UNITED STATES DEPARTMENT OF AGRICULTURE

BEFORE THE SECRETARY OF AGRICULTURE

In re: Milk in the Northeast, Appalachian, Florida, Southeast, Upper Midwest, Central, Mideast, Pacific Northwest, Southwest, and Arizona Marketing Areas	) Docket Nos.) AO-14-A78, AO-388-A23,) AO-356-A44, AO-366-A52,) AO-361-A44, AO-313-A53,) AO-166-A73, AO-368-A40,) AO-231-A72 and AO-271-A44,) DA-09-02, AMS-DA-09-0007

ACCOMPANYING APPENDIX TO THE BRIEF

Exhibit "A"	New England Producer-Handler Association letter of authority;
Exhibit "B"	Additional Requested Fact Findings;
Exhibit "C"	Testimony of Dr. Wayne A. Knoblauch;
Exhibit "D"	Testimony of John Rooney, President of Monument Farms;
Exhibit "E"	Testimony of James Stearns, President of Mountain Dairy;
Exhibit "F"	Testimony of David Bower, President of Homestead Creamery;
Exhibit "G"	Testimony of Warren Taylor, President of Snowville Creamery;
Exhibit "H"	Partial Legislative History of Congressional Consideration of Producer-Handlers of Milk, Reference is Made to Full History.

NEW ENGLAND PRODUCER HANDLER ASSOCIATION

May 1, 2009

TO: Ben Carroll
Carroll & Carroll Lawyers, PC
The Galleries
Syracuse, NY 13202

Dear Ben,

This is to inform you of a vote taken at the annual meeting of New England Producer Handler Association at Wright's Dairy Farm in No. Smithfield, RI on April 1, 2009.

It was voted to assess members to hire Ben Carroll of Carroll & Carroll Lawyers, PC to represent us in retaining our exemption from paying into the Federal Milk Marketing Order Pool.

Ben Carroll is asked to represent our organization at hearings and in Washington, DC in this matter.

Sincerely,

Marjorie Cooper
NEPA secretary

Coopers' Hilltop Farm
515 Henshaw St.
Rochdale, MA 01542

Tel 508 892 3720
FAX 508 892 7935

Cc: J Stearns, president
R Pearson, vp
E Wright, treasurer

ADDITIONAL REQUESTED FINDINGS OF FACT

Producer-Handlers have been exempt from pooling since the beginning of the milk marketing orders (R. 3946).

Congress repeatedly exempted Producer-Handlers from pooling (see Appendix Legislative History and Full History).

The current exemption has existed in Order 1 for 70 years. R. 3947

The proposed elimination of exemption and grandfathering is a burden on Producer-Handlers.

Congress reviewed the market in the Milk Regulatory Equity Act and limited its effect to the milk shipped from a federal market order to a state market order that is not subject to minimum pricing in either order (7 UCS 608c et seq., see Exhibit "H" to Appendix).

The limitation of the exemption will disrupt the historical pattern of exempt milk regulation (R. 3947).

As to Order No. One and Order No. Five:

> There are no large Producer-Handlers Ex. 90, 55, 60, 64, 74, 77, 8, 7, 9;
> The markets are not disorderly or disrupted Ex. 90, 64, 74, 53, 77, 8, 7, 9;
> Producer-Handlers are too small and too few individually or in aggregate to affect either the pool or the market Ex. 90, 55, 60, 64, 74, 77, 8, 7, 9;
> Inclusion of the Producer-Handlers in the pool has a de minims effect on the pool Ex. 90, 55, 60, 64, 74. 77, 8, 7, 9;
> Inclusion of the Producer-Handlers in the pool could result in a loss to Producers Ex. 90, 55, 60, 64, 74. 77, 8, 7, 9.

In 1969 Producer-Handlers composed 2.1 % of the market and there were 421 of them producing and average of 100,654 pounds of milk (Ex. 7).

In 1974 Producer-Handlers composed 1.7 % of the market and there were 333 of them producing and average of 122,990 pound of milk (Ex. 7).

In 1987 Producer-Handlers composed 1.3 % of the market and there were 175 of them producing and average of 199,719 pound of milk (Ex. 7).

In 2001 Producer-Handlers composed 1.7 % of the market and there were 79 of them producing and average of 700,000 pound of milk (Ex. 7, 8).

In 2008 Producer-Handlers composed 1.5 % of the market and there were 40 of them producing and average of 1,422,080 pounds of milk (Ex. 7).

Producer-Handlers are declining in numbers (R. 3052, 3053).

Just one of the large cooperatives (Dean Foods) produces 35,000,000,000 to 40,000,000,000 pounds of milk per year in all classes (R. 3935).

Total National Class 1 sales are 44,814,500,000 pounds (Ex. 9).

Total National Class 1 sales in Order One are 10,328,100,000 (Ex 9)

Total national class 1 sales in Order 5 are 4,136,500,000 (Ex. 9).

Producer-Handlers market share is de minims (Ex. 7, R. 3076).

Producer-Handlers have a de minimis effect on the market (R. 3052, 3076).

Based on historical trends average sales per producer handler will exceed 3,000,000 pounds per month in less than 10 years Ex. 7

Growth patterns for producer handlers are following the same pattern as for dairy farmers-small operations are vanishing (R. 3049. 3050, 3075, 3069)

Technology has allowed for increased more efficient production with larger herds per farm (R. 90).

Adding Producers-Handlers in Orders No. One and Five and nationally will have no measureable benefit to producers (R. 3076).

Monument Dairy, Mountain Dairy and Homestead Creamery sales are de minimis in their respective markets and the effect of placing them in the pool is de minimis (Ex. 90, 55, 60, 64, 74. 77, 8, 7, 9)(See attached exhibit of testimony of Knoblauch).

Producer-Handlers are incapable of creating a disorderly market (R. 3042, 3387).

The market share of Producer-Handlers has remained between 1.5 and 2.1 % for decades (Ex. 7).

Producer-Handlers will never achieve a scale of operations capable of disordering a market (R. 3042, 3050).

If the federal order created a market advantage then there would be more Producer-Handlers and not less (R. 3042).

Producer-Handlers serve niche markets such as kosher, home delivery, grass fed (R. 3045).

There are no published numbers on Producer-Handlers because they are insignificant (R. 3054).

Producer-Handler sales volume has declined since 1992 (R. 3054).

Producer-Handler percentage of the market has declined (R. 3055).

Producer-Handlers regulate their own surplus milk (R. 3080).

Class I milk is no longer the dominant milk usage in the national market.

Plants process 3,000,000 cannot compete on price with plants processing 30,000,000 pounds (R. 3404, 3405, 3407).

Producers are not losing significant revenues because Producer-Handlers are not contributing to the pool (R. 3401).

Placing Producer-Handlers in the pool will produce a de minimis if any benefit to the pool (R. 3402).

Producer-Handlers are entitled to receive money back from the pool if they pay in based on their utilization (R. 3942).

Under certain circumstances the pool could even lose money if producers are added (R. 3942).

The proponents of the proposals have not calculated whether the pool will lose money if Producers-Handlers are included (R.3940, 3942).

The proposals to place them in the pool and restrict them by grandfathering make the Producer-Handlers less competitive (R. 3962).

From Table 1 it can be determined that fluid milk utilization has shrunk from a national average of 64.3 percent in 1969 to a national average of 38.7 percent in 2008 (R. 3012).

Producer-Handlers are an important part of the milk industry, not in terms of the volume and the share of the market, but in terms of the products, innovations, and customers they serve (R. 3012).

An orderly market is to establish and maintain an orderly flow of products to markets in the interest of consumers and producers to avoid unreasonable fluctuations in supplies and prices, unquote (R. 3012).

Producer-Handlers penetrate monopoly markets (R. 3057).

Producer-Handlers service niche markets (R. 3056).

Producer-Handers do not compete directly with generic white milk products of larger processors (R. 3149).

Producers only have a cost advantage in monopolistic situations (R. 3218).

The 150,000 exemption completely stifles any opportunity to serve the organic or natural or the local sustainability farming (R. 1589).

450,000 is too low because it will not even cover a 200 cow dairy (R. 1589).

The exemption needs to be raised to 1,000,000 at least (R. 1589, 1590).

The aged economic data not adjusted for inflation indicates the following (Ex. 73):

A. Producers-Handlers processing 2,000,000 pounds per month will be at a 137 price disadvantage under the proposals (Ex. 73 Table 3 pg. 4399);

B. PH processing 5,000,000 pounds per month will be at a .097 price disadvantage under the proposals (Ex. 73 Table 3 pg. 4399);

C. PH processing 12,000,000 pounds per month will be at a .057 price disadvantage under the proposals (Ex. 73 Table 3 pg. 4399);

D. PH processing 18,000,000 pounds per month will not be at a disadvantage.(Ex. 73 Table 3 pg. 4399).

The fixed cap creates an injustice in that once the Producer is included in the pool he incurs and additional cost of being in the pool and must expand at a competitive disadvantage from 3,000,000 to 18,000,000 pound per month to recover the cost of being placed in the pool (R. 3962, Ex. 73 pg. 4).

