

**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
November 28, 2023

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Reported by:

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

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

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

4 Erin Taylor
5 Todd Wilson
6 Brian Hill
7 Michelle McMurtray

8 FOR THE MILK INNOVATION GROUP:

9 Charles "Chip" English
10 Grace Bulger

11 FOR THE NATIONAL MILK PRODUCERS FEDERATION:

12 Nicole Hancock
13 Brad Prowant

14 FOR SELECT MILK PRODUCERS, INC.:

15 Ryan Miltner

16 FOR INTERNATIONAL DAIRY FOODS ASSOCIATION:

17 Steve Rosenbaum

18 FOR THE AMERICAN FARM BUREAU FEDERATION:

19 Dr. Roger Cryan

20 FOR LAMERS DAIRY:

21 Mark Lamers

22 FOR DAIRY FARMERS OF AMERICA:

23 W. Todd Miller

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

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21
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23
24
25
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M A S T E R I N D E X

SESSIONS

TUESDAY, NOVEMBER 28, 2023

PAGE

MORNING SESSION

8361

AFTERNOON SESSION

8500

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1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

M A S T E R I N D E X

WITNESSES IN CHRONOLOGICAL ORDER

WITNESSES: PAGE

Joe Brinker:

(Continued)

Cross-Examination by Mr. English 8361
Cross-Examination by Ms. Taylor 8380
Redirect Examination by Ms. Hancock 8384

Michael John:

Direct Examination by Ms. Hancock 8386
Cross-Examination by Mr. English 8408
Cross-Examination by Mr. Miltner 8441
Cross-Examination by Dr. Cryan 8451
Cross-Examination by Mr. Lamers 8453
Cross-Examination by Mr. Rosenbaum 8456
Cross-Examination by Ms. Taylor 8458
Redirect Examination by Ms. Hancock 8467

Skylar Ryll:

Direct Examination by Ms. Hancock 8472
Cross-Examination by Mr. English 8508
Cross-Examination by Mr. Miltner 8553
Cross-Examination by Ms. Taylor 8562
Cross-Examination by Mr. Rosenbaum 8574
Redirect Examination by Ms. Hancock 8577

Scott Werme:

Direct Examination by Ms. Hancock 8581
Cross-Examination by Ms. Bulger 8589

---oOo---



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

M A S T E R I N D E X

INDEX OF EXHIBITS

IN CHRONOLOGICAL ORDER:

NO.	DESCRIPTION	I.D.	EVD.
357	MIG-53	8366	8370
358	MIG-54	8371	8379
356	Testimony of Joe Brinker		8385
359	NMPF-41	8386	8470
360	NMPF-42	8470	8550
361	NMPF-42A	8471	8551
362	NMPF-42B	8471	8551
363	NMPF-42C	8471	8551
364	NMPF-42D	8471	8552
365	NMPF-42E	8471	8552
366	MIG-50	8519	8552
367	MIG-39	8537	8553
368	MIG-51	8537	8553
369	MIG-55	8538	8553
370	NMPF-43	8581	
371	Federal Register Notice	8603	8604
372	Press Release	8603	8604

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1 TUESDAY, NOVEMBER 28, 2023 - - MORNING SESSION

2 THE COURT: Let's go back on record.

3 We're back on record. It is 2023, November 28th,
4 approximately 8:00 in the morning.

5 I don't think there are any preliminary matters,
6 but if there are, let me know now.

7 No. All right.

8 The witness who was on the stand yesterday may
9 take his seat at the witness chair.

10 Mr. Brinker, would you again state and spell your
11 name?

12 THE WITNESS: Joe Brinker, J-O-E, B-R-I-N-K-E-R.

13 THE COURT: You remain sworn.

14 And, Mr. English, you may resume your
15 cross-examination.

16 MR ENGLISH: Thank you, Your Honor.

17 JOE BRINKER,

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

20 (CONTINUED) CROSS-EXAMINATION

21 BY MR. ENGLISH:

22 Q. Chip English for the Milk Innovation Group.

23 Good morning, Mr. Brinker.

24 A. Good morning.

25 Q. I do want to mostly start where I left off, but I
26 want to digress just for one moment.

27 In the intervening time since last you were on the
28 stand last night, have you learned anything more about the



1 University of Wisconsin model?

2 A. No.

3 Q. Did you look at Exhibits 300 or 301, which are the
4 big spreadsheets?

5 A. I did not.

6 Q. Is there anything, before we get started, that you
7 would like to revise from yesterday's testimony?

8 A. There is not.

9 Q. Okay. So we have earlier in this proceeding taken
10 official notice of some documents from USDA with respect
11 to milk production, disposition, and income.

12 (Court Reporter clarification.)

13 MR. ENGLISH: Milk production, disposition, and
14 income.

15 And, Your Honor, I would like to -- he obviously
16 doesn't have copies with him, I assume. I brought extras
17 for him to look at. These are the -- not like yesterday,
18 because yesterday Mr. Hoeger had looked at a different
19 time period, but this is the original set for the 2000
20 summary issued in April 2001, and the 2022 summary issued
21 in April 2023, and they have already been taken official
22 notice of, and people may or may not still have copies
23 with them.

24 But may I approach the witness, Your Honor?

25 THE COURT: You may.

26 BY MR. ENGLISH:

27 Q. So, Mr. Brinker, these documents are official
28 publications of the United States Department of



1 Agriculture, and they provide information with respect to
2 milk production, both the total quantity and the percent
3 that is fluid grade or Grade A.

4 So I would like to start. And just for clarity, I
5 have provided only one page of each. In the case of 2000,
6 it's page 9, and in the case of 2022, it's page 11. But
7 it's basically the same information, although the
8 formatting is somewhat different. And they use
9 abbreviations for the states in 2000 and the state names
10 in 2022.

11 But let's start with Missouri for a moment, which
12 is about the middle of the page, "MO" under 2000. And
13 would you confirm with me that the total quantity of milk
14 produced in Missouri at that time was -- these are in
15 million pounds -- 2,229 million pounds.

16 Can you confirm that, please?

17 A. Yes.

18 Q. And that 95% was Grade A, correct?

19 A. Correct.

20 Q. So now let's look at 2022.

21 And the state of Missouri now is 922 million
22 pounds, correct?

23 A. Correct.

24 Q. Which is down over 1.3, so 1,300 million pounds in
25 2002, correct?

26 A. Correct.

27 Q. Very significant drop, correct?

28 A. Yes.



1 Q. Okay. And it's at 97% Grade A, correct?

2 A. That is correct.

3 Q. Okay. So now let's look at Nebraska, two lines
4 down, on 2000.

5 That number shows 1,239 million pounds, correct?

6 A. Yes.

7 Q. And 96% Grade A, correct?

8 A. Yes.

9 Q. And if we look at 2022, it's gone up some to 1,410
10 million pounds, correct?

11 A. That is correct.

12 Q. And 100% Grade A, correct?

13 A. Yes.

14 Q. So now let's go back up the page and look at
15 Kansas.

16 So Kansas, or KS in 2000, is listed at
17 1,508 million pounds, correct?

18 A. Yes.

19 Q. At 99% Grade A, correct?

20 A. Yes.

21 Q. And on -- in 2022, Kansas is now 4,130 million
22 pounds, correct?

23 A. Correct.

24 Q. And 100% Grade A, correct?

25 A. Yes.

26 Q. So Missouri is down significantly, correct?

27 A. Correct.

28 Q. Nebraska is up a little bit, correct?



1 A. Yes.

2 Q. And Kansas is more than tripled, correct?

3 A. Correct.

4 THE COURT: More than tripled?

5 MR. ENGLISH: More than tripled.

6 THE COURT: Did you say the second number was
7 4,130?

8 MR. ENGLISH: Yes.

9 THE COURT: Wouldn't it have to be --

10 MR. ENGLISH: I'm sorry, not quite tripled.
11 You're right, Your Honor.

12 THE COURT: Okay.

13 MR. ENGLISH: Late-night math.

14 A little less than tripled, two and a half times,
15 correct that. Correct?

16 THE WITNESS: Yes.

17 MR. ENGLISH: Thank you, Your Honor.

18 THE WITNESS: Roughly.

19 MR. ENGLISH: Thank you. Roughly.

20 BY MR. ENGLISH:

21 Q. Do you know where that Kansas growth is
22 concentrated?

23 A. I don't know exactly where it's at, but I would --
24 I would guess that it's Western Kansas.

25 Q. Near Wichita?

26 A. No.

27 Q. Some of it near Wichita, some of it just south of
28 Wichita, in Gray County?



1 A. Not that I'm aware of.

2 Q. So Wichita is in Sedgwick County; is that correct?

3 A. I don't know that for a fact.

4 Q. Do you know if the growth in Kansas is in Gray
5 County and Kearney County?

6 A. I don't know that for a fact.

7 Q. Nonetheless, there is significant growth of milk
8 production in Kansas, correct?

9 A. In the state, correct.

10 MR. ENGLISH: Your Honor, I would like to have a
11 document marked which was -- it doesn't have any label on
12 it because it comes from Central Order statistics, but we
13 submitted it this morning to USDA as MIG-53.

14 THE COURT: All right. I believe our next number
15 is 357. Yes, it is, Exhibit 357.

16 (Thereafter, Exhibit Number 357 was marked
17 for identification.)

18 THE COURT: And let's go off record while those
19 exhibits are -- proposed exhibits are distributed.

20 Off the record.

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

22 THE COURT: Let's go back on record.

23 We're back on record at 8:10.

24 Mr. English.

25 MR. ENGLISH: Thank you. Off the record we have
26 marked a document labeled Central Order States as MIG-53,
27 and this exhibit, Your Honor, I'm sorry, I was --

28 THE COURT: 357.



1 MR. ENGLISH: 357.

2 And we had a conversation off the record with Erin
3 Taylor of USDA confirming for those who did not hear that,
4 or for the purpose of the record, that the website will
5 not reorder them, but MIG-53 will be listed, and then
6 there will be a document provided by USDA that will
7 link -- that shows that's Exhibit 357.

8 Your Honor, this is an official publication from
9 the Central Order States. You can find it on the website.
10 I'll provide the cite later.

11 BY MR. ENGLISH:

12 Q. But, if I may, Mr. Brinker, have you seen
13 documents like this before from USDA?

14 A. I have.

15 Q. Okay. So in looking at this document, and going
16 back now as far as 2000, which confirms the data we just
17 saw from NASS, the milk production increases, would you
18 agree, are in Colorado, Iowa, Kansas, and South Dakota,
19 and a little bit Nebraska?

20 A. Yes.

21 Q. And Illinois and Missouri and Oklahoma are down,
22 correct?

23 A. That is correct.

24 Q. So what is the specific reason why National Milk
25 Producers Federation proposes that Wichita goes up \$0.90
26 over the model?

27 THE COURT: Over what?

28 MR. ENGLISH: The model results.



1 THE COURT: The model. Thank you.

2 THE WITNESS: Again -- again, the model was the
3 baseline, the background, and then National Milk looked at
4 the price alignment between markets, and did our best to
5 maintain those current alignments.

6 BY MR. ENGLISH:

7 Q. Is price alignment more important than milk
8 production and population centers?

9 A. I don't -- I'm not sure what your -- what your
10 question is.

11 Q. So -- so what principles should USDA apply in
12 establishing Class I differentials? And I'm asking, is
13 the preference for price alignment or is it a recognition
14 of where the milk is produced, where it is processed, and
15 where it is sold?

16 A. I -- I don't know that any of those are in the
17 model as far as the population centers and where the milk
18 is sold.

19 Q. If the model does take into account where milk is
20 produced, where it is processed, and where it is sold,
21 wouldn't that be relevant to your consideration?

22 A. Yes. And I believe the model does look at where
23 it is -- it is produced and bottled, if you will.

24 Q. So you talk about -- why is price alignment
25 relevant to your consideration?

26 A. Well, I would say that the price alignment is --
27 you know, we're -- the market currently has established
28 market alignments, price alignments that appears to be



1 working, if you will, for lack of a better term, and so
2 whatever those relationships are, there was an effort to
3 maintain the similar relationships.

4 Q. What's the point of updating the Class I
5 differentials from data from 25 years ago if at the end of
6 the day the current alignments are going to prevail over
7 what the model results are?

8 A. I don't understand the question.

9 Q. Could you repeat it back?

10 THE COURT: It was brilliant. I'm -- I don't want
11 her to repeat it back. Ask again even if it's not exactly
12 the same.

13 MR. ENGLISH: All right.

14 BY MR. ENGLISH:

15 Q. What is the point of updating Class I
16 differentials after 25 years, using new data about where
17 milk production is, where the milk's produced, where it is
18 processed, and where it needs to be sold, if at the end of
19 the day existing price alignments are going to govern over
20 what the model results are?

21 A. Well, I -- I would not characterize it existing
22 alignments govern over that. That's just one part of the
23 considerations that were made.

24 Q. So other than price alignment, why are you
25 proposing that Wichita goes up \$0.90 over the model versus
26 Kansas City going zero over the model?

27 A. Again, that would be one of the considerations on
28 price -- price alignment.



1 Q. What are the other considerations?

2 A. Well, the other considerations were -- would be
3 distance from the market, from -- the raw milk distance
4 from the market.

5 Q. And wouldn't the documents we just looked at
6 suggest that with milk production down in Illinois and
7 Missouri, and up significantly in Kansas, that milk
8 production is closer to Wichita than it is to Kansas City?

9 A. I don't know that to be the fact.

10 Q. Do you have any evidence to provide to the
11 contrary?

12 A. I do not.

13 MR. ENGLISH: Your Honor, I move admission of
14 Exhibit 357.

15 THE COURT: Is there any objection to the
16 admission into evidence of Exhibit 357?

17 There is none. Exhibit 357 is admitted into
18 evidence.

19 (Thereafter, Exhibit Number 357 was received
20 into evidence.)

21 MS. HANCOCK: Your Honor, it would be helpful if
22 we had the actual source on here, the cite for it.

23 THE COURT: Well, Mr. English said he would
24 provide that later, but this is all from USDA website
25 material.

26 Is that correct, Mr. English?

27 MR. ENGLISH: Yes, it is, I believe -- there's
28 somebody nodding his head, but all I can testify about --



1 I will provide the citation, and if we need to wait, I'll
2 put it on hold.

3 THE COURT: You do not need to wait.

4 MR. ENGLISH: Fine.

5 THE COURT: We appreciate your courtesy and
6 showing us where to look, but if this is public data, then
7 I'll accept the exhibit.

8 MR. ENGLISH: I will do so no later than tomorrow
9 morning and maybe even today.

10 THE COURT: Thank you. Did I admit it? I did,
11 didn't I? Okay.

12 MR. ENGLISH: Yes, thank you.

13 THE COURT: Oh, so we will appreciate the courtesy
14 of the citations to the USDA website as to source of this
15 material, but nevertheless, with or without it, I do admit
16 into evidence Exhibit 357, also known as MIG-53.

17 MR. ENGLISH: Thank you, Your Honor.

18 My next document is marked Exhibit MIG-54. It is
19 prepared by MIG and uses sort of the headline that we have
20 tried to use and deleted any reference to National Milk.
21 And it is four selected locations in Order 32. If I could
22 provide that yourself and the witness, copies to USDA, I
23 would like to have that marked as the next exhibit.

24 THE COURT: Yes. Let's go off record while we do
25 that.

26 (Thereafter, Exhibit Number 358 was marked
27 for identification.)

28 THE COURT: Let's go back on record. Back on



1 record at 8:21.

2 Mr. English, while off record I labeled MIG-54 as
3 Exhibit 358.

4 MR. ENGLISH: Thank you, Your Honor.

5 So for the benefit of both the witness and the
6 parties, this is yet another chart, in this case,
7 extracting Jackson, Missouri, Row 1497; Omaha, Nebraska,
8 Row 1648; Sedgwick, Kansas, Row 941; and Reno, Kansas,
9 that's the county, of Row 942, where there are four pool
10 distributing plants.

11 THE COURT: So there are four distributing --

12 MR. ENGLISH: Four plants. There are four --

13 THE COURT: Oh, go ahead.

14 MR. ENGLISH: -- pool distributing and supply
15 plants. And the source of most of the information -- all
16 the sources are labeled in the columns, similar to
17 previous documents, although we have done a few different
18 calculations here with the differences and percent
19 changes.

20 BY MR. ENGLISH:

21 Q. Sir, I continue to struggle with this. Why is
22 Reno, Kansas, where proprietary operation operated by
23 Kroger, when the model results go up \$0.10 from the
24 current, add -- National Milk proposes adding an
25 additional \$1.05?

26 A. Well, the -- if I remember correctly, this was a
27 situation where now we are looking at the price alignment
28 as we move south, and trying to attempt to maintain those



1 relationships to -- into Oklahoma.

2 Q. Well, but looking at the four plants that are in
3 your area -- well, let me backtrack.

4 We just looked at documents for Oklahoma, and
5 Oklahoma is shrinking milk production, correct?

6 A. Correct.

7 Q. And presumably the model would pick up the fact
8 that the Oklahoma milk production is shrinking, correct?

9 A. I don't know if it would or not. I can't speak to
10 the model.

11 Q. But you are here talking about why National Milk
12 has proposed numbers that turned out to be different from
13 the model.

14 How is USDA to make a determination of why your
15 numbers are correct if you can't even testify as to the
16 model?

17 A. Again, the model is used as a benchmark. And then
18 for this particular area, I was looking at current
19 relationships and -- and what would be least disruptive to
20 the existing environment.

21 Q. Well -- all right. Least disruptive to the
22 existing environment.

23 But nonetheless, to the extent, you know, Kroger
24 in Kansas may sell east, and Hiland in Kansas City may
25 sell west, currently, yet in the 1997 data that USDA used,
26 that would be \$0.20 higher under the current column, but
27 you make it \$0.50 higher under your proposal, correct?

28 A. Can you repeat that?



1 Q. Comparing the Kansas City location where a
2 cooperative plant is located, to Kroger's proprietary
3 operation in Reno, Kansas, right now, would you agree,
4 that Kansas City is at \$2.00 Class I differential, and
5 Kroger is at \$2.20 Class I differential, correct?

6 A. Correct.

7 Q. And that's a \$0.20 difference, correct?

8 A. Currently, yes.

9 Q. Yes. But if you go under "Proposal" -- the column
10 "Proposal Number 19 June '23," that is now a \$0.50
11 difference, correct? In favor of Kansas City, correct?

12 A. That is correct.

13 But I would also point out that the Wichita price
14 alignment is the same as the Kroger plant in Hutchison.

15 Q. In order to get there you modified it by the
16 additional \$0.15 over the model, correct? I understand
17 you have made it the same, but you have, nonetheless,
18 added, based upon what the model would do, an additional
19 \$0.15 over Wichita, if you look at the difference column,
20 correct?

21 A. Uh-huh.

22 Q. From \$0.90 to \$1.05, correct?

23 A. Per the model.

24 Q. Sir, what's the point of the model if you are just
25 going to go for price alignment?

26 A. Well, I think it's been established that the model
27 was used as the foundation. You have to start somewhere,
28 and -- and that's the somewhere that we started.



1 Q. Let's look at your map on page 5, as we also look
2 at Exhibit 358.

3 THE COURT: So we're looking at 356, page 5?

4 MR. ENGLISH: Yes. 356, page 5.

5 BY MR. ENGLISH:

6 Q. Given growth of milk -- let me back up.

7 You agree that milk production has also gone up in
8 Colorado significantly since 2000?

9 A. Yes.

10 Q. So given that milk production growth in Colorado,
11 and given the milk production in Kansas that has gone up,
12 and the fact that Nebraska has gone up slightly, but
13 Missouri and Illinois have gone down, what is the
14 justification for this \$3.30 zone along Interstate 70 from
15 Colorado into Kansas?

16 A. I believe there will be a future witness that
17 would speak to Western Kansas and the Colorado price
18 surface.

19 Q. But you are here to testify about Wichita,
20 correct?

21 A. That is correct.

22 Q. And so you are saying ask somebody else?

23 A. Not about Wichita.

24 Q. Well, isn't Wichita affected by this \$3.30 range?
25 I guess -- let me back up.

26 When I look at the map, you have Wichita in the
27 \$3.85 zone on the map.

28 A. That is correct.



1 Q. Wichita is not farther west in the state than
2 that?

3 A. I would not consider Wichita Western Kansas.

4 Q. So you are saying it's in the \$3.85 zone?

5 A. That is correct.

6 Q. Other than this idea of retaining current price
7 alignment, what is National Milk Producers' justification
8 for the results that appear on Exhibit 354 that leave
9 Kansas City at the model number, which is a 0% increase,
10 versus Sedgwick, Kansas, of 31% increase, and Reno,
11 Kansas, a 38% increase over the model?

12 A. Again, we started with the model, and it was an
13 attempt to maintain those price alignments.

14 Q. Any other reason other than price alignments?

15 A. That was -- that was a main point of it. Also the
16 distance from the market for the milk that is actually
17 physically delivered into those locations.

18 Q. That is raw milk delivered to plants?

19 A. Correct.

20 Q. And you don't know whether the model takes that
21 into consideration.

22 A. Oh, I would assume that it does, but I don't know
23 that for a fact.

24 Q. Well, if you assume that it does, then hasn't the
25 model already accounted for that, and therefore, it's not
26 the reason for your deviation?

27 A. I -- I don't know at what percentage it takes that
28 into consideration.



1 Q. Did you have any conversations with anybody about
2 that before you proposed these significant increases over
3 the model for Sedgwick, Kansas, and Reno, Kansas?

4 A. I did not.

5 Q. Other than price alignment, and assuming that the
6 model does take into consideration where milk is produced,
7 where it's processed, and where it's sold, how is the
8 model deficient in recognizing the distinctions that you
9 have now made between Kansas City, Omaha, and Wichita?

10 A. Can you repeat that question?

11 Q. Assuming that the model does account for where
12 milk is produced, where it is processed, and where it is
13 sold, other than your arguments for retaining current
14 price alignment, how is the model deficient when it comes
15 to recognizing the distinctions that you have proposed in
16 your testimony to make for the location Kansas City,
17 Omaha, and Wichita?

18 A. Well, I -- I don't know that I would characterize
19 the model as being deficient. Again, it was a starting
20 point for the group to -- to work on this project.

21 Q. What principles were used then, other than price
22 alignment, for saying, from this starting point we're
23 going to make these changes?

24 A. The main consideration was price alignment.

25 Q. Going back to your map on page 5, and looking at
26 the zones, where is the milk production growth? Is it the
27 \$3.00 zone of Kansas? Is it in the \$3.30 zone of Kansas?
28 Where is that milk production growth?



1 A. I would guess it to be the \$3.00 zone, but I don't
2 know that to be at fact.

3 Q. So, now, you understand the concept of
4 stair-stepping milk?

5 A. I do.

6 Q. What is your understanding of that concept?

7 A. That you would move milk from -- maybe move milk
8 out of one location -- I'll use an example. So if you
9 have milk in -- in outside of Dallas, you move Dallas
10 farther east, and then milk that's west of Dallas into the
11 Dallas market, until it -- until it fills the hole where
12 you have a need for the milk.

13 Q. So assuming that that milk supply in Western
14 Kansas is in a \$3.00 zone, given the fact that you have
15 set up a proposed 3.85 zone in Southeast Kansas and
16 Central Oklahoma, but then it's only \$4.00 when you get to
17 Western Missouri and Southeast Oklahoma, how are you going
18 to move milk to where it may be needed in where it's short
19 in Southeastern Oklahoma and short in Western Missouri,
20 with only a \$0.15 difference between the 3.85 you proposed
21 for Wichita and the \$4.00 that you proposed for areas in
22 Missouri and Oklahoma?

23 A. I'm not sure I understand the question.

24 Q. Do you agree that milk is short in Oklahoma?

25 A. Yes.

26 Q. Doesn't that milk need to come either from the
27 north or the west, since Missouri and Illinois can't be
28 sources of milk for Oklahoma?



1 A. Yes.

2 Q. Whether that milk comes from the north or from the
3 west, having set up a \$3.85 zone in Central Kansas and
4 Central Oklahoma, how will milk be attracted that
5 additional distance into Southeast Oklahoma or Southwest
6 Missouri when the differential is \$4.00 or a \$0.15
7 difference?

8 A. Well, these are -- these are the zones that were
9 proposed. And obviously, if the Department needs -- that
10 there needs to have some further refinement, that would be
11 up to their discretion.

12 Q. You agree that in order to stair-step milk, you
13 need to think about beyond price alignment for current
14 operations, correct?

15 A. That is correct.

16 Q. Thank you.

17 MR. ENGLISH: I have no further questions. I move
18 admission of Exhibit 358.

19 THE COURT: Is there any objection to the
20 admission into evidence of Exhibit 358, also known as
21 Exhibit MIG-54, that's 5-4?

22 There is none. Exhibit 358 is admitted into
23 evidence.

24 (Thereafter, Exhibit Number 358 was received
25 into evidence.)

26 MR. ENGLISH: Thank you, Mr. Brinker.

27 THE COURT: Who next will cross-examine the
28 witness?



1 I see no one, so I'll invite the Agricultural
2 Marketing Service to ask questions.

3 CROSS-EXAMINATION

4 BY MS. TAYLOR:

5 Q. Good morning.

6 A. Good morning.

7 Q. You caught me off guard this morning.

8 If we could turn to page 3, and the bottom half of
9 the page is where you are talking about the three
10 different cities and how much milk is locally sourced
11 within 150 miles.

12 And -- and this is just DFA data; is that correct?

13 A. That is correct.

14 Q. Okay. And my first question, when you say fall,
15 what months are you meaning there? Is this one month of
16 data or three months of data?

17 A. Until September.

18 Q. And if this is only DFA data, is there other
19 non-DFA supplies in those areas that the Department should
20 be looking at to get a full picture of milk in that area?

21 A. Not to my knowledge.

22 THE COURT: Ms. Taylor, if I might ask a question
23 that's along those lines.

24 Would you turn to your Exhibit 356 on page 2,
25 Mr. Brinker, and the third paragraph, your oral testimony
26 said "since 2005 the number of dairy farms located," and
27 your written testimony says "the number of DFA farms."

28 Can dairy farms and DFA farms actually be



1 considered interchangeable in that geography?

2 THE WITNESS: If I misspoke, it should be DFA
3 farms.

4 THE COURT: All right.

5 THE WITNESS: So this is -- my testimony
6 specifically is DFA member farms.

7 THE COURT: Throughout your entire exhibit?

8 THE WITNESS: That is correct.

9 THE COURT: Thank you.

10 MS. TAYLOR: Thank you, Your Honor.

11 BY MS. TAYLOR:

12 Q. Earlier in your statement you talk some about how
13 milk -- your facts we just discussed about local supplies
14 have decreased. Earlier in your statement you state that
15 milk must move further.

16 And I'm just curious, based on your knowledge,
17 where -- where are the milk production regions that are
18 servicing Wichita, for example, since that has the least
19 amount of the three cities that is locally supplied?

20 A. The -- there is a large percentage of milk that
21 moves from Northwest Kansas or even Southwest Nebraska.

22 Q. And what's the mileage, would you say, a
23 guesstimate on those? I mean, you gave us data for the
24 150, but --

25 A. Correct. I would guess somewhere between 3 and
26 400 miles.

27 Q. In regards to your transportation cost information
28 you put on, also earlier in your statement, you compare



1 2005 to 2022.

2 Have you seen -- if I wanted to plot out those
3 increases over time, is it more consolidated in recent
4 years of where you have seen the most increase? Has it
5 been steady over that time?

6 A. I can't answer that. So you are referring to like
7 a trendline, if you will?

8 Q. Uh-huh.

9 A. I don't know that -- I don't have that
10 information.

11 Q. Okay. On page 4 -- and I think you went over this
12 some with Mr. English, but I want to make sure we're
13 clear -- you have a sentence in there, and it says, at the
14 end of the first paragraph, "Considerations were also made
15 in regards to the recommended differentials and the
16 surrounding marketplaces."

17 So I was wondering, I'm thinking that's what you
18 are talking about when you are talking about price
19 alignment?

20 A. Yes.

21 Q. And -- and so if I look on your map on the
22 following page, are you talking more price -- and I'll
23 focus on Wichita for the moment -- are you focusing on
24 price alignment more on the Southeastern side as it abuts
25 up to the \$4.00 zone than you are from the Northwestern
26 side?

27 A. I think they are all interchangeable, because
28 it -- it would be difficult to just pick one spot in the



1 country that says, this is where I'm considering it,
2 because it's the domino effect of one market's going to
3 touch another market, is going to touch another market.

4 So I think in -- in my opinion, you have to take a
5 global view of all those markets as they touch each other.

6 Q. Okay. And I understand that. And I ask just
7 because there is a big difference -- there's not a big
8 difference between your 4.00 and your 3.85; that's only
9 \$0.15. But then there is a big difference on the
10 alignment side going the other way. And I'm just curious
11 if you see any issues going the other way on that, because
12 there's such a large -- \$0.55 in some instances, \$0.85 in
13 others, difference between zones.

14 I'm sorry, I think I talked over your answer.

15 A. Okay. So repeat your question.

16 Q. Sure. I'm just asking, you know, there's only
17 \$0.15 between going from Wichita down towards the
18 Southeast. Yet, going the other way, you know, \$0.85 or
19 \$0.55, I'm just wondering if you considered if there's
20 issues there being there's such a big -- much larger
21 difference in the differentials between those zones.

22 A. Yeah. I don't anticipate there would be.
23 However, if that's a concern for you, you -- you know, you
24 have the discretion to adjust our proposal.

25 Q. That's it from AMS.

26 MS. TAYLOR: Thank you.

27 THE COURT: Before we go to redirect, are there
28 any additional questions that are prompted by the



1 Agricultural Marketing Service questions?

2 I see none.

3 Ms. Hancock.

4 MS. HANCOCK: Thank you, Your Honor.

5 REDIRECT EXAMINATION

6 BY MS. HANCOCK:

7 Q. Thank you, Mr. Brinker, for your time. Just a
8 couple of questions.

9 Yesterday you received a question about the USDSS
10 model from Mr. English, and you said you weren't familiar
11 with it. But in your testimony you actually refer to the
12 Wisconsin model.

13 Were you aware, when you answered his question
14 yesterday, those were one and the same?

15 A. I was not.

16 Q. Now, since he's had an opportunity to continue his
17 examination, has that been made clear to you?

18 A. Yes.

19 Q. Okay. And I just want to maybe go back to just
20 the point of the testimony here that you are providing in
21 Exhibit 356.

22 If I'm summing up your testimony, is it fair to
23 say that the first premise is that you were here to
24 provide testimony about the increased hauling costs that
25 you have firsthand -- excuse me -- that you have firsthand
26 observations about in your role and work at DFA?

27 A. Yes.

28 Q. And that they have -- and what you have described



1 since 2005, have increased on the hauling costs by a total
2 of 151% in that time period?

3 A. That is correct.

4 Q. And the three areas that you have the most
5 experience with and that you are providing testimony on
6 that you have listed in Table 1 there, Kansas City, Omaha,
7 and Wichita, in total, those three proposed increases are
8 an increase of 67.5%.

9 A. Correct.

10 Q. Okay. And so even with the proposed increases,
11 that doesn't capture the total amount of hauling costs
12 that you have observed in your experience?

13 A. That is correct.

14 MS. HANCOCK: Okay. Your Honor, at this time we
15 would move for the admission of Exhibit 356.

16 THE COURT: Is there any objection?

17 I see none. Exhibit 356 is admitted into
18 evidence.

19 (Thereafter, Exhibit Number 356 was received
20 into evidence.)

21 MS. HANCOCK: Mr. Brinker, is there anything you
22 would like to add that you feel you weren't adequately
23 allowed to make us understand?

24 THE WITNESS: There is not.

25 THE COURT: All right. Thank you very much.
26 Appreciate your testimony. You may step down.

27 MS. HANCOCK: Your Honor, at this time we would
28 call Michael John as our next witness.



1 While he's taking the stand, I would note that our
2 Exhibit NMPF-41 had one minor correction on the bottom of
3 page 6, so your hard copies are reflecting the corrected
4 version, and it's been sent to USDA. So at some point, it
5 will be updated on the website as well.

6 THE COURT: Before we go off record -- well, maybe
7 we don't have to. I think people already have their
8 copies from yesterday, so we won't go off record.

9 So I'm going to mark Exhibit NMPF-41 as
10 Exhibit 359.

11 (Thereafter, Exhibit Number 359 was marked
12 for identification.)

13 THE COURT: Mr. John, would you state and spell
14 your name?

15 THE WITNESS: Michael John, M-I-C-H-A-E-L,
16 J-O-H-N.

17 THE COURT: Have you previously testified in this
18 proceeding?

19 THE WITNESS: Yes, I have.

20 THE COURT: You remain sworn.

21 THE WITNESS: Thank you.

22 MICHAEL JOHN,
23 Having been previously sworn, was examined
24 and testified as follows:

25 DIRECT EXAMINATION

26 BY MS. HANCOCK:

27 Q. Mr. John, did you prepare Exhibit 359 in support
28 of your testimony today?



1 A. Yes, I did.

2 Q. Okay. Would you provide us your statement,
3 please?

4 A. Sure.

5 My name is Michael John. I am executive vice
6 president of milk marketing for Maryland and Virginia Milk
7 Producers Cooperative, Inc., hereafter I'll say MDVA,
8 located at 13921 Park Center Road, Suite 200, Herndon,
9 Virginia. MDVA is a member of National Milk Producers
10 Federation, which I'll say from now on NMPF, and I serve
11 as a member of the NMPF economic policy committee and a
12 member of the Class I working group.

13 The Class I working group was assigned the
14 responsibility of developing updates to the current
15 Federal Order Class I differentials and for proposing
16 amendments to the method for computing the Class I mover.
17 The purpose of my testimony is to provide support to
18 NMPF's proposed changes to the Federal Order Class I
19 differentials.

20 The overwhelming majority of MDVA's milk -- member
21 milk -- is pooled on Federal Order 1 and Federal Order 5.
22 MDVA's members own and operate three pool distributing
23 plants: Two are located in Federal Order 5 and one is
24 located in Federal Order 1 (Table 1). In addition, MDVA's
25 members own and operate pool supply plants, two pool
26 supply plants: One located in Federal Order 5, as well as
27 one located in Federal Order 1. The majority of MDVA's
28 member milk is received and processed by Class I plants,



1 including the three plants owned by our members, serving
2 markets in Federal Orders 1 and 5. With most of our milk
3 serving the Class I market, and the remaining percentage
4 of our milk mostly supplying our member-owned pool supply
5 plants, we fully understand and support the need to update
6 and increase the Class I differentials.

7 The next part of my testimony has the Table 1. It
8 shows MDVA's plants and their location. The first column
9 is the Federal Order that they are located in and the town
10 or city that they are located in, and then the second
11 column shows the type of plant that they are, whether they
12 are a pool distributing plant or pool supply plant.

13 Subtitle: The Cost of Supplying the Class I
14 Market.

15 To consistently supply pool distributing plants,
16 whether member-owned or operated by a third party, MDVA's
17 pool supply plants give us the ability to balance
18 fluctuations in processing demand and in raw milk
19 production. Constant ebbs and flows of milk orders placed
20 by customers and their subsequent effects on the movement
21 of milk are a fact of supplying the Class I market. The
22 balancing adds additional cost and requires a steady and
23 reliable source of revenue to serve the market. In part,
24 Class I differentials were instituted to help meet these
25 revenue requirements.

26 At MDVA, we are constantly moving milk from supply
27 points located in Federal Order 1 to demand points located
28 in Federal Order 1 or Federal Order 5. Fluctuations in



1 milk needs and milk movements can vary tremendously
2 depending on the time of the year. An example of a large
3 seasonal variation of milk flowing from Federal Order 1 to
4 Federal Order 5 would be to compare the month of April to
5 the month of September. In a typical year, we move twice
6 as much milk from Federal Order 1 to Federal Order 5 in
7 September versus April. If we look at changes that occur
8 during the week, for example, comparing a Saturday to a
9 Wednesday, we see definite fluctuations in demand between
10 the days of the week.

11 In addition to the cost associated with servicing
12 the Class I market, the cost of transportation to move the
13 milk has increased as outlined on page 39 of NMPF's
14 hearing request, and in subsequent NMPF testimony, the
15 cost of moving milk has greatly increased from the early
16 2000s. The proposed increase in Class I differentials is
17 to provide some cost relief to those experiencing
18 increased costs to move milk to Class I plants and to make
19 sure incentives are high enough to attract raw milk to
20 Class I processing plants.

21 It has been over 15 years since Class I
22 differentials have been increased in Federal Order 5. In
23 the face of enormous transportation cost increases, that
24 means the mechanism -- the mechanism to attract milk from
25 supply points has become less effective. The cost of
26 transportation has increased significantly, and at least a
27 portion of that cost needs to be satisfied through an
28 increase in Class I differentials. To continue to meet



1 customer demands for milk, our dairy farmer members must
2 make up the difference in that cost, which comes directly
3 out of their monthly milk checks.

4 Internally, we have designated a hauling subsidy
5 to cover this cost. The subsidy can fluctuate
6 dramatically from month to month based on the fluctuations
7 in supply and demand and in the cost of transportation,
8 which includes the cost of fuel.

9 Table 2 below gives some examples of
10 transportation rates since 2008. The rates below are
11 based on what the trucking industry calls running mile
12 rates. If they were calculated on a -- on a loaded mile
13 rate, the rates would be double.

14 Now we have Table 2, and let me explain Table 2.
15 So we're comparing hauling rates using the same month but
16 different years. So we're comparing January of 2008
17 versus January of 2023. I have three examples here that
18 we put together. Each example has different roundtrip
19 miles, and each example has different -- could have
20 different origin points and different destination points.

21 So let's start with the first one, the first
22 scenario, which has roundtrip miles of 171 miles. What we
23 did was we looked at the same origin or the same route.
24 It may have had different farms on it because some farms
25 may have gone out of business, but in essence it's the
26 same route in the same geographical area in 2008 versus
27 2023, and it went to the same destination, meaning the
28 same pool distributing plant.



1 Now, the next column has the average load size.
2 The average load size in 2008 was 47,500 pounds of milk on
3 that load. And what I'm trying to show here is in 2023
4 you will see that went up to 55,000 pounds. I'm trying to
5 show that we have done what we could do from -- from an
6 industry standpoint to gain efficiencies to move more milk
7 on -- on one truck.

8 And so the -- you know, unfortunately, we're not
9 like some areas like Michigan, so on the East Coast we
10 get -- our weight limits get limited by regulation, state
11 regulations. So we have been able to increase in this
12 particular load by 7,500 pounds. But even with that work
13 towards efficiency, the total cost went up by \$251.45, and
14 the rate per mile increase went up by \$1.47, or a
15 56% increase in rate per mile.

16 The next example is an example of 732 miles
17 roundtrip, or roughly about 360 miles one way. And so
18 this started out with a Federal Order 1 location going to
19 the Federal Order 5 location plant, and, again, the same
20 load going to the same location in 2008 has the same load
21 in 2023 going to the same location in Federal Order 5 in
22 2023. You can see that we gained a little more efficiency
23 on loads, maybe not as much as we did in Federal Order 1.
24 One might ask why. The reason for that is that many of
25 these trailers are multiuse trailers, they don't just haul
26 milk, they also haul orange juice. You know, they're
27 over-the-road trailers, so they have to haul other
28 products, so they are not necessarily -- can weight them



1 out the full weight. They are limited by what their other
2 uses.

3 But even with that efficiency, we still had a
4 \$765 -- \$765.46 increase, and that caused a rate per mile
5 increase of \$1.04, which gave a rate per mile change of
6 68% increase.

7 The last roundtrip scenario is 303 miles, roughly
8 150 miles one way, going from a Federal Order 5 origin to
9 a Federal Order 5 destination. Again, same location
10 starting point to the same ending point. And -- and we
11 see some efficiency gained there, about 1500 pounds. And
12 then, again, showing a rate increase of \$383.24, and the
13 rate increase of \$1.26, and a rate per mile increase of
14 64%.

15 The other thing I would like to say about the
16 cost, these are total costs, so they would be including
17 what we call in the milk marketing world, assembly cost
18 and destination cost. So what do I mean by that?
19 Assembly cost is whatever it takes to load out that truck.
20 So in Federal Order 1, for example, we have a lot smaller
21 farms, so it may take four to six farms to -- you know,
22 stops, to fill out a tractor-trailer load of milk. And
23 then you have the destination. Once that trailer is full,
24 then the cost of moving that milk to the final
25 destination. So it's -- it's costs that include all costs
26 of hauling milk.

27 So now I'll continue on with the rest of my
28 testimony.



1 Based on the need for changes to the Class I
2 differential to help cover additional cost, I will give
3 examples of how we determine changes in the Class I
4 differentials for our geography. As shared by Jeff Sims
5 in his testimony, NMPF created four regional Class I
6 working groups.

7 With MDVA located in the Mid-Atlantic region as
8 well as in Southeast, we were involved in two of the four
9 working groups: The Northeast/Mideast region and the
10 Southeast/Southwest region. Both regions started with the
11 results from the University of Wisconsin spatial price
12 model. The model was run using data from two specific
13 months, May of 2021 and October of '21. We averaged the
14 results of these two months and that established a base
15 for the Class I differential analysis.

16 I'll just say, just to add to that, the reason
17 we -- in our world, the reason we average it is we have a
18 big seasonal difference between May and October. And so
19 by averaging that, we feel like we get a more true result
20 of what it really costs to move that milk.

21 Our next step was to review the current price
22 relationships between specific locations, and compare
23 those to what the model revealed.

24 For example, in Federal Order 1, the current
25 Class I differential relationship between Landover,
26 Maryland, and Frederick, Maryland, is \$3.00 per
27 hundredweight at Landover versus \$2.90 per hundredweight
28 at Frederick, for a difference of \$0.10 per hundredweight.



1 Continuing with the two-city example, the model
2 suggests the Class I differentials should be increased to
3 \$4.90 per hundredweight at Landover, Maryland, and only to
4 4.55 per hundredweight at Frederick, Maryland. This
5 resulting price relationship -- this resulting price
6 relationship then becomes \$0.35 per hundredweight, which
7 is significantly higher from the current price
8 relationship. Recognizing that these two locations are
9 only about 55 miles apart, and recognizing both are in the
10 same competitive market, a \$0.35 per hundredweight
11 difference would create on artificial competitive
12 advantage of one processor over the other.

13 The Northeast --

14 THE COURT: Go ahead and finish reading that
15 sentence. I think it adds value.

16 THE WITNESS: Oh, okay. I missed something there.
17 Okay.

18 Recognizing that these two locations are only
19 about 55 miles apart, and recognizing both are in the same
20 competitive market, a \$0.35 per hundredweight difference
21 would create an artificial competitive advantage of one
22 processor over another relative to the regulated cost of
23 raw milk. Thank you.

24 The Northeast working group took this into
25 consideration when proposing revisions to the model's
26 results for NMPF's Class I differential proposal. In
27 another example, when comparing Philadelphia,
28 Pennsylvania, to York, Pennsylvania, the current



1 difference is -- differentials -- in differentials is
2 \$0.15 per hundredweight. The model increased Class I
3 differentials for both locations by \$1.65 per
4 hundredweight and \$1.70 per hundredweight, respectively,
5 for a differential difference of \$0.20 per hundredweight,
6 thus, closely preserving the historical price
7 relationship.

8 The Southeast working group followed the same
9 basic analytics as the Northeast working group when
10 reviewing locations within Federal Order 5. To give an
11 example, the Class I differentials for Mount Crawford,
12 Virginia, and Verona, Virginia, are the same at 2.90 per
13 hundredweight. The model determined a \$0.10 per
14 hundredweight higher difference for Verona, Virginia.
15 These two locations are approximately 15 miles apart and
16 compete in the same markets. We kept the price
17 relationship the same as current by increasing the
18 differentials in both locations by \$1.80 per hundredweight
19 to a new proposed differential of 4.70 per hundredweight.

20 In a second Federal Order 5 example, the current
21 Class I differentials for Lynchburg, Virginia, and Newport
22 News, Virginia, are the same at \$3.20 per hundredweight.
23 The model determined a \$0.40 per hundredweight higher
24 differential for Newport News, Virginia. Because these
25 two locations serve the same geographical market and both
26 locations draw from farm milk from the same milk sheds, we
27 decided to keep the current price relationships and
28 propose a differential of \$5.00 per hundredweight for both



1 locations.

2 Analyzing these price relationships throughout
3 Federal Order 1 and 5 led the Northeast and Southeast
4 working groups to follow two guiding principles: Namely,
5 that Class I differentials needed to increase to cover the
6 additional cost of servicing fluid milk markets, and to
7 maintain current price relationships between fluid markets
8 to avoid as much unnecessary and unwarranted changes in
9 competitive relationships.

10 In sum, MDVA supports the proposed price
11 differential changes to update and modernize the
12 differentials to better reflect the market increases and
13 cost of serving the Class I market and of moving milk from
14 supply areas to deficit areas, and to recoup some of the
15 increased costs that have occurred since the last time
16 differentials were updated.

17 I want to thank USDA for having this hearing, and
18 thank you for the opportunity to speak on behalf of MDVA's
19 dairy farmer members.

20 BY MS. HANCOCK:

21 Q. Thank you, Mr. John. I just have a couple of
22 questions.

23 In your Exhibit 359 you talk, on page 3, about
24 running mile rates and loaded mile rate.

25 I'm wondering if you could explain the difference
26 there.

27 A. Well, a running mile rate would include -- so
28 if -- if a -- if a truck left one destination point and



1 then goes -- or one starting point and went to a
2 destination, a running mile rate takes in that whole
3 circle. It's the empty trailer moving back, so roundtrip
4 versus a loaded mile would just be one way.

5 Q. Okay. And if there's multiple stops, it's one way
6 just once it starts loading?

7 A. Yes.

8 Q. Okay. And the numbers that you provided were just
9 the loaded mile rates, and you noted that if you included
10 the full running mile rates that would be double?

11 A. It was --

12 Q. I'm sorry, did I say that backwards?

13 A. Yeah, I think it's the other way around.

14 Q. You included in your -- in your -- in your hauling
15 rates that you have included on your Table 2, is that the
16 loaded mile rates?

17 A. That's the running mile rates.

18 Q. Okay.

19 A. If it had been the loaded mile rates, it would
20 have been doubled.

21 Q. And so you have given the more conservative
22 approach?

23 A. Yes.

24 Q. And you, on your -- when you were providing some
25 of the examples on the -- how and why the work on the
26 teams that you performed deviated from the model, and one
27 of the reasons that you talked about was preserving that
28 historic price relationship.



1 A. Yes.

2 Q. I'm wondering if you can provide us with some
3 insights as to why -- why does that matter to try to
4 preserve that historic price relationship?

5 A. Well, for us, number one, you know, I guess I'll
6 have to get more specific in looking at geographical
7 areas.

8 So if I look at the 95 corridor, for example,
9 the -- just being in this business for almost 40 years
10 now, looking at Philadelphia to D.C., there's not many
11 miles there. And all those plants compete for the same
12 markets.

13 And so I think the original -- the Class I
14 differentials that we use today are closely aligned, and
15 so I don't know that there's a lot of change in that
16 alignment needs to happen. And that's what we tried to
17 preserve, because we know that those markets, that whole
18 market, for example, from Philadelphia to D.C., all
19 compete for the same -- the same customer base.

20 Q. And when you receive those model results, you
21 talked about some examples in your testimony.

22 Were there any other examples that -- that you
23 noted that didn't seem to make sense as it came out of
24 those model results?

25 A. Yes. So if I -- if I go down to -- I'm looking at
26 kind of my sheet that I've put together here. If I look
27 at the Federal Order 5 area, and you -- and you look at,
28 you know, many cases were lower, quite a bit lower than



1 what the model suggests. And if you look at where those
2 plants align -- I call it the kind of the triangle of
3 North Carolina -- so you have Asheville out on the west,
4 you kind of have Winston-Salem, High Point in the middle,
5 and then you have Spartanburg, which is just across the
6 line in South Carolina, it kind of makes a triangle. And
7 within that triangle is where all the milk is produced.
8 And also, kind of in the Southern Virginia is where the
9 milk is produced. So from Southern Virginia and then kind
10 of that middle part inside that triangle is where all the
11 milk is produced in Southern Virginia and in North
12 Carolina.

13 And so for us, that's number one, you know, that
14 that milk's a lot closer to the market. Secondly, it's
15 not -- you can move milk out of Federal Order 1 to North
16 Carolina. To move milk, say for example, out of Federal
17 Order 1 to Atlanta is a whole different story. So in that
18 area, you can get milk to that area, not only out of
19 Federal Order 1 but also out of Federal Order 33, you can
20 get milk to that area. So we just didn't feel like
21 warranting that increase --

22 THE COURT: I'm sorry, is "that area" Atlanta?

23 THE WITNESS: That area would be that Central Area
24 of North Carolina.

25 THE COURT: Okay. Back up.

26 THE WITNESS: Okay.

27 THE COURT: So you talked about what doesn't serve
28 Atlanta.



1 THE WITNESS: Right.

2 THE COURT: Right? And then we -- from then on
3 we're not talking about Atlanta anymore; is that right? I
4 need --

5 THE WITNESS: Yeah. I'll back up a second. I
6 talk this language all the time, so it's just so easy, but
7 I understand.

8 THE COURT: It's so easy?

9 THE WITNESS: For me.

10 But I'll -- yeah. So it's -- we can move milk out
11 of Federal Order 1 to that Central North Carolina region,
12 even to Spartanburg, which is just across the border from
13 South Carolina.

14 And so to move milk -- you know, so you have
15 really -- you have that Central North Carolina area, that
16 triangle that I'm talking about, there's -- there's a good
17 bit of milk produced right there. That's where all the
18 milk that is in that Southeast of Federal Order 5 area,
19 that's where it's produced. And, secondly, you can move
20 milk out of Federal Order 1 to that area. And that's why
21 we didn't feel like that Central North Carolina area
22 should go up as much as the model did.

23 BY MS. HANCOCK:

24 Q. But the model takes into account the locations of
25 plants and farms, doesn't it?

26 A. It does, but it doesn't -- it doesn't take in --
27 the model -- I guess the way I look at the model, the
28 model is a -- is the book work. It's the theory. It's,



1 you know, putting -- plugging numbers into an algorithm, a
2 big one, and letting it run. Now we got to put boots on
3 the ground.

4 And that's what our group did, we put the boots on
5 the ground. And we said, this is how the industry really
6 looks. And so we had to tweak it, and that's why we
7 tweaked it there.

8 Q. Okay. And so when you say "boots on the ground"
9 you mean your 40 years of experience --

10 A. Yes.

11 Q. -- and the collective knowledge of the teams that
12 were working on this with you?

13 A. Yes.

14 Q. And the strategies that people deploy when they
15 are buying and selling milk?

16 A. Yeah. And I would say if you add my 40 years
17 with -- there was a couple of other 40 years in there, so
18 I am going to say it's probably collectively about
19 200 years' worth of experience there, so...

20 Q. And things that the model can't take into account
21 when you add the human dynamics into the mix?

22 A. Yes.

23 Q. And -- and other things like having a Federal
24 Order system that governs behaviors and people's buying
25 and purchasing decisions as well?

26 A. That's right.

27 Q. Okay. What about Prince George's County, was that
28 another area that you made a modification to?



1 A. Yeah. So Prince George's County, there's a plant
2 in Prince George's County. It's -- it's on the northeast
3 edge of the beltway. It is 28 miles from the plant in
4 Baltimore. And to have a -- and I'm not exactly sure why
5 the model came up with that high of a location adjustment
6 at, I think it had \$4.90, and we -- we said that it needed
7 to be -- needed to align with Baltimore, which also
8 aligned with Philadelphia. So we kept that whole section,
9 what I called the 95 corridor, at 4.70.

10 Q. And so there were places -- and so in that example
11 you actually reduced down the proposal that National Milk
12 is making over what the model had forecasted.

13 A. Yes.

14 Q. And so is it fair to say that in -- in the working
15 group's efforts, that sometimes the prices were left the
16 same, sometimes they were increased, and sometimes they
17 were decreased from what the model predicted?

18 A. Yes.

19 Q. And at any time, did you hear anybody trying it
20 make any kind of recommendations or decisions that were
21 based on giving themselves a competitive advantage over
22 any of their other competitors?

23 A. No.

24 Q. Was anybody trying to give their competitors a
25 disadvantage in making the decisions that -- that were
26 made in order to get to National Milk's proposal?

27 A. No.

28 Q. Okay. And you have plants that service fluid milk



1 markets.

2 A. Yes.

3 Q. How many?

4 A. Three.

5 Q. And your customers, do they have standard
6 requirements for your fluid mark- -- for your fluid
7 markets?

8 A. Yes.

9 Q. And do those fluid milk market standards exceed
10 the PMO Grade A standards?

11 A. Yes. We have -- and I'll -- it's not just our
12 plants, but also we market a considerable amount of milk
13 to what we call third-party plants, which are not owned by
14 our cooperative. And we have -- well, I'll call it
15 Grade A plus standards. We have -- for example, we have a
16 plant probably for 30 years now. The milk has to be
17 40 degrees. The standard is 45. If it is 40.56, which
18 rounds up to 41, they will reject the load, and they have
19 rejected a load, and so we had to move that load away.

20 We have several customers that require us to give
21 them the full quality makeup in somatic cell and PI counts
22 on each farm, on each load that comes into that plant
23 every month. Now, we don't give out names or addresses,
24 we just give a producer number, but they require the
25 quality information for that farm.

26 And then if -- if a specific farm on that load
27 does not meet what they are looking for, even if the load
28 is okay, but if a specific farm on that load doesn't meet



1 it, they will say, you cannot bring that milk back into my
2 plant until you do an M-CAP, which is a Mandatory
3 Corrective Action Plan, and there's a whole series of
4 paperwork -- I guess electronic work now -- but paperwork
5 that goes into all that, and we have to justify why that
6 farm was allowed to be back on that load again. So we
7 have a couple customers that do that, and these are all
8 Class I customers.

9 So, yes, we have -- and then we have some
10 customers that want lab pasteurized counts run, what we
11 call LPCs, in addition to the standard plate counts and
12 somatic cells. We have customers that -- that want a
13 somatic cell under 200,000.

14 So, yes, there are -- I would say, and I think
15 Chris mentioned it yesterday, a lot of that is for --
16 everybody's trying to find that longer shelf life, they --
17 especially in high temperature short time, HTST, type of
18 production, they are trying to find that one extra day of
19 shelf life.

20 And so a much lower somatic cell count, much
21 lower, you know, bacteria count, gives them that one extra
22 day which is a lot of money to them. So, you know, I
23 understand it, but -- and we work hard to meet those
24 standards every day.

25 Q. Is there a cost associated at the farm level in
26 order to achieve those Grade A plus standards from their
27 end?

28 A. Absolutely. I mean, it's extra work from our



1 field staff. It's a lot more milk testing, you know,
2 drawing samples and testing milk, and just working closely
3 with the farmer. It could mean they would have to -- for
4 on the somatic cell count, they could have to take -- take
5 cows out of the herd. They could stop milking those cows,
6 you know, whatever. Whatever they need to do, they need
7 get there. So, yes, there's definitely cost.

8 We say that cost is somewhere in the neighborhood
9 minimum \$0.60 additional.

10 Q. \$0.60 a hundredweight?

11 A. \$0.60 a hundredweight, yeah.

12 Q. And -- and then also the additional cost
13 associated with the cooler temperature control
14 requirements?

15 A. Yes.

16 Q. Okay. And in order for you to achieve your
17 Class I fluid milk sales, you have to exceed those Grade A
18 standards that are required by your customers?

19 A. That's correct.

20 Q. So is it fair to say that that Grade A plus
21 standard is now the market expectation for the fluid milk,
22 in your experience?

23 A. Yes. I mean, I have had customers say to me
24 directly, "If you don't want to do this, I'll find someone
25 who does," so --

26 Q. And then I want to talk for just a second about
27 balancing -- balancing milk.

28 Are you able to balance -- or balancing costs, are



1 you able to balance those costs of your Class I fluid milk
2 with -- by using cheese plants?

3 A. No.

4 Q. Why not?

5 A. There really isn't any cheese plants in our area.
6 You have to get further north to Pennsylvania to get to
7 cheese plants. So we -- we have our own two plants, as I
8 have testified before in the Make Allowance part of the
9 hearing. We have Laurel, Maryland, and then -- which does
10 make powder, and then Strasburg, Virginia, which is just
11 separates and condenses.

12 Q. And you just mentioned Make Allowances.

13 If Make Allowances are increased through this,
14 through this hearing, would that put further pressure on
15 servicing the Class I markets if there is not an increase
16 in those differentials?

17 A. Yes.

18 MS. HANCOCK: That's all I have, Your Honor.

19 We would submit him for cross-examination.

20 THE COURT: Thank you, Ms. Hancock.

21 Before I invite the first examiner, I need you to
22 go, please, to Table 2 on page 4, Exhibit 359.

23 Now, that involves the roundtrips. Are the
24 roundtrips the running trips or the loaded trips?

25 THE WITNESS: These are the running trips.

26 THE COURT: Roundtrip means running trip.

27 THE WITNESS: Yes.

28 THE COURT: Even though one way there's no load,



1 it's empty?

2 THE WITNESS: Exactly right. Yes.

3 THE COURT: Okay. Just checking.

4 THE WITNESS: Basically, that truck has to come
5 back to the -- to the truck terminal and start getting
6 ready to start its route again.

7 THE COURT: And so at the bottom of page 3 when
8 you say, "If they were calculated on a loaded mile rate,
9 the rates below would be doubled."

10 THE WITNESS: Yes.

11 THE COURT: That's because?

12 THE WITNESS: You are just, instead of -- instead
13 of doing the rates on a -- for example, instead of doing
14 the rates -- take the first one, which would be roughly,
15 let's say 85 miles, you are just lowering the miles. And
16 instead of -- it's the same dollar amount, but it would be
17 85 miles as opposed to 171 miles.

18 THE COURT: Thank you.

19 THE WITNESS: Uh-huh.

20 THE COURT: All right. Who would first like to
21 cross-examine Mr. John on this topic?

22 MS. TAYLOR: Your Honor, might I suggest a break?
23 It's 9:25.

24 THE COURT: How did that happen?

25 MS. TAYLOR: It's riveting.

26 THE COURT: All right. Do we want 15 minutes?

27 Yes. Okay. So please come back ready to go at
28 9:40.



1 We go off record at 9:24.

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

3 THE COURT: Let's go back on record.

4 We're back on record at 9:40.

5 Cross-examination for Mr. John.

6 Mr. English.

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

8 CROSS-EXAMINATION

9 BY MR. ENGLISH:

10 Q. Good morning, Mr. John.

11 My name is Chip English with the Milk Innovation
12 Group. I know you know that.

13 Let me start with what I hope is an easy one, but
14 then I'm easily confused.

15 Before you actually gave your written statement,
16 your counsel pointed out that there was a change in the
17 testimony.

18 A. Yes.

19 Q. And I confess that, you know, I had the one handed
20 out today, I had the one printed out from a long time ago,
21 and I missed it. So I don't want to miss it, and I want
22 to understand what the change or typo is, or whatever was
23 done.

24 A. Sure. So if you go to page 6, and then go to the
25 top of the page, that first paragraph I mistakenly had in
26 my first version -- which would probably be in my sixth
27 rewrite -- but anyway, it's my first submittal,
28 submission -- I had Philadelphia and York at the -- at



1 \$0.15, that they went up the same amount, \$1.65. And,
2 actually, one went up \$1.65, one went up \$1.70. So it was
3 \$0.20 difference versus the same \$0.15 difference.

4 Q. Okay. So which is which? Which is -- which went
5 up \$1.65 versus \$1.70?

6 A. So York went up \$1.65 -- no, I'm sorry,
7 Philadelphia went up \$1.65, and York went up \$1.70.

8 Q. And is that what is actually reflected in National
9 Milk Proposal 19 --

10 A. Yes.

11 Q. -- or did that change?

12 A. No. No, that's -- I had misread it.

13 Q. Thank you. I'll come back to that at an
14 appropriate place, but thank you very much for that
15 clarification.

16 A. All right.

17 THE COURT: Let me stop you.

18 Let's go off record for just a moment.

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

20 THE COURT: Let's go back on record.

21 We're back on record at 9:44.

22 BY MR. ENGLISH:

23 Q. So given the fact that you have discussed
24 Pennsylvania as well as Maryland and Virginia, were you
25 then part of two different red pencil crews, both the
26 Order 1 and the Southeast?

27 A. Yes. And they weren't red pencils, they were
28 colored pencils. If you've seen the map, you know it's



1 all different colors.

2 Q. Well, other people called it red pencil club.

3 A. Yeah, it's not red pencils, it's colored pencils.

4 Q. So who -- I think you are the first person to
5 testify for the Northeast.

6 So who was the "we" for the Order 1 work?

7 A. You mean the specific people?

8 Q. Yes.

9 A. Oh, man.

10 Q. If you can't remember the people, the companies or
11 co-ops.

12 A. Yeah. So there was -- well, two of them are
13 sitting in the back back there. There's --

14 Q. That doesn't help the record.

15 A. So you have folks from Agri-Mark, folks from DFA
16 Northeast, folks from Upstate, Land O'Lakes. Am I missing
17 anybody else? I think that's it -- everybody.

18 Q. And just because you said -- you said that there's
19 two people in the back of the room, you meant Scott Werme
20 from Agri-Mark and Skylar Ryll from DFA, just for
21 clarification?

22 A. Yes.

23 Q. And at the end your testimony you say that there
24 were two guiding principles: One was the Class I
25 differentials needed an increase; and second, that you
26 needed to maintain current price relationships between the
27 fluid markets?

28 A. Yes.



1 Q. Are those two in conflict in some way?

2 A. They could be. You know, the -- if you increase
3 prices -- and I'll give you my personal -- I don't think
4 that the regulated price should be the catalyst that
5 creates a disorderly market. And if all of a sudden the
6 model shows a huge increase in the differential that
7 creates a disorderly market between two competing
8 facilities, I think that that's a problem. And so that's
9 how they could be in conflict.

10 Q. Well, how can we reconcile, I mean, if after
11 25 years there's these increased costs, doesn't the
12 attempt to preserve existing price relationships at some
13 point mean that you are not recognizing those additional
14 costs, or that you are over-recognizing them if you go
15 higher than the model was set at?

16 A. Or in some cases we went under where the model was
17 set, right?

18 Q. Yes. So that's what you did.

19 But isn't there a problem with the reconciliation
20 of, boy, we have had these increased costs --

21 A. Yeah.

22 Q. -- but we want, nonetheless, to maintain the same
23 relationships, say, between York and Philadelphia?

24 A. I don't think so, and let me -- let me tell you
25 why. I would say if you go back and check 25 years ago,
26 that the average shelf life of HTST milk was probably more
27 like 16 days, and today they are getting 22 -- 21,
28 22 days, so now all of a sudden their market has expanded,



1 and there's fewer plants, and the customers are much
2 bigger that -- that these plants have to deal with. And
3 so I -- I don't think so for those, just for those
4 reasons.

5 I think the market has expanded to the existing
6 plants. I think technology has allowed even HTST to serve
7 larger markets, and we have to take that into
8 consideration. I have always told my customers, I don't
9 want to be the reason that, you know, I'm causing you hurt
10 or pain, I want to supply you, I want to help you.

11 Q. But at some level if you -- if you say, look, the
12 I-95 corridor has this current relationship from
13 Philadelphia down to the south, aren't some of those costs
14 in terms of getting there going to have to be covered
15 either in the raw form or the packaged form? That is to
16 say, if somebody tries to sell into that area where
17 there's a toll across the bridge into New Jersey from
18 Philadelphia, that, as we heard yesterday from Mr. Hoeger,
19 it's more expensive to move packaged milk, right?
20 Correct?

21 A. Yes.

22 Q. Okay. So if --

23 A. I'll say to some extent. It depends on how it's
24 packaged. If it's traditional crates, I would agree with
25 that. But if it's not traditional crates, I would not
26 agree with that.

27 Q. And why is that not the case?

28 A. So you don't have the crates. You don't have to



1 worry about bringing the crates back.

2 Q. So how much of that is going on along the I-95
3 corridor?

4 A. There's more than you know.

5 Q. Okay. More than I know is not a very good record.

6 A. Well, I can't -- I don't want to give -- I don't
7 want to give out private information.

8 Q. All right. And I always, I want to emphasize, I
9 think you know that about me, I've never asked for that, I
10 never want it, so that's fine.

11 I guess what I'm getting at is, doesn't there have
12 to be a break at some point in the numbers if Class I
13 differentials need to go up, say, in Winchester, Kentucky,
14 because that's what the model suggests, but you keep
15 prices or you lower prices per the model in North Carolina
16 because of your theory, haven't you created a new problem
17 somewhere else?

18 A. That's -- that's a possibility. I don't know.
19 You know, I -- I'm looking at it from my geography. I
20 can't talk about Winchester, Kentucky. I can talk about,
21 you know, the eastern corridor, that type of thing,
22 because that's kind of where we live, and that's -- that's
23 the market we're at. But I can't talk about Kentucky.

