty clear, is that we looked at the bottom of the slope and -- or at the bottom of the trough, where is that area of significant milk supply and what is the relationship in that region to a similar situated region in a competitive area of the country, I mentioned the Upper Midwest, and then from there building a slope up to where the milk needs to get in the Bay Area and in Southern California. And when those in the Pacific Northwest are here testifying, they will talk about those urban centers, and the same in -- in Idaho -- I mean, in Arizona, I'm sorry.

So it's -- it's a bottom-up approach as opposed to a top-down approach. Ultimately, still develops a slope that we believe is appropriate for milk handlers and plants and producers to respond to those incentives. But -- but I think this map helps support that different approach.

Q. Okay. And when you talk about the bottom-up approach, you are talking about using that for the western side of the country?

A. Correct.

Q. And so at some point you match up with and you meet up with the top approach that was started in Miami that Mr. Covington talked about.

And so is that what you are talking about, that there has to be an alignment where those two intersect at

some point?

A. That's correct. And that really was -- I mean, we have talked about cane anchor cities a lot in this -- in this last week. That was what the anchor cities were about, is you are going to have your own considerations and your own things you do in your different regions. Where those regions intersect, we have got to have some alignment or you end up with very odd county-to-county as you maybe cross a state line, and we wanted to avoid that.

Q. Okay. Thank you very much for your testimony.

MS. HANCOCK: Your Honor, at this time we would make Mr. Vandenheuvel available for cross-examination.

THE COURT: Mr. Vandenheuvel, I want to make sure you have emphasized the footnote that's on page 3 of your testimony. I didn't keep up with you because you had so much information here, I was looking in different places. I don't know whether you read into the record Footnote 1, but I just want to make sure that you now read the sentence that is at the top of page 3 that contains Footnote 1, and then read Footnote 1.

THE WITNESS: Absolutely. And I did not read this, so thank you for the opportunity to make sure that everyone understands Central Valley the same way that I do.

Specific to regional competitiveness, while virtually no milk moves between California's primary milk supply region of the Central Valley -- and Central Valley is defined, for the purposes of this testimony, in the

footnote there: "For purposes of this testimony, California's Central Valley is defined as Butte, Glenn, Fresno, Kern, Kings, Madera, Merced, San Joaquin, Sacramento, Stanislaus, Sutter, and Tulare Counties. These counties collectively represent the most prominent milk shed within the state of California."

And then finishing out that sentence after Central Valley: "And the Upper Midwest regions -- Upper Midwest milk sheds of Wisconsin, Minnesota, and South Dakota, these regions have some functional similarities."

THE COURT: Cross-examination. Who would like to begin?

(An off-the-record discussion took place.)

THE COURT: Please be back and ready to go at 1:00 p.m. We go off record at 11:54.

(Whereupon, the lunch recess was taken.)

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WEDNESDAY, OCTOBER 11, 2023 - - AFTERNOON SESSION

THE COURT: Let's go back on record. We're back on record at 1:00 p.m.

And I have new paperwork.

Ms. Vulin, would you help us get started with what -- the first document I should look at?

MS. VULIN: Yes. Thank you, Your Honor. Ashley Vulin with the Milk Innovation Group.

If we could start with the California county map, please.

THE COURT: I have it. And I'm delighted to have it.

So does that get the next exhibit number?

MS. VULIN: Yes, please, Your Honor.

THE COURT: So our last exhibit number was 348. So California will be 349.

(Thereafter, Exhibit Number 349 was marked for identification.)

MS. VULIN: And then the next exhibit is MIG-34.

And I was just told we do have printed copies that are with the corrected header on them. They just arrived maybe 30 seconds ago.

THE COURT: Wonderful.

MS. VULIN: So, yeah, we'll pass those around so everyone can have that.

THE COURT: Good. So let's give it a number now, and so that will be 350. 350 correlates to Exhibit MIG-34.

(Thereafter, Exhibit Number 350 was marked for identification.)

THE COURT: And the reason something is being passed around now is it has the corrected case -- or the corrected heading. Is that correct?

MS. VULIN: Yes, Your Honor.

THE COURT: Okay. Good. That's wonderful you managed to do that in spite of the fact that your printer has left the building.

MS. VULIN: I'm told it was the last thing hot off the press before it absconded.

THE COURT: Excellent.

MS. VULIN: And the last document is Exhibit 70, entitled "Testimony of Dennis Schad in Support of Proposal 1 of California Dairies, Inc.," from the Clovis California proceedings in 2015.

THE COURT: That brings back the days of my youth. We can mark that as 351. And that Exhibit 351 also shows the exhibit in the California milk order proceeding which was 70. I'm leaving that there. That's helpful. And down at the bottom it happens to say "Cooperative-Exhibit 6."

(Thereafter, Exhibit Number 351 was marked for identification.)

MS. VULIN: Thank you, Your Honor.

And then I would also ask that the witness be given Exhibit 323 and Exhibit 344, and that way we'll have all of our paperwork ready, and we can proceed.

THE COURT: 323 and 344. I have mine. So they are MIG-31, with a corrected header, and MIG-33, whose header is not yet corrected. We're looking for that when we come back.

MS. VULIN: Correct. We weren't able to get that one printed in time.

THE COURT: Understood.

MS. VULIN: Okay. I think that takes care of all of the paperwork. Thank you, Your Honor.

THE COURT: You're welcome.

THE WITNESS: I have 323 and 344. Am I supposed to have the other stuff that was just handed out?

MS. VULIN: Yes. The witness will also need 349, 350, and 351, please.

Thanks for flagging that.

THE WITNESS: You're welcome.

THE COURT: 350 is the MIG-34. Now, we don't need to give the witness -- okay. So you are giving the witness the record copy and he'll need to give it back? So if someone wants to give him one that he can keep if he wants one, be sure to do that.

MS. VULIN: And I have extras. I'm happy to provide after the examination.

THE COURT: Okay. So I'm going to have the witness mark those. Do they have the numbers on them?

THE WITNESS: No.

THE COURT: Okay. So start with the California -- do you have something to write with? Start with the

California map and write 349.

THE WITNESS: Okay.

THE COURT: And then find one that is MIG-34 and mark it 350.

And then find the California exhibit, mark that 351.

And now you are set to go.

THE WITNESS: Thank you. All right.

THE COURT: All right. Now you may proceed.

MS. VULIN: Thank you, Your Honor.

CROSS-EXAMINATION

BY MS. VULIN:

Q. So, Mr. Vandenheuvel, thanks for being here with us today.

A. Yes.

Q. So let's start with your involvement in developing Proposal 19. I know you have -- I think you have seen a little bit of the questioning so far. So as I told the previous witness, we have a general sense of how the overall structure worked, but can you let me know what -- when you came on board and what your role is, please.

A. Yeah. I came on board, so to speak, with the task force from the beginning. When -- I don't remember exactly when that was, but when we started -- well, let me back that up. There was some of this discussion to include a change to the Class I differentials dating back probably beyond when I was involved. But once the decision was made to proceed with a Class I differential

update I was brought in to represent the western United States, given our presence in California, and provide perspective in the West.

Q. And was that before the first USDSS run, do you know?

A. I do not believe it was before the first USDSS. I believe that started when a group of folks looking at Class I issues, generally, they decided they wanted to go down this path. They retained Dr. Stephenson and Dr. Nicholson. It was some time after that that a formalized task force came together to now figure out what we do with this information.

Q. And you said you came aboard to represent the western United States.

Was that just California or the more general region?

A. In that initial meeting, I believe from the western United States, I was the only one in the room. So in some of the initial discussions, I was providing a western perspective. That would be West Coast, maybe including Arizona, Nevada, but, you know, west of the Rockies for sure. And then we started bringing others in with more of a local expertise outside of California since California is the only place I have ever done any business.

Q. And I know we have talked about these regional subgroups.

Were you a leader of one those or what was your

role in those?

A. I would probably call myself a coordinator of that effort. Other individuals I worked with on that included representatives from United Dairymen of Arizona, and there was a couple of people that rotated through that process. But most recently Brent Butcher from United Dairymen of Arizona. Darigold, or Northwest Dairy Association, and there was a couple of people that rotated through there, but most recently Monte Schilter. And Dairy Farmers of America, quite a few representatives there, including Johnny Hiramoto, Ed Gallagher. Eric Erba for a period of time participated in these discussions. Gary Stueve. I think that's it that I was familiar with at Dairy Farmers of America. And then -- and then Land O'Lakes generally oversaw what was going on, although it was more tangential, their involvement.

THE COURT: Would you spell Gary Stueve, please?

THE WITNESS: G-A-R-Y, and last name, S-T-U-E-V-E.

BY MS. VULIN:

Q. And those were all members of the western U.S. group or what was the geographic scope of that task force?

A. That task force was tasked with -- with refining and finalizing recommendations on California -- or Federal Order 51, Federal Order -- whatever the number is for Arizona, the Pacific Northwest Federal Order, and the surrounding unregulated areas, which would include Idaho, Utah, Nevada, and Montana, which is a state order.

Q. And we had heard some discussion earlier about

multiple runs of the USDSS.

Were you involved in any of those iterations or can you provide any insight as to the development between those runs?

A. The thing that sticks out in my mind is that between run 1 and 2, there was an effort to modernize the list of plants, that perhaps there was some updates to the list of plants in the model that warranted a change. Maybe some plants that were imminent, and I'm thinking mostly of an announced plant in Washington that had already been -- you know, broken ground, and the thought was could change some of the milk flows in that area. So I know that was between 1 and 2. I don't recall what -- what the adjustments would be between runs 2 and 3.

Q. And we have heard a little bit about this, adding or removing plants to make sure it reflects what -- what was going on in the industry.

Do you have any specific information on what plants were added and what plants were removed in that run?

A. In California, which would have been the only stuff that I was directly informed on, there was a -- I think there were two plants that come to mind that were in the initial run, because we were provided a list of the plants that the model had included, and they had been since closed down. One was a plant in Southern California, and one was a plant in the Bay Area. That's what comes to mind. And it was -- so in that case it was

removal of plants.

Q. Do you recall specifically, can you tell me which plants those were?

A. One was a Kroger facility in the City of Industry, and I believe the other that's come to mind is the Berkeley Farms facility owned by Dean Foods.

Q. And you said you recall -- so those are two plants that were removed from the USDSS, correct?

A. Correct.

Q. And you also recall there was a plant added that was in Washington?

A. Yeah, a Darigold facility in Pasco, Washington. And it's added to the model. It's in -- under construction. I don't know what the launch date is. But because it was already broken ground and imminent, then -- and we never know how long those hearings last, so we decided it was prudent to add.

Q. And that's a plant -- the Darigold plant you said is still under construction, as of today even?

A. As far as I know.

Q. And it's not obviously receiving any milk at that location?

A. Not to my knowledge.

Q. Any other knowledge of plants that were added or removed, even if not in your area?

A. Nothing coming to mind.

Q. And then I understand that there were anchor cities developed. And if you could pull up Exhibit 323,

please.

Were these anchor cities developed before -- was this list developed before or after you became involved?

A. The very first meeting I was involved included the selection of these cities.

Q. And so you helped select which cities should be the anchor cities?

A. Yeah. Yes.

Q. And can you tell me who else was part of that meeting?

A. Boy. Mr. Sims, Mr. Covington were definitely in that meeting. Boy, I'm going back a ways now. Mr. Vitaliano. I believe Mr. Sleper. I want to say there was a representative from Land O'Lakes, might have been Tom Wagner, but I'm not 100% on that. A representative from DFA, probably would have been Ed Gallagher. Chris Hoeger was probably in that room. And that -- those -- those are the faces I remember.

Q. And when you -- I know it's hard to recall stuff from that far back. Is it that those were the only people there and there were 20 other people who you can't remember, or there were only about ten people, and you think you have got them all, but you are not sure?

A. It was a fairly small room, and so I remember there wouldn't have been more than a dozen people in the room. And then there were a few folks that were participating by Zoom, I believe. Not very many but a couple folks. So less than 15 people total, but

representing different pockets of the country and different pockets of the National Milk membership.

Q. And at this meeting where you selected the anchor cities, is that also where the approach to use anchor cities was developed, or was that done before that meeting?

A. I don't know what discussion took place before that meeting in preparation, but that was the first time that I had heard of this idea of creating these benchmark cities in between regions to ensure that regional work that would come out of that meeting had a point between those regions that you would target some reasonable relationships. In other words, one region didn't take a vastly different approach than the neighboring region, and now you have got to meld those two at the adjoining boundary. So that was the first time I had heard that, that -- as a tool to try to get regional work done but still have a national strategy at the end of the day.

Q. And you said you gave input on the selection of anchor cities that were located in the West?

A. Yes.

Q. Can you identify which ones those are for us on Exhibit 323, please?

A. The two in Arizona, so Phoenix and Yuma -- I guess from a county standpoint, Maricopa and Yuma Counties. One in Southern California, Los Angeles County. And one in the Bay Area, San Francisco County. And I believe those would have been the four that I -- I weighed in on.

With the idea being that the relationships between Phoenix, Yuma, and Los Angeles, there's a -- there's a significance there. They -- they are kind of neighboring areas. You want some similarities -- I included some of that in my testimony about historical milk movements between Southern California and Arizona. And so that balance and making sure those two regions didn't go in vastly different directions. And then the Bay Area was put in there as kind of the nearest divider to the Pacific Northwest up in the northern part of our milk shed.

Q. And I don't believe there are any Pacific Northwest cities in here, are there?

A. There wasn't. And -- well, I don't remember all the exact conversation. It would have made sense that there wasn't any specific in the Pacific Northwest as, again, these were targeted at those borders to regions. So if you treat the Pacific Northwest as one large region that's going to have a consistent strategy, wouldn't need anchor cities within that region. It would be more important to have anchor cities around that region, such as whether it's Denver or whether it's Northern California, to maintain some consistency.

Q. And we'll talk a bit more about this, but I want talk a little bit about just the methodology or the theory behind how you approached the USDSS and those adjustments.

So you said that the USDSS cannot take into account regional competitiveness at the farm level.

Do you recall that?

A. Correct. Yes.
Q. What do you mean by that?
A. I mean, it doesn't look at farm level prices at all. I think Dr. Nicholson talked about that. That's not the intention or design of the model. It absolutely is an important consideration for CDI as we evaluate these proposals. I believe it is an important consideration for National Milk as well. And we believe it should be an important consideration for USDA.

But the general -- the general price -- I don't like to use the word exactly alignment, but -- but relative relationship between prices in different regions was an important consideration that the model just wasn't designed to -- to address.

Q. And when you say "farm level prices," do you mean that the USDSS doesn't take into account production costs at the farm level?
A. No. I'm talking about what is being paid into the pool for prices or for milk purchased and, therefore, consistent prices across the country. Not equal prices. You have different pools, different utilizations. Blend prices are a combination of price and utilization. So you are not going to have similar utilization in different regions, but -- but the prices paid into the pool, which ultimately turn into farmer revenue, it is important to keep some alignment in our opinion.
Q. I guess I'm struggling a little bit. My understanding is the USDSS is meant to generate that

price, right, or a portion of that price. And so how can it take into account what that price will ultimately be? Isn't that the output of the model?

Or I might not be tracking what you are saying there. Is it that the USDSS doesn't take into account whether or not the ultimate price it produces is sufficient in the marketplace? Is that what you mean?

A. I -- that would be -- that would be another way of saying what I'm gathering at, yes.

Q. And then you talk about pool stability and maintaining a robust incentive for handlers and farmers to serve as available supply for the Class I market.

Do you recall that?

A. Yes.

Q. And what do you mean by pool stability? Is that depooling or price inversions?

A. Yeah. I -- and I talked about pool stability in more detail starting on page 3 of the testimony, going into page 4. But it's, you know, not the only focus of our Class I updates, but it is a part of that, that there are features of the Class I price that contribute to whether more or less milk will pool, and to the extent that more pool -- more milk has an interest in pooling, that's more stable, it's more available milk to service the Class I market, and so this contributes to that in our opinion. This proposal contributes to that.