The Producer-Handler is competitive at 18,000,000 pounds per month (Ex. 73 Table 3 pg. 4399).

As such the proposals place the Producer-Handler at a competitive disadvantage (R. 3962).

A smaller plant cannot compete with a larger plant solely on price. This holds true up to even the 40,000,000 pounds per month plants (R. 3108, 3405, Ex. 90).

The standard for a small dairy handler is 500 employees to come under the Regulatory Flexibility Act. 13, CFR 121.201.

All the exempt processors and producer handlers in the order 1 and 5 have less than 500 employees (See appendix Stearns, Bauer, and Rooney attached hereto).

The Producer-Handlers should be exempted from pooling as they have always been because it is too burdensome for them be included and no benefit to the pool (ex. 90, R. 3402).

There is no unfair price advantage in competition with regulated Handlers because Producer-Handlers are at a disadvantage due to higher processing costs when bidding.

The Exempt Handlers should minimally have their exempt cap adjusted for inflation and changes in the market for the time it has been in effect.

The Exempt Handlers should have their cap raised to a figure that allows efficient processing under modern processing procedures (Ex. 90, 73).

There is insufficient information to:

> Determine the effect of banning new Producer-Handlers under grandfather clause;
>
> Determine whether Producer-Handlers are going to get a return form the pool;
>
> Determine what Producer-Handlers will be left and what ones will be bankrupt and the effect of that on the consumers;
>
> Determine at what level on current data that the Producer-Handlers are able to be competitive once the additional costs of being placed in the pool are determined;

No basis for readjusting these costs for inflation as there is no inflation proof.

The proposals are irrational and contradictory as to each other under certain circumstances such as:

Placing the Producer-Handlers in the pool then banning new Producer-Handlers because Producer-Handlers disrupt the pool;

That the smaller Producer-Handlers have any effect on the market, the pool or otherwise.

TESTIMONY OF DR. WAYNE A. KNOBLAUCH ON BEHALF OF AMERICAN INDEPENDENT DAIRY ALLIANCE (AIDA)

Introduction and Qualifications

I am here today to present testimony at this hearing on behalf of the American Independent Dairy Alliance (AIDA). I am a Professor in the Department of Applied Economics and Management in the College of Agriculture and Life Sciences at Cornell University. I earned a PhD in agricultural economics from Michigan State University in 1976. I have been on the faculty at Cornell University since that time. At Cornell University, I teach and conduct research and extension programs in dairy farm management. I have won numerous awards for my research, teaching and extension programs. ~~My curriculum vita is attached to this testimony.~~ WAK

My testimony for AIDA in this hearing addresses three principal areas. First, drawing upon Cornell University research and USDA-ERS statistics, it discusses the costs of producing milk by both large and small dairy farms. Second, I discuss the prices for milk actually received by dairy farmers basing by discussion on the continuing research done at Cornell concerning mailbox milk prices. Third, my testimony addresses the research done at Cornell University to study the costs actually incurred by value added processors, including some producer-handlers and the costs actually incurred by regulated fluid milk bottlers. Finally, I briefly discuss the costs of balancing incurred by producer-handlers.

Costs of Milk Production

For more than 50 years, Cornell has conducted surveys of New York dairy farmers on a wide range of topics, including the cost of producing milk.[1]

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[1] See the References & Citations section at the end of my testimony for a listing of Cornell University Dairy Farm Business Summary publications that I relied upon in preparing my testimony.

Data from the Dairy Farm Business Summary and Analysis program for 2006, 2007 and 2008 was analyzed by herd size. The Dairy Farm Business Summary represents the average of above average producers. For example, the producers in the study are above average in terms of milk production per cow and financial performance.

Not surprisingly, the results show that in each of the most recent three years, as herd size increases, total cost of producing milk decreases. Small herds, those with less than 100 cows, averaged a total cost of $23.16 per hundredweight in 2008. For herds with greater than 800 cows the total cost of producing milk decreased to $18.15 per hundredweight. The difference between small and large herd sizes in 2008 of $5.01 can be mostly attributed to improved rates of production per cow, and capital and labor efficiencies. Yet, despite these efficiencies, and of particular relevance to this hearing, it is important to note that the cost of production exceeds the uniform milk price for small herds in all years but not for large farms in good milk price years, notably 2007 and 2008. While 2009 data is not available, it can be expected that for all herd sizes, the costs of production will by far exceed the uniform price.

The USDA, Economic Research Service cost of milk production data represents the costs for the average producer. Thus, their data shows costs that are higher per hundredweight of milk produced than the Dairy Farm Business Summary. The ERS average data demonstrates that even when measured against the Class I price, the cost of production exceeds the Class I price by $5 to 8 per hundredweight. See the attached graph for actual Dairy Farm Business Summary and ERS cost of production data in comparison to milk prices.

The Cornell data and other data from other studies, most notably the United States Department of Agriculture, Economic Research Service studies, show that scale economies virtually disappear after 1,250 cow herd size is attained. This is true regardless of geographic region of the United States. See especially USDA, ERS Publication Number 47, September, 2007. But nevertheless, even for those producers with these larger, more efficient herds, their cost of production regularly exceeds the uniform prices and even the Class I prices of the orders. Given this fact, dairy farmers regardless of the size of their herd cannot rely on simply marketing their raw milk to ensure long-terms economic viability of their farm operations.

Milk Price Differences

The case that federal milk marketing orders provides uniform milk prices for all producers is just plain wrong. Cornell University compiles period reports and surveys of producer paychecks, which are sorted and analyzed to provide a clearer picture of producer returns. These reports demonstrate that even within the structure of federal orders, farms will be paid differently based on component levels shipped in Multiple Component Pricing orders, somatic cell counts in those orders where that is accounted for, and the Producer Price Differential. And, as you can see from the attached milk check data, over order premiums and deductions from milk checks differ significantly across farms. See "Comparing Your Milk Checks", Stephenson.

In any year, there is about a $2.00 difference from high to low within New York State alone based on components, and this is taking colored breeds with higher milk components out of the equation. There is also a $2.00 spread in what we call the "Net Marketing Margin" which takes the Producer Price Differential + all premiums - all expenses (including hauling). The net marketing margin is a good measure of actual differences among similarly situated farms because a farm could always get a higher Producer Price Differential by shipping their milk to Boston in Order 1 or to Miami in Order 6, for that matter. However, the hauling costs could more than offset the higher Producer Price Differential. Taking these marketing decisions into account, along with components of producer milk, this research data makes the point that producers do not receive equal payments under the current federal order system.

What would producers gain by having Producer Handlers pooled? In 2008, about 39 percent of producer receipts in federal orders were used in Class I sales. The Producer Handler volume in 2008 was about 1.5 percent of Class I sales. If we assume that the average Class I differential that would have been paid by Producer Handlers was between $2-3 per cwt. then the average statistical uniform price would have increased from $18.24 per cwt. to $18.25-18.26 - a mere 1-2 cents per cwt. These increases in the uniform prices due to the full regulation of producer-handlers would neither offset the differences already existing among producer mailbox prices nor would it change the existing spread among producers. Producers are not losing significant revenues because Producer Handlers are not contributing to the pool. Just to put this in perspective, this is well below than the 4-5¢ of administrative costs required in most federal orders that producer-handlers would have to pay.

Let's talk about the pay price to the producer. The cooperatives set the prices to the extent that they are above the minimum price, and also have add on charges and deductions which they charge back to the producers. Thus, the 1- 2 cents might never even go into the producers' pockets in any event.

Value Added Processors

My Cornell University colleagues, Chuck Nicholson and Mark Stephenson, conducted a study of producers who operated plants to determine the viability and profitability of their operations. In this study (RB 206-07) Nicholson and Stephenson refer to the businesses as "Value Added" processors rather than "Producer-Handlers" because there are several farms which are bottling and selling fluid milk but also many farms making manufactured products. We decided to conduct a study of these operations in New York, Vermont and Wisconsin in 2006. There were 27 operations in total that were studied. Some of them were goat or sheep farms but most were traditional dairy farms. Some bottled and sold fluid milk but most made cheese or other manufactured products. Still, there were 6 operations bottling cow's milk which had Producer-Handler status involved in the study.

Enterprise accounting was used to separate the income and expenses of producing milk from processing and marketing of finished products. When processing net income (which includes the cost of the milk produced) was plotted against total processing receipts, a distinct pattern was observed. The report shows a regression line through those data points which indicates that regardless of product produced or type of milk (cow, sheep or goat) a value-added processor needed to receive about $100 per hundredweight in total returns in order to break even.

Fluid milk processors in this study were found to average $2.38 in processing costs (not including milk price) per gallon. There was only one farm in the study that made a modest return on both milk production and processing. Most made a bit of profit in one side of their operation or the other. If part of the rationale for a Producer-Handler exemption is to allow them some room to compete with large specialized fluid milk plants, it is obvious from this study that the need still exists.