24 So if -- could I do something in -- could we do
25 something in Washington, D.C. that could affect someone in
26 the Mideast? I don't know. Possibly. I don't know. If
27 that's what you are asking.

28 Q. Well, that's part of what I'm asking. There's a



1 couple of different pieces there. You just mentioned the
2 Mideast, and I know you are not part of the Mideast, but
3 we had testimony as to the Mideast, at least as to Western
4 Pennsylvania, where price alignment wasn't used.

5 THE COURT: Wasn't used?

6 BY MR. ENGLISH:

7 Q. So I'm trying to -- was not applied, for instance,
8 for Pittsburgh.

9 And so I'm trying to understand what would be the
10 consistent principle across groups that USDA should apply?

11 A. I think that -- to me, I think the most consistent
12 principle USDA could apply is to keep things -- to keep
13 the markets as orderly as possible, and let competition
14 then, in those markets, play out. That's what I think.

15 Q. And is your definition of orderly marketing, then,
16 maintaining current price relationships?

17 A. Yes, I think that's it.

18 Q. Unless you simply increase the base of Class I
19 differentials everywhere, aren't you necessarily going to
20 alter price relationships somewhere?

21 A. Well, I'll say this. So 23 years ago, and I --
22 I'm not an expert on the Panhandle of Texas, for example.
23 But 23 years ago, did we have a lot of milk in the
24 Panhandle of Texas? Probably not. All of a sudden that
25 milk showed up. Now all of a sudden we got milk in the
26 Dakotas where milk wasn't at before. So just the sense
27 that milk shifts and moves creates challenges.

28 So, you know, I -- I think there's other factors



1 other than differentials. I mean, there's just -- you
2 know, when -- for example, I'm old enough to remember, you
3 know, Federal Order Reform in 2000, and what was -- what
4 my understanding was that Federal Order Reform was
5 differentials were to be adjusted periodically, and now
6 here we are 20-some years.

7 Q. And in Federal Order Reform, isn't the case that
8 what were then current price relationships were altered?

9 A. Yes.

10 Q. So you brought up the fact that the idea that,
11 okay, there's been new milk production in the Panhandle of
12 Texas.

13 By and large that's not the case much east of the
14 Mississippi, correct?

15 A. That's right.

16 Q. So the reality is, we're short of milk east of the
17 Mississippi, correct?

18 A. Well, I would say that in --

19 Q. In the Southeast, I'm sorry.

20 A. Yeah, in the Southeast, I would agree with that.
21 Because Pennsylvania has been flat. It's been about
22 10 million -- 10 billion pounds of milk a year forever.

23 Q. Are we moving milk out of Order 1 into Order 5, as
24 you talked about could happen?

25 A. Yes.

26 Q. Okay. Do we move milk out of Order 5 down to
27 Order 7?

28 A. No, not as much. No. Very little. At least our



1 experience has been very little. I -- for example, we
2 only go as far south as Atlanta. And Atlanta is just hard
3 to get to. And so you're basically -- to move milk out
4 of -- even out of 5 to 7, when there's so many locations
5 within Federal Order 5 where that milk's needed, it's
6 pretty hard to pull it out of 5 to take it down to 7
7 because it's needed there in 5.

8 Q. Well, isn't that the concept of stair-stepping
9 milk? You move milk from where it is to the next location
10 and down? That's what Mr. Hoeger testified about
11 yesterday.

12 A. Yeah, we -- we do some of that. But it's also,
13 you have to look at each situation separately. For
14 example, if I'm taking -- ultimately I have to take milk
15 out of a location where there is milk. So I always use --
16 not because I grew up there, but I think it's a good
17 center point, is Chambersburg, Pennsylvania. That's what
18 I use, Franklin County, Pennsylvania. And depending on
19 the hauler, depending on the rate and all that, it might
20 be better to move that load the whole way to North
21 Carolina versus taking it down to somewhere mid-Virginia
22 and then rolling something out of mid-Virginia on down to
23 North Carolina.

24 You have to look at each case separately to
25 determine whether, what is the right, you know, cost
26 scenario.

27 Q. Do you know about milk moving from Chambersburg,
28 Pennsylvania, to North Carolina?



1 A. Absolutely.

2 Q. So if the model suggested, before National Milk
3 proposed altering it, higher values for North Carolina,
4 wouldn't that further compensate for those movements of
5 milk from Chambersburg, Pennsylvania, to North Carolina?

6 A. If we went by the model you are saying?

7 Q. Yes.

8 A. If we used the model numbers?

9 Q. Yes.

10 A. Yes, that would create more dollars there, no
11 question about it.

12 Q. And that would, therefore, incentivize more milk
13 being moved, or at least be reimbursed, for milk moved
14 from Chambersburg to North Carolina, correct?

15 A. It could. It could.

16 Q. But -- but if you lower it by, say, 40 to \$0.55 a
17 hundredweight, or in the case of the anchor city of
18 Asheville by \$0.30, to the extent the model was suggesting
19 an encouragement of milk from Chambersburg to North
20 Carolina, you have actually gone the other way, correct?

21 A. Well, I think, again, as I shared with Nicole, is,
22 if you look at where the milk is produced today, at least
23 a large quantity of the milk that's left in the Federal
24 Order 5 area, is in that Southern Virginia to mid-North
25 Carolina region. And, yeah, could we have gone with the
26 model? I guess the thought process was, is if -- if there
27 wasn't a need to do it, why do it? You know, just to be
28 quite honest about it.



1 I mean, there's -- there's milk there. We have
2 already proven we can move -- move milk from the Federal
3 Order 1 to that Carolina region, and there's milk there.
4 So why -- you know, why have the extra dollars?

5 Q. So while it is not a Final Decision yet, there --
6 there is a pending decision from USDA with respect to new
7 proposals for increased monies in the Southeast for
8 transportation credits, correct?

9 A. Uh-huh.

10 Q. And that includes -- I'm sorry, "uh-huh"
11 doesn't -- for the court reporter, doesn't help.

12 A. Yes, I'm sorry.

13 Q. And that includes Order 5, correct?

14 A. That's correct.

15 Q. That includes North Carolina, correct?

16 A. Correct.

17 Q. Did anybody testify at that proceeding about
18 transportation credits, look, North Carolina is different,
19 we don't need milk because it's already there?

20 A. Yeah, but you are mixing apples with oranges.

21 Q. How am I mixing apples with oranges?

22 A. Transportation credits, at least the ones from out
23 of the region into the region, are only available certain
24 times of the year. And like I said, we -- we take -- we
25 take milk -- twice as much milk when it's needed, when
26 transportation credits are in their glory, so to speak, in
27 the fall of the year, we take twice as much milk down, so
28 that's when we need the transportation credits. We don't



1 need them as much in the -- the spring of the year,
2 because there's milk there.

3 So to me, transportation credits do exactly what
4 they are supposed to do, is to help out in that short
5 season to move that milk. So they are not available all
6 year round, and that's -- that's the idea.

7 Q. So yesterday I discussed a little bit the idea of
8 reserve supply.

9 Are you familiar with the concept of reserve
10 supply --

11 A. Yeah.

12 Q. -- as USDA applies to Class -- Class I?

13 A. Uh-huh.

14 Q. Sorry, yes?

15 A. Yes. Sorry. I'm getting too comfortable with
16 him.

17 Q. Well, we've had a lot of conversations.

18 Do you agree that USDA believes that adequate
19 reserve supply is 25 to 30% for the market?

20 A. I don't know. I'd have to do my own math and do
21 my own...

22 Q. Do you believe that North Carolina has enough milk
23 for its reserve supply?

24 A. No, it does not.

25 Q. And shouldn't Class I differentials address that?

26 A. I think they do. So here's just what I looked at
27 on -- if we look at all the plants, and I listed out all
28 the plants and just kind of did my own little analysis



1 here, but if you look at the plants in Virginia, North
2 Carolina, and the Spartanburg plant in South Carolina, I
3 mean, we have gone up from \$1.80 to -- anywhere from \$1.80
4 to \$2.00. So we did. We did increase the differentials
5 quite substantially.

6 Because if you go up into Federal Order 1, we're
7 looking at \$1.65 to \$1.70. But it just didn't make a lot
8 of sense to just go -- like, I mean, you are talking about
9 numbers now that would have us be up in the \$2.30s to
10 \$2.40 range increase. And we looked at it, and we said,
11 you know, an increase of \$1.80, \$2.00 makes sense, not
12 2.40.

13 Q. So isn't the case that from Day 1 of this hearing
14 all we've heard about is milk is short in the Southeast?

15 A. Uh-huh.

16 Q. I'm sorry, yes?

17 A. Yes. Yes.

18 Q. So, again, I'm struggling when I look at some of
19 these numbers. You know, for instance, Jones County,
20 North Carolina, line number 1909, the model would have it
21 at 6.15, and you propose 5.60, or a \$0.55 drop. I don't
22 know of any decreases in the United States that are --
23 that deviate that much from the model on the downside.

24 Why -- why -- why, given the fact that milk is
25 short in the Southeast, is North Carolina unique in that
26 respect?

27 A. Well, I think to me, I'll just say, I think you
28 are making the assumption that the model is the end-all of



1 everything. And Chuck even testified in his testimony,
2 it's a guideline, it's not -- it's not the end-all number.
3 We have to add common sense to -- you know, to the theory.
4 And what we were doing is adding common sense to the
5 theory.

6 If I'm a Class I processor in North Carolina, I'd
7 probably be pretty happy.

8 Q. I understand.

9 I guess you were here yesterday, right?

10 A. For part of the day, yeah.

11 Q. But there's -- so Minneapolis, Hennepin County,
12 National Milk proposes raising \$0.35, even though there's,
13 like, a Class I utilization of 6% of the Order, Order 30.

14 How is common sense served to increase the Class I
15 differential for those maybe unhappy Class I plants in
16 Minneapolis where there's tons of milk, and down in the
17 Southeast where we have heard nothing but "we need milk,
18 we need milk, we need milk," we're going to lower it in
19 some counties by \$0.55? I'm trying to understand what the
20 common sense is.

21 A. We're not lowering it.

22 Q. Well, lowering it from the model --

23 A. Okay. Okay. But we're still increasing it quite
24 a bit. We're increasing it from -- to 1.80 to 2 bucks.

25 Q. What is the specific shortfall in the model that
26 says in North Carolina it's wrong by 40 to \$0.50?

27 A. There is no shortfall in the model. The model is
28 the model. It's just like any other model. You adjust



1 it. I'm sure you have had examples in your own life where
2 you've had models and it wasn't reality.

3 THE COURT: Now, that's not fair.

4 THE WITNESS: Chip and I know each other too well.

5 BY MR. ENGLISH:

6 Q. So if I -- I can shortcut some of this.

7 If I were to look at North Carolina for Guilford,
8 where Dairy Farmers of America has a plant, where the
9 model would say 5.60 and the National Milk proposal is
10 5.20, and then Davidson, North Carolina, where I believe
11 there is a plant, and the model says 5.75, and the
12 proposal is 5.20, one of the reasons is that you are going
13 to keep those two at the same level because they are both
14 at 3.40 today, correct?

15 A. Yes.

16 THE COURT: Because they are both what?

17 MR. ENGLISH: At 3.40 -- \$3.40. Correct? And he
18 said yes.

19 THE WITNESS: Yes.

20 BY MR. ENGLISH:

21 Q. So like other witnesses, you have talked about the
22 cost of hauling.

23 Do you agree that the University of Wisconsin
24 model includes hauling in its analysis?

25 A. It covers -- yes. It covers the cost of -- I
26 don't know if it covers all the cost, but it covers
27 probably a good portion of the cost.

28 Q. So other than to support the general proposition



1 that Class I differentials need to go up, what is the
2 point of the hauling discussion in your chart relative to
3 any modifications to the model that you have made?

4 A. I guess it's just trying to support the model.
5 The example that I used, I think if I -- if I'm answering
6 your question correctly, the example -- or the three
7 examples, three scenarios that I used are to support the
8 fact that these are some actual cost examples. And to me,
9 I would hope that that would support the -- the -- you
10 know, the increase that the model is demonstrating.

11 Q. I think you have been here for other parts of this
12 proceeding.

13 Are you familiar with Exhibits 300 and 301, which
14 are the spreadsheets?

15 A. That's the big long --

16 Q. Yes.

17 A. Yes.

18 Q. Okay. Had you seen those before we introduced
19 them?

20 A. No.

21 Q. Do you know who the author was?

22 A. You mean, as far as the National Milk spreadsheet?

23 Q. Yes.

24 A. Oh, yeah, yeah, I have seen that. I mean, I have
25 them on digital form. I don't have it in the big long
26 spreadsheet.

27 Q. And you had them in digital form prior to the time
28 that the Milk Innovation Group submitted them?



1 A. Well, we had it on a National Milk spreadsheet,
2 yeah.

3 Q. Okay. That's what I mean.

4 A. Yeah.

5 Q. So you had them prior to the hearing?

6 A. Yes. Yeah.

7 Q. Okay. Do you know who the author is?

8 A. I don't know who exactly put it together. I
9 just -- National Milk put it together. But, you know, I
10 don't know which staff person, if that's what you are
11 asking.

12 Q. Okay. There is a column -- I mean, I can show
13 them to you, but I'm trying to speed things up a bit.

14 There's a column on Exhibit 300, which was the
15 original you made, called Column R, that seems to have
16 volume numbers in it.

17 Do you know about that column?

18 A. No.

19 Q. Let's talk about some specific differentials. And
20 since you -- we have talked about the correction. Let's
21 talk about York versus Philadelphia. And I think what you
22 just told me a few moments ago is that the change in the
23 testimony, just because you -- yeah, whatever, it's the
24 correction --

25 A. Yeah.

26 Q. -- testimony, was that the current difference
27 between York and Philadelphia is \$0.15, and in order to
28 achieve your preserving historic price relationship, you



1 made an alteration, correct?

2 A. Yes.

3 Q. And that alteration was to decrease Philadelphia;
4 is that correct?

5 A. No, it was to increase the difference between York
6 and Philadelphia by \$0.05.

7 Q. That was the model. That's what the model did,
8 correct?

9 A. Let me check here. Too many numbers, I can't
10 remember them all.

11 THE COURT: Which page should we look at while we
12 listen to this? Is this page 6? I think this is page 6,
13 right?

14 MS. TAYLOR: Yeah.

15 THE WITNESS: That's correct. That is correct.

16 BY MR. ENGLISH:

17 Q. What's correct, that you --

18 A. That the model showed \$0.20 as well.

19 Q. Okay. And that's where you ended up?

20 A. Yes.

21 Q. So in that case, you are not disagreeing with the
22 model?

23 A. No.

24 THE COURT: Actually, the answer to that was yes.
25 Yes, we are not disagreeing with the model.

26 Would you go back to that, if you want?

27 MR. ENGLISH: Sure.

28 BY MR. ENGLISH:



1 Q. In essence, your whole discussion about York and
2 Philadelphia is, in the end, that the numbers in National
3 Milk's 19 are the same as the model and you are not making
4 adjustments; is that correct?

5 A. The end numbers are not the same, but the relative
6 difference between Philadelphia and York are the same.

7 Q. So what change did you make to both?

8 A. Okay. So we took both up by -- let me see here.

9 Okay. We took -- we took York up by -- and it was
10 York; is that correct, that you were asking about?

11 Q. Yes.

12 A. We took York up by \$1.70. We took Philadelphia up
13 by \$1.65. So you were correct there, which was we didn't
14 take Philadelphia up quite as much.

15 Q. Okay.

16 A. That's right. You are right.

17 Q. Okay. So let's backtrack now. I think the record
18 is, at best, confused.

19 A. Sorry about that.

20 Q. That's okay. There are a lot of numbers.

21 A. Yeah.

22 Q. Let me see if I can correct it.

23 You have proposed adjusting the model results so
24 that you are not taking Philadelphia up as much as York
25 would take it up, and that's basically \$0.05, correct?

26 A. Right.

27 Q. And the rationale for that, then, is to maintain
28 the current price relationship between York and



1 Philadelphia, correct?

2 A. Yes. And then also, taking a look at Philadelphia
3 as it relates to Baltimore and Washington and all that,
4 that 95 corridor, to try to make sure -- so it's not only
5 kind of looking at it east to west, but also looking at it
6 north to south, too, you know, that whole, like I was
7 saying earlier, that whole 95 corridor.

8 Q. So the bottom line, there's two different pieces
9 to that. There's west to east, York to Philadelphia,
10 correct?

11 A. Yes.

12 Q. And then there's north to south, Philadelphia
13 down --

14 A. To D.C.

15 Q. -- to D.C., correct?

16 A. Yes.

17 Q. And you are proposing, I believe, Philadelphia to
18 be 4.70, correct?

19 A. Yes.

20 Q. Baltimore to be 4.70, correct?

21 A. Yes.

22 Q. And Laurel over to Landover, Maryland, would be
23 4.70, correct?

24 A. Yes. That takes Philadelphia down by a nickel, in
25 the current price relationship even, because currently
26 Baltimore is at \$3.00, Philadelphia is at 3.05, and
27 Landover is at \$3.00.

28 Q. Where does the milk from Philadelphia come from?



1 A. The milk from Philadelphia comes from that
2 Lancaster County area.

3 Q. In the same place where the York milk comes from,
4 Lancaster?

5 A. Yes. And the same place from Landover milk comes
6 from.

7 Q. So doesn't the milk to Landover have to move
8 farther than the milk in Lancaster that goes to either
9 York or Philadelphia?

10 A. Not necessarily to Philadelphia. Again, as I
11 mentioned in earlier testimony, the miles might be a
12 little bit longer, but, you know, you got traffic both
13 ways. So, you know, it's -- it's relatively the same
14 whether you want to go into the city of Philadelphia or
15 the city of D.C., there's not a whole lot of difference
16 there. The biggest difference is with York. I mean,
17 obviously York's closer.

18 Q. It's a relatively less urban center, correct?

19 A. Yes.

20 Q. Okay. So we both live around that area, there's
21 other people in the room who live around that area, and I
22 must say I'm struggling some in comparing Frederick and
23 Baltimore to Laurel.

24 Even if it's only 28 miles from Baltimore to the
25 plant in Laurel, those are very difficult miles to drive,
26 are they not?

27 A. That whole 95 is difficult to drive.

28 Q. I mean, if you have to go down those 28 miles from



1 Baltimore to D.C. to Laurel, you are either going to have
2 to go down Interstate 95 or you are going to go down the
3 Baltimore/Washington Parkway, correct?

4 A. Right. That's correct.

5 Q. And there aren't many times a day that's a great
6 stretch of road, is it?

7 A. That's why our trucks unload at 3:00 in the
8 morning.

9 Q. And, similarly, if you are coming from Frederick,
10 Maryland -- I happened to look before I got up here -- you
11 know, this morning those 51 miles were more like an hour
12 and 20 minutes from Frederick to Laurel, correct?

13 A. That's correct. Yeah, I have done that.

14 Q. So it may be just 55 miles from Frederick to
15 Laurel, but, again, those are 55 really heavily travelled
16 miles, correct?

17 A. You mean Landover, not Laurel.

18 Q. I'm sorry, I'm sorry, Frederick to Landover.

19 A. Okay. Yeah.

20 Q. I'm sorry, yes. Thank you.

21 A. Uh-huh.

22 Q. That's correct. Yes?

23 A. Yes. What I was looking at was, I understand
24 bringing in the raw milk, but, you know, in my role, I
25 also have to look at the customer's view, packaged milk.
26 And the packaged milk from all those three locations, all
27 compete for the same market. And so, you know, part of my
28 job in sales with my customers is to try to meet my



1 customer needs. And so that's -- that's a big part of my
2 job, or I don't have a customer.

3 So, you know, if I look at -- that's why I'm
4 looking at it from that direction as well. I mean, I
5 can't just look at it from one perspective. I have to
6 look at it from the other perspective, too.

7 Q. I understand that. And listen, I appreciate a
8 customer-centric perspective.

9 But I come back to my question from earlier, which
10 is that by necessarily maintaining those price
11 relationships between Philadelphia, Baltimore, and D.C.,
12 and Frederick, aren't you creating an issue farther north
13 and west where by definition you can't be maintaining the
14 price relationship? At some point you can't. Isn't that
15 correct?

16 A. No, I don't think so. I think we did a pretty
17 good job at, as we moved west, at really feathering in,
18 you know, the cost and the location of the milk. I mean,
19 even York itself has gotten a lot harder to get around
20 anymore these days, and I live 70 miles from York. So
21 it -- not even that far, probably 40 miles away from
22 York -- so it's a lot harder to get around York these
23 days. I mean, everything has sprawled out. It's a lot
24 more difficult.

25 Q. But relatively it's harder in D.C., Baltimore, and
26 Philadelphia than it is in York, isn't it?

27 A. Yes.

28 Q. So similarly, let's now turn to what's proposed



1 for Lynchburg, Virginia, and Newport News.

2 Where does Newport News get its milk?

3 A. They both -- both Lynchburg, Virginia, and Newport
4 News get their milk from the same location, which is that
5 Harrisonburg area is where they get their milk from,
6 Harrisonburg, Virginia, area, which is kind of right down
7 off of 81.

8 Now, both of these plants, too, I'll just -- and
9 you probably already know this, but just to remind you,
10 that Newport News -- I get the opportunity, I'll put it
11 that way, of -- or Maryland and Virginia gets the
12 opportunity of living in two state orders, in addition to
13 Federal Orders, and so we get the opportunity to be in
14 Pennsylvania Milk Marketing Board and we get the
15 opportunity to be in the Virginia Milk Commission.

16 And half of Newport News is regulated -- or half
17 the Newport News, yes, is -- the milk going in there is
18 regulated under the Virginia Milk Commission, meaning that
19 half of the sales out of Newport News are in Virginia Milk
20 Commission area. So if you just look at that milk alone,
21 that's much higher than the Federal Order milk as far as
22 cost goes. So -- and Lynchburg is probably almost 50%
23 regulated by the Virginia Milk Commission.

24 So even though they are Federal Order plants
25 because of the -- they meet the qualification on their
26 sales, they are still very highly regulated by the
27 Virginia Milk Commission.

28 Q. Which, of course, could be voted out tomorrow,



1 correct?

2 A. We have been saying that for 40 years, Chip.

3 Q. I understand that.

4 But what -- what role should the existence of that
5 have with respect to setting Class I differentials by
6 USDA?

7 A. I'm just saying it adds another dynamic to those
8 plants, but it doesn't have any role specifically in
9 Class I differentials.

10 Q. Okay. So wouldn't it be fair to say that
11 Harrisonburg, Virginia, and the Shenandoah Valley is an
12 easier drive to Lynchburg than it is to Newport News?

13 A. Well, I would say in the year 2000 it was the same
14 way; wouldn't you say?

15 Q. I --

16 A. I mean, they wanted to keep the differentials the
17 same in the year 2000.

18 Q. Well, maybe the model said that then but --

19 A. I don't know.

20 Q. -- but I guess the question is, we're looking at
21 what the model results are today, and you are going to
22 keep -- you are going to raise both, but essentially raise
23 Lynchburg more, Lynchburg is a proprietary plant, right?

24 A. Yes.

25 Q. And Newport News is your plant, correct?

26 A. That's correct.

27 Q. And regardless of whether anybody talked about it
28 in your meetings, your proposal is to end up with the



1 plant in Lynchburg owned by a proprietary operator to be
2 the same as Newport News, correct?

3 A. Yes.

4 Q. Okay. I guess one thing I would say that's
5 different from 2000 is, hasn't the traffic increased in
6 the peninsula of Newport News even more since 2000?

7 A. Well, traffic in Lynchburg has increased, too.

8 THE COURT: Answer his question before you add on.

9 THE WITNESS: Okay. Okay.

10 THE COURT: So would you ask it again?

11 THE WITNESS: I would assume so. I mean, I -- I
12 don't make that drive a lot.

13 BY MR. ENGLISH:

14 Q. Well, you don't make that drive a lot because it's
15 not a lot of fun, is it?

16 A. No, it's -- I just don't get over there.

17 Q. Well, it's hard to get in and out of the
18 peninsula, isn't it?

19 A. I don't know. I don't get over there, so I can't
20 tell you.

21 Q. I was going to say since 1860, even Civil War
22 generals had trouble getting out of Newport News, right?

23 I am struggling with this principle of, we're
24 going to keep the relationship the same, and you look at
25 Lynchburg over in South Central Virginia, and you look at
26 Newport News in Southeast Virginia, and I just can't
27 conceive of the cost for serving those two markets as
28 being the same.



1 A. Those -- those two markets serve --
2 geographically, serve the same market.

3 Now, there used to be two more plants, right?
4 There was Richmond and then there was Portsmouth south of
5 Newport News. There was two more plants over there.
6 They've closed down since -- both of those have closed
7 down. They were all in the same price range, you know.

8 So I guess my -- my thought is that, again,
9 trying -- and if you look at the map, we flattened out
10 that -- just like I said earlier, we flattened out that --
11 once you got into kind of the mid to southern -- more like
12 Southern Virginia and Northern North Carolina, you will
13 see that whole -- that whole area is flat. It's not just
14 Virginia, it's -- it's that North Carolina area as well.
15 I mean, they all kind of go together.

16 So that starts at Lynchburg as you go north to
17 south, and goes over to Newport News, and it comes down to
18 the center of all of North Carolina, and in that little
19 bit of South Carolina, and it just kind of flattens there
20 a little bit because of what I have already shared,
21 because of where the milk lies.

22 And so that's -- that's when we looked at that.
23 That's kind of what we came away with. And so we feel
24 like it's -- it's very reasonable to -- to maintain that
25 relationship there.

26 Q. So with those two plants -- Richmond was one of
27 them.

28 Where was the other one you said?



1 A. Portsmouth.

2 Q. Portsmouth. So the two plants in Richmond and
3 Portsmouth. By definition, the fact that those two plants
4 are gone since the model was run the last time in 1997
5 would have been taken into consideration by the model,
6 correct?

7 A. Say that again?

8 Q. The fact that those plants no longer exist would
9 be accounted for in the model, correct?

10 A. Yes.

11 Q. Okay. And that would suggest that there may be
12 less milk in raw form needs to be moved down to the
13 peninsula, correct? Because there's only one plant now,
14 correct?

15 A. Yeah, there's less milk.

16 Q. In raw form.

17 A. Right.

18 Q. But packaged milk, more milk needs to move,
19 correct?

20 A. Yes.

21 Q. Wouldn't it make sense to encourage that packaged
22 milk to move by saying, for plants that are moving it in
23 from, say, Lynchburg will have a difference between
24 Lynchburg and Newport News to help make sure that milk
25 moves in packaged form?

26 A. I see your argument. And I guess we'll have to
27 ultimately let the Department decide. But I -- you know,
28 we look at them as the same -- the same area, just like



1 they were back in 2000.

2 Q. So let me come back -- so I guess the other thing
3 is, when you say you flattened it, by definition, if you
4 have raised Lynchburg higher than the model and you have
5 taken the triangle in North Carolina down from the model,
6 haven't you impacted the competitive relationship between
7 Lynchburg and North Carolina?

8 A. Well, we raised them both the same amount, \$1.80,
9 right?

10 Q. But by doing so, you haven't encouraged milk from
11 Lynchburg to move south, have you?

12 A. I haven't encouraged -- I'm not sure I --

13 Q. Well, by definition, if the model said one thing,
14 which is that Lynchburg should be lower than North
15 Carolina, and you have instead said, we're going to take
16 them both up by \$1.80, to the extent the model was
17 suggesting, hey, look, we need milk from Lynchburg to move
18 south, you have taken away that incentive, correct?

19 A. Well, I guess the milk -- I don't -- I don't know
20 that there needs to be an incentive there, I guess, to
21 move that milk, a different incentive than what there
22 already is in the model, I guess -- or in the National
23 Milk proposal. Because, as I said earlier, when you get
24 to that Lynchburg to North Carolina, that middle of North
25 Carolina is where all the milk is. It's -- it's -- that's
26 the second group of milk. So you have a group of milk up
27 in Harrisonburg, and then you have a second group of milk
28 that's south of Lynchburg to the middle of North Carolina.



1 Q. And notwithstanding --

2 A. And that's where that milk goes. It's always gone
3 there.

4 Q. But notwithstanding all of that, you have to move
5 milk from Chambersburg, Pennsylvania, to North Carolina,
6 correct?

7 A. Yes.

8 Q. So given your preserving price relationship
9 arguments, why not preserve the price relationship that
10 Kroger in Winchester, Kentucky, has selling south and
11 east? Instead, you -- National Milk proposes taking
12 Kroger up \$2.00 in Winchester, Kentucky, and the plants in
13 High Point up \$1.60, correct?

14 A. I don't know about -- I didn't -- I wasn't in
15 charge of -- of that. I wasn't in that group of
16 Winchester, Kentucky, so I can't comment on that.

17 Q. Doesn't that go to my point that -- if somebody at
18 National Milk's proposed Winchester, Kentucky, for
19 \$2.00 --

20 (Court Reporter clarification.)

21 BY MR. ENGLISH:

22 Q. Assume for a moment National Milk's Proposal 19
23 proposes moving Winchester, Kentucky up by \$2.00 a
24 hundredweight --

25 A. Okay.

26 Q. -- which is where the Kroger plant is located --

27 THE COURT: Which is what?

28 BY MR. ENGLISH:



1 Q. -- where the Kroger plant is located, and at the
2 same time, because you are reducing prices in North
3 Carolina, you are taking that up less than \$2.00, I think
4 it's \$1.60 at High Point; is that right?

5 A. In North Carolina?

6 Q. Yes.

7 A. North Carolina we -- it was either \$1.80 to
8 2 bucks.

9 Q. Okay. So \$1.80. It's \$1.80.

10 A. Yeah.

11 Q. Nonetheless, you are taking Kroger Winchester --
12 National Milk's proposing taking Kroger Winchester up more
13 than High Point.

14 Isn't that an example where you have not preserved
15 the price relationship somewhere?

16 A. Well, again, I can't comment on -- on the
17 Winchester, Kentucky. I don't know enough of that area to
18 be able to comment on it.

19 Q. I guess that may be my ultimate question is, did
20 any of the groups get together afterward and say, oh,
21 look, we better consult about this because down in North
22 Carolina we used price relationship, but we didn't do that
23 in Winchester, Kentucky, and, therefore, we have created a
24 problem?

25 A. Did we have groups that got together and talked to
26 each other? Yeah. But did we talk about your specific?
27 I don't -- I don't know. I wasn't in all the discussions.
28 You know, we -- we -- you know, like, for us, our furthest



1 western plant is Asheville that we serve in North
2 Carolina. You know, I think Jeff already testified, I
3 don't know the geography, but like Asheville, for example,
4 the reason it didn't go up higher -- or it went up
5 higher -- let's see, what do I want to say here? Let me
6 get my right numbers here.

7 The model had it 5.70, and we went -- we went up
8 there, but not as much as the model, but went up more than
9 say, like -- we didn't keep it the same as the middle of
10 North Carolina is the geography. It's a lot harder to get
11 to Asheville. You have got to go, you know, up -- I have
12 made that drive many times -- and it's just not an easy
13 drive. It's not easy to get haulers that want to go up
14 there.

15 And so that's why we felt like -- and it's a
16 little -- just a little south. If you look at the map,
17 it's just a little south of the High Point and
18 Winston-Salem plants, and so, you know, those two reasons
19 is why we -- why we -- we kept some dollars there and
20 didn't -- and didn't take the full -- didn't reduce it as
21 much as we had reduced the others on the increase.

22 Q. So you agree it's harder to get to Asheville,
23 correct?

24 A. Yeah.

25 Q. And, therefore, you made a slight adjustment to
26 the current price relationship, correct?

27 A. Yeah. And I don't know if that's -- that might be
28 the reason for Winchester, Kentucky, or not. I don't



1 know. I have never been there. I don't know.

2 Q. But you did make an adjustment -- or you made a
3 lesser adjustment to Asheville because of considering the
4 difficulty in driving in Asheville, correct?

5 A. Uh-huh.

6 THE COURT: That was a yes?

7 THE WITNESS: Yes. I'm sorry.

8 BY MR. ENGLISH:

9 Q. But when it came to Lynchburg versus Newport News,
10 you did not make an adjustment because of the difficulty
11 of getting to Newport News, did you?

12 A. It's not a difficulty. The road's straight. The
13 road is flat. It's a timing issue.

14 Q. Well, isn't that a cost? Timing issue a cost?

15 A. Well, we have been doing it for such a long time.
16 Again, we just, we start receiving at 2, 3 o'clock in the
17 morning. It's not a topography issue.

18 Q. I understand. It's a traffic issue, correct?

19 A. They have traffic issues even in Asheville, too.

20 Q. But it's also a distance issue because it's
21 farther from Harrisburg to Newport News than it is to
22 Lynchburg, isn't it? Fewer miles to Lynchburg from
23 Harrisburg?

24 A. From Harrisburg to Lynchburg?

25 Q. Yes, than it is to Newport.

26 A. Yes. But not from Lancaster to Newport News. We
27 don't take Harrisburg milk to Newport News, we take
28 Lancaster milk to Newport News.



1 Q. I thought you testified earlier that both Newport
2 News and Lynchburg get their milk from the same location,
3 Harrisonburg.

4 A. Harrisonburg, Virginia.

5 Q. Yeah, Harrisonburg. I'm sorry, I meant
6 Harrisonburg.

7 A. Oh, oh, oh. I thought you meant Harrisburg --

8 Q. I may have misspoke. I apologize. Harrisonburg.

9 A. Yes.

10 Q. It's a shorter distance from Harrisonburg to
11 Lynchburg than it is from Harrisonburg to Newport News,
12 correct?

13 A. Yes.

14 Q. And both those plants get the milk from that
15 location, correct?

16 A. Yes.

17 MR. ENGLISH: Thank you. I have no further
18 questions.

19 THE COURT: Mr. Miltner.

20 CROSS-EXAMINATION

21 BY MR. MILTNER:

22 Q. Good morning, Mr. John.

23 A. Good morning.

24 Q. My name is Ryan Miltner. I represent Select Milk
25 Producers.

26 I'm going to do my best not to re-plow ground that
27 Mr. English covered. Bear with me as I perhaps pause
28 between points here.



1 So if I could summarize your testimony, you have
2 spent a lot of time discussing how competitive
3 relationships were managed as National Milk developed a
4 Class I price surface.

5 Is that a fair summary?

6 A. That's fair.

7 Q. And part of that consideration is the distance
8 between plants and milk supplies.

9 Is that also accurate?

10 A. That's fair, yes.

11 Q. You also, in your testimony, provided some
12 information about hauling costs. I have heard kicked
13 around this rule of thumb for our current economic
14 situation that perhaps \$5.00 a loaded mile is a fair
15 hauling rate on a per hundredweight basis.

16 Is that -- is that consistent with your experience
17 at Maryland and Virginia?

18 A. That would be consistent with -- and that would be
19 a loaded mile?

20 Q. Yes.

21 A. Yes. So that would be as you move longer
22 distances and have a -- what I'll call a -- we call them
23 one-stop load where the farm produces enough milk to make
24 a whole tractor-trailer load, and you are running long
25 distance, I would agree with that.

26 Short distances, it's like anything, you have more
27 farms to make a load. Usually in our
28 Pennsylvania/Maryland area, you have more farms to make a



1 load, and so you have more fixed costs and you are running
2 shorter miles, so you can't flatten out your fixed cost as
3 much. So that number would be higher.

4 Q. Okay. But as a -- perhaps as a lowest hauling
5 rate, \$5.00 per loaded mile would be a good base rate?

6 A. Yes.

7 Q. So if we had 500 hundredweights on a full tanker,
8 it's about a penny per hundredweight per mile, or more --

9 A. Yes.

10 Q. -- to move milk?

11 A. Yes.

12 Q. And so as you presented several different price
13 relationships, and Mr. English went through a number of
14 them with you, I wanted to look at some of those, and the
15 haul rates in particular, or the haul cost.

16 A. Okay.

17 Q. If I look at Landover to Frederick with a 55-mile
18 distance between them, if the model was showing a \$0.35
19 difference between those two points, and it were at least
20 a penny a mile to move milk, that spread that the model
21 encompassed would not cover the haul cost between those
22 two points, would it?

23 A. That's correct.

24 Q. And if I look at Philadelphia to York, that's
25 about 100 miles between those two points, correct?

26 A. Yeah. I think that's about right.

27 Q. And so if the model is showing \$0.20 between them,
28 again, that -- the haul is not reflected in that spread,



1 is it?

2 A. That's correct.

3 Q. And we have two more that I wanted to look at,
4 Mount Crawford, Virginia, to Verona, again, 15 miles
5 between the two and \$0.10 in the model.

6 Again, does the transportation cost get
7 encompassed in that spread, in your opinion?

8 A. Right. Yeah. And I would agree that -- that --
9 and that's I guess my other argument was, is that trying
10 to maintain, that's where I -- I'm trying to balance two
11 things between haul costs and customer needs and
12 customers, what they -- what their market is, what they
13 serve.

14 Q. And then the last one, the Lynchburg to Newport
15 News, there's 200 miles between those two points roughly,
16 correct?

17 A. That's correct.

18 Q. And the model had \$0.50 -- I believe \$0.50 spread
19 between those two points, correct?

20 A. You said Lynchburg, right?

21 Q. Yes.

22 A. Yes.

23 Q. Okay. So 200 miles and a \$0.50 spread.

24 Again, same as the other three city pairings or
25 four county pairings, the haul cost exceeds the spread for
26 the model output, correct?

27 A. That's correct.

28 Q. Now, Mr. English also asked you some questions



1 about what is encompassed in the model, and we have plenty
2 of testimony from the folks that developed the model that
3 explained that in greater detail, so I don't want to
4 belabor that.

5 But in addition to the distance between points,
6 the model takes into account where the milk is located,
7 correct?

8 A. Yes.

9 Q. And it takes into account where the plants are
10 located, correct?

11 A. Yes.

12 Q. But does the model, to your knowledge, take into
13 account where the milk is affiliated in terms of whether
14 it's cooperative, affiliated, or independent milk?

15 A. No, it does not.

16 Q. And as far as the plants go, does it take into
17 account who is supplying those plants under a contractual
18 arrangement?

19 A. No, it does not.

20 Q. So the model is taking into account multiple
21 factors -- or let me rephrase that.

22 There are business realities that your cooperative
23 experiences that are not encompassed in the model,
24 correct?

25 A. That's correct. I mean, one very easy one for me
26 is schools. So schools start up in August/September, and
27 they let out May/June. The model doesn't do anything with
28 schools. And you might have a 10, 15% increase in



1 production at the plant that the model doesn't -- it --
2 you know, seasonality, things like that, the model does
3 not take that into consideration.

4 Q. You also testified about certain customers'
5 specifications that Maryland and Virginia has to consider
6 when supplying milk, correct?

7 A. Correct.

8 Q. The model doesn't take into account any of those
9 specific demands when it establishes these price
10 relationships, does it?

11 A. That's correct. That's correct.

12 Q. Now, as a cooperative -- and I don't think
13 Maryland and Virginia is unique in this respect -- you
14 have a network of milk supply to optimize, don't you?

15 A. That's correct. Yeah.

16 Q. You also have a series or a number of contractual
17 relationships with your own customers that you have to
18 manage, correct?

19 A. That's correct.

20 Q. Now, if you could explain for us just briefly what
21 that entails in terms of matching up your milk supply with
22 your plants and what the geography of those relationships
23 entail.

24 A. So plants, you mean both the plants that we own
25 and plants that -- third-party customers that I supply?

26 Q. Yes, please.

27 A. Okay. So we serve mostly Class I plants or fluid
28 plants. They may do a little Class II work, but it's



1 mostly Class I plants. So we don't supply -- very little
2 to the cheese market, and if they are, they are very small
3 facilities.

4 So other than that, other than -- and I just
5 wanted to back up to give a broader scope of it -- other
6 than servicing those Class I plants, we balance all the
7 milk at our two ingredient plants, which I have talked
8 about earlier. So there's really -- if I divide our
9 customers into two pieces, two specific types of
10 customers, one is traditional HTST, high temperature short
11 time customers, and the second one is ultra-pasteurized
12 customers. So we have those two type of customers.

13 So many of the HTST plants don't take -- don't run
14 seven days a week, so that's one of the challenges.
15 They -- they will -- they -- some of them run five days a
16 week, some will run six days a week, but very few of them
17 run seven days a week, which means there's a challenge
18 on -- they don't take the same amount of loads every
19 single day of the week. Many of them also take more
20 volume on Wednesday -- let's say Tuesday, Wednesday,
21 Thursday, and less on a Friday, Saturday, Sunday, so
22 there's that balancing.

23 Then if we move over to the ultra-pasteurized
24 plants, all the ultra-pasteurized plants that we serve
25 also run non-milk beverages. So we not only have to
26 balance that plant from a milk standpoint and what they --
27 what their orders are, but if they have a major customer
28 that -- that's a non-milk customer that comes to them and



1 says, you must run, you know, this run for me, we'll have
2 changes in the middle of the week sometimes. It's just --
3 it's more balancing. I have often thought that
4 ultra-pasteurized would be less balancing, but in our case
5 it's actually been more balancing that we have had to do.

6 So does that kind of answer your question?

7 Q. It does, and let me delve into a little further.

8 I mean, Maryland and Virginia has competitors when
9 it comes to the procurement of milk from the farm, doesn't
10 it?

11 A. Absolutely, yeah.

12 Q. Okay. And who are some of those competitors that
13 you have in the areas where you operate?

14 A. Well, I'd say the -- the major competitors are
15 going to be, obviously, DFA and Land O'Lakes, and then we
16 have -- there's many smaller cooperatives and independents
17 on top of that.

18 Q. Now, each of those entities competing with
19 Maryland and Virginia for milk procurement, are those same
20 entities competing with Maryland and Virginia to supply
21 plants and customers?

22 A. That's true.

23 Q. So is it the case that Maryland and Virginia might
24 have a contract to supply a fluid plant, but the closest
25 farms to that plant would be obligated to provide their
26 milk to one of your competitors because they are a member
27 of another cooperative?

28 A. That is true. That is true.



1 Q. And in that case, would the milk that is closest
2 to the plant necessarily be delivered to the plant?

3 A. Not necessarily.

4 Q. Some cases it would be, correct? There would be
5 an arrangement to -- to optimize some efficiencies, but --

6 A. Yes. And I'll give you another example that
7 complicates things a little more.

8 As I -- as I -- one of my examples about the
9 Virginia Milk Commission. The Virginia Milk Commission
10 assigns whose milk goes into whose plant. And so, for
11 example, most of the Virginia Milk Commission milk that
12 goes into Newport News is not our milk, it's somebody
13 else's milk that owns Virginia base, so that creates more
14 complication.

15 Q. And is that -- is that reality reflected in the
16 model, to your knowledge?

17 A. No. No.

18 Q. You also talked about daily and weekly balancing
19 of plants just a minute ago. To your knowledge, is the
20 daily fluctuation demand from individual plants
21 encompassed in the model?

22 A. No.

23 Q. Does Maryland and Virginia use receiving credits
24 or other tools to help offset those costs?

25 A. We do in some areas. Some areas the competitive
26 nature doesn't allow us to do that.

27 Q. You mentioned the competitive nature, and that
28 kind of, I think, is going to help tie up my questioning



1 here.

2 If I look at the end of your statement, it's the
3 first paragraph on page 7 in the second sentence, and it
4 reads: "Namely, that the Class I differentials needed to
5 increase to cover the additional costs of servicing fluid
6 milk markets and to maintain current price relationships
7 between fluid milk markets to avoid, as much as possible,
8 unnecessary or unwarranted changes in competitive
9 relationships."

10 You have two different concepts in there, as I
11 read that. You talk about current price relationships and
12 competitive relationships.

13 Now, when you refer to current price
14 relationships, you are talking about the differentials
15 that are in the current Class I surface, correct?

16 A. Correct.

17 Q. So that comes from regulation as it stands today,
18 correct?

19 A. Correct.

20 Q. But when you talk about competitive relationships,
21 those are the results of the business decisions and
22 economic realities that Maryland and Virginia faces, isn't
23 it?

24 A. Yes.

25 Q. Those competitive relationships have to do with
26 who your customers are, correct?

27 A. Correct.

28 Q. To a lesser extent, who your members are, correct?



1 A. Correct.

2 Q. And it is those realities that -- that in Maryland
3 and Virginia's opinion, and National Milk's, require
4 deviation from the model as a straight output?

5 A. That's correct. That's correct.

6 MR. MILTNER: I think that's all I have. Thank
7 you very much.

8 THE WITNESS: Thank you.

9 THE COURT: Dr. Cryan.

10 DR. CRYAN: Thank you, Your Honor.

11 CROSS-EXAMINATION

12 BY DR. CRYAN:

13 Q. I'm Roger Cryan with the American Farm Bureau
14 Federation. I want to follow up a little bit on some of
15 the things Mr. Miltner was talking about regarding the
16 limitations of the model with respect to the local
17 circumstances.

18 Do you understand the model assumes --
19 essentially, it's an engineering solution, a one -- like
20 one -- one giant hand directing all milk to be sent in all
21 the most efficient channels possible to minimize the cost
22 of shipping; is that right?

23 A. That's correct. Yeah.

24 Q. So it doesn't really account for competition. We
25 believe in competition in this country.

26 A. Right.

27 Q. And this is -- this is a solution of one company
28 ran everything and somehow managed to be efficient.



1 But this doesn't account for competition, right?

2 A. That's correct.

3 Q. And it's typical for nearby competing plants not
4 to allocate their market according to where the most
5 efficient, you know, movement of milk is, but to compete
6 within a larger market; is that correct?

7 A. Yes, that's correct.

8 Q. And so those -- those markets naturally overlap.

9 A. Yes.

10 Q. And that -- would you say that's fundamentally why
11 so many of the analyses presented in defense of this -- of
12 these adjustments are trying to align milk markets where
13 there's -- where there's a substantial competition, a
14 substantial overlapping competition?

15 A. Yeah, that's what we tried to do based on our
16 years of experience.

17 Q. Okay. And that reflects a difference between the
18 actual competitive market and the sort of efficient
19 engineering allocation of the model.

20 A. Yes.

21 Q. Okay. And would you agree that essentially --
22 this is to restate just one more time -- the model
23 essentially represents the absolute minimal, the absolute
24 minimum differential among locations that would be
25 required in the most efficient way to -- to move milk
26 across the country?

27 A. Yeah.

28 Q. Okay. Which is -- which is going to be a



1 principle that would necessarily be a bit lower than -- a
2 bit less expensive than, you know, the actual messy world?

3 A. Yes. Yes. Absolutely.

4 Q. Okay.

5 DR. CRYAN: That's it. That's all I've got.
6 Thank you very much. Thank you.

7 CROSS-EXAMINATION

8 BY MR. LAMERS:

9 Q. Good morning, Mr. John.

10 A. Good morning.

11 Q. Mark Lamers representing Lamers Dairy. We have a
12 small fluid milk plant in Wisconsin. Just a couple of
13 quick questions.

14 A. Sure.

15 Q. I'm not real familiar with the model, not being
16 present for all the testimony that was here, but do you
17 know with the suggested Class I differentials, was that
18 reconciled with the actual costs associated? Is that how
19 that number was arrived?

20 A. The -- the --

21 Q. Dollars generated in the pool.

22 A. Are you talking about the model, the -- how the
23 model was -- the spatial model was developed?

24 Q. Yes. National Milk Producers' proposal for
25 increasing Class I differential, were those
26 differentials -- they generate a certain amount of money
27 into the pool, correct?

28 A. Yes.



1 Q. And was that dollar amount reconciled with the
2 costs associated with serving in the Class I market?

3 A. I would say that -- that -- I don't -- I don't
4 know the answer directly to your question. What I would
5 say is that -- that the -- and I don't know if I'm not
6 understanding your question -- but what I'd say the model
7 reflected, what Roger was just saying earlier, is it tried
8 to reflect the -- in a perfect world, the movement of
9 milk -- or anything, I guess, it could be anything
10 really -- but in this case, the movement of milk from, you
11 know, supply points to destination points.

12 Q. Okay. In looking back at your Table 2, I did some
13 quick math.

14 A. Okay.

15 Q. And looking at the roundtrip, 171 miles, with the
16 difference in cost on that, if my math is correct, it
17 looks like about \$0.46 a hundredweight.

18 A. That would be correct.

19 Q. And then for Northeast Order 1, they have a
20 proposed increase of \$1.76?

21 A. Yes.

22 Q. Okay. So looking at those numbers for the amount
23 of Class I milk in the pool for Federal Order 1, when you
24 take out that \$0.46, that leaves about \$1.30 for any
25 additional costs?

26 A. Yes.

27 Q. And my question was, that \$1.30 generates about
28 \$8 million into the pool.



1 Is that number ever reconciled when composing
2 these Class I differentials, as to that's the actual cost
3 of what it takes to service that market?

4 A. So I can't speak to, you know, everybody else,
5 but, you know, as my discussion with Nicole earlier, and
6 as I have shared with others about our increased costs to
7 serve Class I, that, to me, is both in what I'll call
8 Grade A plus milk to the Class I market, and then also
9 supplying -- or also balancing, the extra balancing needs,
10 would easily make up that difference, if that's what you
11 are asking about making up that difference between the
12 40-some cents and the, say, \$1.65.

13 Q. Yeah. I guess I have a hard time personally
14 reconciling that number in my mind, operating a fluid
15 plant like I do, that that amount of money would be
16 justified for this.

17 A. It is -- I will agree with you, it's big dollars.
18 It's hard to imagine, but when we sit down and look at the
19 actual, do the actual math on what it costs to balance,
20 what it costs to service customers, the -- you know, all
21 the costs have gone up. The extra testing, the extra
22 manpower that we have to have in order to serve Class I.
23 Let alone, and I didn't even get into all the
24 sustainability efforts today that are just a requirement
25 to serve. And that's probably not just Class I, that's
26 probably everywhere, but in our case, we serve Class I.
27 Just the requirement, you know, you have to be FARM
28 certified. And that's not just animal care now, it's



1 employee welfare, it is environmental care, it's, you
2 know, what's your greenhouse gas emissions, and how are
3 you going to reduce that and become net zero. I mean,
4 it's on and on, all those things like that. And I didn't
5 even get into all that, adds a ton of cost to servicing
6 the marketplace.

7 Q. And that all should fall back on the Class I
8 consumer?

9 A. Well, should it fall on the dairy farmer? I mean,
10 I don't think it should fall on -- I don't think it should
11 all fall on the dairy farmer. That's what I'm here to
12 testify about.

13 Q. Well, just one other question. You had mentioned
14 earlier two plants closing.

15 Do you know if they were cooperative-owned plants
16 or proprietary plants?

17 A. They were both proprietary-owned plants.

18 Q. Thank you.

19 A. Uh-huh.

20 THE COURT: Thank you, Mr. Lamers.

21 Mr. Rosenbaum.

22 CROSS-EXAMINATION

23 BY MR. ROSENBAUM:

24 Q. Steve Rosenbaum for the International Dairy Foods
25 Association.

26 Just to follow up on the questioning there. You
27 mentioned the FARM program, correct?

28 A. Yes.



1 Q. That's a program that relates to animal care and
2 things of that nature, correct?

3 A. That's one aspect. It now has three modules to
4 it.

5 Q. And -- but there's -- that -- that's not a
6 Class I-oriented program, correct?

7 A. No, it's not. And I said that. It's not.
8 It's -- you know, in our market, because that's what we
9 serve, it is. But, yes.

10 Q. I mean, you are pretty unique in that respect,
11 correct? That you are serving such a large portion of
12 Class I milk, correct?

13 A. Probably, yeah.

14 Q. It'd be irrational for the USDA to accept your
15 particular unique circumstance as the philosophy that
16 should be adopted nationwide; is that fair?

17 A. I have been told I have been unique before.

18 Q. Well, do you agree with my statement?

19 A. Yes.

20 Q. Okay.

21 MR. ROSENBAUM: That's all I have. Thank you.

22 THE COURT: Are there other questions before we
23 take a break and then we'll come back to the Agricultural
24 Marketing Service?

25 All right. So when we return, we'll go with the
26 Agricultural Marketing Service questions. Please be back,
27 ready to go at 11:15.

28 We go off record at 11:00.



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

2 THE COURT: Let's go back on record.

3 We're back on record. It's 11:16.

4 Questions for the witness from the Agricultural
5 Marketing Service?

6 CROSS-EXAMINATION

7 BY MS. TAYLOR:

8 Q. Good morning.

9 A. Good morning.

10 Q. Okay. I want to start on page 3. And I just want
11 to ask just a few -- I want to make sure everything's
12 crystal clear on the record.

13 In the middle of that first big paragraph you have
14 a sentence that says, "In the face of enormous
15 transportation cost increases, that means the mechanism to
16 attract milk from supply points has become less
17 effective."

18 And I just want to make sure you are clear on --
19 on the record, of what you were referring to as "the
20 mechanism."

21 A. Okay. The mechanism would be the Class I
22 differential.

23 Q. Okay.

24 A. Yes.

25 Q. And then in the second paragraph there you are
26 talking about your internal hauling subsidy to cover these
27 additional transportation costs.

28 I was wondering if you could talk a little bit



1 more about how that works for Maryland and Virginia?

2 A. Sure. So -- so with each month we have to look at
3 what we deduct off of our members. I mean, that's right
4 on their statement. Most of the times it does not cover
5 the full cost of moving that milk, because it's in arrears
6 of what -- we project what we think is going to happen in
7 the month and -- but the month never goes the way we
8 figure it's going to go. And so we always have extra
9 costs afterwards, and so that becomes an additional cost
10 that we basically spread that over all of our membership
11 as a -- as a -- call it a subsidy, that additional cost
12 out of there. It's not -- not their regular hauling rate,
13 per se, but it becomes a cost that had to -- had to be
14 paid to move that milk in that given month.

15 Q. Right.

16 So just so we're clear, then, your members have a
17 hauling rate that they are charged?

18 A. Yes.

19 Q. And that is what you are saying could change
20 monthly?

21 A. No, that -- that's -- that stays.

22 Q. So that's flat?

23 A. Yeah.

24 Q. In addition, there's a hauling --

25 A. We call it a subsidy.

26 Q. -- subsidy or --

27 A. Of what actually -- what -- you know, like, for
28 example, we never know if we're going to move -- in my



1 conversation with Chip, we never know when we're going to
2 move the milk from Franklin County to North Carolina, for
3 example. And that cost has to be -- any cost that isn't
4 recovered through the differentials or through
5 transportation credits, for example, there's always
6 additional cost left over. That is not part of, say, the
7 local haul rate that a producer pays, so that has to be --
8 that has to be paid somehow.

9 Q. And that's a deduct off the checks --

10 A. Yes.

11 Q. -- to the members?

12 A. Yes.

13 Q. And is that rate -- is that spread evenly?

14 A. Yes.

15 Q. On a hundredweight basis?

16 A. Yes.

17 Q. On your Table 1, the three routes -- yeah, the
18 three routes you picked as examples, how did you pick
19 these routes?

20 A. Well, first of all, we wanted to make sure that --
21 and I hope I'm getting to the answer to your question --
22 but, first of all, we wanted to make sure we had routes
23 that were around in 2008 and also around in 2023 so we
24 could look at the same routes. We wanted to keep it as
25 consistent as possible so that we were actually comparing
26 apples to apples.

27 We looked at kind of a traditional route. I can
28 honestly say that that -- that Federal Order 1 to Federal



1 Order 5 is moving milk from Franklin County, Pennsylvania,
2 to -- to North Carolina, since we talked about that so
3 much.

4 And the Federal Order 1 to Federal Order 1 is
5 basically just -- where it's a route that's been around
6 for a long time and it's well-established.

7 Q. Okay. And the mileage on these, are they
8 representative of the typical miles per load in those --

9 A. Yes.

10 Q. -- those routes?

11 A. Especially -- the Federal Order 1, that's, you
12 know, a route to the -- from the farm to a plant is going
13 to be -- if you just take half of that, the distance is
14 going to be right around 85 miles. That's normal for us.
15 We don't have -- we don't have -- some of our largest
16 volume is moving milk into Maryland out of Pennsylvania,
17 so that's what, you know, drives some of that up, and then
18 moving it from West Pennsylvania to Eastern Pennsylvania,
19 that drives that miles up a little bit.

20 The -- one of the things I didn't do that I
21 probably could have done on the Federal Order 5 to Federal
22 Order 5, which is, again, looking at 303 roundtrip, or say
23 150 one way, I could have looked at, okay, how -- you
24 know, what was that average local haul, say, back in 2008
25 compared to what the average local haul is today? I know
26 it's more because there's less farms and there's less
27 plants. So the farm, the milk that's left has to travel
28 further. And I -- you know, that would have been a good



1 analysis to look at, I just didn't do that, but I know
2 that to be true.

3 Q. And you talked about how the costs are included,
4 both assembly and destination costs.

5 And so I think it's -- it's typical in these
6 orders, but I want to make sure it's clear, that these
7 routes have multiple -- all of them probably have multiple
8 stops in the route. It's not a one farm --

9 A. With the exception of the middle scenario there,
10 which is --

11 Q. That is one farm?

12 A. Yeah, that would be one farm.

13 Q. Okay. And does Maryland and Virginia own its own
14 fleet of trucks?

15 A. No.

16 Q. No.

17 So -- so when you talked about increasing the
18 average load size --

19 A. Yes.

20 Q. -- that's increasing what's allowed on the road,
21 but then it's up to the hauler to make sure they have a
22 truck that would be --

23 A. Absolutely. Yes. So that's not an easy task --
24 (Court Reporter clarification.)

25 THE WITNESS: So is it my turn?

26 BY MS. TAYLOR:

27 Q. I think so.

28 A. Okay. Sorry about that.



1 So, yes, we have about 30, 32 contract milk
2 haulers, and we do not own our trucks or trailers. So
3 this is all a negotiation to try to get them to buy larger
4 trailers and to, you know, move milk more efficiently and
5 that type of thing. It's -- you know, it's a little
6 harder convincing somebody sometimes to buy brand new when
7 they have got a fully depreciated trailer that works just
8 as well, you know. And so I'd like to -- probably if we
9 had our own trailers, we would have that even better than
10 that, but we -- we don't. So...

11 Q. Okay. All right. Turning to page 5. In your
12 bottom example of Landover and Frederick. I think the
13 model results came back that there would be \$0.35
14 difference between the two locations where currently
15 there's only a \$0.10 difference. And you talk in that
16 last sentence on the page that the \$0.35 difference would
17 create an artificial competitive advantage of one
18 processor over another.

19 And I was wondering if you could expand on what
20 you mean by "artificial competitive advantage."

21 A. Sure. I guess I go back to my economic classes
22 but -- when I say that. So \$0.35 per hundredweight is,
23 what, 2.5, maybe \$0.03 per gallon difference, and if they
24 are competing for the same marketplace, and they are,
25 the -- we're using the Federal Order -- I'll just say it
26 that way. If this would get adopted, if the model would
27 get adopted as the Federal Order price, we would be using
28 the Federal Order as a vehicle to create a competitive



1 advantage for one processor over another and -- that --
2 that are currently serving the same marketplace. And to
3 me, that creates an artificial market that -- that gives
4 somebody an advantage over another, I guess that's what I
5 was getting at when I said that.

6 Q. And when you say "artificial" -- excuse me, they
7 compete in the same marketplace, you are talking about on
8 the sales side?

9 A. Yes. Yes.

10 Q. So we have talked a lot about the milk shed side.
11 I just want to --

12 A. Yes. I'm sorry. I'm talking about the sales
13 side.

14 Q. Okay. Let's see. On your last page -- well, two
15 questions.

16 One, there was some discussion of the
17 transportation credit provisions down in the Southeast
18 area. And I have asked questions of other witnesses on
19 that, but I wanted to ask another question that I don't
20 think that's come up.

21 The way it's set up, current ones, and the way
22 that the proposed ones, I have no idea if they would be --
23 continue to be recommended or adopted, but let's say if
24 they are, but as proposed, do they net out any
25 differential gain? Does it account for the fact that
26 there's maybe a gain in differentials in moving some of
27 that milk?

28 A. So as I've looked at it, and looking at



1 especially, again, using our example of Franklin County to
2 North Carolina, or you could even look at it from
3 Lancaster to North Carolina, with the new differentials,
4 because in the math equation, to do a transportation
5 credit calculation you have to subtract off the difference
6 between the differentials, the differential at the supply
7 point and the differential at the destination point. And
8 by increasing the curve and making a greater difference in
9 dollar amount between the differential at the supply and
10 the destination, which is what National Milk's proposal
11 is, that actually lowers the transportation credit.

12 So they -- they kind of, I don't know what the
13 right terminology is there, but it does -- it does, I
14 think, take that into consideration. So...

15 Q. Thank you.

16 A. Uh-huh.

17 Q. And then just a big picture thing. As I have read
18 your testimony and heard the cross and look at, you know,
19 particularly the guiding principles that you listed on the
20 last page, right? What I think I heard was, generally
21 right now milk is going where it needs to go?

22 A. Yes.

23 Q. But that's not because necessarily all the costs
24 are covered through the Federal Order program?

25 A. That's correct.

26 Q. And so your principle was to -- or the National
27 Milk principle, as you understood it, is to increase the
28 differentials to reflect some of that additional cost in



1 your mind?

2 A. Yes.

3 Q. And -- and to the best extent possible, maintain
4 these current pricing relationships, but that wasn't --
5 I'm trying to think of the word. You used the caveat, "as
6 much as possible."

7 A. Yes.

8 Q. I guess that's what I'm trying to point out. So
9 generally things are working, but you did need to tweak
10 some things in that.

11 And what I heard -- because there was some cross
12 on it, too -- was, yes, milk is going where it needs to
13 go, but that doesn't mean it's doing it because the
14 Federal Order differentials are making that happen?

15 A. That's right. That's right.

16 Q. Okay.

17 A. It helps to have a good year like 2022 in milk
18 prices, but to -- because of the subsidy that I was
19 talking about earlier. It makes the subsidy seem smaller,
20 but it's really not, you know, as we know.

21 Q. Okay.

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

23 THE WITNESS: Thank you.

24 THE COURT: Mr. John, was there anything else that
25 you wanted to clarify or expand on so that there's a good
26 understanding of what you presented with today's
27 testimony?

28 THE WITNESS: Not at this time.



1 THE COURT: Thank you so much.

2 Ms. Hancock.

3 MS. HANCOCK: Thank you, Your Honor.

4 REDIRECT EXAMINATION

5 BY MS. HANCOCK:

6 Q. Mr. John, just a couple of brief follow-ups.

7 We talked earlier about the costs in -- of the --
8 procuring milk related to the additional requirements
9 beyond the Grade A standards.

10 A. Yes.

11 Q. And then we talked about balance, also the work
12 that you do in balancing the milk that you have. And I
13 forgot to ask you about the costs that were associated
14 with balancing that milk.

15 Did you calculate that by any chance?

16 A. Yes. Yes, we did. We said that that was another
17 \$0.60.

18 Q. Okay. On top of the other costs that we have
19 already discussed?

20 A. Yes. So if you add the two, the two Grade A plus
21 and the extra balancing, we would say that those added
22 together would be a minimum of \$1.20.

23 Q. Okay. And can you just give me some understanding
24 about what is included in that \$0.60 cost?

25 A. On the balancing side?

26 Q. On the balancing side.

27 A. So, again, you have your normal -- you have your
28 normal balancing -- what we call normal, maybe it's not



1 normal to anybody else -- but you have seasonal balancing
2 with schools. And schools are not just, you know, in
3 season. You also have, then, holidays, and the push and
4 pull on the flow of milk that that creates in the
5 holidays.

6 You also have, as I have stated earlier, you have
7 different differences in the days of the week. You will
8 have a higher draw, especially on a Tuesday, Wednesday,
9 Thursday, than you would over the weekend. You have
10 Class I plants that don't receive milk evenly all seven
11 days of the week.

12 And then, as I shared earlier with
13 ultra-pasteurized plants that we serve, and we serve quite
14 a few, they are all -- they all have nondairy in their
15 plants, and that creates additional challenges as they
16 deal with those customers. Some can be very demanding,
17 and that can -- that can change pretty much on a weekly
18 basis with us, where maybe they take 20 loads a day this
19 week, and next week they are down to 15 loads a day, and
20 just because of the requirements that nondairy customers
21 put on them.

22 Q. Okay. Thank you for that.

23 And then one more follow-up. You -- in talking
24 with Mr. English, you were talking about price alignments
25 and looking to create some relativities as you were
26 looking at the map. And he asked you if that was the
27 definition of orderly marketing, and I think that you
28 responded that yes, that -- that was.



1 Do you recall that?

2 A. Yes.

3 Q. I'm just wondering if you could elaborate on that
4 a little bit. Because what I'm trying to figure out is,
5 are you saying that -- that that is the only way in which
6 you believe that an orderly market condition could occur
7 is if you created the same alignments that currently exist
8 with -- with whatever is being proposed to the USDA now?

9 A. No. No. And I think you have to look at -- you
10 have to look at the -- you know, the whole picture, not
11 just one aspect of it.