Q. And you say even in your testimony that a big part of the cause of depooling is the large and sustained gaps

between the Class III and IV prices, correct?
A. Correct.
Q. And so even in your testimony, you state that Class I prices are just a part of creating pool stability?
A. Absolutely.
Q. And I want to follow up on that a little bit.
In terms of how that operates in California, what is the Class I utilization in California, an estimate?
A. Somewhere -- estimated, call it 18 to 20% in any given month.
Q. And in terms of the Class I price and the ability of that price to impact pooling decisions, have you done any mathematical studies or numerical analyses to confirm that the degree to which your proposal can support pool stability?
A. We don't have a specific mathematical analysis. We do know that the more money that's paid into a pool, the higher the incentive to participate in that pool over the long-term.
Q. But only if that money is high enough, right, to change a pooling decision, correct?
A. Correct.
Q. So even if we have more money added to the pool, if it is not enough money to change a Class III or IV pooling decision, it won't actually improve pool stability, correct?
A. Yes. But I'd like to expand on that a little bit.
I am somewhat involved in our pooling decisions at

CDI, and I can tell you that even if you are not going to pool 100% of your milk, some milk is pooled or not pooled on the basis of pennies. And so to the extent that the blend price is higher because there's more money in the pool, it will result in a higher percentage of milk that's pooled, even if it's not completely eliminating an incentive to depool some of the milk.

Q. But you haven't done any analysis to see if Proposal 19 is sufficiently high to have that type of impact, have you?

A. Analysis? No. But I can tell you, like I said, it -- it -- we have milk that's not pooled on the basis of pennies per hundredweight in many months. And so I wouldn't want to leave the record with the -- with the message that we didn't -- we just assumed that somehow these -- this proposal would lead directly to more milk being pooled. It's adding significant dollars to the pool when you look at, you know, pretty, admittedly, significant increases to the Class I differential. That will move the blend price enough to have additional milk that would not otherwise be pooled as pooled. But it is correct that I don't have an analysis to that effect.

Q. And that impact of the additional Class I dollars in the pool is going to vary based on the utilization of the respective pools, correct?

A. Correct.

Q. And did you see the testimony of Jacob Schuelke with Crystal Creamery when he testified on the impacts of

the Class I price on pooling decisions?

A. I caught pieces of it online, but it -- I was not here for it and didn't catch his whole testimony.

Q. Did you see when he ran the analysis of how much the Class I price would have to change in order to change pooling decisions?

A. I'm not sure I saw an exhibit. I heard him talking about it.

Q. And you recall that testimony?

A. I recall that he claimed the Class I price would have to move substantially higher to incentivize milk to all pool or to eliminate any chance of inversions.

Q. And do you disagree with that testimony?

A. I don't disagree with the testimony. If your goal is to have 100% of milk pooled, we should change the pooling rules. But it's undoubted -- it's un- -- you can't argue against the fact that more money in the pool will result in a higher percentage of the milk in that order wanting to associate with the pool over the long-term. So I think those are two different arguments. Do you want 100% or do you want more? We don't have a system that mandates 100%. It's not a realistic goal. But more is -- this proposal would increase what percentage of milk wanted to associate with the pool.

Q. But you are not sure by how much more because you haven't done the analysis, you have just concluded it will increase pooling by some amount?

A. Correct. And that's not the sole driver of why

we're proposing Number 19, but it is a contributing factor that was worth noting in my testimony.

Q. And in terms of kind of how the marketplace impacts these prices, if the market is demanding high prices for Class I milk, or milk to be used for Class I, wouldn't we be seeing that in over-order premiums?

A. Can you repeat the first part of that -- or repeat the whole question because I'm not sure I caught the intro.

Q. So it was a little bit of a transition, so that's fair.

But thinking about how the marketplace drives prices, and if the marketplace is demanding more milk for fluid use, isn't that going to be reflected in higher over-order premiums for that milk?

A. Over the long-term, that is correct.

Q. And so, again, I posed this question to Mr. Covington, why aren't we letting over-order premiums solve this problem then, if it's really about the getting milk to Class I?

A. I can't speak for the entire country, but I can tell you in -- in our pocket of the country, it is a combination of the regulated price and over-order premiums. So they both -- they both are. It's not one exclusive of the other.

And so in our region we have Class I differentials, we have regulated prices, and those serve as a foundation of how we start with the milk price, and

then over-order premiums are on top of that. And they drive typically, based on more than just, you know, is Class I demand high. It might be regional considerations. It might be limitations of that plant, difficulties in servicing that plant, balancing schedules. All these things get factored into that. And I think that's a critical part of this, but it doesn't ignore the fact that after 20 years, the underlying price warranted another look.

Q. And isn't there a risk that if the Class I price is set too high, that could generate more milk than the market demands?

A. I think that's always something that needs to be taken into account in regulated prices. We don't believe Proposal 19 does that.

Q. And when talking about encouraging pooling -- and I know you brought up, if you want 100% pooling, you have to address that through the regulations that govern pooling. But with Class I utilization as low as it is in a number of orders, is the Class I price the best mechanism by which to try and create pool stability? Or even a useful mechanism?

A. If Proposal 19 was being done to specifically fix pool stability, I would say it's a very inefficient way to fix that problem. Does it help contribute to more pool stability? I believe it does. That's why it's in my testimony. It's not the first or even primary reason that we support Proposal 19, but it was an important

consider- -- important enough consideration to include at least a reference in the testimony.

Q. And in terms of over-order premiums, I know you had said those play an important role.

Does CDI or has CDI ever negotiated an over-order premium with a Class I plant?

A. Yes.

Q. How frequently?

A. Our typical supply agreements range from probably two to four years, and so as they come up, you have got to renegotiate those agreements, and they all have some level of negotiation around over-order premiums.

Q. And so just -- and my question was maybe a little imprecise. So I was looking kind of at what percentage of agreements that CDI has with Class I plants contain some type of over-order premium, and it sounds like all of them?

A. 100%.

Q. Thank you.

And has CDI ever passed along a fuel or -- a fuel fee or a hauling fee, I have heard some different terminology, but something equivalent to that, to a Class I processor plant?

A. Yes.

Q. And, again, percentage-wise, how frequently does that happen in the sales that CDI makes to Class I plants?

A. Nearly -- nearly 100%. The only exception would be if we operate on a temporary spot sale, we'll just

price that because it's a known period of time without the uncertainty of what fuel prices will do during the course of that contract term. Then we will just price it in one number so we don't complicate the discussion. But if it's a multi-year agreement and you want to hedge the risk that fuel prices could elevate beyond what is assumed at the time of contract, we include that adjuster in the contract language.

Q. And the fuel adjuster would adjust based on the cost of fuel going up or down?

A. Correct.

Q. And have you -- I know you covered hauling expresses in some of your testimony, correct?

A. Yeah, I did. I talked about some of CDI's hauling expenses differing from one region to another.

Q. And as part of that analysis did you deduct or otherwise account for the percentage of hauling costs that CDI typically earns back through its hauling or fuel fee?

A. I believe I did not because I included the all-in cost in both regions to show the differential of what both regions would do, because I wasn't trying to express the -- the total gross number wasn't as important as the difference between the two numbers. So I believe I included -- whatever I did, I included on both sides to ensure that the gap was measured consistently.

Q. So if we're looking at that number to determine what is the potential out-of-pocket cost to CDI for hauling or fuel costs, we would not take that number

wholesale, we would want to reduce it by whatever CDI in a particular agreement has for its hauling or fuel fee?

A. You would, except -- so this is on page -- predominantly on page 7 of my testimony. And so if you -- if you look, for instance, in the first paragraph, I give one range for milk deliveries from Kern County to Los Angeles County, and a second range from Kern County to Tulare County, so I was demonstrating the gap. If you are going to adjust them to some fuel surcharge, you would have to adjust both of them, which means the gap would remain the same per hundredweight. But, yeah, you could either include them or you could subtract them, the gap would remain the same.

Q. And so in providing this hauling data, was the intent that USDA use that to justify your deviations from the USDSS or is this data meant to support the adoption of the USDSS and their separate justifications for your changes from that model output?

A. This -- this information was used to support the proposal. Now, the fact that the proposal represents a deviation from either the current Class I differentials or from the model, spatial relationships, this data was intended to support the final results as opposed to how we got there.

Q. So there's no way to draw a line -- for example, if I'm looking at this, $0.68 to $0.81 a hundredweight for shipping from Kern to Tulare.

Do you see that?

A. Yes.

Q. So there's no way to draw a specific correlation or number-to-number translation to say, okay, this was the hauling cost, and that's why NMPF recommended X for the differential in Tulare?

A. That's correct. There's no -- there's no direct line.

Instead what -- what -- the way I would look at this information -- or I did look at this information, was if I'm looking at -- let's say, I take the midpoint of these two numbers, roughly, $0.75 for the shorter haul and roughly $1.45 for the longer haul, that farmer or that milk handler sitting in Kern County has to make a decision: Do I send the milk to Southern California and incur the larger haul cost, or do I send it to a closer plant in Tulare County and incur the lower cost haul?

We believe that the $0.40 gap in differentials from Kern County to Southern California is an adequate -- it's an adequate incentive to continue sending the milk to Southern California where it's most needed.

Q. So given where Los Angeles County is today, which I believe is $2.10 --

A. Yes.

Q. -- correct?

So how is -- and I'm not trying to be facetious, but how is milk making it there today if what the differential is at is much lower than what you are proposing and there are these hauling costs?

A. Well, the reality is it's -- it's making it there today through a combination of the base price and over-order premiums, and that is why you will notice that while the underlying lower -- lowest value in our state, we are proposing to move it higher, the relationship from Kern County to Southern California, or from Tulare County to Southern California, is largely unchanged, very minor tweaks. We think that there's some improvement to make, which is discussed later in my testimony. But we have not proposed a significant change in the slope from the Central Valley to Southern California, because while we believe an update to the -- to the figures is warranted, we believe the relationship is okay.

Q. And you said that over-order premiums are helping drive that milk to LA today, correct?

A. Correct.

Q. Do you expect that over-order premiums will no longer be needed if NMPF's proposal is adopted?

A. I -- I don't have that expectation or don't not have that expectation. We will have to work with our customers and figure that out when we get there. Over-order premiums are unpredictable and -- and a moment in time as you are working out those supply arrangements.

Q. And so the intent here is to account for what otherwise today is coming in over-order premium and put it in the base minimum; is that fair?

A. The intent here is to update a set of assumptions that are more than 20 years old. What impact that will

have in the marketplace is not entirely known. It's impossible to know exactly what impact that would have. We think that there's a lot of reasons to make these changes. We know some of these changes are needed in other parts of the country, and we think it would be inappropriate to make them in other parts of the country and not also address California to maintain some level of competitive balance.

But I -- I wouldn't go so far as to say there will be either no change or some change to how those relationships look after this process. We -- we think it needs to be updated, and we'll let the chips fall where they may in terms of how supplier and receiver coordinate contracts going forward.

Q. So you think the marketplace will still have a role to playing?

A. I think the marketplace will always have a role to play. The marketplace is not just setting a price based on national factors. It is setting a price based on what's the milk available in that area and who is able to sell it and who is able to buy it. And, yeah, those things change a lot faster than the regulatory process can possibly respond to.

Q. Thank you.

And if you could pull up Exhibit 351, please, which is the California testimony.

And so I want to go back in time a little bit just to understand how this process of approaching

differentials in California has developed and evolved.

So you discussed on page 1 the adoption of the FMMO in California, correct?

A. Correct.

Q. And you participated in that promulgation hearing, correct?

A. I was not at California Dairies, Inc., so I testified in a much different way, as a representative of the Milk Producers Council. So I would say I predominantly listened but occasionally would participate.

Q. CDI was a participant, correct?

A. CDI was a participant.

Q. And when I see here at the bottom of this, it says, "Cooperative-Exhibit 6."

Do you see that there?

A. Yes.

Q. Was CDI a member of the group of cooperatives who were petitioning to have a California Federal Milk Marketing Order put in place?

A. Yes.

Q. And I think a lot of us here got to enjoy that proceeding, so the band is back together here in Indiana.

A. I dispute the word "enjoy." But, yes.

Q. Noted for the record. Thank you.

And in this testimony, which was put forth by Dennis Schad of Land O'Lakes, I wanted to just ask a couple questions about how the approach that the cooperatives and CDI as a member of that group in

California took versus the approach you are proposing today.

So if you could go to page 29, please.

And there is some discussion on this page of the Class I differentials. And I'll go through and maybe read you some testimony just to orient us, and then go through and questions. Does that work?

A. Yes.

Q. So on this page, if you look at the top paragraph, second sentence, it says, "Section 1000.52 lists the Class I differentials for all counties in the United States, including California.

"The Cooperatives recommend that this section be included in the California Order in Sections 1051.51 and 1051.52."

And then if I go down to the next paragraph, it starts, "These differentials were developed during the Federal Order Reform process and represent the spatial value of milk and its components across the United States. AMS relied on the United States Dairy Sector Simulator Model (USDSS) to estimate relative geographic values of milk and place them on a national grid, which assigned Class I location values for each county in the U.S."

And then it goes on to explain that Congress instructed that the Secretary apply Option 1A, which we have had a little discussion about.

And then: "The Federal Register of December 17, 1999, lists all counties of the United States, including

counties of California, and the Class I differentials associated with each."

So just to orient us, even though at this point in time California was not under the Federal Order system, there were still differentials developed for the state of California, correct?

A. Correct.

Q. And just as today we have differentials for Idaho or other states that are not part of Federal Orders, correct?

A. Correct.

Q. And based on this, and my recollection, and I want to know if yours is the same, the cooperatives in California requested that the USDA adopt those differentials that were already within the regulations for California and apply those to the California Federal Order, correct?

A. Correct, with respect to Class I prices. I seem to recall that the proposal by the cooperatives treated blend price calculation different, but -- but for setting Class I prices, yes, they adopted the -- they requested the adoption of the current map.

Q. Thank you. And -- and I appreciate the nuances there.

And then if you turn to page 30 on the next page.

The bottom paragraph starts with "also addressed in Federal Order Reform was the appropriateness of the utilization of the minimum $1.60 per hundredweight base

Class I price."

And we have had a lot of discussion about whether or not this $1.60 is a minimum, is a base.

What's your understanding of what this $1.60 is that is used in the USDSS?

A. My understanding of that historical reference is that it was used -- it was a result of a consideration USDA made -- or came out of the Federal Order Reform process with and was used in some way as a basis of how they established the map at that time.

Q. And the $1.60 was added flat across every county, correct?

A. I've not seen maybe it said exactly that way, but as I have listened to this testimony and read a little bit of the history, that that appears to be consistent.

Q. Thank you.

And then if you could go to page 32, please.

And I'm looking at the last paragraph that starts "since reform."

A. 32. Okay.

Q. "Since reform, AMS has only changed the Class I differentials found in Section 1000.52 once as a result of a hearing held in May 2000 [sic] for FMMOs 5, 6, and 7."

THE COURT: Read again the year -- or the month and the year.

MS. VULIN: May 2007.

BY MS. VULIN:

Q. "That decision to increase the differentials

within the marketing areas was based on testimony that the Southeast was experiencing an increase of demand concurrent with a decline in milk production. All three marketing areas were described as milk deficit. Adjustments to the county differentials were based on a transportation cost function from the nearest surplus supply region to the Southeast markets. None of the supply/demand factors referenced in the Southeast decision are present in California."

Do you see that?

A. I do.

Q. And so my question is, this testimony was from 2015.

Do you believe that the supply/demand factors have since changed in California or do you believe the statement is still true?

A. I believe that it's a fundamentally different exercise, changing one region and leaving the rest of the country the same. That's -- that's something they did in the Southeast at one point because things had changed enough in that region to focus on that area only. I think the bar was appropriately high as to when you would make such a regional change but leave everything else in the country consistent.

What we're talking about in this hearing, and what Proposal 19 represents, is a wholesale review of the entire map. And in that -- through that lens, I believe you would take different things into consideration as to

when these differentials would move higher or lower. I still think it's appropriate -- as much as my dairy farmers won't like me saying this -- that the Class I price is higher in Florida than it is in California. They have a different regional supply and demand. They have to pull milk from further distances as has been testified to in this hearing.