The additional burden of contributing equalization payments to the pool and the associated paperwork would certainly put some folks out of business. And, this really comes without the usual Class I benefit of performance (balancing) for most Producer Handlers.

Cost of Processing

Admittedly, Producer Handlers in the Value Added study were smaller sized operations. However, another Cornell University study clearly shows that larger plant size and higher plant capacity utilization increase plant labor productivity. Furthermore, both factors also directly impact plant cost per gallon. The total effect of operating a larger plant, considering both the direct effect on cost per gallon and the indirect effect on costs through increased labor productivity, was substantial if plant size changed significantly. See RB 97-03, Erba, Aplin and Stephenson.

For example, increasing from 2 million gallons (17.24 million pounds) per month to 3 million gallons (25.86 million pounds) per month decreased plant cost per gallon by 4.1%. Increasing from 3 million gallons per month to 4 million gallons (34.48 million pounds) per month further decreased plant cost per gallon by 2.7%. Given their analysis was based on costs exclusive of depreciation, the cost advantage of larger plants when including depreciation is undoubtedly even larger because the investment per gallon is lower in larger plants. This provides evidence that plants in the 15 to 30 million pounds of milk per month are still finding substantial returns to scale and have not yet reached the "flat portion" of the cost curve which occurs after the 30 million pounds of milk per month. The assertion that fluid bottling plants reach a level of efficiency at three million pounds of Class I volumes each month sufficient to compete on a level playing field with larger regulated bottlers is simply untrue. When we further consider that this study was completed over 12 years ago and it is likely that the scale economies have moved to even larger volumes since then. Producer Handlers, even those processing volumes of milk at the upper end of the levels estimated by NMPF in its economic testimony are simply not in the range of the scale to compete with equal milk costs with large, fully regulated plants.

Balancing Costs

Producer Handlers must balance their own milk supplies with demand for their fluid products. If a Producer Handler produces more milk than it is able to sell as finished product, the disposal of surplus milk is either through outlets that the producer-handler might possess or through sales to another outlet at a negotiated price - usually the lowest class price - not the statistical uniform price. We tend to think of the uniform price as the opportunity cost that a Producer Handler foregoes for the privilege of selling at a higher class I level, but that is not the case for sales of milk to balance their production. The significant cost of balancing is placed on the Producer Handlers themselves. For example, the U.S. average statistical uniform price in 2008 was $18.24 per hundredweight but the Class IV price only averaged $14.65 that year. The penalty to a Producer Handler for selling surplus milk at the Class IV price was therefore $3.59 per hundredweight.

For example, if 20 percent of a Producer Handler's milk was sold to balance demand, it is receiving a penalty of at least $0.72 per hundredweight of milk produced ($3.59 * 0.20) versus operating as a plant with 100% Class I sales.

Conclusions

(1) The results of Cornell University research show that in each of the most recent three years, as herd size increases, total cost of producing milk decreases and decreases significantly, but plateaus at approximately 1,250 cows. This is consistent with studies performed by others, most notably, the USDA, Economic Research Service. Taken in tandem, the data from the DFBS and the ERS demonstrate that the total costs of production across all herd sizes exceeds the FMMO blend and Class I prices.

(2) Milk check research data clearly makes the point that producers do not receive equal payments under the current federal order system. This is true even if one ignores the differences in farm-to-farm component payments. Over-order premiums and other marketing decisions result in milk checks that vary substantially between producers in the same federal order. If producer equity is a goal of federal milk marketing orders, then lack of attaining that goal has little to do with Producer Handlers.

(3) Value added research clearly implies that Producer Handler status is a small step in the direction of leveling the playing field with large specialized fluid plants.

(4) As both farms and plants get larger, Producer Handler operations still function at a comparative disadvantage to larger fully regulated plants. Even the largest farms do not generate consistent returns from simply marketing raw milk to ensure profitability, and assuming that those large farms elect to operate producer-handler bottling plants, economies of scale from plant size are not fully realized at the level of volumes that even the largest producer-handlers operate.

(5) Producer Handlers can incur large costs in balancing milk supplied to meet their customer demands. These costs are incurred by the Producer Handler and not by the pooled producers in the order.

References & Citations

Knoblauch, Wayne A., Curriculum Vita

Knoblauch, Wayne A., Linda D. Putnam, Jason Karszes, Daniel Murray and Rella Moag, "Dairy Farm Business Summary New York State, 2007", RB 2008-03, October 2008, Department of Applied Economics and Management, Cornell University.

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"Profits, Costs and the Changing Structure of Dairy Farming", MacDonald, O'Donoghue, McBride, Nehring, Sandretto and Mosheim, USDA, ERS, Report Number 47, September 2007.

"Characteristics and Production Costs of U.S. Dairy Operations", Sara D. Short, USDA, ERS, Report Number 974-6, February 2004.

"Comparing Your Milk Checks", 2008, Stephenson, Department of Applied Economics and Management, Cornell University.

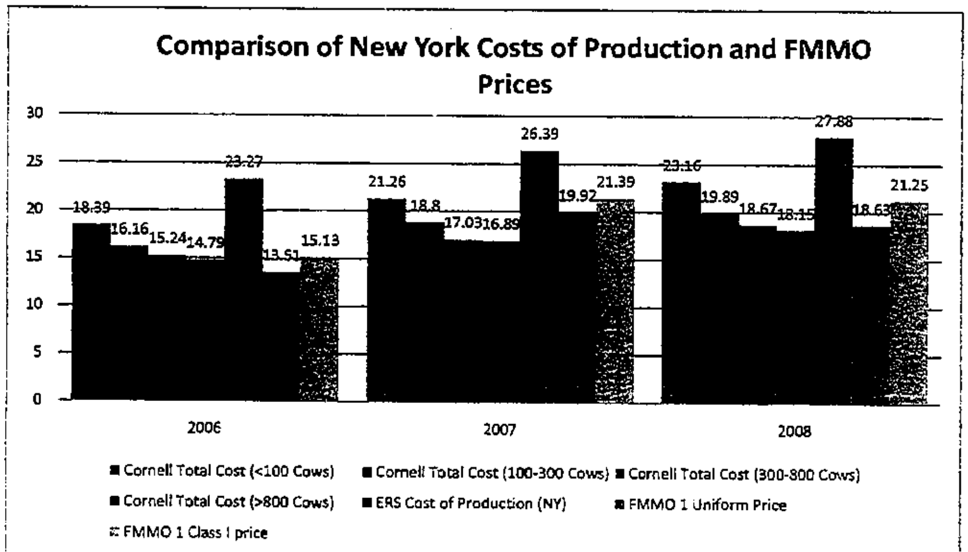
Nicholson, Charles, and Mark Stephenson, "Financial Performance and Other Characteristics of On-Farm Dairy Processing Enterprises in New York, Vermont and Wisconsin", RB 2006-07, November 2006, Department of Applied Economics and Management, Cornell University.

Erba, Eric M, Richard D. Aplin and Mark W. Stephenson, "An Analysis of Processing and Distribution Costs in 35 Fluid Milk Plants, RB 97-03, February 1997, Department of Agricultural, Resource and Managerial Economics, Cornell University.

Year	Less Than 100 Cows Cash	Purch Inputs	Total Cost	100 to 300 Cows Cash	Purch Inputs	Total Cost	300 to 800 Cows Cash	Purch Inputs	Total Cost	More Than 800 Cows Cash	Purch Inputs	Total Cost	ERS Average Cost of Productioi	USDA Data FMMO 1 Uniform Pr
2006	11.2	12.57	18.39	11.51	12.86	16.16	12.16	13.46	15.24	12.31	13.5	14.79	23.27	13.51
2007	13.72	15.19	21.26	13.94	15.27	18.8	13.77	15.09	17.03	14.13	15.44	16.89	26.39	19.92
2008	15.73	17.14	23.16	15.23	16.57	19.89	15.47	16.74	18.67	14.89	16.4	18.15	27.88	18.63

http://www.ers.usda.gov/Data/CostsAndReturns/TestPick.htm#milkproduction

Year	Cornell Total Cost (<100 Cows)	Cornell Total Cost (100-300 Cows)	Cornell Total Cost (300-800 Cows)	Cornell Total Cost (>800 Cows)	ERS Cost of Production (NY)	FMMO 1 Uniform Price	FMMO 1 Class I price
2006	18.39	16.16	15.24	14.79	23.27	13.51	15.13
2007	21.26	18.8	17.03	16.89	26.39	19.92	21.39
2008	23.16	19.89	18.67	18.15	27.88	18.63	21.25



APPENDIX
Page 10

9

one of Dr. Knutson's charts.

MR. CARROLL: From one of the charts?

DR. KNOBLAUCH: Yes.

MR. CARROLL: I think there's one in evidence that says that, and we'll all find that. But that's what you relied on, at any rate?

DR. KNOBLAUCH: Yes.