12 And, again, like I was sharing earlier, if we look
13 at the -- specifically with differentials, if you look at
14 the increase in differentials in Federal Order 1, our
15 group was right in the \$1.60 or \$1.65 to \$1.70 range
16 pretty much. And when we went down to Order 5, we tried
17 to keep that range of increase about the same again, so
18 that we didn't have too much of a big gap between, really,
19 the Federal Order 1 area and the Federal Order 5 area,
20 creating some kind of a weird market situation. So that's
21 why we -- the group worked on trying to keep that in that
22 \$1.80 to \$2.00 range.

23 So that's another aspect to try and keep things --
24 trying to keep that increase, you know, reasonable between
25 what I'll call between geographical regions. So that's --
26 that's outside of even looking from a customer standpoint
27 and all that.

28 So there's other aspects that went into it to try



1 to keep things as orderly as we possibly could. So...

2 Q. Okay. Thank you for that clarification.

3 MS. HANCOCK: Your Honor, at this time we would
4 move to admit Exhibit 359 into evidence.

5 THE COURT: Is there any objection?

6 There is none. Exhibit 359, also marked as
7 NMPF-41, is admitted into evidence.

8 (Thereafter, Exhibit Number 359 was received
9 into evidence.)

10 THE COURT: Thank you so much, Mr. John. You may
11 step down.

12 A document's being distributed. Let's go off
13 record.

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

15 THE COURT: Let's go back on record.

16 We're back on record at 11:39.

17 MS. HANCOCK: Thank you, Your Honor. We have
18 Skylar Ryll as our next witness.

19 THE COURT: Thank you.

20 MS. HANCOCK: And we have -- I believe that we
21 have six exhibits that we'll mark in support of her
22 testimony, the first one being Exhibit NMPF-42.

23 THE COURT: 42, so that will be Exhibit 360.

24 (Thereafter, Exhibit Number 360 was marked
25 for identification.)

26 MS. HANCOCK: And then we have Exhibit 42A,
27 National Milk Producers Federation-42A.

28 THE COURT: All right. That will be 361,



1 Exhibit 361.

2 (Thereafter, Exhibit Number 361 was marked
3 for identification.)

4 MS. HANCOCK: Then we have Exhibit NMPF-42B, like
5 boy. That's Exhibit 362?

6 THE COURT: Yes.

7 (Thereafter, Exhibit Number 362 was marked
8 for identification.)

9 MS. HANCOCK: Exhibit NMPF-42C, like cat, we'll do
10 363.

11 THE COURT: Yes.

12 (Thereafter, Exhibit Number 363 was marked
13 for identification.)

14 MS. HANCOCK: Exhibit NMPF-42D, as in David, we'll
15 do Exhibit 364.

16 (Thereafter, Exhibit Number 364 was marked
17 for identification.)

18 MS. HANCOCK: And then finally, Exhibit NMPF-42E,
19 as in Edward, we'll do Exhibit 365.

20 (Thereafter, Exhibit Number 365 was marked
21 for identification.)

22 THE COURT: All right. Good.

23 Would you state and spell your name?

24 THE WITNESS: Skylar Ryll, S-K-Y-L-A-R, R-Y-L-L.

25 THE COURT: Have you previously testified in this
26 proceeding?

27 THE WITNESS: No.

28 THE COURT: I'd like to swear you in.



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SKYLAR RYLL,

Being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MS. HANCOCK:

Q. Good morning, Ms. Ryll. Did you prepare exhibit NMPF-42 that we have marked as Exhibit 360 as your written testimony that you are prepared to give today?

A. I did.

Q. And then we have marked your attachments for -- as Exhibits 361, 362, 363, 364, and 365.

You will be talking about those exhibits throughout the course of your testimony; is that right?

A. Correct.

Q. Would you provide your statement in Exhibit 360, please.

THE COURT: But before you begin, let's go off record just a moment.

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

THE COURT: We're back on record at 11:42, and I have before me the documents that were just identified and marked.

And you may proceed.

THE WITNESS: Thank you for having me today and having this hearing. I am Skylar Ryll, the assistant vice president of milk marketing operations for Dairy Farmers of America's Northeast area based in East Syracuse, New York, and have been employed with the cooperative for over



1 13 years.

2 During this time I have been focused on milk
3 marketing, transportation, analytics, and overall
4 operations of DFA in two specific geographic regions: The
5 Western area covering California and Nevada, and the
6 Northeast area covering 13 states from Maryland to Maine.

7 I earned my bachelor of science from Cornell
8 University, majoring in animal science with a focus on
9 agribusiness, and I also hold a master of business
10 administration from Syracuse University. Prior to college
11 I showed registered dairy cattle around New England and
12 worked on a dairy farm in New Hampshire.

13 DFA is a global milk marketing cooperative that
14 includes membership and operations within the Northeast
15 region of the United States.

16 MS. HANCOCK: I'm going to interrupt just a
17 moment. If you just would read just a little bit slower
18 just so --

19 THE WITNESS: Sorry.

20 MS. HANCOCK: -- we can make sure we save our
21 court reporter.

22 THE COURT: And also, would you just twist the mic
23 a little -- no, the base of it a little, so it's pointed
24 more toward where your mouth is. I think that would be
25 perfect.

26 THE WITNESS: During 2022, DFA had 2,437
27 farmer-owners within its Northeast area and marketed
28 approximately 12.3 billion pounds annually, with the



1 majority pooled on Federal Order 1. Roughly 20% of our
2 farmer-owner milk is picked up and delivered across the
3 region by DFA's transportation fleet, DFA Northeast
4 Logistics. Additionally, DFA owns and operates 14 dairy
5 manufacturing facilities within the Northeast area that
6 receive raw milk to make a variety of products, including,
7 but not limited to, HTST and ESL fluid milk, and milk
8 products, cream, condensed skim, nonfat dry milk, and
9 whole milk powder.

10 The facilities operate as pool distributing
11 plants, pool supply unit plants, pool supply system
12 plants, and partially-regulated plants within Federal
13 Order 1. This facility count does not include DFA's
14 facilities located in Sharpsville and New Wilmington,
15 Pennsylvania, as they are outside of DFA's Northeast area
16 which does not include the western portion of
17 Pennsylvania, as it is part of DFA's Mideast Area.
18 Additionally, there are several other plants that operate
19 within the Northeast that do not receive raw milk but do
20 receive milk components to make coffee beverages, ice
21 cream, and specialty concentrates.

22 Today I am testifying in support of Proposal 19 as
23 submitted by NMPF as included in the hearing announcement.
24 The proposal requests updates to the Class I differential
25 pricing surface based upon changing dynamics relative to
26 the increased cost of hauling milk, location changes of
27 farms and fluid milk processing, and overall increases in
28 cost of production.



1 My colleague, Jeff Sims, provided a recap of the
2 process that was used to determine the appropriate Class I
3 differentials to include within the proposal. The process
4 utilized work done by Dr. Mark Stephenson and Dr. Chuck
5 Nicholson from the University of Wisconsin, assessing milk
6 from supply points to processing plants and then moving
7 finished dairy products to demand points known as the
8 USDSS model. This work was then assessed by many national
9 and regional milk marketing experts from around the
10 country, like me, who then applied practical knowledge
11 about milk movements to determine the ultimate
12 differentials that were proposed.

13 In the following testimony I will provide
14 additional commentary about how the Northeast region of
15 stakeholders determined the appropriate differentials
16 within our region and share key contributing factors that
17 signify an adjustment is necessary.

18 The Northeast stakeholders is comprised of
19 representatives from Agri-Mark Dairy Cooperative, DFA,
20 Land O'Lakes, Inc., Maryland and Virginia Milk Producers
21 Cooperative Association, Inc., and Upstate Niagara
22 Cooperative, Inc.

23 In addition to my own testimony, other milk
24 marketing experts from some of these cooperatives will be
25 providing testimony supporting the proposal for specific
26 regions in milk movements within the Northeast.
27 Additional testimony supporting the Northeast region will
28 be provided by Scott Werme from Agri-Mark Dairy



1 Cooperative and Mike John from Maryland and Virginia, who
2 you just heard from.

3 Many dynamics have impacted the need to update the
4 Class I differential pricing surface across the country,
5 and the changes within the Northeastern states provide
6 some clear examples of these systemic shifts within the
7 industry since 2000.

8 Milk production has changed across all states
9 within the Northeast since 2000. States that represent
10 the Northeast are the states of Connecticut, Delaware,
11 Maine, Maryland, Massachusetts, New Hampshire, New Jersey,
12 New York, Pennsylvania, Rhode Island, Vermont, and
13 Virginia. According to the USDA, all but one of the
14 states within the Northeast decreased milk production from
15 2000 to 2022, as shown in Table 1 and Map 1.

16 The decreases seen across the 11 states of
17 Connecticut, Delaware, Maine, Maryland, Massachusetts, New
18 Hampshire, New Jersey, Pennsylvania, Rhode Island,
19 Vermont, and Virginia amounted to 3.043 billion pounds per
20 year of milk from 2000 to 2022. Growth in milk production
21 in New York more than compensated for the combined loss in
22 these states with growth of 3.739 billion pounds per year
23 from 2000 to 2022. Overall milk production grew by
24 696 million pounds, or 2.2%, from 2000 to 2022, led by the
25 growth within the state of New York.

26 It is important to note that along with
27 significant changes in milk production across the
28 Northeast states, there was also a transformation in the



1 resident population in each state impacting the number of
2 potential dairy consumers and changing the landscape for
3 how farm milk and processed packaged milk is moved to meet
4 consumer demand.

5 Total resident population across the area grew by
6 almost 6.1 million people, or 9.1%, from 2000 to 2022, as
7 seen in Table 2 below. The states with the most
8 population growth from 2000 to 2022 were Maryland, New
9 Jersey, Pennsylvania, and Virginia. These four states
10 correlate with some of the highest milk production
11 declines seen within the Northeast region with declines of
12 509 million pounds, 157 million pounds, 1,207 million
13 pounds, and 476 million pounds, respectively. This
14 indicates that milk production is decreasing in regions
15 where the resident population is increasing in the
16 Northeast.

17 In addition to the noted changes in resident
18 population, it's also important to look at how the per
19 capita consumption of milk beverages, along with milk
20 production, has changed by Northeastern states. The U.S.
21 per capita sales of fluid milk products averaged
22 approximately 197 pounds in the year 2000. By the year
23 2022, this volume decreased 67 pounds to approximately
24 30 pounds per person.

25 THE COURT: Let me stop you there. Approximately
26 what?

27 THE WITNESS: 130 pounds per person.

28 THE COURT: All right. And while I have you



1 stopped, above, the three sentences -- or two sentences
2 that you just read on page 5 is Table 2. Would you just
3 tell us what table that is by its title and its source?

4 THE WITNESS: So the Table 2 is Resident
5 Population in Northeast States, and the source is the
6 United States Census Bureau.

7 THE COURT: Thank you. You may resume.

8 THE WITNESS: These figures were calculated by
9 dividing the sum of the total -- or the monthly total
10 fluid milk products from the USDA AMS' estimated fluid
11 milk sales page by the sum of U.S. Census Bureau resident
12 population for each U.S. state and Washington D.C. for the
13 years 2000 and 2022.

14 Although there has been an overall decline in
15 consumption per person, some states have seen a rapid
16 increase in the percentage of milk that needs to be
17 brought in from out of state to meet consumer demand for
18 milk beverage due to changes in resident population and
19 milk production. This has resulted in increased
20 transportation costs to bring milk supplies to these milk
21 deficit regions for processing, and ultimately for
22 consumer consumption.

23 To show these trends, DFA has estimated the total
24 pounds of milk beverage required to meet demand per state
25 by taking the state population multiplied by the
26 calculated national per capita milk beverage demand, as
27 state level data is not currently available for milk
28 beverage demand. After milk beverage demand by state has



1 been estimated, it is then divided by the state milk
2 production to determine the beverage demand compared to
3 milk production.

4 Table 3 demonstrates these calculations for 2000
5 and 2022 in the Northeastern states and included in
6 Appendix 1 is a complete listing of the states in which
7 this calculation was performed. The data shows how the
8 percentage of beverage demand in each state has changed
9 relative to milk production.

10 As you can see, during both 2000 and 2022, the
11 five Northeast states of Rhode Island, New Jersey,
12 Massachusetts, Delaware, and Connecticut required more
13 milk for consumer demand than is produced within the
14 state, making them milk deficit states. However, four of
15 these five states saw rapid increases in their reliance on
16 out-of-state milk production to satisfy estimated consumer
17 demand from 2000 to 2022. In fact, most Northeast states
18 increased their beverage demand compared to milk
19 production percentage from 2000 to 2022. And by looking
20 at the full list within Appendix 1, some of the states
21 within the Northeast are some of the most milk deficit
22 states in the U.S., matching or exceeding the deficit of
23 most of the Southeastern states.

24 Along with shifts in milk production and resident
25 population within the Northeast, changes in the
26 manufacturing footprint for both Class I and manufacturing
27 classes of milk from 2000 to 2022 have also occurred.
28 When comparing the Federal Order 1 monthly statistical



1 report for the months of December 2001 and December 2022,
2 the number of pool distributing plants operating within
3 Federal Order 1 decreased from the total of 63 to 49 due
4 to industry consolidation and plant closures.
5 Additionally, there has been a shift in the geographic
6 region in which milk has been processed. This can be seen
7 by reviewing Federal Order 1 data representing receipts of
8 producer milk by plant location differential at which
9 priced.

10 Below, in Table 4, is data derived from the same
11 Federal Order 1 monthly statistical reports as noted above
12 for the months of December 2001 and December 2022, and it
13 shows the milk processed within each differential range by
14 class. The data demonstrates a significant decrease in
15 Class I milk processed within the \$3.00 and above zones.
16 The decrease, amounting to approximately 284 million
17 pounds of milk from December 2001 to December 2022, can
18 mostly be attributed to the loss of production capacity in
19 the representative zones, along with decreases in Class I
20 utilization as a percentage of the market total.

21 Examples of lost Class I production capacity
22 within the \$3.00 and above zones include the closures of
23 Sunnyside Farms in Brooklyn, New York, during 2005; Tuscan
24 Dairy in Union, New Jersey, during 2005; Farmland Dairies
25 in Wallington, New Jersey, during 2013; Elmhurst Dairy in
26 Jamaica, New York, during 2001 -- or, sorry, excuse me --
27 2016; and Readington Farms in Whitehouse, New Jersey,
28 during 2022.



1 THE COURT: Now, that's Whitehouse Station?

2 THE WITNESS: Correct.

3 THE COURT: And would you spell Readington?

4 THE WITNESS: R-E-A-D-I-N-G-T-O-N.

5 THE COURT: Thank you.

6 THE WITNESS: These areas are representative of
7 generally more urban areas along the eastern side of the
8 Northeast region.

9 Along with the changes in the locations in which
10 Class I milk is processed, there have also been some
11 significant changes in volumes and regions where other
12 manufacturing classes of milk are processed. When looking
13 at Class II demand across Federal Order 1 in December of
14 2001, processing volumes are relatively evenly distributed
15 across all the zones within the order. When looking at
16 the same utilization during December 2022, not only has
17 the overall demand for Class II milk increased in the
18 region, but there has also been a considerable increase of
19 volume processed within the \$2.55 and below zones,
20 increasing by approximately 175 million pounds from
21 December 2001 to December 2022.

22 Additionally, growth in Class III volumes in
23 Federal Order 1 from December 2001 to December 2022,
24 increasing by approximately 48 million pounds, is
25 apparent. The growth has primarily attributed -- was
26 primarily attributed to regions in zones \$2.70 and below
27 representing fewer urban areas in the Northeast geography.

28 It is evident there have been significant changes



1 in the way milk must be moved within the Northeast region
2 to service the demand within each zone. As the relative
3 volume of Class I processing has decreased in the \$3.00
4 and above zones, but with some demand still existing
5 within those zones, and as growth in Class II and III has
6 primarily been in \$2.70 and below zones --

7 THE COURT: So \$2.70 and below zones.

8 THE WITNESS: Yep.

9 THE COURT: Okay.

10 THE WITNESS: -- local milk supplies are being
11 utilized to fulfill Class II and III demand, while Class I
12 milk supplies must travel further today at a higher cost
13 per mile than before.

14 Though it is likely there is less mileage
15 associated with servicing plants where the primary growth
16 has occurred for Class II and III due to proximity to milk
17 supply, there has been higher costs associated with
18 transportation than there were in 2000 for a variety of
19 reasons.

20 In summary, the Northeast milk market has changed
21 in significant ways since 2000. Any changes with the
22 Class I price surface should be taking the changes that
23 have been explained with milk production, resident
24 population, and the manufacturing footprint into
25 consideration.

26 THE COURT: Ms. Ryll, let me interrupt you for
27 just a moment. You have just completed page 8, and it's
28 12 noon.



1 Do we break for lunch now or do we let her keep
2 working?

3 So Mr. English would prefer to we go to 12:30, if
4 possible. Would that work with everyone?

5 Ms. Ryll, this is a remarkable production, and you
6 are presenting it beautifully, so they want another half
7 hour. You may proceed.

8 THE WITNESS: Thank you. I appreciate that. All
9 right.

10 As a cooperative with investment in hauling assets
11 since 2002, DFA has tracked costs associated with
12 maintaining a fleet for the purpose of transporting raw
13 milk from the farm to the processing location. These
14 costs include the purchase of physical assets, including
15 trucks, trailers, and tires, as well as the cost
16 associated with labor, insurance, and fuel.

17 Table 5 shows the hauling costs that DFA has
18 experienced since 2002. When looking at DFA specific
19 transportation assets located in the New England region
20 since 2003, the cost to purchase a day cab truck has
21 increased \$84,287, or 104%, and the cost to purchase a
22 7500-gallon, two-compartment trailer has increased
23 \$112,286 per trailer, or 224%.

24 THE COURT: So what is that dollar amount per
25 trailer?

26 THE WITNESS: \$112,586.

27 THE COURT: Thank you.

28 THE WITNESS: To maintain an adequate pool of



1 drivers and to keep up with changes in minimum wage across
2 the country, labor rates have needed to increase roughly
3 \$17.50 per hour, or 104%, since 2005.

4 THE COURT: What percent?

5 THE WITNESS: 140. Thank you.

6 THE COURT: Thank you.

7 THE WITNESS: Additionally, the equipment has
8 escalated in price, and insurance companies have assessed
9 the industry -- industry's risk differently. The cost to
10 insure a fleet has also increased dramatically. This cost
11 has increased approximately 39% from 2005 to 2023.

12 Lastly, fuel cost remains a key contributor to the
13 cost associated with the transportation fleet. From 2002
14 to 2022, the yearly average price per gallon of fuel in
15 the New England and Central Atlantic regions in which DFA
16 operates in have increased by \$3.87 and \$3.95 per gallon,
17 respectively.

18 In addition to costs associated with owning and
19 managing a fleet, to manage -- and managing a fleet to
20 transport milk from the farm to the processing plant,
21 there are other factors that contribute to increased
22 costs.

23 One factor, as highlighted within Farm Credit
24 East's February 2023 publication titled "Challenges in
25 Northeast Milk Transportation," is weight limits between
26 states. Today, there are not consistent laws within the
27 Northeast states that allow for the same weights to be
28 carried on trucks and trailers. As the report cites,



1 truck technology has significantly improved in recent
2 years and today's trucks can safely carry more weight than
3 in the past.

4 However, many laws have not kept pace with these
5 improvements. With some Northeast states not allowing for
6 heavier loads to take advantage of the new technology with
7 or without a permit, efficiency of milk movement across
8 the region is impacted. As many loads travel across state
9 lines, not being able to take advantage of increased
10 weight capacities decreases efficiencies in the supply
11 chain and increases costs.

12 All of these factors lead to an increased cost per
13 hundredweight paid by dairy farmers in the region to
14 transport milk from the farm to the processing location.
15 According to a 2000 dairy farm management business summary
16 of New York State from Cornell University, the average
17 cost of hauling and co-op dues charged across 74 farms in
18 New York State was \$0.59 per hundredweight in 2000.

19 15 years later, the same publication refreshed their data
20 for the year 2015 with 132 farms in New York State, and
21 the average cost of hauling and co-op dues increased to
22 \$0.80 per hundredweight. This represented a 35% increase.

23 The 2021 Dairy Farm Business Summary published by
24 Farm Credit East stated that the average trucking
25 marketing cost per hundredweight was \$1.29 per
26 hundredweight across all farms within the summary.
27 Assuming these costs from 2000 to 2001 correlate with
28 similar factors included --



1 THE COURT: Let me stop you and have you start
2 that sentence again, please.

3 THE WITNESS: Assuming these costs from 2000 to
4 2021 correlate with similar factors included, this would
5 represent an average increase in costs of \$0.70 per
6 hundredweight in transportation costs paid by dairy
7 farmers in the Northeast region.

8 THE COURT: Now, we're on page 10, and we have
9 completed two-thirds of that page. I'm going to stop and
10 take us off record just for two minutes to stretch.

11 So we're off record at 12:07.

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

13 THE COURT: Let's go back on record.

14 We're back on record at 12:09. We're now
15 beginning a new category near the bottom of page 10.

16 THE WITNESS: All the factors stated previously
17 impacted how the Northeast working group established the
18 proposed Class I differential pricing surface within our
19 region. To begin the process, the group utilized the
20 University of Wisconsin model and took the average of the
21 model's output for May and October 2021 to smooth any
22 variability in the model's results that would have
23 represented high transportation costs for a specific month
24 or changes in supply and consumption between the spring
25 and fall months.

26 When using the average between the two outputs,
27 the average increase in differential values across the
28 Northeast was \$1.78 per hundredweight compared to the



1 current Class I differentials. The next step in the
2 process was to compare the average values from the model
3 to the current county differentials to see any counties
4 that needed to be adjusted from the model average based on
5 the anchor city of Winchester, Virginia, actual milk
6 movements, historical zone differences, or any potential
7 for disorderly marketing based on current or future plant
8 locations.

9 An anchor city refers to a city that was selected
10 during the initial process, as described by Jeff Sims, to
11 establish the relative level from which regional subgroups
12 could branch out and discuss increasing or decreasing the
13 USDSS-generated Class I differential values using
14 knowledge of local challenges and specifics. The
15 Northeast working group used the closest in proximity
16 anchor city, Winchester, Virginia, as the model average
17 value of \$4.50 per hundredweight, for the county in which
18 it is located, Frederick County, Virginia, which is \$1.70
19 higher than the current differential of \$2.80 per
20 hundredweight, to determine the proposed differentials for
21 the remainder of the region.

22 By utilizing Winchester, Virginia, as the anchor
23 city, the Northeast working group moved through the
24 remainder of the region by looking at historical
25 differential relationships from the anchor city, along
26 with how the model's results related in the surrounding
27 counties to the anchor city.

28 Ultimately, the group proposed differentials for



1 all counties within our region that were very much in line
2 with the May and October '21 model average, resulting in
3 an average differential higher than the model suggested by
4 \$0.01 per hundredweight. Only 24 out of 274 counties
5 within our proposal for the Northeast represented values
6 higher than the October 2021 model, which included higher
7 costs than May 2021. This variance is primarily due to
8 historical milk movements in these counties, and most will
9 be explained in further detail within this testimony and
10 within others that are providing additional supporting
11 testimony.

12 For context surrounding why Winchester, Virginia,
13 was important to use as an anchor city, and how its values
14 are then used as a basis for the remainder of the
15 Northeast region, it is important to understand the city's
16 relationship with the Southeast Milk markets and then with
17 the Northeast milk markets.

18 Winchester, Virginia, represents the southern edge
19 of the Northeast milk marketing area and abuts to the
20 Southern milk marketing areas. Because of its proximity
21 to both areas, it is important for the milk that is being
22 delivered to Winchester, Virginia, to be priced
23 appropriately as to not give an advantage or disadvantage
24 to one order or another.

25 If values have not -- had not been competitive for
26 deliveries into Winchester, Virginia, compared to further
27 south delivery points, milk could deliver direct to
28 Federal Order 5 plants from Federal Order 1 to gain higher



1 differentials and potentially leave Federal Order 1 plants
2 unfilled, resulting in disorderly milk marketing.

3 This practical application of making Winchester,
4 Virginia, relatively comparable to the Southeast region is
5 then extrapolated to the remainder of the Northeast to
6 ensure that Federal Order 1 milk -- Federal Order 1 milk
7 maintains deliveries in the Federal Order 1 plants to
8 support the infrastructure investments within the region
9 without providing a disproportionate advantage to move
10 milk to other Federal Orders.

11 Below, within Table 6, are select counties
12 throughout the Northeast region that have important
13 manufacturing facilities that operate within Federal
14 Order 1 and/or surrounding orders. When looking at the
15 data within the table for these select 49 counties, the
16 average difference between the proposed differentials and
17 the average of the study is approximately \$0.03 per
18 hundredweight. This signifies that the proposed
19 differentials align very well with the average of the
20 University of Wisconsin's model.

21 THE COURT: Now, you have just completed page 12.

22 THE WITNESS: Yep.

23 THE COURT: Tell me what's on page 13.

24 THE WITNESS: So page 13 is Table 6 with the
25 proposed differentials compared to the study results for
26 select counties within the Northeast regions. So
27 essentially it's a comparison of the current differentials
28 with the study results, our proposed differentials, and



1 then the difference between the proposals and the
2 averages.

3 THE COURT: Thank you.

4 THE WITNESS: And then on the next page is Map 2,
5 which represents the differentials that were proposed for
6 the entire Northeast region, including those that were
7 representative of in Table 6. So Map 2 is just a picture,
8 if you will, of those differentials on Table 6, plus
9 surrounding counties.

10 There were some instances where the group chose to
11 utilize their expertise on milk movements and historical
12 relationships with milk sheds to smooth out county
13 differentials to reduce negative impacts to dairy farmers
14 in Class I processing facilities. This would also help
15 prevent disorderly milk marketing and support meeting
16 Class I demand on a routine basis.

17 Some of the these instances include, but are not
18 limited to: The differentials within the state of Maine,
19 including the county containing Class I processing
20 facilities, Cumberland County; certain portions of
21 Maryland; certain portions of New Jersey; certain portions
22 of New York, including counties comprising the western,
23 central, and northern portions of the state; certain
24 portions of Pennsylvania; and certain portions of Vermont.

25 Within our proposal there are specific regions
26 within New York that move away from the current
27 differential pattern, including in Western and Central New
28 York. In general, the proposal suggests flatter



1 differentials in Western New York and more alignment with
2 Western Pennsylvania differentials. This proposal adjusts
3 the differentials for changes in manufacturing assets,
4 Class I utilization, and milk movement dynamics in the
5 region that have occurred since 2000.

6 At the time of Federal Order Reform, the New York
7 counties of Erie and Genesee had significant manufacturing
8 plant capacity with some Class I facilities that serviced
9 the Buffalo and Rochester markets. Since then, there's
10 been significant expansion in Class I processing in both
11 counties with more expansion that has been recently
12 announced by Empire State Development in Genesee County.
13 Some of this expansion can be seen in Table 4 above, which
14 demonstrates the changes in Class I receipts by plant
15 location differential. In a class whose pounds continue
16 to decline in Federal Order 1, Table 4 shows an increase
17 of close to 50 million pounds per month of Class I milk
18 being pooled at location differentials of \$2.35 and below,
19 which would primarily include the New York counties of
20 Erie and Genesee.

21 In addition to the Class I investment that has
22 already occurred in Western New York, a recent
23 announcement by New York State's Governor Hochul announced
24 plans for a new 5-million-pounds-per-day dairy beverage
25 facility with some assumed Class I production in Monroe
26 County, New York, to be completed in the coming years.
27 This plant is reportedly the largest in the Northeast and
28 will impact the demand for milk significantly in the



1 coming years.

2 The Western New York marketplace has attracted
3 other manufacturing investments with more to be completed
4 soon. Since 2000, there has been Class II investment in
5 Genesee County. There is also a significant expansion in
6 Class III manufacturing underway just south of there in
7 Cattaraugus County in the coming year.

8 THE COURT: Would you spell Cattaraugus, please?

9 THE WITNESS: Sure can. C-A-T-T-A-R-A-U-G-U-S.

10 The Cattaraugus County manufacturing facility will
11 replace assets that are currently operating within
12 Allegany County, and according to the press release, the
13 new facility will double the milk consumption of the
14 existing plant.

15 Although these counties are next to each other and
16 the facilities will be less than 20 miles apart, in
17 today's differential structure, the counties would fall in
18 different zones. Within our proposal, Allegany and
19 Cattaraugus Counties have been requested to be at the same
20 zone differential due to this transition and ultimately be
21 at the same level as the remainder of Western New York and
22 Western Pennsylvania under the new proposed flattened
23 structure. This aligns considering that the milk supply
24 region for both delivery points will be the same, if not
25 extended, given the size and scope of the new Cattaraugus
26 County facility.

27 Regardless of the outcome of this hearing, it is
28 requested that a modification be made to align



1 differentials between Allegany and Cattaraugus County to
2 reduce any disorderly marketing of milk within Western New
3 York that would negatively impact farms.

4 THE COURT: May I interrupt? We're on page 16,
5 and I'm looking at the top of the page. I see two
6 different spellings for Allegany. There's an H in the one
7 you most recently read, and I don't see it earlier on at
8 the top of the page.

9 THE WITNESS: I'm not sure of the proper spelling.

10 THE COURT: Okay. I think it's got an H, but I
11 don't -- I'm getting nods yes. An H does belong in there.
12 So the most recent word you read is correctly spelled.
13 Okay. Good. Thank you.

14 So now you are going on to a new paragraph. You
15 may proceed.

16 THE WITNESS: The way that the milk supply moves
17 to facilitate the demand within Western New York has
18 changed as the demand has changed. Previously, milk had
19 traditionally moved from east to west to fill demand
20 across New York State. Today, due to the investments in
21 milk supply/demand dynamics, milk is moving different
22 directions in Western New York to fill demand. While some
23 is staying local or making those same west-to-east
24 movements to fill demand in Central New York, on any given
25 day, milk is also moving from more eastern counties, for
26 example, Livingston and Ontario, to fill demand in Genesee
27 and Erie Counties.

28 Additionally, milk moves routinely north to south



1 from the Western New York counties of Cattaraugus,
2 Chautauqua, Allegany, Steuben, and Wyoming to fill demand
3 in Western Pennsylvania. These milk movements indicate
4 that milk sheds are overlapping from multiple different
5 demand points for Western New York produced milk. Thus, a
6 flattened zone differential structure would create less
7 challenges when moving milk to meet demand.

8 It is important to take into consideration all of
9 these factors when looking at the Class I and producer
10 price surface in Western New York. Under Federal Order
11 Reform, it was necessary to have a lower price in the
12 Buffalo region (Erie County) to remain competitive with
13 Class I plants in Western Pennsylvania that had a lower
14 price. As Western Pennsylvania's differentials increase
15 with the current proposal, it makes sense to create a
16 flatter, common \$4.00 zone in all Western New York and
17 Western Pennsylvania. This also eliminates the difference
18 between the Buffalo region (Erie County) and Rochester
19 (Monroe County) markets. This creates a level playing
20 field from milk costs from the common supply area moving
21 in different directions.

22 Another item for consideration surrounding the
23 Western New York differentials and the request to flatten
24 them compared to Western Pennsylvania is the need to align
25 blend prices. Due to the overlapping milk sheds competing
26 for farm milk between these two regions, alignment is
27 necessary to not cause uneconomic milk movement in unequal
28 raw product cost for processors. This is a difficult job



1 to do when taking into consideration the different Federal
2 Orders, 1 and 33, and the differing utilizations in
3 pricing. Today, plants in Western Pennsylvania are in the
4 \$2.10 zone, but further east in Western New York the
5 current differential reaches as high as \$2.30.

6 Historically, the uniform price difference
7 between -- when comparing the producer price
8 differentials, PPDs, has shown that over time the PPDs
9 have often been higher in Order 33. This is due to a
10 variety of factors, including higher average Class I
11 utilization in that order and relative values of Class II,
12 III, and IV prices. The difference between the Federal
13 Order 1 and Federal Order 33 uniform blends at a \$2 zone
14 has averaged a negative \$0.21 per hundredweight over the
15 period between 2010 and July 2023.

16 To underscore the need for a flattened zone and
17 aligned blend prices between Order 1 and Order 33, milk
18 from Western New York counties is already servicing
19 Order 33, as demonstrated in the maps included in USDA
20 Exhibit 58 for Federal Order 1 and Federal Order 33.

21 There is potential for misalignment between the
22 orders if Western New York's final differentials relative
23 to Western Pennsylvania's are lower than the proposed.
24 The working group gave careful consideration to blend
25 price alignment between Western Pennsylvania and Western
26 New York in an effort to not impact current market
27 dynamics between handlers and producers who face different
28 pooling access and producer prices between the orders.



1 The milk marketed in the non-Federal Order area between
2 Order 1 and Order 33 has acted as a buffer, but state
3 regulation, whether by New York or Pennsylvania, is very
4 limited in the ability to solve potential misalignment.
5 Therefore, concern must be to provide pricing which does
6 not exacerbate the situation.

7 Moving east from Western New York to Central New
8 York, Onondaga and Madison Counties have been proposed at
9 \$0.20 higher than the average model results and \$0.20
10 higher than the flattened zone in Western New York.

11 THE COURT: May I interrupt? Would you spell
12 Onondaga.

13 THE WITNESS: Sure can. O-N-O-N-D-A-G-A.

14 THE COURT: Thank you.

15 THE WITNESS: Yeah.

16 This is to enhance the current relationship that
17 these counties have with Suffolk County, Massachusetts, as
18 well as other regions of New York. Currently, there is a
19 \$0.75 spread between the counties, while in the proposal
20 there would be a \$0.90 spread. The cost to transport from
21 Central New York to other regions, including New England
22 and New Jersey, continues to escalate and the proposal
23 reflects this increased cost. It was important to ensure
24 that sufficient zone is available to ensure these milk
25 movements going forward to fulfill demand with adequate
26 supply.

27 Another item relative to Central New York is a
28 relationship between Oneida and Madison Counties. The



1 average model result suggested two different differentials
2 for these two counties, while the proposal requests these
3 counties to maintain the same differential as they have
4 today. Within these counties there are three primary
5 manufacturing facilities: One, a pool distributing plant;
6 one, a pool supply unit plant; and one, a pool supply
7 plant. Two of the three facilities are operated by the
8 same organization and are often looked at as a unit for
9 milk marketing purposes. As such, it would create
10 disorderly marketing if these plants were separated by
11 zones, as they are utilizing milk from the same supply
12 areas, and milk is often swapped between the two to
13 maintain an adequate operating supply.

14 Moving south from New York, the proposed
15 differentials for the state of New Jersey address some
16 transportation-related challenges associated with
17 servicing the New Jersey market. As demonstrated within
18 Table 3 above, New Jersey largely relies on out-of-state
19 milk production to fulfill consumer demand and typically
20 brings in milk supplies from surrounding regions like New
21 York and Pennsylvania to meet that need.

22 To transport milk into New Jersey from surrounding
23 states, there are cost factors that must be taken into
24 consideration. These factors include additional bridge
25 tolls when exiting the state and returning to New York or
26 Pennsylvania and decreased payload of trailers. An
27 example of a toll for a five-axle trailer crossing from
28 Burlington, New Jersey, to Bristol, Pennsylvania, is \$30



1 per trip, or approximately \$0.06 per hundredweight on a
2 50,000-pound load of milk.

3 In addition to the tolls, there is a reduced
4 payload capacity of trailers traveling into New Jersey by
5 at least 15,000 pounds due to road weight restrictions
6 within the state. The reduction in payload reduces
7 overall efficiencies for hauling companies and, therefore,
8 increases costs while delivering into New Jersey.

9 Today, milk movement from Lancaster County,
10 Pennsylvania, to Philadelphia County, Pennsylvania,
11 maintain the same zone differential as milk movements from
12 Lancaster County, Pennsylvania, to Burlington County, New
13 Jersey. However, as just described, there is additional
14 costs to service the New Jersey destination.

15 To acknowledge the cost factors at play to service
16 New Jersey from Southeast Pennsylvania, the working group
17 built in a \$0.10 per hundredweight difference between
18 Southeastern Pennsylvania counties compared to Southern
19 New Jersey, instead of maintaining the same spread as the
20 current differentials.

21 To provide further detail and perspective on some
22 of the other regions previously mentioned, representatives
23 from Agri-Mark Dairy Cooperative and Maryland and Virginia
24 Milk Producers Cooperative Association will provide
25 testimony with further detail on specific reasons for
26 these movements away from the model results to better
27 align with the practical challenges of marketing milk in
28 the areas. Agri-Mark will provide specific testimony to



1 the state of Maine, Northern Vermont, and Northern New
2 York. Additionally, Maryland and Virginia, which they
3 already provided, will provide testimony specific to
4 certain portions of Pennsylvania, Maryland, and how the
5 Northeast would work to align with the Mideast region to
6 smooth differentials where our regions intersected.

7 Thank you for your time today.

8 THE COURT: Wow.

9 THE WITNESS: That's how I feel.

10 THE COURT: That was magnificent.

11 THE WITNESS: Thank you.

12 THE COURT: Let me see what time it is.

13 And timing, does anyone object to our breaking for
14 lunch?

15 No. Please be back at 1:35.

16 We go off record at 12:33.

17 (Whereupon, the lunch recess was taken.)

18
19 ---o0o---



1 TUESDAY, NOVEMBER 28, 2023 - - AFTERNOON SESSION

2 THE COURT: Let's go back on record.

3 We're back on record at 1:35.

4 Ms. Hancock.

5 MS. HANCOCK: Thank you, Your Honor.

6 BY MS. HANCOCK:

7 Q. Ms. Ryll, if you would take a look at your
8 testimony in Exhibit 360, I want to make sure that we have
9 cross-referenced the additional exhibits that you have.

10 So if we could turn to page 7 of your testimony,
11 and you have a Table 4 there that references December of
12 2001 and December of 2022, Receipts of Producer Milk By
13 Plant Location Differential at which Priced.

14 Do you see that?

15 A. Correct. Yes.

16 Q. Does that correspond -- Table 4, does that
17 correspond to Exhibits 361 and 362?

18 A. It does.

19 Q. And so 361 and 362, that's the source of the data
20 that you used to create those tables?

21 A. Correct.

22 Q. If we turn to page -- turn to page 15.

23 You have a section here under that heading titled
24 "Western/Central New York and New Jersey changes," where
25 you talk about different changes in that -- in that
26 region.

27 Is that a fair characterization of that section?

28 A. Yes, it is.



1 Q. And the first one that -- or one of the ones that
2 you have talked about begins about halfway into that
3 paragraph where you say, "Since then there's been
4 significant expansion in Class I processing in both
5 counties, with more expansion that's been recently
6 announced by Empire State Development in Genesee County."

7 Do you see that?

8 A. I do.

9 Q. And is that supported by what you have in
10 Exhibit 363?

11 A. Yes, it is.

12 Q. And then, in that same paragraph, if we go on, you
13 reference a recent announcement by New York State's
14 Governor -- how do you pronounce it?

15 A. Hochul.

16 Q. Hochul. Announced plans for a new 5 million
17 pounds per dairy (sic) beverage facility.

18 Is that what you have referenced in Exhibit 364?

19 A. It is.

20 Q. So 363 was the Hood expansion?

21 A. Correct.

22 Q. And 364, this is the Fairlife expansion?

23 A. Correct.

24 Q. Okay. And then if you go to the next paragraph,
25 you also talk about a Class III manufacturing facility
26 that's being expanded in Cattaraugus County?

27 A. Cattaraugus.

28 Q. Cattaraugus.



1 Is that -- is that what you have included as
2 Exhibit 365 to your testimony?

3 A. That's correct.

4 Q. That's for Great Lakes Cheese?

5 A. Correct.

6 Q. And how many -- well, tell me about the fluid milk
7 markets that you supply. We talked about, with some other
8 witnesses, some of the -- of the quality standards that
9 were required by their customers.

10 Do you have similar experiences where for your
11 fluid milk that you also have quality standards that are
12 set by your consumers -- or your customers?

13 A. We do.

14 Q. And can you tell me what those are?

15 A. Most of them are focused around temperature and
16 PI, where they are looking for, I guess, higher standards
17 than what would be within the regular PMO standards.

18 Q. And Mr. John called them Grade A plus.

19 Is that how you refer to them as well?

20 A. Yes, that's one representation. I don't know if I
21 have ever put a term to it. But, yes.

22 Q. Okay. Is it fair to say that the quality
23 standards for temperature and PI are something in excess
24 of the PMO's Grade A standards?

25 A. Yes, I would agree with that.

26 Q. So -- and that's what your customers require in
27 order for you to sell them fluid milk?

28 A. Some of them do, correct.



1 Q. Do you know what percentage of your fluid milk
2 customers require something in excess of Grade A?

3 A. I don't.

4 Q. Is it an increasing number with time?

5 A. I would say it's probably become more common
6 practice to have greater standards than the PMO would
7 suggest. So I don't know if it's increasing or
8 decreasing, but it's just more common.

9 Q. And does that then become the standard by which
10 you have to procure your milk from your dairy farmers?

11 A. It is definitely one of the standards that we're
12 looking for.

13 Q. Okay. And then does that come at a higher cost
14 for the dairy farmers to be able to produce at that higher
15 level as well?

16 A. It does. When you think about things like
17 temperature and PI, a lot of that is controllable with
18 on-farm items that require some investment on their side.

19 Q. And then I want to just maybe take a quick step
20 back.

21 When you first were involved in the process of
22 working on National Milk's proposal for its Class I price
23 differentials, what information did you receive initially?

24 A. So what I received initially was an Excel file
25 with both the May and October 2021 data and an average.

26 Q. All right. And then what did you do with that
27 information once you had the May and the October and the
28 average numbers that came out of the model?



1 A. So we assessed how it looked compared to the
2 current differential structure and if there were any items
3 that we needed to address or look at differently based
4 upon our marketing knowledge.

5 Q. And did you notice anything that you felt like
6 needed to be addressed in your territory that you were
7 looking at?

8 A. Yes. So like I mentioned in the testimony, some
9 of the areas that we focused on that needed some
10 addressing or potential changes from what was the average
11 of May and October were areas like Western New York,
12 Northern Vermont, Maine, and then some other regions
13 including kind of New Jersey and Pennsylvania.

14 Q. And I think in your testimony you clarified
15 that -- and throughout that Western New York area, that
16 there were different -- currently into the current
17 differentials, that there are different prices that are
18 set?

19 A. That's correct.

20 Q. And -- and so what was the issue that you saw once
21 you were looking at the model results?

22 A. So in Western New York specifically, currently,
23 there is, I think it would be three differentials in
24 Western New York. As we looked at the model, it was
25 suggesting very small differences in those counties, let's
26 say \$0.05 here or there, and it made sense as we were
27 thinking about how milk is moving in that region to align
28 on one differential, which is that \$4 zone I spoke to.



1 Q. Why did you think it made more sense to have that
2 be one differential as opposed to different differentials
3 in that territory?

4 A. Again, it was more focused on how we're moving
5 around milk today and how milk can be moving west to east
6 or east to west, north to south. And I think by having
7 one flattened differential structure, that allowed some
8 of -- maybe some other abilities to move around milk
9 without needing to focus so much on the differential piece
10 because things are moving -- so, like in a circle
11 sometimes.

12 Q. And we heard some testimony previously that the
13 model actually takes into account movements of milk.

14 Do you have any ideas why the model wasn't able to
15 capture the movement of milk that you needed to resolve
16 when you looked at those results?

17 A. Again, I think it did take into consideration some
18 of those. Again, some of the changes in the zones in
19 Western New York specifically were minor, right, 5 and
20 \$0.10. I also think that the model didn't include some of
21 the new investment that's occurring there that needed to
22 be taken into consideration with the zones.

23 Q. Okay. And so when you were resolving that, I
24 think you said that you set that -- the area -- all at --
25 is it \$4.50?

26 A. Western New York would be \$4.00.

27 Q. \$4.00.

28 Was that an increase from the model or decrease



1 from the model?

2 A. It would depend on county. So there are some
3 counties that would go up and some counties that would go
4 down.

5 Q. Okay. And you did that without regard to whether
6 it would provide an advantage or disadvantage to any of
7 the existing plants that are in that location?

8 A. That's correct.

9 Q. Just to be more pointed on that, did you hear or
10 did you participate in any work where it looked like
11 anyone on your committee or anybody in your working group
12 was making a proposal for a price differential that would
13 provide, for example, for you, DFA, a competitive
14 advantage over any of its competitors?

15 A. There was no conversation regarding any
16 competitive advantages for one or the other, whether it
17 was proprietary or cooperative.

18 Q. Okay. And so whether there were conversations or
19 not, did you observe any of the changes that made you feel
20 like someone was trying to stack the deck more favorable
21 to one -- one plant over another?

22 A. I did not.

23 Q. What about just compartmentalized a proprietary
24 plants versus cooperative plants, did it appear that
25 anybody was trying to provide any competitive advantage or
26 a competitive disadvantage to one group over another?

27 A. It did not appear that way, no.

28 Q. Okay. Was your efforts focused on just the



1 ability to move milk and incentivize it to go in the
2 correct direction?

3 A. Correct. Yep, that's my primary duty on a daily
4 basis is to move milk around the Northeast region, and so
5 that was what our primary focus was on, is how milk is
6 moving and how it is landing from the farm to the
7 processor.

8 Q. Okay. Thank you very much.

9 MS. HANCOCK: Your Honor, at this time we would
10 make Ms. Ryll available for cross-examination.

11 THE COURT: Thank you, Ms. Hancock.

12 I want you to look at page 16 of Exhibit 360. On
13 the top line there is a reference to Allegany County, New
14 York.

15 THE WITNESS: Correct.

16 THE COURT: Now, with regard to only Allegany
17 County, New York, do you now believe that the spelling in
18 that top line is actually correct?

19 THE WITNESS: I do believe that.

20 THE COURT: There are lots of spellings of
21 Allegany.

22 THE WITNESS: As we have learned, yes.

23 THE COURT: Including within New York.

24 THE WITNESS: I think so, yes.

25 THE COURT: And this Allegany County, New York, is
26 spelled how?

27 THE WITNESS: It is spelled A-L-L-E-G-A-N-Y.

28 THE COURT: And you have spelled it that way twice



1 in the paragraph that we're looking at, and then in the
2 last line -- next to the last line of the paragraph an H
3 got into the spelling.

4 THE WITNESS: It did.

5 THE COURT: It doesn't belong there.

6 THE WITNESS: Nope.

7 THE COURT: And then later on you again refer to
8 Allegany County, New York, with the proper spelling.

9 THE WITNESS: Correct.

10 THE COURT: Okay. Good. I was so confused.

11 THE WITNESS: There's a lot of Alleganys.

12 THE COURT: A lot of Alleganys, yes. And I wasn't
13 used to this one.

14 All right. Who would like to cross-examine?

15 Mr. English.

16 CROSS-EXAMINATION

17 BY MR. ENGLISH:

18 Q. Good afternoon, Ms. Ryll.

19 A. Hello.

20 Q. My name is Chip English. I represent the Milk
21 Innovation Group. You've probably heard that a couple of
22 times.

23 A. A couple.

24 THE COURT: And I need more volume on
25 Mr. English's mic.

26 MR. ENGLISH: Which is always unusual, but there
27 you go.

28 It would help if I had a copy of Exhibit 301 --



1 300 and 301 provided.

2 THE COURT: I have just what you need,
3 Mr. English. Shall I take these to the witness stand?
4 Because I have another one for me.

5 MR. ENGLISH: One of us. I can do it.

6 THE WITNESS: Thank you.

7 BY MR. ENGLISH:

8 Q. So as we get started, I just wanted to start with
9 something that puzzles me more than anything else, and I
10 want to try to see if we can clear it up.

11 THE COURT: Now, you are letting your voice drop.

12 BY MR. ENGLISH:

13 Q. See if we can clear it up.

14 Page 13, which is your Table 6, turn to that.

15 You were in the room I think earlier today when I
16 was having my conversation with Mr. John, correct?

17 A. Correct.

18 Q. And part of our conversation that I had with him
19 revolved around York County, correct?

20 A. Correct.

21 Q. And -- and he testified, I believe, that the
22 number for National Milk Producers Federation proposal was
23 \$4.60, correct? Do you remember?

24 A. I don't remember that.

25 Q. So -- so you have \$4.55 as a proposed differential
26 for York, Pennsylvania.

27 A. I do.

28 Q. Do you know if that's what actually National Milk



1 submitted?

2 A. I haven't read that in detail, no.

3 Q. So if we go to Pennsylvania, and I'm looking at
4 Exhibit 301, and line 2278, which is York, and under
5 Column O, which is -- it says 4.60, correct? You want to
6 get there?

7 A. Can you say the line again?

8 Q. 2278. That's the row, not the line. I'm
9 instructed by someone who knows Excel better than I do.
10 It's called a row, 2278. She's listening online and will
11 beat me up later.

12 THE COURT: And we're in 301?

13 MR. ENGLISH: We're in Exhibit 301.

14 THE COURT: Thank you.

15 BY MR. ENGLISH:

16 Q. And I'm looking at 2278 for York, Pennsylvania,
17 and I see \$4.60 proposed.

18 Do you see that?

19 A. I do.

20 Q. Okay. Do you know what -- what's the
21 difference -- I mean, is yours an error in the exhibit or
22 did you mean to propose 4.55? Which is the -- which is
23 the right answer?

24 A. I would take what -- what National Milk has
25 supported and supplied. However, we can look into it. I
26 don't know the answer for why they are different.

27 Q. So I will represent to you -- and you're welcome
28 to look -- that if you go back to 300 in the various time



1 periods, March, May, and June, it was always 4.60.

2 A. Okay.

3 Q. I have seven more on that page, so I'm just
4 wondering -- I'm just wondering what the difference is.
5 So let's start from, in alphabetical order, Frederick,
6 Maryland.

7 A. Are you in 301?

8 Q. I'm actually -- I'm looking at -- okay. I'm
9 looking at your exhibit, page 13 to start with. I want to
10 compa- -- we'll start with that, and then we'll go to 301.

11 So I'm looking at Frederick, Maryland, where you
12 have listed \$4.65 on your proposed differential, correct?

13 A. Correct.

14 Q. And if we go to Exhibit 301 and we look at
15 line 1171 -- sorry, Row 1171, do you see 4.60?

16 A. I do.

17 Q. Do you know what the difference is there?

18 A. I don't.

19 Q. Okay. If we go to Steuben, New York, which you
20 actually talked about in your testimony, on page 13, under
21 proposed differential you have listed \$4.10; is that
22 correct?

23 A. It is correct.

24 Q. If you look at Row 1846, 1846, the row for
25 Steuben, New York, it's \$4.00, correct?

26 A. Hold on. What was the row again?

27 Q. It's Row 1846. Is it \$4.00?

28 A. Yes, it is.



1 Q. Do you know the difference between your number on
2 the exhibit at \$4.10 and the \$4.00?

3 A. I do not.

4 Q. Is it the case again that you would adopt National
5 Milk's number as opposed to your number?

6 A. Yes.

7 Q. If we go to Berks County, Pennsylvania, page 13,
8 you have listed 4.45, correct?

9 A. That's correct.

10 Q. Go to Row 2217, Berks, do you see \$4.50, correct?

11 A. That's correct.

12 Q. Do you know the reason for the difference?

13 A. I don't.

14 Q. Next county down, Cumberland, Pennsylvania, again,
15 \$4.45 on page 13, correct?

16 A. Correct.

17 Q. If we look at Row 2232 on Exhibit 301, we're in
18 Cumberland, not Maryland, Cumberland, Pennsylvania.
19 Cumberland, Maryland, is located in another Allegany
20 County, spelled a different way.

21 THE COURT: Which row?

22 MR. ENGLISH: Row 2232 is Cumberland,
23 Pennsylvania.

24 BY MR. ENGLISH:

25 Q. And under Column O, I see \$4.50, correct?

26 A. That's correct.

27 Q. And, again, do you know the different -- why
28 that's different from what you have in your exhibit?



1 A. I don't.

2 Q. Go to Delaware, Pennsylvania -- I'm sorry,
3 Lancaster, Pennsylvania.

4 Lancaster, Pennsylvania, you have on page 13 of
5 your exhibit, \$4.55, correct?

6 A. Correct.

7 Q. If we go to Row 2247 for Lancaster, Pennsylvania,
8 do you see \$4.60?

9 A. I do.

10 Q. Do you know the difference?

11 A. No, I do not.

12 Q. If we go to Lycoming, Pennsylvania, page 13 --

13 THE COURT: And would you spell that for us?

14 MR. ENGLISH: L-Y-C-O-M-I-N-G, Lycoming,
15 Pennsylvania, which is the next one down from Lancaster.

16 BY MR. ENGLISH:

17 Q. Do you see \$4.25?

18 A. I do.

19 Q. If you go to Row 2247 --

20 THE COURT: We just did that row.

21 MR. ENGLISH: I'm sorry. 2252. Thank you, Your
22 Honor.

23 BY MR. ENGLISH:

24 Q. Do you see \$4.20?

25 A. I do.

26 Q. And finally, for Schuylkill -- which is
27 S-C-H-U-Y-K-I-L-L (sic) -- Schuylkill River, that's
28 Schuylkill County, Pennsylvania, on page 13, do you see



1 4.45?

2 A. I do.

3 Q. And on Exhibit 301, you have to turn the page for
4 Row 2265, do you see \$4.50?

5 A. I do.

6 Q. Do you know the difference there?

7 A. I don't.

8 Q. But for all of those, to the extent there is a
9 difference between your exhibit page 13 and the National
10 Milk proposal, you are not saying that they should be
11 different, they should be the National Milk proposal,
12 correct?

13 A. At this point I believe it should be the National
14 Milk proposal, correct. However, I think we can look into
15 it.

16 Q. Okay. All right. You are certainly welcome to do
17 that.

18 So you have -- I think you have told us who was
19 the red pencil crew for the Northeast.

20 Did you consult with Order 33 or Order 5 red
21 pencil crews in terms of when you got to the market
22 alignments?

23 A. There was consulting along the way as the, I think
24 folks in front of us, in front of me, would have
25 represented, that there was collaboration, once -- there
26 was maybe a regional approach, and then there was
27 collaboration when we thought we had our initial thoughts
28 and version in front of us, and then collaboration with



1 the other orders.

2 Q. What principles did your red pencil group for
3 Northeast apply?

4 A. I think I would say that they were similar to
5 those that Mr. John provided, again, utilizing some of
6 those items relative to kind of current market dynamics,
7 how milk is being moved around, in which -- how they
8 connect with our current differential system and then how
9 it looked compared to the model results.

10 Q. A couple times in your testimony you refer to the
11 model average, but then at one point you do an analysis in
12 the number of counties in which you were -- I think you
13 said higher than the October.

14 What governed, the model average or October?

15 A. The model average was the basis for our analysis.
16 The reason for the comparison within my testimony was to
17 demonstrate the, I guess, relativity of our proposed
18 differentials compared to the higher price month to show
19 that there were only -- I think the -- like, I don't know
20 where the testimony --

21 Q. You said 24 --

22 A. -- 24 counties that were higher than October, was
23 just to represent that I think it was a modest
24 representation of how we went about it. There was modest
25 increases associated with our proposal.

26 Q. But you didn't do the same comparison for the
27 average, did you?

28 A. Not in my testimony, no.



1 THE COURT: Not what?

2 THE WITNESS: Not in my testimony, no.

3 BY MR. ENGLISH:

4 Q. By definition, if October were higher than the
5 average, and you did an analysis of October, if you had
6 done the average, it probably would have been more than
7 24, correct?

8 A. I'm not sure. I didn't do that.

9 Q. To the extent you were looking at the October,
10 wouldn't that mean for minimum price purposes, leaving
11 aside the 24, that you are erring on the high side of
12 pricing, minimum pricing?

13 A. Can you repeat the question?

14 Q. To the extent you did a comparison as to October,
15 given the fact that in most months -- in most locations
16 October is higher than May, wouldn't that mean that for
17 minimum price purposes, your analysis errs on the high
18 side of pricing?

19 A. It -- I don't think that is what it would mean.
20 And nothing specific about our analysis would have gone
21 into that detail.

22 Q. So as I see it, as I read the testimony and see
23 everything National Milk's done, the anchor city for the
24 Northeast was Winchester, Virginia, correct?

25 A. That's correct.

26 Q. In other areas such as California, San Francisco
27 and Los Angeles are anchor cities.

28 Why isn't Boston an anchor city given its



1 population size?

2 A. I was not apart of the task force that initiated
3 the anchor city profile, so I can't answer that question.

4 Q. Given your testimony about the change in
5 population and production in Massachusetts, wouldn't it
6 make sense to think of Boston as an anchor city and work
7 your way down, rather than from Winchester, Virginia, and
8 work your way up?

9 A. Again, I'm not certain of the thought process the
10 group task force did to create those anchor cities, and I
11 can't speak to it.

12 Q. Was there anybody on the group task force
13 representing the Northeast Order 1?

14 A. I'm not certain.

15 Q. So looking at your Table 3, on page 6, and you
16 have testified, and I agree, Massachusetts and Rhode
17 Island are up there near the top for beverage demand
18 compared to milk demand, correct?

19 A. Correct.

20 Q. So if we look at Maine, while milk production has
21 gone down some in Maine, the beverage demand for Maine was
22 38% in 2000 and it's 32% in 2022, correct?

23 A. That is correct.

24 Q. So wouldn't one expect the pricing to be higher in
25 Massachusetts there and not lower relative to Maine in
26 your changes to the model?

27 A. Can you repeat that question again?

28 Q. Do you agree that relative to the model, you



1 propose lowering the price in Eastern Massachusetts,
2 Norfolk, Mass, according to your page 13, down \$0.15
3 compared to the model, while at the same time you propose
4 increasing Cumberland, Maryland -- Cumberland, Maine, by
5 \$0.35, correct?

6 A. That's correct.

7 Q. Okay. And looking at your own chart, the biggest
8 deviation you have for the whole Northeast is increasing
9 Cumberland, Maine, by \$0.35, correct?

10 A. That's correct.

11 Q. What is the justification for proposing to
12 increase Maine by \$0.35, and effectively \$0.50 in terms of
13 the difference with Norfolk, Mass, given those differences
14 that we see in beverage demand on page 6 of your
15 testimony?

16 A. So for those of you familiar with Maine geography,
17 the county there, which is Cumberland County, would be
18 kind of the Portland, Maine, area. You have a unique
19 scenario in the state of Maine where you have got Class I
20 processors located in the Portland area, and because of
21 that, and because of its relationship to Boston, we didn't
22 want to, I guess, incentivize further milk to move past
23 that Portland geography by -- by giving a lesser zone
24 value to that Portland area. And I think my colleague
25 Mr. Werme will be testifying with some specifics on that
26 region.

27 Q. Well, you talked about it in your testimony. In
28 fact, it appears on page 5 -- or I'm sorry, one of the



1 first ones you talk about a deviation, in your testimony.
2 You reference it. And you are the witness right now -- so
3 I apologize, I happen to be very familiar with the
4 geography.

5 A. It's a nice area.

6 Q. You may or may not have heard that, or known that,
7 since I spend my summers up there.

8 MR. ENGLISH: And so I would like to have a map
9 marked, Your Honor. It's been submitted as MIG-50.

10 THE COURT: Let's go off record while we
11 distribute.

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

13 THE COURT: Let's go back on record.

14 I'm looking at the map that Mr. English has marked
15 MIG-50. I believe that next exhibit number is
16 Exhibit 366.

17 All right. I'm going to mark it Exhibit 366.

18 (Thereafter, Exhibit Number 366 was marked
19 for identification.)

20 MR. ENGLISH: Thank you, Your Honor.

21 BY MR. ENGLISH:

22 Q. And, Ms. Ryll, I realize you and I are familiar
23 with the geography, and others may have been there, but I
24 thought it might help to picture it.

25 So Cumberland County is in the southwest part of
26 Maine. It's the second county up from New Hampshire,
27 correct?

28 A. Correct.



1 Q. And New Hampshire is a bare, like, 16 and a half
2 miles as you travel up from 95.

3 A. It's not a big state.

4 Q. Especially down near the coast, correct?

5 A. I think it's nine miles. But, yeah.

6 Q. So the milk in Maine is largely north and east of
7 Cumberland, correct, Cumberland County?

8 A. That's correct.

9 Q. And you just said that you don't want to
10 incentivize that milk to leave the state of Maine, is that
11 what you said, to go to Boston?

12 A. I may have said that, yes. I don't exactly know
13 my words.

14 Q. But it's close enough or -- what -- so I'll let
15 you restate it if you want to restate it.

16 What's the idea of taking the model numbers and
17 raising Cumberland up \$0.35 and lowering in Norfolk,
18 Massachusetts -- which, by the way, I believe is where
19 there is a plant owned by DFA, correct, in Franklin, Mass?

20 A. Correct.

21 Q. So why is there a \$0.50 per hundredweight swing,
22 raising Cumberland and lowering Norfolk?

23 A. So as part of the process, we have talked about
24 how we wanted to maintain some differential relationships
25 that we currently have within the Federal Order
26 differentials, and one of those areas would be this
27 specific location that you are talking about, is trying to
28 look at how we currently move milk, and what is working.



1 And that is one region specifically that we wanted to
2 identify and maintain similar differentials as we have
3 today, meaning between Portland and Boston in your
4 example.

5 Q. But looking at page 6, in your tables -- Table 3,
6 wouldn't it make economic sense given the fact that
7 Massachusetts is, as you yourself said, one of the
8 greatest deficit states, its beverage demand compared to
9 milk production in 2022 is, you know, basically 482%,
10 almost five times the needs, correct, in Massachusetts?

11 A. That's correct.

12 Q. Whereas, Maine only needs 32%, correct?

13 A. That's correct.

14 Q. So wouldn't it make economic sense to say, wow, we
15 need to encourage milk, both raw and packaged form, to
16 make its way to the Boston market, and one way to do that
17 is to accept the model results and not switch it by \$0.50?

18 A. I don't necessarily agree with that. And I think
19 that USDA can make the determination of what makes
20 economic sense. It is not my call.

21 Q. You are allowed to say what you need to say.
22 That's your right.

23 I'm just puzzling over modifications to the model,
24 which result in saying, okay, let's not move milk from
25 Maine, even though Maine has a 68% milk surplus.

26 Is there any manufacturing available in Maine, any
27 cheese manufacturing that you know of?

28 A. There is.



1 Q. Small? Very small?

2 A. Depends on what you characterize as small.

3 Q. Does DFA have any cheese manufacturing up there?

4 A. No.

5 Q. Do you have any butter powder operations up there?

6 A. No.

7 Q. Do you know of any other cooperatives that have
8 cheese or butter powder plants in Maine?

9 A. Not to my knowledge.

10 Q. So looking now to page 11 of your testimony, and
11 the middle paragraph, which is the same paragraph that
12 referenced 24 counties being higher than the October 2021
13 model, you have a sentence that says, "This variance" --
14 which I presume means the variance of 24 out of 274
15 counties --

16 (Court Reporter clarification.)

17 MR. ENGLISH: 274 counties.

18 BY MR. ENGLISH:

19 Q. -- "is primarily due to historical milk movements
20 in these counties, and most of these will be explained in
21 further detail within this testimony and within others
22 that are providing additional supporting testimony."

23 What historical milk movements are you referring
24 to in that sentence relative to Maine and Eastern
25 Massachusetts?

26 A. I'd have to go back and look at what specific
27 counties these 24 are. I don't know that off the top of
28 my head.



1 Q. Would it be safe to say that Cumberland, Maine,
2 with a \$0.35 increase is clearly in that category?

3 A. I believe so, yes.

4 Q. So considering that, that Cumberland County, which
5 is where the city of Portland is located, is one of those,
6 what historical milk movements in and around that area
7 explain the need for a \$0.35 increase over the model?

8 A. Again, you explained where the milk in Maine is
9 produced, which is generally northeast of Portland. The
10 historical milk movements are moving that milk from that
11 northeast portion of the state down to the southern
12 portion of the state.

13 Q. And isn't it the case -- I do not know about your
14 route dispositions, although I used to know Oakhurst very
15 well.

16 THE COURT: You're --

17 MR. ENGLISH: Oakhurst.

18 THE COURT: You're not --

19 MR. ENGLISH: I'm sorry.

20 THE COURT: -- your chin is lowered, which means
21 you are talking to your podium, not your microphone.

22 MR. ENGLISH: Or I could lower the microphone.

23 THE COURT: I think that will help. Thank you.

24 MR. ENGLISH: Thank you, Your Honor.

25 BY MR. ENGLISH:

26 Q. So there are two fluid milk processing facilities
27 in Cumberland in Portland, Maine, correct?

28 A. That's correct.



1 Q. One is the Oakhurst facility owned by Dairy
2 Farmers of America located on Route 302, Forest Avenue,
3 correct?

4 A. I don't know their address, but I will agree that
5 I think it is on Forest Avenue.

6 Q. And the other facility is the HP Hood facility,
7 located very near the Hadlock Field baseball stadium,
8 correct?

9 A. Again, I don't know a specific location relative
10 to baseball fields.

11 Q. If HP Hood --

12 THE COURT: You say very near what?

13 MR. ENGLISH: Hadlock, H-A-D-D-O-C-K (sic),
14 Hadlock Field. It's downtown Portland. It's where the
15 Portland Sea Dogs play, downtown Portland, Maine.