The discussion over what the map looks like coast to coast, however, and what the lowest points are and what the highest points are, is where we think there's an appropriate review at this time.

Q. Do you believe or do you assert here that there is disorderly marketing in California due to the Class I prices?

A. No.

Q. And so the change of Class I prices in California is primarily prompted because other regions are changing and California needs to be changed in order to maintain the appropriate relationship with those regions?

A. Yes. We believe there are some adjustments to the counties as I talked about. But in terms of the predominant purpose of the change, it was -- it was, as you stated, a need to make adjustments in other parts of the country, a need for a lot of reasons as described in the testimony, to make sure we feathered that out across the country, even if we weren't supplying the Southeast or a particular region that was short of milk.

Q. We're doing a good job with our buzz words of

feathering and aligning.

A. Yeah. It's the word of the day.

Q. And so would -- based on your recollection of the California proceeding, did any of the cooperatives propose adjustments to the USDSS generated prices that ultimately became the Class I differentials in California?

A. No. At that time, again, because it -- we would be looking at just the region of California, we did not look at that.

And, again, I referenced it earlier, but to reiterate, the ultimate Federal Order provisions that became Order 51 were not the same as what the cooperatives' proposal was. So the cooperatives' proposal was supportive of the Class I differential map in determining Class I obligations of handlers, but they didn't, admittedly -- and I wasn't in the room, but from the outside, clearly didn't take a close look at the impact it would have on blend prices and -- and the handlers that are supplying those plants and their pool draws because that wasn't part of their proposal, that then was incorporated into the proposal, you know, in the recommended and ultimately Final Decision.

But this testimony, which would have been given under the assumption that the proposal includes a consistent blend price across the country, not adjusted by Class I differentials, would have driven -- in other words, the co-ops might have taken a different approach if they knew they were going to have a blend price that was

also adjusted by Class I differentials, but they didn't. And so here we are four or five years later. We now know the rules that we operate under. We have been in there for four or five years, and we think that there's a warrant to make some adjustments to some of the counties and how they interact.

Q. And you would agree with me that USDA didn't of their own volition take a look at the differentials and decide that there needed to be adjustments, correct?

A. Correct.

Q. But now you are advocating that USDA take a different approach, take the USDSS model and make adjustments to that or changes to that based on local knowledge, correct?

A. Correct.

Q. And you can set that aside now. Thank you.

A. I correct my previous statement. Somebody enjoyed the hearing.

Q. So we have talked about some of the price adjustments. And I have the map in front of me, and I'm sure, as with Mr. Covington, you have all of these counties committed to memory, but I find it helpful to have. I know that a lot of your testimony focuses on how do we get milk from kind of the Central Valley milk shed to the major cities, primarily LA and San Francisco, possibly also San Diego; is that right?

A. Yes.

Q. And I understand that part of what drives the

higher differentials in the cities and the deviations from the USDSS is traffic and the impact that has on the ability to move milk; is that right?

A. Yes.

Q. And so when I am looking at the deviations from the USDSS -- and if you want to have Exhibit 350 handy as well. And MIG has taken the differentials proposed by NMPF and added these difference in percent change columns. I found those helpful to, one, avoid having to do math on the fly and also for comparison.

And so I'm looking at Los Angeles County and the adjustment from the USDSS. And it's 33 --

THE COURT: Let me stop you there.

MS. VULIN: Yes.

THE COURT: I think this would be a good place for us to indicate -- I know you haven't had a chance yet to correct the heading, but this would be a good place for each of us to mark how you will adjust the heading to show that this is not a National Milk Producers Federation exhibit.

MS. VULIN: I believe we handed out corrected ones, but perhaps we haven't gotten one to Your Honor yet. Apologies.

THE COURT: No worries.

Oh, how beautiful, we don't have to write on it.

Okay. So I would like the witness to read to me what you're looking at, with regard to Exhibit 350, would you read across the top each section. And because we now

know that this is Exhibit 350, I would like you to fill in the blank, if you have a blank at the top.

THE WITNESS: Mine is different from yours, so I would need to read yours.

THE COURT: Let's give the witness the updated one. Do you have an extra copy? He doesn't have to take the record copy.

MS. VULIN: May I approach?

THE COURT: You may.

MS. VULIN: I'll take the old one.

THE COURT: Yes.

All right. Now, do you see, Mr. Vandenheuvel, that there's a fill-in-the-blank in the heading?

THE WITNESS: Yes.

THE COURT: Would you write into your copy, 350, because that's what we designated this exhibit.

THE WITNESS: Yes, it's been written.

THE COURT: Okay. Somebody's taking better care of you than they are of me.

All right. So I have 350. Please read into the record the way this heading reads now.

THE WITNESS: It says, "Exhibit 350, MIG-34, NMPF_Final Class I Differentials, June 2023, California, Corrected Header."

THE COURT: Good. And then to the left of the heading, still on the same line as the heading, what words do you see?

THE WITNESS: "Prepared by MIG."

THE COURT: And to the right of the heading that you read into the record, what do you see?

THE WITNESS: "Exhibit MIG-34."

THE COURT: All right. Good.

Now, you may continue.

MS. VULIN: Thank you, Your Honor.

BY MS. VULIN:

Q. So if you could go to Row 177, please.

And here you can see we have extracted the California counties, which is why it starts at Row 159. But in thinking about the impact that traffic has and the justification of deviating from the USDSS based on that, I see a 33% change in the price for Los Angeles, from 2.25, as the model average, $2.25, to $3, correct?

A. Yes.

Q. But when I look at, for example, Fresno in Row 168, there was an almost identical percentage change there of 32%, from $1.90 from the model to $2.50.

And so in thinking about the respective traffic in those areas, and I don't live there, but I watch Saturday Night Live, so I have heard a little bit about the traffic in Los Angeles, it's some of the worst in the country, I would think.

And so how was that principle applied across the counties when we're seeing something very similar with two very different regions?

A. Well, when I talked earlier in my direct examination about the approach we took, the bottom -- and

$2.50 would be the bottom in California, it would be the trough, the valley of the slope -- was established not based on the USDSS, but based on competitive considerations that I talked about, which may have been driven by USDSS in other parts of the country. And then we built up from that valley. And while milk in Fresno does not typically get transported to Los Angeles or even the Bay Area, milk in Kern or Tulare County does.

And so we then looked at, you know, what would we do to build that slope into Southern California. And frankly, we could have put together a justification to have a much larger than $0.50 slope from the Central Valley to Southern California, but that's the slope we have today. We believe that milk is moving where it needs to move. And so we -- even though -- even though it didn't increase LA more than the $0.50 that we had increased Fresno, we decided that that was an appropriate slope.

So that was the thought process. We obviously didn't look at it through the lens that you are presenting here.

Q. And just to be clear, when I equated the similarity of the change, it was by the percentage change, not the ultimate dollar.

A. Correct.

Q. So they were different dollar changes.

So then -- but my understanding was that Los Angeles was an anchor city. So I thought the Los Angeles

price came first, and then everything else would have been built from that.

A. It did come first. But that didn't mean that the numbers associated with LA County were set and never moved. We -- the anchor cities established basically the first run of, okay, each region, go to do your regional work, here's the anchor cities, we're going to put some numbers associated with those anchor cities, and then we're going to come back and meet. And hopefully because of the use of anchor cities, we have got some -- you know, some cohesion between the regions.

Then, throughout the process, we continued to evaluate what this map should look like, and so adjustments were made, whether it was an anchor city or not. So while LA was initially identified, LA ultimately ended up in a -- at a different differential recommendation than initially assumed.

Q. What was the original differential recommendation for LA when you established the anchor cities?

A. I -- I don't recall, but if I had to guess, it was probably somewhere close to the USDSS number of $2.25. But I -- I don't have that reference available. But that would have been the most likely. Most likely $2.25 or somewhere plus or minus somewhere close to that.

Q. When the anchor cities were established, was there an intent that those close very trackly -- let me start that again.

When the anchor cities were established, was there

an intent that those track very closely to the USDSS average results?

A. There was a recognition that this definitely was going to be a marathon, not a sprint. So at that point, they set it very close to the USDSS number, so that the regions could begin their work. Ultimately, in the refining sessions and the process of coming up with a full coast-to-coast proposal, lots of considerations came in, which I have already talked about. But in that moment in time, it was, we aren't going to debate what this number should ultimately be, let's start with something. And it probably was exactly the USDSS number because that was a reference price at that number -- you know, run one of the USDSS, and then we'll refine as we go forward.

Q. And I see that when I look at Exhibit 323, which lists the anchor cities.

A. Okay.

Q. I see some of the ones listed at the top which are maybe the more east coast or central. You do have some that are set right at the USDSS amount.

A. Yes.

Q. For example, Charleston, West Virginia, looks like Nashville, Tennessee.

But then as we go down, the four anchor cities in your region, Phoenix and Yuma in Arizona, and Los Angeles and San Francisco in California, have more significant deviations from $0.60 to $0.80, correct?

A. Correct.

Q. And you are saying the reason for those changes was that some of the other counties in California had to be pushed up, and therefore those counties got pushed up in order to maintain the slope relationship between them?

A. Correct.

Q. And what forced the other counties, like Fresno, to be pushed up that started this iterative change?

A. Regional competitiveness, pool stability, and maintaining a robust incentive for handlers and farms to serve as available supply for the Class I market, and limitations or cost drivers created by region specific factors. So all of the things I testified to, that are kind of broken down later. I would say probably regional competitiveness was an overriding theme that we talked about in the West, and in California in particular.

Q. And when you said "they" set it, referring to the anchor city USDSS -- let me start that again.

When we were talking about how the original anchor city prices were set, I believe you said "they" set it at the USDSS prices.

Who is "they"?

A. Yeah, I should have been more clear. So the group that -- that was meeting in that initial meeting. And actually I -- I'm not sure if this was the order in which they were selected. It was an exercise for much of the meeting of where does this region and that region come together that I was less familiar with, but came up with these list of cities, and then the group would assign a

value. And I believe the default value was the University of Wisconsin model run.

Q. And you were part of that group?

A. I was part of that group. Yes.

Q. And it is interesting to look at this selection of cities, right, because looking at San Francisco or LA, you understand how those can be real drivers. But I couldn't figure out why Yuma, why we would look at Yuma alongside LA or San Francisco given that based on my quick Google, Yuma has less than 100,000 people, and obviously San Francisco and LA have millions of people.

A. I believe Yuma sits on or very near the border of Arizona and California, and so it was seen as a -- as a border region that has milk, has -- has plant capacity. It's -- it's -- it's a -- it's a consideration in milk pricing in Federal Milk Marketing Orders, and conveniently sat between two regions that were going to have to go back and do some regional work. So that's why it was selected, so that the work the Arizona folks conducted and the work the California group conducted would ultimately be targeting a consistent target point on that border.

Q. Okay. And you had discussed earlier the relationship between California and other regions of the country, and you pulled up the map that Dr. Nicholson had shared demonstrating that there's kind of two distinct regions in a more major sense, right, the west and the east.

Is that right?

A. Yes.
Q. And I believe you said that they're largely separate and independent of each other.
Is that right, in terms of their milk sheds and processing?
A. With regard to milk, yeah, milk flows, I think there's -- when you are talking about feed, I mean, we had a witness from J.D. Heiskell talking about grain stuffs moving from one region to the other. But milk, too much water to move that kind of distance.
Q. And when we're talking about the regionality of it, you are talking both about the raw milk supply.
But what about this fluid milk finished product? Is that also a very regional product?
A. Yes. Typically very regional, particularly in the, you know, traditional bottled milk business with a limited shelf life.
Q. And probably the regions are more expansive or broader when you're talking about components or cheese or other products then you are fluid milk, correct?
A. Absolutely.
Q. And so you said in your testimony that the Upper Midwest milk sheds, like Wisconsin, Minnesota, and South Dakota, had their prices change as part of this process, and that the Central Valley of California needed to change to be comparable to those.
But if they are totally separate milk sheds that aren't competitors, why would they need to have comparable

prices?

A. In the Class I space you could certainly argue that they are mutually exclusive regions. The fact that this drives pool revenue and ultimate blend price calculations of farmers, those farmers are absolutely competing with farmers in regions all over the country, whether it's for feed supplies or -- I can tell you it's been an interesting dynamic watching the state of South Dakota and the state of Kansas put a representative in a booth at the Tulare County ag show trying to solicit our farms away from California and bring them to their region. You are competing at a farm level with where -- where is there other options to milk cows.

And so because this all, ultimately, results in a pool that determines blend price values for the farms, we thought it was appropriate that we not endorse a proposal that would put our farms at a competitive disadvantage because pool price -- pool revenues were enhanced in one area and not enhanced in our region.

Q. And then kind of looking at this global comparison, if you could look at Exhibit 350 and 344, which are the two tables. One we had talked to Mr. Covington about that showed the percent changes to the Florida USDSS prices, and then I have here the California one. And I set them side by side, and it's a very stark comparison to me, looking at the exclusively single-digit, very low percentage changes from the USDSS in Florida, and then the much more significant higher deviations in

California.

And if we're trying to approach the differentials in some kind of systematic or consistent way, how do we reconcile the severity of the differences in these approaches?

A. Well, I'll start with if we had $6.90 differentials in California, I probably wouldn't have strayed from the model too far, but that's not what we ended up with. We ended up with significantly lower.

We -- we -- we believe that there's justification for the numbers that we have set at the -- kind of the bottom of our valley for competitive reasons. We actually think we were probably conservative in how we built the slope up to the LA and out to the Bay Area urban centers. The fact that that results in a double-digit change is partially a function of we're starting with a lower number, and partially a difference of opinion on how to interpret the USDSS numbers, that we think that there's warrant in -- there's value in evaluating it as a separate pool as opposed to one national map, and as I talked about in my direct examination.

So I don't think you can compare what we're doing in -- what we're proposing to do in Florida under Proposal 19 with what we are proposing to do in California. I think you've got two different situations. I think as much as our farmers would like it, we're not proposing a $6 or $7 differential in California because, for all the reasons that are talked about in this hearing,

there is a difference in that part of the country. But we don't think it's unreasonable to ask for a meaningful adjustment to the California differentials, even if the USDSS did not recommend those changes.

MS. VULIN: And, Your Honor, I have one more set of questions, but I'm at a good stop if a break is in order.

THE COURT: A break is in order. And I congratulate the two of you. You're just covering a lot of important ground, and you are doing it very beautifully. Thank you.

So we go off record at 2:11. Please be back and ready to go at 2:25.

(Whereupon, a break was taken.)

THE COURT: Let's go back on record. We're back on record at 2:26.

Ms. Vulin.

MS. VULIN: Thank you, Your Honor. Ashley Vulin with the Milk Innovation Group.

Now I had Exhibit 300 put on your desk.

I believe we need a copy for Your Honor, or do you have --

THE COURT: I have my own.

And this is a good time to express my gratitude for the yardsticks. These are substantial. I've never had such a good yardstick. I'm going to need someone from AMS who as a motor vehicle to transport the yardsticks as if they were record exhibits. And I have one, and I have

a witness one, and --

MS. VULIN: I'm glad I'm a yard and a half away from you all.

THE COURT: All right. I'm sorry. What number?

MS. VULIN: Exhibit 300.

THE COURT: Ready.

MS. VULIN: Thank you.

BY MS. VULIN:

Q. And, Mr. Vandenheuvel, I'm -- I want to ask to see if you can solve a little mystery for us.

So Column O in this Exhibit 300 says "Proposed Class I," and Column S says "New Proposal."

Do you see that?

A. Yes.

Q. And I believe this was the May 2023 NMPF price differential Excel. And I'm trying to figure out what the differences between O and S.

Do you know that?

A. No.

Q. And we have also been trying to figure out who the author of this Exhibit 300 is that was submitted to USDA.

Was that you by chance?

A. No.

Q. Do you -- have you seen a document similar to this that was utilized as part of the process of developing Proposal 19?