MR. CARROLL: Then you go on to say, if we assume the average Class I differential that would have been paid by producer-handlers was between $2 to $3 per hundredweight, and then you go on to make some other calculations.

Can you tell us the source of the 2 to $3 assumption? What was the basis for that assumption; that is, the 2 to $3 per hundredweight.

DR. KNOBLAUCH: Right now, I can't give you a specific source.

MR. CARROLL: But there is a figure of that type for the Northeastern Order. Actually, it's over $2 for the last -- for the year 2008. You recognize, I take it, that Class I prices aren't stable --

DR. KNOBLAUCH: That's correct.

MR. CARROLL: -- they move? And this 2 to $3, does it represent the higher -- your idea of the higher level of the Class I price? In other words, the -- in doing this study, you determined what you thought would be a reasonably high figure for a Class I return?

DR. KNOBLAUCH: Yes, in recognizing that it's going to be a variable number.

MR. CARROLL: All right. Now, based on those assumptions, you've -- you made a determination, as the sentence continues, that there would be 1 to 2 cents per hundredweight difference in the -- in the uniform price on those assumptions.

DR. KNOBLAUCH: That's correct.

MR. CARROLL: And then you continue on to say that -- skipping a sentence, the next to the last sentence says, producers are not losing significant revenues because producer-handlers are not contributing to the pool. Just to put this in perspective, this is well below the 4 to 5 cents of administrative costs required in most Federal Orders that producer-handlers would have to pay.

DR. KNOBLAUCH: Would have to pay

under --

MR. CARROLL: All right. So are you saying by those two comparisons that there's nothing to be gained by regulating producer-handlers in terms of dollars for producers and some loss for the regulatory system?

DR. KNOBLAUCH: I'm saying that the amount that would be gained due to the payments would be very small, perhaps rounding error, no guarantee that farmers would actually receive those additional monies as well, and that the cost to the individual producer-handler, if they became regulated, could be substantial.

MR. CARROLL: Thank you. Directing your attention to page 5 of your report, under Cost of Processing, you refer to, in the -- in the last sentence of the first full paragraph, under Cost of Processing, you refer -- you say, See RB97-03, Erba, Aplin and Stephenson. Now, can you tell me what that study consisted of?

DR. KNOBLAUCH: Well, I can perhaps do better than that. I have it right -- I did have it -- this was RB97-03. This is a study that was done of 35 fluid milk plants. The processing -- the actual title is, An Analysis of Processing and Distribution Productivity and Costs in 35 Fluid Milk Plants.

MR. CARROLL: And who are Erba, Aplin and Stephenson, if you know?

DR. KNOBLAUCH: Oh, I know. Eric Erba was a graduate student in our department. He was my teaching assistant for one semester. Dick Aplin was a long-time professor of agricultural economics, did a lot of work in milk markets and policy. And Dick Aplin has since retired. Mark Stephenson is a colleague of mine, still actively on the faculty, who was referred to many times in these proceedings.

MR. CARROLL: Are the last two qualified economists?

DR. KNOBLAUCH: They're all three qualified economists.

MR. CARROLL: All three qualified. Okay. Now, directing your attention to some of their findings. Eventually -- skipping over, because I don't want to take the time of everyone with what they already know. About in the middle you have a sentence that starts, this provides evidence that plants in the 15 to 30 million proceed.

JONATHAN ROONEY

of lawful age, being duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. CARROLL:

Q. Mr. Rooney, you prepared a statement for your presentation today, is that correct?

A. Yes.

Q. And before you give the statement, could you tell me just briefly what your position with Monument is?

A. My position currently is president.

Q. And are you here on their behalf?

A. Yes, I am.

Q. And are you testifying in support of the proposal for the 3 million pound level of exception --

A. Yes.

Q. -- for producer-handlers?

A. Yes, I am.

Q. All right. Would you now read us your statement?

A. Thank you for the opportunity to offer testimony in support of the proposal put forth by the

New England Producer Handler Association regarding the status of producer-handlers within the Federal Order system. Specifically, the Association proposes to retain the producer-handler exemption and to establish a 3 million pound per month exemption for all Class I milk distributed by a producer-handler in all Federal Orders.

Monument Farms, Inc., is a producer-handler located in Weybridge, Vermont, in Addison County, one of the top two milk producing counties in Vermont. In our third generation of family ownership and management, we milk approximately 400 to 450 cows, producing nearly a million pounds of milk per month without the use of rbST. We produce our own feeds on about 1,800 acres of tillable lands and raise our own replacements. Our herd is one of the best managed in our area and produces the extremely high quality raw product necessary to sell under our own name to customers from southern Addison County north to the Canadian border. As owner/managers, we generally work 60 to 70 hour weeks, especially on the farm side of our business. We employ 35 people including farm, processing, distribution, sales and office staff. The majority of our employees have worked with us for more than ten years, proving that we provide a stable, enjoyable working environment. We have provided numerous family members to fill the ranks of local Select Boards, Chamber of Commerce boards, school boards, church boards, Farm Bureau boards, local planning boards, bank boards, Lions Club, Rotary, milk promotion boards, et cetera.

Vermont is a state that prides itself on independence, and as such, is a very strong proponent of the Buy Local theme. Consumers want to know where their food comes from and where their food dollars go. Our dairy, which has been operating since 1930, is a long established fixture in our area of the state and has acquired a reputation for strong stewardship of our lands and a very consistently high quality product. People in our area of Vermont take as much pride in the fact that they support us as we take in providing the products and care of the land and community. Monument Farms has been lauded with numerous conservation awards throughout our 79-year history, recognizing our commitment to preserving our lands for the public benefit. We owe our existence to our customers who buy our products over our competitors' products regardless of price because they know, like, and trust us. They also know that our prices to the stores reflect our cost of production from our farm all the way through distribution. They know that our prices remain consistent, changing only when our cost structures change. Yet, beyond these warm and fuzzy, very subjective points, the most important fact is that the consumer has a choice and makes a choice, voting with his or her food dollar. If our business did not exist, consumers in our area of the state of Vermont would have no option but to purchase products offered by a large, nationally-sized dairy processor who counts profits in the hundreds of millions of dollars while the producers of their raw product suffer from the roller coaster ride which dairy pricing has become. Monument Farms believes in a fair return for providing a high quality product. This philosophy leads to a very steady, consistent pricing, one based entirely on our cost structure.

A graph of our wholesale prices over the past nine or ten years would look positively boring when compared to that of our competitors. During those rare periods of extremely high uniform prices, our cost of production allows us to be, at best, competitive pricewise with our pooled competitors. As USDA cost-of-production figures for the Northeast Region of the United States demonstrate, the total cost of production, not just operating costs, was never exceeded by the Class I price. This shows clearly that there is no price advantage enjoyed by a producer-handler in

Federal Order 1. During periods of low milk prices such as we are experiencing at this time, the cost of raw supply for a producer-handler already exceeds his pooled competitors' cost. If the proposal put forth by NMPF and IDFA is adopted by the USDA, affected producer-handlers in the Northeast would find themselves with an untenable disadvantage. Far from removing the price advantage, as stated by IDFA, this producer-handler would be faced with a cost of over $20 a hundredweight, compared to his pooled competitor's cost of under $14 per hundredweight for the current month of May.

For the use of this esteemed group, I would like to share cost of production figures for our -- for our fiscal year ending March 31, 2009. These numbers represent operating costs per gallon for the various sections of our business. We utilize cash-based accounting, thereby creating a need to look at numbers over an extended period of time to derive meaningful information.

And I'll just interject with that, that due to the fact that it's an extended period of time that we have to look at it, in order to adjust our cost structures, that's one reason why our costs change very infrequently. On a cash accounting system, you --

monthly numbers are virtually meaningless.

Cost of raw supply. $1.69 per gallon is what it costs us for the past fiscal year, which just ended the end of March of this year. And these are operating costs. $19.65 per hundredweight.

Cost of processing. Including containers, for a gallon of milk, between the processing and the container cost, 65 cents a gallon.

Cost of delivery works out to 48 cents a gallon. And that's excluding any -- any amount that -- selling purchased products through our delivery trucks. We deduct that in arriving at the cost of delivery for a gallon of milk. Cost of sales and office, 22 cents a gallon. Total cost, per gallon, is $3.04 per gallon, operating.

The above numbers represent the operating costs involved in getting a gallon of whole milk into a bottle and to a store. They include no interest expense, no depreciation, and no return on investment.