16 THE COURT: Thank you.

17 Did you say Sea Dogs?

18 MR. ENGLISH: Sea Dogs.

19 THE COURT: Thank you.

20 MR. ENGLISH: They are a Red Sox affiliate.

21 That's for a future witness.

22 BY MR. ENGLISH:

23 Q. If I were to tell you that the HP Hood witness
24 will later testify that they move packaged milk in
25 Cumberland down to Boston, would you have any reason to
26 disbelieve that information?

27 A. I don't have any knowledge of any packaged milk
28 movement in that region.



1 Q. So let's turn to the model, sometimes known as the
2 USDSS model, sometimes known as the University of
3 Wisconsin model, correct?

4 A. Correct.

5 Q. And you have testified, as a number of other
6 witnesses have, about increases in costs of hauling,
7 correct?

8 A. Correct.

9 Q. Is that testimony to support the general need for
10 increasing Class I or is it to justify specific
11 differences when you made changes -- proposed changes in
12 National Milk Producers Federation 19 to the model
13 results?

14 A. The hauling data that was presented is to provide
15 a general overview of how costs have increased over the
16 last number of years. In this example it was from 2002,
17 2003, 2005, to current year, 2022 and 2023.

18 Q. I take that then to mean that it is in general
19 support of National Milk Producers 19, whether the model
20 or your actual proposal; is that correct?

21 A. Again, it's meant to support the recognition of
22 cost increases for our milk hauling.

23 Q. Does it play any role in your proposal to modify
24 the model results as to Cumberland County, Maine, by
25 raising it \$0.35 over the model results?

26 A. It is just providing supporting information for
27 why we are requesting the change on the proposal. There
28 wasn't specific information relative to Cumberland County,



1 Maine.

2 Q. And what about the plant that DFA owns in
3 Franklin, Massachusetts which is in Norfolk County, Mass?

4 A. What about it?

5 Q. Were the hauling costs used in any way to justify
6 the proposed difference between the model and the \$0.15
7 reduction that National Milk proposes for that location?

8 A. Again, the costs were just to represent the
9 increased hauling costs associated with moving milk from
10 plant or from farm to plant, not specific for any one
11 location.

12 Q. And that if I kept going, you would say that would
13 be the answer for all my other questions, correct?

14 A. Yes, sir.

15 Q. Thank you.

16 Having looked at Exhibits 300 and 301, and I think
17 you may have been asked some questions by Ms. Hancock, but
18 have you seen these documents before they were submitted?

19 A. Actually, no, I haven't.

20 Q. Okay. Do you have any idea who the author is?

21 A. I don't.

22 Q. On Exhibit 300 there's a Column R that seems to
23 have some volumes of milk in some of the columns.

24 Do you have any idea where that information came
25 from?

26 A. I do not.

27 Q. Would you agree that one of the principle concepts
28 of Federal Order pooling of revenues revolves around the



1 Class I differential supporting a reserve pool of milk to
2 service a variable fluid demand weekly and seasonally?

3 A. Could you restate that for me?

4 Q. Of course.

5 Would you agree that one of the principle concepts
6 between behind Federal Milk Order pooling revolves around
7 the Class I differential supporting a reserve pool of milk
8 to service variable fluid demand weekly and seasonally?

9 A. Yes.

10 Q. Do you know what percentage of reserve pool milk
11 is necessary to service the fluid milk market in Federal
12 Order 1?

13 A. I do not.

14 Q. Do you have any information based upon your
15 experience of what USDA considers to be a needed reserve
16 supply of milk?

17 A. I do not.

18 Q. Your data and testimony seems to suggest that
19 Class III production has grown in New York and expected to
20 increase; is that correct?

21 A. That's correct.

22 Q. I want to go back to page 7, Table 4, and you
23 indicated in answer to questions from Ms. Hancock that
24 derivation of this data was Exhibits 361 and 362, correct?

25 A. That's correct.

26 Q. It's an observation, you would agree, that between
27 December 2001 and December 2022, the total receipts from
28 producer milk in Class I have declined by over 215 million



1 pounds, correct?

2 A. Say that again?

3 Q. If you look at Class I producer milk for the whole
4 market, it's declined from 910-plus million pounds to 693
5 and a half million pounds, correct?

6 A. That's correct.

7 Q. At the same time, total receipts have increased
8 from 2.077 billion to 2.255 billion, correct?

9 A. Correct.

10 THE COURT: 2-point --

11 MR. ENGLISH: 255 --

12 THE COURT: -- 254.

13 MR. ENGLISH: Well, but I was rounding, Your
14 Honor.

15 THE COURT: Oh.

16 MR. ENGLISH: The other ones I rounded down; this
17 one I rounded up.

18 THE COURT: Thank you.

19 And did you catch the question, the receipts went
20 up?

21 THE WITNESS: Yes, I did.

22 BY MR. ENGLISH:

23 Q. Now, my first question is: This is receipts of
24 producer milk, correct?

25 A. Correct.

26 Q. And that technical term would mean that it's not
27 all the milk in -- located in the area of Order 1,
28 correct?



1 (Court Reporter clarification.)

2 MR. ENGLISH: It would not mean all milk located
3 and produced in counties represented under Order 1 --

4 THE COURT: Wait, wait, wait, wait. It's the end
5 of your sentence we can't understand. So say it again,
6 but go slowly on the end of your sentence.

7 BY MR. ENGLISH:

8 Q. By definition, producer milk represents pooled
9 milk on the order, correct?

10 A. Producer milk represents --

11 Q. Pooled milk on the order, correct?

12 A. I'm not certain of the definition regarding this.

13 Q. If you assume with me that the definition of
14 producer milk would mean milk pooled on the order in
15 December 2022, isn't it the case that there is more milk
16 produced in the territory represented by Order 1 than what
17 is represented on that table?

18 A. I don't know the answer to that.

19 Q. Okay. Would you agree that in the last 25 years,
20 Class III plants, especially new plants, but Class III
21 plants have largely leveled out the requests for raw milk,
22 both daily and seasonally?

23 A. To my knowledge, Class III plants operate of their
24 choosing, and can vary, and can be level. It depends on
25 the plant.

26 Q. Many of them now are what you would call full
27 supply plants, correct?

28 A. What's your definition of full supply plant?



1 Q. They aren't accepting milk on a regular basis that
2 is being diverted from Class I?

3 A. Meaning --

4 Q. They are not serving as balancing plants; would
5 you agree with that?

6 A. I think every plant operates differently, so I
7 don't think it would be fair to put them in one bucket
8 like that.

9 Q. Are there a number of plants, though, for
10 instance, some of these new plants or plants that are
11 replacing, that are basically not operating as balancing
12 plants?

13 THE COURT: Not operating --

14 MR. ENGLISH: Not operating as balancing plants.

15 THE COURT: Thank you.

16 THE WITNESS: Again, every operator out there
17 makes decisions on how they are going to be operating
18 their plant. So it is up to them.

19 BY MR. ENGLISH:

20 Q. How long have you been associated with working on
21 Order 1?

22 A. I have been working in Federal Order 1 for almost
23 nine years.

24 Q. So going back at least that far, are you aware
25 there have been a steady series of requests made to relax
26 pooling requirements in Federal Order 1?

27 A. I am aware.

28 Q. Has the reluctance of Class III plants to take on



1 additional seasonal milk led to raw milk dumping across
2 the Northeast?

3 A. I don't believe that to be true.

4 Q. Is there any difference in the increase of hauling
5 costs for raw milk servicing Class III plants than for
6 hauling costs servicing Class I plants?

7 A. As I have stated previously, hauling costs have
8 gone up across the board. In my testimony, I talk about
9 the relationship where milk has been moving in their
10 production regions compared to where Class I facilities
11 are located, and then you can throw in there Class II and
12 III and IV facilities are located. If you are looking at
13 the overall costs to service, if it's a longer haul, it is
14 going to cost you more money; if it is closer in to the
15 milk supply, it will be less than that longer haul was.
16 But in general, those hauling costs have increased.

17 Q. Whether the milk is going to Class III or Class I,
18 correct?

19 A. Yes.

20 Q. Isn't it by being on the pool that those Class III
21 plants are able to attract raw milk given those higher
22 hauling costs?

23 A. Can you repeat the question?

24 Q. I'll try to rephrase it.

25 You have agreed that hauling costs have gone up
26 for everybody, correct?

27 A. That's correct.

28 Q. Okay. Isn't it the case that the ability to draw



1 money from the pool provides those Class III plants with
2 an ability to attract raw milk and effectively subsidize
3 that haul?

4 A. I'm not certain that a plant's ability to be on
5 the pool or not on the pool has a bearing on that
6 conversation.

7 Q. Doesn't your organization already require a
8 balancing charge for Class I deliveries?

9 A. Can you define what a balancing charge would be?

10 Q. A charge on the over-order premium to Class I
11 plants for taking milk other than on a seven-day delivery
12 basis.

13 A. And your question was?

14 Q. Doesn't DFA charge that kind of balancing cost to
15 your Class I customers?

16 A. We have a number of programs out there that we
17 would work with our customers or ourselves on depending on
18 what you are looking at, and anything can be included in
19 that.

20 Q. Is it not the case that one of those charges is a
21 balancing charge?

22 A. It is not -- we don't have anything called a
23 balancing charge.

24 Q. How is your over-order premium described?

25 A. My over-order premium?

26 Q. Yes.

27 A. Like others in the room, I think it would be
28 dependent upon what is required to service a customer.



1 Q. Does that service of customer include balancing?

2 A. It could.

3 Q. Does that cost of service include the cost of
4 providing milk that meets those Class I processors who ask
5 for low temperature milk?

6 A. Again, it really varies depending on what's being
7 requested and who the plants associated with that are.

8 Q. If USDA grants your request for increased Class I
9 differentials, since that request is intended to cover
10 hauling and balancing, will you lower your over-order
11 premiums?

12 A. I don't think that's really a question that I can
13 answer today given I don't know what the outcome of the
14 hearing will be.

15 Q. Given that you have agreed there's been a steady
16 series of requests to relax pooling requirements to
17 Federal Order 1, why do we need increased Class I
18 differentials?

19 A. I think that given what we have presented
20 regarding increased costs to service markets, that comes
21 back to why we have determined an increase in Class I
22 differentials are needed. And it's not relative to the
23 pooling requirements in Federal Order 1. This would be a
24 national scope.

25 Q. Well, given the desire -- the fact that there's
26 been pooling requirements routinely reduced in Order 1,
27 and given what is on page 7 of your testimony about lower
28 Class I milk utilization in the face of higher receipts,



1 isn't it the case that there's an adequate supply of milk
2 for fluid use in the Northeast?

3 A. Today there is adequate supply in the Northeast.
4 However, as we've discussed previously, things change
5 pretty -- I don't know if rapidly is the right word, but
6 as you can see, we have had significant changes from 2000
7 to 2023, and I would imagine we'll have more in the future
8 because changes come. So I cannot speculate, you know, in
9 answer to your question based upon that.

10 Q. Is the purpose of increasing your Class I
11 differentials designed to assist in getting milk to
12 Class I plants?

13 A. The purpose of Class I differentials is supposed
14 to reasonably reflect the cost of milk to that market in
15 addition to other items that we have talked about.

16 Q. Given the dropping Class I utilization and
17 increasing overall receipts, doesn't that additional
18 Class I money get spread out over large volumes of
19 non-Class I milk, which doesn't actually result in moving
20 milk to Class I?

21 A. I'm not sure that that's a fair representation of
22 that.

23 Q. If you increase the Class I differential by \$1,
24 but only \$0.25 of that ends up for the dairy farmer who is
25 shipping the milk to Class I, how much more incentive is
26 there for that producer to meet that given your higher
27 hauling cost testimony?

28 A. That's a great question. As we think about how



1 those proceeds get distributed in Federal Order 1, you
2 know, I think we will -- I don't know what the right word
3 is. I think that -- that if -- in your example, the \$0.25
4 assists with the cost for anybody to service a Class I
5 plant, as there are requirements within Federal Order 1
6 already to do so.

7 Q. But the other \$0.75 doesn't actually do anything
8 for Class I, does it?

9 A. Where did the \$0.75 go?

10 Q. I said the differential was \$1 --

11 A. Yeah.

12 Q. -- and \$0.25 is, you know, the utilization, so
13 that's what's going to be added, and so the other \$0.75,
14 as I said, is being spread out over non-Class I plants.

15 A. Okay.

16 Q. So -- so the Class I handler has paid an extra
17 dollar, the dairy farmer shipping to that plant has gotten
18 \$0.25, the hauling costs have gone up, as you have
19 testified, far more than \$0.25. Aren't we going to
20 continue failing the system?

21 A. I'm not certain of that. We'll have to see how it
22 plays out.

23 Q. So going to go back to page 13 of your testimony a
24 little bit. And I'm going to look at Rensselaer,
25 R-E-N-S-S-E-L-A-E-R, New York.

26 Rensselaer, New York, is near Albany, correct?

27 A. Correct.

28 Q. And that county has a plant in it owned by Dairy



1 Farmers of America, correct?

2 A. Correct.

3 Q. And you have proposed taking that down by \$0.05
4 from the model, correct?

5 A. That's correct.

6 Q. To the east, in Hampden, Massachusetts, where
7 HP Hood is located, you are increasing it by \$0.05,
8 correct?

9 A. In Hampden, Massachusetts?

10 Q. Hampden, which is located in Hampden County, which
11 is in Southern Mass, the Agawam plant, HP Hood plant,
12 Agawam.

13 A. Uh-huh.

14 Q. Correct?

15 A. There is a plant there, yes.

16 Q. Okay. And -- and that plant, which is located --
17 you know, the fourth one listed, Hampden, is actually at
18 \$4.85, correct? So you have given yourself a \$0.05
19 benefit for DFA's plant in Albany, correct?

20 A. I'm not looking at any benefits, winners or
21 losers, based upon who owns the facility.

22 Q. It's just a coincidence that your plant just to
23 the west in Rensselaer goes down, and your plant just in
24 east in Massachusetts goes down, and HP Hood doesn't,
25 correct?

26 A. It is what the group determined was the best fit
27 for our region for these differentials.

28 And I will note, if you look at Rensselaer, it



1 aligns with similar facilities in its region, like Albany
2 County.

3 MR. ENGLISH: Let's do two more maps, Your Honor.
4 I'll do a New York map and a Massachusetts map.

5 THE COURT: All right. Tell me what the MIG
6 numbers on those are.

7 MR. ENGLISH: The Massachusetts one is MIG-51, and
8 the New York one is MIG-39. So I'm going to do New York
9 first.

10 THE COURT: So the New York one is MIG which?

11 MR. ENGLISH: 39.

12 THE COURT: 39?

13 MR. ENGLISH: It was posted earlier.

14 THE COURT: Okay. So the New York one, the
15 MIG-39, will get the next exhibit number.

16 MR. ENGLISH: Yes, Your Honor.

17 THE COURT: That will be 367.

18 (Thereafter, Exhibit Number 367 was marked
19 for identification.)

20 THE COURT: And the Massachusetts one, which is
21 the MIG-51, 5-1, will get 368.

22 (Thereafter, Exhibit Number 368 was marked
23 for identification.)

24 THE COURT: We'll go off record while you
25 distribute.

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

27 THE COURT: Let's go back on record.

28 We're back on record at 2:44.



1 Mr. English, I have marked as Exhibit 367, MIG-39;
2 as Exhibit 368, MIG-51; and as Exhibit 369, MIG-55.

3 (Thereafter, Exhibit Number 369 was marked
4 for identification.)

5 MR. ENGLISH: And for the record, Exhibit 367 is
6 marked as a county map of New York; Exhibit 368 marked as
7 a county map, along with some cities, in Massachusetts;
8 and Exhibit 369, prepared by MIG using the spreadsheets of
9 301 and also 300, that's Exhibit 369, MIG-55, Selected
10 FMMO 1 Northeast County Comparison.xlsx.

11 THE COURT: So how can we tell whether the data
12 came from 300 or 301?

13 MR. ENGLISH: Just a second, Your Honor, it may
14 all be 301. I think this one we did not include any
15 data -- no, I'm sorry. Yes, Proposed Class I -- so the
16 column that said "Proposed Class I March '23," Your
17 Honor --

18 THE COURT: Yes.

19 MR. ENGLISH: -- is from Exhibit 300. Then there
20 was what was called "New Proposal May '23," that is the
21 last column, Column S. So one is Column O; one is
22 Column S from 300. And then "Proposal Number 19
23 June '23," that column is Exhibit 301.

24 THE COURT: Thank you.

25 Now, my hard copy doesn't actually show Column O,
26 so forth, but I have the category names. So I do see
27 "Proposed Class I March '23," and right next to it, "New
28 Proposal May '23."



1 MR. ENGLISH: And I am prompted by a helpful
2 comment from Nicole Hancock that this document was
3 prepared for me over lunch, so -- or something like
4 that -- and there's a legend on the last page, so there's
5 a way of knowing if one looks at the legend.

6 THE COURT: Did everybody get the legend?

7 MR. ENGLISH: Is there a third page?

8 THE COURT: Okay. So I have page -- oh, I have
9 two page 2s and no page 3.

10 (Voice from the crowd saying something
11 undiscernible.)

12 THE COURT: All right, then. We're still on
13 record.

14 BY MR. ENGLISH:

15 Q. So now that we have the maps, Exhibit 367 shows
16 that Rensselaer County is on the eastern side of New York,
17 correct?

18 A. Correct.

19 Q. And Hampden County is two counties in from New
20 York in Massachusetts on Exhibit 368, correct?

21 A. Correct.

22 Q. If we look at Exhibit 369, and down the middle of
23 the page, Row 1807, in Delaware, New York, there's a
24 Saputo plant in Delaware County, correct?

25 A. Correct.

26 Q. And your model would take it up \$0.05, correct?

27 A. Can you tell me which column I'm looking at?

28 Q. If you look at the difference, Proposal 19 minus



1 the University of Wisconsin average, which is the fourth
2 column from the right of MIG-369 --

3 A. Uh-huh.

4 Q. -- if you look at that line for Saputo, it's a
5 positive \$0.05, correct?

6 A. Correct. On the sheet it is.

7 Q. And do you know if that's what you submitted?

8 A. I don't without doing a comparison.

9 Q. Do you have any reason to believe it's wrong?

10 A. I don't.

11 Q. If you look down three lines to HP Hood in
12 Batavia, Genesee, New York, do you see that that's also up
13 \$0.05?

14 A. I do.

15 THE COURT: Mr. English, would you just spell
16 Batavia, please?

17 MR. ENGLISH: B-A-T-A-V-I-A.

18 THE COURT: Thank you.

19 BY MR. ENGLISH:

20 Q. And if we look down to the bottom of the page,
21 line -- Row 1839, King Brothers in Saratoga, New York,
22 that's also up \$0.05 from the model, correct?

23 A. Correct.

24 Q. And if we look at Midland Farms in Albany, you
25 have left it at zero, correct?

26 A. What row was that?

27 Q. Row 1795, middle of the page.

28 A. It shows zero, correct.



1 Q. Other than historical price relationships, what
2 justifies those numbers relative to the Rensselaer
3 facility that you propose taking down \$0.05 from the
4 model?

5 A. So you are looking at the differences between the
6 model and what was proposed?

7 Q. Yes.

8 A. Well, within our proposal, those plants are all
9 within the same zone at 4.40.

10 Q. That's the current, correct?

11 A. That's the current, I'm sorry.

12 Q. What is the current?

13 A. The current differential with those plants?

14 Q. Yes.

15 A. I believe it to be 2.70.

16 Q. And so based upon the fact that it's currently
17 2.70, you are putting them all in the same at \$4.00 now,
18 correct?

19 A. Not \$4.00, I don't believe. \$4.40.

20 Q. 4.40, I'm sorry. 4.40, correct?

21 A. Correct.

22 Q. At what point do the economics of moving milk
23 govern over this idea of price alignment?

24 A. Can you expand further?

25 Q. What is more important, price alignment or
26 recognizing the changes in the market as you have
27 described in your own testimony, where there's less milk
28 going in raw form to the cities, more going in the



1 country, with all those kinds of changes in milk
2 production, reduced Class I usage, more milk, you know,
3 all of those circumstances? What is the rationale for
4 saying that price alignment counts over everything else?

5 A. I'm not certain that's exactly what's being said.
6 We are looking at all of those factors related to the
7 proposals, including price alignment, right? So if it's
8 regarding hauling costs to get it there, additional items
9 related to cost of production, we're -- we're aligning
10 similar geography plants with similar differentials as to
11 not disadvantage one or the other.

12 Q. Well, we have talked about Franklin, Mass,
13 relative to Maine. Let's also talk about relative to
14 Hood's plant in Agawam.

15 Looking at line item 1194 in Norfolk, Mass, where
16 DFA Garelick is located --

17 THE COURT: And would you spell the name of that
18 plant?

19 MR. ENGLISH: G-A-R-E-L-I-C-K.

20 THE COURT: Thank you.

21 BY MR. ENGLISH:

22 Q. Again, as we discussed with Maine, you are
23 proposing reducing that from the model by \$0.15, correct?

24 A. Which county are you looking at?

25 Q. I'm looking at Norfolk, Mass, where we have agreed
26 DFA has the Garelick plant in Franklin, Mass.

27 A. Correct.

28 Q. Okay. Is there any plant farther east than that



1 in Massachusetts?

2 A. Not that I'm aware of.

3 Q. And so the question I'm asking is, what justifies,
4 given your testimony about the need for getting milk into
5 Massachusetts as a deficit jurisdiction, what justifies
6 deviating from the model down \$0.15 for your own plant in
7 Norfolk, Mass, relative to Hood's plant in Hampden, Mass,
8 where no change is proposed to the model?

9 A. Again, as we were looking at this analysis and
10 what we were going to be proposing, there wasn't any, I
11 guess, discrimination amongst who owned the facilities,
12 whether it was HP Hood or DFA or another entity that's out
13 there that you have listed on this page. As we were
14 looking at differentials, we used a bit of that art that
15 we have talked about to make sure that there's alignment
16 among differentials that made sense from a practicality
17 standpoint and milk movement standpoint.

18 Q. If you are going to do that, and you are going to
19 lower -- okay, maybe it is a coincidence -- but your plant
20 in Rensselaer by \$0.05, why not also lower Hood by \$0.05
21 in Agawam?

22 A. Again, we did not look at it relative to ownership
23 of facilities. It was based upon all of the things I have
24 just discussed.

25 Q. So let's turn to New Jersey.

26 So your own testimony refers to the great joy that
27 all drivers have of paying tolls in and out of New Jersey,
28 correct?



1 A. It is a great joy, yep.

2 Q. And the model doesn't take into consideration
3 tolls, does it?

4 A. I'm sorry?

5 Q. The model does not take into consideration road
6 tolls?

7 A. I don't believe so.

8 Q. You went out of your way to mention tolls, and yet
9 for the plants located in Burlington, New Jersey, the
10 Florence plant owned by DFA, you are proposing, you know,
11 going down \$0.05 per hundredweight, correct?

12 A. That's currently what's proposed.

13 Q. Why wouldn't you, in consideration of all those
14 very high tolls, increase relative to the model?

15 A. My conversation on tolls was not necessarily to
16 look at this difference of the proposal and the average,
17 it was to align pricing between Pennsylvania and New
18 Jersey, as I spoke to within my testimony, that there is a
19 difference between delivering into the Philadelphia market
20 and the Southern New Jersey market. It was not
21 necessarily to discuss the changes from the proposal to
22 the average.

23 Q. But aren't those tolls relevant?

24 A. They are, and that's why they were discussed.

25 Q. Well, if they are discussed, how did you apply
26 them?

27 A. Well, if you look at the model, the average-of,
28 the model was already suggesting some higher pricing in



1 that Southern New Jersey region. We combined regions and
2 differentials to align better and ensure there was that
3 difference between Southeast Pennsylvania and New Jersey.
4 That was already discussed.

5 And while you are at it, the Cumberland facility,
6 just the row below that, was increased \$0.05. So there
7 was gives and takes along the way.

8 Q. I understand that. One might have expected it to
9 go up more than \$0.05 given the tolls?

10 A. The model was already suggesting an increase, and
11 we aligned with that at a differential.

12 Q. Speaking of Southeastern Pennsylvania, Wawa,
13 proprietary operator, line 2233, located in Delaware,
14 Pennsylvania, which is -- if you are coming north on
15 Interstate 95, it is the first county into Pennsylvania,
16 correct?

17 A. I'll have to look at a map to identify that.

18 Q. But you have proposed increasing it from the model
19 by \$0.10, correct?

20 A. That's correct.

21 Q. Okay.

22 THE COURT: So, Mr. English, I'm looking at this
23 Row 2233 on page 2 of Exhibit 369, and I'm curious. So
24 the name of the pool distributing and supply plant is
25 "Wawa, Media."

26 MR. ENGLISH: Media is the name of the city.

27 THE COURT: Oh, thank you. All right.

28 MR. ENGLISH: The county -- the county, of course,



1 is what's actually shown in Federal Order statistics.

2 THE COURT: So the county is Delaware,
3 Pennsylvania?

4 MR. ENGLISH: Delaware, Pennsylvania.

5 THE COURT: Thank you.

6 MR. ENGLISH: It is the Wawa facility in
7 Southeastern Pennsylvania.

8 THE COURT: Thank you.

9 BY MR. ENGLISH:

10 Q. You don't incur the tolls getting across the
11 Delaware River into New Jersey for that facility, correct?

12 A. Not to my knowledge because it's in Pennsylvania.

13 Q. I have already heard from Mr. John, but you are
14 also testifying about it. Washington, Maryland, is
15 increased \$0.10 per hundredweight.

16 Do you know why that's increased \$0.10 per
17 hundredweight?

18 A. Washington, Maryland?

19 Q. Yes, the county of Washington, Maryland, why do
20 you propose increasing that \$0.10 per hundredweight over
21 the model?

22 A. As Mr. John explained, there's a number of reasons
23 for changes in that region, and he has more than
24 adequately defined them.

25 Q. Okay. And I'm happy to rely -- if you have
26 anything different to say from Mr. John on the Maryland
27 and Northern Virginia kind of testimony.

28 A. I don't.



1 Q. Okay. There's been a number of questions asked of
2 witnesses about Grade A.

3 Are you aware of any cheese processors in the
4 Northeast who accept Grade B milk?

5 A. I don't know. I don't have that knowledge.

6 Q. Does DFA have any Grade B milk in the Northeast?

7 A. Not to my knowledge.

8 MR. ENGLISH: Your Honor, at this time I move
9 admission of Exhibits 366, 367, 368, and 369.

10 And I thank you, Ms. Ryll, for your time and
11 testimony, and I am complete once a ruling is made on
12 those exhibits.

13 THE COURT: Excellent. Thank you.

14 Now, I know there will be other cross-examination,
15 but it's time for a break. So after the break I'll deal
16 with the admission of the exhibits.

17 And please be back and ready to go at 3:17. We go
18 off record at 3:03.

19 (Whereupon, a break was taken.)

20 THE COURT: Let's go back on record.

21 We're back on record at 3:21.

22 MR. ENGLISH: Your Honor, before you rule on
23 the -- if I may beg your indulgence, I'm always allowed to
24 come back up, but I thought I'd just try to clean
25 something up. And I think I made this mess myself, so let
26 me see if I can do something.

27 BY MR. ENGLISH:

28 Q. Going back to the issue of over-order charges,



1 over-order premiums --

2 THE COURT: You're not projecting. I'm sorry. Go
3 again.

4 MR. ENGLISH: I need a cough drop.

5 BY MR. ENGLISH:

6 Q. Going back to the issue of over-order charges, and
7 I think I sort of had it backwards, which was probably
8 what was confusing.

9 Once you have an over-order charge, is it true
10 that DFA then, to those entities that qualify, provides a
11 uniform or universal receiving credit?

12 A. We do, and to those that have them.

13 Q. Okay. And have -- have those credits because they
14 have taken milk on an even basis so that you don't incur
15 as much balancing cost, correct?

16 A. Milk doesn't necessarily need to be taken to have
17 those programs established evenly -- or milk doesn't need
18 to be taken evenly to have those programs established.

19 Q. But nonetheless, you do have programs that credit
20 against an otherwise charge if a plant does things to
21 assist you with what otherwise would be balancing,
22 correct?

23 A. Yes. And there could be a variety of forms of
24 that across the Northeast.

25 Q. Great. Thank you. I appreciate that.

26 MR. ENGLISH: Okay. Now I'm done, Your Honor, and
27 I would again move the admission of the maps, you know,
28 that I have, plus the chart. I think it is 366, 367, 368,



1 and 369.

2 THE COURT: You are correct with no notes.

3 All right. Ms. Hancock, I would like to deal
4 first with your client's exhibits. Do you have any
5 objection to my determining now whether they can be
6 admitted into evidence?

7 MS. HANCOCK: Your Honor, my only objection is on
8 Exhibit 369. Again, it's not National Milk's document, it
9 is something that's been put together by MIG, and it
10 includes information about locations of plants. It does
11 cross-reference the others. But I don't have any
12 independent information about it.

13 So to the extent that we're just using it as
14 admitting it for purposes of reference and not for the
15 truth of what's in here, I think that's fine. But I don't
16 know that this witness can attest to the accuracy of the
17 information in here without verifying it.

18 THE COURT: Your response, Mr. English?

19 MR. ENGLISH: I'm for making things easy, so I
20 think it's still admissible if we have all the references
21 there. The one issue is Exhibit 52, which is the USDA
22 exhibit.

23 On the other hand, I'm not going to press the
24 point. So the author of this document will be testifying
25 at a later date. If it's preferable to put it on hold and
26 have it admitted at that time, as long as it can be
27 referred to by this -- you know, in this witness's
28 testimony, and perhaps in a future witness, I have -- I'm



1 not going to stand on ceremony to admit it today.

2 THE COURT: All right. I, on the other hand,
3 don't want to neglect admitting it into evidence. I love
4 these -- this page 3 where you clearly reference where you
5 got the material.

6 So Ms. Hancock's reservations about the exhibit
7 are noted, and we'll see what comes of the future
8 evidence, but in the meantime, I am going to admit it into
9 evidence.

10 MR. ENGLISH: Thank you, Your Honor.

11 THE COURT: But let me start with -- and I know
12 that ordinarily, Ms. Hancock, your custom is to wait until
13 all cross-examination is completed before you move the
14 admission of these exhibits, but I would like to get
15 Ms. Ryll's exhibits dealt with first, before I go to
16 Mr. English's.

17 So I'm going to do them one at a time.

18 Is there any objection to the admission into
19 evidence of Exhibit 360, which is NMPF-42?

20 There is none. Exhibit 360 is admitted into
21 evidence.

22 (Thereafter, Exhibit Number 360 was received
23 into evidence.)

24 THE COURT: All right. Is there any objection --
25 oops, sorry. So 361 I have lost. I have leaped to 362.

26 MS. HANCOCK: Your Honor, that is the
27 December 2001 Federal Milk Order Number 1, USDA document.
28 It looks like this (indicating).



1 THE COURT: Well, I labeled that as that's 42A,
2 and I said that it was 362.

3 MS. HANCOCK: 362 is 46B.

4 THE COURT: Oh, so I have misnumbered them.
5 That's where I'm mistaken. All right. All right.

6 Is there any objection -- here, let me go back and
7 double-check this. Stay on record, I'm okay.

8 All right. Very good.

9 Is there any objection to the admission into
10 evidence of Exhibit 361, which is NMPF-42A?

11 There is none. Exhibit 361 is admitted into
12 evidence.

13 (Thereafter, Exhibit Number 361 was received
14 into evidence.)

15 THE COURT: Is there any objection to the
16 admission into evidence of 362, Exhibit 362, which is
17 NMPF-42B?

18 There is none. Exhibit 362 is admitted into
19 evidence.

20 (Thereafter, Exhibit Number 362 was received
21 into evidence.)

22 THE COURT: Is there any objection to the
23 admission into evidence of Exhibit 363, which is NMPF-42C?

24 There is none. Exhibit 363 is admitted into
25 evidence.

26 (Thereafter, Exhibit Number 363 was received
27 into evidence.)

28 THE COURT: Is there any objection to the



1 admission into evidence of Exhibit 364, which is NMPF-42D?

2 There is none. Exhibit 364 is admitted into
3 evidence.

4 (Thereafter, Exhibit Number 364 was received
5 into evidence.)

6 THE COURT: Is there any objection to the
7 admission into evidence of Exhibit 365, which is NMPF-42E?

8 There is none. Exhibit 365 is admitted into
9 evidence.

10 (Thereafter, Exhibit Number 365 was received
11 into evidence.)

12 THE COURT: All right. Thank you, Ms. Hancock.

13 Now, turning to Mr. English's four exhibits.

14 Is there any objection to the admission into
15 evidence of Exhibit 367, which is MIG-39?

16 MR. ENGLISH: Your Honor, did you skip 366, which
17 is Maine? To your left. Sitting to your left, I think.

18 MR. HILL: MIG-50.

19 THE COURT: I did. Thank you very much. So let
20 me start with that one.

21 Is there any objection to the admission into
22 evidence of Exhibit 366, which is MIG-50?

23 There is none. Exhibit 366 is admitted into
24 evidence.

25 (Thereafter, Exhibit Number 366 was received
26 into evidence.)

27 THE COURT: Is there any objection to the
28 admission into evidence of Exhibit 367, which is MIG-39?



1 Q. So I'd like to just jump right into a few pieces
2 of your testimony, Exhibit 360, and start off with a
3 question that might obviate the need for a bunch more.

4 A. Okay.

5 Q. If I take it and I look at, beginning on page 2,
6 the bottom of page 2 through page 7, is the entirety of
7 that section intended to be background? In other words,
8 is it -- is that section of your testimony justification
9 for adjusting the differentials without specifically
10 asking for any particular county to be adjusted?

11 A. The intent of that section, which I believe is the
12 overview of the Northeast milk market, that section and
13 then some sections beyond that, would be to just provide
14 flavor and context for the Northeast milk market and
15 dynamics that are at play there.

16 Q. Okay.

17 A. Yep.

18 Q. So could I take that one step further and say that
19 there's nothing in that part of your testimony that's
20 particularly applicable to any individual county or any
21 individual deviation from the model?

22 A. Correct. It's not anything specific to a county
23 or a differential. It would be more so, again, that
24 general milk market information.

25 Q. Great. Okay.

26 So now I'm looking at the bottom of page 8, and
27 it's the very last sentence there which reads, "Any
28 changes with the Class I price surface should be taking



1 the changes that have been explained with milk production,
2 resident population, and the manufacturing footprint into
3 consideration."

4 Now, my understanding is that those particular
5 factors -- milk production, resident population, and the
6 manufacturing footprint -- those are some of the elements
7 that are included in the USDSS model.

8 Is that your understanding as well?

9 A. My understanding is that the model includes some
10 of those, correct.

11 Q. Okay. When you say it "includes some of those,"
12 does it not include any of those factors that you have
13 listed?

14 A. I don't know.

15 Q. Okay. And I now want to ask about a statement on
16 page 11 in the final paragraph. It's in the middle of
17 that paragraph, and you are talking about deliveries into
18 Winchester, Virginia, and disorderly milk marketing
19 because of the fact that that area is a border between
20 Order 1 and Order 5. Okay? And I wonder if you could
21 explain a little more what type of disorderly marketing
22 you envision if the prices there are not aligned as you
23 have requested.

24 A. Sure. So from a Winchester, Virginia, standpoint,
25 like I talked about, it is sort of in the intersect of
26 Federal Order 1 and 5, and a point -- our southernmost
27 point when it comes to our region that I represent.

28 As I think about what this paragraph is trying to



1 represent, it would just be to make sure that we are
2 aligning the price surface in an appropriate manner for
3 those deliveries into that southern region of our area,
4 and to not neglect the fact that that is important
5 delivery points and to not cross over them for potentially
6 a higher differential. So it was important to align
7 Winchester with not only the southern portion, but the
8 northern portion so that it was -- they're inequitable.

9 Q. Is the goal there to disincentivize milk from
10 moving from north to south to get into Order 5?

11 A. I don't think that there's any specific goal with
12 that alignment. It is just to ensure that any potential
13 disorderly marketing doesn't occur.

14 Q. Well, can you give us an example of what that type
15 of disorderly marketing might look like?

16 A. Like I mentioned before, it could be the potential
17 for milk to jump over that specific region and move
18 towards maybe different differentials or higher
19 differentials without, you know, that -- fulfilling a
20 demand point in Winchester.

21 Q. Is there insufficient milk there, in your
22 experience, to make sure that the plants in Winchester are
23 adequately served?

24 A. I'm uncertain of whether or not there is
25 sufficient supply. It -- like I mentioned, it is kind of
26 our southern area.

27 Q. Okay. So then if you could turn to page 14,
28 please.



1 And the first sentence after the map reads:
2 "There were some instances where the group chose to
3 utilize their experience on milk movements and historical
4 relationships with milk sheds to smooth out county
5 differentials to reduce negative impacts to dairy farmers
6 and Class I processing facilities."

7 I was hoping that you could expand a little bit on
8 what you mean by "negative impacts to dairy farmers and
9 Class I processing facilities."

10 A. Sure. So as we were thinking through this and how
11 milk is moving, as we have discussed previously, those
12 milk movements are important to be represented in the
13 differential scheme. So anytime there is a potential
14 where the proposed differential or the -- excuse me -- the
15 average was different than maybe what we see from a
16 practical standpoint of how we move milk, we wanted to
17 ensure that there was some art behind it to also signify
18 kind of the practicality of the current milk movement. So
19 it was more intended to utilize the -- how we're currently
20 moving milk compared to what maybe the average was. So
21 that's -- I -- what that intention of that sentence is, is
22 to ensure that we're doing that.

23 Q. And I -- I thank you for the answer, and I
24 understand the goal I think in broad terms. And I was
25 wondering if in -- what you are talking about here
26 specifically, if you had examples of what some of those
27 negative impacts might be for both dairy farmers and
28 Class I plants that we might be able to refer to.



1 A. I don't.

2 Q. Okay. If you would turn to page 17, please.

3 The paragraph in the middle of the page begins by
4 stating: There is potential for misalignment between the
5 orders if Western New York's final differentials relative
6 to Western Pennsylvania's are lower than those proposed,
7 I'll say.

8 What do you mean in that sentence by "potential
9 for misalignment between the orders"?

10 A. So that's really referring to the paragraph in
11 front of it that is speaking to some of the blend price
12 disparity between Order 1 and 33 today, some of it caused
13 by some difference in differentials with Western
14 Pennsylvania and Western New York. And so that sentence
15 is correlated closely to the paragraph above.

16 Q. In testimony yesterday, I don't recall if you were
17 here or not, but there was some -- the phrase "blend price
18 alignment" or something very similar to it was used.

19 What do you mean in your statement when you use
20 the term "blend price alignment"?

21 A. Where do I use "blend price alignment"?

22 Q. It is in the same paragraph: "The working group
23 gave careful consideration to blend price alignment."

24 A. Uh-huh. Again, that's that alignment between
25 Order 1 and 33. Again, today we have, as mentioned in the
26 previous paragraph, that disparity. So alignment would be
27 maybe a closer comparison between the two.

28 Q. When you use that term, does that include an



1 instance where a differential slope between the base price
2 point and another point would cause depooling?

3 A. I'm not certain that that's what causes depooling.

4 Q. So at least in the context you are using this
5 phrase, "blend price alignment" is not related to
6 depooling?

7 A. Correct.

8 Q. Okay. If you continue on in that same sentence,
9 you state that the "consideration to blend price alignment
10 between Western Pennsylvania and Western New York is in an
11 effort to not impact current market dynamics between
12 handlers and producers who face different pooling access
13 and producer prices between the orders."

14 Again, when you use the phrase "current market
15 dynamics," what do you mean by that?

16 A. So I speak to some of that regarding just milk
17 movements and that geography of how we are moving milk
18 from Western New York to Western Pennsylvania, and those
19 are the general milk marketing dynamics that I'm speaking
20 to.

21 Q. Are there any particular competitive issues or
22 customer concerns that you mean to encompass with your
23 phrase "current market dynamics"?

24 A. I don't believe so, no.

25 Q. On page 18, in the first paragraph, you make
26 reference to -- and that's -- I'll just read the sentence:
27 "Two of the three facilities are operated by the same
28 organization and are often looked at as a unit for milk



1 marketing purposes."

2 Which organization are you referring to?

3 A. HP Hood.

4 Q. Where you characterize those as a unit for milk
5 marketing purposes, is that Hood's characterization?

6 A. I'm not sure what their characterization would be.

7 Q. Is that -- is it DFA then that views it as a unit
8 for milk marketing purposes?

9 A. This example, yes.

10 Q. Okay. In the following paragraph you talked about
11 the tolls around New Jersey. Mr. English asked you some
12 questions about that. I have kind of a philosophical
13 question for you as a co-op.

14 A. Sure.

15 Q. If you -- if DFA is marketing that milk, and your
16 hauler, and therefore your members, have to bear that toll
17 expense, if you are asking for the differential to be
18 increased in order to offset those expenses, your members
19 don't receive the benefit, necessarily, of all of that
20 increased differential, do they?

21 A. Can you elaborate a little bit more?

22 Q. May be better if I just simplify it.

23 If the utilization in the order is say 50%, I know
24 it's lower but we'll just say 50%, and you are incurring a
25 \$30 toll, okay?

26 A. Okay.

27 Q. But you have now increased the differential in
28 part to compensate for those toll expenses, your producers



1 are only getting \$15 of that toll back in theory, correct?

2 A. Wouldn't that be the producers in the order, not
3 necessarily DFA specific producers?

4 Q. Well, that's the thing. I mean, your producers,
5 in general -- let's -- let me think about your answer for
6 a second. Maybe I answered too quickly.

7 Yes, let's say -- no, let me rephrase my
8 theoretical there.

9 A. Okay.

10 Q. If all of the toll is captured in the
11 differential, and DFA has 50% of the milk in the order,
12 your members will get 50% of that toll refunded, correct?

13 A. If I'm following your math, which again, I know is
14 an example --

15 Q. Yep.

16 A. -- right? I believe that would be accurate.

17 Q. So why, then, would you want to put the toll in
18 the differential as opposed to an over-order premium so
19 your members would be fully compensated?

20 A. So as we were looking at the differentials and the
21 model averages, I'm going to come back to those because
22 they did represent higher pricing into that area. So we
23 were not looking at it from a co-op specific or
24 proprietary or whoever else operates in the order, right?
25 We're signifying that there's increased costs in that
26 region, and it should be recognized through the mode in
27 which we are able to recognize it, which today is the
28 differentials.



1 Q. So is your example of the toll then more intended
2 to provide evidence for the increased cost of hauling
3 rather than a specific justification for a change to New
4 Jersey?

5 A. It supports the notion and the averages that were
6 presented from the study of why there is increase in the
7 need in that Southern New Jersey area for a different
8 differential from Southern Pennsylvania, as I have
9 explained.

10 MR. MILTNER: I think that's the end of my
11 questions. Thank you.

12 THE WITNESS: Thank you.

13 THE COURT: Thank you, Mr. Miltner. Who next will
14 cross-examine the witness? Is there anyone else who
15 wishes to ask Ms. Ryll questions before I turn to the
16 Agricultural Marketing Service?

17 There is no one. The Agricultural Marketing
18 Service may question Ms. Ryll.

19 CROSS-EXAMINATION

20 BY MS. TAYLOR:

21 Q. Good afternoon.

22 A. Hi.

23 Q. Thanks for coming to testify.

24 A. Thanks for having me.

25 Q. Just a few questions. I want to -- let's see. I
26 want to not be repetitive. I want to turn to page 6 in
27 your charts, and so I just want to make sure it's clear
28 for the record, so when we go back when this hearing is



1 over and try to process everything, we are reading these
2 charts right.

3 And so I'll start at Table 3, and if you could
4 just read a line, because I -- explain the numbers and
5 just pick a line. And I particularly want to make sure we
6 understand what the final column represents, so I think if
7 you do that, that would help.

8 A. Got it. Okay.

9 So I'm going to pick Maryland. So if you were to
10 look at the state of Maryland, and I'm looking at the year
11 2000. So Maryland, the population is -- again, this data
12 is coming from the census -- Maryland is represented by
13 5,311,000 residents.

14 The next column over is utilizing the per capita
15 milk beverage demand per person. So it is signifying that
16 on average in the U.S. folks have been drinking 197 pounds
17 of milk per year.

18 So then the next column over is looking at those
19 folks in Maryland and the average beverage demand that per
20 capita we have found through statistical information.
21 There it's saying -- it's multiplying those and it's
22 saying that based upon the information that we have, the
23 total milk beverage demand in the state of Maryland is
24 1,045,000 -- actually, it's not a million, that's in
25 millions. So would that be 1,045,000,000.

26 And then if you look across to the next column
27 which is milk production, so this is milk production, a
28 USDA statistic of how much in the year 2000 was produced



1 on dairy farms in the state of Maryland. You are looking
2 at 1-point -- I'm going to round up -- 1.4 billion pounds
3 of milk in Maryland.

4 So when you compare those two numbers, the total
5 milk beverage demand in the milk production, so you take
6 1 billion divided by 1.4 billion -- again, I'm rounding
7 here -- you get that 77%. So it's signifying --

8 THE COURT: Let me stop you.

9 THE WITNESS: Yep.

10 THE COURT: You said 1.4 billion.

11 THE WITNESS: Yes.

12 THE COURT: So that's not exactly right because
13 there's a zero in there.

14 THE WITNESS: Sorry, for that one I thought I said
15 1 million -- or 1 billion.

16 So the 1.045 billion pounds is the total milk
17 beverage demand, and that is then divided by the milk
18 production, which is 1.351 billion for the year. And so
19 it demonstrates that 77%, to the right, that their milk,
20 if you were to look at it apples to apples, 77% -- excuse
21 me, I'm doing the math here -- it's the beverage demand
22 compared to milk production. So in Maryland, for example,
23 they have more milk production compared to beverage
24 demand. So 77% of their milk production is utilized for
25 beverage demand in the state of Maryland. Theoretically,
26 right, in these charts, these math charts.

27 BY MS. TAYLOR:

28 Q. Okay. And I won't say conversely, but let's go to



1 Rhode Island where it says 738%. That's telling me that
2 actually their beverage demand is 738% of their actual
3 milk production --

4 A. Correct.

5 Q. -- so they need to import milk?

6 A. Correct. Yep. And I will say that I think
7 Mr. Gallagher from DFA will be here, and he can explain
8 some of these math tables later, because he is the -- he
9 helped create them.

10 Q. Okay. Thank you.

11 I want to turn to page 8. And a lot of this text
12 uses the data on the previous page about -- from Table 4
13 on producer milk receipts and what class they are used in
14 and in what zone they are used in.

15 And -- and so that talks about use of milk, your
16 data on the previous page, page 7.

17 A. Correct.

18 Q. But you have a sentence in here on page 8, and
19 it's the second to the last paragraph, it's a clause at
20 the end of the sentence, and I'll start, "Local milk
21 supplies are being utilized to fulfill Class II and III
22 demand, while Class I milk supplies must travel further
23 today at a higher cost per mile than before."

24 And I'm trying to -- I know there's been
25 discussion of that, but is there data in your testimony to
26 support that or is that based on your knowledge, you know,
27 working in that area? Because I didn't quite see the data
28 there. I could be missing it or it could be just based



1 off your knowledge since you have worked in that area for
2 a long time.

3 A. I believe that was primarily driven off the
4 knowledge of working in that region and where milk is
5 produced compared to where it's delivering to today versus
6 where it was, say, ten years ago.

7 Q. And can you talk a little bit about that, then?

8 A. Sure. So I think in the testimony I'm reviewing
9 primarily Class II and III growth in certain zones and
10 regions. And as I look at production in those certain
11 regions, I think you can notice that there's -- from my
12 knowledge, that there would be growth in those counties
13 associated with those zone differentials from a production
14 standpoint.

15 So to me, looking at the data, it would signify
16 that that milk is being utilized for those locations,
17 those Class II and III locations. And then we're
18 therefore, moving milk -- continuing to move milk to the
19 Class I market, and as discussed, the higher costs
20 associated with that hold true.

21 Q. On page 9 at the bottom, here you are talking a
22 little bit about your Farm Credit East February 2023
23 publication that I believe is an additional exhibit, and
24 you mention how it talks about other factors that
25 contribute to increased costs in addition to the ones you
26 talked about since you own and manage, DFA owns and
27 manages a fleet.

28 And I was just curious if you would elaborate on



1 what other costs -- assuming they are in the exhibit, but
2 since I haven't read that exhibit yet -- what other costs
3 are you talking about there?

4 A. So you are talking about what the Farm Credit is
5 talking about other costs?

6 Q. Yes. You talk about one factor, right?

7 A. Yeah.

8 Q. It goes on to say one factor is inconsistent truck
9 weights, volumes allowed on roads, et cetera.

10 But are there other costs besides that?

11 A. Yeah. So there are other costs that are discussed
12 beyond the road weight situation and local laws. Off the
13 top of my head I can't tell you exactly what they are.

14 Q. Okay. I did want to note, we were looking at your
15 Table 6 on page 13, and you went over that in detail with
16 Mr. English about there was a few differences between
17 what's in the table. But what we did notice, and I just
18 say this for people to look at, is I think your map
19 actually has the correct numbers, it's just the table that
20 might be different.

21 A. I think you are correct there.

22 THE COURT: So, Ms. Taylor, you are telling us
23 that if we use the numbers that are on page 14 on the map,
24 those may vary in a few instances from what we see in
25 Table 6?

26 MS. TAYLOR: Yes. But what's in Map 2 looks to be
27 consistent with what is in the actual proposal of National
28 Milk. And I just wanted to kind of note that for the



1 record if people see differences.

2 THE COURT: Thank you.

3 BY MS. TAYLOR:

4 Q. I'm going to turn next to pages 15, going into 16.

5 So at the bottom, and here you are talking about
6 Western New York, and there was the manufacturing side of
7 things, the plant expansions that have happened over
8 there. And what I gather, and I just want to make sure
9 I'm hearing this correctly, is out there, some of the
10 adjusted -- adjustments you made were to align those
11 counties because of the impact that the surface has on
12 producer pay prices.

13 Would that be correct?

14 A. Yes.

15 Q. And then I did want to note, because you have at
16 the bottom of that first paragraph on page 16, and I don't
17 think it's been discussed, the last sentence: "Regardless
18 of the outcome of this hearing, it is requested that a
19 modification be made to align the differentials between
20 Allegany" -- and some other county I can't pronounce --

21 A. Cattaraugus.

22 Q. -- "Cattaraugus Counties to reduce any disorderly
23 marketing of milk within Western New York that would
24 negatively impact farms."

25 So this is kind of a slight modification. I just
26 wanted to kind of inquire a little bit about that because
27 I don't think that's been discussed.

28 A. Sure. The scenario that's being discussed here is



1 that there is a new plant being built in Cattaraugus
2 County, and that plant is designed to be the replacement
3 for a plant in Allegany County. And so if you look today
4 at where those counties sit from a differential
5 standpoint, they are different. And when you think about
6 where that milk supply comes from to feed those two
7 facilities or that one facility that is currently
8 operating, that same milk supply will be supplying the new
9 facility in Cattaraugus County. And so the intention
10 there is just to ensure that there's alignment because we
11 will still be utilizing from the same milk supply as one
12 is being closed and another opened.

13 Q. Okay. Is it -- am I to take it that the ownership
14 of the plant closing and the plant opening is the same?

15 A. Correct. Yes.

16 Q. Okay. So that's a modification on top of any
17 other differential regardless of where the Department
18 comes out, you would like to see those aligned?

19 A. That's correct.

20 Q. And just to close the circle, you talk about
21 aligning those would reduce any disorderly marketing of
22 milk within Western New York that would negatively impact
23 farms.

24 Could you just expand on what you are talking
25 about there?

26 A. Again, that's specific to those volumes where one
27 would be -- the new facility would be, I guess a term
28 would be back-zoning because you are reducing the



1 differential at the new facility compared to --

2 Q. Oh, that's the way it goes --

3 A. -- the old facility.

4 Q. -- right now.

5 A. Correct.

6 Q. Okay.

7 A. Yep.

8 Q. I want to turn to page 17.

9 I think you talked to Mr. Miltner about this a
10 little bit, but I wanted to follow up on that second to --
11 second paragraph down starting with "historically." And
12 this is -- you're talking about a line -- let me see if I
13 wrote here, for blend price alignment between Orders 1 and
14 33, and you talk about currently in the \$2.00 zone it's
15 averaged a difference in blend of negative \$0.21 per
16 hundredweight --

17 A. Correct.

18 Q. -- over your time period.

19 Does that mean that in Order 33 is higher?

20 A. That's correct. Yep. 33 would be higher by \$0.21
21 compared to Order 1.

22 Q. So I just want to make sure we're clear.

23 So to producers they would rather, under the
24 current arrangement, as what I read, service Order 33
25 where they can get a higher pay price than Order 1. Is
26 that what I'm -- should interpret?

27 A. That would be an interpretation, yes.

28 Q. And that's currently a problem?



1 A. I'm not certain if it's a problem. I would say it
2 is a dynamic that's faced in Western New York and Western
3 Pennsylvania, that we need to -- we have looked at when it
4 comes to looking at that differential in that area, the
5 \$4.00 zone, the flattened \$4.00 zone.

6 Q. Is it a problem because then the plants in that
7 area can't get the milk they need because it wants to go
8 over to Order 33?

9 A. I think that -- again, I don't know if it would be
10 considered a problem. I think it was just looking at some
11 of the alignment and potential issues with how the
12 differentials are aligned today and how we're proposing
13 them.

14 So today, those differentials would cause that
15 Western New York milk to be moving backwards in zone if
16 it's facilitating movement. And in the current proposal,
17 they maintain the same one. So I think it would -- it's
18 not necessarily a problem, is not necessarily how I
19 would --

20 Q. It's just that milk is moving against the zones?

21 A. Correct. Yes.

22 Q. Okay. Further down on the bottom of the page, I
23 think you did discuss this with Mr. Miltner and I missed
24 it, so my apologies. There's a sentence in that last
25 paragraph how you are talking about from the two counties
26 there in New York, you wanted to enhance the relationship
27 these counties have with Suffolk County, Massachusetts.

28 I just wanted you to expand on what you mean by



1 "enhance the current relationship"?

2 A. Sure. That was meant to recognize the additional
3 cost compared to the \$0.75 spread that there is today
4 between those counties and Suffolk County. It increases
5 by \$0.15 to recognize that additional cost to service,
6 moving milk from Central New York to Suffolk County, or to
7 counties in that general geography.

8 Q. And that's an additional cost you think maybe the
9 model didn't account for?

10 A. That is -- yes. Yes.

11 Q. And what is -- what -- what kind of makes up that
12 additional cost?

13 A. Yeah. So some of it could be relative to hours of
14 service and at -- in drive time associated with moving
15 from kind of Central New York to Franklin is the example,
16 Suffolk County, Boston area. So hours of service, for
17 example, if drivers are having to lay over on their way
18 home will cost additional. Some other things that could
19 be included is you go over a mountain range, which would
20 be Berkshire, some would call them a hill, but I think
21 that some of those costs associated with that movement.
22 And in some cases there's permitting items relative to
23 states crossing over state borders that maybe are not
24 accounted for.

25 Q. Okay. Thank you. That's helpful.

26 And then on page 18, I hate to beat a dead horse,
27 but let's talk about the tolls again in New Jersey.

28 A. It's a nice subject.



1 Q. You talk about how you built in \$0.10 --
2 additional \$0.10 in New Jersey to account for that?

3 A. Yes.

4 Q. Just wondering kind of why \$0.10? Where did that
5 number come from?

6 A. So I think -- I'm going to come back to the model
7 on this and what the average of May and October did. To
8 some degree it did actually provide that differential
9 without me putting it in there. I think it was more so
10 in -- that \$0.10 is more so to ensure that we're
11 maintaining the spread between Southeast Pennsylvania and
12 Southern New Jersey. Again, the model was signifying that
13 it was an increased cost already, and we are just
14 providing some additional information to demonstrate the
15 need to keep that difference aligned.

16 Q. Okay. So I haven't looked at the model numbers on
17 those specific areas yet, but -- so what you are saying is
18 the model came out and did show an increase in -- increase
19 the slope between those areas, but there's additional
20 costs so National Milk has proposed an additional \$0.10 on
21 the New Jersey side.

22 Am I understanding that correct?

23 A. I don't believe that -- I think -- I think the
24 \$0.10 is the spread between the Southeast Pennsylvania and
25 Southern New Jersey. We didn't just plug in \$0.10 on
26 that. It was, again, a demonstration based on what the
27 model was telling us needed to happen, and that's why
28 there is that difference.



1 To make up some of it, I -- I provided detail on
2 the tolling, the toll information, the \$0.06, and then the
3 weight variance sizes, the weight restrictions that we
4 have.

5 Q. Uh-huh. Okay.

6 MS. TAYLOR: I think that's it from AMS. Thank
7 you.

8 THE WITNESS: Thank you.

9 THE COURT: Are there any other questions before I
10 ask for redirect?

11 Mr. Rosenbaum.

12 CROSS-EXAMINATION

13 BY MR. ROSENBAUM:

14 Q. Steve Rosenbaum, International Dairy Foods
15 Association.

16 Following up on questions by USDA, if you could
17 turn to Table 4 on page 7 of Hearing Exhibit 360, that
18 table is comparing the zone in which milk was received in
19 December 2001 versus December 2022, correct?

20 A. Correct.

21 Q. The higher zones are associated with the higher
22 population, right?

23 A. Generally speaking.

24 Q. I mean, Boston and New York would be the highest
25 for example, correct?

26 A. Generally speaking, yes.

27 Q. Okay. And so what -- and of course in the end,
28 the milk has to get delivered in a package to the consumer



1 at their grocery store, correct?

2 A. Sure.

3 Q. And so there's two legs of the journey: One is
4 the leg of the raw milk to the processing plant, and the
5 other is from the processing plant to the consumer,
6 correct?

7 A. Sure. Yes.

8 Q. And if I understand your table, what this is
9 showing is actually the processing has actually moved to
10 more rural areas closer to where the farms are between
11 2001 and 2020.

12 Is that a fair understanding?

13 A. For which class?

14 Q. Well, for all of them really. That is to say,
15 it's originally, in 2001, 17.7% of total receipts were
16 being received by a plant in the highest population area,
17 correct? Because they are the ones with the biggest
18 location differential, correct?

19 A. 17.7% was received in a 3.15 or above zone,
20 correct.

21 Q. And that would have been milk that was transported
22 to that processing facility in -- as raw milk, correct?

23 A. Correct.

24 Q. And whereas that's fallen to only 6.4% in 2020,
25 correct?

26 A. That's correct. There is some probably detail on
27 that surrounding farm location as well, right?

28 Q. Well, overall, I mean, the total amount, the total



1 receipts is actually pretty similar between 2001. It's a
2 little over 2 billion, and in 2022 it's 2.2 billion,
3 correct?

4 A. Correct.

5 Q. But the -- the location at which the milk stops
6 being the responsibility of the producer and starts being
7 the responsibility of the processor, that is actually that
8 point is now in a more rural area, correct?

9 A. If we're assuming that any zones that are less
10 than the 3.15 would be considered rural, yes.

11 Q. Okay. Well, I'm assuming the two -- well, I mean,
12 for example, the 2.35 and below, which is the low zone,
13 whereas previously 19.1% of the milk was received there,
14 now it's 27.3%, correct?

15 A. Correct.

16 Q. And as I say, to take the other extreme, the 3.15
17 and above, which previously was 17.7% of total receipts,
18 that's fallen to 6.4%, correct?

19 A. Correct.

20 Q. Is it fair to say the burden of getting the milk
21 to the actual consumer, that's actually shifted more to
22 the processor over the last 20 years?

23 A. I'm not sure that's fair.

24 Q. Is it fair to say that, in fact, it's more
25 expensive generally to transport packaged milk than raw
26 milk?

27 A. I don't have knowledge of how expensive it is to
28 transport packaged milk.



1 MR. ROSENBAUM: That's all I have. Thank you.

2 THE COURT: Ms. Hancock.

3 MS HANCOCK: Thank you, Your Honor.

4 REDIRECT EXAMINATION

5 BY MS. HANCOCK:

6 Q. Ms. Ryll, I just want to turn to page 13 of your
7 testimony in Exhibit 360.

8 I just want to -- I appreciate Ms. Taylor
9 commenting on the fact that the map on page 14 is correct.
10 I just want to make sure that as we finalize your
11 testimony into the record that we just correct those
12 items, because I know how hard you have worked on all
13 this, and I want it to be as perfect as you intended.

14 So I'm going to compare this with Exhibit 299,
15 which is actually National Milk's proposal. That's what
16 you had testified was actually the correct numbers to make
17 sure that we're using?

18 A. Correct.

19 Q. Okay. And so if we look at, on page 13, I'm on
20 Table 6 --

21 MS. HANCOCK: And Your Honor, I would ask if, as
22 she confirms these, that we can correct the record copy
23 that's in the record as well.

24 THE COURT: All right. Great. So make sure we're
25 all on the same page. We're all looking at Exhibit 360,
26 and we're on page 13. And we will change those as we go.

27 MS. HANCOCK: Okay. And I believe there's eight
28 total.



1 BY MS. HANCOCK:

2 Q. The first one being Frederick, Maryland, and your
3 proposed differential that you have noted in your chart on
4 Table 6 is 4.65, and that should be 4.60; is that right?

5 A. Correct.

6 Q. And the second one --

7 THE COURT: Wait just a second. So then don't we
8 also have to change the \$0.10 to \$0.05?

9 MS. HANCOCK: That's correct, Your Honor.

10 THE COURT: Okay. So the final two columns
11 we'll -- in each case, we'll make an adjustment in the
12 next to the last column. We'll also make an adjustment in
13 the last column. Okay.

14 BY MS. HANCOCK:

15 Q. Okay. And the next one would be New York.

16 And your testimony in Table 6 has \$4.10, and that
17 should be \$4.00; is that right?

18 A. That's correct.

19 Q. And so that should be negative \$0.05?

20 A. Correct.

21 THE COURT: So just put parentheses around it.

22 MS. HANCOCK: Very efficient.

23 BY MS. HANCOCK:

24 Q. And then if we go to the next one, if we're ready,
25 Berks, Pennsylvania. You have \$4.45, and that should be
26 \$4.50?

27 A. Correct.

28 Q. So that difference would be positive \$0.05?



1 A. Correct.

2 Q. And the next one would be Cumberland,
3 Pennsylvania. And similar we have \$4.45, and the correct
4 number should be \$4.50?

5 A. Correct.

6 Q. So that should be a positive \$0.15?

7 A. Correct.

8 Q. And the next one would be Lancaster, Pennsylvania.
9 It has \$4.55; it should be \$4.60?

10 A. Correct.

11 Q. And that would be a positive \$0.15 --

12 A. Correct.

13 Q. -- difference?

14 The next one would be like Lycoming, Pennsylvania.
15 It has \$4.25 currently; it should be \$4.20?

16 A. Correct.

17 Q. And then that would be a negative \$0.05
18 difference?

19 A. Correct.

20 Q. The next one would be Schuylkill, Pennsylvania?

21 A. It's a tough one.

22 Q. It is a little public quiz and my inability to
23 pronounce words.

24 It has currently \$4.45, and it should be \$4.50?

25 A. Correct.

26 Q. And so the difference would be a positive \$0.15?

27 A. Correct.

28 Q. And then finally, York, Pennsylvania, has \$4.55,



1 that should be \$4.60; the difference would be positive
2 \$0.15?

3 A. Correct.

4 Q. Okay.

5 MS. HANCOCK: And, Your Honor, that is all I have
6 for Ms. Ryll. I appreciate the indulgence to get those
7 corrected in the record copy.

8 THE COURT: All right. Are you comfortable with
9 what you have done? Very good. Would you bring it to me
10 and let me compare it with what I did just to be sure in
11 case I got it wrong? Thank you. Don't leave. This is
12 going to be very short.

13 We agree. Thank you. I'm happy.

14 MS. HANCOCK: Okay. Good. Thank you.

15 Your Honor, that is all we have for Ms. Ryll.

16 THE COURT: All right. Thank you. I am very
17 impressed with your work. Thank you.

18 THE WITNESS: Thank you.

19 THE COURT: I think it was very helpful. I think
20 your cross-examination was very helpful.

21 THE WITNESS: Thank you.

22 MS. HANCOCK: Your Honor, our next witness is
23 Mr. Scott Werme.

24 THE COURT: We want to take a little break? A
25 little five minutes?

26 We're all good. We'll keep going.

27 MS. HANCOCK: Good afternoon, Mr. Werme.

28 Your Honor, everyone should be receiving Exhibit



1 NMPF-43 that we'll mark as our next exhibit.

2 THE COURT: All right. Now, if I am caught up, I
3 do not want to misspeak, the next exhibit will be 370.

4 All right. So this will be Exhibit 370.

5 (Thereafter, Exhibit Number 370 was marked
6 for identification.)