A. In general, I have seen spreadsheets with columns that look like this, but not in this exact format.

Q. So you are not sure who may have been the owner or author of this document?
A. Correct.
Q. And then there's also a Column R there that says "Average Monthly Pounds 2022 (mil)."
Do you see that?
A. Yes.
Q. Do you have any idea what that column is indicating?
A. I will assume that's the amount of -- well, no, I don't know because I -- it could be amount of milk produced or processed in that county. Previous spreadsheets I have seen have not had such a column on it.
Q. So it would just be a guess?
A. Yes.
Q. So the mystery shall continue. You can set that aside.
So I have just a couple questions about Grade A versus B milk, in particular in California.
So did you hear any of the questions yesterday of Mr. Erba or Mr. Sims regarding the costs of Grade A farming?
A. Yes.
Q. And are you aware of there being any difference in how California allows election of being a Grade B farm versus A?
A. I think your question asked about a difference, and I'm not sure I caught what difference you are looking

for. Can you repeat the question?

Q. Sure. So I'll put it to -- are you familiar with the Food and Agricultural Code in California, Section 33452, which defines or provides for farms to make an annual election to not be a Grade A farm? Are you familiar with that?

A. I'm familiar with the concept, maybe not the exact verbiage of the regulation. But, yes, the concept.

Q. Can you tell me what you know about that concept, please?

A. The concept is by some period prior to January 1st of any given year, you can designate yourself as a manufacturing milk dairy as opposed to a market milk or Grade A dairy, and that decision is locked in for 12 months from -- or for that calendar year, January 1 through December 31.

Q. And those terms, marketing -- manufacturing milk and market milk, it's my understanding that the manufacturing milk is the Grade B and the market milk, because it can be used for fluid milk, is Grade A; is that right?

A. That's my understanding as well.

Q. And why would a -- this is -- sorry. Strike that.

In California, this is a unique option just to farms located in California?

A. I believe that's the case, yes.

Q. And why would a farm in California want to elect to be a Grade B or a manufacturing milk farm for a year?

A. In today's environment, the purpose would be, if you can find a buyer that will buy your milk year round, and you can contract with that buyer at a price that is acceptable to you, it allows you to escape funding the California quota program that only applies to Grade A or market milk.

Q. And I have some familiarity with the California quota program, but can you just give us a short description of what that is, please?

A. California's quota program has a long and storied history, but in its current form, it is a -- a paper asset held by dairymen that entitles them to a certain return on each pound of quota, which is tied to a pound of solids nonfat that they produce. The funds to fund that payment to quota holders used to come out of the California state pool. With the creation of a California Federal Order, they are now funded by an assessment each month on all Grade A milk produced and processed in the state, thereby providing an incentive for someone to not produce Grade A milk if that was an available option because they would not have to fund that pot of money that's distributed to quota holders.

Q. And this option to switch back and forth with the annual election, that would mean a farm that wanted the option to return as a Grade A farm would maintain the fixed aspects of their operation, right, the facilities and things like that, they would need to maintain that Grade A status if they wanted to elect back in the

following year?

A. They would at least keep it in a condition that they could -- they could restore to that standard by the time they signed up the next year.

Q. So when we're looking at the percentage of California farmers who may be Grade B at any point in time, there is a motivation to do that that's unique to California and not necessarily driven by the FMMOs; is that right?

A. Correct.

Q. And are you aware of any cheese processors in California who require suppliers to be Grade A?

A. I believe a majority, you might even say a vast majority, of cheese manufacturers require their supply to be Grade A.

Q. And are you aware of any cheese manufacturers or processors in California who actively solicit Grade B milk?

A. In 2023, I do not. There has been cases in the past when even a large cheese manufacturer would have a program offering that opportunity to its suppliers. I don't believe that's still the case in 2023.

Q. Thank you.

MS. VULIN: Nothing further, Your Honor.

Thank you for your time.

THE WITNESS: You're welcome.

CROSS-EXAMINATION

BY MR. MILTNER:

Q. Good afternoon, Mr. Vandenheuvel.
A. Good afternoon, Mr. Miltner.
Q. Ryan Miltner representing Select Milk Producers.
I wanted to start with getting a little more detail or clarification from you on one particular part of your testimony, and it is on page 3 of your written statement, Exhibit 345.
And you're comparing California's Central Valley and the Upper Midwest regions, and one sentence in particular caught my attention. You state, "The gap" -- after you describe the Proposal 19 differentials in those two regions -- "The gap is wider than exists today, but CDI supports Proposal 19 and believes it represents a reasonable relationship in Class I differentials between these two regions."
I wondered what the importance of that relationship is to CDI as you were putting together this price surface?
A. Well, I -- I talked in the previous couple of paragraphs about why I think there are some functional similarities between the Central Valley of California and the major milk sheds of the Upper Midwest. And I also noted that in our current Class I differential map they are pretty close. And so at least at the time of establishing that map, they established -- "they" being USDA -- established a differential for those various counties that was pretty close. If you look at what the USDSS model generated in its most current run, they are

not very close.

And so for CDI, as we evaluated what we think is an appropriate set of differentials by county, we thought that there was justification to closer align, not exactly align, but at least closer align, within reason, the bottom of our trough or slope or whatever word you want to use, in California, with the bottom of the slope or trough in the Upper Midwest.

And so that was -- that paragraph is they're recognizing that while they may not be equal in the proposal, they are close enough and they are much closer than the USDSS model put out as a recommendation, and so we were supportive of that.

Q. What specifically about the characteristics of those two regions makes them -- makes it appropriate to align them more closely than the USDSS model suggests?

A. Well, we look at -- we looked at this as both regions could be fairly described as the supply portion of the supply/demand relationship as opposed to the demand side. It's -- it's more likely that those two regions are going to be on the bottom of the slope as opposed to the top, Miami or cities in the Southeast, for instance, that have been talked about in pre- -- by previous witnesses.

And so what led us to that belief is they are both areas that have strong and concentrated milk production assets. They both have very limited Class I utilization. I know that California, if all the milk was pooled, we might be closer to a 10 or 12% Class I utilization, but if

you look at the Central Valley in isolation and not including the Southern California region, the Bay Area that are very different from the Central Valley, there's very little in-area Class I utilization in the Central Valley of California.

So we thought that they had some similar features like that. I talked earlier about some of the competition that exists between farms in California and farms in the Upper Midwest, going so far as trying to recruit farms to those other regions, you know, better economics, closer access to feed, all those -- all those things that are -- that are talked about when you are trying to convince a farmer to leave the state of California.

So that -- for those reasons, collectively, we thought there was a justification that those -- the bottom of those troughs -- the bottom of those slopes should be similarly situated.

Q. You said in your answer that if you look at the Central Valley in isolation without taking into consideration demand in Los Angeles.

Was that part of the approach that your particular working group looked at, was to say, let's look at production isolated from the Class I demands pulling from those regions?

A. I -- I think it was part of the consideration. You know, California is a huge state, and so one might say, well, you know, you have got Class I, it's just a little further south from the Central Valley. Well, in

other parts of the country that might be two states away in miles, but it happens to be in the same state, but it is really not the same region. There's not only miles in between, there's a mountain range in between, with limited arteries for traffic to go between those two regions.

And so we did definitely look at the Central Valley as the supply region and the bottom of the slope whereas the urban centers of the coast, whether that's Southern California or the Bay Area, were -- were, you know, different regions, which I talked about in the testimony as kind of three distinct regions.

Q. And I apologize. I had to step out of the room a little bit for part of your first set of questioning. But was there -- are you really viewing the whole map as not a single national surface, but a collection of regional surfaces in your analysis?

A. I think USDSS model attempts to create some regional distinctions, but is still ultimately a national map. My reason for bringing up the map from Dr. Stephenson and Dr. Nicholson's report was to show that it really is not one big pool where milk all flows to a common area of deficit. The West is a bit of an island. Milk doesn't flow over the Rockies on any kind of regular occurrence, for very legitimate reasons.

And so I was pointing that out to say that changes or variations that we would recommend to the model won't necessarily impact the milk flows or economics in the other part of the country. Not sure I would agree that we

looked at this with a lot of different regions, but we certainly, in the West, looked at this and said, we think there's -- there's other considerations outside of the model, regional competitiveness being a big one, and we think we can make some adjustments to reflect that, and we don't think that will compromise what's happening on the eastern part of the country.

Q. I wanted to ask you also about a base differential.

As your working group was beginning to look at county-by-county values and the USDSS model, did you assume that there was a base Class I differential from which to start?

A. Our initial work of our first draft would have been largely influenced by the USDSS, which as testimony earlier has revealed, had embedded in it a $1.60 base differential. We at that point took a lot of other considerations into account.

So I'd say after that initial establishment, then we really didn't spend a lot of time focusing on a base differential and rather focused on some of the other considerations we talked about, most notably regional competitiveness.

Q. Now, are you familiar with USDA's discussion in the order reform decisions which breaks out three components of that $1.60 base differential?

A. I generally am aware of that, yes.

Q. Do you believe that those three elements are still

relevant to the determination of a Class I differential?

A. I believe they are relevant to include in the discussion and to recognize the cost that exists when it comes to the three buckets that were discussed in that Federal Order Reform decision. Where I would stop short is that that should define exclusively the bottom of any regional slope. We think there's -- there's other factors, such as the ones in my testimony.

Q. When you say that it should stop short of defining the bottom of a regional slope, are you suggesting that the bottom of a regional slope could be lower than those three buckets?

A. We don't have any proposal -- or we don't have any counties in Proposal 19 that are lower than $2.20, so that's what we support as the lowest. We don't call it a base differential, and it wasn't constructed as such. But we're not proposing any number that is tied to those calculations.

As I recall, Dr. Erba's calculations did not add up to exactly $2.20 when he was talking about some of the pieces that add up to that, you know, those three buckets. So we just -- we took a fundamentally different look.

But I understand that the model had to put a value and -- in order for it to calculate, and that started -- that served as an initial discussion point, but from there we took a lot of real life considerations into account.

Q. So I believe Dr. Erba testified that the Grade A maintenance costs were $1.40 something. And I believe he

also testified that while he hadn't quantified it, that balancing costs and the cost to attract milk to Class I plants exceeded $0.74, which in combination, if you take his testimony, would get you to $2.20.

Now, if we take Dr. Erba's $1.40-ish for Grade A, and Mr. Covington's testimony about the cost of balancing that they incur at SMI, we're over $2.50, and we haven't even started to talk about the cost to attract milk to the market. And I don't think National Milk or its members have put on any other numbers to help us quantify what that base is.

Do you have -- CDI have an opinion on what those three buckets add up to?

A. No.

Q. And so when you say you took a different approach or a different look at this, you also deviated from the USDSS model by looking at competitive factors and the like, correct?

A. Correct.

Q. So I guess I'm trying to help synthesize all of this into a methodology to help justify the specific numbers that are in there? Because if you deviate from the base and you deviate from the model, then all we're left with is what the colored pencil crew did, right?

A. Well, previous testimony said a couple of things, as I recall, and I will admit that I haven't heard every minute of the testimony. But Dr. Nicholson I believe talked about the fact that to run their model they had to

put a number in, a base value. Otherwise, the dual pricing spatial analysis, whatever his terminology was, would have created a -- would have generated a county at zero or a base county at zero. So they put a number in there.

Testimony by Dr. Erba and some testimony by Mr. Covington was aimed at supporting why it shouldn't be zero, it should be some number higher than zero.

To support using the USDSS as a model, what I testified as to was that in the western United States, we don't think the model results represent an appropriate adjustment to the Class I differential map for the reasons referenced in my testimony. And so for those reasons, we made adjustments. We explained those adjustments. We didn't just put them in a grid and say, here they are, we would like USDA to take them. We put some thought around them and why there should be considerations beyond the model. The model is a good tool, but it's not the only consideration. And so that's -- that's the process by which we did.

And, you know, our hope is that there's enough in the record to explain why USDA should use the USDSS as an influencing factor in updating the differential map, but that also, when looking at a coast-to-coast adjustment, there are some pretty -- some other pretty important factors that should be taken into account that all roll up into Proposal 19.

Q. Dr. Vitaliano's statement on Proposal 19 referred

to a base Class I differential of $2.20, quote, as embedded in the NMPF proposal, close quote.

Do you agree with his characterization of $2.20 as a base Class I differential?

A. I would agree that $2.20 is the lowest Class I differential in the proposal. And if that's what's meant -- I can't read beyond the words and what was intended to be described as a base differential, but it is absolutely the lowest differential in Proposal 19.

Q. Would you characterize it as a base differential?

A. I would characterize it as the lowest differential in Proposal 19.

Q. So is that a yes or a no, Rob?

THE COURT: He doesn't have to answer that yes or no.

MR. MILTNER: Well, I asked a yes or no question, Your Honor.

THE WITNESS: I will -- I will give closer to a yes and no perhaps.

California, the differentials that I was most involved with, I did not set those -- or recommend them. I didn't set them. They are part of a broad proposal that National Milk's Board of Directors included on a unanimous basis into our proposal, but I did not recommend those, along with other parties in the West and in California, with a 2.20 in mind. I recommended them for all the reasons laid out in my testimony.

But the reality is the lowest county is 2.20.

Whether you call that the lowest county in the differential schedule or you call it a base differential is semantics in my mind. But it did not influence why, and that's why it's not included in my testimony, because it did not influence why California established our slope and our bottom of the slope in the way we did. We used other factors.

MR. MILTNER: Thank you.

And, Your Honor, I would respectfully suggest that the term base differential has a very specific meaning within the context of the regulations as USDA stated them, and that's why it's important, in my opinion, for us to evaluate how these differentials were built because -- precisely because of the way USDA has used that term in its previous decisions, and I don't believe it's just semantics.

But I appreciate your Honor's opinion and will respect it.

THE COURT: It is just that this witness didn't look at his evaluation that way. The fact that that may be an overriding concern, I grant you.

MR. MILTNER: Thank you.

BY MR. MILTNER:

Q. So, Mr. Vandenheuvel, I want to look at just -- hopefully just a couple of counties here. And I don't know that you necessarily need to get out your ruler and exhibit, but you can if you wish. I'm looking at Kings County, California.

THE COURT: On what exhibit?

MR. MILTNER: I think they are all about the same, but I'm looking -- the one on my screen is MIG-30.

Is that the one you have got there? It would be the longer spreadsheet you just put papers on top of.

THE WITNESS: Are you only looking at California?

MR. MILTNER: I am.

THE WITNESS: Okay. Then MIG-34 has all the California counties.

THE COURT: Oh, okay. Good. The little one.

MR. MILTNER: So Kings County, California --

THE COURT: Hold on. Hold on. Hold on. So --

THE WITNESS: 350.

THE COURT: Thank you very much.

All right. We're all looking at Exhibit 350.

Now you may proceed.

MR. MILTNER: Thank you.

BY MR. MILTNER:

Q. Okay. So the USDSS has an average differential of $2, correct?

A. Yes.

Q. And the current differential is $1.60, correct?

A. Yes. Correct.

Q. Which, however we call that, $1.60 is the lowest point on the current map, correct?

A. Yes.

Q. National Milk proposes $2.50, correct?

A. Correct.

Q. And so the model increases the differential $0.40. National Milk increases it $0.90.

And so without going down this discussion about base zones or whatever, what -- how do you justify the $0.50 difference between what the model shows and what you have asked for?

A. Well, at the risk of sounding like a broken record, the items in the testimony with regional competitiveness as a predominant factor to take into account why we -- why CDI supports a higher differential in Kings County than what the model recommended. And understanding the model doesn't recommend the Class I differential, but it recommends a spatial value of some definition.

Q. It has an output, right?

A. Yes.

Q. In looking at -- well, have you looked at USDA's order reform decisions on the establishment of Class I differentials?

A. Not -- not in a level of detail.

Q. Are you aware as to whether USDA refers to regional competitiveness as a factor in setting the differentials that we have currently?

A. I am not aware.

Q. Is there a way in which your working group or National Milk as a whole quantified -- if it's possible to quantify -- regional competitiveness?

A. Beyond what I have put in this testimony, I don't

believe we have another exhibit defining regional competitiveness.