16 months ago, Monument Farms became a pooled plant for a two-month period due to exceeding the limit on distributions of non-farm Class I milk of 150,000 pounds per month. This was mostly due to a slight drop in milk production combined with strong demand. The cost to Monument Farms of this pooling for

two months would translate into approximately $360,000 over a year's time. We were forced to drop one large customer and a few smaller, as well. Aside from the direct monetary price tag, which had a substantial impact on our business, it is important to look at the bigger picture to see the difficulties producer-handlers of our size and smaller are faced with. As most dairy farmers will admit, there is nothing easy about farming and producing milk. Concurrently, I have yet to ever hear another milk processor say that processing, packaging and distributing milk is easy. The two sides of the business wrapped up all in one create a very capital-intensive business with far more complications than those of either one, individually. A processor who acquires a new customer simply needs to order more milk from the cooperative that supplies him with raw milk. Or, for example, if demand climbs or falls suddenly, as it can on occasion, a fluid bottler gets first choice on available milk and can order up a couple of extra loads of milk or cancel a load or two, as the case may require. A producer-handler, on the other hand, must constantly balance demand with available supply and pay a premium over Class I to purchase extra, or receive the lowest class price available to ship excess. Besides these supply-demand complications, a producer-handler is faced with all of the issues faced by any farmer; weather which is tending to be more and more extreme; high input costs for grains, fertilizers and pesticides; increasing health insurance and workers' compensation insurance premiums; fossil fuel prices increase as we all experienced a year or two ago, and the list goes on and on. The raw supply cost structure for a producer-handler is at least as high as any individual producer and generally higher due to the fact that a producer-handler always needs to be aware of the volume of milk that he will be able to market. Any growth in sales has to be accompanied by a corresponding growth in milk production, which, as any knowledgeable person knows, cannot be accomplished quickly, but must be planned well in advance.

In summary, figures compiled by the USDA shows that without a doubt that the total cost of producing milk in the Northeast exceeded the Class I price in both 2006 and 2007. If one accepts USDA numbers, there can be no claim that producer-handlers enjoy a price advantage over pooled processors, and USDA numbers also show that producer-handlers' percentage of the national or even regional total milk production is less than 1 percent of that total. Therefore, the only real impact of a ruling in favor of the proposals submitted by NMPF and IDFA to limit Class I sales by producer-handlers to less than 450,000 pounds per month would be to drive those small producer-handlers affected out of business, thereby consolidating further the power of the large processors who are already found at the top of the list of the largest processors in the U.S. In the case of our sales area in Vermont, this would dramatically affect consumer options, by removing 50 percent of available choices, leaving only one source for non-organic fluid milk. For these reasons, we believe that a 3 million pound exemption for producer-handlers would accomplish the protection that NMPF is seeking, while still allowing our customers to choose between supporting a local supplier with close ties to our communities or one whose headquarters are in another state entirely.

Q. Thank you, Mr. Rooney. Now, I want to ask you --

JUDGE CLIFTON: Mr. Carroll, you are not close enough.

MR. CARROLL: Oh, thank you.

BY MR. CARROLL:

Q. I want to ask you about your -- your family. Are there any members of your family employed by the dairy?

A. Yes.

Q. And can you give us their names and their occupations?

A. Peter James is my cousin.

Q. Peter James?

A. Peter James. He's in charge of the farm side of our business. Bob James is his younger brother; he's in charge of our sales and distribution. Myself, I run the processing plant and deal with quality issues. My mother, who's almost 81, is still our secretary/treasurer, deals with all payables. And my cousin, Bob, has two younger sons who are currently working in the business --

Q. All right.

A. -- but don't hold any ownership.

Q. Now, would you give us the history of your dairy?

A. My grandparents -- our grandparents started the business in 1930. They both came from farming families, which were located within a mile either direction of our current operation.

They began this business in 1930 and quickly realized that they needed to -- at that time, it was very common for a producer to bottle his own milk and sell it to a few homes. I think my grandparents started with a -- delivering bottled milk to a restaurant and, like, ten home delivery customers. And that was in 1930.

And we've grown steadily, adding new technologies as they became available. We began high temperature, short-time pasteurizing in the mid '60s, built our first barn with a parlor in the mid '60s and have added some land to our operation. We own about 2,000 acres of land and crop about 1,800 of that.

Q. And can you tell me if you have any local connections to the community, and if so, what they are?

A. Well, as I mentioned, I can't remember a time -- I was born in 1958, but I -- I can't ever remember a time when one of our family members or another was not involved in local town government, local charities. My grandmother was a state legislator at one point. But we've always been very tightly involved with -- with our communities. And we make every effort to support local sports programs and certainly donate lots and lots of product to -- to fundraisers, et cetera.

We -- we delivered milk to the schools in our county until we stopped packaging in paper about five years ago. We had always managed to keep those school bids, mostly because there were very few other --

very few other, if any, other bids.

But we -- we continue to distribute purchased half pints to the schools just to maintain our connection. We felt a number of the schools are too small to interest any other type delivery system for milk. So we continued to go to a lot of schools, just because there would have been no other way for them to have fresh milk.

Q. Do you deliver home -- do any home delivery?

A. No. We ceased that about ten years ago.

Q. Have there been any awards given to your farm?

A. A number of different conservation awards. Just a year ago we received the Lake Champlain Basin Conservation Award, and we've been Farm of the Year, I believe, Farm Bureau Farm of the Year recently. I can't remember exactly when.

Q. I show you what's been marked for identification as Exhibit 46, and ask you if you would look at that exhibit?

JUDGE CLIFTON: Now, for ease, Mr. Carroll, please put them all in front of him and put a set of all of them in front of USDA. The court reporter won't need the photographs.

MR. CARROLL: This is just one of the exhibits. One of each.

JUDGE CLIFTON: Let me ask you, who will identify Exhibit 47?

MR. CARROLL: He'll identify all of these exhibits.

JUDGE CLIFTON: Let's put them all in front of him then.

MR. CARROLL: Okay.

JUDGE CLIFTON: Let's go off record while you make distribution of them. You'll need to place them strategically around the room for those who would like access.

MR. VETNE: I seem to have lost track, your Honor. The witness's statement, I believe, was marked as 42.

JUDGE CLIFTON: Yes. And what we did before we went on record this morning is I -- I asked Mr. Carroll to leapfrog forward to 45 because I didn't know for sure how many exhibits would come before.

MR. VETNE: I wonder if I missed three of them.

JUDGE CLIFTON: Right now there is no 43 and there is no 44.

JUDGE CLIFTON: Thank you. All right. Now we'll go off while those are distributed. It's now 10:31.

(A recess was taken from 10:31 to 10:36.)

(Exhibits 45-51 were marked for identification.)

JUDGE CLIFTON: All right. We're back on record at 10:36. Mr. Carroll, you may proceed.

MR. CARROLL: Your Honor, to save -- to save time, since there are numerous of these, I thought I would simply ask the witness to -- if he has 45 through 51, ask him if he would explain each picture. Would that be sufficient?

JUDGE CLIFTON: Excellent. Yes.

BY MR. CARROLL:

Q. All right. Then I now ask you, sir, if you would examine the pictures. If you can do them in order, it would be helpful. But if you can, just identify which one you're talking about and tell us what that picture shows.

A. Okay. Exhibit 45 is just the front of our one milking facility where all our cows are milked in-house.

Q. Let me ask you something. On the side of the barn, on one of the barns, it has Hagar Farms, Mountain Farms Dairy. What about -- Hagar Farms, what does that mean?

A. It says Hagar Farm.

Q. Hagar Farm, thank you.

A. In Vermont, there is a long tradition of naming farms after owners three or four or five steps back down the road. And my grandparents had purchased the land from a Mr. Hagar. I can't remember his first name, but the lands originally came from him. So that became our Hagar Farm. We also had Hamilton Farm or Jewitt Farm (phonetic) or Bingham Farm. And this -- this is currently our only mixing facility.

Q. Okay. But it is part of and owned by Monument Farms Dairy?

A. Yes. It's totally, totally owned by us.

JUDGE CLIFTON: And how is Hagar spelled?

THE WITNESS: H-a-g-a-r.

JUDGE CLIFTON: Thank you.

A. And if you notice that sign, the sign post in front of the building says -- you may not be able to read it, but it says, Dairy of Distinction. And that's a program run by the Vermont Agency of Agriculture -- actually run by Vermont Dairy Industry Association, recognizing farms that look -- need and represent the dairy industry in a very positive manner. And we've been awarded the Dairy of Distinction at least the past 10 or 12 years of its -- of the program's existence.

Q. Directing your attention to the building that says Hagar Farm, Monument Farms Dairy, what did you say the function of that building was?

A. The part of the building with the name on it is our parlor area where we have a double pen herringbone milking parlor and where all of our cows are milked.

Q. And there's a building to the right of that. Can you tell us what that building is?

A. That's just additional housing. There are one, two, three -- there are three different housing facilities all tied together. It's a very common -- common way of laying out a modern dairy farm.

Q. All right. Directing your attention to Exhibit Number 46, can you tell us what that is?

A. That's myself and my two cousins receiving an award from Vermont Dairy Industry. This was actually an award from Lake Champlain Basin Committee. And it's our governor, Jim Douglas, on the right.

Q. For the benefit of some of these Texans, can you tell them what Lake Champlain is?

A. Lake Champlain is the sixth great lake. Actually, I'm not sure if it ever attained that status. Senator Leahy was attempting to have it named as part of the Great Lakes System. It's just a lake that runs between New York and Vermont and managed to keep us separated most of the time in the early years of Vermont.