7 THE COURT: And while that's being distributed,
8 would you please, Mr. Werme, in the witness stand, state
9 and spell your name.

10 THE WITNESS: Scott Werme, S-C-O-T-T, W-E-R-M-E.

11 THE COURT: So your last name ends in E?

12 THE WITNESS: Correct.

13 THE COURT: Thank you.

14 And have you previously testified in this
15 proceeding?

16 THE WITNESS: I have not.

17 THE COURT: All right. I'd like to swear you in.

18 SCOTT WERME,

19 Being first duly sworn, was examined and
20 testified as follows:

21 DIRECT EXAMINATION

22 BY MS. HANCOCK:

23 Q. Good afternoon, Mr. Werme.

24 Did you prepare Exhibit 370 in preparation for
25 your testimony today?

26 A. I did.

27 Q. Would you mind providing us with that testimony,
28 just being mindful of your reading speed for the court



1 reporter.

2 A. I will.

3 Q. Thank you.

4 A. Thank you for the opportunity to testify. My name
5 is Scott Werme. I retired from Agri-Mark in 2021 after a
6 31-year career with the cooperative. During my career, I
7 held positions in nearly every corner of the cooperative,
8 starting as a field representative and moving to other
9 supervisory roles such as plant manager, plant accounting,
10 and hauling and transportation manager. My last position
11 was senior vice president of membership, a role that
12 included membership services and overseeing bulk fluid
13 sales of member milk to the region's milk processors.
14 Agri-Mark retained me post-retirement as a consultant to
15 assist with special projects and the transition of
16 leadership, where I have experience and expertise.

17 Agri-Mark, a dairy cooperative in the Northeast,
18 is owned and operated by over 550 dairy farm families
19 across New England and New York. Our members are pooled
20 in Federal Order 1. The cooperative has been marketing
21 milk for dairy farmers since 1916 and has headquarters in
22 Andover, Massachusetts, and Waitsfield, Vermont. Those
23 farm families supply more than 3.2 billion pounds of farm
24 fresh milk that we use to make our award winning Cabot
25 branded cheeses, dairy products, and ingredients.

26 Agri-Mark operates three cheese manufacturing
27 facilities located in Cabot, Vermont; Middlebury, Vermont;
28 and Chateaugay, New York.



1 THE COURT: And would you spell Chateaugay for us.

2 THE WITNESS: C-H-A-T-E-A-U-G-A-Y.

3 THE COURT: Thank you.

4 THE WITNESS: These are pooled supply plants. The
5 cooperative manufactures and markets valuable whey
6 proteins around the world, produced at the Middlebury,
7 Vermont, facility. Agri-Mark also operates a butter
8 powder facility in West Springfield, Massachusetts, that
9 is a non-pooled supply plant. Additionally, Agri-Mark
10 supplies fresh fluid milk to the region's largest dairy
11 processors.

12 I am testifying today on behalf of Agri-Mark and
13 our 550 dairy farm families. I have been marketing milk
14 in the cooperative for seven years. I have considerable
15 experience in moving milk through the region and within
16 the confines of Federal Order 1.

17 Agri-Mark is in full support of National Milk
18 Producers Federation proposal for modernization of the
19 Federal Milk Marketing orders. More specifically,
20 Agri-Mark supports NMPF Proposal 19, update the Class I
21 differentials pricing surface throughout the United
22 States.

23 The current Class I pricing surface map was a
24 product of the Federal Order Reform process that concluded
25 with implantation of new or revised regulatory policies in
26 2000. NMPF's proposal to evaluate the Class I
27 differentials is critical to our overall efforts of FMMO
28 modernization.



1 Since 2000, the dairy industry and landscape has
2 changed significantly. The number and location of farms
3 and fluid milk processors, consumer demand, and population
4 centers have all changed dramatically. Witnesses who have
5 preceded me have entered data into the hearing record to
6 support this. A driving factor for milk marketing over
7 the last 20 years is the enormous change in the cost of
8 transporting raw milk.

9 As others mentioned in previous testimony, the
10 NMPF proposal for Class I differentials has its foundation
11 in modeling results published by the University of
12 Wisconsin. The model's outputs using data from May '21
13 and October 2021 were averaged to reduce variability. As
14 has been discussed previously, individual cooperative
15 representatives were broken up by region to allow for more
16 detailed and specific conversations.

17 The Northeast working group was then tasked with
18 comparing the results of the model to see if estimated
19 milk values derived from the model were consistent with
20 actual milk movements and historical relationships.
21 Ultimately, the group was asked to determine if adoption
22 of the model's output would help to promote orderly milk
23 marketing given current or future plant locations.

24 In the Northeast region, most counties fell within
25 a reasonable relationship with the average of the model's
26 May 2021 and October 2021 outputs. Compared to current
27 Class I differentials, the model resulted in much higher
28 values at nearly all locations. Justifications for these



1 increases were due to significant changes in the dairy
2 landscape over the past 20 years, and especially changes
3 in historical milk movements.

4 I will focus my testimony on the areas of the
5 Northeast in which I have expertise, in which the NMPF
6 proposed differentials differ significantly from the
7 output of the model, namely Maine, Northern Vermont, and
8 Northern New York.

9 Maine: The differentials generated by the model
10 were lower for Maine and Southeastern New Hampshire.
11 However, there are two Class I plants in Cumberland
12 County, Maine, that rely on local milk. If the model
13 results were adopted unchanged, the respective
14 differentials would have incentivized Maine milk to leave
15 the state for plants in Eastern Massachusetts;
16 additionally, the Southern New Hampshire milk would have
17 been incentivized to flow into western Massachusetts. To
18 prevent incentivizing counterintuitive milk movement, the
19 Northeast working group agreed to flatten the proposed
20 Class I differentials for the Maine zones to keep the
21 relationships consistent with the current Class I
22 differentials. The average increase for Class I
23 differentials in Maine was \$0.23 per hundredweight above
24 the model output.

25 So, Your Honor, I would like to pause there for a
26 moment. The last time we were here, I don't know if
27 something was said by one of the folks testifying, and I
28 went back to double-check those numbers that I had entered



1 as my testimony, and as it turns out, I used the
2 differentials for the area correctly, but took the
3 difference from the wrong column. I used the October
4 column rather than the average column. So I would like to
5 be able to correct those here today.

6 THE COURT: You are certainly welcome to. Now,
7 it's interesting, because the witness who just stepped off
8 the stand on purpose used the October data.

9 THE WITNESS: I caught that.

10 THE COURT: But you didn't intend to.

11 THE WITNESS: No, I did not intend to.

12 THE COURT: All right.

13 THE WITNESS: Okay.

14 THE COURT: So, yes, you will certainly -- now,
15 the easiest way for us to do this is as we dwell on every
16 change you want to make, we'll make it on the record copy.

17 THE WITNESS: Three changes.

18 THE COURT: Okay.

19 THE WITNESS: So the first one, Maine was -- I
20 wrote Maine was \$0.23. It should be \$0.39.

21 THE COURT: All right. So this is in your
22 paragraph on page 2 of Exhibit 370, also NMPF-43, in the
23 paragraph on Maine, the last full line, we are changing
24 \$0.23 per hundredweight to what?

25 THE WITNESS: \$0.39 per hundredweight.

26 THE COURT: \$0.39 per hundredweight. Thank you.

27 THE WITNESS: Northern Vermont: In Vermont's
28 northernmost counties, the Northeast working group reduced



1 the differentials by \$0.35 per hundredweight from the
2 model's results.

3 That \$0.35 should read \$0.20.

4 THE COURT: 2-5.

5 THE WITNESS: 2-0. Sorry. \$0.20.

6 THE COURT: \$0.20, 2-0. All right. So we're
7 changing \$0.35 per hundredweight to \$0.20 per
8 hundredweight.

9 THE WITNESS: Correct.

10 THE COURT: 0.20 dollars per hundredweight. All
11 right.

12 THE WITNESS: In this region there are no
13 significant delivery points and none are expected in the
14 near future. Milk generally flows to Eastern
15 Massachusetts, Western Massachusetts, and Vermont points
16 further south. The lower differentials in Northern
17 Vermont provide more of a slope to incentivize milk
18 movement and better offset the cost of moving milk to
19 these locations.

20 Northern New York: In Northern New York, the
21 Northeast working group reduced differentials \$0.30 per
22 hundredweight below the model's output.

23 That should read \$0.15 per hundredweight.

24 THE COURT: All right. So on the first line under
25 "Northern New York" on page 2, we are putting \$0.15?

26 THE WITNESS: 15.

27 THE COURT: 1-5.

28 THE WITNESS: 1-5.



1 THE COURT: And striking the \$0.30 per
2 hundredweight.

3 THE WITNESS: I apologize for this, but I'm glad I
4 caught it.

5 THE COURT: Yeah. Actually, you know, I'm sorry,
6 it's all good. But you specifically wanted to use the
7 October --

8 THE WITNESS: The average.

9 THE COURT: Oh, the average rather than the
10 October?

11 THE WITNESS: Correct.

12 THE COURT: Understood.

13 THE WITNESS: This was especially necessary for
14 the significant supply in St. Lawrence and Jefferson
15 Counties. Milk from these counties needs to move east.
16 The lower differentials at the source counties increased
17 the slope needed to incentivize appropriate milk movements
18 to Northeastern New York and North and Central Vermont.

19 In summary, Class I differentials are outdated and
20 need modernization to reflect the changes in the dairy
21 industry since 2000. The University of Wisconsin model
22 provides a sound and logical basis for updating Class I
23 differentials. However, as noted above in the examples of
24 Maine, Northern Vermont, and Northern New York,
25 modifications from model results are necessary to preserve
26 actual milk movements and historic relationships and to
27 maintain orderly marketing of milk.

28 THE COURT: All right.



1 Ms. Hancock.

2 MS. HANCOCK: Thank you, Your Honor, at this time
3 we would make Mr. Werme available for cross-examination.

4 THE COURT: Thank you.

5 Who will begin?

6 MS. BULGER: Good afternoon.

7 THE COURT: Good afternoon.

8 CROSS-EXAMINATION

9 BY MS. BULGER:

10 Q. Grace Bulger for Milk Innovation Group.

11 Thank you for your patience, Mr. Werme. I had a
12 lot of questions about the October or average difference,
13 so I was just rearranging a few things.

14 A. Okay.

15 MS. BULGER: But I do have a few exhibits that I
16 would like to ask to have in front of the witness.

17 THE COURT: Yes. Tell us which ones they are.

18 MS. BULGER: So -- and I apologize if I don't use
19 these -- because, like I said, thank you for sparing me
20 some questions. Exhibits 53, 58, 301, 366, 368, and 369.

21 THE COURT: Okay. I'll supply the 301, and you
22 may approach the witness with my extra copy of that one.
23 And he has a yardstick.

24 Also, I'm going to -- some of these don't need a
25 yardstick, but they still need a ruler.

26 THE WITNESS: Okay. Thank you.

27 THE COURT: Now, the others we're gathering, so
28 let's go off record for just a moment.



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

2 THE COURT: Let's go back on record.

3 We're back on record at 4:39.

4 Ms. Butcher (sic), you may proceed.

5 MS. BULGER: Thank you.

6 BY MS. BULGER:

7 Q. Good afternoon, Mr. Werme.

8 A. Good afternoon.

9 Q. So you say on page 1 of your testimony that
10 Agri-Mark operates three cheese manufacturing facilities:
11 Two in Vermont, one in New York, which were pool supply
12 plants, correct? And Agri-Mark also operates a butter
13 powder facility in Massachusetts which is a non-pool
14 supply plant, correct?

15 A. Correct.

16 Q. For each of those, can you tell me whether they
17 are full supply or balancing plants?

18 A. The one in West Springfield is a balancing plant.
19 The others are full supply, running either seven days a
20 week or -- the Cabot plant runs five or six days a week.

21 Q. Are these plants supplied only by
22 Agri-Mark-produced raw milk?

23 A. Yes.

24 Q. And Agri-Mark supplies raw milk to the region's
25 dairy processors, right?

26 A. It does.

27 Q. Who does Agri-Mark supply fresh fluid milk to?

28 A. Well, we supply a number of customers that are



1 Class II, Class I, Class III. I don't think we supply any
2 Class IV plants. Occasionally we do, and they are pretty
3 much all over New England, in every state.

4 Q. So are all of those processors fully regulated on
5 Order 1?

6 A. I'm not sure about the smaller ones, but I would
7 say yes. The large ones are for sure.

8 Q. Are any of those processors partially regulated?

9 A. I don't know that.

10 Q. What portion of Agri-Mark's milk goes to
11 Agri-Mark's plants?

12 A. How about 75%.

13 Q. I have a few questions about your involvement in
14 working on the proposed differentials.

15 And so my first question is: What group were you
16 in?

17 A. Federal Order 1, Northeast.

18 Q. Who else was in your group?

19 A. There were folks from Virginia Upstate, DFA, and
20 Land O'Lakes, I believe.

21 Q. When did you begin working together?

22 A. I came into the process late actually. Our
23 economist, Catherine de Ronde, asked me, invited me to the
24 conversation probably, I don't know, halfway in, maybe.

25 Q. And what was your specific role?

26 A. Early on she just wanted me to sit in on the calls
27 to listen in and to sort of vet what was happening against
28 what I used to do for the cooperative, which was find



1 homes for all the milk.

2 Q. So when you started working with this group, your
3 expectation was -- was your expectation more so to be
4 listening?

5 A. Yes.

6 Q. Yes?

7 And did you -- did you end up contributing more
8 directly?

9 A. Yes. But mainly on what I testified to today.

10 Q. So on page 2 of your testimony you say that the
11 Northeast working group was asked to determine if the
12 adoption of the model's output would help promote orderly
13 milk marketing given current or future plant locations.

14 A. Yes.

15 Q. How would you define orderly marketing?

16 A. I would define orderly marketing as how milk
17 really moves in a region. How it actually moves, where it
18 comes from, how we arrange hauling, and whether it moves
19 hopefully with the zones rather than against the zones.

20 Q. So you said "in a region."

21 What in your mind is needed in the Northeast to
22 promote orderly marketing?

23 A. I would say it's knowing where all the milk is,
24 knowing where -- and I can -- I'm really only speaking for
25 Agri-Mark on this, but knowing where all our milk is, how
26 many pounds is in each area of our co-op. We have hauling
27 areas that we break things up into so that we know where
28 the milk is, and to know what we have -- what we have set



1 up for contracts for the following year and what our
2 plants -- what our individual plants take, and what they
3 need every day, and what our orders are that come in --
4 typically in our business they come in -- well, in Federal
5 Order 1 they come in -- they start coming in on Thursdays
6 the orders come in.

7 Q. When you began your work, were you open to the
8 idea that the model output could be sufficient as is?

9 A. I don't know that I had an opinion on that early
10 on.

11 Q. Like I -- I read from your testimony that you were
12 asked to determine if the adoption of the model output
13 would help to promote orderly milk marketing.

14 Did you answer that question independently, if
15 adoption of the model's output, on its own, would help to
16 promote orderly milk marketing before making adjustments?

17 A. I would say that that -- I was -- that -- I came
18 to that opinion probably in one of the joint calls with
19 the -- with what we were tasked to do in looking at the
20 orders in the Northeast, looking at the differentials.

21 Q. Did the group consider that a threshold question
22 before making adjustments, whether on its own it --

23 A. Could you kind of clarify that?

24 Q. I guess I'm asking if -- if the group was asked to
25 determine if the adoption of the model's output would help
26 to promote orderly milk marketing, before making any
27 adjustments, did the group have a conversation about just
28 the answer to that question with the model output on its



1 own?

2 A. I think the group realized pretty early on that
3 there were areas in the model that we would need to look
4 at to improve the orderly milk marketing.

5 Q. And back to that quote one more time, "given
6 current or future plant locations," which future plant
7 locations are you referring to?

8 A. At the time we knew that -- Skylar talked about
9 earlier today -- that there was going to be a new large
10 Fairlife plant in New York, and Great Lakes Cheese was
11 going to build, or is in the process of building, a plant
12 that would actually double the intake of the plant that is
13 closing.

14 Q. And is that replacing an existing plant?

15 A. I believe it is.

16 Q. And now I want to point to page 1 of your
17 testimony. I apologize for jumping around a bit.

18 You say that the dairy industry and landscape has
19 changed significantly since 2000, and specifically you
20 refer to changes in the number and location of farms and
21 fluid milk processors, consumer demand, and population
22 centers.

23 So how for each of those three factors -- and I
24 can repeat them back to you if you need -- how have they
25 changed?

26 A. In terms of farms, I can only speak for us, of
27 course, but I would say back in 2000 we had over 2,000
28 farms. Now we're down to 550-ish. We're at 3.2 billion



1 pounds of milk. I don't know what the number was in 2000,
2 but it was much less. It was probably 2.5 billion pounds
3 of milk, I would guess. There have been a lot of plant
4 closings. I know from my product accounting days in West
5 Springfield, kind of where a lot of milk came from at the
6 time, and where we bought cream from to run our butter
7 plant, and there's a lot of those plants that don't exist
8 anymore.

9 Q. And so talking about factors -- and, now, I'm
10 sorry, again, to jump to -- on page 2 of your testimony,
11 you say, "A driving factor for milk marketing over the
12 last 20 years is the enormous change in cost of
13 transporting milk"?

14 A. Uh-huh.

15 Q. A driving -- I wonder -- a driving factor towards
16 what? What do you mean by "a driving factor"?

17 A. The driving factor in the cost of moving milk.
18 The change in the cost of moving milk, even from when I
19 became more intimately involved in it in 2015 to when I
20 retired six years later, the cost of moving milk increased
21 quite dramatically. Haulers needed an increase. We were
22 losing haulers because they couldn't get paid enough, and
23 we had to constantly send out cost surveys to our haulers
24 to make sure that they were being paid correctly. And
25 they never went down.

26 THE COURT: The costs never went down?

27 THE WITNESS: The costs never went down.

28 BY MS. BULGER:



1 Q. And are you familiar with the University of
2 Wisconsin model?

3 A. Since becoming part of this, yes.

4 Q. Do you agree that the University of Wisconsin
5 model factors in hauling costs to its output?

6 A. Yes.

7 Q. In your opinion, does the University of Wisconsin
8 model sufficiently take into account the various changes
9 that you have described?

10 A. I believe so.

11 Q. Okay. Thank you.

12 When -- I have a -- when selling its member milk,
13 has Agri-Mark ever negotiated an over-order premium?

14 A. When we sell milk to our customers, we're always
15 trying to negotiate an over-order premium. We call it a
16 service charge.

17 Q. So with the Class I plant?

18 A. Class I, II, III, wherever we sell it. We're
19 trying to get the most we can for it.

20 Q. So you're always trying to get the most you can.
21 How frequently do you negotiate them?

22 A. Well, there are certain customers we negotiate
23 contracts for once a year. Okay? And eventually it
24 settles. It usually settles in in some class-plus price,
25 and it depends on how much milk there is in the
26 marketplace. It's changed over the years.

27 And then there is -- there's customers that don't
28 want to negotiate a contract, they would rather buy it on



1 a weekly basis. And so they call the different co-ops
2 around that can supply milk, and they try and get the best
3 price, and, of course, we try and get the most we can.

4 Q. If the Class I differentials that National Milk
5 has proposed are adopted, will that reduce Class I
6 premiums charged in the region that you are discussing?

7 A. I don't really know that for sure.

8 Q. Okay. So I had some questions about the
9 reductions in differentials or raising them from the
10 numbers, but after your corrections I don't have as many.

11 I do have -- so thank you.

12 I do have a general sort of question. In your
13 testimony, you -- when you talk about Vermont, you say
14 that the Northeast working group reduced differentials
15 by -- and you have corrected this -- to \$0.20 --

16 A. \$0.20, yes.

17 Q. -- per hundredweight from the model results.

18 When for New York, you say, similarly, the
19 Northeast working group reduced differentials, and that's
20 been corrected to \$0.15 --

21 A. Correct.

22 Q. -- per hundredweight.

23 And for Maine, on page 2, you say the average
24 increase for Class I differentials in Maine was -- and you
25 have corrected that to \$0.39 --

26 A. Yes.

27 Q. -- per hundredweight above the model output.

28 And so I guess my overall question is, for Vermont



1 and New York, it almost sounds like that is a standard
2 reduction that you made across the board versus Maine you
3 refer to an average number.

4 And so I just wanted to clarify --

5 A. Oh.

6 Q. -- if you are talking about for Vermont's
7 northernmost counties?

8 A. Well, I actually averaged all of them.

9 Q. Okay.

10 A. Okay. I don't know whether it was consistently --
11 I would have to look to see if it was consistently \$0.15,
12 for example. But I -- I ended up redoing, subtracting
13 from the correct column, and then using the Excel average
14 function to get the average.

15 Q. I went through when I was looking at your
16 testimony and averaged the counties in Maine, and I came
17 up with \$0.39, so I was -- that made me feel good about my
18 math when you corrected it to that.

19 A. Okay.

20 Q. One moment.

21 I would like to direct you to the portion of your
22 testimony where you are talking about Maine. That's what
23 I want to focus on. And that is MIG -- or Hearing
24 Exhibit 366 is the map of Maine.

25 A. Uh-huh.

26 Q. Perhaps more useful to me than you.

27 A. Actually I have my own.

28 Q. So you refer to two Class I plants in Cumberland



1 County that rely on local milk in your testimony?

2 A. Yes.

3 Q. Which two plants are those?

4 A. Oakhurst and a Hood plant, both in Portland.

5 THE COURT: Oakhurst was the first one?

6 THE WITNESS: Yes, Oakhurst.

7 THE COURT: Thank you.

8 BY MS. BULGER:

9 Q. If I could point you to Hearing Exhibit 369, which
10 also says Exhibit MIG-55 in the corner. It's the smaller
11 spreadsheet.

12 A. Oh, 369. Yep.

13 Q. So near the top of page 1, let's see, in Row 1146?

14 A. Uh-huh.

15 Q. Looking at Cumberland County in Row 1146, the
16 model average was \$4.50?

17 A. Yes.

18 Q. And NMPF is proposing a differential of \$4.85,
19 correct? And that -- you can see that just on the same
20 spreadsheet as well?

21 A. Uh-huh. Yes.

22 Q. So that's a \$0.35 increase from the model average,
23 correct?

24 A. Correct.

25 Q. And as we have discussed, the average increase
26 from the model average across Maine was \$0.40, \$0.39?

27 A. \$0.39.

28 Q. So in comparison to other counties in Maine,



1 National Milk proposed a smaller increase from the model
2 output for Cumberland County?

3 A. Yes.

4 Q. Why?

5 A. Because it was further south and it was closer to
6 where the end point of Maine is. And what we were more
7 actually looking at was where the milk was actually coming
8 from. Like, for example, Agri-Mark doesn't have much --
9 many farms in those southern two counties. Most of the
10 milk is further north in Penobscot County, and Kennebec,
11 Somerset, and Piscataquis County. So that's where the
12 milk comes from, so that's where we took the biggest
13 changes from the model to flatten the entire -- the entire
14 part of the Maine where the milk is located.

15 THE COURT: Looking at Exhibit 366, would you tell
16 me these three counties again where the milk comes from?

17 THE WITNESS: Most of our milk comes from
18 Kennebec, Somerset, Penobscot, and Piscataquis.

19 THE COURT: So Kennebec is not very far north.
20 And would you spell that one?

21 THE WITNESS: Kennebec?

22 THE COURT: Yes.

23 THE WITNESS: K-E-N-N-E-B-E-C.

24 THE COURT: All right. And then the other three
25 you mentioned?

26 THE WITNESS: Somerset, Penobscot --

27 THE COURT: And spell that one, please.

28 THE WITNESS: P-E-N-O-B-S-C-O-T.



1 THE COURT: All right. And the last one?

2 THE WITNESS: Piscataquis.

3 THE COURT: And spell that one.

4 THE WITNESS: P-I-S-C-A-T-A-Q-U-I-S.

5 THE COURT: Thank you.

6 BY MS. BULGER:

7 Q. So on page 2 of your testimony, the third sentence
8 under when you are talking about Maine, you say that if
9 the model results were adopted unchanged, the respective
10 differentials would have incentivized Maine milk to leave
11 the state for plants in Eastern Massachusetts.

12 How much Maine milk leaves the state for plants in
13 Eastern Massachusetts under the current differentials?

14 A. I can tell you that the majority of our milk stays
15 in Maine right now. There's two or three loads a day that
16 leave the state. And we kind of wish they wouldn't, but
17 they do.

18 THE COURT: I hate to interrupt, but it's
19 5 o'clock, and I want to take just a few minutes to talk
20 about what we're going to do tomorrow.

21 And I want to know whether you would like to
22 collect your original exhibits to keep them overnight and
23 then give them back to the witness when he resumes. So if
24 you would come forward, and I would like the witness to
25 hand all of those, except 301, to the Agricultural
26 Marketing Service to keep, to return to you later, and
27 I'll take 301 because that one came from me. Thank you.
28 I'll allow this to stay at the witness stand. Thank you.



1 So can you remember where you were? All right.

2 And whom shall I ask as to how we will proceed
3 tomorrow? Should I ask Ms. Hancock?

4 MS. TAYLOR: Once we do that, we would just like
5 to quickly put on two exhibits that we did get printed.
6 That will only take a minute.

7 THE COURT: Okay. Great.

8 Ms. Hancock, yesterday people said no way would
9 you use the time with the witnesses you had lined up. Oh,
10 ye of little faith.

11 Ms. Hancock, how would you like to proceed
12 tomorrow?

13 MS. HANCOCK: So, tomorrow, Your Honor, we will
14 finish Mr. Werme. And then in some order, although I
15 don't know if this is the order, we have Johnny Hiramoto,
16 Brent Butcher, Mike Hurting, John Kang. Dr. Cryan will go
17 on some point just to make sure that he is on and off.

18 THE COURT: Who did you say after Hurting?

19 MS. HANCOCK: John Kang, K-A-N-G. And then
20 Dr. Cryan.

21 THE COURT: Does anybody have any questions about
22 that? Did you hear?

23 Mr. English.

24 (Discussion had in the back of the room, not
25 reported.)

26 THE COURT: Very good.

27 Ms. Taylor, you have the floor.

28 MS. McMURTRAY: Yes, Your Honor. This is Michelle



1 McMURTRAY. I am with the Office of the General Counsel at
2 USDA on behalf of the Agricultural Marketing Service. We
3 want to enter two exhibits that are just required by the
4 regulations just to make sure that they are on the record.

5 So the first one we have, I believe it's marked as
6 Exhibit 371, I believe is our next one, and it is the
7 Federal Register notice that just notices the reconvening
8 of the hearing. It is Federal Register Volume 88, number
9 213, published Monday, November 6th, 2023. Oh, and then
10 the page number is 76143.

11 (Thereafter, Exhibit Number 371 was marked
12 for identification.)

13 MS. McMURTRAY: And our second exhibit is the
14 press release that was posted on USDA's website. We have
15 it marked as Exhibit 372.

16 (Thereafter, Exhibit Number 372 was marked
17 for identification.)

18 MS. McMURTRAY: Once again, just required by
19 the regulations, making sure that notice of the hearing is
20 given to those who are interested.

21 So we would just -- we don't have any sponsors
22 just because they are required by the regulations, so we
23 would just ask that they be moved into part of the record.

24 And they are on the hearing website. We don't
25 have copies for everyone today, but they are there.

26 THE COURT: Yes. All right.

27 Is there any objection to the admission into
28 evidence of Exhibit 371, which is the Federal Register



1 notice of our reconvened hearing that we began yesterday?

2 There are none. Exhibit 371 is admitted into
3 evidence.

4 (Thereafter, Exhibit Number 371 was received
5 into evidence.)

6 THE COURT: Does anyone object to the press
7 release that announced what was in that Federal Register
8 notice that has been marked as Exhibit 372?

9 There is no objection. Exhibit 372 is admitted
10 into evidence.

11 (Thereafter, Exhibit Number 372 was received
12 into evidence.)

13 THE COURT: All right. Is there anything further
14 before we end for the day?

15 There is not. We will be in recess until tomorrow
16 morning at 8:00 a.m., and we now go off record at
17 5:05 p.m.

18 (Whereupon, the proceedings were concluded.)

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1 STATE OF CALIFORNIA)
) SS
 2 COUNTY OF FRESNO)

3

4 I, MYRA A. PISH, Certified Shorthand Reporter, do
 5 hereby certify that the foregoing pages comprise a full,
 6 true and correct transcript of my shorthand notes, and a
 7 full, true and correct statement of the proceedings held
 8 at the time and place heretofore stated.

9

10 DATED: January 4, 2024

11 FRESNO, CALIFORNIA

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16 MYRA A. PISH, RPR CSR
 17 Certificate No. 11613

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\$			1
	\$0.80 8485:22	8393:26 8427:26,27 8480:15,22 8482:3	
	\$0.85 8383:12,18	\$3.20 8395:22	1 8385:6 8387:21,24,27
\$0.01 8488:4	\$0.90 8367:25 8369:25 8374:22 8496:20	\$3.30 8375:14,24 8377:27	8388:2,7,27,28 8389:3,6 8391:18,23 8392:20 8393:24
\$0.03 8463:23 8489:17	\$1 8534:23 8535:10	\$3.40 8422:17	8396:3 8399:15,17,19 8400:11,20 8409:26 8410:6
\$0.05 8425:6 8426:25 8504:26 8536:3,7,18 8539:26 8540:5,13,22 8541:3 8543:20 8544:11 8545:6,9 8578:8,19,28 8579:17	\$1.04 8392:5	\$3.85 8375:27 8376:4 8379:3	8415:23 8418:3 8420:6,13 8454:19,23 8460:17,28 8461:4,11 8469:14,19 8474:1,13 8476:15 8479:6, 20,28 8480:3,7,11 8481:13, 23 8488:28 8489:1,6,7,14 8491:16 8495:2,13,17,20 8496:2 8517:13 8527:12 8528:27 8529:3,16 8530:21, 22,26 8533:17,23,26 8535:1, 5 8538:10 8550:27 8555:20, 26 8558:12,25 8564:6,15 8570:13,21,25 8582:20 8583:16 8590:9 8591:5,17 8593:5 8594:16 8599:13
\$0.06 8498:1 8574:2	\$1.05 8372:25 8374:22	\$3.87 8484:16	8593:5 8594:16 8599:13
\$0.10 8372:23 8393:28 8395:13 8444:5 8463:15 8498:17 8505:20 8545:19 8546:15,16,20 8573:1,2,4, 10,20,24,25 8578:8	\$1.20 8467:22	\$3.95 8484:16	\$30 8497:28 8560:25
\$0.15 8374:16,19 8378:20 8379:6 8383:9,17 8395:2 8409:1,3 8424:27 8518:2 8526:6 8542:23 8543:6 8572:5 8579:6,11,26 8580:2 8587:23,25 8597:20 8598:11	\$1.26 8392:13	\$383.24 8392:12	\$4 8504:28
\$0.20 8373:26 8374:7 8395:5 8409:3 8425:18 8443:27 8496:9 8587:3,5,6,7 8597:15,16	\$1.29 8485:25	\$4.00 8378:16,21 8379:6 8382:25 8494:16 8505:26,27 8511:25,27 8512:2 8541:17, 19 8571:5 8578:17	\$4.10 8511:21 8512:2 8578:16
\$0.21 8495:14 8570:15,20	\$1.30 8454:24,27	\$4.20 8513:24 8579:15	\$4.25 8513:17 8579:15
\$0.23 8585:23 8586:20,24	\$1.47 8391:14	\$4.40 8541:19	\$4.45 8512:15 8578:25 8579:3,24
\$0.25 8534:24 8535:3,12,18, 19	\$1.60 8437:13 8438:4 8469:15	\$4.50 8487:17 8505:25 8512:10,25 8514:4 8578:26 8579:4,24 8599:16	\$4.55 8509:25 8513:5 8579:9,28
\$0.30 8417:18 8587:21 8588:1	\$1.65 8395:3 8409:1,2,5,6,7 8420:7 8426:13 8455:12 8469:15	\$4.60 8509:23 8510:17 8513:8 8579:9 8580:1	\$4.65 8511:12
\$0.35 8394:6,10,20 8421:12 8443:18 8463:13,16,22 8518:5,9,12 8520:17 8523:2, 7 8525:25 8587:1,3,7 8599:22	\$1.70 8395:4 8409:2,5,7 8420:7 8426:12 8469:15 8487:18	\$4.65 8511:12	\$4.85 8536:18 8599:18
\$0.39 8586:20,25,26 8597:25 8598:17 8599:26,27	\$1.76 8454:20	\$4.90 8394:3 8402:6	\$5.00 8395:28 8442:14 8443:5
\$0.40 8395:23 8599:26	\$1.78 8486:28	\$765 8392:4	\$765.46 8392:4
\$0.46 8454:17,24	\$1.80 8395:18 8420:3,11 8436:8,16 8438:7,9 8469:22	\$8 8454:28	\$84,287 8483:21
\$0.50 8373:27 8374:10 8421:26 8444:18,23 8518:12 8520:21 8521:17	\$112,286 8483:23	\$84,287 8483:21	
\$0.55 8383:12,19 8417:16 8420:21 8421:19	\$112,586 8483:26		
\$0.59 8485:18	\$15 8561:1		
\$0.60 8405:9,10,11 8467:17, 24	\$17.50 8484:3		
\$0.70 8486:5	\$2 8495:13		
\$0.75 8496:19 8535:7,9,13 8572:3	\$2.00 8374:4 8420:4,11 8437:12,19,23 8438:3 8469:22 8570:14		
	\$2.10 8495:4		
	\$2.20 8374:5		
	\$2.30 8495:5		
	\$2.30s 8420:9		
	\$2.35 8491:18		
	\$2.40 8420:10		
	\$2.55 8481:19		
	\$2.70 8481:26 8482:6,7		
	\$2.80 8487:19		
	\$2.90 8393:27		
	\$251.45 8391:13		
	\$3.00 8377:27 8378:1,14		
		----- ---o0o--- 8499:19 8604:19 ----- 0 -----	
		0% 8376:9	
		0.20 8587:10	
			1,045,000 8563:24
			1,045,000,000 8563:25
			1,207 8477:12
			1,239 8364:5
			1,300 8363:24
			1,410 8364:9
			1,508 8364:17
			1-5 8587:27,28
			1-point 8564:2
			1.045 8564:16
			1.3 8363:24
			1.351 8564:18
			1.4 8564:2,6,10
			1.80 8421:24
			10 8415:22 8445:28 8486:8, 15
			100 8443:25
			100% 8364:12,24
			104% 8483:21 8484:3
			11 8363:6 8476:16 8522:10 8555:16
			1146 8599:13,15
			1171 8511:15
			1194 8542:15
			11:00 8457:28
			11:15 8457:27
			11:16 8458:3



11:39 8470:16	19 8374:10 8409:9 8426:3 8437:22 8474:22 8525:12,19 8538:22 8539:28 8583:20	8485:15,18,27 8486:3 8491:5 8492:4 8517:22 8534:6 8563:11,28 8583:26 8584:1 8588:21 8594:19,27 8595:1	2252 8513:21
11:42 8472:20			2265 8514:4
12 8482:28 8489:21	19.1% 8576:13		2278 8510:4,8,10,16
12.3 8473:28	1909 8420:20	2000s 8389:16	23 8374:10 8414:21,23 8538:16,20,23,27,28
12:07 8486:11	1916 8582:21	2001 8362:20 8480:1,12,17, 26 8481:14,21,23 8485:27 8500:12 8527:27 8550:27 8574:19 8575:11,15 8576:1	24 8488:4 8515:21,22 8516:7,11 8522:12,14,27
12:09 8486:14	197 8477:22 8563:16	2002 8363:25 8483:11,18 8484:13 8525:16	25 8369:5,16 8411:11,25 8419:19 8529:19
12:30 8483:3	1997 8373:25 8435:4		254 8528:12
12:33 8499:16	1:35 8499:15 8500:3		255 8528:11
13 8473:1,6 8489:23,24 8509:14 8511:9,20 8512:7, 15 8513:4,12,28 8514:9 8518:2 8535:23 8567:15 8577:6,19,26	<u>2</u>	2003 8483:20 8525:17	27.3% 8576:14
130 8477:27	2 8380:24 8390:9,14 8397:15 8406:22 8421:24 8438:8 8440:16 8454:12 8477:7 8478:2,4 8490:4,7 8545:23 8554:5,6 8567:26 8576:2 8586:22 8587:25 8592:10 8595:10 8597:23 8601:7	2005 8380:26 8382:1 8385:1 8480:23,24 8484:3,11 8525:17	274 8488:4 8522:14,17
132 8485:20		2008 8390:10,16,26 8391:2, 20 8460:23 8461:24	28 8361:1 8402:3 8428:24,28 8500:1
13921 8387:8	2,000 8594:27	2010 8495:15	284 8480:16
14 8474:4 8556:27 8567:23 8577:9	2,229 8363:15	2013 8480:25	28th 8361:3
140 8484:5	2,437 8473:26	2015 8485:20 8595:19	299 8577:14
1497 8372:7	2-0 8587:5,6	2016 8480:27	2:44 8537:28
15 8389:21 8395:15 8407:26 8444:4 8468:19 8485:19 8500:22 8568:4 8587:26	2-5 8587:4	2020 8575:11,24	2s 8539:9
15% 8445:28	2-point 8528:10	2021 8393:13 8485:23 8486:4,21 8488:6,7 8503:25 8522:12 8582:5 8584:13,26	<u>3</u>
15,000 8498:5	2.077 8528:8	2022 8362:20 8363:6,10,20 8364:9,21 8382:1 8466:17 8473:26 8476:15,20,23,24 8477:6,8,23 8478:13 8479:5, 10,17,19,27 8480:1,12,17,28 8481:16,21,23 8484:14 8500:12 8517:22 8521:9 8525:17 8527:27 8529:15 8574:19 8576:2	3 8380:8 8381:25 8396:23 8407:7 8440:16 8458:10 8479:4 8497:18 8517:15 8521:5 8539:9 8550:4 8563:3
150 8380:11 8381:24 8392:8 8461:23	2.2 8576:2		3.043 8476:19
1500 8392:11	2.2% 8476:24		3.05 8427:26
151% 8385:2	2.255 8528:8		3.15 8575:19 8576:10,16
157 8477:12	2.35 8576:12		3.2 8582:23 8594:28
16 8411:27 8493:4 8507:12 8520:1 8568:4,16	2.40 8420:12		3.40 8422:14,17
1648 8372:8	2.5 8463:23 8595:2		3.739 8476:22
17 8558:2 8570:8	2.70 8541:15,17		3.85 8378:15,20 8383:8
17.7% 8575:15,19 8576:17	2.90 8395:12		30 8403:16 8421:13 8463:1 8477:24
171 8390:22 8407:17 8454:15	20 8429:12 8468:18 8492:16 8576:22 8584:7 8585:2 8595:12	21 8393:13 8411:27 8488:2 8584:12	30% 8419:19
175 8481:20	20% 8474:1	213 8603:9	300 8362:3 8423:13 8424:14 8509:1 8510:28 8526:16,22 8538:9,12,19,22
1795 8540:27	20-some 8415:6	215 8527:28	301 8362:3 8423:13 8508:28 8509:1 8510:4,12,13 8511:7, 10,14 8512:17 8514:3 8526:16 8538:9,12,14,23 8589:20,21 8601:25,27
18 8559:25 8572:26	200 8387:8 8401:19 8444:15, 23	22 8411:27,28	302 8524:2
1807 8539:23	200,000 8404:13	2217 8512:10	
1839 8540:21	2000 8362:19 8363:5,9,12 8364:4,16 8367:16 8375:8 8415:3 8432:13,17 8433:5,6 8436:1 8476:7,9,15,20,23,24 8477:6,8,22 8478:13 8479:4, 10,17,19,27 8482:18,21	2232 8512:17,22	
1846 8511:24,27		2233 8545:13,23	
1860 8433:21		224% 8483:23	
		2247 8513:7,19	



303 8392:7 8461:22	372 8603:15,16 8604:8,9,11	8389:4,6,22 8391:19,21	63 8480:3
31% 8376:10	38% 8376:11 8517:22	8392:8,9 8395:10,20 8396:3	64% 8392:14
31-year 8582:6	39 8389:13 8537:11,12	8398:27 8400:18 8415:23,26	67 8477:23
32 8371:21 8463:1	39% 8484:11	8416:4,5,6,7 8417:24	67.5% 8385:8
32% 8517:22 8521:12	3:00 8429:7	8418:13 8461:1,21,22	68% 8392:6 8521:25
33 8399:19 8495:2,9,13,17, 19,20 8496:2 8514:20	3:03 8547:18	8463:11 8469:16,19 8478:2	693 8528:4
8558:12,25 8570:14,19,20, 24 8571:8	3:17 8547:17	8483:17 8488:28 8501:16	696 8476:24
35% 8485:22	3:21 8547:21	8505:19 8514:20 8518:28	6th 8603:9
354 8376:8	<hr/> 4 <hr/>	8555:20,26 8556:10 8601:19	<hr/> 7 <hr/>
356 8375:3,4 8380:24	4 8382:11 8406:22 8480:10	5,311,000 8563:13	7 8415:27 8416:4,6 8450:3
8384:21 8385:15,17,19	8491:13,16 8500:11,16	5-1 8537:21	8500:10 8527:22 8533:27
357 8366:15,16,28 8367:1,7	8527:22 8565:12 8574:17	5-4 8379:21	8554:6 8565:16 8574:17
8370:14,16,17,19 8371:16	4,130 8364:21 8365:7	5-million-pounds-per-day	7,500 8391:12
358 8371:26 8372:3 8375:2	4.00 8383:8	8491:24	70 8375:14 8430:20
8379:18,20,22,24	4.40 8541:9,20	5.20 8422:10,12	732 8391:16
359 8386:10,11,27 8396:23	4.45 8512:8 8514:1	5.60 8420:21 8422:9	738% 8565:1,2
8406:22 8470:4,6,8	4.55 8394:4 8510:22	5.70 8439:7	74 8485:17
360 8391:17 8470:23,24	4.60 8510:5 8511:1,15	5.75 8422:11	75% 8591:12
8472:7,15 8500:8 8507:12	8578:4	50 8491:17	7500-gallon 8483:22
8550:19,20,22 8554:2	4.65 8578:4	50% 8431:22 8560:23,24	76143 8603:10
8574:17 8577:7,25	4.70 8395:19 8402:9	8561:11,12	77% 8564:7,19,20,24
361 8470:28 8471:1,2	8427:18,20,23	50,000-pound 8498:2	<hr/> 8 <hr/>
8472:11 8500:17,19 8527:24	40 8398:9 8401:9,16,17	500 8443:7	8 8482:27 8554:26 8565:11, 18
8550:25 8551:10,11,13	8403:17 8417:16 8421:26	509 8477:12	81 8431:7
362 8471:5,7 8472:11	8430:21 8432:2	51 8429:11	85 8407:15,17 8461:14
8500:17,19 8527:24 8550:25	40-some 8455:12	52 8549:21	88 8603:8
8551:2,3,16,18,20	40.56 8403:17	53 8589:20	8:00 8361:4 8604:16
363 8471:10,12 8472:11	400 8381:26	55 8394:9,19 8429:14,15	8:10 8366:23
8501:10,20 8551:23,24,26	41 8403:18	55,000 8391:4	8:21 8372:1
364 8471:15,16 8472:11	42 8470:23	55-mile 8443:17	<hr/> 9 <hr/>
8501:18,22 8552:1,2,4	42A 8470:26 8551:1	550 8582:18 8583:13	9 8363:6 8566:21
365 8471:19,20 8472:11	45 8403:17	550-ish 8594:28	9.1% 8477:6
8502:2 8552:7,8,10	46B 8551:3	56% 8391:15	910-plus 8528:4
366 8519:16,17,18 8547:9	47,500 8391:2	58 8495:20 8589:20	922 8363:21
8548:28 8552:16,22,23,25	476 8477:13	5:05 8604:17	941 8372:8
8589:20 8598:24 8600:15	48 8481:24	<hr/> 6 <hr/>	942 8372:9
367 8537:17,18 8538:1,5	482% 8521:9	6 8386:3 8408:24 8425:12	95 8398:8 8402:9 8427:4,7
8539:15 8547:9 8548:28	49 8480:3 8489:15	8489:11,24 8490:7,8	8428:27 8429:2 8520:2
8552:15,28 8553:1,3	4:39 8590:3	8509:14 8517:15 8518:14	8545:15
368 8537:21,22 8538:2,6	<hr/> 5 <hr/>	8521:5 8562:26 8567:15,25	
8539:20 8547:9 8548:28	5 8375:1,3,4 8377:25	8577:20 8578:4,16	
8553:6,7,9 8589:20	8387:21,23,26 8388:2,28	6% 8421:13	
369 8538:2,3,8,9 8539:22		6.1 8477:6	
8545:23 8547:9 8549:1,8		6.15 8420:21	
8553:12,15,17,18 8589:20		6.4% 8575:24 8576:18	
8599:9,12			
370 8581:3,4,5,24 8586:22			
371 8603:6,11,28 8604:2,4			



95% 8363:18	added 8374:18 8467:21 8535:13	admit 8371:10,15 8470:4 8550:1,8 8553:17	Agriculture 8363:1
96% 8364:7	adding 8372:24 8421:4	admitted 8370:17 8379:22 8385:17 8470:7 8549:6,26 8550:20 8551:11,18,24 8552:2,8,23 8553:1,7 8604:2,9	ahead 8372:13 8394:14
97% 8364:1	addition 8387:24 8389:11 8404:11 8431:12 8445:5 8459:24 8475:23 8477:17 8484:18 8491:21 8498:3 8534:15 8566:25	admitting 8549:14 8550:3	Albany 8535:26 8536:19 8537:1 8540:24
99% 8364:19	additional 8372:25 8374:16, 18 8379:5 8383:28 8388:22 8393:2 8396:6 8405:9,12 8411:13 8450:5 8454:25 8458:27 8459:9,11 8460:6 8465:28 8467:8 8468:15 8475:14,27 8488:10 8497:24 8498:13 8500:9 8522:22 8531:1 8534:17 8542:8 8553:16 8566:23 8572:2,5,8, 12,18 8573:2,14,19,20	adopt 8512:4	algorithm 8401:1
9:24 8408:1	additionally 8474:4,18 8480:5 8481:22 8484:7 8493:28 8499:2 8583:9 8585:16	adopted 8457:16 8463:26,27 8464:23 8585:13 8597:5 8601:9	align 8399:2 8402:7 8452:12 8489:19 8492:28 8494:24 8498:27 8499:5 8504:27 8544:17 8545:2 8556:6 8568:10,19
9:25 8407:23	address 8419:25 8497:15 8504:3 8524:4	adoption 8584:21 8592:12 8593:12,15,25	aligned 8398:14 8402:8 8495:17 8545:11 8555:22 8569:18 8571:12 8573:15
9:40 8407:28 8408:4	addressed 8504:6	advantage 8394:12,21 8402:21 8463:17,20 8464:1, 4 8485:6,9 8488:23 8489:9 8506:6,14,25	aligning 8542:9 8556:2 8569:21
9:44 8409:21	addresses 8403:23	advantages 8506:16	alignment 8368:4,7,13,24,26 8369:24,28 8372:27 8374:14,25 8376:7 8377:5, 14,22,24 8379:13 8382:19, 24 8383:10 8398:16 8414:4 8491:1 8494:26 8495:25 8541:23,25 8542:4,7 8543:15 8556:12 8558:18, 20,21,23,24,26 8559:5,9 8569:10 8570:13 8571:11
A	addressing 8504:10	affect 8413:25	alignments 8368:5,28 8369:6,19,22 8376:13,14 8468:24 8469:7 8514:22
A-L-L-E-G-A-N-Y 8507:27	adds 8388:22 8394:15 8432:7 8456:5	affected 8375:24	aligns 8492:23 8537:1
a.m. 8604:16	adequate 8419:18 8483:28 8496:25 8497:13 8534:1,3	affiliate 8524:20	Allegany 8492:12,18 8493:1, 6 8494:2 8507:13,16,21,25 8508:8 8512:19 8568:20 8569:3
abbreviations 8363:9	adequately 8385:22 8546:24 8556:23	affiliated 8445:13,14	Alleganys 8508:11,12
abilities 8505:8	adjust 8383:24 8421:28	afternoon 8500:1 8508:18 8553:27 8562:21 8580:27 8581:23 8589:6,7 8590:7,8	allocate 8452:4
ability 8388:17 8496:4 8507:1 8531:28 8532:2,4	adjusted 8415:5 8487:4 8554:10 8568:10	afterward 8438:20	allocation 8452:19
absolute 8452:23	adjusting 8426:23 8554:9	Agawam 8536:11,12 8542:14 8543:21	Allowance 8406:8
Absolutely 8404:28 8417:1 8448:11 8453:3 8462:23	adjustment 8402:5 8439:25 8440:2,3,10 8475:17 8578:11,12	agree 8367:18 8374:3 8375:7 8378:24 8379:12 8412:24,26 8415:20 8419:18 8422:23 8439:22 8442:25 8444:8 8452:21 8455:17 8457:18 8502:25 8517:16,28 8521:18 8524:4 8526:27 8527:5,26 8529:19 8530:5 8580:13 8596:4	Allowances 8406:12,13
abuts 8382:24 8488:19	adjustments 8426:4 8452:12 8568:10 8593:16, 22,27	agreed 8531:25 8533:15 8542:25 8585:19	allowed 8385:23 8404:6 8412:6 8462:20 8505:7 8521:21 8547:23 8567:9
accept 8371:7 8457:14 8521:17 8547:4	adjusts 8491:2	Agri-mark 8410:15,20 8475:19,28 8498:23,28 8582:5,14,17,26 8583:7,9, 12,17,20 8590:10,12,24,27 8592:25 8596:13 8600:8	allowing 8485:5
accepting 8530:1	administration 8473:10	Agri-mark's 8591:10,11	alphabetical 8511:5
access 8495:28 8559:12	admissible 8549:20	Agri-mark-produced 8590:22	alter 8414:20
account 8368:19 8377:11 8400:24 8401:20 8445:6,9, 13,17,20 8446:8 8451:24 8452:1 8464:25 8505:13 8572:9 8573:2 8596:8	admission 8370:13,16 8379:18,20 8385:15 8547:9, 16 8548:27 8550:14,18 8551:9,16,23 8552:1,7,14, 21,28 8553:6,14 8603:27	agribusiness 8473:9	alteration 8425:1,3
accounted 8376:25 8435:9 8572:24		Agricultural 8380:1 8384:1 8457:23,26 8458:4 8562:16, 17 8601:25 8603:2	altered 8415:8
accounting 8582:9 8595:4			altering 8417:3
accuracy 8549:16			amendments 8387:16
accurate 8442:9 8561:16			America 8422:8 8524:2 8536:1
achieve 8404:26 8405:16 8424:28			
acknowledge 8498:15			
acted 8496:2			
Action 8404:3			
actual 8370:22 8423:8 8452:18 8453:2,18 8455:2, 19 8487:5 8525:20 8565:2 8567:27 8576:21 8584:20 8588:26			
add 8372:24 8385:22 8393:16 8401:16,21 8421:3 8433:8 8467:20			



America's 8472:27	applied 8414:7 8475:10	asserted 8553:12	8588:8,9 8589:12 8597:23
American 8451:13	applies 8419:12	assessed 8475:8 8484:8 8504:1	8598:3,13,14 8599:16,22,25, 26
amount 8381:19 8385:11 8403:12 8407:16 8409:1 8436:8 8447:18 8453:26 8454:1,22 8455:15 8465:9 8483:24 8575:28	apply 8368:11 8414:10,12 8515:3 8544:25	assessing 8475:5	average-of 8544:27
amounted 8476:19	approach 8362:24 8397:22 8514:26 8589:22	assets 8483:10,14,19 8491:3 8492:11	averaged 8393:13 8477:21 8495:14 8570:15 8584:13 8598:8,16
amounting 8480:16	appropriately 8488:23	assigned 8387:13	averages 8490:2 8561:21 8562:5
AMS 8383:25 8466:22 8574:6	approximately 8361:4 8395:15 8473:28 8477:22, 23,25 8480:16 8481:20,24 8484:11 8489:17 8498:1	assigns 8449:10	averaging 8393:19
AMS' 8478:10	April 8362:20,21 8389:4,7	assist 8534:11 8548:21 8582:15	avoid 8396:8 8450:7
analyses 8452:11	area 8373:3,18 8380:20 8390:26 8398:27 8399:18, 20,22,23 8400:15,18,20,21 8401:28 8406:5 8412:16 8417:24 8428:2,20,21 8431:5,6,20 8434:13,14 8435:28 8438:17 8442:28 8464:18 8469:19 8472:27 8473:5,6,27 8474:5,15,17 8477:5 8488:19 8494:20 8496:1 8504:15 8505:24 8518:18,20,24 8519:5 8523:6 8528:27 8555:19 8556:3,26 8561:22 8562:7 8565:27 8566:1 8571:4,7 8572:16 8575:16 8576:8 8586:2 8592:26	assistant 8472:25	award 8582:24
analysis 8393:15 8419:28 8422:24 8462:1 8515:11,15 8516:5,17,20 8543:9	areas 8378:21 8380:19 8385:4 8391:9 8396:14 8398:7 8448:13 8449:25 8481:6,7,27 8488:20,21 8497:12 8498:28 8504:9,11 8516:26 8520:26 8573:17,19 8575:10 8585:4 8592:27 8594:3	assists 8535:4	aware 8366:1 8384:13 8530:24,27 8543:2 8547:3
analytics 8395:9 8473:3	Asheville 8399:3 8417:18 8439:1,3,11,22 8440:3,4,19	Association 8456:25 8475:21 8498:24 8574:15	B
Analyzing 8396:2	aspect 8457:3 8469:11,23	assume 8362:16 8376:22,24 8433:11 8437:22 8529:13	B-A-T-A-V-I-A 8540:17
anchor 8417:17 8487:5,9,16, 22,25,27 8488:13 8516:23, 27,28 8517:3,6,10	arguments 8377:13 8437:9	assumed 8491:25	B-R-I-N-K-E-R 8361:12
and/or 8489:14	arrange 8592:18	assumes 8451:18	bachelor 8473:7
Andover 8582:22	arrangement 8445:18 8449:5 8570:24	assuming 8377:5,11 8378:13 8485:27 8486:3 8567:1 8576:9,11	back 8361:2,3 8364:14 8366:22,23 8367:16 8369:9, 11 8371:28 8375:6,25 8377:25 8384:19 8397:3 8399:25 8400:5 8404:1,6 8407:5,27 8408:3,4 8409:13, 20,21 8410:13,19 8411:25 8413:1 8425:26 8430:9 8436:1,2 8447:5 8454:12 8456:7 8457:23,26 8458:2,3 8461:24 8463:13,21 8470:15,16 8472:20 8486:13,14 8499:15 8500:2, 3 8503:20 8510:28 8519:13 8522:26 8527:22 8530:24 8533:21 8535:23 8537:27,28 8547:17,20,21,24,28 8548:6 8551:6 8561:1,21 8562:28 8573:6 8585:28 8590:2,3 8594:5,24,27 8601:23 8602:24
Angeles 8516:27	argument 8435:26 8444:9	assumption 8420:28	back-zoning 8569:28
animal 8455:28 8457:1 8473:8	arguments 8377:13 8437:9	Atlanta 8399:17,22,28 8400:3 8416:2	background 8368:3 8554:7
announced 8491:12,23 8501:6,16 8604:7	arrange 8592:18	Atlantic 8484:15	backtrack 8373:3 8426:17
announcement 8474:23 8491:23 8501:13	arrangement 8445:18 8449:5 8570:24	attachments 8472:10	backwards 8397:12 8548:7 8571:15
annually 8473:28	arrears 8459:5	attempt 8372:28 8376:13 8411:12	bacteria 8404:21
answering 8423:5	arrived 8453:19	attest 8549:16	balance 8388:17 8405:28 8406:1 8444:10 8447:6,26 8455:19 8467:11
anticipate 8383:22	art 8543:14 8557:17	attract 8389:19,24 8458:16 8531:21 8532:2	balancing 8388:22 8405:27, 28 8447:22 8448:3,4,5 8449:18 8455:9 8467:12,14, 21,25,26,28 8468:1 8530:4,
anymore 8400:3 8430:20 8595:8	artificial 8394:11,21 8463:17,20 8464:3,6	attracted 8379:4 8492:2	
anytime 8557:13	Asheville 8399:3 8417:18 8439:1,3,11,22 8440:3,4,19	attributed 8480:18 8481:25, 26	
apologies 8571:24	aspect 8457:3 8469:11,23	August/september 8445:26	
apologize 8441:8 8519:3 8588:3 8589:18 8594:17	aspects 8469:28	author 8423:21 8424:7 8526:20 8549:24	
apparent 8481:25	assembly 8392:17,19 8462:4	Avenue 8524:2,5	
appears 8368:28 8518:28		average 8391:1,2 8393:17 8411:26 8461:24,25 8462:18 8484:14 8485:16,21,24 8486:5,20,26,27 8487:2,4,16 8488:2,3 8489:16,17,19 8495:10 8496:9 8497:1 8503:25,28 8504:10 8515:11,14,15,27 8516:5,6 8540:1 8544:16,22 8557:15, 20 8563:16,19 8573:7 8584:25 8585:22 8586:4	