Q. Regional competitiveness is more than simply the distance between two points on a map; would you agree with that?

A. I would agree with that, yes.

Q. Because, for instance, the distance from Bakersfield to City of Industry, which is in Los Angeles County and there are milk plants there, is about 130 miles, right?

A. Sounds right.

Q. And the proposed slope between those two points between a milk production zone and a Class I demand area is $0.50, correct? Bakersfield to LA?

A. Currently?

Q. As proposed?

A. As proposed is $0.40.

Q. $0.40. Okay.

So that's $0.40 over 130 miles, but then Sacramento to San Francisco, which is about 90 miles, right?

A. Sounds right.

Q. That's a $0.50 slope as proposed, correct? Sacramento to -- is that Marin County? San Francisco?

A. $0.40. $2.90 and $2.50. My testimony said $0.40, so you had me second guessing.

Q. Well, I'm second guessing myself now too.

But -- so if they are both $0.40, one is 150 miles

and one is 90 miles, it is more than a function of distance, correct?

A. It is more than a function of distance. One of the things that's going on in Kern County is there are no raw milk processing facilities in Kern County, and so all that milk needs to travel a great distance, not 130 miles, but it needs to travel north to Tulare County currently to be processed. And so the incentive to incentivize Kern County milk to go into Southern California doesn't need to be as aggressive as an incentive for Sacramento milk to go into the Bay Area because that Kern County milk is going to incur a significant cost. That dairy was built there, and that milk -- or the milk shed was build without a local home for milk. So they -- they -- their secondary option -- it's not just the primary option, it is what's their secondary option that's important to consider when you are looking at what does the incentive need to be to draw that milk into a region.

Q. Now, the USDSS includes in its model the locations of both distributing plants and manufacturing plants, correct?

A. I believe so, yes.

Q. So wouldn't -- wouldn't that secondary plant option already be encompassed in the model?

A. I think it probably would. And if you look at, let's say, Kern County and what the model says, the Kern County average price of the UW analysis, if I'm reading it right, is $2.15 and LA County is $2.25. So I think it has

recognized -- I think they have undervalued how difficult that drive is from Kern County to LA, because I think you need more than a -- we believe, CDI believes, you need more than a $0.10 or $0.15 difference. But that gap is probably smaller because of the supply plant locations as you referenced just now.

Q. So is it -- is it your understanding or your belief that the model undervalues the secondary marketing option and that's why you needed to adjust from it, or is it the difficulty of moving the milk to the primary market?

A. In this particular case, it was the difficulty moving the milk to the primary market that I believe the model is challenged to capture. And I reference some of those factors, a single highway -- or interstate highway that goes into Southern California with lots of traffic and geography to deal with.

Q. So the last -- I think the last set of questions I have are about a paragraph on page 7 of your statement, and it's the paragraph right in the middle where you are talking about this Tulare County to Los Angeles County delivery. And so I want to walk through my understanding of what you are outlining here.

So if we have a farm in Tulare County, and they were going to deliver milk to Los Angeles County, that cost of delivery -- the cost of delivery is between $1.68 and $1.88.

That's what you've stated, correct?

A. That was our experience last year.
Q. Okay. So can we just call it $1.80 so we can work with round numbers for right now?
A. Sounds good.
Q. Great.
Now, the average cost incurred by CDI for moving that milk from that same farm to the manufacturing plant is 44 to $0.54 per hundredweight.
That's what you testified to, I just read it, correct?
A. Yes.
Q. Okay. Can we call that $0.50 to play with round numbers?
A. Sure.
Q. Okay. So it costs an extra $1.30 to move milk from Tulare County to Los Angeles County as opposed to its secondary market, correct?
A. Correct.
Q. And so the offset for making that additional haul is going to be made up by the Class I differential, right?
A. To the farmer the offset is the difference in the blend price, but it is the same difference.
Q. Well, no, it is different and we'll -- I wanted to tease that out.
But at least as to the value of the milk itself as classified, it's the Class I differential that is the difference there, correct?
A. Okay. I'll kind of let the line of questions go

forward, but, yeah -- to the farmer, or even to the milk handler, the Class I differential is -- is not directly impacting us. It is that impact on the blend price that impacts us, because when we sell milk as a cooperative, or as a farmer, either one, to a Class I handler in Southern California, we're paid the blend price, we're not paid the Class I price.

But -- so with that caveat then, the -- it -- the incentive is the higher blend price, which is captured by the higher Class I differential.

Q. Okay. So let's go -- I agree with everything you just said, and we're going down two paths, I think, to get to a similar point.

A. Okay.

Q. If your -- if that farm is delivering to that manufacturing plant, is that milk pooled for CDI today?

A. It may or may not be pooled, but the -- it may or may not be pooled.

Q. If that milk is pooled, is the return to the farmer -- the farmer is indifferent as to which plant he delivers to, correct?

A. In the case of a cooperative, things get a little bit mixed up. But, in general, if a farmer is delivering to a plant in Southern California or delivering to a pooled plant in Tulare County, their pay price is different by $0.50 currently and under the proposal.

Q. Their pay price is different?

A. Pay price is different.

Q. Okay. Explain that.
A. The blend price in LA County is $0.50 higher than the blend price in Tulare County, and you are paid based on where your milk is delivered to, not where your farm is from.
Q. But the purpose of the order itself is to make the farmer indifferent as to whether the milk is delivered to a Class I plant or a manufacturing plant to avoid competition for the highest market; isn't that correct?
A. I'm not sure I agree that it -- that the order is to make the farmer or handler indifferent, because region and county location of the receiving plant matters. But within -- if all the -- if all the facilities -- if the Class I bottling plant and the manufacturing plant were in the same county, then I could agree that the farmer would be indifferent because the blend price would be exactly the same if both plants were pooled. But in this case, there's a regional difference.
Q. Okay. And what is the difference today to CDI for this delivery you describe?
A. Today, the difference is the -- if you assume that the manufacturing plant -- that that milk is pooled, the draw, the pool draw, or the ultimate blended value of the milk in Southern California, would be $0.50 higher than what that blend price would be in Tulare County.
Q. But you are now deducting a $1.30 from that return for the haul, correct?
A. Correct.

Q. So it's $0.80 -- the net return to the co-op or the producer is $0.80 higher today delivering to the manufacturing plant; is that correct?

A. In this example, yes.

Q. Okay.

A. There's a logic behind this if -- unless -- I don't want to jump on any other questions.

Q. Go.

A. So one of the things you want to do is avoid unintended consequences. I talked about Kern County, which is south of Tulare County. That is a first logical supply of milk outside of Southern California. So you figure Southern California demand, first pounds then are going to be Southern California local milk. That makes sense. The next available milk is Kern County, and you can see that we have proposed a $0.40 gap between Kern County and Southern California, or LA County, to partially offset that incremental haul that's higher going to Southern California than coming up to the Central Valley or coming up to Tulare to the nearest manufacturing plant.

What you want to avoid doing is creating a differential for Tulare County, a county to the north of Kern County, that would actually incentivize milk from further out to go down to Southern California, which would then mean the Kern County milk would have to go to a manufacturer and the drivers could high five on the I-5 coming past each other. So you don't want to create unintended consequences.

So what this proposal, I think, correctly does, is it establishes the Kern County differential and the slope between Kern County and Southern California at one level, and then doesn't make it too generous if you do have to go pull milk from the next level. If we get to a point where Kern County milk is not sufficient to supply the needs in Southern California, and we need to start pulling milk from Tulare County, we're going to have to bridge that gap with over-order premiums. And I think those can happen faster than holding another hearing and adjusting things on a regulatory standpoint.

So it's intentional that the Tulare County math does not get closer than what you have laid out here. That's to recognize that there needs to be some modest incentive, but over-order premiums are going to need to bridge the gap above that, if we get to the point where Tulare County is a primary supply for Southern California.

Q. Is Tulare County a primary supply for Southern California today?

A. No.

Q. What is the primary supply for Southern California today?

A. Kern County and Southern California.

Q. So Kern County is the primary supply for Southern California -- is a primary supply for Southern California?

A. Kern County, not Tulare County.

Q. Tulare County, thank you.

A. Kern County.

Q. Okay. So for the example you are laying out in this paragraph, what is the net return to the producer under Proposal 19 delivering to Tulare County versus Los Angeles County?

A. I can only give you an incomplete answer because the net return is going to depend on over-order premiums that their co-op is able to secure or if they're a direct ship relationship that they would secure.

From a regulatory standpoint, if you're just looking at the blended milk prices, their net return would be negative. But there are other factors that would have -- if Tulare County became a supplying county for Southern California, on a large basis, they would -- that would need to be -- there -- that bridge would need to be -- or that gap would need to be bridged through some sort of over-order premium because, as proposed, the regulation -- regulated price would not fully offset the additional cost of haul nor do we think at CDI that the regulatory price should cover the full cost of haul -- or the full incremental cost of haul.

Q. Where you -- you acknowledge that it would be negative, would it be more or less negative than it is today?

A. It would be the same as today. Today there is a $0.50 gap between the Southern California and Tulare County differentials, and that is the same gap that exists today -- or that exists in Proposal Number 19.

Q. And so after all the changes, the net return to

your members is the same, right?

A. For a county that's not the surplus supply currently for Southern California, it is a secondary market. Kern County is the predominant supply for Southern California, and we did increase that slope slightly by $0.10. So we improved the return on Kern County, which is the primary supply; Tulare County, we opted not to make a steeper slope than exists today.

I remember, as I testified earlier, we really looked the opposite way. We looked at where do we think the bottom should be, that $2.50 differential, in Tulare, Fresno, Madera, Merced Counties, that Central Valley, and then built up to LA. And admittedly, we could have probably justified a larger slope into Southern California, but we think that the current gap between the Central Valley and Southern California is resulting in orderly marketing of milk into Southern California and, therefore, opted to recommend that the slope largely stay the same.

Q. And you suggest that the gap there could be bridged with over-order premiums, but we have heard testimony from other witnesses that over-order premiums are not the solution to getting milk moved where it wants to be or where it should be.

How are we supposed to reconcile those two positions, between those who think the free market in over-order premiums are the better approach to reconcile these economic difficulties and those that say it must be

the regulated price?

A. Well, like a lot of things, the reconciliation probably lies somewhere in the middle. Over-order premiums are not the exclusive answer. They are not as reliable as a regulated price, which is announced every month and very transparent. There's concerns about transparency of over-order premiums when it comes to buyers, and I think Mr. Covington talked about that at length this morning.

But, ultimately, over-order premiums are what the marketplace will use to allocate milk in real time, not due to hearings that take place infrequently and take up a lot of time. Not criticizing them, but they just can't act as fast as the market needs to act.

And so if adjustments need to be made, adjustments will be made to make sure milk ultimately finds the right place, but that doesn't mean an adjustment to the regulated price isn't in order after 20 years since the last refresh.

Q. I believe that -- I'm trying to find it so I don't misquote. But I think Mr. Sims suggested that people who think over-order premiums can solve the problem are ignorant or naive. And I certainly don't believe that you are, nor do I believe that I am.

Do you disagree with his characterization?

THE COURT: I object to that. We listened to Mr. Sims for a long time.

MR. MILTNER: He wrote it down, Your Honor.

THE COURT: It's part of the solution or it's not. These other things are part of the solution or they are not. You have done a good job. His last answer was epic. That was your exit point.

MR. MILTNER: I disagree, and I'll respect your ruling. Thank you.

THE COURT: Thank you. And I note your exception.

THE WITNESS: Before Mr. Miltner steps down. I think the one thought that was bouncing in my head that I think is important to get in the record is that Mr. Covington and I, and even Mr. Sims and I, come at this from slightly different perspectives.

California is predominantly a manufacturing state, and so when it comes to over-order premiums, it's a very different situation when you do have 80%, 85%, almost 90% of your market that you can default to a manufacturing plant. And when you are California Dairies, Inc., and you have large plants, you can probably have a different discussion with those bottlers for over-order premiums because you are able to take that milk back to your own plant if you can't come to terms that are acceptable.

Mr. Covington and Mr. Sims, looking at the Southeast, are in a scenario where they have to sell to a Class I plant or they don't have another option. That is a very different situation when it comes to negotiating over-order premiums, and probably puts a higher sense of urgency on a regulated price that gives the transparency that those buyers need.

So I think there's -- there's nuance to this discussion of over-order premiums, and -- and I think both Mr. Covington and Mr. Sims and myself, can all be correct even if we're coming at this from a different perspective.

CROSS-EXAMINATION

BY MS. VULIN:

Q. Ashley Vulin with the Milk Innovation Group.

I'm following up on a separate topic from over-order premiums. We had discussed the plants that were either added or removed from the USDSS as part of NMPF's work with Dr. Stephenson and Dr. Nicholson, correct?

A. Yes.

Q. And I believe you just testified that there are no processing facilities currently in Kern; is that right?

A. That's correct.

Q. But it was my understanding that CDI is in the process of building a facility in Kern County; is that right?

A. That's correct.

Q. What kind of facility is that?

A. A Class I UHT/ESL facility.

Q. And did either you or anyone at NMPF have Dr. Nicholson or Dr. Stephenson add that plant to their model?

A. We did not. The decision at that time, and this goes back -- and the timing would have been close to announcing the hearing as -- or the building of that

plant, we made the decision that plants should be recommended for inclusion only if they are already on their way to being constructed and are imminent to occur. Basing it on announcements would be premature to include in a model. You don't have details about what the throughput would be. In this case, we have yet to pour the first concrete, so it would have been premature a year and a half ago or whenever we were having that conversation to include a plant that at that time had been just an announcement.

Q. And as we sit here today, what is the current status of the construction of that Kern plant owned by CDI?

A. It has begun, but no concrete has been poured. It's -- it's -- it's in some of the ground preparation portion of the construction.

Q. And would it be fair as we consider the county differentials in NMPF's Proposal 19 to consider the fact that there very likely will be a CDI fluid Class I plant coming online in Kern County in the near term?

A. It wouldn't be inappropriate to look at that. I -- I hope this hearing results in a decision before we're producing milk in that plant, but let's call it a race. And the thing to keep in mind with that plant is in its phase currently under construction, it would process less than a million pounds of milk per day, and CDI alone has member milk production of approximately 6 million pounds of milk per day in Kern County. So it would be a

small portion of that Kern County milk that is processed in that facility.

So it would be -- the impact on the overall discussion we have had today, milk would still need to flow to Southern California, the excess would still need to flow to Tulare County. None of that changes. And I'm only looking at the California bal- -- or the CDI balance. Other handlers also have Kern County milk that would be unimpacted by the building of a CDI facility.

MS. VULIN: Thank you.

THE COURT: Other cross?

I invite the Agricultural Marketing Service to ask questions of this witness.

CROSS-EXAMINATION

BY MS. TAYLOR:

Q. Good afternoon.

A. Good afternoon.

Q. Thanks for returning to the stand.

A. I'd say anytime, but it's not -- I'm not being genuine.

Q. I wouldn't either.

Your testimony is just on California. Will there be another witness to talk about other parts of the western area?

A. Yes. I believe Brent Butcher from United Dairymen of Arizona will provide testimony; Monte Schilter from Northwest Dairy Association, or Darigold; Johnny Hiramoto from Dairy Farmers of America, all with a focus on the

Western U.S.

Q. Okay. Great.

I want to talk a little bit about the regional competitiveness, one of the factors you said that went into what you all ultimately proposed. And what I heard from that conversation over, kind of many lines of questioning, was you looked at the Class I surface not just as the Class I price that handlers pay for Class I milk, but also as a producer price surface and how they are paid. And when I hear regional competitiveness in what you talked about in that, that was a bigger factor in that discussion.

Would that be a correct interpretation of what we have heard this afternoon?

A. Yeah. And hopefully I -- my attempt to capture that was regional competitiveness at the farm level. I'm aware that a bottler in Los Angeles is not competing with a bottler in Chicago. But at the farm level, this all flows to a blend price. And so it absolutely -- I was looking at it predominantly through the lens of, you know, what is going into this pool calculation each month for a farmer, farmer pay price.