It was discovered by Samuel deChamplain. I believe it's the 400th anniversary coming up this summer of his exploration of the lake for the first time.

Q. And the farm award was for what purpose?

A. Just recognizing our conservation efforts in reducing farm waste runoff, pump silo leachate runoff, which all flows eventually into Lake Champlain.

Q. Directing your attention to Exhibit Number 46, starting from the left to the right, can you tell us who are the persons in that picture and what their relationship to the dairy is?

A. That's myself on the left. Looks like I'm missing a tooth but I'm not. That's my cousin, Bob james.

Q. And what does he do on the farm?

A. He runs our distribution and sales and he's the one who spends most evenings working on trucks or truck reefers, trying to keep them going for the next day.

Next to him is his older brother, my cousin, Peter James, and he's the oldest of our generation. He's a couple years older than I am. And he runs the farm side of our business, a real handful given the size, and also requires upkeep on about seven or eight tenant houses that have all -- that house a number of our employees. And he literally is working seven days a week to one extent or another.

Q. And the gentleman next to him?

A. I honestly can't remember his name. He was one of the Lake Champlain Basin people.

Q. All right.

A. As is the person directly behind the award sign.

Q. And who is the person on the far right side?

A. Our governor, Jim Douglas, who happens to be from Middlebury, which is right next door to our town. We know him.

Q. Is he governor of what?

A. He's the governor of the state of Vermont.

Q. All right. Now, showing you Exhibit -- I next show you Exhibit Number 47. Can you tell us what that exhibit shows?

A. This is just a shot of our calf raising facility, which is located directly behind our Hagar Farm. It's just a big greenhouse, and it's a wonderful, airy, bright greenhouse. It's a great calf raising facility. And it looks pretty empty right there. That was a few years ago. But the number of calves is always going up or down.

Q. And then if you would look at Exhibit Number 48 and tell us what that exhibit shows.

A. Is this the picture you -- mine says Exhibit 49 on the back of two of them, so --

Q. Oh, 49?

A. No. Is this 48?

Q. I have 48.

A. Then.

Q. Yeah, that's what I have.

A. Okay. That would be my cousin, Pete; cousin, Bob. My mother, Millicent.

JUDGE CLIFTON: Stop just a minute. Let me see what the record copy is. Would you hold Exhibit 48 for us and we'll see if it's the same as their Exhibit 48.

MR. ROWER: Just a moment. Thank you for protecting them.

MS. FISHER: That's 48.

MR. ROWER: Four people.

THE WITNESS: Yeah.

MS. FISHER: 49 is the small barn.

JUDGE CLIFTON: Good. Thank you so much.

A. This is simply a shot taken inside our small office where we also have a -- a store cooler, a three-bay store cooler where customers can stop. And it became quite a focal point for our whole community. It's like a community bulletin board in there. And I think people feel very welcome and comfortable in stopping in there.

Q. Do you market milk then on the farm? People come to the farm for milk?

A. Yes. This is at our office, which is -- which is located at our processing plant.

Q. Now, once again, would you go through the names and the functions of the persons in the picture?

A. That's my cousin, Pete, is on the left, Peter James. And as you can tell from looking at him, he runs the farm side.

Bob is -- Bob James is next to him and runs our sales and distribution. That's my mother. And my mother, Millicent Rooney, and myself on the right.

Q. And your mother works on the premises?

A. Yes. She's still our treasurer. Takes care of payables.

Q. Exhibit Number 49, would you examine that?

A. That's a lovely winter shot of our Hagar Farm from the back side. You can see five bump silos where most of our -- our hayage and corn silage are stored. There's an ingredient shed on the right which houses the various purchased ingredients, feed ingredients, that we need to supplement what we grow on the -- on the farm.

And the greenhouse is on the left. It doesn't look much like a greenhouse right there, but that's where we raise our calves.

As you can see, there are four different structures up near on the road. The right-hand structure and the two on the left are both housing for -- for our cows, which are broken up into low -- low, medium and high producing areas, refresh cows that haven't been freshened yet and -- and the fresh group, which is cows that have just recently calved and need special attention paid to them for about three weeks.

Q. Directing your attention to Exhibit 49, I want to ask you if you have loans outstanding on -- with loaning agencies on those structures?

A. Yes, absolutely.

Q. And how much are your loans?

A. We're -- currently we're around the 2 million mark with Yankee Farm Credit.

Q. And who is the lending agency?

A. Yankee Farm Credit. It's part of the National --

Q. Part of the National Federal Farm Credit Program?

A. Yes.

JUDGE CLIFTON: Be sure, Mr. Carroll, that his voice has died away before you --

MR. CARROLL: Thank you. Right. Thank you.

Q. Now, directing your attention to Exhibit 50, can you tell me what that shows?

A. That's -- four years ago, we celebrated our 75th anniversary of being in business. And we threw a big community get-together, gave out free hot dogs, free creamies and had a number of animal exhibits. And we put so much work into preparing it. I was -- I was totally sick of it by the time the day finally arrived.

But the amount of community support and

enjoyment, it was like one of the few beautiful clear days out of, you know, two weeks of rain before and two or three weeks of rain after. And it was just such a great, great time. We had a real ball. And we had somewhere around 2,000 -- we're estimating, around 2 -- 2 -- over 2,000 people coming by to visit.

And -- and a really high percentage of them all said to us, as they were leaving, that that was just the best time they had. And that really made it all worth it. But that's just thanking --

At the same time there was a local museum, a Middlebury museum, and there was a John Deere exhibit that was making the rounds of the country. And it was there in Middlebury at that point and so we took advantage of that. And we co-sponsored an antique tractor parade and had about -- over 50 antique tractors, too. This is our tractor with the bunk blade on it. I was bringing up the end of the parade just thanking everyone. It was a great time.

Q. Now, do you have an opinion as to what would happen to your --

JUDGE CLIFTON: Did we go through all the photos?

MR. CARROLL: Oh, no. I'm sorry, we have one more.

JUDGE CLIFTON: Let's do that one before you go on to a new area.

MR. CARROLL: Exhibit 51, can you tell us what that is?

A. That's just the front of our processing area and office area. Inside this, I have six -- six people that work with me in the processing plant. And we have 2 1/2 to 3 people doing office and -- and receptionist-type work inside this building. And of course all the drivers on there have done their routes and such.

Q. Do you have local employees?

A. Yes.

Q. Local persons employed?

A. Yes. They're all what I would consider local.

Q. How many employees do you have besides the family?

A. I would put it at 28 or 29.

Q. Thank you. Now, would you tell me what would happen to those employees and to yourself if you were to be -- have the exemption taken away from your farm?

A. Well, it would -- as it would extremely -- well, not just difficult, there's no way we can -- we can finance, you know, 2 million in debt, a debt load of 2 million and still pump out what we've estimated would be $360,000 for market pool payments. The two won't fit together.

Q. Would you be out of business?

A. Yes, absolutely.

Q. That's all, your Honor.

JUDGE CLIFTON: Don't leave yet. I'm going to hand the witness Exhibit 1, which is the Notice of Hearing that's in the Federal Register. And I have turned it to page 16,300 where Proposal Number 13 is located and ask the witness to look at that and see if he recognizes that as the proposal that he said he's supporting.

THE WITNESS: 16, you said?

JUDGE CLIFTON: 13, actually. Left-hand column.

THE WITNESS: Uh-huh. Yes.

JUDGE CLIFTON: All right. And were there any other proposals that you had any comment on, either in favor of or against?

MR. CARROLL: Your Honor, may I interrupt?

JUDGE CLIFTON: You may, Mr. Carroll.

MR. CARROLL: As I said, I will be a witness and I'm covering these subjects of the various clients' positions on proposals.

JUDGE CLIFTON: Ah. That will be helpful.

MR. CARROLL: Yeah.

JUDGE CLIFTON: Now, they won't be available for cross-examination on that, but you will be able to communicate how -- you know that's how they feel?

MR. CARROLL: Absolutely.

JUDGE CLIFTON: All right, then. I'll withdraw that question unless you want to add something in that vein.

THE WITNESS: The huge differences in the various proposals that I've seen are -- are broad enough that I can't really propose any -- or point out anything on any specific proposal. They're just so wide ranging.

JUDGE CLIFTON: You know, I understand. All right. So the witness is available for cross-examination, Mr. Carroll?

MR. CARROLL: Yes, he is. Yes, he is your Honor.

JUDGE CLIFTON: Did you want to move any

of the exhibits now or did you want to wait until the cross-examination is complete?

MR. CARROLL: I'll move Exhibit 42 now.

JUDGE CLIFTON: All right. Is there any objection to the admission of Exhibit 42? There is none. Exhibit 42 is hereby admitted.

You know, Mr. Carroll, I'll bet you can get those photos in now, too.

MR. CARROLL: At this time I'd like to move the photographs into evidence.