11,14 8532:8,9,14,21,23 8533:1,10 8548:15,21 8590:17,18	benchmark 8373:17	boy 8411:20 8471:5	8485:15,23 8593:4
Baltimore 8402:4,7 8427:3, 20,26 8428:23,24 8429:1 8430:11,25	benefit 8372:5 8536:19 8560:19	branch 8487:12	Butcher 8590:4 8602:16
Baltimore/washington 8429:3	benefits 8536:20	brand 8463:6	butter 8522:5,8 8583:7 8590:12 8595:6
bare 8520:1	Berks 8512:7,10 8578:25	branded 8582:25	buy 8463:3,6 8596:28
base 8393:14 8398:19 8414:18 8443:5 8449:13 8473:23 8559:1	Berkshire 8572:20	break 8407:22 8413:12 8457:23 8483:1 8547:15,19 8580:24 8592:27	buying 8401:15,24
baseball 8524:7,10	beverage 8478:18,24,26,28 8479:2,8,18 8491:24 8501:17 8517:17,21 8518:14 8521:8 8563:15,19,23 8564:5,17,21,23,25 8565:2	breaking 8499:13	C
based 8374:18 8381:16 8390:6,11 8393:1 8402:21 8452:15 8472:27 8474:25 8487:4,7 8504:3 8527:14 8534:9 8536:21 8541:16 8543:23 8563:22 8565:26,28 8573:26	beverages 8447:25 8474:20 8477:19	Brent 8602:16	C-A-T-T-A-R-A-U-G-U-S 8492:9
baseline 8368:3	big 8362:4 8383:7,9,20 8393:18 8401:2 8423:15,25 8430:1 8455:17 8458:13 8465:17 8469:18 8520:3	bridge 8412:17 8497:24	C-H-A-T-E-A-U-G-A-Y 8583:2
basic 8395:9	bigger 8412:2	briefly 8446:20	cab 8483:20
basically 8363:7 8407:4 8416:3 8426:25 8459:10 8461:5 8521:9 8530:11	biggest 8428:16 8518:7 8575:17 8600:12	brilliant 8369:10	Cabot 8582:24,27 8590:20
basis 8442:15 8460:15 8468:18 8488:14 8490:16 8507:4 8515:15 8530:1 8532:12 8548:14 8588:22 8597:1	billion 8415:22 8473:28 8476:19,22 8528:8 8564:2,6, 10,15,16,18 8576:2 8582:23 8594:28 8595:2	bring 8404:1 8478:20 8580:9	calculate 8467:15
Batavia 8540:12,16	bit 8364:28 8367:19 8398:28 8400:17 8419:7 8421:24 8424:13 8428:12 8434:19,20 8451:14 8453:1,2 8458:28 8461:19 8469:4 8473:17 8535:24 8543:14 8557:7 8560:21 8566:7,22 8568:26 8570:10 8594:17	bringing 8413:1 8429:24	calculated 8390:12 8407:8 8478:8,26
bear 8441:27 8560:16	blend 8494:25 8495:17,24 8558:11,17,20,21,23 8559:5, 9 8570:13,15	brings 8497:20	calculation 8465:5 8479:7
bearing 8532:5	blends 8495:13	Brinker 8361:10,12,17,23 8362:27 8367:12 8379:26 8380:25 8384:7 8385:21	calculations 8372:18 8479:4
beat 8510:11 8572:26	board 8431:14 8531:8 8598:2	Bristol 8497:28	California 8473:5 8516:26
beautifully 8483:6	book 8400:28	broad 8557:24	call 8385:28 8392:17 8399:2 8403:13,14 8404:11 8442:22 8455:7 8459:11,25 8467:28 8469:25 8521:20 8529:26 8572:20 8596:15 8597:1
beg 8547:23	boots 8401:2,4,8	broader 8447:5	called 8402:9 8410:2 8424:15 8502:18 8510:10 8532:22 8538:20
began 8593:7 8604:1	border 8400:12 8555:19	broken 8584:15	calls 8390:11 8591:26 8593:18
begin 8472:17 8486:19 8589:5 8591:21	borders 8572:23	Brooklyn 8480:23	capacities 8485:10
beginning 8486:15 8554:5	Boston 8516:28 8517:6 8518:21 8520:11 8521:3,16 8524:25 8572:16 8574:24	Brothers 8540:21	capacity 8480:18,21 8491:8 8498:4
begins 8501:2 8558:3	bottled 8368:23	brought 8362:16 8415:10 8478:17	capita 8477:19,21 8478:26 8563:14,20
behalf 8396:18 8583:12 8603:2	bottom 8380:8 8386:2 8407:7 8427:8 8463:12 8486:15 8540:20 8554:6,26 8566:21 8568:5,16 8571:22	bucket 8530:7	capture 8385:11 8505:15
behaviors 8401:24	bought 8595:6	bucks 8421:24 8438:8	captured 8561:10
belabor 8445:4		Buffalo 8491:9 8494:12,18	care 8455:28 8456:1 8457:1
believes 8419:18		buffer 8496:2	career 8582:6
belong 8493:11 8508:5		build 8594:11	careful 8495:24 8558:23
beltway 8402:3		building 8594:11	Carolina 8399:3,6,12,16,24 8400:11,13,15,21 8413:15 8416:21,23,28 8417:3,5,14, 20,25 8418:3,15,18 8419:22 8420:2,20,25 8421:6,26 8422:7,10 8434:12,14,18,19 8436:5,7,15,24,25,28 8437:5 8438:3,5,7,22 8439:2,10 8460:2 8461:2 8465:2,3
		built 8498:17 8569:1 8573:1	
		Bulger 8589:6,9,10,15,18 8590:5,6 8595:28 8599:8 8601:6	
		bulk 8582:12	
		bunch 8554:3	
		burden 8576:20	
		Bureau 8451:13 8478:6,11	
		Burlington 8497:28 8498:12 8544:9	
		business 8390:25 8398:9 8445:22 8450:21 8473:9	



carried 8484:28	8468:15 8484:24 8487:14 8494:7 8497:16 8498:27	Chuck 8421:1 8475:4	8532:1,8,10,15 8533:4,8,17, 21,28 8534:10,12,13,16,18, 20,23,25 8535:4,8,16 8538:15,16,27 8542:2 8554:28 8557:6,9,28 8565:13,21,22 8566:9,17,19 8575:13 8583:20,23,26 8584:10,27 8585:11,20,21, 22 8588:19,22 8591:1,2 8596:17,18 8597:4,5,24 8598:28
carry 8485:2	Chambersburg 8416:17,27 8417:5,14,19 8437:5	circle 8397:3 8505:10 8569:20	class-plus 8596:24
case 8363:5,6 8372:6 8412:27 8415:7,13 8416:24 8417:17 8420:13 8425:21 8448:4,23 8449:1 8454:10 8455:26 8512:4 8523:13 8529:15 8531:28 8532:20 8534:1 8578:11 8580:11	chance 8467:15	circumstance 8457:15	classes 8463:21 8479:27 8481:12
cases 8398:28 8411:16 8449:4 8572:22	change 8392:5 8398:15 8408:16,22 8409:11 8424:22 8426:7 8459:19 8468:17 8517:4 8525:27 8534:4 8543:8 8562:3 8577:26 8578:8 8584:7 8586:16 8595:12,18	circumstances 8451:17 8542:3	clause 8565:19
cat 8471:9	changed 8476:8 8477:20 8479:8 8482:20 8493:18 8584:2,4 8594:19,25 8596:26	citation 8371:1	clean 8547:24
catalyst 8411:4	changing 8474:25 8477:2 8586:23 8587:7	citations 8371:14	clear 8382:13 8384:17 8458:12,18 8459:16 8462:6 8476:6 8509:10,13 8562:27 8570:22
catch 8528:19	channels 8451:21	cite 8367:10 8370:22	client's 8549:4
category 8486:15 8523:2 8538:26	characterization 8500:27 8560:5,6	cites 8484:28	close 8491:17 8520:14 8569:20
Catherine 8591:23	characterize 8369:21 8377:18 8522:2 8560:4	cities 8380:10 8381:19 8516:27 8517:10 8538:7 8541:28	closed 8434:6 8569:12
Cattaraugus 8492:7,8,10,19, 25 8493:1 8494:1 8501:26, 27,28 8568:21,22 8569:1,9	charge 8437:15 8532:8,9,10, 14,21,23 8548:9,20 8596:16	city 8369:26 8370:8 8373:24 8374:1,4,11 8376:9 8377:9, 16 8385:6 8388:10 8417:17 8428:14,15 8444:24 8487:5, 9,16,23,25,27 8488:13 8516:23,28 8517:3,6 8523:5 8545:26	closely 8395:6 8398:14 8405:2 8558:15
cattle 8473:11	charged 8459:17 8485:17 8597:6	city's 8488:15	closer 8370:8 8399:14 8428:17 8531:14 8558:27 8575:10 8600:5
caught 8380:7 8581:2 8586:9 8588:4	charges 8532:20 8547:28 8548:6	Civil 8433:21	closest 8448:24 8449:1 8487:15
caused 8392:4 8558:12	chart 8372:6 8423:2 8518:7 8548:28 8578:3	clarification 8362:12 8409:15 8410:21 8437:20 8462:24 8470:2 8522:16 8529:1	closing 8456:14 8569:14 8594:13
causing 8412:9	charts 8562:27 8563:2 8564:26	clarified 8504:14	closings 8595:4
caveat 8466:5	Chateaugay 8582:28 8583:1	clarify 8466:25 8593:23 8598:4	closure 8480:4,22
cell 8403:21 8404:13,20 8405:4	Chautauqua 8494:2	clarity 8363:4	club 8410:2
cells 8404:12	check 8411:25 8425:9	class 8368:12 8369:4,15 8374:4,5 8387:12,13,15,16, 18,28 8388:3,6,13,21,24 8389:12,16,18,20,21,28 8393:1,3,5,15,25 8394:2,26 8395:2,11,21 8396:5,13 8398:13 8404:8 8405:17 8406:1,15 8410:24 8413:12 8414:18 8419:12,25 8421:6, 13,14,15 8423:1 8432:5,9 8442:4 8446:27,28 8447:1,6 8450:4,15 8453:17,25 8454:2,23 8455:2,7,8,22,25, 26 8456:7 8457:6,12 8458:21 8468:10 8474:24 8475:2 8476:4 8479:26 8480:14,15,19,21 8481:10, 13,17,22 8482:3,5,11,16,22 8486:18 8487:1,13 8490:14, 16,19 8491:4,8,10,14,15,17, 21,25 8492:4,6 8494:9,13 8495:10,11 8501:4,25 8503:22 8518:19 8525:10 8527:1,7,19,28 8528:3 8529:20,23 8530:2,28 8531:5,6,10,11,17,20	co-op 8485:17,21 8560:13 8561:23 8592:26
census 8478:6,11 8563:12	checking 8407:3	clarify 8466:25 8593:23 8598:4	co-ops 8410:11 8597:1
center 8387:8 8416:17 8428:18 8434:18	cheese 8406:2,5,7 8447:2 8502:4 8521:27 8522:3,8 8547:3 8582:26 8590:10 8594:10	clarified 8504:14	coast 8391:9 8520:4
centers 8368:8,17 8584:4 8594:22	cheeses 8582:25	clarity 8363:4	coffee 8474:20
central 8366:12,26 8367:9 8378:16 8379:3,4 8399:23 8400:11,15,21 8433:25 8484:15 8490:23,27 8493:24 8496:7,21,27 8572:6,15 8588:18	chin 8523:20	class 8368:12 8369:4,15 8374:4,5 8387:12,13,15,16, 18,28 8388:3,6,13,21,24 8389:12,16,18,20,21,28 8393:1,3,5,15,25 8394:2,26 8395:2,11,21 8396:5,13 8398:13 8404:8 8405:17 8406:1,15 8410:24 8413:12 8414:18 8419:12,25 8421:6, 13,14,15 8423:1 8432:5,9 8442:4 8446:27,28 8447:1,6 8450:4,15 8453:17,25 8454:2,23 8455:2,7,8,22,25, 26 8456:7 8457:6,12 8458:21 8468:10 8474:24 8475:2 8476:4 8479:26 8480:14,15,19,21 8481:10, 13,17,22 8482:3,5,11,16,22 8486:18 8487:1,13 8490:14, 16,19 8491:4,8,10,14,15,17, 21,25 8492:4,6 8494:9,13 8495:10,11 8501:4,25 8503:22 8518:19 8525:10 8527:1,7,19,28 8528:3 8529:20,23 8530:2,28 8531:5,6,10,11,17,20	coincidence 8536:22 8543:19
cents 8455:12	Chip 8361:22 8408:11 8422:4 8432:2 8460:1 8508:20	class 8368:12 8369:4,15 8374:4,5 8387:12,13,15,16, 18,28 8388:3,6,13,21,24 8389:12,16,18,20,21,28 8393:1,3,5,15,25 8394:2,26 8395:2,11,21 8396:5,13 8398:13 8404:8 8405:17 8406:1,15 8410:24 8413:12 8414:18 8419:12,25 8421:6, 13,14,15 8423:1 8432:5,9 8442:4 8446:27,28 8447:1,6 8450:4,15 8453:17,25 8454:2,23 8455:2,7,8,22,25, 26 8456:7 8457:6,12 8458:21 8468:10 8474:24 8475:2 8476:4 8479:26 8480:14,15,19,21 8481:10, 13,17,22 8482:3,5,11,16,22 8486:18 8487:1,13 8490:14, 16,19 8491:4,8,10,14,15,17, 21,25 8492:4,6 8494:9,13 8495:10,11 8501:4,25 8503:22 8518:19 8525:10 8527:1,7,19,28 8528:3 8529:20,23 8530:2,28 8531:5,6,10,11,17,20	collaboration 8514:25,27,28
ceremony 8550:1	choosing 8529:24	class 8368:12 8369:4,15 8374:4,5 8387:12,13,15,16, 18,28 8388:3,6,13,21,24 8389:12,16,18,20,21,28 8393:1,3,5,15,25 8394:2,26 8395:2,11,21 8396:5,13 8398:13 8404:8 8405:17 8406:1,15 8410:24 8413:12 8414:18 8419:12,25 8421:6, 13,14,15 8423:1 8432:5,9 8442:4 8446:27,28 8447:1,6 8450:4,15 8453:17,25 8454:2,23 8455:2,7,8,22,25, 26 8456:7 8457:6,12 8458:21 8468:10 8474:24 8475:2 8476:4 8479:26 8480:14,15,19,21 8481:10, 13,17,22 8482:3,5,11,16,22 8486:18 8487:1,13 8490:14, 16,19 8491:4,8,10,14,15,17, 21,25 8492:4,6 8494:9,13 8495:10,11 8501:4,25 8503:22 8518:19 8525:10 8527:1,7,19,28 8528:3 8529:20,23 8530:2,28 8531:5,6,10,11,17,20	colleague 8475:1 8518:24
certified 8455:28	chose 8490:10 8557:2	class 8368:12 8369:4,15 8374:4,5 8387:12,13,15,16, 18,28 8388:3,6,13,21,24 8389:12,16,18,20,21,28 8393:1,3,5,15,25 8394:2,26 8395:2,11,21 8396:5,13 8398:13 8404:8 8405:17 8406:1,15 8410:24 8413:12 8414:18 8419:12,25 8421:6, 13,14,15 8423:1 8432:5,9 8442:4 8446:27,28 8447:1,6 8450:4,15 8453:17,25 8454:2,23 8455:2,7,8,22,25, 26 8456:7 8457:6,12 8458:21 8468:10 8474:24 8475:2 8476:4 8479:26 8480:14,15,19,21 8481:10, 13,17,22 8482:3,5,11,16,22 8486:18 8487:1,13 8490:14, 16,19 8491:4,8,10,14,15,17, 21,25 8492:4,6 8494:9,13 8495:10,11 8501:4,25 8503:22 8518:19 8525:10 8527:1,7,19,28 8528:3 8529:20,23 8530:2,28 8531:5,6,10,11,17,20	collect 8601:22
cetera 8567:9	Chris 8404:15	class 8368:12 8369:4,15 8374:4,5 8387:12,13,15,16, 18,28 8388:3,6,13,21,24 8389:12,16,18,20,21,28 8393:1,3,5,15,25 8394:2,26 8395:2,11,21 8396:5,13 8398:13 8404:8 8405:17 8406:1,15 8410:24 8413:12 8414:18 8419:12,25 8421:6, 13,14,15 8423:1 8432:5,9 8442:4 8446:27,28 8447:1,6 8450:4,15 8453:17,25 8454:2,23 8455:2,7,8,22,25, 26 8456:7 8457:6,12 8458:21 8468:10 8474:24 8475:2 8476:4 8479:26 8480:14,15,19,21 8481:10, 13,17,22 8482:3,5,11,16,22 8486:18 8487:1,13 8490:14, 16,19 8491:4,8,10,14,15,17, 21,25 8492:4,6 8494:9,13 8495:10,11 8501:4,25 8503:22 8518:19 8525:10 8527:1,7,19,28 8528:3 8529:20,23 8530:2,28 8531:5,6,10,11,17,20	collective 8401:11
chain 8485:11		class 8368:12 8369:4,15 8374:4,5 8387:12,13,15,16, 18,28 8388:3,6,13,21,24 8389:12,16,18,20,21,28 8393:1,3,5,15,25 8394:2,26 8395:2,11,21 8396:5,13 8398:13 8404:8 8405:17 8406:1,15 8410:24 8413:12 8414:18 8419:12,25 8421:6, 13,14,15 8423:1 8432:5,9 8442:4 8446:27,28 8447:1,6 8450:4,15 8453:17,25 8454:2,23 8455:2,7,8,22,25, 26 8456:7 8457:6,12 8458:21 8468:10 8474:24 8475:2 8476:4 8479:26 8480:14,15,19,21 8481:10, 13,17,22 8482:3,5,11,16,22 8486:18 8487:1,13 8490:14, 16,19 8491:4,8,10,14,15,17, 21,25 8492:4,6 8494:9,13 8495:10,11 8501:4,25 8503:22 8518:19 8525:10 8527:1,7,19,28 8528:3 8529:20,23 8530:2,28 8531:5,6,10,11,17,20	collectively 8401:18
chair 8361:9		class 8368:12 8369:4,15 8374:4,5 8387:12,13,15,16, 18,28 8388:3,6,13,21,24 8389:12,16,18,20,21,28 8393:1,3,5,15,25 8394:2,26 8395:2,11,21 8396:5,13 8398:13 8404:8 8405:17 8406:1,15 8410:24 8413:12 8414:18 8419:12,25 8421:6, 13,14,15 8423:1 8432:5,9 8442:4 8446:27,28 8447:1,6 8450:4,15 8453:17,25 8454:2,23 8455:2,7,8,22,25, 26 8456:7 8457:6,12 8458:21 8468:10 8474:24 8475:2 8476:4 8479:26 8480:14,15,19,21 8481:10, 13,17,22 8482:3,5,11,16,22 8486:18 8487:1,13 8490:14, 16,19 8491:4,8,10,14,15,17, 21,25 8492:4,6 8494:9,13 8495:10,11 8501:4,25 8503:22 8518:19 8525:10 8527:1,7,19,28 8528:3 8529:20,23 8530:2,28 8531:5,6,10,11,17,20	college 8473:10
challenge 8447:17		class 8368:12 8369:4,15 8374:4,5 8387:12,13,15,16, 18,28 8388:3,6,13,21,24 8389:12,16,18,20,21,28 8393:1,3,5,15,25 8394:2,26 8395:2,11,21 8396:5,13 8398:13 8404:8 8405:17 8406:1,15 8410:24 8413:12 8414:18 8419:12,25 8421:6, 13,14,15 8423:1 8432:5,9 8442:4 8446:27,28 8447:1,6 8450:4,15 8453:17,25 8454:2,23 8455:2,7,8,22,25, 26 8456:7 8457:6,12 8458:21 8468:10 8474:24 8475:2 8476:4 8479:26 8480:14,15,19,21 8481:10, 13,17,22 8482:3,5,11,16,22 8486:18 8487:1,13 8490:14, 16,19 8491:4,8,10,14,15,17, 21,25 8492:4,6 8494:9,13 8495:10,11 8501:4,25 8503:22 8518:19 8525:10 8527:1,7,19,28 8528:3 8529:20,23 8530:2,28 8531:5,6,10,11,17,20	
challenges 8414:27 8447:14		class 8368:12 8369:4,15 8374:4,5 8387:12,13,15,16, 18,28 8388:3,6,13,21,24 8389:12,16,18,20,21,28 8393:1,3,5,15,25 8394:2,26 8395:2,11,21 8396:5,13 8398:13 8404:8 8405:17 8406:1,15 8410:24 8413:12 8414:18 8419:12,25 8421:6, 13,14,15 8423:1 8432:5,9 8442:4 8446:27,28 8447:1,6 8450:4,15 8453:17,25 8454:2,23 8455:2,7,8,22,25, 26 8456:7 8457:6,12 8458:21 8468:10 8474:24 8475:2 8476:4 8479:26 8480:14,15,19,21 8481:10, 13,17,22 8482:3,5,11,16,22 8486:18 8487:1,13 8490:14, 16,19 8491:4,8,10,14,15,17, 21,25 8492:4,6 8494:9,13 8495:10,11 8501:4,25 8503:22 8518:19 8525:10 8527:1,7,19,28 8528:3 8529:20,23 8530:2,28 8531:5,6,10,11,17,20	



Colorado 8367:18 8375:8, 10,15,17	compete 8395:16 8398:11, 19 8429:27 8452:5 8464:7	8508:10	contract 8448:24 8463:1 8596:28
colored 8409:28 8410:3	competing 8411:7 8448:18, 20 8452:3 8463:24 8494:25	confusing 8548:8	contracts 8593:1 8596:23
colors 8410:1	competition 8414:13 8451:24,25 8452:1,13,14	connect 8515:8	contractual 8445:17 8446:16
column 8373:26 8374:9,19 8388:8,11 8391:1 8424:12, 14,15,17 8510:5 8512:25 8526:22 8538:16,21,22,23, 25 8539:27 8540:2 8563:6, 14,18,26 8578:12,13 8586:3, 4 8598:13	competitive 8394:10,11,20, 21 8396:9 8402:21 8436:6 8442:2 8449:25,27 8450:8, 12,20,25 8452:18 8463:17, 20,28 8488:25 8494:12 8506:13,16,25,26 8559:21	Connecticut 8476:10,17 8479:12	contrary 8370:11
columns 8372:16 8526:23 8578:10	competitors 8402:22,24 8448:8,12,14,26 8506:14	conservative 8397:21	contribute 8484:21 8566:25
combined 8476:21 8545:1	complete 8479:6 8547:11	considerable 8403:12 8481:18 8583:14	contributing 8475:16 8592:7
comfortable 8419:15 8580:8	completed 8482:27 8486:9 8489:21 8491:26 8492:3 8550:13	consideration 8368:21,25 8376:21,28 8377:6,24 8394:25 8412:8 8435:5 8442:7 8446:3 8465:14 8482:25 8494:8,22 8495:1, 24 8497:24 8505:17,22 8544:2,5,13 8555:3 8558:23 8559:9	contributor 8484:12
comment 8437:16 8438:16, 18 8539:2	complicates 8449:7	considerations 8369:23,27 8370:1,2 8382:14	control 8405:13
commentary 8475:14	complication 8449:14	considered 8381:1 8383:19 8571:10 8576:10	controllable 8503:17
commenting 8577:9	components 8474:20	considers 8527:15	conversation 8367:2 8460:1 8506:15 8509:16,18 8532:6 8544:15 8591:24 8593:27
Commission 8431:15,18,20, 23,27 8449:9,11	composing 8455:1	consistent 8414:10,11 8442:16,18 8460:25 8484:26 8567:27 8584:19 8585:21	conversations 8377:1 8419:17 8506:18 8584:16
committee 8387:11 8506:11	comprised 8475:18	consistently 8388:15 8598:10,11	conversely 8564:28
common 8421:3,4,14,20 8494:16,20 8503:5,8	comprising 8490:22	consolidated 8382:3	convincing 8463:6
compa- 8511:10	computing 8387:16	consolidation 8480:4	cooler 8405:13
companies 8410:10 8484:8 8498:7	conceive 8433:27	Constant 8388:19	cooperative 8374:2 8387:7 8403:14 8445:14,22 8446:12 8448:27 8472:28 8473:13 8475:19,21,22 8476:1 8483:10 8498:23,24 8506:17,24 8582:6,7,17,20 8583:5,14 8584:14 8591:28
company 8451:27	concentrated 8365:22	constantly 8388:26 8595:23	cooperative-owned 8456:15
comparable 8489:4	concentrates 8474:21	consult 8438:21 8514:20	cooperatives 8448:16 8475:24 8522:7
compare 8381:28 8389:4 8393:22 8487:2 8564:4 8577:14 8580:10	concept 8378:3,6 8416:8 8419:9	consultant 8582:14	copies 8362:16,22 8371:22 8386:3,8 8603:25
compared 8461:25 8479:2, 18 8486:28 8488:26 8489:25 8494:24 8498:18 8504:1 8515:9,18 8517:18 8518:3 8521:8 8531:10 8557:20 8564:22,23 8566:5 8570:1, 21 8572:3 8584:26	concepts 8450:10 8526:27 8527:5	consulting 8514:23	copy 8508:28 8538:25 8577:22 8580:7 8586:16 8589:22
comparing 8374:1 8389:8 8390:15,16 8394:27 8428:22 8460:25 8479:28 8495:7 8574:18 8584:18	concern 8383:23 8496:5 8553:11,13,16,17	consumer 8456:8 8477:4 8478:17,22 8479:13,16 8497:19 8574:28 8575:5 8576:21 8584:3 8594:21	Cornell 8473:7 8485:16
comparison 8489:27 8515:16,26 8516:14 8540:8 8558:27 8599:28	concerns 8559:22	consumers 8477:2 8502:12	corner 8582:7 8599:10
Comparison.xlsx. 8538:10	concluded 8583:24 8604:18	consumption 8477:19 8478:15,22 8486:24 8492:13	correct 8363:18,19,22,23, 25,26,27 8364:1,2,5,7,10,11, 12,17,19,22,23,24,26,27,28 8365:2,3,15 8366:2,8,9 8367:22,23 8370:26 8373:5, 6,8,15,27 8374:5,6,7,11,12, 16,20,22 8375:20,21,28 8376:5,19 8379:14,15 8380:12,13 8381:8,25 8385:3,9,13 8405:19 8412:20 8415:14,17 8417:14,20 8418:8,13,14,15, 16 8422:14,17 8425:1,4,8, 15,17 8426:4,10,13,22,25 8427:1,10,15,18,20,23 8428:18 8429:3,4,12,13,16,
compartmentalized 8506:23	condensed 8474:8	context 8488:12 8554:14 8559:4	
compensate 8417:4 8560:28	condenses 8406:11	continue 8372:21 8384:16 8389:28 8392:27 8464:23 8491:15 8535:20 8559:8	
compensated 8476:21 8561:19	condition 8469:6	CONTINUED 8361:20	
	confess 8408:19	continues 8496:22	
	confines 8583:16	continuing 8394:1 8566:18	
	confirm 8363:13,16		
	confirming 8367:3		
	confirms 8367:16 8577:22		
	conflict 8411:1,9		
	confused 8408:14 8426:18		



22 8430:15 8432:1,25,26 8433:2 8435:6,9,13,14,19 8436:18 8437:6,13 8439:23, 26 8440:4,18 8441:12,15 8443:23,25 8444:2,16,17,19, 26,27 8445:7,10,24,25 8446:6,7,11,15,18,19 8449:4 8450:15,16,18,19,26,27,28 8451:1,5,23 8452:2,6,7 8453:27 8454:16,18 8456:27 8457:2,6,11,12 8465:25 8472:14 8481:2 8500:15,21 8501:21,23 8502:3,5,28 8504:19 8506:8 8507:2,3,15, 18 8508:9 8509:16,17,19,20, 23 8510:5 8511:12,13,22,23, 25 8512:8,9,10,11,15,16,25, 26 8513:5,6 8514:12,14 8516:7,24,25 8517:18,19,22, 23 8518:5,6,9,10 8519:27,28 8520:4,7,8,19,20 8521:10, 11,12,13 8523:27,28 8524:3, 8 8525:3,4,7,8,20 8526:13 8527:20,21,24,25 8528:1,5, 6,8,9,24,25,28 8529:9,11,27 8531:18,26,27 8535:26,27 8536:1,2,4,5,8,14,18,19,25 8539:17,18,20,21,24,25,26 8540:5,6,22,23,25,28 8541:10,18,20,21 8542:23, 27 8543:28 8544:11 8545:16,19,20 8546:11 8548:15,22 8549:2 8554:22 8555:10 8559:7 8561:1,12 8565:4,6,17 8567:19,21 8568:13 8569:15,19 8570:5, 17,20 8571:21 8573:22 8574:19,20,25 8575:1,6,17, 18,20,22,23,25,26 8576:3,4, 8,14,15,18,19 8577:9,11,16, 18,22 8578:5,9,18,20,27 8579:1,3,5,7,10,12,16,19,25, 27 8580:3 8581:12 8586:5 8587:9 8588:11 8590:12,14, 15 8597:21 8598:13 8599:19,23,24	8412:12 8413:3,21 8427:4,7 cost 8381:27 8388:13,22 8389:11,12,15,17,23,25,27 8390:2,5,7,8 8391:13 8392:16,17,18,19,24 8393:2 8394:22 8396:6,13 8404:25 8405:7,8,12 8416:25 8422:22,25,26,27 8423:8 8430:18 8431:22 8433:27 8440:14 8443:2,15,21 8444:6,25 8451:21 8454:16 8455:2 8456:5 8458:15 8459:5,9,11,13 8460:3,6 8465:28 8467:24 8474:26,28 8482:12 8483:15,20,21 8484:9,10,12,13 8485:12,17, 21,25 8494:28 8496:20,23 8497:23 8498:15 8503:13 8525:22 8531:14 8532:14 8533:3 8534:14,27 8535:4 8542:9 8548:15 8562:2 8565:23 8572:3,5,8,12,18 8573:13 8584:7 8587:18 8595:12,17,18,20,23 costs 8384:24 8385:1,11 8389:18 8392:16,25 8393:20 8396:15 8405:28 8406:1 8411:11,14,20 8412:13 8442:12 8443:1 8444:11 8449:24 8450:5 8453:18 8454:2,25 8455:6,19,20,21 8458:27 8459:9 8462:3,4 8465:23 8467:7,13,18 8478:20 8482:17 8483:11, 14,17 8484:18,22 8485:11, 27 8486:3,5,6,23 8488:7 8494:20 8498:8,14 8525:6, 15 8526:5,8,9 8531:5,6,7,13, 16,22,25 8533:20 8535:18 8542:8 8561:25 8566:19,25 8567:1,2,5,10,11 8572:21 8573:20 8595:26,27 8596:5	country 8383:1 8451:25 8452:26 8475:10 8476:4 8484:2 8542:1 counts 8403:21 8404:10,11 8542:4 county 8365:28 8366:2,5 8372:9 8401:27 8402:1,2 8416:18 8420:19 8421:11 8428:2 8444:25 8460:2 8461:1 8465:1 8487:3,17,18 8490:12,19,20 8491:12,26 8492:5,7,10,12,26 8493:1 8494:12,18,19 8496:17 8498:9,10,12 8501:6,26 8506:2 8507:13,17,25 8508:8 8509:19 8512:7,14, 20 8513:28 8518:17 8519:25,26 8520:7 8523:4 8525:24,28 8526:3 8535:28 8536:10 8537:2 8538:6,7,10 8539:16,19,24 8542:24 8545:15,28 8546:2,19 8554:10,20,22 8557:4 8568:20 8569:2,3,9 8571:27 8572:4,6,16 8585:12 8599:1, 15 8600:2,10,11 couple 8384:8 8396:21 8401:17 8404:7 8414:1 8453:12 8467:6 8508:21,23 8515:10 court 8361:2,13 8362:12,25 8365:4,6,9,12 8366:14,18, 22,28 8367:27 8368:1 8369:10 8370:15,23 8371:3, 5,10,13,24,28 8372:11,13 8375:3 8379:19,27 8380:22 8381:4,7,9 8383:27 8385:16, 25 8386:6,13,17,20 8394:14 8399:22,25,27 8400:2,8 8406:20,26,28 8407:3,7,11, 18,20,24,26 8408:3 8409:17, 20 8414:5 8418:11 8422:3, 16 8425:11,24 8433:8,10 8437:20,27 8440:6 8441:19 8451:9 8456:20 8457:22 8458:2 8462:24 8466:24 8467:1 8470:5,10,15,19,23, 28 8471:6,11,22,25,28 8472:17,20 8473:21,22 8477:25,28 8478:7 8481:1,3, 5 8482:7,9,26 8483:24,27 8484:4,6 8486:1,8,13 8489:21,23 8490:3 8492:8 8493:4,10 8496:11,14 8499:8,10,12 8500:2 8507:11,16,20,23,25,28 8508:5,7,10,12,24 8509:2,11 8510:12,14 8512:21 8513:13,20 8516:1 8519:10, 13 8522:16 8523:16,18,20, 23 8524:12,16,19 8528:10, 12,15,18 8529:1,4 8530:13, 15 8537:5,10,12,14,17,20,	24,27 8538:11,18,24 8539:6, 8,12 8540:15,18 8542:17,20 8545:22,27 8546:2,5,8 8547:13,20 8548:2 8549:2, 18 8550:2,11,24 8551:1,4, 15,22,28 8552:6,12,19,27 8553:5,11,21 8562:13 8564:8,10,12 8567:22 8568:2 8574:9 8577:2,24 8578:7,10,21 8580:8,16,19, 24 8581:2,7,11,13,17,28 8583:1,3 8586:6,10,12,14, 18,21,26 8587:4,6,10,24,27 8588:1,5,9,12,28 8589:4,7, 17,21,27 8590:2 8595:26 8599:5,7 8600:15,19,22,24, 27 8601:1,3,5,18 8602:7,18, 21,26 8603:26 8604:6,13 courtesy 8371:5,13 cover 8390:5 8393:2 8396:5 8443:21 8450:5 8458:26 8459:4 8533:9 covered 8412:14 8441:27 8465:24 covering 8473:5,6 covers 8422:25,26 cows 8405:5 crates 8412:24,25,28 8413:1 Crawford 8395:11 8444:4 cream 8474:8,21 8595:6 create 8394:11,21 8417:10 8463:17,28 8468:25 8494:6, 15 8497:9 8500:20 8517:10 8565:9 created 8393:5 8413:16 8438:23 8469:7 creates 8411:5,7 8414:27 8449:13 8464:3 8468:4,15 8494:19 creating 8430:12 8469:20 credit 8464:17 8465:5,11 8484:23 8485:24 8548:11,19 8566:22 8567:4 credits 8418:8,18,22,26,28 8419:3 8449:23 8460:5 8548:13 crew 8514:19 crews 8409:25 8514:21 critical 8583:27 cross 8465:18 8466:11 8556:5 cross-examination 8361:15, 20 8380:3 8406:19 8408:5,8
--	--	--	---



8441:20 8451:11 8453:7 8456:22 8458:6 8507:10 8508:16 8547:14 8550:13 8553:25 8562:19 8574:12 8580:20 8589:3,8	12,26 8503:2 8532:15,17 8590:28 8596:14,22,27	December 8480:1,12,17 8481:13,16,21,23 8500:11, 12 8527:27 8529:15 8550:27 8574:19	delivery 8488:27 8492:24 8532:11 8556:5 8587:13
cross-examine 8379:27 8407:21 8508:14 8553:22 8562:14	customers' 8446:4		delve 8448:7
cross-reference 8549:11	D	decide 8435:27	demand 8388:18,27 8389:9 8390:7 8449:20 8475:7 8477:4 8478:17,24,26,28 8479:2,8,13,17,18 8481:13, 17 8482:2,4,11 8490:16 8491:28 8493:17,18,19,22, 24,26 8494:2,5,7 8496:25 8497:19 8517:17,18,21 8518:14 8521:8 8527:2,8 8556:20 8563:15,19,23 8564:5,17,21,24,25 8565:2, 22 8584:3 8594:21
cross-referenced 8500:9	D.C. 8398:10,18 8413:25 8427:14,15 8428:15 8429:1 8430:11,25 8478:12	decided 8395:27	demanding 8468:16
crossing 8497:27 8572:23	daily 8449:18,20 8507:3 8529:22	decision 8418:5,6	demands 8390:1 8446:9
crowd 8539:10	dairies 8480:24	decisions 8401:25 8402:20, 25 8450:21 8530:17	demonstrate 8515:17 8573:14
Cryan 8451:9,10,12,13 8453:5 8602:16,20	dairy 8380:26,28 8390:1 8396:19 8422:8 8453:11 8456:9,11,24 8472:26 8473:11,12 8474:4 8475:7, 19,28 8477:2 8480:24,25 8485:13,15,23 8486:6 8490:13 8491:24 8498:23 8501:17 8503:10,14 8524:1 8534:24 8535:17,28 8557:5, 8,27 8564:1 8574:14 8582:17,18,21,25 8583:10, 13 8584:1 8585:1 8588:20 8590:25 8594:18	deck 8506:20	demonstrated 8495:19 8497:17
crystal 8458:12	Dakota 8367:18	decline 8478:14 8491:16	demonstrates 8479:4 8480:14 8491:14 8564:19
Cumberland 8490:20 8512:14,18,19,22 8518:4,9, 17 8519:25 8520:7,17,22 8523:1,4,27 8524:25 8525:24,28 8545:5 8579:2 8585:11 8598:28 8599:15 8600:2	Dakotas 8414:26	declined 8527:28 8528:4	demonstrating 8423:10
curious 8381:16 8383:10 8545:23 8566:28	Dallas 8378:9,10,11	declines 8477:11	demonstration 8573:26
current 8368:5 8369:6 8372:24 8373:18,26 8376:6 8377:13 8379:13 8387:14 8393:21,24 8394:7,28 8395:17,20,27 8396:7 8410:26 8412:12 8414:16 8415:8 8424:26 8426:28 8427:25 8439:26 8442:13 8450:6,11,13,15 8464:21 8466:4 8487:1,3,7,19 8489:27 8490:26 8494:15 8495:5,26 8496:16 8498:20 8504:2,16 8515:6,8 8525:17 8541:10,11,12,13 8557:18 8559:11,14,23 8570:24 8571:16 8572:1 8583:23 8584:23,26 8585:21 8592:13 8594:6 8601:13	data 8367:16 8369:5,16 8371:6 8373:25 8380:12,16, 18 8381:23 8393:12 8478:27 8479:7 8480:7,10,14 8485:19 8489:15 8500:19 8503:25 8525:14 8527:18,24 8538:11,15 8563:11 8565:12,16,25,27 8566:15 8584:5,12 8586:8	decrease 8425:3 8480:14,16 8505:28	Department 8362:28 8379:9 8380:19 8435:27 8569:17
curve 8465:8	date 8549:25	decreased 8381:14 8402:17 8476:14 8477:23 8480:3 8482:3 8497:26	depend 8506:2
custom 8550:12	David 8471:14	decreases 8420:22 8476:16 8480:19 8485:10	dependent 8532:28
customer 8390:1 8398:19 8430:1,2 8444:11 8447:27, 28 8469:26 8532:28 8533:1 8559:22	Davidson 8422:10	decreasing 8477:14 8487:12 8503:8	depending 8389:2 8416:18, 19 8532:17 8533:6
customer's 8429:25	day 8369:6,19 8404:18,22, 24 8420:13 8421:10 8429:5 8447:19 8468:18,19 8483:20 8493:25 8593:3 8601:15 8604:14	deduct 8459:3 8460:9	depends 8412:23 8522:2 8529:24 8596:25
customer-centric 8430:8	days 8389:10 8411:27,28 8430:20,23 8447:14,15,16, 17 8468:7,11 8590:19,20 8595:4	defense 8452:11	deploy 8401:14
customers 8388:20 8403:5, 20 8404:7,8,10,12 8405:18, 23 8412:1,8 8429:28 8444:12 8446:17,25 8447:9, 10,11,12 8448:21 8450:26 8455:20 8468:16,20 8502:9,	de 8591:23	deficient 8377:8,14,19	depooling 8559:2,3,6
	dead 8572:26	deficit 8396:14 8478:21 8479:14,21,22 8521:8 8543:5	depreciated 8463:7
	deal 8412:2 8468:16 8547:15 8549:3	define 8532:9 8592:15,16	derivation 8527:24
	dealt 8550:15	defined 8546:24	derived 8480:10 8584:19
		definite 8389:9	designated 8390:4
		definition 8414:15 8430:13 8435:3 8436:3,13 8468:27 8516:4 8529:8,12,13,28	designed 8534:11 8569:2
		degree 8573:8	desire 8533:25
		degrees 8403:17	destination 8390:20,27 8392:9,18,23,25 8396:28 8397:2 8454:11 8462:4 8465:7,10 8498:14
		Delaware 8476:10,17 8479:12 8513:2 8539:23,24 8545:13 8546:2,4,11	detail 8445:3 8488:9 8498:21,25 8510:2 8516:21 8522:21 8567:15 8574:1 8575:26
		deleted 8371:20	detailed 8584:16
		deliver 8488:27	
		delivered 8376:17,18 8449:2 8474:2 8488:22 8574:28	
		deliveries 8488:26 8489:7 8532:8 8555:17 8556:3	
		delivering 8498:8 8544:19 8566:5	



<p>determination 8373:14 8521:19</p> <p>determine 8393:3 8416:25 8475:2,11 8479:2 8487:20 8584:21 8592:11 8593:12,25</p> <p>determined 8395:13,23 8475:15 8533:21 8536:26</p> <p>determining 8549:5</p> <p>developed 8442:3 8445:2 8453:23</p> <p>developing 8387:14</p> <p>Development 8491:12 8501:6</p> <p>deviate 8420:23</p> <p>deviated 8397:26</p> <p>deviating 8543:6</p> <p>deviation 8376:26 8451:4 8518:8 8519:1 8554:21</p> <p>DFA 8380:12,18,27,28 8381:2,6 8384:26 8410:15, 20 8448:15 8473:4,13,26 8474:3,4 8475:19 8478:23 8483:11,17,18 8484:15 8506:13 8520:19 8522:3 8526:2 8532:14 8542:16,26 8543:12 8544:10 8547:6 8548:10 8560:7,15 8561:3, 11 8565:7 8566:26 8591:19</p> <p>DFA's 8474:3,13,15,17 8536:19</p> <p>differ 8585:6</p> <p>difference 8374:7,11,19 8378:20 8379:7 8383:7,8,9, 13,21 8390:2 8393:18,28 8394:11,20 8395:1,5,14 8396:25 8409:3 8424:26 8425:5 8426:6 8428:15,16 8435:23 8443:19 8452:17 8454:16 8455:10,11 8463:14,15,16,23 8465:5,8 8489:16 8490:1 8494:17 8495:6,12 8498:17 8510:21 8511:4,17 8512:1,12 8513:10 8514:6,9 8518:13 8526:6 8531:4 8539:28 8544:16,19 8545:3 8558:13 8570:15 8573:15,28 8578:28 8579:13,18,26 8580:1 8586:3 8589:12</p> <p>differences 8372:18 8468:7 8487:6 8504:25 8518:13 8525:11 8541:5 8567:16 8568:1</p> <p>differential 8374:4,5 8379:6 8393:2,15,25 8394:26 8395:5,19,24,28 8396:11</p>	<p>8411:6 8421:15 8452:24 8453:25 8458:22 8464:25 8465:6,7,9 8474:24 8476:4 8480:8,13 8486:18,27 8487:13,19,25 8488:3 8490:27 8491:15 8492:17,20 8494:6 8495:5 8497:3 8498:11 8500:13 8504:2,28 8505:2,7,9 8506:12 8509:25 8511:12,21 8515:8 8520:24 8527:1,7 8534:23 8535:10 8541:13 8545:11 8554:23 8556:6 8557:13,14 8559:1 8560:17,20,27 8561:11,18 8562:8 8569:4,17 8570:1 8571:4 8573:8 8575:18 8578:3 8599:18</p> <p>differentials 8368:12 8369:5,16 8382:15 8383:21 8387:15,19 8388:6,24 8389:16,22,28 8393:4 8394:2 8395:1,3,11,18,21 8396:5,12,16 8398:14 8406:16 8410:25 8413:13 8414:19 8415:1,5 8419:25 8420:4 8423:1 8424:19 8432:5,9,16 8450:4,14 8453:17,26 8455:2 8460:4 8464:26 8465:3,6,28 8466:14 8469:13,14 8475:3, 12,15 8487:1,3,20,28 8489:1,16,19,25,27,28 8490:5,8,13,18 8491:1,2,3, 18 8493:1 8494:14,23 8495:8,22 8497:1,15 8498:20 8499:6 8503:23 8504:17,23 8505:2 8515:18 8520:26 8521:2 8533:9,18, 22 8534:11,13 8536:27 8542:10 8543:14,16 8545:2 8554:9 8556:18,19 8557:5 8558:5,13 8561:20,28 8566:13 8568:19 8571:12,14 8583:21,27 8584:10,27 8585:6,9,14,20,22,23 8586:2 8587:1,16,21 8588:16,19,23 8591:14 8593:20 8597:4,9, 14,19,24 8601:10,13</p> <p>differently 8484:9 8504:3 8530:6</p> <p>differing 8495:2</p> <p>difficult 8382:28 8428:25,27 8430:24 8494:28</p> <p>difficulty 8440:4,10,12</p> <p>digital 8423:25,27</p> <p>digress 8361:26</p> <p>direct 8386:25 8472:4 8488:27 8581:21 8598:21</p> <p>directing 8451:20</p>	<p>direction 8430:4 8507:2</p> <p>directions 8493:22 8494:21</p> <p>directly 8390:2 8405:24 8454:4 8592:8</p> <p>disadvantage 8402:25 8488:23 8506:6,26 8542:11</p> <p>disagreeing 8425:21,25</p> <p>disbelieve 8524:26</p> <p>discretion 8379:11 8383:24</p> <p>discrimination 8543:11</p> <p>discuss 8487:12 8544:21 8571:23</p> <p>discussed 8381:13 8409:23 8419:7 8467:19 8534:4 8542:22 8543:24 8544:24,25 8545:4 8557:11 8566:19 8567:11 8568:17,27,28 8584:14 8599:25</p> <p>discussing 8442:2 8597:6</p> <p>discussion 8366:21 8408:2 8409:19 8423:2 8426:1 8455:5 8458:1 8464:16 8470:14 8472:19 8486:12 8519:12 8537:26 8565:25 8590:1 8602:24</p> <p>discussions 8438:27</p> <p>disincentivize 8556:9</p> <p>disorderly 8411:5,7 8487:7 8489:2 8490:15 8493:2 8497:10 8555:18,21 8556:13,15 8568:22 8569:21</p> <p>disparity 8558:12,26</p> <p>disposition 8362:11,13</p> <p>dispositions 8523:14</p> <p>disproportionate 8489:9</p> <p>disruptive 8373:19,21</p> <p>distance 8370:3 8376:16 8379:5 8440:20 8441:10 8442:7,25 8443:18 8445:5 8461:13</p> <p>distances 8442:22,26</p> <p>distinctions 8377:8,15</p> <p>distribute 8519:11 8537:25</p> <p>distributed 8366:19 8470:12 8481:14 8535:1 8581:7</p> <p>distributing 8372:10,11,14 8387:22 8388:12,15 8390:28 8474:10 8480:2 8497:5 8545:24</p>	<p>diverted 8530:2</p> <p>divide 8447:8</p> <p>divided 8479:1 8564:6,17</p> <p>dividing 8478:9</p> <p>document 8366:11,26 8367:6,15 8371:18 8539:2 8549:8,24 8550:27</p> <p>document's 8470:12</p> <p>documents 8362:10,27 8367:13 8370:5 8372:17 8373:4 8472:21 8526:18</p> <p>Dogs 8524:15,17,18</p> <p>dollar 8407:16 8454:1 8465:9 8483:24 8535:17</p> <p>dollars 8417:10 8418:4 8439:19 8453:21 8455:17 8587:10</p> <p>domino 8383:2</p> <p>double 8390:13 8397:10 8492:13 8594:12</p> <p>double-check 8551:7 8585:28</p> <p>doubled 8397:20 8407:9</p> <p>downside 8420:23</p> <p>downtown 8524:14,15</p> <p>dramatically 8390:6 8484:10 8584:4 8595:21</p> <p>draw 8395:26 8468:8 8531:28</p> <p>drawing 8405:2</p> <p>drinking 8563:16</p> <p>drive 8428:25,27 8432:12 8433:12,14 8439:12,13 8572:14</p> <p>driven 8566:3</p> <p>drivers 8484:1 8543:27 8572:17</p> <p>drives 8461:17,19</p> <p>driving 8440:4 8584:6 8595:11,15,16,17</p> <p>drop 8363:27 8420:21 8509:11 8548:4</p> <p>dropping 8534:16</p> <p>dry 8474:8</p> <p>due 8478:18 8480:3 8482:16 8488:7 8492:20 8493:20 8494:25 8495:9 8498:5 8522:19 8585:1</p>
--	---	--	--



dues 8485:17,21	effectively 8518:12 8532:2	English 8361:14,16,21,22 8362:13,26 8365:5,8,10,13, 17,19,20 8366:10,24,25 8367:1,11,28 8368:6 8369:13,14 8370:13,23,26, 27 8371:4,8,12,17 8372:2,4, 12,14,20 8375:4,5 8379:17, 26 8382:12 8384:10 8408:6, 7,9,11 8409:22 8414:6 8422:5,17,20 8425:16,27,28 8433:13 8437:21,28 8440:8 8441:17,27 8443:13 8444:28 8468:24 8483:3 8508:15,17, 20,26 8509:3,5,7,12 8510:13,15 8512:22,24 8513:14,16,21,23 8516:3 8519:8,14,20,21 8522:17,18 8523:17,19,22,24,25 8524:13,18,20,22 8528:11, 13,16,22 8529:2,7 8530:14, 19 8537:3,7,11,13,16 8538:1,5,13,19 8539:1,7,14 8540:15,17,19 8542:19,21 8545:22,26,28 8546:4,6,9 8547:8,22,27 8548:4,5,26 8549:18,19 8550:10 8552:16 8553:20,21 8560:11 8567:16 8602:23	Erin 8367:2 erring 8516:11 error 8510:21 errs 8516:17 escalate 8496:22 escalated 8484:8 ESL 8474:7 essence 8390:25 8426:1 essentially 8432:22 8451:19 8452:21,23 8489:27 establish 8487:11 established 8368:27 8374:26 8393:14 8486:17 8548:17,18 establishes 8446:9 establishing 8368:12 estimated 8478:10,23 8479:1,16 8584:18 evaluate 8583:26 evenly 8460:13 8468:10 8481:14 8548:17,18 eventually 8596:23 everybody's 8404:16 everything's 8458:11 evidence 8370:10,16,18,20 8371:16 8379:20,23,25 8385:18,20 8470:4,7,9 8549:6 8550:3,8,9,19,21,23 8551:10,12,14,16,19,21,23, 25,27 8552:1,3,5,7,9,11,15, 22,24,26,28 8553:2,4,6,8,10, 15,17,19 8562:2 8603:28 8604:3,5,10,12 evident 8481:28 exacerbate 8496:6 examination 8384:5,17 8386:25 8467:4 8472:4 8577:4 8581:21 examined 8361:18 8386:23 8472:2 8581:19 examiner 8406:21 examples 8390:9,17 8393:3 8397:25 8398:21,22 8422:1 8423:7,8 8449:8 8460:18 8476:6 8480:21 8557:26 8588:23 exceed 8403:9 8405:17 exceeding 8479:22
duly 8472:2 8581:19	effects 8388:20		
dumping 8531:1	efficiencies 8391:6 8449:5 8485:10 8498:7		
duty 8507:3	efficiency 8391:13,22 8392:3,11 8485:7		
dwell 8586:15	efficient 8451:21,28 8452:5, 18,25 8578:22		
dynamic 8432:7 8571:2	efficiently 8463:4		
dynamics 8401:21 8474:25 8476:3 8491:4 8493:21 8495:27 8515:6 8554:15 8559:11,15,19,23	effort 8369:2 8495:26 8559:11		
E	efforts 8402:15 8455:24 8506:28 8583:27		
earlier 8362:9 8381:12,14,28 8427:7 8428:11 8430:9 8434:10 8436:23 8441:1 8447:8 8454:7 8455:5 8456:14 8466:19 8467:7 8468:6,12 8469:12 8493:7 8509:15 8537:13 8594:9	elaborate 8469:3 8560:21 8566:28		
early 8389:15 8591:26 8593:9 8594:2	electronic 8404:4		
earned 8473:7	elements 8555:6		
easier 8432:12	eliminates 8494:17		
easiest 8586:15	Elmhurst 8480:25		
easily 8408:14 8455:10	else's 8449:13		
east 8373:24 8378:10 8391:9 8415:13,16 8427:5,9 8437:11 8472:27 8485:24 8493:19 8495:4 8496:7 8505:5,6 8520:6 8536:6,24 8542:28 8566:22 8588:15	emissions 8456:2		
East's 8484:24	emphasize 8413:8		
eastern 8413:21 8461:18 8481:7 8493:25 8518:1 8522:24 8539:16 8585:15 8587:14 8601:11,13	Empire 8491:12 8501:6		
easy 8400:6,8 8408:13 8439:12,13 8445:25 8462:23 8549:19	employed 8472:28		
ebbs 8388:19	employee 8456:1		
economic 8387:11 8442:13 8450:22 8463:21 8521:6,14, 20	empty 8397:3 8407:1		
economics 8541:22	encompass 8559:22		
economist 8591:23	encompassed 8443:21 8444:7 8445:1,23 8449:21		
edge 8402:3 8488:18	encourage 8435:21 8521:15		
Edward 8471:19	encouraged 8436:10,12		
effect 8383:2	encouragement 8417:19		
effective 8389:25 8458:17	end 8369:5,18 8382:14 8404:27 8410:23 8426:2,5 8432:28 8450:2 8529:4,6 8562:10 8565:20 8574:27 8592:7 8600:6 8604:14		
	end-all 8420:28 8421:2		
	ended 8425:19 8598:12		
	ending 8392:10		
	ends 8534:24 8581:11		
	engineering 8451:19 8452:19		
	England 8473:11 8483:19 8484:15 8496:21 8582:19 8591:3		



exceeds 8444:25	expansion 8491:10,11,13 8492:5 8501:4,5,20,22	facilitate 8493:17	8567:4 8575:27 8582:18,23 8583:13
Excel 8503:24 8510:9 8598:13	expansions 8568:7	facilitating 8571:16	farmer 8390:1 8396:19 8405:3 8456:9,11 8534:24 8535:17
Excellent 8547:13	expect 8517:24	facilities 8411:8 8447:3 8474:5,10,14 8489:13 8490:14,20 8491:8 8492:16 8497:5,7 8523:26 8531:10, 12 8537:1 8543:11,23 8557:6,9 8559:27 8569:7 8582:27 8590:10	farmer-owner 8474:2
exception 8462:9	expectation 8405:21 8592:3	facility 8474:13 8491:25 8492:10,13,26 8501:17,25 8524:1,6 8536:21 8541:3 8545:5 8546:6,11 8569:7,9, 27 8570:1,3 8575:22 8583:7, 8 8590:13	farmer-owners 8473:27
excess 8502:23 8503:2	expected 8527:19 8545:8 8587:13	fact 8366:3,6 8370:9 8373:7 8375:12 8376:23 8378:2,14 8388:21 8409:23 8415:10 8420:24 8423:8 8435:3,8 8464:25 8479:17 8516:15 8518:28 8521:6 8533:25 8541:16 8555:19 8556:4 8576:24 8577:9	farmers 8422:8 8472:26 8485:13 8486:7 8490:13 8503:10,14 8524:2 8536:1 8557:5,8,27 8582:21
excuse 8384:25 8464:6 8480:26 8557:14 8564:20	expense 8560:17	factor 8484:23 8567:6,8 8584:6 8595:11,15,16,17	Farmland 8480:24
executive 8387:5	expenses 8560:18,28	factors 8414:28 8445:21 8475:16 8484:21 8485:12,28 8486:4,16 8494:9 8495:10 8497:23,24 8498:15 8542:6 8555:5,12 8566:24 8594:23 8595:9 8596:5	farms 8380:26,27,28 8381:3, 6 8390:24 8392:21 8400:25 8442:27,28 8448:25 8461:26 8474:27 8480:23,27 8485:17,20,26 8493:3 8540:24 8564:1 8568:24 8569:23 8575:10 8584:2 8594:20,26,28 8600:9
exhibit 8366:15,16,27 8367:7 8370:14,16,17,19 8371:7,16,18,23,26 8372:3 8375:2 8376:8 8379:18,20, 21,22,24 8380:24 8381:7 8384:21 8385:15,17,19 8386:2,9,10,11,27 8396:23 8406:22 8424:14 8470:4,6,8, 22,23,24,26 8471:1,2,4,5,7, 9,12,14,15,16,18,19,20 8472:6,7,15 8495:20 8500:8 8501:10,18 8502:2 8507:12 8508:28 8510:4,13,21 8511:9,14 8512:2,17,28 8513:5 8514:3,9 8519:15,16, 17,18 8526:22 8537:15,18, 22 8538:1,2,3,5,6,8,9,19,23 8539:15,20,22 8545:23 8549:8,21,22 8550:6,19,20, 22 8551:10,11,13,16,18,20, 23,24,26 8552:1,2,4,7,8,10, 15,22,23,25,28 8553:1,3,6,7, 9,12,15,17,18 8554:2 8566:23 8567:1,2 8574:17 8577:7,14,25 8580:28 8581:1,3,4,5,24 8586:22 8598:24 8599:9,10 8600:15 8603:6,11,13,15,16,28 8604:2,4,8,9,11	expensive 8412:19 8453:2 8576:25,27	facts 8381:13	farther 8376:1 8378:10 8428:8 8430:12 8440:21 8542:28
exhibit 8366:15,16,27 8367:7 8370:14,16,17,19 8371:7,16,18,23,26 8372:3 8375:2 8376:8 8379:18,20, 21,22,24 8380:24 8381:7 8384:21 8385:15,17,19 8386:2,9,10,11,27 8396:23 8406:22 8424:14 8470:4,6,8, 22,23,24,26 8471:1,2,4,5,7, 9,12,14,15,16,18,19,20 8472:6,7,15 8495:20 8500:8 8501:10,18 8502:2 8507:12 8508:28 8510:4,13,21 8511:9,14 8512:2,17,28 8513:5 8514:3,9 8519:15,16, 17,18 8526:22 8537:15,18, 22 8538:1,2,3,5,6,8,9,19,23 8539:15,20,22 8545:23 8549:8,21,22 8550:6,19,20, 22 8551:10,11,13,16,18,20, 23,24,26 8552:1,2,4,7,8,10, 15,22,23,25,28 8553:1,3,6,7, 9,12,15,17,18 8554:2 8566:23 8567:1,2 8574:17 8577:7,14,25 8580:28 8581:1,3,4,5,24 8586:22 8598:24 8599:9,10 8600:15 8603:6,11,13,15,16,28 8604:2,4,8,9,11	experience 8385:5,12 8401:9,19 8405:22 8416:1 8442:16 8452:16 8527:15 8556:22 8557:3 8582:16 8583:15	failing 8535:20	February 8484:24 8566:22
exhibit 8366:15,16,27 8367:7 8370:14,16,17,19 8371:7,16,18,23,26 8372:3 8375:2 8376:8 8379:18,20, 21,22,24 8380:24 8381:7 8384:21 8385:15,17,19 8386:2,9,10,11,27 8396:23 8406:22 8424:14 8470:4,6,8, 22,23,24,26 8471:1,2,4,5,7, 9,12,14,15,16,18,19,20 8472:6,7,15 8495:20 8500:8 8501:10,18 8502:2 8507:12 8508:28 8510:4,13,21 8511:9,14 8512:2,17,28 8513:5 8514:3,9 8519:15,16, 17,18 8526:22 8537:15,18, 22 8538:1,2,3,5,6,8,9,19,23 8539:15,20,22 8545:23 8549:8,21,22 8550:6,19,20, 22 8551:10,11,13,16,18,20, 23,24,26 8552:1,2,4,7,8,10, 15,22,23,25,28 8553:1,3,6,7, 9,12,15,17,18 8554:2 8566:23 8567:1,2 8574:17 8577:7,14,25 8580:28 8581:1,3,4,5,24 8586:22 8598:24 8599:9,10 8600:15 8603:6,11,13,15,16,28 8604:2,4,8,9,11	experienced 8483:18	fair 8384:22 8402:14 8405:20 8422:3 8432:10 8442:5,6,10,14 8457:16 8500:27 8502:22 8530:7 8534:21 8575:12 8576:20, 23,24	Federal 8387:15,18,21,23, 24,26,27 8388:2,9,27,28 8389:3,4,6,22 8391:18,19, 21,23 8392:8,9,20 8393:24 8395:10,20 8396:3 8398:27 8399:15,16,19 8400:11,18, 20 8401:23 8415:3,4,7 8416:5 8417:23 8418:2 8420:6 8431:13,21,24 8454:23 8460:28 8461:4,11, 21 8463:25,27,28 8465:24 8466:14 8469:14,19 8474:1, 12 8479:28 8480:3,7,11 8481:13,23 8488:28 8489:1, 6,7,10,13 8491:6,16 8494:10 8495:1,12,13,20 8520:25 8526:28 8527:6,11 8530:22, 26 8533:17,23 8535:1,5 8546:1 8550:27 8555:26 8582:20 8583:16,19,24 8591:17 8593:4 8603:7,8,28 8604:7
exhibit 8366:15,16,27 8367:7 8370:14,16,17,19 8371:7,16,18,23,26 8372:3 8375:2 8376:8 8379:18,20, 21,22,24 8380:24 8381:7 8384:21 8385:15,17,19 8386:2,9,10,11,27 8396:23 8406:22 8424:14 8470:4,6,8, 22,23,24,26 8471:1,2,4,5,7, 9,12,14,15,16,18,19,20 8472:6,7,15 8495:20 8500:8 8501:10,18 8502:2 8507:12 8508:28 8510:4,13,21 8511:9,14 8512:2,17,28 8513:5 8514:3,9 8519:15,16, 17,18 8526:22 8537:15,18, 22 8538:1,2,3,5,6,8,9,19,23 8539:15,20,22 8545:23 8549:8,21,22 8550:6,19,20, 22 8551:10,11,13,16,18,20, 23,24,26 8552:1,2,4,7,8,10, 15,22,23,25,28 8553:1,3,6,7, 9,12,15,17,18 8554:2 8566:23 8567:1,2 8574:17 8577:7,14,25 8580:28 8581:1,3,4,5,24 8586:22 8598:24 8599:9,10 8600:15 8603:6,11,13,15,16,28 8604:2,4,8,9,11	experiences 8445:23 8502:10	Fairlife 8501:22 8594:10	Federation 8367:25 8387:10 8451:14 8509:22 8525:12 8583:18
exhibit 8366:15,16,27 8367:7 8370:14,16,17,19 8371:7,16,18,23,26 8372:3 8375:2 8376:8 8379:18,20, 21,22,24 8380:24 8381:7 8384:21 8385:15,17,19 8386:2,9,10,11,27 8396:23 8406:22 8424:14 8470:4,6,8, 22,23,24,26 8471:1,2,4,5,7, 9,12,14,15,16,18,19,20 8472:6,7,15 8495:20 8500:8 8501:10,18 8502:2 8507:12 8508:28 8510:4,13,21 8511:9,14 8512:2,17,28 8513:5 8514:3,9 8519:15,16, 17,18 8526:22 8537:15,18, 22 8538:1,2,3,5,6,8,9,19,23 8539:15,20,22 8545:23 8549:8,21,22 8550:6,19,20, 22 8551:10,11,13,16,18,20, 23,24,26 8552:1,2,4,7,8,10, 15,22,23,25,28 8553:1,3,6,7, 9,12,15,17,18 8554:2 8566:23 8567:1,2 8574:17 8577:7,14,25 8580:28 8581:1,3,4,5,24 8586:22 8598:24 8599:9,10 8600:15 8603:6,11,13,15,16,28 8604:2,4,8,9,11	experiencing 8389:17	faith 8602:10	Federation-42a 8470:27
exhibit 8366:15,16,27 8367:7 8370:14,16,17,19 8371:7,16,18,23,26 8372:3 8375:2 8376:8 8379:18,20, 21,22,24 8380:24 8381:7 8384:21 8385:15,17,19 8386:2,9,10,11,27 8396:23 8406:22 8424:14 8470:4,6,8, 22,23,24,26 8471:1,2,4,5,7, 9,12,14,15,16,18,19,20 8472:6,7,15 8495:20 8500:8 8501:10,18 8502:2 8507:12 8508:28 8510:4,13,21 8511:9,14 8512:2,17,28 8513:5 8514:3,9 8519:15,16, 17,18 8526:22 8537:15,18, 22 8538:1,2,3,5,6,8,9,19,23 8539:15,20,22 8545:23 8549:8,21,22 8550:6,19,20, 22 8551:10,11,13,16,18,20, 23,24,26 8552:1,2,4,7,8,10, 15,22,23,25,28 8553:1,3,6,7, 9,12,15,17,18 8554:2 8566:23 8567:1,2 8574:17 8577:7,14,25 8580:28 8581:1,3,4,5,24 8586:22 8598:24 8599:9,10 8600:15 8603:6,11,13,15,16,28 8604:2,4,8,9,11	expert 8414:22	fallen 8575:24 8576:18	feed 8569:6
exhibit 8366:15,16,27 8367:7 8370:14,16,17,19 8371:7,16,18,23,26 8372:3 8375:2 8376:8 8379:18,20, 21,22,24 8380:24 8381:7 8384:21 8385:15,17,19 8386:2,9,10,11,27 8396:23 8406:22 8424:14 8470:4,6,8, 22,23,24,26 8471:1,2,4,5,7, 9,12,14,15,16,18,19,20 8472:6,7,15 8495:20 8500:8 8501:10,18 8502:2 8507:12 8508:28 8510:4,13,21 8511:9,14 8512:2,17,28 8513:5 8514:3,9 8519:15,16, 17,18 8526:22 8537:15,18, 22 8538:1,2,3,5,6,8,9,19,23 8539:15,20,22 8545:23 8549:8,21,22 8550:6,19,20, 22 8551:10,11,13,16,18,20, 23,24,26 8552:1,2,4,7,8,10, 15,22,23,25,28 8553:1,3,6,7, 9,12,15,17,18 8554:2 8566:23 8567:1,2 8574:17 8577:7,14,25 8580:28 8581:1,3,4,5,24 8586:22 8598:24 8599:9,10 8600:15 8603:6,11,13,15,16,28 8604:2,4,8,9,11	expertise 8490:11 8582:16 8585:5	familiar 8384:10 8419:9 8423:13 8453:15 8518:16 8519:3,22 8596:1	feel 8385:22 8393:19 8399:20 8400:21 8434:23
exhibit 8366:15,16,27 8367:7 8370:14,16,17,19 8371:7,16,18,23,26 8372:3 8375:2 8376:8 8379:18,20, 21,22,24 8380:24 8381:7 8384:21 8385:15,17,19 8386:2,9,10,11,27 8396:23 8406:22 8424:14 8470:4,6,8, 22,23,24,26 8471:1,2,4,5,7, 9,12,14,15,16,18,19,20 8472:6,7,15 8495:20 8500:8 8501:10,18 8502:2 8507:12 8508:28 8510:4,13,21 8511:9,14 8512:2,17,28 8513:5 8514:3,9 8519:15,16, 17,18 8526:22 8537:15,18, 22 8538:1,2,3,5,6,8,9,19,23 8539:15,20,22 8545:23 8549:8,21,22 8550:6,19,20, 22 8551:10,11,13,16,18,20, 23,24,26 8552:1,2,4,7,8,10, 15,22,23,25,28 8553:1,3,6,7, 9,12,15,17,18 8554:2 8566:23 8567:1,2 8574:17 8577:7,14,25 8580:28 8581:1,3,4,5,24 8586:22 8598:24 8599:9,10 8600:15 8603:6,11,13,15,16,28 8604:2,4,8,9,11	experts 8475:9,24	families 8582:18,23 8583:13	
exhibit 8366:15,16,27 8367:7 8370:14,16,17,19 8371:7,16,18,23,26 8372:3 8375:2 8376:8 8379:18,20, 21,22,24 8380:24 8381:7 8384:21 8385:15,17,19 8386:2,9,10,11,27 8396:23 8406:22 8424:14 8470:4,6,8, 22,23,24,26 8471:1,2,4,5,7, 9,12,14,15,16,18,19,20 8472:6,7,15 8495:20 8500:8 8501:10,18 8502:2 8507:12 8508:28 8510:4,13,21 8511:9,14 8512:2,17,28 8513:5 8514:3,9 8519:15,16, 17,18 8526:22 8537:15,18, 22 8538:1,2,3,5,6,8,9,19,23 8539:15,20,22 8545:23 8549:8,21,22 8550:6,19,20, 22 8551:10,11,13,16,18,20, 23,24,26 8552:1,2,4,7,8,10, 15,22,23,25,28 8553:1,3,6,7, 9,12,15,17,18 8554:2 8566:23 8567:1,2 8574:17 8577:7,14,25 8580:28 8581:1,3,4,5,24 8586:22 8598:24 8599:9,10 8600:15 8603:6,11,13,15,16,28 8604:2,4,8,9,11	explain 8390:14 8396:25 8446:20 8523:7 8555:21 8563:4 8565:7	farm 8395:26 8403:22,25,26, 28 8404:6,25 8442:23 8448:9 8451:13 8455:27 8456:27 8461:12,27 8462:8, 11,12 8473:12 8477:3 8483:13 8484:20,23 8485:14,15,23,24 8494:26 8507:6 8526:10 8566:22	
exhibit 8366:15,16,27 8367:7 8370:14,16,17,19 8371:7,16,18,23,26 8372:3 8375:2 8376:8 8379:18,20, 21,22,24 8380:24 8381:7 8384:21 8385:15,17,19 8386:2,9,10,11,27 8396:23 8406:22 8424:14 8470:4,6,8, 22,23,24,26 8471:1,2,4,5,7, 9,12,14,15,16,18,19,20 8472:6,7,15 8495:20 8500:8 8501:10,18 8502:2 8507:12 8508:28 8510:4,13,21 8511:9,14 8512:2,17,28 8513:5 8514:3,9 8519:15,16, 17,18 8526:22 8537:15,18, 22 8538:1,2,3,5,6,8,9,19,23 8539:15,20,22 8545:23 8549:8,21,22 8550:6,19,20, 22 8551:10,11,13,16,18,20, 23,24,26 8552:1,2,4,7,8,10, 15,22,23,25,28 8553:1,3,6,7, 9,12,15,17,18 8554:2 8566:23 8567:1,2 8574:17 8577:7,14,25 8580:28 8581:1,3,4,5,24 8586:22 8598:24 8599:9,10 8600:15 8603:6,11,13,15,16,28 8604:2,4,8,9,11	explained 8445:3 8482:23 8488:9 8522:20 8523:8 8546:22 8555:1 8562:9		
exhibit 8366:15,16,27 8367:7 8370:14,16,17,19 8371:7,16,18,23,26 8372:3 8375:2 8376:8 8379:18,20, 21,22,24 8380:24 8381:7 8384:21 8385:15,17,19 8386:2,9,10,11,27 8396:23 8406:22 8424:14 8470:4,6,8, 22,23,24,26 8471:1,2,4,5,7, 9,12,14,15,16,18,19,20 8472:6,7,15 8495:20 8500:8 8501:10,18 8502:2 8507:12 8508:28 8510:4,13,21 8511:9,14 8512:2,17,28 8513:5 8514:3,9 8519:15,16, 17,18 8526:22 8537:15,18, 22 8538:1,2,3,5,6,8,9,19,23 8539:15,20,22 8545:23 8549:8,21,22 8550:6,19,20, 22 8551:10,11,13,16,18,20, 23,24,26 8552:1,2,4,7,8,10, 15,22,23,25,28 8553:1,3,6,7, 9,12,15,17,18 8554:2 8566:23 8567:1,2 8574:17 8577:7,14,25 8580:28 8581:1,3,4,5,24 8586:22 8598:24 8599:9,10 8600:15 8603:6,11,13,15,16,28 8604:2,4,8,9,11	extended 8492:25		
exhibit 8366:15,16,27 8367:7 8370:14,16,17,19 8371:7,16,18,23,26 8372:3 8375:2 8376:8 8379:18,20, 21,22,24 8380:24 8381:7 8384:21 8385:15,17,19 8386:2,9,10,11,27 8396:23 8406:22 8424:14 8470:4,6,8, 22,23,24,26 8471:1,2,4,5,7, 9,12,14,15,16,18,19,20 8472:6,7,15 8495:20 8500:8 8501:10,18 8502:2 8507:12 8508:28 8510:4,13,21 8511:9,14 8512:2,17,28 8513:5 8514:3,9 8519:15,16, 17,18 8526:22			