Q. And is this a particularly important issue in California given that LA is announced at one of the higher zone areas? And so, you know, your uniform price, it's always -- most often, right, you are backing off that price to what your producers get.

A. It would have been nice if the target city was

Visalia or Tulare instead of LA, but --

Q. Nice since 2020.

A. Yes. But, no, I -- I still -- whether you announce -- whether the price is announced at the bottom of the slope or the top of the slope is -- is -- does not change our concerns. What would be concerning is if everywhere outside the Western U.S. had differentials of $2.75 or higher and because the model ignores the fact that the Western U.S. is just its own island, so to speak, with these movements, that we would have smaller pools because our bottlers would be paying, you know, more than $1, $1.50 less than that into the pool.

You know, I get the model, but convincing our producers that a bottler in Miami should pay $7 a hundredweight on top of the Class I mover and our bottlers in the -- one of the most regulated, high cost portions of the country should only have to pay $1.60 or $1.70 per hundredweight over the mover is a tough argument to sell. But we understand supply/demand dynamics are different.

So we accept a gap. We object to that gap widening.

Q. And back in the California hearing, often it was comparing California to the Upper Midwest, as you did in your testimony, right, to say they are very similar.

So that's where you are talking about, at least the bottom of the slope or the bottom of the trough in those two areas as you have proposed them would be similar?

A. Yeah. My reference to Miami was certainly not an endorsement that the two areas are the same. It was taking the extremes, the low on our side and the high on the Southeast. But our comparison here, as you note, is trying to compare regions of likes -- like functions in the bottom of the slope.

Q. Okay. And I wanted to talk a bit about pool stability. When I -- I read through this couple of paragraphs, I summarize this, and please tell me if this is incorrect.

Is the first factor is a willingness to supply Class I and, thus, have that milk be pooled?

A. Yes.

Q. The second would be more stability at the producer level through uniform producer prices.

A. Yes.

Q. Did that go into -- so in the Central Valley right now there are two zones. And as you have proposed them, it would all be at $2.50.

A. With the exception of Kern County.

Q. Right.

A. But, yes.

Q. Yes. So is that, when you talk about more uni- -- I mean, I'm just curious, did that play a bigger role in that particular area, to move that from two zones to one zone? Or how come you decided to do that piece?

A. The reason for doing that is twofold. One is, there's really nothing magic about the line between Madera

and Merced County that fundamentally changes where the milk is going. It's still largely a manufacturing region, heavy -- you know, strong milk flows, and most of the milk is going to manufactured class plants. So what's the reason for having a difference in the differential?

But by moving that northern part of the valley to even, to one $0.10 down, it also created a little more slope up to the Bay Area. It wasn't just we have to increase the Bay Area, we also took a -- we steepened the slope by leveling out the Central Valley. So kind of had that dual benefit of that change.

Q. Okay. Okay. You mentioned on page 5 about a balancing plant that closed, I think somewhere in Southern California.

A. Yes.

Q. Was that then -- is it correct that that plant then wasn't included in the model, you removed it?

A. That was not included in the model, yes. That was CDI's powder manufacturing facility in Artesia, California closed in 2019. Making powder is tough enough in the Valley, trying to make it in Southern California was even more challenging.

But what we learned in the closure of that is trying to balance Southern California bottlers' demand -- and other manufacturers in Southern California -- their demand is more difficult when you don't have that balancing asset to bounce off of.

Q. Speaking of plants in the survey, you said you

all -- and this is for the Western area, generally -- you mentioned you added a plant in Washington, the Pasco plant.

A. Correct.

Q. And so then you -- but you didn't add your new -- well, at that time, to-be-announced plant that's going in Kern. Were there any other plant changes you made that you remember in any other portions of the Western area? That might be a question I can ask someone else.

A. I -- I don't believe so. The only exception might be there -- there's a cheese plant -- or there was a cheese plant in Southern California called Farmdale Creamery, and they shut down the cheese plant, but they maintain the plant running other products, so they only shut down part of their plant. Didn't handle a lot of milk, but it's possible that we might have removed that and I'm not remembering. That's the only other plant that's coming to mind that was -- that was closed that might have been included. But because it still has some level of operations, it's also possible we left it in there.

Q. Okay.

MS. TAYLOR: All right. You answered my questions through other people. That's it from AMS.

THE WITNESS: All right. Thanks.

REDIRECT EXAMINATION

BY MS. HANCOCK:

Q. I apologize. That went a little faster than I was

expecting, so I didn't have my papers ready.

Thank you, Mr. Vandenheuvel, for your time again. Just a couple questions.

You looked at Exhibit 351 with Ms. Vulin, and that was the testimony from Dennis Schad at the Fresno promulgation hearing.

Do you remember talking with her about that?

A. Yes.

Q. This wasn't a company you ever worked for, was it, Land O'Lakes?

A. No.

Q. And did you have any -- any role in helping Mr. Schad prepare his testimony for that hearing?

A. No.

Q. Did you work for a cooperative when that hearing took place?

A. No.

Q. And you understood that that hearing was a promulgation hearing where California was moving from a state order system to a Federal Order system?

A. Correct.

Q. And did you believe that it was the time and the place to look at whether differentials across the country should be updated?

A. No, nor would that have been within the scope of the hearing.

MS. HANCOCK: Your Honor, I think that's all the questions that I have. We would move for Exhibits -- move

for the admission of Exhibits 345, 346, 347, and 348.

And for the record, we have no objection to the exhibits that Ms. Vulin offered.

THE COURT: Music to my ears.

Ms. Vulin, please come to the podium, but I'll first deal with these 345, 346, 347, and 348.

Is there any objection to the admission into evidence of Exhibit 345?

There is none. Exhibit 345 is admitted into evidence.

(Thereafter, Exhibit Number 345 was received into evidence.)

THE COURT: Is there any objection to the admission into evidence of 346?

There is none. Exhibit 346 is admitted into evidence.

(Thereafter, Exhibit Number 346 was received into evidence.)

THE COURT: Is there any objection to the admission into evidence of Exhibit 347?

There is none. Exhibit 347 is admitted into evidence.

(Thereafter, Exhibit Number 347 was received into evidence.)

THE COURT: Is there any objection to the admission into evidence of Exhibit 348?

There is none. Exhibit 348 is admitted into evidence.

(Thereafter, Exhibit Number 348 was received into evidence.)

THE COURT: Ms. Vulin.

MS. VULIN: Thank you, Your Honor. We would move to admit Exhibits 349, 350, and 351, please.

THE COURT: Exhibit 349 is the California map. Is there any objection to that being admitted into evidence?

There is none. Exhibit 349 is admitted into evidence. And that is an MIG exhibit.

(Thereafter, Exhibit Number 349 was received into evidence.)

THE COURT: With regard to Exhibit 350, you should have the header that includes the words "Corrected Header," to be certain that this is a MIG exhibit, and what I love about what they have been doing is that the last page includes the source for every line. Please do the math yourself if you would like.

Is there any objection to the admission into evidence of this Exhibit 350, also, Exhibit MIG-34 with corrected header?

There is none. Exhibit 350 is admitted into evidence.

(Thereafter, Exhibit Number 350 was received into evidence.)

THE COURT: And is there any objection to admission into evidence of Exhibit 351, which was Exhibit 70 in the Federal Milk Marketing Orders for the State of California back in 2015?

There is none. Exhibit 351 is admitted into evidence.

(Thereafter, Exhibit Number 351 was received into evidence.)

MS. VULIN: Thank you, Your Honor. And I think there are still record copies at the witness stand that we'll want to make sure are returned.

THE COURT: All right. Let's -- you sit there for a minute because you get to keep the ones that aren't the record copy. So I'll ask that Agricultural Marketing Service come collect whatever you loaned the witness, and he can walk away with everything else.

THE WITNESS: Anything with a yellow sticker.

THE COURT: Mr. Vandenheuvel, thank you so much.

Now, would our next witness -- although we will probably take a break -- would our next witness be Mr. Hoeger?

MS. HANCOCK: Yes, Your Honor.

THE COURT: I think Mr. Hoeger will be happy to get his work done. Should we take ten minutes?

All right. Please be back and ready to go at 3:50. That's 3:50. We go off record at 3:38.

(Whereupon, a break was taken.)

THE COURT: We're back on record at 3:51.

I'd like the witness in the witness chair to state and spell his name.

THE WITNESS: Chris, C-H-R-I-S, Hoeger, H-O-E-G-E-R.

THE COURT: Mr. Hoeger, I have a document in front of me. I'd like to get it marked with an exhibit number. It is Exhibit NMPF-40, and I show this to be 352. I'm marking that exhibit as 352.

(Thereafter, Exhibit Number 352 was marked for identification.)

THE COURT: And do you have a copy of it in front of you?

THE WITNESS: I do.

THE COURT: And is yours marked with "352"?

THE WITNESS: I just did.

THE COURT: Excellent. All right. Good.

I know you have testified before because I remember you. You remain sworn.

THE WITNESS: Thank you.

CHRIS HOEGER,

Having been previously sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MS. HANCOCK:

Q. Mr. Hoeger, good afternoon. Did you prepare Exhibit 352 in support of your testimony today?

A. Yes, I did.

Q. Okay. Would you proceed with your testimony, please?

A. Certainly.

My name is Chris Hoeger. This testimony is presented in support of Proposal 19: Updating the Class I

Differentials throughout the United States (U.S.) as proposed by National Milk Producers Federation, herein referred as NMPF. This testimony is presented on behalf of Prairie Farms Dairy, Inc. (Prairie Farms), a dairy marketing cooperative owned by 668 dairy farmers.

My career in the dairy industry covers over 22 years, working in various roles from sales representative to several executive/management level roles. I currently hold the title of Vice President of Procurement and Member Services. I have served on several dairy-related committees with many different dairy industry organizations. I have participated on the National Milk Federal Order Task Force over the last couple of years, and I have served on the NMPF Economic Policy Committee for the last decade.

Prairie Farms is a Capper-Volstead cooperative. As of June 30th, 2023, Prairie Farms' membership is 668 conventional dairy farms located in Illinois, Indiana, Iowa, Kentucky, Michigan, Ohio, Minnesota, Missouri, and Wisconsin. Prairie Farms is the second largest fluid milk bottler in the U.S. with bottling plants primarily located in the Midwest. We operate through wholly owned subsidiaries and/or joint ventures for a total of 30 pool distributing plants located throughout the Midwest, from the Canadian border to the Mexican border. We also operate over 20 other manufacturing facilities, producing primarily Class II products, such as ice cream, cultured dairy products, and some cheese.

Prairie Farms purchases approximately 20 to 30% of its raw milk from other entities and under various arrangements. Prairie Farms has pool distributing plants in Federal Milk Market Orders (FMMOs) 5, 7, 30, 32, 33, and 126. The majority of our plants and milk supply are located in FMMO 32.

Milk production has continued to move farther and farther away from the population centers in the past 20 years. Growth in the West and Northwest area of the Upper Midwest (UMW) has continued this trend. We continue to see the creation of "dairy deserts" in Illinois and the Eastern half of Iowa. I refer to "dairy deserts" as areas that were once strong or had significant dairy farm numbers but now have minimal farm numbers (less than three farms per county) or no dairy production in the area.

Prairie Farms over the years has become more dependent on supplemental milk supplies to serve the St. Louis, Missouri market, as well as other large population centers in Southern Illinois and in Missouri. This is evident by reviewing USDA's statistical data, which shows milk production has decreased in Illinois from 1,173,396,523 pounds of milk in 2002 to 797,454,865 pounds of milk in 2022, a 32% decrease. Iowa shows a similar trend with milk production dropping from 3,170,628,596 pounds in 2002 to 2,938,460,431 pounds in 2022, a nearly 8% decrease.

Iowa has lost milk processing capacity in its eastern half due to several plant closures during the past

20 years. For example, Swiss Valley Farms closed a cultured plant in Cedar Rapids, Iowa, in 2008. Also, the Kalona Cheese plant, which produced barrel cheddar cheese in Kalona, Iowa, was closed in 2014. Closing these two facilities along with other plant closures resulted in loss of markets. The unfortunate result was that producers were required to ship their milk further to reach other markets, thereby incurring additional hauling costs.

Furthermore, Prairie Farms closed its Peoria, Illinois, fluid bottling plant in 2020. The milk processed by this plant was traditionally supplied from two main supply points, the Southern Illinois and Missouri milk shed and from the Northern Illinois and Eastern Iowa milk shed. Milk shipped from Northeast Iowa to the locations mentioned above would travel approximately 190 miles to the Peoria facility because we ship milk from Central Illinois to fluid bottling facilities supplying the St. Louis metro market, as well as other southern population centers.

The continued deterioration of the milk supply in Central Illinois and in Southeast Iowa over the past two decades and the continued closure of plants now prevents stair-stepping milk to the south. We use the term "stair-stepping" as a way to move milk efficiently in smaller steps rather than using long hauls to reach the farthest destination.

For example, to get milk to Kosciusko,

Mississippi, milk is moved from Southern Illinois to Kosciusko. To service the Southern Illinois plants, milk is moved from Central Illinois to replace the local milk that went to Mississippi. In practice, we move milk from Northeast Iowa, Northern Illinois, and Southwest Wisconsin to the Central Illinois plant, thus creating a series of smaller steps to move milk from the stronger milk areas to where it is needed in the south.

Instead of being able to stair-step milk, Prairie Farms must now move milk from Northeast Iowa to plants that are just outside the St. Louis metro market at a distance of just over 300 miles. This milk supply traditionally provided seasonal support during the fall months, but with milk produced in South Central Illinois and in Missouri being pulled to plants in FMMO 5 and 7 year-round, it has become necessary for milk produced in Northern Illinois and Northeast Iowa to provide support not just occasionally but year-round.

We have also pulled milk from Northwest Iowa to supply plants in Northeast Iowa as we continue to shift milk around to meet the demands of the fluid bottling plants in Central and Southern Illinois and Central Missouri. This is verified by Table 1 that shows the change in milk production for the 28 southeastern counties in Iowa from January 2002 and January 2023.

THE COURT: May I stop you for two spellings, Mr. Hoeger.

THE WITNESS: Sure.

THE COURT: You might guess the first one, it starts out K-O-S-C-I -- that one.

THE WITNESS: C-I-U-S-K-O. Kosciusko.

THE COURT: Yes. And that's a place in Mississippi.

THE WITNESS: Correct.

THE COURT: And then the other one is more familiar to you all, but to me it has an unusual spelling. What is it, Kalona?

THE WITNESS: Kalona, yes. It's K-A-L-O-N-A.

THE COURT: Thank you.

And in what state is that?

THE WITNESS: Kalona, Iowa.

THE COURT: Thank you.

You may proceed.

THE WITNESS: I included on the chart, which can go up on the...

So as -- I won't go through all the individual. I'll drop to -- I'll try to do this on -- as the chart shows, and I'll just go to the bottom, which will show the -- and I can read it -- in 2002, in those counties indicated on the table, there were 375 farms, which produced 42,347,131 pounds. Again, this was just for the month of January as I have used for a comparison. In January of 2023, there are 96 farms, 26,217,536 pounds.

The similar analysis of the 51 counties in North Central -- North and Central Illinois shows the continued deterioration of the milk supply that has forced increased

reliance on more distant milk supplies.

As indicated on Table 2 -- and, again, it is the 51 counties that I referenced, and they are all listed there -- I'll go to the total at the bottom -- 237 farms produced 13,911,781 farms in 2002 January.

THE COURT: So that's 781 pounds?

THE WITNESS: Correct, pounds of milk.

THE COURT: All right. In 2002.

THE WITNESS: And then in January of 2023, there were -- there are now 48 farms for 3,860,422.

THE COURT: Pounds.

THE WITNESS: Pounds. Sorry. Correct.

Another case for increasing the Price Surface Differentials - Disparity for dairy producers.

The three Southeastern FMMOs (i.e., FMMOs 5, 6, and 7) have continued to need year-round support for supplemental milk. Another case for needing to update the Class I differentials is the disparity of what dairy producers receive in different parts of the country.