JUDGE CLIFTON: Is there any objection to the admission into evidence of Exhibits 45 through 51? There is none. Exhibit 42 and Exhibit 45 through 51 are hereby admitted into evidence. Mr. Stevens.

MR. STEVENS: Might I inquire, just for the purpose of the record -- I was out of the room, unfortunately. Exhibit 43 and 44 are reserved --

JUDGE CLIFTON: Yes.

MR. STEVENS: -- for a future time?

JUDGE CLIFTON: Yes. And the reason is I wanted these photos marked before we went on record today so we wouldn't have to do it during the hearing. So I just picked some number that

I didn't think would be used.

MR. STEVENS: Right. Thank you very much, your Honor.

JUDGE CLIFTON: You're welcome. Mr. Vetne.

CROSS-EXAMINATION

BY MR. VETNE:

Q. I'm John Vetne from Raymond, New Hampshire. I represent two producer-handlers in the Pacific Northwest and one from Roswell, New Mexico.

You came here, as I understand it, to testify in opposition to two proposals that would eliminate the producer-handler opportunity and limit exempt plants to 450,000 pounds, am I correct?

A. Yes.

Q. And are you aware that National Milk Producers, original proponents of Proposals 1 and 2, now has added a third proposal as part of a package that would allow you to continue as a grandfather?

A. I'm aware of that, yes.

Q. And you are aware that International Dairy Foods, which represents your processor competitive -- competitors, still embrace only Proposals 1 and 2, which would eliminate producer-handlers?

A. Yes.
Q. Okay. I'm looking on page 2 where you give some information on your costs. And I have some information about that. As I understand, this is a summary of one fiscal year's data from your joint farm and plant operation, correct?
A. Yes.
Q. And these are cash operating costs excluding your cash costs to service debt?
A. Correct.
Q. Okay. Are there any other excluded cash costs for you?
A. Well, there's debt and certainly there's depreciation, which is a great deal more a real cost than most people realize.
Q. Because you have to replace things --
A. Yeah.
Q. -- eventually?
A. Yes. Especially farm equipment.
Q. Okay. The line labeled cost of raw milk supply, was that cost put together following any conventional boilerplate or model -- line-item model by which farm costs are measured?
A. No. The only other model that we've ever used was -- was, again, through -- Yankee Farm Credit

offers Agri-FACTs format. But we employ a -- a very part-time CPA who, between him and my mother, they arrived at a format to come up as close as we can to determining the cost for the various parts.

Q. Okay. So you are familiar with an annual or periodic publication of the Northeast Farm Credit System?

A. Yes.

Q. That provides information on costs of production for farm credit participants in the Northeast?

A. Yes.

Q. Okay. And you tried to follow that format as a guide?

A. No, not necessarily.

Q. Not necessarily?

A. This is a very customized way -- way that we've come up with to break costs down. There are some overlapping costs in any integrated business.

Q. Yeah, that's sort of my next line of questioning. You anticipate me.

You have utility costs, electric costs. do you have one meter serving the whole operation.

A. No.

Q. You have two meters?

A. No. We have multiple meters.
Q. Multiple meters?
A. Yeah.
Q. Okay. So you -- your farm meter is separate from your plant meter?
A. Yes.
Q. Okay. So to the extent there are electric utility costs, there's no overlap of one to the other?
A. No. As far as electrical cost, no.
Q. Okay. How about fuel, how did you allocate fuel between the farm operation or the processing operation and the delivery operation?
A. Again, that's a little tricky in that our farm -- all of our crop work now is done utilizing trucks rather than tractors and forage wagons and such. Such trucks are doing all the hauling to the bunks from the field. They usually fill up from the plant, from our distribution fuel tank that also services our distribution, and they also use some fuel from our farm shop area.
It gets a little confusing. It's hard to keep track of, but that's --
Q. So you -- my question is, you made some allocation of your total fuel costs and applied, in your

best judgment, an allocation to each of the lines?

A. Yes.

Q. Okay.

A. Absolutely.

Q. Okay.

A. Is -- again, these are -- these are numbers that we use in making decisions. We need them to be as accurate as possible.

Q. Okay. And the same thing for labor. You have some people that provide labor services both for the farm and for the processing and for delivery and sales?

A. That's -- yes, that's much easier to break down, to itemize.

Q. Well, for example, you and your family, you do -- do you pay yourself salaries?

A. Yes.

Q. Yes. And you provide overall management services for each of these line items, farm, processing, delivery and assessment?

A. Yes.

Q. Did you allocate the value of your salaries, your administrative services, to each of those as part of the costs?

A. Yes.

Q. Okay.
A. Even though, as you pointed out, there's certainly overlap.
Q. And cost of delivery, would that include -- do you use crates to deliver milk, plastic crates?
A. Yes. We call them cases.
Q. Cases. When you have case losses, what line would that be applied to?
A. I believe we pretty much applied it to processing rather than distribution.
Q. And that's -- and some of your -- the folks that drive the trucks might provide service for either the cost of delivery or cost of processing line or farm line?
A. No, that's all fairly well separated out.
Q. It is?
A. Yeah.
Q. Okay. In your farm operation -- well, in the combination operation, do you experience more cream than you use in a bottle, in Class I products?
A. It all -- it all depends on what our volumes are and at what time of the year.
Q. And some times of the year you have higher fat content than others, correct?

A. Yes, and more available.
Q. And more -- and what -- when you have cream in excess of your bottling needs, what do you do with that cream?
A. We either sell it to another pooled processor or we're a Grade A plant. So sell to either a pooled process or to a cream broker, who I'm not quite certain what he does with it, frankly.
Q. Okay. When you -- when you -- when you make those sales, are you a price setter or a price taker? Do you know the difference?
A. No, we're definitely a taker.
Q. So whatever they're willing to offer, you'll take?
A. Yes, absolutely.
Q. And at times do you also produce more milk, not just cream, but more milk in total than you use?
A. Yes.
Q. And what do you do with that?
A. We sell it, again either to the same pooled processor or to a local cooperative in Vermont.
Q. Okay. And this would be -- how is that transported, by the way?
A. We have to hire a -- a hauler to make a

special trip. If it's going to the cooperative, we hire an outside hauler.

Q. To put it in a bulk tank?

A. Yes.

Q. Would it be a large trucker that has other milk in it at the same time?

A. No, because most trucks are fairly well filled, their routes are fairly local. This needs to be a separate trip. It costs us a great deal of money to -- to transport it.

Q. Okay. If you -- let's see. If you sell to a pooled handler, would that sale be coming from a tank in your plant?

A. No.

Q. It leaves from the farm?

A. It leaves from the farm, yes.

Q. And by pooled handler, am I correct that that would be a manufacturing plant that enjoys pool status?

A. It's a fluid bottler.

Q. A fluid bottler?

A. Yes, who enjoys pooled status.

Q. How frequent an occurrence is it for you? Is it every month that you sell something or -- of bulk milk?

A. It -- it all depends how sales production are working out. During the fall and the winter, those are generally the periods of our highest sales, so it's rare that we would have excess milk during those times. Like every other processor or fluid bottler, April, May and June into July tend to be slower so the odds are greater that we would have excess production.

Q. Okay. And when you have to hire a truck to -- to haul milk or to haul cream, what line item here, if any, would that trucking cost be under?

A. I believe it comes in under cost of -- I believe it comes in under cost of raw supply.

MR. CARROLL: Cost of raw supply. That's all the questions I have. Thank you very much for the detail you provided about your operation.

THE WITNESS: You're very welcome.

JUDGE CLIFTON: Thank you, Mr. Vetne. Who next will cross-examine Mr. Rooney? Mr. Yale.

CROSS-EXAMINATION

BY MR. YALE:

Q. Good morning. Benjamin F. Yale, Continental Dairy Products and Select Milk. Good morning.

A. Good morning, sir.

Q. I'm very impressed with the cleanliness of your facilities.

A. Thank you.

Q. It was very nice. You indicated a strong tie to family. You've got cousins and uncles and nephews and everybody else that seems to be involved in the operation. There are some proposals that talk about grandfathering in. In other words, protecting you or Monument Farms, but not allowing you to -- it has to stay within the family.

At some point, if it moved to another family or anything like that, it would lose the exemption. Do you have any statement or any comments about that?

A. I believe that would be too restrictive. Not in our case, but as a personal opinion. I don't doubt that we can continue to provide family members to continue our business.

Q. So you think that the next phase will be somebody else that will own it. Is that what you're saying?

A. I don't understand.

Q. Are you saying if this company survives in the years to come, it may have to be owned by somebody other than in the family. Is that --

A. No, I'm not of that belief.

Q. But just think it's too restrictive?

A. I -- I don't believe -- your statement that if a producer-handler changed families, changed hands, was sold, you would no longer be grandfathered, is that the way?

Q. Right, right.

A. I said that would not be an issue for us. Then I gave a personal opinion that that was too restrictive.

Q. Okay. Thank you. That's what I needed to clarify.

MR. YALE: That's all I have. Thank you.