8499:9 8506:19 8598:17	flowing 8389:3	Franklin 8416:18 8460:2 8461:1 8465:1 8520:19 8526:3 8542:12,26 8572:15	8408:15 8495:24 8558:23
fell 8584:24	flows 8388:19 8587:14	Frederick 8393:26,28 8394:4 8428:22 8429:9,12, 14,18 8430:12 8443:17 8463:12 8487:18 8511:5,11 8578:2	general 8422:28 8490:28 8525:9,15,18 8531:16 8554:24 8559:19 8561:5 8572:7 8597:12 8603:1
felt 8439:15 8504:5	fluctuate 8390:5	frequently 8596:21	generally 8465:20 8466:9 8481:7 8523:9 8574:23,26 8576:25 8587:14
fewer 8412:1 8440:22 8481:27	fluctuation 8449:20	fresh 8582:24 8583:10 8590:27	generals 8433:22
field 8405:1 8494:20 8524:7, 14 8582:8	fluctuations 8388:18,28 8389:9 8390:6	Friday 8447:21	generate 8453:26
fields 8524:10	fluid 8363:3 8396:6,7 8402:28 8403:6,9 8405:17, 21 8406:1 8410:27 8446:27 8448:24 8450:5,7 8453:12 8455:14 8474:7,27 8477:21 8478:10 8502:6,11,27 8503:1 8523:26 8527:2,8,11 8534:2 8582:12 8583:10 8584:3 8590:27 8594:21	front 8514:24,28 8558:11 8589:16	generated 8453:21 8585:9
figure 8459:8 8469:4	FMMO 8538:10 8583:27	fuel 8390:8 8483:16 8484:12,14	generates 8454:27
figures 8478:8	focus 8382:23 8473:8 8505:9 8507:5 8585:4 8598:23	fulfill 8482:11 8496:25 8497:19 8565:21	Genesee 8491:7,12,20 8492:5 8493:26 8501:6 8540:12
file 8503:24	focused 8473:2 8502:15 8504:9 8505:4 8506:28	fulfilling 8556:19	geographic 8473:4 8480:5
fill 8392:22 8493:19,22,24, 26 8494:2	focusing 8382:23	full 8380:20 8392:1,23 8397:10 8403:21 8439:20 8443:7 8459:5 8479:20 8529:26,28 8583:17 8586:23 8590:17,19	geographical 8390:26 8395:25 8398:6 8469:25
fills 8378:11	folks 8410:15,16 8445:2 8514:24 8563:16,19 8585:27 8591:19	fully 8388:5 8463:7 8561:19 8591:4	geographically 8434:2
final 8392:24 8418:5 8495:22 8555:16 8558:5 8563:6 8578:10	follow 8396:4 8451:14 8456:26 8570:10	fun 8433:15	geography 8381:1 8393:4 8413:19 8439:3,10 8446:22 8481:27 8518:16,23 8519:4, 23 8542:10 8559:17 8572:7
finalize 8577:10	follow-up 8468:23	function 8598:14	George's 8401:27 8402:1,2
finally 8471:18 8513:26 8579:28	follow-ups 8467:6	fundamentally 8452:10	giant 8451:20
find 8367:9 8404:16,18 8405:24 8591:28	Foods 8456:24 8574:14	furthest 8438:28	give 8388:17 8393:2 8395:10 8402:24 8403:20, 23,24 8411:3 8413:6,7 8447:5 8449:6 8467:23 8472:8 8488:23 8556:14 8601:23
fine 8371:4 8413:10 8549:15	footprint 8479:26 8482:24 8555:2,6	future 8375:16 8487:7 8524:21 8534:7 8549:28 8550:7 8584:23 8587:14 8592:13 8594:6	giving 8402:21 8518:23
finish 8394:14 8602:14	force 8517:2,10,12		glad 8588:3
finished 8475:7	forecasted 8402:12	G	global 8383:5 8473:13
firsthand 8384:25	Forest 8524:2,5	G-A-R-E-L-I-C-K 8542:19	glory 8418:26
fit 8536:26	forever 8415:22	gain 8391:6 8464:25,26 8488:28	goal 8556:9,11 8557:24
five-axle 8497:27	forgot 8467:13	gained 8391:22 8392:11	good 8361:23,24 8380:5,6 8400:16 8408:7,10 8413:5 8416:16 8422:27 8430:17 8441:22,23 8443:5 8453:9, 10 8458:8,9 8461:28 8466:17,25 8471:22 8472:6 8493:13 8508:10,18 8551:8 8553:27 8562:21 8580:9,14, 26,27 8581:23 8588:6 8589:6,7 8590:7,8 8598:17 8602:26
fixed 8443:1,2	form 8412:15 8423:25,27 8435:12,16,25 8521:15 8541:28	Gallagher 8565:7	govern 8369:19,22 8541:23
flat 8415:21 8434:13 8440:13 8459:22	formatting 8363:8	gallon 8463:23 8484:14,16	governed 8515:14
flatten 8443:2 8494:23 8585:19 8600:13	forms 8548:23	gap 8469:18	Governor 8491:23 8501:14
flattened 8434:9,10 8436:3 8492:22 8494:6 8495:16 8496:10 8505:7 8571:5	forward 8496:25 8601:24	Garelick 8542:16,26	
flattens 8434:19	found 8563:20	gas 8456:2	
flatter 8490:28 8494:16	foundation 8374:27 8584:10	gather 8568:8	
flavor 8554:14	fourth 8536:17 8540:1	gathering 8589:27	
fleet 8462:14 8474:3 8483:12 8484:10,13,19 8566:27	Francisco 8516:26	gave 8381:23 8392:5	
floor 8602:27			
Florence 8544:10			
flow 8468:4 8585:17			



governs 8401:24	8518:22 8543:11 8569:27 8593:24 8595:3 8597:28	Harrisburg 8440:21,23,24, 27 8441:7	hey 8436:17	
Grace 8589:10		Harrisonburg 8431:5,6 8432:11 8436:27 8441:3,4,5, 6,8,10,11	high 8389:19 8399:4 8402:5 8404:17 8437:13 8438:4,13 8439:17 8447:10 8486:23 8495:5 8516:11,17 8544:14	
grade 8363:3,18 8364:1,7, 12,19,24 8403:10,15 8404:26 8405:17,20 8455:8 8467:9,20 8502:18,24 8503:2 8547:2,4,6	guesstimate 8381:23	hate 8572:26 8601:18	higher 8373:26,27 8394:7 8395:14,23 8411:15 8417:3 8431:21 8436:4 8439:4,5 8443:3 8468:8 8482:12,17 8487:19 8488:3,6,28 8495:9, 10 8496:9,10 8502:16 8503:13,14 8515:13,18,22 8516:4,16 8517:24 8522:12 8531:21 8533:28 8534:26 8544:28 8556:6,18 8561:22 8565:23 8566:19 8570:19, 20,25 8574:21 8584:27	
grants 8533:8	guideline 8421:2	haul 8391:25,26,27 8443:15, 21,28 8444:11,25 8460:7 8461:24,25 8531:13,15 8532:3	highest 8477:10 8574:24 8575:16	
Gray 8365:28 8366:4	guiding 8396:4 8410:24 8465:19	hauler 8416:19 8462:21 8560:16	highlighted 8484:23	
great 8429:5 8502:4 8534:28 8543:26 8544:1 8548:25 8554:25 8577:24 8594:10 8602:7	Guilford 8422:7	haulers 8439:13 8463:2 8595:21,22,23	highly 8431:26	
greater 8445:3 8465:8 8503:6	H	hauling 8384:24 8385:1,11 8390:4,15 8392:26 8397:14 8422:22,24 8423:2 8442:12, 15 8443:4 8458:26 8459:12, 17,24 8474:26 8483:10,17 8485:17,21 8498:7 8525:6, 14,22 8526:5,9 8531:4,6,7, 16,22,25 8533:10 8534:27 8535:18 8542:8 8562:2 8582:10 8592:18,26 8596:5	Hiland 8373:24	
greatest 8521:8	H-A-D-D-O-C-K 8524:13	head 8370:28 8522:28 8567:13	hill 8552:18 8572:20	
greatly 8389:15	Hadlock 8524:7,13,14	heading 8500:23	Hiramoto 8602:15	
greenhouse 8456:2	half 8365:14 8380:8 8431:16,19 8461:13 8483:6 8520:1 8528:5	headline 8371:19	historic 8397:28 8398:4 8424:28 8588:26	
grew 8416:16 8476:23 8477:5	halfway 8501:2 8591:24	headquarters 8582:21	historical 8395:6 8487:6,24 8488:8 8490:11 8522:19,23 8523:6,10 8541:1 8557:3 8584:20 8585:3	
grocery 8575:1	Hampden 8536:6,9,10,17 8539:19 8543:7	hear 8367:3 8402:19 8506:9 8602:22	historically 8495:6 8570:11	
ground 8401:3,5,8 8441:26	Hampshire 8473:12 8476:11,18 8519:26 8520:1 8585:10,16	heard 8412:18 8420:14 8421:17 8442:12 8465:18,20 8466:11 8476:2 8505:12 8508:21 8519:6 8546:13	Hochul 8491:23 8501:15,16	
group 8361:22 8377:20 8387:12,13 8394:24 8395:8, 9 8401:4 8408:12 8423:28 8436:26,27 8437:15 8469:15,21 8486:17,19 8487:15,23,28 8490:10 8495:24 8498:16 8506:11,26 8508:21 8515:2 8517:10,12 8536:26 8557:2 8558:22 8584:17,21 8585:19 8586:28 8587:21 8589:10 8591:15,18 8592:2,11 8593:21,24,27 8594:2 8597:14,19	Hancock 8370:21 8384:3,4,6 8385:14,21,27 8386:26 8396:20 8400:23 8406:18,20 8467:2,3,5 8470:3,17,20,26 8471:4,9,14,18 8472:5 8473:16,20 8500:4,5,6 8507:9,11 8526:17 8527:23 8539:2 8549:3,7 8550:12,26 8551:3 8552:12 8577:2,3,5, 21,27 8578:1,9,14,22,23 8580:5,14,22,27 8581:22 8589:1,2 8602:3,8,11,13,19	hearing 8389:14 8396:17 8406:9,14 8420:13 8424:5 8472:25 8474:23 8492:27 8533:14 8562:28 8568:9,18 8574:17 8584:5 8598:23 8599:9 8603:8,19,24 8604:1	Hoeger 8362:18 8412:18 8416:10	
group's 8402:15	Hancock's 8550:6	heavier 8485:6	hold 8371:2 8473:9 8511:26 8549:25 8566:20	
groups 8393:6,9 8396:4 8414:10 8438:20,25	hand 8451:20 8549:23 8550:2 8601:25	heavily 8429:15	hole 8378:11	
grown 8527:19	handed 8408:19	held 8582:7	holidays 8468:3,5	
growth 8365:21 8366:4,7 8375:6,10 8377:26,28 8476:20,22,25 8477:8 8481:22,25 8482:5,15 8566:9,12	handler 8535:16	helped 8565:9	home 8572:18	
guard 8380:7	handlers 8495:27 8559:12	helpful 8370:21 8539:1 8572:25 8580:19,20	homes 8592:1	
guess 8365:24 8375:25 8378:1 8381:25 8398:5 8400:27 8404:4 8413:11 8417:26 8421:9 8423:4 8432:20 8433:4 8434:8 8435:26 8436:2,19,20,22 8438:19 8444:9 8454:9 8455:13 8463:21 8464:4 8466:8 8502:16 8515:17	happen 8398:16 8407:24 8415:24 8459:6 8466:14 8519:3 8573:27	helps 8466:17	honest 8417:28	
	happened 8429:10 8568:7	Hennepin 8421:11	honestly 8460:28	
	happening 8591:27	herd 8405:5	Honor 8361:16 8362:15,24 8365:11,17 8366:10,27 8367:8 8370:13,21 8371:17 8372:4 8381:10 8384:4 8385:14,27 8406:18 8407:22 8408:7 8451:10 8467:3 8470:3,17 8500:5 8507:9 8513:22 8519:9,20 8523:24 8528:14 8537:3,16 8538:13, 17 8547:8,22 8548:26	Herndon 8387:8



8549:7 8550:10,26 8552:16 8553:20 8577:3,21 8578:9 8580:5,15,22,28 8585:25 8589:2 8602:13,28	8603:12,17 identified 8472:21 identify 8521:2 8545:17	8462:3 8467:24 8474:23 8479:5 8485:28 8486:4 8488:6 8495:19 8502:1 8532:18 8555:7 8572:19 8582:12	independent 8445:14 8549:12 independently 8593:14 independents 8448:16 indicating 8550:28 individual 8449:20 8554:20, 21 8584:14 8593:2 indulgence 8547:23 8580:6 industry 8390:11 8391:6 8401:5 8476:7 8480:4 8484:9 8584:1 8588:21 8594:18 industry's 8484:9 inequitable 8556:8 information 8363:1,7 8372:15 8381:27 8382:10 8403:25 8413:7 8442:12 8503:23,27 8524:26 8525:26,28 8526:24 8527:14 8549:10,12,17 8554:24 8563:20,22 8573:14 8574:2 infrastructure 8489:8 ingredient 8447:7 ingredients 8582:25 initial 8487:10 8514:27 initially 8503:23,24 initiated 8517:2 Innovation 8361:22 8408:11 8423:28 8508:21 8589:10 inquire 8568:26 inside 8399:10 insights 8398:3 instance 8414:7 8420:19 8530:10 8559:1 instances 8383:12 8490:10, 17 8557:2 8567:24 instituted 8388:24 instructed 8510:9 insufficient 8556:21 insurance 8483:16 8484:8 insure 8484:10 intake 8594:12 intend 8586:10,11 intended 8533:9 8554:7 8557:19 8562:1 8577:13 intent 8554:11
Hood 8501:20 8524:6,11,23 8536:7,11,24 8540:11 8543:12,20 8560:3 8599:4	II 8446:28 8481:13,17 8482:5,11,16 8492:4 8495:11 8531:11 8565:21 8566:9,17 8591:1 8596:18	includes 8390:8 8418:10,13, 15 8422:24 8473:14 8549:10 8555:9,11 including 8388:1 8392:16 8474:6 8483:14 8490:6,19, 22,27 8495:10 8496:21 8504:13 8507:23 8542:7 income 8362:11,14 inconsistent 8567:8 increase 8376:9,10,11 8382:4 8385:8 8388:6 8389:16,28 8391:11,14,15 8392:4,5,6,12,13 8396:5 8399:21 8406:15 8410:25 8411:2,6 8414:18 8420:4,10, 11 8421:14 8423:10 8425:5 8439:21 8445:28 8450:5 8454:20 8465:27 8469:14, 17,24 8478:16 8481:18 8484:2 8485:22 8486:5,27 8491:16 8494:14 8505:28 8518:12 8523:2,7 8527:20 8531:4 8533:21 8534:23 8544:14 8545:10 8562:6 8573:18 8585:22 8595:21 8597:24 8599:22,25 8600:1 increased 8384:24 8385:1 8389:13,15,18,22,26 8394:2 8395:2 8396:15 8402:16 8406:13 8411:11,20 8418:7 8433:5,7 8455:6 8474:26 8478:19 8479:18 8481:17 8483:21,22 8484:10,11,16, 21 8485:9,12,21 8496:23 8525:15 8526:9 8528:7 8531:16 8533:8,17,20 8545:6 8546:15,16 8560:18, 20,27 8561:25 8562:2 8566:25 8573:13 8588:16 8595:20 increases 8367:17 8377:2 8382:3 8385:7,10 8389:23 8396:12 8458:15 8474:27 8479:15 8485:11 8498:8 8515:25 8525:6,22 8572:4 8585:1 increasing 8395:17 8421:23, 24 8453:25 8462:17,20 8465:8 8477:15 8481:20,24 8487:12 8503:4,7 8518:4,8 8525:10 8534:10,17 8536:7 8545:18 8546:20 incur 8546:10 8548:14 incurring 8560:24	III 8481:22 8482:5,11,16 8492:6 8495:12 8501:25 8527:19 8529:20,23 8530:28 8531:5,12,17,20 8532:1 8565:21 8566:9,17 8591:1 8596:18 Illinois 8367:21 8370:6 8375:13 8378:27 imagine 8455:18 8534:7 impact 8491:28 8493:3 8495:26 8559:11 8568:11,24 8569:22 impacted 8436:6 8476:3 8485:8 8486:17 impacting 8477:1 impacts 8490:13 8557:5,8, 27 implantation 8583:25 import 8565:5 important 8368:7 8476:26 8477:18 8488:13,15,21 8489:12 8494:8 8496:23 8541:25 8556:4,6 8557:12 impressed 8580:17 improve 8594:4 improved 8485:1 improvements 8485:5 inability 8579:22 incentive 8436:18,20,21 8534:25 incentives 8389:19 incentivize 8417:12 8507:1 8518:22 8520:10 8587:17 8588:17 incentivized 8585:14,17 8601:10 incentivizing 8585:18 include 8392:25 8396:27 8474:13,16 8475:3 8480:22 8483:14 8490:17 8491:19 8497:24 8505:20 8533:1,3 8538:14 8555:12 8558:28 included 8397:9,14,15
Hood's 8542:14 8543:7 8560:5 hope 8408:13 8423:9 8460:21 hoping 8557:7 horse 8572:26 hour 8429:11 8483:7 8484:3 hours 8572:13,16 HP 8524:6,11,23 8536:7,11, 24 8540:11 8543:12 8560:3 HTST 8404:17 8411:26 8412:6 8447:10,13 8474:7 huge 8411:6 human 8401:21 hundredweight 8393:27,28 8394:3,4,6,10,20 8395:2,4,5, 13,14,18,19,22,23,28 8405:10,11 8417:17 8437:24 8442:15 8443:8 8454:17 8460:15 8463:22 8485:13, 18,22,25,26 8486:6,28 8487:17,20 8488:4 8489:18 8495:14 8498:1,17 8520:21 8544:11 8546:15,17,20 8570:16 8585:23 8586:24, 25,26 8587:1,7,8,10,22,23 8588:2 8597:17,22,27 hundredweights 8443:7 hurt 8412:9 Hurting 8602:16,18 Hutchison 8374:14	I I-95 8412:12 8413:2 I-ORIENTED 8457:6 ice 8474:20 idea 8376:6 8415:10 8419:6, 7 8464:22 8520:16 8526:20, 24 8541:23 8593:8 ideas 8505:14 identification 8366:17 8371:27 8386:12 8470:25 8471:3,8,13,17,21 8519:19 8537:19,23 8538:4 8581:6		



intention 8557:21 8569:9		8526:5	lab 8404:10
interchangeable 8381:1 8382:27	J		label 8366:11
interested 8603:20	J-O-E 8361:12	K	labeled 8366:26 8372:2,16 8551:1 8553:15
interesting 8586:7	J-O-H-N 8386:16	K-A-N-G 8602:19	labor 8483:16 8484:2
internal 8458:26	Jackson 8372:7	K-E-N-N-E-B-E-C 8600:23	lack 8369:1
Internally 8390:4	Jamaica 8480:26	Kang 8602:16,19	Lakes 8502:4 8594:10
International 8456:24 8574:14	January 8390:16,17	Kansas 8364:15,16,21 8365:2,21,24 8366:4,8 8367:18 8369:26 8370:7,8 8372:8,22 8373:24 8374:1,3, 4,11 8375:11,15,17 8376:3, 9,10,11 8377:3,9,16,27 8378:14,15 8379:3 8381:21 8385:6	Lamers 8453:8,11 8456:20
interpret 8570:26	Jeff 8393:4 8439:2 8475:1 8487:10	Kearney 8366:5	Lancaster 8428:2,4,8 8440:26,28 8465:3 8498:9, 12 8513:3,4,7,15 8579:8
interpretation 8570:27	Jefferson 8588:14	Kennebec 8600:10,18,19,21	Land 8410:16 8448:15 8475:20 8591:20
interrupt 8473:16 8482:26 8493:4 8496:11 8601:18	Jersey 8412:17 8476:11,18 8477:9 8479:11 8480:24,25, 27 8490:21 8496:22 8497:15,17,18,22,28 8498:4, 8,13,14,16,19 8500:24 8504:13 8543:25,27 8544:9, 18,20 8545:1,3 8546:11 8560:11 8562:4,7 8572:27 8573:2,12,21,25	Kentucky 8413:13,20,23 8437:10,12,16,18,23 8438:17,23 8439:28	landing 8507:6
intersect 8555:25	job 8429:28 8430:2,17 8494:28	key 8475:16 8484:12	Landover 8393:25,27 8394:3 8427:22,27 8428:5,7 8429:17,18 8443:17 8463:12
intersected 8499:6	Joe 8361:12,17	kicked 8442:12	landscape 8477:2 8584:1 8585:2 8594:18
Interstate 8375:14 8429:2 8545:15	John 8385:28 8386:13,15, 22,27 8387:5 8396:21 8407:21 8408:5,10 8441:22 8453:9 8466:24 8467:6 8470:10 8476:1 8502:18 8509:16 8515:5 8546:13,22, 26 8602:16,19	kind 8398:26 8399:2,4,6,8,9 8402:20 8413:22 8419:28 8427:5 8431:6 8434:11,15, 19,23 8448:6 8449:28 8460:27 8465:12 8469:20 8504:13 8515:6 8518:18 8532:14 8546:27 8556:25 8557:18 8560:12 8567:28 8568:25,26 8572:11,15 8573:4 8593:23 8595:5 8601:16	language 8400:6
intervening 8361:27	Johnny 8602:15	kinds 8542:1	large 8381:20 8383:12 8389:2 8415:13 8417:23 8457:11 8534:18 8591:7 8594:9
intimately 8595:19	joint 8593:18	King 8540:21	largely 8497:18 8520:6 8529:21
introduced 8423:18	Jones 8420:19	knew 8594:8	larger 8383:20 8412:7 8452:6 8463:3
investment 8483:10 8491:21 8492:4 8503:18 8505:21	journey 8575:3	knowing 8539:5 8592:23,24, 25	largest 8461:15 8491:27 8583:10
investments 8489:8 8492:3 8493:20	joy 8543:26 8544:1	knowledge 8380:21 8381:16 8401:11 8445:12 8449:16,19 8475:10 8487:14 8504:4 8522:9 8524:27 8529:23 8546:12 8547:5,7 8565:26 8566:1,4,12 8576:27	Lastly 8484:12
invite 8380:1 8406:21	juice 8391:26	knows 8594:8	late 8591:22
invited 8591:23	July 8495:15	knowing 8539:5 8592:23,24, 25	Late-night 8365:13
involved 8393:8 8503:21 8595:19	jump 8554:1 8556:17 8595:10	knows 8594:8	Laurel 8406:9 8427:22 8428:23,25 8429:1,12,15,17
involvement 8591:13	jumping 8594:17	Kroger 8372:23 8373:23 8374:5,14 8437:10,12,26 8438:1,11,12	Lawrence 8588:14
involves 8406:23	June 8374:10 8511:1 8538:23	Kroger's 8374:2	laws 8484:26 8485:4 8567:12
lowa 8367:18	jurisdiction 8543:5	KS 8364:16	lay 8572:17
irrational 8457:14	justification 8375:14 8376:7 8518:11 8554:8 8562:3		lead 8485:12
Island 8476:12,18 8479:11 8517:17 8565:1	Justifications 8584:28	L	leadership 8582:16
issue 8430:12 8440:13,14, 17,18,20 8504:20 8547:28 8548:6 8549:21	justified 8455:16	L-Y-C-O-M-I-N-G 8513:14	leaped 8550:25
issued 8362:20	justifies 8541:2 8543:3,5		learned 8361:28 8507:22
issues 8383:11,20 8440:19 8559:21 8571:11	justify 8404:5 8525:10		leave 8376:8 8489:1 8520:10 8580:11 8585:14 8601:10,16
item 8494:22 8496:27 8542:15			leaves 8454:24 8601:12
items 8503:18 8504:2 8515:6 8534:15 8542:8 8572:22 8577:12			leaving 8516:10
IV 8495:12 8531:12 8591:2			



led 8396:3 8476:24 8531:1	loading 8397:6	lot 8392:20 8398:15 8399:14 8404:15,22 8405:1 8414:23 8419:17 8420:7 8426:20 8428:15 8430:19,22,23 8433:12,14,15 8439:10 8442:2 8464:10 8503:17 8508:11,12 8565:11 8589:12 8595:3,5,7	8523:1,8,27 8524:15 8525:24 8526:1 8542:13,22 8552:17 8585:7,9,10,12,14, 20,23 8586:19,20,23 8588:24 8597:23,24 8598:2, 16,22,24 8599:26,28 8600:6, 14 8601:8,10,12,15
left 8361:25 8396:28 8402:15 8417:23 8460:6 8461:27 8540:25 8552:17	loads 8391:23 8447:18 8468:18,19 8485:6,8 8601:15	local 8381:13 8451:16 8460:7 8461:24,25 8482:10 8487:14 8493:23 8565:20 8567:12 8585:12 8599:1	maintain 8368:5 8369:3 8372:28 8376:13 8396:7 8410:26 8411:22 8426:27 8434:24 8444:10 8450:6 8466:3 8483:28 8497:3,13 8498:11 8520:24 8521:2 8571:17 8588:27
leg 8575:4	locally 8380:10 8381:19	lower 8398:28 8404:20,21 8413:15 8417:16 8421:18 8436:14 8453:1 8494:11,13 8495:23 8517:25 8523:22 8533:10,27 8543:19,20 8558:6 8560:24 8585:10 8587:16 8588:16	maintaining 8414:16 8430:10,13 8483:12 8498:19 8573:11
legend 8539:4,5,6	located 8374:2 8380:26 8387:8,23,24,26,27 8388:9, 10,27 8393:7 8437:26 8438:1 8445:6,10 8474:14 8483:19 8487:18 8512:19 8518:20 8523:5 8524:2,7 8528:27 8529:2 8531:11,12 8536:7,10,16 8542:16 8544:9 8545:13 8582:27 8600:14	low 8533:5 8576:12	maintains 8489:7
legs 8575:3	location 8374:1 8377:16 8378:8 8388:8 8391:18,19, 20,21 8392:9 8402:5 8416:9, 15 8430:18 8431:4 8441:2, 15 8474:26 8480:8 8483:13 8485:14 8491:15,18 8500:13 8506:7 8520:27 8524:9 8526:7,11 8575:18,27 8576:5 8584:2 8594:20	lowered 8523:20	major 8447:27 8448:14
lesser 8440:3 8450:28 8518:23	locations 8371:21 8376:17 8393:22 8394:8,18 8395:3, 10,15,18,25,26 8396:1 8400:24 8416:4 8429:26 8452:24 8463:14 8481:9 8487:8 8516:15 8549:10 8566:16,17 8584:23,28 8587:19 8592:13 8594:6,7	lowering 8407:15 8421:21, 22 8518:1 8520:17,22	majoring 8473:8
Let alone 8455:23	logical 8588:22	lowers 8465:11	majority 8387:20,27 8474:1 8601:14
letting 8401:2 8509:11	Logistics 8474:4	lowest 8443:4	make 8373:14,27 8377:16, 23 8382:12 8385:23 8389:18 8390:2 8398:23 8402:20 8406:8,10,12,13 8420:7 8426:7 8427:4 8433:12,14 8435:21,24 8440:2,10 8442:23,27,28 8455:10 8458:11,18 8460:20,22 8462:6,21 8473:20 8474:6, 20 8500:8 8507:10 8517:6 8521:6,14,16,19 8543:15 8556:1,22 8559:25 8562:27 8563:5 8568:8 8570:22 8574:1 8577:10,16,24 8578:11,12 8582:24 8586:16 8589:3 8595:24 8602:17 8603:4
level 8404:25 8412:11 8422:13 8478:27 8487:11 8492:21 8494:19 8503:15 8529:24	long 8408:20 8423:15,25 8440:15 8442:24 8461:6 8530:20 8549:26 8566:2	LPCS 8404:11	makes 8399:6 8420:11 8466:19 8494:15 8521:19 8530:17 8572:11
leveled 8529:21	longer 8404:16 8428:12 8435:8 8442:21 8531:13,15	lunch 8483:1 8499:14,17 8539:3	makeup 8403:21
lies 8434:21	looked 8362:18 8368:3 8370:5 8373:4 8390:23 8419:26 8420:10 8434:22 8460:27 8461:23 8464:28 8497:8 8504:1,24 8505:16 8506:10 8515:9 8526:16 8559:28 8571:3 8573:16	Lycoming 8513:12,14 8579:14	making 8402:12,25 8420:28 8426:3 8455:11 8465:8 8466:14 8479:14 8489:3 8493:23 8506:12 8549:19 8593:16,22,26 8603:19
life 8404:16,19 8411:26 8422:1	Los 8516:27	Lynchburg 8395:21 8431:1, 3,22 8432:12,23 8433:1,7,25 8434:16 8435:23,24 8436:4, 7,11,14,17,24,28 8440:9,22, 24 8441:2,11 8444:14,20	man 8410:9
limitations 8451:16	losers 8536:21	M	manage 8446:18 8484:19 8566:26
limited 8391:10 8392:1 8474:7 8490:18 8496:4	losing 8595:22	M-CAP 8404:2	managed 8442:3 8451:28
limits 8391:10 8484:25	loss 8476:21 8480:18	M-I-C-H-A-E-L 8386:15	management 8485:15
lined 8602:9	lost 8480:21 8550:25	made 8369:23 8374:17 8377:9 8382:14 8384:17 8401:28 8402:26 8423:3 8424:15 8425:1 8439:12,25 8440:2 8492:28 8504:26 8505:1 8506:19 8525:11 8530:25 8543:16 8547:11,25 8568:10,19 8598:2,17	manager 8582:9,10
lines 8364:3 8380:23 8485:9 8540:11		Madison 8496:8,28	manages 8566:27
link 8367:7		magnificent 8499:10	
list 8479:20		main 8376:15 8377:24	
listed 8364:16 8367:5 8385:6 8419:27 8465:19 8511:12,21 8512:8 8536:17 8543:13 8555:13		Maine 8473:6 8476:11,17 8490:18 8499:1 8504:12 8517:20,21,25 8518:4,9,12, 16,18,19 8519:26 8520:6,10 8521:12,25,26 8522:8,24	
listen 8425:12 8430:7 8591:27			
listening 8510:10 8592:4			
listing 8479:6			
live 8413:22 8428:20,21 8430:20			
living 8431:12			
Livingston 8493:26			
load 8391:1,2,3,12,20 8392:19,22 8403:18,19,22, 26,27,28 8404:6 8406:28 8416:20 8442:23,24,27 8443:1 8461:8 8462:18 8498:2			
loaded 8390:12 8396:24 8397:4,9,16,19 8406:24 8407:8 8442:14,19 8443:5			



<p>managing 8484:19</p> <p>Mandatory 8404:2</p> <p>manner 8556:2</p> <p>manpower 8455:22</p> <p>manufactures 8583:5</p> <p>manufacturing 8474:5 8479:26 8481:12 8482:24 8489:13 8491:3,7 8492:3,6, 10 8497:5 8501:25 8521:26, 27 8522:3 8555:2,6 8568:6 8582:26 8590:10</p> <p>map 8375:1,26,27 8377:25 8382:21 8409:28 8434:9 8439:16 8468:26 8476:15 8490:4,7 8519:8,14 8537:4 8538:6,7 8545:17 8557:1 8567:18,23,26 8577:9 8583:23 8598:24</p> <p>maps 8495:19 8537:3 8539:15 8548:27</p> <p>March 8511:1 8538:16,27</p> <p>mark 8386:9 8453:11 8470:21 8475:4 8519:17 8581:1</p> <p>mark- 8403:6</p> <p>marked 8366:11,16,26 8371:18,23,26 8386:11 8470:6,24 8471:2,7,12,16,20 8472:7,10,22 8519:9,14,18 8537:18,22 8538:1,3,6 8581:5 8603:5,11,15,16 8604:8</p> <p>market 8368:27 8370:3,4 8376:16 8378:11 8383:3 8388:3,14,21,23 8389:12 8394:10,20 8395:25 8396:12,13 8398:18 8399:14 8403:9,12 8405:21 8411:5,7, 28 8412:5 8413:23 8419:19 8429:27 8434:2 8444:12 8447:2 8452:4,6,18 8454:2 8455:3,8 8457:8 8464:3 8469:6,20 8480:20 8482:20 8495:26 8497:17 8514:21 8515:6 8521:16 8527:11 8528:4 8534:14 8541:26 8544:19,20 8554:12,14,24 8559:11,14,23 8566:19</p> <p>market alignments 8368:28</p> <p>market's 8383:2</p> <p>marketed 8473:27 8496:1</p> <p>marketing 8380:2 8384:1 8387:6 8392:17 8414:15 8431:14 8457:24,26 8458:5 8468:27 8472:26 8473:3,13 8475:9,24 8485:25 8487:7</p>	<p>8488:19,20 8489:2 8490:15 8493:2 8497:9,10 8498:27 8504:4 8555:18,21 8556:13, 15 8559:19 8560:1,5,8,15 8562:16,17 8568:23 8569:21 8582:20 8583:13,19 8584:6, 23 8588:27 8592:13,15,16, 22 8593:13,16,26 8594:4 8595:11 8601:26 8603:2</p> <p>marketplace 8456:6 8463:24 8464:2,7 8492:2 8596:26</p> <p>marketplaces 8382:16</p> <p>markets 8368:4 8383:5 8388:2 8395:16 8396:6,7 8398:12,17 8403:1,7 8406:15 8410:27 8412:7 8414:13,14 8433:27 8434:1 8450:6,7 8452:8,12 8488:16, 17 8491:9 8494:19 8502:7 8533:20 8583:5</p> <p>Maryland 8387:6 8393:26 8394:3,4 8406:9 8409:24 8427:22 8429:10 8431:11 8442:17 8446:5,13 8448:8, 19,20,23 8449:23 8450:22 8451:2 8459:1 8461:16 8462:13 8473:6 8475:20 8476:1,11,17 8477:8 8490:21 8498:23 8499:2,4 8511:6,11 8512:18,19 8518:4 8546:14,18,19,26 8563:9,10,11,12,19,23 8564:1,3,22,25 8578:2</p> <p>Mass 8518:2,13 8520:19 8526:3 8536:11 8542:12,15, 25,26 8543:7</p> <p>Massachusetts 8476:11,17 8479:12 8496:17 8517:5,16, 25 8518:1 8520:18 8521:7, 10 8522:25 8526:3 8536:6,9, 24 8537:4,7,20 8538:7 8539:20 8543:1,5 8571:27 8582:22 8583:8 8585:15,17 8587:15 8590:13 8601:11,13</p> <p>master 8473:9</p> <p>matching 8446:21 8479:22</p> <p>material 8370:25 8371:15 8550:5</p> <p>math 8365:13 8419:20 8454:13,16 8455:19 8465:4 8561:13 8564:21,26 8565:8 8598:18</p> <p>matter 8398:3</p> <p>matters 8361:5 8553:12</p> <p>May/June 8445:27</p> <p>Mcmurtray 8602:28 8603:1, 13,18</p>	<p>MDVA 8387:7,9 8388:26 8393:7 8396:10</p> <p>MDVA's 8387:20,22,24,27 8388:8,16 8396:18</p> <p>meaning 8380:15 8390:27 8431:18 8521:3 8530:3</p> <p>means 8389:24 8406:26 8447:17 8458:15 8522:14 8523:20</p> <p>meant 8410:19 8441:5,7 8525:21 8572:2</p> <p>meantime 8550:8</p> <p>mechanism 8389:24 8458:15,20,21</p> <p>Media 8545:25,26</p> <p>meet 8388:24 8389:28 8403:27,28 8404:23 8429:28 8431:25 8477:3 8478:17,24 8494:7 8497:21 8534:26</p> <p>meeting 8490:15</p> <p>meetings 8432:28</p> <p>meets 8533:4</p> <p>member 8381:6 8387:9,11, 12,20,28 8448:26 8582:13 8596:12</p> <p>member-owned 8388:4,16</p> <p>members 8387:22,25 8388:1 8390:1 8396:19 8450:28 8459:3,16 8460:11 8560:16, 18 8561:12,19 8582:19</p> <p>membership 8459:10 8473:14 8582:11,12</p> <p>mention 8544:8 8566:24</p> <p>mentioned 8404:15 8406:12 8414:1 8428:11 8449:27 8456:13,27 8498:22 8504:8 8556:16,25 8558:25 8584:9 8600:25</p> <p>mess 8547:25</p> <p>messy 8453:2</p> <p>method 8387:16</p> <p>mic 8473:22 8508:25</p> <p>Michael 8385:28 8386:15,22 8387:5</p> <p>Michelle 8602:28</p> <p>Michigan 8391:9</p> <p>microphone 8523:21,22</p> <p>mid 8434:11</p>	<p>Mid-atlantic 8393:7</p> <p>mid-north 8417:24</p> <p>mid-virginia 8416:21,22</p> <p>middle 8363:12 8399:4,10 8436:24,28 8439:9 8448:2 8458:13 8462:9 8522:11 8539:22 8540:27 8555:16 8558:3</p> <p>Middlebury 8582:27 8583:6</p> <p>Mideast 8413:26 8414:2,3 8474:17 8499:5</p> <p>Midland 8540:24</p> <p>MIG 8371:19 8537:5,10 8538:8 8549:9 8598:23</p> <p>MIG-369 8540:2</p> <p>MIG-39 8537:8,15 8538:1 8552:15,28</p> <p>MIG-50 8519:9,15 8552:18, 22</p> <p>MIG-51 8537:7,21 8538:2 8553:6</p> <p>MIG-53 8366:13,26 8367:5 8371:16</p> <p>MIG-54 8371:18 8372:2 8379:21</p> <p>MIG-55 8538:2,9 8553:15 8599:10</p> <p>Mike 8476:1 8602:16</p> <p>mile 8390:11,12 8391:14,15 8392:4,5,13 8396:24,27 8397:2,4,9,10,16,17,19 8407:8 8442:14,19 8443:5,8, 20 8482:13 8565:23</p> <p>mileage 8381:22 8461:7 8482:14</p> <p>miles 8380:11 8381:26 8390:19,22 8391:16,17 8392:7,8 8394:9,19 8395:15 8398:11 8402:3 8407:15,17 8428:11,24,25,28 8429:11, 14,16 8430:20,21 8440:22 8443:2,25 8444:4,15,23 8454:15 8461:8,14,19 8492:16 8520:2,5</p> <p>milk 8361:22 8362:11,13 8363:2,13 8366:7 8367:17, 24 8368:3,7,14,17,19 8369:17 8370:3,6,7 8371:20 8372:24 8373:5,8,11 8375:6, 7,10,11 8376:7,16,18 8377:6,12,26,28 8378:4,7,9, 10,12,13,18,24,26,28 8379:2,4,12 8380:10,20 8381:13,15,17,20 8387:6,9,</p>
---	--	--	--



20,21,28 8388:2,4,18,19,21, 26 8389:1,3,6,13,15,18,19, 24 8390:1,3 8391:2,6,26 8392:17,22,24,26 8393:20 8394:23 8395:26 8396:6,13 8399:7,9,11,15,16,18,20 8400:10,14,17,18,20 8401:15 8402:11,28 8403:9, 12,16 8404:1 8405:1,2,17, 21,27 8406:1 8408:11 8409:9 8411:26 8412:19 8414:23,25,26,27 8415:11, 16,22,23,26 8416:3,9,14,15, 27 8417:2,5,12,13,19,22,23 8418:1,2,3,19,25,27 8419:2, 5,22 8420:14,24 8421:12,16, 17,18 8422:9 8423:22,28 8424:1,9 8427:28 8428:1,3, 5,7,8 8429:24,25,26 8430:18 8431:2,4,5,14,15,17,18,19, 20,21,23,27 8434:21 8435:12,15,18,22,24 8436:10,17,19,21,23,25,26, 27 8437:2,5,11 8440:27,28 8441:2,14,24 8442:3,8,23 8443:10,20 8445:6,13,14 8446:6,14,21 8447:7,26 8448:9,19,26 8449:1,9,10, 11,12,13 8450:6,7 8451:20 8452:5,12,25 8453:12,24 8454:9,10,23 8455:8 8457:12 8458:16 8459:5,14 8460:2 8461:1,16,27 8463:1, 4 8464:10,27 8465:21,27 8466:12,17 8467:8,12,14 8468:4,10 8470:27 8472:26 8473:2,13 8474:2,6,7,8,9,19, 20,26,27 8475:5,9,11,20,23, 26 8476:8,14,20,23,27 8477:3,10,14,19,21 8478:10, 11,16,18,19,20,24,26,27,28 8479:1,3,9,13,14,16,18,21, 24,27 8480:6,8,13,15,17 8481:10,12,17 8482:1,10,12, 16,20,23 8483:13 8484:20, 25 8485:7,14 8487:5 8488:8, 16,17,19,20,21,27 8489:2,6, 10 8490:11,12,15 8491:4,17, 28 8492:13,23 8493:2,16,18, 21,25,28 8494:3,4,5,7,20,25, 26,27 8495:17 8496:1,24 8497:9,11,12,19,20,22 8498:2,9,11,24,27 8500:12 8502:6,11,27 8503:1,10 8504:27 8505:5,8,13,15 8507:1,4,5 8508:20 8509:22, 28 8510:24 8514:10,11,14 8515:7 8517:18,20 8518:22 8520:6,10,28 8521:9,15,24, 25 8522:19,23 8523:6,8,10, 26 8524:24,27 8525:12,19, 22 8526:7,9,23 8527:1,6,7, 10,11,16,28 8528:3,24,27 8529:2,8,9,10,11,14,15,21 8530:1 8531:1,5,9,15,17,21	8532:2,11 8533:4,5,28 8534:1,11,14,19,20,25 8541:22,27 8542:1,2 8543:4, 17 8547:4,6 8548:14,16,17 8550:27 8553:24 8554:12, 14,24 8555:1,5,18 8556:9, 17,21 8557:3,4,11,12,16,18, 20 8559:16,17,19,28 8560:4, 8,15 8561:11 8563:15,17,23, 27 8564:3,5,16,17,19,22,23, 24 8565:3,5,13,15,20,22 8566:4,16,18 8567:28 8568:23 8569:6,8,11,22 8571:7,15,20 8572:6 8573:20 8574:18,28 8575:4, 21,22 8576:5,13,20,25,26,28 8582:13,21,24 8583:10,13, 15,17,19 8584:3,6,8,19,20, 22 8585:3,12,14,16,18, 8587:14,17,18 8588:15,17, 26,27 8589:10 8590:22,24, 27 8591:10 8592:1,13,16,23, 25,28 8593:13,16,26 8594:4, 21 8595:1,3,5,11,13,17,18, 20 8596:12,14,25 8597:2,4 8599:1 8600:1,7,10,12,14, 16,17 8601:10,12,14	8486:10 8580:25 8601:19 misalignment 8495:21 8496:4 8558:4,9 misnumbered 8551:4 misread 8409:12 missed 8394:16 8408:21 8571:23 missing 8410:16 8565:28 Mississippi 8415:14,17 Missouri 8363:11,14,21 8364:26 8367:21 8370:7 8372:7 8375:13 8378:17,19, 22,27 8379:6 misspeak 8581:3 misspoke 8381:2 8441:8 mistaken 8551:5 mistakenly 8408:25 mix 8401:21 mixing 8418:20,21 MO 8363:12 mode 8561:26 model 8362:1 8367:26,28 8368:1,2,17,19,22 8369:7, 20,25,26 8372:23 8373:7,10, 13,16,17 8374:16,18,23,24, 26 8376:9,11,12,20,25 8377:3,6,8,11,14,19 8384:10,12 8393:12,23 8394:1 8395:2,13,23 8397:26 8398:20,24 8399:1 8400:22,24,27,28 8401:20 8402:5,12,17 8411:6,15,16 8413:14,15 8417:2,6,8,18,26 8420:20,23,28 8421:22,25, 27,28 8422:9,11,24 8423:3, 4,10 8425:7,18,22,25 8426:3,23 8432:18,21 8435:4,5,9 8436:4,5,13,16, 22 8439:7,8 8443:18,20,27 8444:5,18,26 8445:1,2,6,12, 20,23,27 8446:1,2,8 8449:16,21 8451:4,16,18 8452:19,22 8453:15,22,23 8454:6 8463:13,26 8475:8 8486:20 8487:2,4,16 8488:2, 3,6 8489:20 8496:9 8497:1 8498:26 8503:28 8504:21,24 8505:13,14,20,28 8506:1 8515:9,11,14,15 8517:26,28 8518:3 8520:16 8521:17,23 8522:13 8523:7 8525:1,2,3, 12,19,24,25 8526:6 8536:4 8539:26 8540:22 8541:4,6 8542:23 8543:6,8 8544:2,5, 14,27,28 8545:10,18 8546:21 8554:21 8555:7,9	8561:21 8572:9 8573:6,12, 16,18,27 8584:18,19,27 8585:7,9,12,24 8588:21,25 8593:8,12,28 8594:3 8596:2, 5,8 8597:17,27 8599:16,22, 26 8600:1,13 8601:9 model's 8394:25 8486:21,22 8487:26 8584:12,22,25 8587:2,22 8592:12 8593:15, 25 modeling 8584:11 models 8422:2 modernization 8583:18,28 8588:20 modernize 8396:11 modest 8515:23,24 modification 8401:28 8492:28 8568:19,25 8569:16 modifications 8423:3 8521:23 8588:25 modified 8374:15 modify 8525:23 modules 8457:3 moment 8361:26 8363:11 8382:23 8409:18 8437:22 8472:18 8473:17 8482:27 8585:26 8589:28 8598:20 moments 8424:22 Monday 8603:9 money 8404:22 8453:26 8455:15 8531:14 8532:1 8534:18 monies 8418:7 monroe 8491:25 8494:19 month 8380:15 8389:4,5 8390:6,15 8403:23 8459:2,7, 14 8486:23 8491:17 8515:18 monthly 8390:3 8459:20 8478:9 8479:28 8480:11 months 8380:15,16 8393:13, 14 8480:1,12 8486:25 8516:15 morning 8361:1,4,23,24 8366:13 8371:9 8380:5,6,7 8408:7,10 8429:8,11 8440:17 8441:22,23 8453:9, 10 8458:8,9 8472:6 8604:16 Mount 8395:11 8444:4 mountain 8572:19 mouth 8473:24
--	--	--	---



<p>move 8370:13 8372:28 8378:7,9,18 8379:17 8381:15 8385:15 8389:5,12, 18 8391:6 8393:20 8399:15, 16 8400:10,14,19 8403:19 8412:19 8415:26 8416:3,9, 20 8418:2 8419:5 8428:7 8435:18,22 8436:11,17,21 8437:4 8442:21 8443:10,20 8447:23 8452:25 8459:14,28 8460:2 8463:4 8470:4 8489:9 8490:26 8505:8 8507:1,4 8518:22 8520:28 8521:24 8524:24 8547:8 8548:27 8550:13 8556:17 8557:16 8566:18 8588:15</p> <p>moved 8417:13 8430:17 8435:12 8477:3 8482:1 8487:23 8493:19 8515:7 8575:9 8603:23</p> <p>movement 8388:20 8452:5 8454:8,10 8485:7 8491:4 8494:27 8498:9 8505:15 8524:28 8543:17 8557:18 8571:16 8572:21 8585:18 8587:18</p> <p>movements 8389:1 8417:4 8475:11,26 8487:6 8488:8 8490:11 8493:24 8494:3 8496:25 8498:11,26 8505:13 8522:19,23 8523:6,10 8557:3,12 8559:17 8584:20 8585:3 8588:17,26</p> <p>mover 8387:16</p> <p>moves 8381:21 8414:27 8435:25 8493:16,28 8592:17,18</p> <p>moving 8388:26 8389:15 8392:24 8396:13 8397:3 8415:23 8416:27 8435:22 8437:23 8459:5 8461:1,16, 18 8464:26 8475:6 8493:21, 25 8494:7,20 8496:7 8497:14 8504:27 8505:4,5, 10 8507:6 8523:10 8526:9 8531:9 8534:19 8541:22 8556:10 8557:11,20 8559:17 8566:18 8571:15,20 8572:6, 14 8582:8 8583:15 8587:18 8595:17,18,20</p> <p>multiple 8397:5 8445:20 8462:7 8494:4</p> <p>multiplied 8478:25</p> <p>multiplying 8563:21</p> <p>multiuse 8391:25</p> <hr/> <p style="text-align: center;">N</p> <hr/> <p>names 8363:9 8403:23</p>	<p>8538:26</p> <p>NASS 8367:17</p> <p>national 8367:24 8368:3 8371:20 8372:24 8373:11 8376:7 8387:9 8402:11,26 8409:8 8417:2 8421:12 8422:9 8423:22 8424:1,9 8426:2 8436:22 8437:11,18, 22 8438:12 8442:3 8451:3 8453:24 8465:10,26 8470:27 8475:8 8478:26 8503:22 8509:22,28 8510:24 8512:4 8514:9,11,13 8516:23 8525:12,19 8526:7 8533:24 8549:8 8567:27 8573:20 8577:15 8583:17 8597:4 8600:1</p> <p>nationwide 8457:16</p> <p>naturally 8452:8</p> <p>nature 8449:26,27 8457:2</p> <p>nearby 8452:3</p> <p>Nebraska 8364:3,28 8367:19 8372:7 8375:12 8381:21</p> <p>necessarily 8391:28 8414:19 8428:10 8430:10 8449:2,3 8453:1 8465:23 8521:18 8544:15,21 8548:16 8560:19 8561:3 8571:18</p> <p>needed 8378:18 8396:5 8402:6,7 8410:25,26 8416:5, 7 8418:25 8450:4 8484:2 8487:4 8504:3,6,9 8505:15, 21 8527:15 8533:22 8573:27 8588:17 8592:21 8595:21</p> <p>needing 8505:9</p> <p>negative 8490:13 8495:14 8557:5,8,27 8570:15 8578:19 8579:17</p> <p>negatively 8493:3 8568:24 8569:22</p> <p>neglect 8550:3 8556:4</p> <p>negotiate 8596:15,21,22,28</p> <p>negotiated 8596:13</p> <p>negotiation 8463:3</p> <p>neighborhood 8405:8</p> <p>net 8456:3 8464:24</p> <p>network 8446:14</p> <p>Nevada 8473:5</p> <p>Newport 8395:21,24 8431:1, 2,3,10,16,17,19 8432:12,25 8433:2,6,22,26 8434:5,17</p>	<p>8435:24 8440:9,11,21,25,26, 27,28 8441:1,11 8444:14 8449:12</p> <p>News 8395:22,24 8431:1,2, 4,10,16,17,19 8432:12,25 8433:2,6,22,26 8434:5,17 8435:24 8440:9,11,21,26,27, 28 8441:2,11 8444:15 8449:12</p> <p>Niagara 8475:21</p> <p>nice 8519:5 8572:28</p> <p>Nicholson 8475:5</p> <p>nickel 8427:24</p> <p>Nicole 8417:21 8455:5 8539:2</p> <p>night 8361:28</p> <p>NMPF 8387:10,11 8389:14 8393:5 8474:23 8583:20 8584:10 8585:5 8599:18</p> <p>NMPF's 8387:18 8389:13 8394:26 8583:26</p> <p>NMPF-41 8386:2,9 8470:7</p> <p>NMPF-42 8470:22 8472:7 8550:19</p> <p>NMPF-42A 8551:10</p> <p>NMPF-42B 8471:4 8551:17</p> <p>NMPF-42C 8471:9 8551:23</p> <p>NMPF-42D 8471:14 8552:1</p> <p>NMPF-42E 8471:18 8552:7</p> <p>NMPF-43 8581:1 8586:22</p> <p>nodding 8370:28</p> <p>nods 8493:11</p> <p>non-class 8534:19 8535:14</p> <p>non-dfa 8380:19</p> <p>non-federal 8496:1</p> <p>non-milk 8447:25,28</p> <p>non-pool 8590:13</p> <p>non-pooled 8583:9</p> <p>nondairy 8468:14,20</p> <p>nonetheless 8366:7 8373:23 8374:17 8411:22 8438:11 8548:19</p> <p>nonfat 8474:8</p> <p>noon 8482:28</p> <p>Norfolk 8518:2,13 8520:17, 22 8526:3 8542:15,25 8543:7</p>	<p>normal 8461:14 8467:27,28 8468:1</p> <p>north 8378:27 8379:2 8399:3,11,15,24 8400:11,15, 21 8406:6 8413:15 8416:20, 23,28 8417:3,5,14,19 8418:15,18 8419:22 8420:1, 20,25 8421:6,26 8422:7,10 8427:6,12 8430:12 8434:12, 14,16,18 8436:5,7,14,24,28 8437:5 8438:2,5,7,21 8439:1,10 8460:2 8461:2 8465:2,3 8493:28 8505:6 8520:6 8545:14 8556:10 8588:18 8600:10,19</p> <p>northeast 8394:13,24 8395:9 8396:3 8402:2 8410:5,16 8454:19 8472:27 8473:6,14,27 8474:3,5,15,19 8475:14,18,26,27 8476:9,10, 14,28 8477:11,16 8478:5 8479:11,17,21,25 8481:8,27 8482:1,20 8484:25,27 8485:5 8486:7,17,28 8487:15,23 8488:5,15,17,19 8489:5,12,26 8490:6 8491:27 8499:5 8507:4 8514:19 8515:3 8516:24 8517:13 8518:8 8523:9,11 8531:2 8534:2,3 8538:10 8547:4,6 8548:24 8554:12, 14 8582:17 8584:17,24 8585:5,19 8586:28 8587:21 8591:17 8592:11,21 8593:20 8597:14,19</p> <p>Northeast/mideast 8393:9</p> <p>Northeastern 8476:5 8477:20 8479:5 8588:18</p> <p>northern 8434:12 8490:23 8499:1 8504:12 8546:27 8556:8 8585:7,8 8586:27 8587:16,20,25 8588:24</p> <p>northernmost 8586:28 8598:7</p> <p>Northwest 8381:21</p> <p>Northwestern 8382:25</p> <p>note 8386:1 8476:26 8536:28 8567:14,28 8568:15</p> <p>noted 8397:9 8398:23 8477:17 8480:11 8550:7 8578:3 8588:23</p> <p>notes 8549:2</p> <p>notice 8362:10,22 8504:5 8566:11 8567:17 8603:7,19 8604:1,8</p> <p>notices 8603:7</p>
---	--	--	---



<p>notion 8562:5</p> <p>notwithstanding 8437:1,4 8553:13</p> <p>November 8361:1,3 8500:1 8603:9</p> <p>number 8364:5 8365:6 8366:14,16 8370:19 8371:26 8374:10 8376:9 8379:24 8380:26,27 8385:19 8386:11 8398:5 8399:13 8403:24 8420:20 8421:2 8443:3,13 8446:16 8453:19 8455:1,14 8470:8,24 8471:2,7,12,16,20 8477:1 8480:2 8503:4 8509:22 8512:1,5 8515:12 8519:15,18 8525:5,16 8530:9 8532:16 8537:15,18, 22 8538:3,22 8546:22 8547:1 8550:22,27 8551:13, 20,26 8552:4,10,25 8553:3, 9,18 8573:5 8579:4 8581:5 8584:2 8590:28 8594:20 8595:1 8598:3 8603:8,10,11, 16 8604:4,11</p> <p>numbers 8373:12,15 8397:8 8401:1 8413:12 8417:8 8420:9,19 8424:16 8425:9 8426:2,5,20 8439:6 8454:22 8503:28 8520:16 8537:6 8541:2 8563:4 8564:4 8567:19,23 8573:16 8577:16 8585:28 8597:10</p> <hr/> <p style="text-align: center;">O</p> <hr/> <p>O'LAKES 8410:16 8448:15 8475:20 8591:20</p> <p>O-N-O-N-D-A-G-A 8496:13</p> <p>Oakhurst 8523:14,17 8524:1 8599:4,5,6</p> <p>object 8499:13 8604:6</p> <p>objection 8370:15 8379:19 8385:16 8470:5 8549:5,7 8550:18,24 8551:6,9,15,22, 28 8552:6,14,21,27 8553:5, 14 8603:27 8604:9</p> <p>obligated 8448:25</p> <p>observation 8527:26</p> <p>observations 8384:26</p> <p>observe 8506:19</p> <p>observed 8385:12</p> <p>obviate 8554:3</p> <p>Occasionally 8591:2</p> <p>occur 8389:7 8469:6 8556:13</p>	<p>occurred 8396:15 8479:27 8482:16 8491:5,22</p> <p>occurring 8505:21</p> <p>October 8393:13,18 8486:21 8488:2,6 8503:25,27 8504:11 8515:13,14,22 8516:4,5,9,14,16 8522:12 8573:7 8584:13,26 8586:3,8 8588:7,10 8589:12</p> <p>off-the-record 8366:21 8408:2 8409:19 8458:1 8470:14 8472:19 8486:12 8519:12 8537:26 8590:1</p> <p>Office 8603:1</p> <p>official 8362:10,21,27 8367:8</p> <p>offset 8449:24 8560:18 8587:18</p> <p>Oklahoma 8367:21 8373:1, 4,5,8 8378:16,17,19,22,24, 28 8379:4,5</p> <p>Omaha 8372:7 8377:9,17 8385:6</p> <p>on-farm 8503:18</p> <p>one-stop 8442:23</p> <p>Oneida 8496:28</p> <p>online 8510:10</p> <p>Onondaga 8496:8,12</p> <p>Ontario 8493:26</p> <p>oops 8550:25</p> <p>open 8593:7</p> <p>opened 8569:12</p> <p>opening 8569:14</p> <p>operate 8387:22,25 8448:13 8474:10,18 8489:13 8529:23</p> <p>operated 8372:22 8388:16 8497:7 8559:27 8582:18</p> <p>operates 8474:4 8484:16 8530:6 8561:24 8582:26 8583:7 8590:10,12</p> <p>operating 8455:14 8480:2 8492:11 8497:13 8530:11, 13,14,17 8569:8</p> <p>operation 8372:22 8374:3</p> <p>operations 8379:14 8472:26 8473:4,14 8522:5</p> <p>operator 8433:1 8530:16 8545:13</p> <p>opinion 8383:4 8444:7</p>	<p>8451:3 8593:9,18 8596:7</p> <p>opportunity 8384:16 8396:18 8431:10,12,13,15 8582:4</p> <p>opposed 8407:17 8505:2 8512:5 8561:18</p> <p>optimize 8446:14 8449:5</p> <p>oral 8380:25</p> <p>orange 8391:26</p> <p>oranges 8418:20,21</p> <p>order 8366:12,26 8367:9 8371:21 8374:15 8379:12 8387:15,18,21,23,24,26,27 8388:9,27,28 8389:3,4,6,22 8391:18,19,21,23 8392:8,9, 20 8393:24 8395:10,20 8396:3 8398:27 8399:15,17, 19 8400:11,18,20 8401:24 8402:26 8404:26 8405:16 8409:26 8410:6 8415:3,4,7, 23,26,27 8416:5 8417:24 8418:3,13 8420:6 8421:13 8424:27 8431:21,24 8454:19,23 8455:22 8460:28 8461:1,4,11,21,22 8463:25, 27,28 8465:24 8466:14 8469:14,16,19 8474:1,13 8479:28 8480:3,7,11 8481:13,15,23 8488:24,28 8489:1,6,7,14 8491:6,16 8494:10 8495:9,11,13,17,19, 20 8496:1,2 8502:27 8511:5 8514:20 8517:13 8520:25 8526:28 8527:6,12 8528:27 8529:3,9,11,14,16 8530:21, 22,26 8533:17,23,26 8535:1, 5 8546:1 8550:27 8555:20, 26 8556:10 8558:12,25 8560:18,23 8561:2,11,24 8570:19,21,24,25 8571:8 8582:20 8583:16,24 8591:5, 17 8593:5 8602:14,15</p> <p>orderly 8414:13,15 8468:27 8469:6 8470:1 8584:22 8588:27 8592:12,15,16,22 8593:13,16,26 8594:4</p> <p>orders 8388:2,19 8431:12, 13 8447:27 8462:6 8489:10, 14 8495:2,22,28 8515:1 8558:5,9 8559:13 8570:13 8583:19 8593:3,6,20</p> <p>ordinarily 8550:12</p> <p>organization 8497:8 8532:7 8559:28 8560:2</p> <p>origin 8390:20,23 8392:8</p> <p>original 8362:19 8398:13 8424:15 8601:22</p>	<p>originally 8575:15</p> <p>out-of-state 8479:16 8497:18</p> <p>outcome 8492:27 8533:13 8568:18</p> <p>outdated 8588:19</p> <p>outlined 8389:13</p> <p>output 8444:26 8451:4 8486:21 8584:22 8585:7,24 8587:22 8592:12 8593:8,12, 15,25,28 8596:5 8597:27 8600:2</p> <p>outputs 8486:26 8584:12,26</p> <p>over-order 8532:10,24,25 8533:10 8547:28 8548:1,6,9 8561:18 8596:13,15</p> <p>over-recognizing 8411:14</p> <p>over-the-road 8391:27</p> <p>overlap 8452:8</p> <p>overlapping 8452:14 8494:4,25</p> <p>overnight 8601:22</p> <p>overseeing 8582:12</p> <p>overview 8525:15 8554:12</p> <p>overwhelming 8387:20</p> <p>owned 8388:1 8403:13 8433:1 8520:19 8524:1 8535:28 8543:11 8544:10 8582:18</p> <p>ownership 8543:22 8569:13</p> <p>owning 8484:18</p> <p>owns 8449:13 8474:4 8526:2 8536:21 8566:26</p> <hr/> <p style="text-align: center;">P</p> <hr/> <p>P-E-N-O-B-S-C-O-T 8600:28</p> <p>P-I-S-C-A-T-A-Q-U-I-S 8601:4</p> <p>p.m. 8604:17</p> <p>pace 8485:4</p> <p>package 8574:28</p> <p>packaged 8412:15,19,24 8429:25,26 8435:18,21,25 8477:3 8521:15 8524:24,27 8576:25,28</p> <p>pages 8568:4</p> <p>paid 8459:14 8460:8 8485:13 8486:6 8535:16</p>
---	--	--	--