For example, Prairie Farms supports its southern and southeastern plants with milk produced in Central and Southern Illinois and in Southeastern Missouri. This milk travels an average of 326 miles to our Kosciusko, Mississippi, plant. Also, Prairie Farms ships milk from Central and Southern Illinois to Memphis, Tennessee, and to Somerset, Kentucky, on a year-round basis. This milk travels an average of 257 miles and 338 miles, respectively.

The Class I differentials for both Memphis and Somerset are $0.90 per hundredweight higher than the Class I differentials where the milk supply originated. However, milk shipped about 300 miles from Northeast Iowa to Central Illinois only picks up $0.25 per hundredweight in the Class I differential value. Said another way, for milk traveling south to Mississippi, the current differential difference of $0.90 per hundredweight whereas milk coming from Northeast Iowa to Carlinville, Illinois, travels about the same distance but only receives $0.25 per hundredweight.

Such disparity will cause (or has caused) dairy producers to question eventually whether they want to service the Class I market. Updating Class I differentials according to the NMPF proposal fairly compensates producers for some of the additional freight costs incurred.

The NMPF proposed Class I differentials have differences of $1.50 per hundredweight at Kosciusko, Mississippi; $1.05 per hundredweight at Memphis, Tennessee; and $1.15 per hundredweight at Somerset, Kentucky, when compared to the Class I differentials at locations in Southern Illinois (Table 3). We feel the NMPF proposal would provide fair compensation to move milk to these deficit markets.

Milk costs for either shipping route is about the same whether hauling milk from Central Illinois to the southern markets or Northeast Iowa to Central Illinois;

the distance and terrain are about the same. Based on the extra freight that Prairie Farms pays its haulers to move milk to those markets, we estimate it costs $1 per hundredweight to travel 100 miles.

Table 3 shows the chart of the differences between what I just described in some of my earlier testimony. As an example in the testimony, we have Clinton -- I'll take Clinton Illinois in the middle of the table, of Table 3, from Clinton, Illinois, to Holland, Indiana, is 162 miles. Current price surface difference is $0.30, and we feel at 162 miles the proposed difference between those two counties are adequate.

Clinton, Illinois, to Somerset, Kentucky, is 360 miles. Currently it is $0.90. And it adds -- we are going to go to $1.15.

Livingston, Illinois, to Carlinville, Illinois, is 152 miles, and that's going to go from $0.20 to $0.50. And that's -- that will help with that -- the haul of that milk.

The packaged fluid milk needs of the Chicago metropolitan area is served by several plants located in the Upper Midwest and in the Mideast. The members of NMPF's Class I price surface committee wanted to ensure that there was a price continuity for all the plants that serve the Chicago market. Also, we wanted to make sure no plant had a competitive advantage or a competitive disadvantage when serving this large population center.

Prairie Farms operates several Class I plants that

serve this market. In the last 18 months, this market lost a plant located in Chemung, Illinois, that was a major supplier of fluid milk. The plant closure in the summer of 2022 forced increased reliance on other plants to supply the market.

As shown in Table 4, the NMPF proposal assigned Class I differentials to those plants serving the Chicago market to make sure that no plant had a competitive advantage or disadvantage relative to other plants serving this large population center and to incentivize the movement of milk to the more deficiently supplied areas.

Slide that down on the screen.

So, again, as in Table 4, it shows the various plants, as we tried to keep the same plants with the same mileage, with the same current price surface, correlation, and do the same for the new proposed price surface.

The Upper Midwest price surface was reviewed by the NMPF's Class I differential subcommittee. Discussions centered around finding the right Class I price surface map to ensure a reliable milk supply as well as an equitable distribution of pool revenues. The subcommittee concluded that too much of a "slope" between Minnesota and Wisconsin would create a tremendous incentive to move milk out of Minnesota, milk that would not be part of the local supply, thus making the plants in Minnesota uncompetitive for milk supply in a tight market.

A secondary goal of addressing the Class I price surface was to minimize any negative impacts on producer

blend prices. With the Class I utilization averaging around 6 to 10% for FMMO 30, the NMPF Class I differentials proposed for the Upper Midwest would have a minimal impact on producer prices (Table 5).

Table 5 then shows the various -- I went back the last ten years to show the average Class I utilization by month based on -- from Federal Order 30, from 2013 to 2023.

As shown in the Table 5, Class I milk utilization in the Upper Midwest (FMMO 30) is 10.67% on average. This means for an average increase in Class I differential of $1.21 per hundredweight, the average increase to the FMMO 30 blend price would be about $0.13 per hundredweight. This is a minor price increase for dairy producers who still bear most of the cost of transporting milk to markets.

The cost of moving milk. Prairie Farms has many plants that must be served with its member milk. With many of the sales arrangements, the milk continues to get farther away from the population centers. Prairie Farms also supplies many of its own plants located in the southern and southeastern regions of the U.S.

The terms of the sale impose the cost of moving this milk to markets on dairy farmers. Rather than charge members the actual cost of moving their milk, Prairie Farms charges hauling costs to its member-owners as though the milk was delivered to the plant closest to the member farm. The cooperative, through its own pay price pool of

monies, pays the additional freight to move milk to the plant. Thus, all members share in the cost of the secondary haul.

Bear in mind, many plants served are located in excess of 250 miles away from the milk supply. Because we serve the southern and southeastern markets on a daily basis year-round, we have a good understanding of the cost per mile associated with moving milk. The cost of moving raw milk to our four southern and southeastern plants is approximately $5.25 per mile to $5.50 per loaded mile. With not many opportunities for back hauls, this cost is incurred solely to support those plants due to declining milk production capacities in those areas. We experience similar costs to move milk from Northeast Iowa and Northern Illinois to Central Illinois.

A trucking industry contact who works for a large trucking dealership that manages 23 locations throughout Iowa, Wisconsin, Illinois, Indiana, and Ohio provided me with some costs to be considered. The cost of a power unit and parts for the ten years covering 2013 to 2023 showed an increase of 31 to 33%. Milk hauling equipment costs have continued to increase over the past decade, some of which are detailed below.

Some of the factors driving price increases in Class 8 vehicles over the last ten years include:

Point 1, emission systems-after treatment devices. In the last ten years, DTNA Class 8 trucks have gone through four EPA level changes:

A, EPA14;

B, EPA17;

C, GHG21;

D, DD product Gen 5 engines.

Also included is point 2, collision mitigation systems:

A. DTNA has advanced from simple ABS function to Detroit Assurance 5.0.;

i. Adding front radar, helping maintain safer following distances;

ii. Adding side radar, helping to avoid "blind spot" collisions;

iii. Adding anti-roll stabilizers to avoid turnpike on and off ramp rollovers;

iv. Adding forward-facing cameras to gain visibility to root cause of collisions and accidents;

v. Adding lane keep assist to autonomously keep unit within driving lanes;

vi. Adding lane deviation notification to alert driver of drifting outside of the lane.

Point 3, technology advancements:

A. HVAC systems that create idle-free cab heating and cooling while maintaining engine starting capabilities;

B. Creature comforts, such as heated and cooled seats;

C. Auto dimming lighting, including head lamps;

D. Auto operating windshield wipers.

Point 4, additional hidden costs.

A. Material surcharges have increased;

B. Increased transportation charges from original build plant to the final destination.

On average, the cost of power units has increased by 31 to 33% over the last ten years. Specialized/day cab/straight-chassis truck applications have seen even higher cost increases.

A leading seller of equipment in the Midwest verifies that hauling equipment costs have increased significantly.

THE COURT: Would you re-read that sentence, please. We're at the top of page 9.

THE WITNESS: A leading seller of equipment in the Midwest and Mideast verifies that hauling equipment costs have increased significantly. These cost increases do not include the cost of drivers that have continued to be in short supply.

On the positive side, fuel economy of new power units has been improved by implementing some of the technology changes over the last decade. However, that has not offset the increases of all the costs.

Tanker trailer costs have gone up dramatically in the last 20 years. For example, a 2023 Polar 6,500-gallon tanker trailer is almost double the cost of just a few years ago. Currently, a tanker trailer of that size would retail for about $91,250. These same tanker trailers were selling for $61,200 in 2020. Please see Figures 1 and 2

that show the quotes from 2020 and 2023.

I can put them up on the screen. They are at the back of my testimony. It shows there, it's 178,000 back in 2020 for three tankers, and now it is 91,266 per tanker.

THE COURT: Oops, you shifted. No, you are there. I see it. Thank you.

THE WITNESS: In summary, the original Class I "slope" from the Upper Midwest to the central part of the U.S. was sufficient at $0.25 to $0.30 per hundredweight as it was much cheaper to acquire and to operate milk moving equipment 20 years ago. In addition, milk was generally moving 100 to 150 miles at most.

In today's world, the milk supply is located farther from plants and population centers, and most milk is traveling much farther, as much as two to three times as many miles as it was in 2000.

Prairie Farms has always tried to be as efficient as possible by stair-stepping milk to the Southeast region, FMMOs 5 and 7. We also use that same approach when moving supplemental milk to the central part of the Midwest from the Upper Midwest.

Even when milk from the Central Midwest is used to support plants located in the Southeast on an everyday basis, the increase in "slope" in the range of $0.90 per hundredweight to $1.30 per hundredweight, as proposed by NMPF, does not fully cover the cost of moving milk 300 miles or more. All dairy farmers need to be compensated

fairly to encourage the availability of adequate milk supplies that can be used to support milk demand in distant markets.

Impact on the Consumer. One of the questions asked is, "How will this change impact the consumer?" The impact on the consumer will be minimal when considered with the other reform measures within the FMMOs. If retail prices follow Federal Order Class I price, our estimate is an increase of approximately .149 cents per gallon for a consumer in the St. Louis, Missouri, market.

THE COURT: All right. So tell me that number again, per gallon.

THE WITNESS: .149 cents per gallon, just under $0.15 a gallon.

THE COURT: Yeah. So it's not .149 cents, it's --

THE WITNESS: It's .149 dollars.

THE COURT: Yes. Which is also 14.9 cents.

THE WITNESS: Correct.

THE COURT: Okay. Good. Thank you.

THE WITNESS: It will be less in the Chicago, Illinois, Des Moines, Iowa, and Minneapolis, Minnesota, markets at approximately $0.112 per gallon. This will be about a 4.25% increase to the consumer, assuming an average retail price of $3.50 per gallon, which is close to the average retail price for milk over the last 20 years (see the graph on the next page).

If comparing the cost to the average retail price from the last two years, the impact would be 3.63%. As

shown in Figure 1, the average milk price from 2000 to 2010 was $3.11 per gallon and the average prices from 2011 to 2022 was $3.41 per gallon. Using the data from the analysis above suggests the price increase proposed by NMPF would be less than .25% annually for a 20-year period.

THE COURT: Is that the figure that you want? It's less than a percent. It is a quarter of a percent.

THE WITNESS: Correct. On an annualized basis.

THE COURT: We're getting a bargain.

THE WITNESS: Yeah. Especially compared today's inflation prices. Inflation stats.

Prairie Farms expresses its appreciation to the Secretary of Agriculture and to the Dairy Division for holding this hearing. We strongly recommend the Secretary to adopt NMPF's Class I differential proposal. This will promote more orderly marketing of milk and will ensure an adequate supply of milk for Class I plants as needed to serve their markets.

Respectfully submitted, Chris Hoeger, on behalf of Prairie Farms Dairy, Inc., 3744 Staunton Road, Edwardsville, Illinois 62025.

BY MS. HANCOCK:

Q. Thank you, Mr. Hoeger. I just have a couple of questions before we open you up for cross-examination.

We had -- when Mr. Sims was on the stand, he had provided an example of some milk hauling costs to -- in Texas.

Do you recall that?

A. Yes.

Q. And then Mr. Rosenbaum put together Exhibit 332 and 333 to look at the cooperative blend prices as compared to that individual handler -- or the individual producer price.

Do you remember that?

A. Yes.

Q. I am wondering if -- if you have any experience with dealing with single producers in your operations?

A. We actually do. We have -- in the Class III years, we have acquired several different plants in the -- through the Dean's bankruptcy, and we also just acquired a couple plants last summer from Borden Dairy in the Texas market. The two Dean facilities were in Louisiana and Alabama.

Both those facilities and the Borden facilities have come -- when we acquired those plants, we inherited, I guess we'll call it, when we took them on as supply independent dairy producers, they have chosen that they want to -- our board and both kind of mutually agreed at this point in time they're going to continue to be

independent operators and ship their milk to our plants.

The 16 -- there was 16 of them in the -- Alabama that served our Alabama plant. They have since found another market because we closed our Birmingham, Alabama, plant back in -- I don't know what time -- we bought it in 20- -- I think it was '21. Time has gone.

But currently we have 17 independent dairy producers that service our Louisiana plant and our Texas plants, and they are traveling very similar miles that Mr. Sims testified to. And they are -- several of them are up in that Hereford, Texas, area that ship down to our Conroe, Texas, plant down in Houston. And then we have also another large group that ships to our Dallas plant in Dallas, Texas. And then we also -- we have another farm that's shipping his milk to our Louisiana plant, and I know -- believe his farm is traveling about 420 miles, over 400 miles.

Q. Okay. And have they expressed to you the stressors that they face with respect to the financial pressures of transporting their milk that distance?

A. Yes. We -- we hear quite frequently from them that they are -- the transportation costs have continued to go up. That's probably their number one concern in the last few years.

Q. And do you cover those hauling costs for them?

A. We do what we can to help, you know, keep -- we have also got to remain competitive in the marketplace, and so, you know, we cover what we can. But, you know, we

explain to them, too, that that's -- I mean, this is what we can do at this point in time.

Q. Okay. It's always a pressure on both sides; is that fair?

A. Correct.

Q. Okay. And then on -- let's see what page it is. On page 6 of your testimony you talk about the Chicago market. And I just want to take a moment there and talk about some of the process that you were involved in with respect to the Chicago market.

Can you give us an overview about what -- what -- what you -- what work you did on the task force with National Milk to make the recommendations for that market in particular?

A. There were several of us that were -- Chicago was a -- as Eric Erba kind of described -- was a -- a challenging key city in our key city index that we created. One of our goals was -- and that's where we sat down to look at the current relationship that all of the current plants that are serving the Chicago market have when it comes to the current location differential. We then looked at the mile, just to make sure the correlation was similar.

As an example, I will use our Dubuque, Iowa, plant. Got actually listed as a key city on our key city -- you know, when we were going through because it serves the Chicago market. I mean, no different than I think was mentioned in Rob's testimony, Dubuque, Iowa's

population is no different than -- I can't remember the plant he was referencing -- but it is only about 100,000 people, so it's not like -- but Chicago market is an important market that it serves, along with several of them in Wisconsin.

Anyway, Dubuque, Iowa, is currently in the 1.75 zone, and Grand Rapids, Michigan, is in the 1.80 zone. Grand Rapids is 179 miles -- by Google Maps, I just did the center part of -- downtown Chicago, and Dubuque is 178. So we started to use that correlation to develop a foundation of let's try to keep some continuity so all plants stayed on some same similar raw milk cost, so they had the similar costs that they are currently under to make sure they were not competitively at an advantage or disadvantage.

Q. Okay. And were you -- in the process that you undertook, did you favor or give any preferential treatment to the cooperative locations as compared to the proprietary plants?

A. No. I would actually say no to that because maybe not necessarily in the Chicago -- I mean, I'll be perfectly honest, I -- I know several of the plants up in Michigan, but I don't know all of them. I found out through testimony, I think, that Grand Rapids must be proprietary. I mean, obviously Dubuque is cooperative. So if our goal was to maintain those two to be similar in correlation as they are right now, I can't see how I would be giving preferential treatment to a co-op plant.

Q. And then can you think of any examples in which proprietary plants are located in places that have more beneficial -- or higher differentials set than cooperatives?

A. When we did our review of Iowa, as an example, Anderson Erickson Dairy is located in Des Moines, and the Des Moines market, metro market, is about -- probably about one-fourth of the entire state of Iowa's population. So they are right in the heart bed of, you know, where all the activity is. I've got two daughters that live there, and they tell me that's where all the activity is.