8595:22,24	8415:21 8416:17,18,28	8430:11,26 8443:24 8498:10	8388:1,5,8,15,17 8389:18,20
pain 8412:10	8417:5 8431:14 8437:5	8544:19	8398:11 8399:2 8400:25
pairings 8444:24,25	8461:1,16,18 8474:15,17	philosophical 8560:12	8402:28 8403:12,13 8406:2,
Panhandle 8414:22,24	8476:12,18 8477:9 8490:24	philosophy 8457:15	5,7 8412:1,2,6 8419:27,28
8415:11	8491:2 8492:22 8494:3,13,	phrase 8558:17 8559:5,14,	8420:1 8421:15 8431:8,24
paperwork 8404:4	17,24 8495:3,25 8496:3	23	8432:8 8434:3,5,26 8435:2,
paragraph 8380:25 8382:14	8497:21,26,28 8498:10,12,	physical 8483:14	3,8,22 8437:12 8439:18
8408:25 8450:3 8458:13,25	16,18 8499:4 8504:13	physically 8376:17	8441:14 8442:8 8445:9,16,
8493:14 8501:3,12,24	8509:26 8510:3,16 8512:7,	PI 8403:21 8502:16,23	17 8446:22,24,25,27,28
8508:1,2 8522:11 8555:16,	14,18,23 8513:2,3,4,7,12,15,	8503:17	8447:1,6,7,13,24 8448:21
17,28 8558:3,10,15,22,26	28 8544:17 8545:3,12,14,15	pick 8373:7 8382:28	8449:19,20 8452:3 8456:14,
8559:25 8560:10 8565:19	8546:3,4,7,12 8558:14	8460:18 8563:5,9	15,16,17 8461:27 8468:10,
8568:16 8570:11 8571:25	8559:10,18 8562:8 8571:3	picked 8460:18 8474:2	13,15 8474:11,12,18 8475:6
8586:22,23	8573:11,24 8578:25 8579:3,	picture 8380:20 8465:17	8480:2 8482:15 8488:28
parentheses 8578:21	8,14,20,28	8469:10 8490:7 8519:24	8489:1,7 8494:13 8495:3
Park 8387:8	Pennsylvania's 8494:14	piece 8505:9	8497:10 8506:7,24 8522:8
Parkway 8429:3	8495:23 8558:6	pieces 8414:1 8427:8	8529:20,21,23,27 8530:4,9,
part 8369:22 8388:7,23	Pennsylvania/maryland	8447:9 8554:1	10,12,14,28 8531:5,6,21
8399:10 8406:8 8409:25	8442:28	Piscataquis 8600:11,18	8532:1,11 8533:7 8534:12
8413:28 8414:2 8421:10	penny 8443:8,20	8601:2	8535:14 8541:8,13 8542:10
8429:27 8430:1 8442:7	Penobscot 8600:10,18,26	Pittsburgh 8414:8	8544:9 8549:10 8556:22
8460:6 8474:17 8509:18	people 8362:22 8386:7	place 8366:21 8408:2	8557:28 8571:6 8583:4
8519:25 8520:23 8554:19	8401:14 8410:2,7,10,19	8409:14,19 8428:3,5 8458:1	8585:11,15 8590:12,17,21
8560:28 8596:3 8600:14	8428:21 8477:6 8567:18	8470:14 8472:19 8486:12	8591:2,11 8593:2 8595:7
8603:23	8568:1 8602:8	8519:12 8537:26 8590:1	8598:28 8599:3 8601:11,12
partially 8591:8	people's 8401:24	places 8402:10	plate 8404:11
partially-regulated 8474:12	percent 8363:2 8372:18	Plan 8404:3	play 8414:14 8498:15
participate 8506:10	8484:4	plans 8491:24 8501:16	8524:15 8525:23 8554:15
parties 8372:6	percentage 8376:27	plant 8374:2,14 8388:11,12	playing 8494:19
parts 8423:11	8381:20 8388:3 8478:16	8390:28 8391:19 8402:1,3	plays 8535:22
party 8388:16	8479:8,19 8480:20 8503:1	8403:16,22 8404:2 8420:2	plenty 8445:1
past 8485:3 8518:22 8585:2	8527:10	8422:8,11 8428:25 8432:23,	plot 8382:2
pasteurized 8404:10	perfect 8454:8 8473:25	25 8433:1 8435:13 8437:26	plug 8573:25
patience 8589:11	8577:13	8438:1 8439:1 8446:1	plugging 8401:1
pattern 8490:27	performed 8397:26 8479:7	8447:26 8448:24,25 8449:2,	PMO 8403:10 8502:17
pause 8441:27 8585:25	period 8362:19 8385:2	10 8453:12 8455:15 8461:12	8503:6
pay 8568:12 8570:25	8495:15 8570:18	8480:4,8 8484:20 8487:7	PMO's 8502:24
paying 8543:27	periodically 8415:5	8491:8,14,27 8492:14	podium 8523:21
payload 8497:26 8498:4,6	periods 8511:1	8497:5,6,7 8500:13 8506:21	point 8369:4,15 8374:13,24
pays 8460:7	permit 8485:7	8520:19 8526:2,10 8529:25,	8376:15 8377:20,22 8384:20
pencil 8409:25 8410:2	permitting 8572:22	28 8530:6,18 8535:5,17,28	8386:4 8392:10 8396:28
8514:19,21 8515:2	person 8410:4 8424:10	8536:11,15,16,19,22,23	8397:1 8399:4 8411:13
pencils 8409:27,28 8410:3	8477:24,27 8478:15 8563:15	8539:24 8542:14,18,26,28	8413:12 8416:17 8423:2
pending 8418:6	personal 8411:3	8543:6,7,19 8544:10	8430:14 8437:13,17 8438:4,
peninsula 8433:6,18	personally 8455:13	8545:24 8548:20 8568:7	13 8439:17 8465:7 8466:8
8435:13	perspective 8430:5,6,8	8569:1,2,3,14 8575:4,5,16	8514:13 8515:11 8541:22
Pennsylvania 8394:28	8498:21	8582:9 8583:9 8584:23	8549:24 8555:26,27 8556:20
8406:6 8409:24 8414:4	Philadelphia 8394:27	8590:14,18,20 8592:13	8559:2 8576:8 8594:16
	8398:10,18 8402:8 8408:28	8594:6,10,11,12,14 8595:3,7	8599:9 8600:6 8602:17
	8409:7 8411:23 8412:13,18	8596:17 8599:4	pointed 8408:16 8473:23
	8424:21,27 8425:3,6 8426:2,	plant's 8532:4	8506:9
	6,12,14,24 8427:1,2,9,12,17,	plants 8372:10,12,15 8373:2	points 8388:27 8389:25
	24,26,28 8428:1,9,10,14	8376:18 8387:23,25,26,28	8390:20 8441:28 8443:19,



<p>policies 8583:25</p> <p>policy 8387:11</p> <p>pool 8372:9,14 8387:22,25 8388:4,12,15,17 8390:28 8453:21,27 8454:23,28 8474:10,11 8480:2 8483:28 8497:5,6 8527:1,7,10 8531:20 8532:1,5 8545:24 8590:11</p> <p>pooled 8387:21 8474:1 8491:18 8529:8,11,14 8582:19 8583:4</p> <p>pooling 8495:28 8526:28 8527:6 8530:26 8533:16,23, 26 8559:12</p> <p>population 8368:8,17 8477:1,5,8,15,18 8478:5,12, 18,25 8479:25 8482:24 8517:1,5 8555:2,5 8563:11 8574:22 8575:16 8584:3 8594:21</p> <p>portion 8389:27 8422:27 8457:11 8474:16 8523:11,12 8556:7,8 8591:10 8598:21</p> <p>portions 8490:20,21,23,24 8499:4</p> <p>Portland 8518:18,20,23,24 8521:3 8523:5,9,27 8524:14, 15 8599:4</p> <p>Portsmouth 8434:4 8435:1, 2,3</p> <p>position 8582:10</p> <p>positions 8582:7</p> <p>positive 8540:5 8578:28 8579:6,11,26 8580:1</p> <p>possibility 8413:18</p> <p>possibly 8413:26 8470:1</p> <p>post-retirement 8582:14</p> <p>posted 8537:13 8603:14</p> <p>potential 8477:2 8487:6 8495:21 8496:4 8504:10 8556:12,16 8557:13 8558:4, 8 8571:11</p> <p>potentially 8489:1 8556:5</p> <p>pounds 8363:15,22,24 8364:5,10,17,22 8391:2,4,12 8392:11 8415:22 8473:28 8476:19,22,24 8477:12,13, 22,23,24,27 8478:24 8480:17 8481:20,24 8491:15,17 8498:5 8501:17 8528:1,4,5 8563:16 8564:2, 16 8582:23 8592:26 8595:1, 2</p>	<p>powder 8406:10 8474:9 8522:5,8 8583:8 8590:13</p> <p>PPDS 8495:8</p> <p>practical 8475:10 8489:3 8498:27 8557:16</p> <p>practicality 8543:16 8557:18</p> <p>practice 8503:6</p> <p>preceded 8584:5</p> <p>predicted 8402:17</p> <p>prefer 8483:3</p> <p>preferable 8549:25</p> <p>preference 8368:13</p> <p>preliminary 8361:5</p> <p>premise 8384:23</p> <p>premium 8532:10,24,25 8561:18 8596:13,15</p> <p>premiums 8533:11 8548:1 8597:6</p> <p>preparation 8581:24</p> <p>prepare 8386:27 8472:6 8581:24</p> <p>prepared 8371:19 8472:8 8538:8 8539:3</p> <p>present 8453:16</p> <p>presented 8443:12 8452:11 8466:26 8525:14 8533:19 8562:6</p> <p>presenting 8483:6</p> <p>preserve 8398:4,17 8411:12 8437:9 8588:25</p> <p>preserved 8438:14</p> <p>preserving 8395:6 8397:27 8424:28 8437:8</p> <p>president 8387:6 8472:26 8582:11</p> <p>press 8492:12 8549:23 8603:14 8604:6</p> <p>pressure 8406:14</p> <p>presume 8522:14</p> <p>pretty 8416:6 8421:7 8430:16 8457:10 8468:17 8469:16 8534:5 8576:1 8591:2 8594:2</p> <p>prevail 8369:6</p> <p>prevent 8490:15 8585:18</p> <p>previous 8372:17 8558:26 8565:12,16 8584:9</p>	<p>previously 8361:18 8386:17, 23 8471:25 8486:16 8493:18 8498:22 8505:12 8531:7 8534:4 8557:11 8576:13,17 8581:14 8584:14</p> <p>price 8368:4,7,13,24,26,28 8369:19,24,28 8372:27 8374:13,25 8375:17 8376:6, 13,14 8377:5,14,21,24 8379:13 8382:18,22,24 8393:11,21 8394:5,7 8395:6, 16,27 8396:2,7,10 8397:28 8398:4 8410:26 8411:4,12 8414:4,16,20 8415:8 8424:28 8426:28 8427:25 8430:10,14 8434:7 8437:8,9 8438:15,22 8439:26 8442:4 8443:12 8446:9 8450:6,11, 13 8463:27 8468:24 8482:22 8484:8,14 8494:10,11,14 8495:6,7,25 8503:22 8506:12 8515:18 8516:10,17 8518:1 8541:1,23,25 8542:4, 7 8554:28 8556:2 8558:11, 17,20,21,23 8559:1,5,9 8570:13,25 8596:24 8597:3</p> <p>priced 8480:9 8488:22 8500:13</p> <p>prices 8402:15 8411:3 8413:15 8438:2 8466:18 8494:25 8495:12,17,28 8504:17 8555:22 8559:13 8568:12</p> <p>pricing 8466:4 8474:25 8476:4 8486:18 8495:3 8496:5 8516:12,18 8517:24 8544:17,28 8561:22 8583:21,23</p> <p>primarily 8481:25,26 8482:6 8488:7 8491:19 8522:19 8566:3,9</p> <p>primary 8482:15 8497:4 8507:3,5</p> <p>Prince 8401:27 8402:1,2</p> <p>principle 8414:10,12 8433:23 8453:1 8465:26,27 8526:27 8527:5</p> <p>principles 8368:11 8377:21 8396:4 8410:24 8465:19 8515:2</p> <p>printed 8408:20 8602:5</p> <p>prior 8423:27 8424:5 8473:10</p> <p>private 8413:7</p> <p>problem 8411:8,19 8413:16 8438:24 8570:28 8571:1,6, 10,18</p>	<p>proceed 8472:23 8483:7 8493:15 8590:4 8602:2,11</p> <p>proceeding 8362:9 8386:18 8418:17 8423:12 8471:26 8581:15</p> <p>proceedings 8604:18</p> <p>proceeds 8535:1</p> <p>process 8417:26 8475:2,3 8486:19 8487:2,10 8503:21 8517:9 8520:23 8563:1 8583:24 8591:22 8594:11</p> <p>processed 8368:14,20 8369:18 8377:7,12 8387:28 8477:3 8480:6,13,15 8481:10,12,19</p> <p>processing 8388:18 8389:20 8474:27 8475:6 8478:21 8481:14 8482:3 8483:13 8484:20 8485:14 8490:14,19 8491:10 8501:4 8523:26 8557:6,9 8575:4,5, 9,22</p> <p>processor 8394:12,22 8421:6 8463:18 8464:1 8507:7 8576:7,22</p> <p>processors 8494:28 8518:20 8533:4 8547:3 8582:13 8583:11 8584:3 8590:25 8591:4,8 8594:21</p> <p>procure 8503:10</p> <p>procurement 8448:9,19</p> <p>procuring 8467:8</p> <p>produce 8503:14</p> <p>produced 8363:14 8368:14, 20,23 8369:17 8377:6,12 8399:7,9,11 8400:17,19 8417:22 8479:13 8494:5 8523:9 8529:3,16 8563:28 8566:5 8583:6</p> <p>producer 8403:24 8460:7 8480:8 8494:9 8495:7,28 8500:12 8527:28 8528:3,24 8529:8,10,14 8534:26 8559:13 8565:13 8568:12 8576:6</p> <p>producers 8367:25 8387:7,9 8441:25 8470:27 8475:20 8495:27 8498:24 8509:22 8525:12,19 8553:24 8559:12 8560:28 8561:2,3,4 8570:23 8583:18</p> <p>Producers' 8376:7 8453:24</p> <p>produces 8442:23</p> <p>product 8494:28 8583:24</p>
---	---	--	---



8595:4	8417:3 8426:23 8430:28	purchasing 8401:25	R-E-N-S-S-E-L-A-E-R 8535:25
production 8362:11,13	8437:18 8454:20 8464:22,24	purpose 8367:4 8387:17	R-Y-L-L 8471:24
8363:2 8366:8 8367:17	8469:8 8475:12 8486:18	8483:12 8534:10,13 8586:8	raise 8432:22
8368:8 8369:17 8370:6,8	8487:20,28 8489:16,18,25,	purposes 8497:9 8516:10,	raised 8436:4,8
8373:5,8 8375:7,10,11	28 8490:5 8492:22 8495:23	17 8549:14 8560:1,5,8	raising 8421:12 8520:17,22
8377:26,28 8381:17 8388:19	8496:8 8497:14 8509:25	push 8468:3	8525:25 8597:9
8404:18 8415:11 8446:1	8510:17 8511:12,21 8515:17	put 8371:2 8381:28 8390:18	ran 8451:28
8474:28 8476:8,14,20,23,27	8525:11 8526:6 8536:3	8398:26 8401:2,4 8406:14	range 8375:24 8420:10
8477:10,14,20 8478:19	8538:15,16,27 8541:6	8424:8,9 8431:10 8468:21	8434:7 8469:15,17,22
8479:2,3,9,16,19,24	8543:8 8544:12 8545:18	8502:21 8530:7 8549:9,25	8480:13 8572:19
8480:18,21 8482:23 8483:5	8557:14 8558:6 8573:20	8561:17 8578:21 8602:5	rapid 8478:15 8479:15
8491:25 8497:19 8517:5,20	8578:3 8585:6,19 8591:14	putting 8401:1 8541:17	rapidly 8534:5
8521:9 8527:19 8531:10	8597:5 8600:1	8573:9 8587:25	rate 8390:13 8391:14,15
8542:2,9 8555:1,5 8563:27	proposes 8367:25 8372:24	puzzles 8509:9	8392:4,5,12,13 8396:24,27
8564:5,18,22,23,24 8565:3	8421:12 8437:11,23 8526:7	puzzling 8521:23	8397:2 8407:8 8416:19
8566:10,13	proposing 8369:25 8387:15	<hr/> Q <hr/>	8442:15 8443:5 8459:12,17
products 8391:28 8474:6,8	8394:25 8427:17 8438:12	qualification 8431:25	8460:7,13
8475:7 8477:21 8478:10	8518:11 8542:23 8543:10	qualify 8548:10	rates 8390:10,12,13,15
8582:25	8544:10 8571:12 8599:18	quality 8403:21,25 8502:8,	8396:24 8397:9,10,15,16,17,
profile 8517:3	proposition 8422:28	11,22	19 8407:9,13,14 8443:15
program 8456:27 8457:1,6	proprietary 8372:22 8374:2	quantity 8363:2,13 8417:23	8484:2
8465:24	8432:23 8433:1 8456:16	question 8368:10 8369:8	rational 8426:27 8542:3
programs 8532:16 8548:17,	8506:17,23 8545:13 8561:24	8377:10 8378:23 8380:14,22	raw 8370:3 8376:18 8388:18
18,19	proprietary-owned 8456:17	8383:15 8384:9,13 8417:11	8389:19 8394:23 8412:15
project 8377:20 8459:6	proteins 8583:6	8423:6 8430:9 8432:20	8429:24 8435:12,16 8474:6,
projecting 8548:2	proven 8418:2	8433:8 8438:19 8448:6	19 8483:12 8494:28 8521:15
projects 8582:15	provide 8363:1 8367:10	8454:4,6,27 8456:13	8529:21 8531:1,5,21 8532:2
promote 8584:22 8592:12,	8370:10,24 8371:1,22	8460:21 8464:19 8516:13	8541:28 8575:4,22 8576:25
22 8593:13,16,26	8384:24 8387:2,17 8389:17	8517:3,27 8528:19,23	8584:8 8590:22,24
prompted 8383:28 8539:1	8398:2 8448:25 8472:15	8531:23 8532:13 8533:12	re-plow 8441:26
pronounce 8501:14 8568:20	8475:13 8476:5 8496:5	8534:9,28 8543:3 8554:3	reaches 8495:5
8579:23	8498:21,24,28 8499:3	8560:13 8562:18 8591:15	read 8450:11 8465:17
proper 8493:9 8508:8	8506:6,13,25 8525:14	8593:14,21,28 8597:12,28	8473:17 8478:2 8493:7,12
proposal 8373:27 8374:9,10	8554:13 8562:2 8573:8	questioning 8449:28	8510:2 8516:22 8559:26
8383:24 8394:26 8402:11,26	8587:17	8456:26	8563:4 8567:2 8570:24
8409:9 8422:9,12 8432:28	provided 8363:5 8367:6	questions 8379:17 8380:2	8587:3,23 8593:11
8436:23 8437:22 8453:24	8397:8 8442:11 8475:1,28	8383:28 8384:1,8 8396:22	reading 8394:14 8563:1
8465:10 8474:22,24 8475:3,	8499:3 8509:1 8515:5	8441:18 8444:28 8453:13	8581:28
25 8488:5 8490:25,28	8574:1	8457:22,26 8458:4 8464:15,	Readington 8480:27 8481:3
8491:2 8492:18 8494:15	providing 8384:20 8385:5	18 8526:13,17 8527:23	reads 8450:4 8554:27
8496:19,22 8497:2 8503:22	8397:24 8475:25 8488:10	8547:1 8560:12 8562:11,15,	8557:1
8506:12 8509:22 8514:10,	8489:9 8522:22 8525:26	25 8574:9,16 8589:12,20	ready 8407:6,27 8457:27
11,14 8515:25 8525:20,23,	8533:4 8573:14 8581:27	8591:13 8597:8 8602:21	8547:17 8578:24
27 8538:20,22,28 8539:28	provisions 8464:17	quick 8453:13 8454:13	real 8453:15
8541:8 8544:16,21 8567:27	proximity 8482:16 8487:15	8503:19	realities 8445:22 8450:22
8571:16 8577:15 8583:18,	8488:20	quickly 8561:6 8602:5	8451:2
20,26 8584:10	public 8371:6 8579:22	quiz 8579:22	reality 8415:16 8422:2
proposals 8418:7 8490:1	publication 8367:8 8484:24	quote 8594:5	8449:15
8542:7	8485:19 8566:23	<hr/> R <hr/>	realize 8519:22
propose 8395:28 8420:21	publications 8362:28	R-E-A-D-I-N-G-T-O-N 8481:4	
8510:22 8518:1,3 8541:3	published 8485:23 8584:11		
8546:20	8603:9		
proposed 8366:19 8373:12	pull 8416:6 8468:4		
8377:2,15 8378:15,20,21	purchase 8483:14,20,21		
8379:9 8385:7,10 8387:18			
8389:16 8395:19 8396:10			



realized 8594:2	reconvening 8603:7	reflected 8409:8 8443:28 8449:15 8454:7	relationship 8393:25 8394:5,6,8 8395:7,17 8397:28 8398:4 8412:12 8424:28 8426:28 8427:25 8430:14 8433:24 8434:25 8436:6 8437:8,9 8438:15,22 8439:26 8488:16 8496:16,28 8518:21 8531:9 8571:26 8572:1 8584:25
rearranging 8589:13	record 8361:2,3 8366:18,20, 22,23,25 8367:2,4 8371:24, 28 8372:1,2 8386:6,8 8408:1,3,4 8409:18,20,21 8410:14 8413:5 8426:17 8457:28 8458:2,3,12,19 8470:13,15,16 8472:18,20 8486:10,11,13,14 8499:16 8500:2,3 8519:10,13 8537:24,27,28 8538:5 8539:13 8547:18,20,21 8551:7 8562:28 8568:1 8577:11,22,23 8580:7 8584:5 8586:16 8589:28 8590:2,3 8603:4,23 8604:16	reflecting 8386:3	relationships 8369:2,3 8373:1,19 8393:22 8395:27 8396:2,7,9 8410:26 8411:12, 23 8414:16,20 8415:8 8430:11 8442:3 8443:13 8446:10,17,22 8450:6,9,11, 12,14,20,25 8466:4 8487:25 8490:12 8520:24 8541:1 8557:4 8584:20 8585:21 8588:26
reason 8367:24 8376:14,26 8391:24 8393:16,17 8412:9 8439:4,28 8512:12 8515:16 8524:25 8540:9	recoup 8396:14	reflects 8452:17 8496:23	relative 8394:22 8423:2 8426:5 8474:25 8479:9 8482:2 8487:11 8495:11,22 8496:27 8515:6 8517:25,28 8522:24 8524:9 8525:28 8533:22 8541:2 8542:13 8543:7,22 8544:14 8558:5 8572:13,22
reasonable 8434:24 8469:24 8584:25	recovered 8460:4	Reform 8415:3,4,7 8491:6 8494:11 8583:24	relativities 8468:25
reasons 8397:27 8412:4 8422:12 8439:18 8482:19 8498:25 8546:22	red 8409:25,27 8410:2,3 8514:19,20 8515:2 8524:20	refreshed 8485:19	relativity 8515:17
recall 8469:1 8558:16	redirect 8383:27 8384:5 8467:4 8574:10 8577:4	refunded 8561:12	relax 8530:25 8533:16
recap 8475:1	redoing 8598:12	regard 8506:5 8507:16	release 8492:12 8603:14 8604:7
receipts 8480:7 8491:14 8500:12 8527:27 8528:7,19, 23 8533:28 8534:17 8565:13 8575:15 8576:1,17	reduce 8439:20 8456:3 8490:13 8493:2 8557:5 8568:22 8569:21 8584:13 8597:5	region 8393:7,9,10 8400:11 8417:25 8418:3,23 8473:15 8474:3 8475:14,16,27 8477:11 8480:6 8481:8,18 8482:1 8483:19 8485:8,13 8486:7,19 8487:21,24 8488:1,15 8489:4,8,12 8490:6 8491:5 8492:24 8494:12,18 8499:5 8500:26 8504:27 8507:4 8518:26 8521:1 8524:28 8536:27 8537:1 8545:1 8546:23 8555:27 8556:3,17 8561:26 8566:4 8583:15 8584:15,24 8587:12 8592:17,20 8597:6	relevant 8368:21,25 8544:23
receive 8398:20 8468:10 8474:6,19,20 8503:23 8560:19	reduced 8402:11 8439:21 8498:3 8533:26 8542:2 8586:28 8587:21 8597:14,19	region's 8582:13 8583:10 8590:24	reliable 8388:23
received 8370:19 8379:24 8384:9 8385:19 8387:28 8470:8 8503:24 8550:22 8551:13,20,26 8552:4,10,25 8553:3,9,18 8574:18 8575:16,19 8576:13 8604:4, 11	reduces 8498:6	regional 8393:5 8475:9 8487:11 8514:26	reliance 8479:15
receiving 8440:16 8449:23 8548:11 8580:28	reducing 8438:2 8542:23 8569:28	regions 8381:17 8393:10 8469:25 8473:4 8475:26 8477:14 8478:21 8481:11,26 8484:15 8489:26 8490:25 8494:26 8496:18,21 8497:20 8498:22 8499:6 8504:12 8531:10 8545:1 8566:10,11	relief 8389:17
recent 8382:3 8485:1 8491:22 8493:12 8501:13	reduction 8498:6 8526:7 8598:2	Register 8603:7,8,28 8604:7	relies 8497:18
recently 8491:11 8493:7 8501:5	reductions 8597:9	registered 8473:11	reluctance 8530:28
recess 8499:17 8604:15	refer 8384:11 8450:13 8502:19 8508:7 8515:10 8557:28 8594:20 8598:3,28	regular 8459:12 8502:17 8530:1	rely 8546:25 8585:12 8599:1
recognition 8368:13 8525:21	reference 8371:20 8501:13 8507:13 8519:2 8549:14 8550:4 8559:26	regulated 8394:22 8411:4 8431:16,18,23,26 8591:4,8	remain 8361:13 8386:20 8494:12
recognize 8561:27 8572:2,5	referenced 8501:18 8522:12	regulation 8391:10 8450:17 8496:3	remainder 8487:21,24 8488:14 8489:5 8492:21
recognized 8561:26	references 8500:11 8549:20	regulations 8391:11 8603:4, 19,22	remaining 8388:3
recognizing 8377:8,15 8394:8,9,18,19 8411:13 8541:26	referred 8549:27	regulatory 8583:25	remains 8484:12
recommendations 8402:20	referring 8382:6 8458:19 8522:23 8558:10 8560:2 8594:7	reimbursed 8417:13	remarkable 8483:5
recommended 8382:15 8464:23	refers 8487:9 8543:26	reject 8403:18	remember 8372:26 8410:10 8415:2 8425:10 8509:23,24 8602:1
reconcile 8411:10	refinement 8379:10	rejected 8403:19	remind 8431:9
reconciled 8453:18 8454:1 8455:1	reflect 8396:12 8454:8 8465:28 8534:14 8588:20	related 8467:8 8487:26 8542:6,9 8559:5	Reno 8372:8,22 8374:3 8376:10 8377:3
reconciliation 8411:19		relates 8427:3 8457:1	
reconciling 8455:14			
reconvened 8604:1			



Rensselaer 8535:24,26 8536:23,28 8539:16 8541:2 8543:20	8478:24 8479:12 8502:9 8532:28 8603:3,18,22	return 8457:25 8601:26	roundtrip 8390:18,22 8391:17 8392:7 8397:3 8406:26 8454:15 8461:22
reorder 8367:5	requirement 8455:24,27	returning 8497:25	roundtrips 8406:23,24
repeat 8369:9,11 8373:28 8377:10 8383:15 8516:13 8517:27 8531:23 8594:24	requirements 8388:25 8403:6 8405:14 8467:8 8468:20 8530:26 8533:16, 23,26 8535:5	revealed 8393:23	route 8390:23,26 8407:6 8460:27 8461:5,12 8462:8 8523:14 8524:2
repetitive 8562:26	requires 8388:22	revenue 8388:23,25	routes 8460:17,18,19,22,24 8461:10 8462:7
rephrase 8445:21 8531:24 8561:7	reservations 8550:6	revenues 8526:28	routine 8490:16
replace 8492:11	reserve 8419:8,9,19,23 8527:1,7,10,15	review 8393:21	routinely 8493:28 8533:26
replacement 8569:2	resident 8477:1,5,15,17 8478:4,11,18 8479:24 8482:23 8555:2,5	reviewing 8395:10 8480:7 8566:8	row 8372:7,8,9 8510:8,10 8511:15,24,26,27 8512:10, 17,21,22 8513:7,19,20 8514:4 8539:23 8540:21,26, 27 8545:6,23 8599:13,15
replacing 8530:11 8594:14	residents 8563:13	revise 8362:7	rule 8442:13 8547:22
report 8480:1 8484:28	resolve 8505:15	revised 8583:25	ruler 8589:25
reported 8602:25	resolving 8505:23	revisions 8394:25	ruling 8547:11
reportedly 8491:27	respect 8362:10 8363:1 8418:6 8420:26 8432:5 8446:13 8451:16 8457:10	revolved 8509:19	run 8393:12 8401:2 8404:10 8435:4 8447:13,15,16,17,25 8448:1 8595:6
reporter 8362:12 8418:11 8437:20 8462:24 8473:21 8522:16 8529:1 8582:1	respective 8585:13 8601:9	revolves 8526:28 8527:6	running 8390:11 8396:24,27 8397:2,10,17 8406:24,25,26 8442:24 8443:1 8590:19
reports 8480:11	responded 8468:28	rewrite 8408:27	runs 8590:20
represent 8441:24 8476:9 8486:5 8508:20 8510:27 8515:23 8526:8 8555:27 8556:1 8561:22	response 8549:18	Rhode 8476:12,18 8479:11 8517:16 8565:1	rural 8575:10 8576:8,10
representation 8502:20 8515:24 8534:21	responsibility 8387:14 8576:6,7	Richmond 8434:4,26 8435:2	Ryan 8441:24 8553:23
representative 8461:8 8480:19 8481:6 8490:7 8582:8	rest 8392:27	risk 8484:9	Ryll 8410:20 8470:18 8471:24 8472:1,6,25 8482:26 8483:5 8500:7 8507:10 8508:18 8519:22 8547:10 8553:22,27 8562:15,18 8577:6 8580:6, 15
representatives 8475:19 8498:22 8584:15	restate 8452:22 8520:15 8527:3	River 8513:27 8546:11	Ryll's 8550:15
represented 8485:22 8486:23 8488:5 8514:25 8529:3,16,17 8557:12 8563:12	restrictions 8498:5 8574:3	riveting 8407:25	
representing 8453:11 8480:7 8481:27 8517:13 8553:23	result 8393:19 8497:1 8521:24 8534:19	road 8387:8 8429:6 8440:13 8462:20 8498:5 8544:5 8567:12	<hr/> S <hr/>
represents 8452:23 8488:18 8490:5 8529:8,10 8563:6	resulted 8478:19 8584:27	road's 8440:12	S-C-H-U-Y-K-I-L-L 8513:27
request 8389:14 8494:23 8533:8,9	resulting 8394:5 8488:2 8489:2	roads 8567:9	S-C-O-T-T 8581:10
requested 8492:19,28 8533:7 8555:23 8568:18	results 8367:28 8369:7,20 8372:23 8376:8 8393:11,14 8394:26 8398:20,24 8426:23 8432:21 8450:21 8463:13 8486:22 8487:26 8489:25,28 8496:9 8498:26 8504:21 8505:16 8515:9 8521:17 8525:13,24,25 8584:11,18 8585:13 8587:2 8588:25 8597:17 8601:9	Rochester 8491:9 8494:18	S-K-Y-L-A-R 8471:24
requesting 8525:27	resume 8361:14 8478:7	Roger 8451:13 8454:7	safe 8523:1
requests 8474:24 8497:2 8529:21 8530:25 8533:16	resumes 8601:23	role 8384:26 8429:24 8432:4,8 8525:23 8582:11 8591:25	safely 8485:2
require 8403:20,24 8451:3 8502:26 8503:2,18 8532:7	retained 8582:14	roles 8582:9	sales 8405:17 8429:28 8431:19,26 8464:8,12 8477:21 8478:11 8582:13
required 8405:18 8452:25	retaining 8376:6 8377:13	rolling 8416:22	samples 8405:2
	retired 8582:5 8595:20	Ronde 8591:23	San 8516:26
		room 8410:19 8428:21 8509:15 8532:27 8602:24	Saputo 8539:24 8540:4
		Rosenbaum 8456:21,23,24 8457:21 8574:11,13,14 8577:1	
		roughly 8365:18,19 8391:17 8392:7 8407:14 8444:15 8474:1 8484:2	
		round 8419:6 8564:2	
		rounded 8528:16,17	
		rounding 8528:13 8564:6	
		rounds 8403:18	



Saratoga 8540:21	8486:2 8522:13,24 8529:5,6 8554:27 8557:1,21 8558:8, 14 8559:8,26 8565:18,20 8568:17 8571:24 8601:7	sheet 8398:26 8540:6	8515:4 8521:2 8537:1 8542:10 8558:18 8576:1 8579:3
satisfied 8389:27		shelf 8404:16,19 8411:26	
satisfy 8479:16		Shenandoah 8432:11	similarly 8429:9 8430:28 8597:18
Saturday 8389:8 8447:21	sentences 8478:1	shift 8480:5	
save 8473:20	separated 8497:10	shifted 8576:21	simplify 8560:22
scenario 8390:22 8392:7 8416:26 8462:9 8518:19 8568:28	separately 8416:13,24	shifts 8414:27 8476:6 8479:24	simply 8414:18
scenarios 8423:7	separates 8406:11	shipping 8451:22 8534:25 8535:17	Sims 8393:4 8475:1 8487:10
scheme 8557:13	September 8380:17 8389:5, 7	short 8378:18,19,24 8404:17 8415:16 8419:4 8420:14,25 8442:26 8447:10 8580:12	single 8447:19
schools 8445:26,28 8468:2	series 8404:3 8446:16 8530:25 8533:16	shortcut 8422:6	sir 8372:21 8374:24 8526:14
Schuykill 8513:26,27,28 8579:20	serve 8387:10 8388:23 8395:25 8399:27 8412:6 8434:1,2 8439:1 8444:13 8446:27 8447:24 8455:7,22, 25,26 8457:9 8468:13	shorter 8441:10 8443:2	sit 8455:18 8569:4 8591:26
science 8473:7,8	served 8421:14 8556:23	shortfall 8421:25,27	sitting 8410:13 8552:17
scope 8447:5 8492:25 8533:24	service 8380:2 8384:1 8402:28 8455:3,20 8457:24, 26 8458:5 8482:2 8498:14, 15 8527:2,8,11 8531:13 8532:28 8533:1,3,20 8535:4 8562:16,18 8570:24 8572:5, 14,16 8596:16 8601:26 8603:2	show 8391:3,5 8424:12 8478:23 8515:18 8538:25 8573:18	situation 8372:27 8416:13 8442:14 8469:20 8496:6 8567:12
Scott 8410:19 8475:28 8580:23 8581:10,18 8582:5	serviced 8491:8	showed 8414:25 8425:18 8473:11	sixth 8408:26
Sea 8524:15,17,18	services 8582:12	showing 8371:6 8392:12 8443:18,27 8575:9	size 8391:1,2 8462:18 8492:25 8517:1
season 8419:5 8468:3	servicing 8381:18 8389:11 8396:6 8406:15 8447:6 8450:5 8456:5 8482:15 8495:18 8497:17 8531:5,6	shown 8476:15 8495:8 8546:1	sizes 8574:3
seasonal 8389:3 8393:18 8468:1 8531:1	serving 8388:1,3 8396:13 8433:27 8454:2 8457:11 8464:2 8530:4	shows 8364:5 8367:7 8388:8,11 8411:6 8479:7 8480:13 8483:17 8491:16 8539:15 8540:28	skim 8474:8
seasonality 8446:2	SESSION 8361:1 8500:1	shrinking 8373:5,8	skip 8552:16
seasonally 8527:2,8 8529:22	set 8362:19 8378:15 8379:3 8411:15,17 8464:21 8502:12 8504:18 8505:24 8592:28	sic 8501:17 8513:27 8524:13 8590:4	Skylar 8410:20 8470:18 8471:24 8472:1,25 8594:8
seat 8361:9	setting 8432:5	side 8382:24,26 8383:10 8464:8,10,13 8467:25,26 8481:7 8503:18 8516:11,18 8539:16 8568:6 8573:21	slight 8439:25 8568:25
section 8402:8 8500:23,27 8554:7,8,11,12	settles 8596:24	significant 8363:27 8366:7 8377:2 8476:27 8480:14 8481:11,28 8482:21 8491:7, 10 8492:5 8501:4 8534:6 8585:1 8587:13 8588:14	slightly 8375:12
sections 8554:13	seven-day 8532:11	significantly 8364:26 8370:7 8375:8 8389:26 8394:7 8485:1 8491:28 8584:2 8585:6 8594:19	slope 8559:1 8573:19 8587:17 8588:17
Sedgwick 8366:2 8372:8 8376:10 8377:3	share 8475:16	signifies 8489:18	slower 8473:17
select 8441:24 8489:11,15, 26 8553:23	shared 8393:4 8417:21 8434:20 8455:6 8468:12	signify 8475:17 8557:17 8566:15	slowly 8529:6
selected 8371:21 8487:9 8538:9	sharing 8469:12	signifying 8561:25 8563:15 8564:7 8573:12	small 8447:2 8453:12 8504:25 8522:1,2
sell 8373:24,25 8412:16 8502:27 8596:14,18	Sharpville 8474:14	similar 8369:3 8372:16 8485:28 8486:4 8502:10	smaller 8392:20 8448:16 8466:19 8591:6 8599:10 8600:1
selling 8401:15 8437:10 8596:12	shed 8464:10		smooth 8486:21 8490:12 8499:6 8557:4
send 8595:23	sheds 8395:26 8490:12 8494:4,25 8557:4		sold 8368:15,18,20 8369:18 8377:7,13
senior 8582:11			solution 8451:19,27
sense 8398:23 8414:26 8420:8,11 8421:3,4,14,20 8435:21 8494:15 8504:26 8505:1 8517:6 8521:6,14,20 8543:16			solve 8496:4
sentence 8382:13 8394:15 8450:3 8458:14 8463:16			somatic 8403:21 8404:12, 13,20 8405:4



sounds 8598:1	8516:20 8520:27 8522:26 8524:9 8525:10,28 8526:10 8554:22 8556:11,17 8561:3, 23 8562:3 8569:26 8573:17 8584:16 8591:25	stand 8361:8,28 8386:1 8509:3 8550:1 8581:8 8586:8 8601:28	Station 8481:1
source 8370:22 8371:14 8372:15 8388:23 8478:3,5 8500:19 8588:16	specifically 8381:6 8432:8 8469:13 8504:22 8505:19 8521:1 8554:9 8557:26 8583:19 8588:6 8594:19	standard 8403:5,17 8404:11 8405:21 8503:9 8598:1	statistic 8563:28
sourced 8380:10	specifications 8446:5	standards 8403:9,10,15 8404:24,26 8405:18 8467:9 8502:8,11,16,17,23,24 8503:6,11	statistical 8479:28 8480:11 8563:20
sources 8372:16 8378:28	specifics 8487:14 8518:25	standpoint 8391:6 8447:26 8469:26 8543:17 8555:24 8557:16 8566:14 8569:5	statistics 8366:12 8546:1
south 8365:27 8367:18 8372:28 8399:6 8400:13 8412:13 8416:2 8420:2 8427:6,12 8433:25 8434:4, 17,19 8436:11,18,28 8437:10 8439:16,17 8488:27 8492:6 8493:28 8497:14 8505:6 8556:10 8587:16 8600:5	speculate 8534:8	stands 8450:17	stay 8551:7 8601:28
Southeast 8378:15,17 8379:5 8383:18 8393:8 8395:8 8396:3 8400:18 8409:26 8415:19,20 8418:7 8420:14,25 8421:17 8433:26 8464:17 8488:16 8489:4 8498:16 8545:3 8573:11,24	speed 8424:13 8581:28	start 8361:25 8363:4,11 8374:27 8390:21 8407:5,6 8408:13 8440:16 8445:26 8458:10 8486:1 8509:8 8511:5,9,10 8550:11 8552:20 8554:2 8563:3 8565:20 8593:5	staying 8493:23
Southeast/southwest 8393:10	spell 8361:10 8386:13 8471:23 8481:3 8492:8 8496:11 8513:13 8540:15 8542:17 8581:9 8583:1 8600:20,27 8601:3	started 8362:6 8374:28 8376:12 8391:18 8393:10 8509:8 8592:2	stays 8459:21 8601:14
Southeastern 8378:19 8382:24 8479:23 8498:18 8545:12 8546:7 8585:10	spelled 8493:12 8507:26,27, 28 8512:20	starting 8377:19,22 8392:10 8397:1 8570:11 8582:8	steady 8382:5 8388:22 8530:25 8533:15
southern 8399:8,9,11 8417:24 8434:11,12 8488:18,20 8498:18 8523:11 8536:11 8544:20 8545:1 8556:3,7,26 8562:7,8 8573:12,25 8585:16 8600:9	spelling 8493:9 8507:17 8508:3,8	starts 8397:6 8434:16 8576:6	step 8385:26 8393:21 8470:11 8487:1 8503:19 8554:18
southernmost 8555:26	spellings 8493:6 8507:20	state 8361:10 8363:9,21 8366:9 8376:1 8381:14 8386:13 8391:10 8431:12 8471:23 8476:25 8477:1 8478:12,17,24,25,27,28 8479:1,8,14 8485:8,16,18,20 8490:18,23 8491:12 8493:20 8496:2 8497:15,25 8498:6 8499:1 8501:6 8518:19 8520:3,10 8523:11,12 8559:9 8563:10,23 8564:1, 25 8572:23 8581:8 8585:15 8591:3 8601:11,12,16	Stephenson 8475:4
southwest 8379:5 8381:21 8519:25	spend 8519:7	State's 8491:23 8501:13	stepped 8586:7
Sox 8524:20	spent 8442:2	stated 8468:6 8485:24 8486:16 8531:7	Steuben 8494:2 8511:19,25
sparing 8589:19	spoke 8504:28 8544:18	statement 8381:12,14,28 8387:2 8408:15 8450:2 8457:18 8459:4 8472:15 8555:15 8558:19	Steve 8456:24 8574:14
Spartanburg 8399:5 8400:12 8420:2	sponsors 8603:21	states 8362:28 8363:9 8366:26 8367:9 8420:22 8473:6,15 8476:5,8,9,10,14, 16,22,28 8477:7,9,20 8478:5,6,15 8479:5,6,11,14, 15,17,20,22,23 8484:26,27 8485:5 8497:23 8521:8 8572:23 8583:22	stop 8405:5 8409:17 8477:25 8486:1,9 8564:8
spatial 8393:11 8453:23	spot 8382:28	stating 8558:4	stopped 8478:1
speak 8373:9 8375:17 8396:18 8418:26 8455:4 8517:11 8559:16 8594:26	sprawled 8430:23		store 8575:1
speaking 8545:12 8558:11 8559:19 8574:23,26 8592:24	spread 8443:20,28 8444:7, 18,23,25 8459:10 8460:13 8496:19,20 8498:19 8534:18 8535:14 8572:3 8573:11,24		story 8399:17
special 8582:15	spreadsheet 8423:22,26 8424:1 8599:11,20		straight 8440:12 8451:4
specialty 8474:21	spreadsheets 8362:4 8423:14 8538:8		Strasburg 8406:10
specific 8367:24 8393:12,22 8398:6 8403:26,28 8410:7 8421:25 8424:19 8438:26 8446:9 8447:9 8473:4 8475:25 8483:18 8486:23 8490:25 8498:25,28 8499:3	spring 8419:1 8486:24		strategies 8401:14



subsidize 8532:2	8492:23 8493:16 8494:20 8496:26 8497:6,11,13 8502:7 8527:16 8529:27,28 8531:15 8534:1,3 8545:24 8556:25 8569:6,8,11 8582:23 8583:4,9 8588:14 8589:21 8590:11,14,17,19, 27,28 8591:1 8597:2	8477:7 8478:2,3,4 8479:4 8480:10 8483:17 8489:11, 15,24 8490:7,8 8491:13,16 8497:18 8500:11,16 8509:14 8517:15 8521:5 8527:22 8529:17 8563:3 8565:12 8567:15,17,19,25 8574:17, 18 8575:8 8577:20 8578:4, 16	8574:6 8577:8 8602:4,27
subsidy 8390:4,5 8458:26 8459:11,25,26 8466:18,19	supply/demand 8493:21	tables 8500:20 8521:5 8565:8	teams 8397:26 8401:11
substantial 8452:13,14	supplying 8388:4,13,21 8445:17 8446:6 8455:9 8569:8	takes 8376:20,27 8392:19 8397:2 8400:24 8427:24 8445:6,9 8455:3 8505:13 8545:7	technical 8528:26
substantially 8420:5	support 8386:27 8387:17 8388:5 8422:28 8423:4,7,9 8470:21 8474:22 8489:8 8490:15 8525:9,19,21 8565:26 8583:17 8584:6	taking 8386:1 8416:14,21 8426:24 8427:2 8437:11 8438:3,11,12 8445:20 8478:25 8482:22 8495:1 8520:16 8532:11 8536:3 8541:3 8554:28	technology 8412:6 8485:1,6
Subtitle 8388:13	supported 8501:9 8510:25	talk 8368:24 8381:12 8396:23 8400:6 8405:26 8413:20,23 8424:19,21 8438:26 8450:11,20 8458:28 8463:15 8500:25 8501:25 8519:1 8531:8 8542:13 8566:7 8567:6 8569:20 8570:14 8572:27 8573:1 8597:13 8601:19	telling 8565:1 8567:22 8573:27
subtract 8465:5	supporting 8475:25,27 8488:10 8522:22 8525:26 8527:1,7	talked 8383:14 8397:27 8398:21 8399:27 8415:24 8422:21 8424:20 8432:27 8438:25 8447:7 8449:18 8461:2 8462:3,17 8464:10 8467:7,11 8501:2 8502:7 8511:20 8518:27 8520:23 8534:15 8542:12 8543:15 8555:25 8560:10 8566:26 8570:9 8594:8	temperature 8404:17 8405:13 8447:10 8502:15,23 8503:17 8533:5
subtracting 8598:12	supports 8396:10 8562:5 8583:20	talking 8373:11 8380:9 8382:18,22 8400:3,16 8420:8 8450:14 8451:15 8453:22 8458:26 8464:7,12 8466:19 8468:23,24 8472:12 8520:27 8523:21 8555:17 8557:25 8566:21 8567:3,4,5 8568:5 8569:24 8570:12 8571:25 8595:9 8598:6,22 8601:8	term 8369:1 8502:21 8528:26 8558:20,28 8569:27
sudden 8411:5,28 8414:24, 25	supposed 8419:4 8534:13	talks 8565:15 8566:24	ten 8566:6
sufficient 8496:24 8556:25 8593:8	surface 8375:18 8442:4 8450:15 8474:25 8476:4 8482:22 8486:18 8494:10 8554:28 8556:2 8568:11 8583:21,23	tanker 8443:7	terminal 8407:5
sufficiently 8596:8	surveys 8595:23	task 8462:23 8517:2,10,12	terminology 8465:13
Suffolk 8496:17 8571:27 8572:4,6,16	sustainability 8455:24	tasked 8584:17 8593:19	terms 8412:14 8445:13 8446:21 8514:21 8518:12 8557:24 8594:26
suggest 8370:6 8407:22 8435:11 8503:7 8527:18	swapped 8497:12	Taylor 8367:3 8380:4,22 8381:10,11 8383:26 8407:22,25 8425:14 8458:7 8462:26 8466:22 8562:20 8564:27 8567:22,26 8568:3	territory 8504:6 8505:3 8529:16
suggested 8417:2 8453:17 8488:3 8497:1	swear 8471:28 8581:17		testified 8361:19 8386:17,24 8406:8 8416:10 8421:1 8439:2 8441:1 8446:4 8471:25 8472:3 8509:21 8517:16 8525:5 8535:19 8577:16 8581:14,20 8592:9
suggesting 8417:18 8436:17 8504:25 8544:28 8545:10	swing 8520:21		testify 8370:28 8373:15 8375:19 8410:5 8418:17 8456:12 8524:24 8562:23 8582:4
suggests 8394:2 8399:1 8413:14 8490:28	switch 8521:17		testifying 8474:22 8518:25 8546:14 8549:24 8583:12 8585:27
Suite 8387:8	sworn 8361:13,18 8386:20, 23 8472:2 8581:19		testimony 8362:7 8377:16 8380:25,27 8381:5 8384:11, 20,22,24 8385:5,26 8386:28 8387:17 8388:7 8389:14 8392:28 8393:5 8398:21 8408:17 8410:23 8414:3 8421:1 8424:23,26 8428:11 8442:1,11 8445:2 8453:16 8465:18 8466:27 8470:22 8472:8,13 8475:13,23,25,27 8488:9,11 8498:25,28 8499:3 8500:8,10 8502:2 8504:8,14 8505:12 8511:20 8515:10,16,20,28 8516:2,22 8517:4 8518:15,27 8519:1 8522:10,21,22 8525:9 8527:18 8531:8 8533:27 8534:27 8535:23 8541:27 8543:4,26 8544:18 8546:27 8547:11 8549:28 8554:2,8, 19 8558:16 8565:25 8566:8 8577:7,11 8578:16 8581:25, 27 8584:9 8585:4 8586:1 8590:9 8592:10 8593:11
sum 8396:10 8478:9,11	Syracuse 8472:27 8473:10		
summarize 8442:1	system 8401:24 8474:11 8515:8 8535:20		
summary 8362:20 8442:5 8482:20 8485:15,23,26 8588:19	systemic 8476:6		
summers 8519:7			
summing 8384:22			
Sunday 8447:21			
Sunnydale 8480:23			
supervisory 8582:9			
supplied 8381:19 8510:25 8590:21			
supplies 8380:19 8381:13 8442:8 8478:20 8482:10,12 8497:20 8565:21,22 8583:10 8590:24			
supply 8372:14 8378:13 8387:25,26 8388:4,12,15,17, 26 8389:25 8390:7 8396:14 8412:10 8419:8,10,19,23 8446:14,21,25 8447:1 8448:20,24 8454:11 8458:16 8465:6,9 8474:11 8475:6 8482:17 8485:10 8486:24			
	table 8385:6 8387:24 8388:7 8390:9,14 8397:15 8406:22 8454:12 8460:17 8476:15		
	T		



8594:17 8595:10 8597:13 8598:16,22 8599:1 8601:7	timing 8440:13,14 8499:13	tractor-trailer 8392:22 8442:24	8485:2
testing 8405:1,2 8455:21	tires 8483:15	traditional 8412:24,25 8447:10 8460:27	true 8393:19 8448:22,28 8462:2 8531:3 8548:9 8566:20
Texas 8414:22,24 8415:12	title 8478:3	traditionally 8493:19	truth 8549:15 8553:12
text 8565:11	titled 8484:24 8500:23	traffic 8428:12 8433:5,7 8440:18,19	Tuesday 8361:1 8447:20 8468:8 8500:1
theoretical 8561:8	today 8371:9 8386:28 8398:14 8408:20 8411:27 8417:22 8422:14 8432:21 8450:17 8455:24 8461:25 8472:8,24 8474:22 8482:12 8484:26 8493:20 8495:3 8497:4 8498:9 8499:7 8505:5 8509:15 8521:3 8533:13 8534:3 8550:1 8558:12,25 8561:27 8565:23 8566:5 8569:3 8571:12,14 8572:3 8581:25 8583:12 8586:5 8592:9 8594:9 8603:25	trailer 8392:23 8397:3 8463:7 8483:22,23,25 8497:27	turn 8380:8,24 8430:28 8462:25 8500:10,22 8509:14 8514:3 8525:1 8543:25 8556:27 8558:2 8562:15,26 8565:11 8568:4 8570:8 8574:17 8577:6
Theoretically 8564:25	today's 8466:26 8485:2 8492:17	trailers 8391:25,27 8463:2,4, 9 8483:15 8484:28 8497:26 8498:4	turned 8373:12
theory 8400:28 8413:16 8421:3,5 8561:1	told 8412:8 8424:22 8457:17 8514:18	transformation 8476:28	turning 8463:11 8552:13
thing 8392:15 8413:21 8433:4 8436:2,13 8463:5 8465:17 8561:4	toll 8412:17 8497:27 8560:16,25,28 8561:1,10,12, 17 8562:1 8574:2	transition 8492:20 8582:15	turns 8586:1
things 8401:20,23 8414:12 8424:13 8444:11 8446:2 8449:7 8451:15 8456:4 8457:2 8461:20 8466:9,10 8469:23 8470:1 8503:16 8505:10 8534:4 8543:23 8548:20 8549:19 8568:7 8572:18 8589:13 8592:27	tolling 8574:2	transport 8484:20 8485:14 8496:20 8497:22 8576:25,28	Tuscan 8480:23
thinking 8382:17 8504:27 8557:10	tolls 8497:25 8498:3 8543:27 8544:3,6,8,14,15,23 8545:9 8546:10 8560:11 8572:27	transportation 8381:27 8389:12,23,26 8390:7,10 8418:8,18,22,26,28 8419:3 8444:6 8458:15,27 8460:5 8464:17 8465:4,11 8473:3 8474:3 8478:20 8482:18 8483:19 8484:13,25 8486:6, 23 8582:10	tweak 8401:6 8466:9
third-party 8403:13 8446:25	tomorrow 8371:8 8431:28 8601:20 8602:3,12,13 8604:15	transportation-related 8497:16	tweaked 8401:7
thought 8417:26 8434:8 8441:1,7 8448:3 8514:27 8517:9 8519:24 8547:24 8564:14	ton 8456:5	transported 8575:21	twist 8473:22
thoughts 8514:27	tons 8421:16	transporting 8483:12 8584:8 8595:13	two-city 8394:1
threshold 8593:21	tools 8449:24	travel 8461:27 8482:12 8485:8 8520:2 8565:22	two-compartment 8483:22
throw 8531:11	top 8408:25 8448:17 8467:18 8493:5,8 8507:13, 18 8517:17 8522:27 8567:13 8569:16 8599:13	traveling 8498:4	two-thirds 8486:9
thumb 8442:13	topic 8407:21	travelled 8429:15	type 8388:11 8404:17 8413:21 8447:12 8463:5 8555:21 8556:14
Thursday 8447:21 8468:9	topography 8440:17	tremendously 8389:1	types 8447:9
Thursdays 8593:5	total 8363:2,13 8385:1,7,11 8391:13 8392:16 8477:5 8478:9,23 8480:3,20 8527:27 8528:7 8563:23 8564:4,16 8575:15,28 8576:17 8577:28	trendline 8382:7	typical 8389:5 8452:3 8461:8 8462:5
tie 8449:28	touch 8383:3,5	trends 8478:23	typically 8497:19 8593:4
time 8361:27 8362:19 8363:14 8382:3,5 8384:7 8385:2,14,27 8389:2 8396:15 8400:6 8402:19 8404:17 8408:20 8423:27 8435:4 8438:2 8440:15 8442:2 8447:11 8452:22 8455:13 8461:6 8466:28 8470:3 8473:2 8491:6 8495:8 8499:7,12 8503:4 8507:9 8510:28 8518:3 8528:7 8547:8,10,15 8549:26 8550:17 8566:2 8570:18 8572:14 8585:26 8589:2 8594:5,8 8595:6 8602:9	tough 8579:21	triangle 8399:2,6,7,10 8400:16 8436:5	typo 8408:22
times 8365:14 8418:24 8429:5 8439:12 8459:4 8508:22 8515:10 8521:10	town 8388:9	trip 8406:26 8498:1	<hr/> U <hr/>
	tracked 8483:11	triple 8365:2,4,5,10,14	U.S. 8477:20 8478:11,12 8479:22 8563:16
		trips 8406:24,25	uh-huh 8374:21 8382:8 8407:19 8418:9,10 8419:13 8420:15 8429:21 8440:5 8456:19 8465:16 8536:13 8540:3 8558:24 8574:5 8595:14 8598:25 8599:14,21
		trouble 8433:22	ultimate 8438:19 8475:11
		truck 8391:7 8392:19 8396:28 8407:4,5 8462:22 8483:20 8485:1 8567:8	ultimately 8416:14 8435:27 8478:21 8487:28 8492:20 8584:21
		trucking 8390:11 8485:24	ultra-pasteurized 8447:11, 23,24 8448:4 8468:13
		trucks 8429:7 8462:14 8463:2 8483:15 8484:28	uncertain 8556:24



unchanged 8585:13 8601:9	usage 8542:2	8597:13,28	8588:6 8591:26 8598:4
underscore 8495:16	USDA 8362:10 8366:13 8367:3,6,13 8368:11 8370:24 8371:14,22 8373:14,25 8386:4 8396:17 8414:10,12 8418:6 8419:12, 18 8432:6 8457:14 8469:8 8476:13 8478:10 8495:19 8521:19 8527:15 8533:8 8549:21 8550:27 8563:28 8574:16 8603:2	Vermont's 8586:27 8598:6	War 8433:21
understand 8369:8 8374:16 8378:3,23 8383:6 8385:23 8388:5 8400:7 8404:23 8408:22 8414:9 8421:8,19 8429:23 8430:7 8432:3 8440:18 8451:18 8488:15 8529:5 8545:8 8557:24 8563:6 8575:8	USDA's 8603:14	Verona 8395:12,14 8444:4	warranting 8399:21
understanding 8378:6 8415:4 8454:6 8466:26 8467:23 8555:4,8,9 8573:22 8575:12	USDSS 8384:9 8475:8 8525:2 8555:7	version 8386:4 8408:26 8514:28	Washington 8413:25 8427:3 8478:12 8546:14,18,19
understood 8465:27 8588:12	USDSS-GENERATED 8487:13	versus 8369:25 8376:10 8389:7 8390:17,26 8393:27 8397:4 8409:3,5 8416:21 8424:21 8440:9 8506:24 8566:5 8574:19 8598:2	Wawa 8545:12,25 8546:6
underway 8492:6	utilization 8421:13 8480:20 8481:16 8491:4 8495:11 8533:28 8534:16 8535:12 8560:23	vet 8591:27	ways 8428:13 8482:21
undiscernible 8539:11	utilizations 8495:2	vice 8387:5 8472:25 8582:11	website 8367:4,9 8370:24 8371:14 8386:5 8603:14,24
uneconomic 8494:27	utilize 8490:11 8557:3,19	view 8383:5 8429:25	Wednesday 8389:9 8447:20 8468:8
unequal 8494:27	utilized 8475:4 8482:11 8486:19 8564:24 8565:21 8566:16	views 8560:7	week 8389:8,10 8447:14,16, 17,19 8448:2 8468:7,11,19 8590:20
unfilled 8489:2	utilizing 8487:22 8497:11 8515:5 8563:14 8569:11	Virginia 8387:6,9 8395:12, 14,21,22,24 8399:8,9,11 8406:10 8409:24 8417:24 8420:1 8431:1,3,6,11,15,18, 19,23,27 8432:11 8433:25, 26 8434:12,14 8441:4 8442:17 8444:4 8446:5,13 8448:8,19,20,23 8449:9,11, 13,23 8450:22 8459:1 8462:13 8475:20 8476:1,13, 19 8477:9 8487:5,16,18,22 8488:12,18,22,26 8489:4 8498:23 8499:2 8516:24 8517:7 8546:27 8555:18,24 8591:19	weekend 8468:9
unhappy 8421:15	<hr/> V <hr/>	Virginia's 8451:3	weekly 8449:18 8468:17 8527:2,8 8597:1
uniform 8495:6,13 8548:11	Valley 8432:11	voice 8509:11 8539:10	weight 8391:10,28 8392:1 8484:25 8485:2,10 8498:5 8567:12 8574:3
Union 8480:24	valuable 8583:5	volume 8424:16 8447:20 8461:16 8477:23 8481:19 8482:3 8508:24 8603:8	weights 8484:27 8567:9
unique 8420:25 8446:13 8457:10,15,17 8518:18	values 8417:3 8486:27 8487:2,13 8488:5,13,25 8495:11 8584:19,28	volumes 8481:11,14,22 8526:23 8534:18 8567:9 8569:26	weird 8469:20
unit 8474:11 8497:6,8 8559:28 8560:4,7	variability 8486:22 8584:13	voted 8431:28	welfare 8456:1
United 8362:28 8420:22 8473:15 8478:6 8583:21	variable 8527:2,8	<hr/> W <hr/>	well-established 8461:6
universal 8548:11	variance 8488:7 8522:13,14 8574:3	W-E-R-M-E 8581:10	Werme 8410:19 8475:28 8518:25 8580:23,27 8581:8, 10,18,23 8582:5 8589:3,11 8590:7 8602:14
University 8362:1 8393:11 8422:23 8473:8,10 8475:5 8485:16 8486:20 8489:20 8525:2 8540:1 8584:11 8588:21 8596:1,4,7	variation 8389:3	wage 8484:1	west 8373:25 8376:1 8378:10,27 8379:3 8399:3 8427:5,9 8430:13,17 8461:18 8493:19 8505:5,6 8536:23 8583:8 8590:18 8595:4
unload 8429:7	varies 8533:6	wait 8371:1,3 8529:4 8550:12 8578:7	west-to-east 8493:23
unnecessary 8396:8 8450:8	variety 8474:6 8482:18 8495:10 8548:23	Waitsfield 8582:22	western 8365:24 8375:17 8376:3 8378:13,17,19 8414:3 8439:1 8473:5 8474:16 8490:22,27 8491:1, 2,22 8492:2,21,22 8493:2, 17,22 8494:1,3,5,10,13,14, 16,17,23,24 8495:3,4,18,22, 23,25 8496:7,10 8504:11,15, 22,24 8505:19,26 8558:5,6, 13,14 8559:10,18 8568:6,23 8569:22 8571:2,15 8585:17 8587:15
unusual 8508:26	vary 8389:1 8529:24 8567:24	Wallington 8480:25	Western/central 8500:24
unwarranted 8396:8 8450:8	vehicle 8463:28	wanted 8382:2 8432:16 8443:14 8444:3 8447:5 8460:20,22,24 8464:19 8466:25 8509:8 8520:24 8521:1 8557:16 8567:28 8568:26 8570:10 8571:26,28	whey 8583:5
update 8388:5 8396:11 8476:3 8583:20	verifying 8549:17		Whitehouse 8480:27 8481:1
updated 8386:5 8396:16	Vermont 8476:12,19 8490:24 8499:1 8504:12 8582:22,27 8583:7 8585:7 8586:27 8587:15,17 8588:18,24 8590:11		Wichita 8365:25,27,28
updates 8387:14 8474:24			
updating 8369:4,15 8588:22			
Upstate 8410:16 8475:21 8591:19			
urban 8428:18 8481:7,27			



8366:2 8367:25 8369:25 8370:8 8374:13,19 8375:19, 23,24,26 8376:1,3 8377:9,17 8378:21 8381:18 8382:23 8383:17 8385:7 Wilmington 8474:14 Winchester 8413:13,20 8437:10,12,16,18,23 8438:11,12,17,23 8439:28 8487:5,16,22 8488:12,18,22, 26 8489:3 8516:24 8517:7 8555:18,24 8556:7,20,22 winnners 8536:20 winning 8582:24 Winston-salem 8399:4 8439:18 Wisconsin 8362:1 8384:12 8393:11 8422:23 8453:12 8475:5 8486:20 8525:3 8540:1 8584:12 8588:21 8596:2,4,7 Wisconsin's 8489:20 wishes 8562:15 witness's 8549:27 witnesses 8422:21 8464:18 8502:8 8525:6 8547:2 8584:4 8602:9 wondering 8382:17 8383:19 8396:25 8398:2 8458:28 8463:19 8469:3 8511:4 8557:25 8573:4 word 8466:5 8493:12 8534:5 8535:2 words 8520:13 8554:7 8579:23 work 8377:20 8384:26 8391:12 8397:25 8400:28 8404:4,23,28 8410:6 8446:28 8467:11 8475:4,8 8483:4 8499:5 8506:10 8517:6,8 8532:17 8580:17 8593:7 worked 8469:21 8473:12 8566:1 8577:12 working 8369:1 8387:12,13 8393:6,9 8394:24 8395:8,9 8396:4 8401:12 8402:14 8405:2 8466:9 8483:2 8486:17 8487:15,23 8495:24 8498:16 8503:22 8506:11 8520:28 8530:20,22 8558:22 8565:27 8566:4 8584:17 8585:19 8586:28 8587:21 8591:14,21 8592:2,11 8597:14,19	works 8459:1 8463:7 world 8392:17 8393:17 8453:2 8454:8 8583:6 worry 8413:1 worth 8401:19 wow 8499:8 8521:14 written 8380:27 8408:15 8472:7 wrong 8421:26 8540:9 8580:11 8586:3 wrote 8570:13 8586:20 Wyoming 8494:2 <hr/> Y <hr/> yardstick 8589:23,25 ye 8602:10 year 8389:2,5 8415:22 8418:24,27 8419:1,6 8432:13,17 8466:17 8476:20,22 8477:22 8485:20 8492:7 8525:17 8563:10,17, 28 8564:18 8593:1 8596:23 yearly 8484:14 years 8369:5,16 8382:4 8389:21 8390:16 8398:9 8401:9,16,17 8403:16 8411:11,25 8414:21,23 8415:6 8432:2 8452:16 8473:1 8478:13 8485:2,19 8491:26 8492:1 8525:16 8529:19 8530:23 8566:6 8576:22 8583:14 8584:7 8585:2 8595:12,20 8596:26 years' 8401:19 yesterday 8361:8 8362:17, 18 8384:9,14 8386:8 8404:15 8412:18 8416:11 8419:7 8421:9 8558:16 8602:8 8604:1 yesterday's 8362:7 York 8394:28 8408:28 8409:6,7 8411:23 8424:21, 27 8425:5 8426:1,6,9,10,12, 24,28 8427:9 8428:3,9,16 8430:19,20,22,26 8443:24 8472:28 8476:12,21,25 8480:23,26 8485:16,18,20 8490:22,26,28 8491:1,6,19, 22,23,26 8492:2,21 8493:3, 17,20,22,24 8494:1,5,10,16, 23 8495:4,18,26 8496:3,7,8, 10,18,21,27 8497:14,21,25 8499:2 8500:24 8501:13 8504:11,15,22,24 8505:19,	26 8507:14,17,23,25 8508:8 8509:19,26 8510:4,16 8511:19,25 8527:19 8535:25,26 8537:4,8,10,14 8538:6 8539:16,20,23 8540:12,21 8558:14 8559:10,18 8568:6,23 8569:22 8571:2,15,26 8572:6,15 8574:24 8578:15 8579:28 8582:19,28 8585:8 8587:20,25 8588:18,24 8590:11 8594:10 8597:18 8598:1 York's 8428:17 8495:22 8558:5 <hr/> Z <hr/> zone 8375:14,27 8376:4 8377:27 8378:1,14,15 8379:3 8382:25 8482:2 8487:6 8492:20 8494:6,16 8495:4,13,16 8496:10,24 8498:11 8504:28 8518:23 8541:9 8565:14 8566:13 8570:14 8571:5,15 8574:18 8575:19 8576:12 zones 8377:26 8379:8 8383:13,21 8480:15,19,22 8481:15,19,26 8482:4,5,6,7 8492:18 8497:11 8505:18,22 8566:9 8571:20 8574:21 8576:9 8585:20 8592:19
--	---	---