But anyway, current -- that used to be on the 1.80 zone. Our Omaha -- Hiland -- our Hiland plant in Omaha, Nebraska, which is about 130 to 140 miles away, was also in the 1.80 zone. Those both in the model, it called for Anderson Erickson to be at 2.80 and the Omaha plant to be at 2.60. The committee, we decided to put them both at $3. So really we raised the co-op plant more than what the model called for versus what we increased.

Q. Okay. And then I want to talk about just how the model in Chicago deviated from -- from the model results and how you evaluated those deviations.

Can you talk about that process as well?

A. Yeah. That's in the -- as I discussed in my testimony on page 7. Really the challenge with Chicago was Cook and DuPage County was listed as, according to the model, $3.70 a hundredweight. And after several conversations with Chuck Nicholson and trying to get --

just to figure out why Chicago came out that high, which surprised me, we were trying to figure out, and as Chuck testified in his statement, the one thing the model doesn't take into consideration is Federal Market Orders. And if you look at it, the base zone for Federal Market Order 30 is Cook County -- or Lake County but -- so it is $3, and it's in that $3.70 zone.

So when you go to zone back to Minneapolis, you are looking at going from 3.70 down to 2.75 at a negative $0.95 zone back. That's where I'm referencing that Minnesota -- no one is going to want to service a Class I plant there because why would you always want to sign up for a negative PPD with such low Class I utilization.

THE COURT: Could you spell for me the plant that's near Des Moines, Iowa?

THE WITNESS: Anderson Erickson?

THE COURT: So what are you saying?

THE WITNESS: A&E, I mentioned A -- it goes by A&E, but it's known as Anderson Erickson.

THE COURT: Okay. Anderson Erickson?

THE WITNESS: Correct.

THE COURT: Both S-O-N?

THE WITNESS: I believe so. I'd have to look it up myself, but I'm pretty sure that is.

THE COURT: Thank you.

BY MS. HANCOCK:

Q. And when you -- you mentioned that you had some conversations with Dr. Nicholson who performed the USDSS

model and provided the results, did he say anything to you about whether it was appropriate to make those modifications?

A. He acknowledged that that probably would be an appropriate change from the model results.

Q. Okay. And that's based on the way in which the Federal Order and the blend prices are applied in each of those areas?

A. That would be correct, because he says that's the one thing that the model does not take into consideration.

Q. Okay. Thank you for your time.

MS. HANCOCK: Your Honor, at this time we would make him available for cross-examination.

THE COURT: Let's take a five-minute stretch break. You don't have to go very far, but you are welcome to leave if you are quick.

Please be back and ready to go at 4:40.

(Whereupon, a break was taken.)

THE COURT: Let's go back on record. We're back on record at 4:40 p.m.

MR. ENGLISH: Good afternoon, Your Honor. My name is Chip English, and I represent the Milk Innovation Group, which has ten members, one of them is a cooperative, and one of them is Anderson Erickson Dairy. A-N-D-E-R-S-O-N, E-R-I-C-K-S-O-N, Dairy.

CROSS-EXAMINATION

BY MR. ENGLISH:

Q. Good afternoon.

A. Thanks for the clarification.
Q. So in the somewhat limited time we have, I'll try to get some things done, but it's going to be fairly preliminary.
THE COURT: What was that last part?
MR. ENGLISH: "Fairly preliminary."
THE COURT: Okay.
MR. ENGLISH: I put a lot of stuff back, including your favorite spreadsheets.
(An off-the-record discussion took place.)
BY MR. ENGLISH:
Q. So, Mr. Hoeger --
A. Sorry.
Q. We have to, especially at this point, have a little humor.
I want to start off with what I understand, maybe incorrectly, about your role in the red pencil crew. Mr. Sims, I think, indicated that you were the -- at least a lead for the red pencil crew, but for your region, correct? Is that correct?
A. Well, we touch a lot of regions, so I was -- if you want to say Order 32, the eastern half, because we kind of split Order 32 into two pieces because it goes so wide east to west, so I did assume that lead on Order 32 and on Order 30.
Q. Okay. That's what I thought. And that's sort of what I wanted to sort of get the parameters around. Because it does appear from your testimony, you're talking

a little bit about Minnesota, a lot about Illinois, some about Iowa, and then you also talk about some slope down into the Southeast in Order 5.

A. Correct. Yes. Where our plants are.

Q. So what about Missouri? Are you talking about Missouri or is that someone else?

A. We -- that is -- I handled probably in the eastern half of Missouri. I didn't get really per se into what I'll say Southwest Missouri, like Springfield area, because that's part of our Hiland. And, again, that kind of fell in with -- with the other people that will be coming to testify for what I'll call west -- I'll include Springfield, Missouri, but west of I-35. Does that make --

Q. It makes sense to me.

A. Yeah.

Q. So, again, I just want to understand. Listen, I get it. Most of us know the Central order is very long west to east.

A. Yep.

Q. So similarly -- and I'll just move fairly quickly here -- it sounds like you did not have at least direct involvement with Oklahoma, correct?

A. Did not.

Q. Or Kansas?

A. Did not.

Q. But you mentioned Nebraska.

Did you -- did you --

A. That was -- we worked on that together as a crew to make sure -- mainly it goes back to that -- some of that continuity and correlation. So the part of Nebraska that I guess I was involved in was Omaha in that sense, because I was concerned about making sure, again, that competitive landscape was similar to where it currently is for the rest of Iowa. Because Anderson Erickson and our Hiland plant in Omaha, Nebraska, one of the markets that they compete for is Des Moines.

Q. And --

A. Because our Dubuque plant focuses more east and goes to Chicago.

Q. So if I may, again, trying to move it along a little bit --

A. Uh-huh.

Q. No, no, I'm not -- I'm saying in terms of my questions.

A. Sure.

Q. It appears that, at least from what I see, there were two or three principles applied, and maybe I'm missing something or maybe I'm adding on. One was the desire for competitive alignment in markets such as Chicago and the conversation you had about Omaha and Des Moines, correct?

A. Correct.

Q. One was stair-stepping and the need to move milk especially into the Southeast, correct?

A. Correct. We currently have a strong milk supply

that it would be -- I'd call it east to southeast of our St. Louis market. We generally move that to plants right there in St. Louis or south or southeast to, like I said, Kosciusko or Somerset or Memphis. Only probably when it comes to weekend milk, because plants aren't processing as much, that some of that milk goes north up to our Carlinville plant.

Q. Okay. So you mentioned something that causes me to jump ahead, and I'll come back.

A. Sure.

Q. So you said you have a milk supply down south and east in the state of Illinois, sort of south of St. Louis, correct?

A. Yeah.

Q. And so in your testimony on page 4 you talk about central counties of Illinois, correct?

A. Correct.

Q. That would not include that southern section, correct?

A. No, it does not.

Q. Okay.

A. That essentially -- probably one of the more southern counties of that section, it kind of runs to just -- you might as well say Interstate 80, I don't know how familiar you are with Illinois, but Interstate 80 runs east to west from the south side of Chicago to Iowa. And then it goes south that -- those 51 counties go south to basically where our Carlinville plant is in -- Macoupin

County is where our Carlinville plant resides in, which --

THE COURT: Could you spell that for me, Macoupin?

THE WITNESS: Macoupin is M-A-C-O-U-P-I-N.

THE COURT: Thank you.

THE WITNESS: It's on Table 2, about halfway down.

BY MR. ENGLISH:

Q. And then I think I just heard at the -- near the end of your testimony, especially in your conversation with Ms. Hancock. And I think it was a third principle, but I'm not sure. There was this idea of proper alignment of blend prices from Chicago up to Minneapolis.

A. Correct.

Q. Okay. Were there other principles?

A. Again, up in Minneapolis, as an example, there are three processing facilities in the Minneapolis market. Ironically, Minneapolis metro area -- well, I shouldn't say Minneapolis -- the Minneapolis metro market. Ironically, all three plants reside in a different county. One is in Hennepin, and I think you've mentioned that in other cross-examination; the other one is Ramsey County; and then the last one is in Washington County, which is our Woodbury plant. And all three of them had the -- according to the model, it had a different location differential. Even though from the two plants out on the very end of the spectrum, and one's exactly in the middle, they are 22 miles apart. The Minneapolis one sits kind of on the northwest side, and our Woodbury is more on the southeast side.

But anyway -- so there was 22 miles apart, but there's three different location differentials: 2.65, 2.75, and 2.85.

So, again, no different than what we did kind of in the Chicago market. We agreed that all three plants should have the same location differential.

Q. And you moved them all up, correct?

A. Correct.

And the reason we moved them up had more to do with the blend price analysis that we had done versus just arbitrarily moving them up. It all came down to blend price analysis. Because really what it -- when it came to the blend price analysis, once we got Chicago established, then we were able to go to work into Minnesota and so forth, and stretching all the way out to Fargo.

Q. So given the fact that you lowered the price in and around Chicago, I don't see, at least in my analysis -- and taking for a moment our view of the world --

A. Uh-huh.

Q. -- that there was a base -- Federal Order base Class I of $1.60, I don't see an increase of $0.60 that you took into consideration; is that correct?

A. The only reason I know that it was -- there was a $1.60 base, as you referred to it as, is because that's originally in our very first meeting with Mark and Chuck, that's what was used in the model. After that, there was no discussion of $1.60 or anything. We evaluated the

model based on the model results, and then started to look at those correlations, and then also looked at the blend price analysis.

Q. Okay. So just to be clear, because I think I talked over you, there's --

A. Sorry.

Q. No, I -- what I hear you saying is that you did not in the meetings discuss increasing whatever it's called from $1.60 to 2.20, correct?

A. No, we did not.

Q. Now, again, I -- looking at your testimony, I think I have puzzled something out. When you discuss at the bottom of page 1 and the top of page 2 USDA's statistical data with respect to milk production in Illinois, are you using producer milk on Order 32?

A. Correct.

Q. Okay. So you are not actually talking about all milk production in Illinois?

A. No.

Q. In either -- for Illinois or Iowa, right?

A. That would be correct. It's all from -- it came from the Order 32 statistical reports on their website.

Q. Okay.

A. Well, other than 2002 was not available for Iowa or -- and Illinois for back -- that's why Exhibit 60 became requested by the USDA -- for the USDA exhibit.

Q. Okay. But the bottom line is you were using producer milk as opposed to actual milk production

according to NASS, correct?

A. Correct.

MR. ENGLISH: Okay. Your Honor, previously this week -- at least I believe it was this week -- we -- I provided copies for everyone and took official notice of USDA NASS Statistics 2022 Summary for April -- issued in April 2023. At this time, subject to our limitations on time, because the witness used the data he used, I have 2000 summary issued in April of 2001. And so I can -- I have copies to pass out.

THE COURT: Wonderful.

MR. ENGLISH: And, again, it is -- I want to pass it out, and then I'll tell you what it is.

THE COURT: And, again, you would like me to take official notice?

MR. ENGLISH: Yes, Your Honor.

THE COURT: All right. And I appreciate the courtesy of the copies.

MR. ENGLISH: I'm going to provide the witness with our copy of the April 2023 that has already been taken official notice of.

THE COURT: Yes. You certainly may. Is that your only copy?

MR. ENGLISH: Well, obviously having, you know, people not prepared today for that, I'm not sure if people have extras. I passed out all my others before.

So, Your Honor, I'm not sure how much time we're going to have. I'm going to ask for official notice to be

taken of what I just handed out, which like the other documents is a United States Department of Agriculture publication of the National Agricultural Statistic Service, titled DA1-2(01) Milk Production Disposition and Income, 2000 Summary, April 2001.

THE COURT: I do take official notice of the document, and I appreciate very much the courtesy copy of the document. Of course, what I'm taking official notice of would be found in -- online in records.

MR. ENGLISH: May I exchange with the witness? We have an extra copy that's not been marked.

THE COURT: Yes. Wasn't that clever of Mr. English.

THE WITNESS: Now he knows what I wrote on there. Yeah.

MR. ENGLISH: I didn't do that on purpose.

THE WITNESS: All I did was write under Iowa and Illinois. I got such a big ruler, I think I would be hitting the mic, so I thought I would just write under it to help speed along our process.

THE COURT: All right. And I'm noting that I took official notice on October 11th.

BY MR. ENGLISH:

Q. All right. So let's start in alphabetical order with Illinois.

A. Okay. Which are we on, the '22 or --

Q. I have got my 2000 on the left and my 2022 on the right, so I'm going to do this time sequentially.

THE COURT: Your -- your 2000. You mean your 2001?

MR. ENGLISH: Okay. It's published in 2001, but the data is 2000, Your Honor.

THE COURT: Okay.

MR. ENGLISH: And similarly the one published in 2023 has the 2022 data.

THE COURT: Okay.

MR. ENGLISH: It's always published in April of the year following.

BY MR. ENGLISH:

Q. So if we look at Illinois --

A. Yep.

Q. -- in 2000, 98% of the milk was Grade A. And so consistent with what you said about your counties, there appear to have been annual marketings of 2,074,000,000 pounds in 2000, and 1,703,000,000 pounds in 2022, correct?

THE COURT: Now here --

THE WITNESS: Mine was in 2002.

THE COURT: This may help you. I don't know.

MR. ENGLISH: All right. Your Honor, it is close to 5 o'clock. By the time I come back, I'll have the 2002 one.

THE WITNESS: Well, I don't mean to be technical.

MR. ENGLISH: No, we got to be accurate.

THE COURT: Actually this would be a good time to stop. So you have given us a preview of what to expect.

THE WITNESS: And I appreciate that, Your Honor.

MR. ENGLISH: And other than Mr. Hoeger, no one else will be on time at 1 o'clock.

THE WITNESS: This is my six-week homework assignment?

THE COURT: I have a statement to read into the record.

I want first to know whether there's anything preliminary to that that anyone wants to put on the record before we approach recessing.

MS. HANCOCK: Your Honor, I'm just wondering if we can just move to admit his exhibits, just to knock that off, so I don't forget later.

THE COURT: I think that's an excellent idea.

Does anyone object to the admission into evidence of Exhibit 352, which is also NMPF-40?

MR. HILL: I think there are a couple of issues with the document. There's a numbering issue on the figures, and there's another couple of questions I have to ask about the document.

THE COURT: All right. Then it's been moved, and it's under consideration.

MS. HANCOCK: Okay. Thank you.

THE COURT: Thank you.

Is there anything else anyone would like to bring before the good of the body before we recess?

All right. This hearing will recess today and reconvene on November 27, 2023, at 1:00 p.m. Eastern, at the same venue here in Carmel, Indiana, where we now sit,

which is 502 Event Center, 502 East Carmel Drive, Carmel, Indiana.

Now, that week is November 27 through December 1. December 1 is the Friday of that week. If the hearing is not completed by December 1, the hearing will reconvene at the Palomino Ballroom, P-A-L-O-M-I-N-O, Ballroom, 481 South County Road, 1200 East, Zionsville, Indiana. With the exception of Monday, November 27, the hearing will be held from 8:00 a.m. until 5:00 p.m. each weekday.

So I just note that that week that starts at the Palomino Ballroom, if we have not completed by 5:00 p.m. December 1, that week starts December 4, 2023, and that Friday is December 8, 2023.

A notice reiterating this information and outlining hearing procedures for the reconvened weeks will be published in the Federal Register as soon as possible.

During the recess, transcripts of the hearing will begin to be posted on the Agricultural Marketing Service website on or before October 27, 2023. Transcripts will continue to be posted on or before each subsequent Friday as additional transcript days become available.

This hearing is recessed at 5:02 p.m. Eastern. We're off record.

(Whereupon, the proceeding concluded.)

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STATE OF CALIFORNIA)
) ss
COUNTY OF FRESNO)

I, MYRA A. PISH, Certified Shorthand Reporter, do hereby certify that the foregoing pages comprise a full, true and correct transcript of my shorthand notes, and a full, true and correct statement of the proceedings held at the time and place heretofore stated.

DATED: December 20, 2023

FRESNO, CALIFORNIA

MYRA A. PISH, RPR CSR
Certificate No. 11613