JUDGE CLIFTON: Thank you, Mr. Yale.

Other cross-examination of Mr. Rooney?

Mr. Ricciardi.

CROSS-EXAMINATION

BY MR. RICCIARDI:

Q. Mr. Rooney, good morning. I'm Al Ricciardi.

A. Good morning.

Q. And I know that you supplied Middlebury College, but don't exclude the University of Vermont, okay?

Four things. There's been a claim made that somehow producer-handlers in Federal Order 1 have created disorder. Have you seen any disorder in Federal Order 1 caused by a producer-handlers?

A. It -- it depends totally on one's definition of disorder.

Q. Yours.

A. No.

Q. Okay. Do you believe that there's any need to change the status of producer-handlers at all?

A. I believe that by my definition of producer-handler, there is no need.

Q. Okay. And your strong preference would be to keep the status of producer-handlers the same?

A. Yes, that would be my preference.

Q. Thank you.

JUDGE CLIFTON: Who next would like to cross-examine Mr. Rooney? Is there any redirect, Mr. Carroll?

MR. CARROLL: None.

JUDGE CLIFTON: Thank you, Mr. Rooney. You may step down.

THE WITNESS: Thank you.

JUDGE CLIFTON: Thank you for your

presentation. Now, let's see. I'm going to ask you to hand me back the Exhibit 1. Thank you. And let me check how we're doing on time. It's 11:13.

Who would be your next witness? Is this the panel now, Mr. Carroll?

MR. CARROLL: No, not yet.

JUDGE CLIFTON: Not yet. So this is a single?

MR. CARROLL: Mr. Stearns.

JUDGE CLIFTON: Mr. Stearns. Let's have Mr. Stearns go on before we -- let's try to have Mr. Stearns before we break. I may have to interrupt him with a break. But let's begin with Mr. Stearns.

Mr. Stearns, would you please state and spell your name for us?

THE WITNESS: My name is James W. Stearns, J-a-m-e-s, W. S-t-e-a-r-n-s.

JUDGE CLIFTON: All right. Would you raise your right hand, please?

(The witness was sworn.)

JUDGE CLIFTON: Thank you. Mr. Carroll, you may proceed.

MR. CARROLL: Thank you.

JAMES STEARNS

of lawful age, being duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. CARROLL:

Q. Mr. Stearns, would you be so kind to tell us when your family first entered into the dairy business?

A. 1871.

Q. And can you tell me where they started?

A. 50 Stearns Road, Storrs, Connecticut.

Q. Right.

JUDGE CLIFTON: I'm sorry, the name of the town in Connecticut? Say it and spell it for me.

MR. CARROLL: Storrs.

THE WITNESS: Well, the legal name is actually Mansfield. Storrs is a borough, post office address.

JUDGE CLIFTON: And how is Storrs spelled?

S-t-o-r-r-s.

JUDGE CLIFTON: Thank you.

MR. CARROLL: And was your family -- did your family play a role in the establishment of the University of Connecticut at Storrs during that period of time?

A. Yes. My great, great grandmother's family donated the land for the University of Connecticut in 1872, I believe. And then because of that, that part of Mansfield has been called Storrs since then. She was a Storrs.

Q. She was a Storrs?

A. Yes.

Q. Now, from that time forward, has the family been engaged in the dairy business?

A. Yes, we have.

Q. And did they pedal milk to homes to start with?

A. Yes.

Q. And can you trace the evolution of that business from those days until your present day?

A. Oh, in 1881, it was a horse and wagon and a can and a ladle. I would guess about 20 cows. I'm not sure of that.

Up through the Depression, during the Depression, we were actually bankrupt and came out of bankruptcy. We've been serving the local hospital since its inception in 1931. We were predominantly a home delivery business until 1975, '76.

And as everybody in this room knows, I'm sure that home delivery is pretty much a thing of the past. We still run eight home delivery routes, but it's a very small part of the business now and most of our business is independent markets, restaurants, convenience stores.

Q. Are you presently an exempt plant handler?

A. Yes, I am.

Q. Can you tell us approximately the number of cows that you presently have?

A. About 500.

Q. And can you tell us your general area of service?

A. Our general area of service is east of the Connecticut River, although we do have a few stops west of the river. The Hartford area and east and Hartford is right on the Connecticut River. And the Connecticut River basically bisects the state of Connecticut.

Q. Are these areas you've just described relatively close to your farm?

A. Yes.

Q. And are you -- are you a recognized local supply of milk?

A. Yes, we are.

Q. And what efforts, if any, do you make to advertise that fact?

A. We advertise that we're a local producer of milk, that it's Connecticut grown, no artificial hormones. We support various civic groups. We're members of civic groups, and promote youth activities and charities.

Q. Now, directing your attention to the effect that the exemption loss -- you're presently exempt?

A. Yes, we are.

Q. What effect, if any, would it have on your business if you were to lose that exemption?

A. It would substantially alter. What effect? It would be where -- we're about the same size of Mr. Rooney, and the cost of being in the pool would amount to about $360,000 a year. We've managed to avoid being in the pool. But at one point when I thought it might be imminent, I had the Market Administrator just run up a mock what it would cost. And it was $33,000 for the month of July of '08.

Q. So you think it's approximately 360,000?

A. I would say approximately, yeah.

Q. Is there $360,000 of money in your

business to make that payment?

A. Unfortunately, no.

Q. And would it therefore force you out of business?

A. It would force us out of business or force us to hit the street and sell a lot more to spread that rate around.

Q. All right. Now, directing your attention to the family aspect of your business, are you the only member of the family engaged in that business?

A. No, myself and my brother are involved in the processing end and an uncle and two cousins are involved in the agricultural end.

Q. And can you -- can you tell me -- they're on salary, I take it?

A. Yes.

Q. Paid salary?

A. Yes.

Q. Can you tell me how many employees you have?

A. About 25.

Q. All right. Did you hear the testimony of Mr. Rooney ahead of you?

A. Yes, I did.

Q. Yeah. Do you have approximately the same

sized operation?
A. Yes.
Q. You saw the pictures of his -- or at least the pictures here of his farm?
A. Yes, I did.
Q. Are yours comparable, the size operation in the pictures?
A. Yes, we are.
Q. Do you oppose the proposal of the National Milk Producers and the Milk Dealers to eliminate the exemption?
A. Absolutely.
Q. And do you support the 3 million pound figure testified to -- to Mr. Rooney -- by Mr. Rooney?
A. Yes, I do.
Q. And how many acres of land do you farm?
A. Approximately 2,000.
Q. Is there a milk regulation board of the state of Connecticut?
A. Yes, there is.
Q. What relationship, if any, do you have with that?
A. I'm a member of that board.
Q. And do you -- is there a milk promotion program for the state of Connecticut?

A. We're starting one, yes. We've had one meeting. And I'm the chairman of the milk promotion board.

Q. And are you involved in civic organizations, like Lions and Rotary and the other clubs?

A. Yes, we are. I'm a member of the Lions. My brother is a member of the Rotary and we're members of the Farm Bureau, I've already said.

Q. Are there schools that you serve on occasion?

A. We serve some very small schools, a few Catholic schools that found they were just paying too much because they bought so little milk and called and solicited our business, and another school in an outlying town that, to the best of my knowledge, does not have a cafeteria and they were getting their product delivered kind of as a Meals On Wheels type thing. And they wanted fresher, better taken care of products, so they also solicited us.

Q. If you didn't supply that school, would it having difficulty getting supplies?

A. Yes, it would.

Q. Do you compete with any large regional or national handlers?

A. Yes, we do. Our main competition is Dean Foods, HP Hood and Guida based in New Britain, Connecticut.

JUDGE CLIFTON: I need help with the one out of Connecticut, the name, the spelling, and the town.

THE WITNESS: G-u-i-d-a.

JUDGE CLIFTON: And how do you say that?

THE WITNESS: It's Polish, so it it's instead of Guida.

JUDGE CLIFTON: What town are they?

THE WITNESS: They're in New Britain.

JUDGE CLIFTON: And how is New Britain spelled?

THE WITNESS: N-e-w, B-r-i-t-a-i-n.

JUDGE CLIFTON: Thank you.

MR. CARROLL: That's all, your Honor.

JUDGE CLIFTON: Thank you, Mr. Carroll. Who would like to begin the cross-examination of Mr. Stearns? Mr. Yale.

CROSS-EXAMINATION

BY MR. YALE:

Q. Good morning.

A. Good morning.

Q. Benjamin F. Yale on behalf of

Continental Dairy Products and Select Milk. By the way, I spent four very happy years in New Haven, Connecticut, a number of decades ago and I've got some family that still lives there. It's a small state, what, about an hour away, a little further away?

A. About a hour away.

Q. Of course, if you go about an hour anywhere in Connecticut, you're pretty much out of state, right?

A. Right.

Q. How many dairies are left in Connecticut?

A. I really believe it's three; the very small exempt plant a couple of towns over; there's Guida, which is a very large plant; there's ourselves. That's three I know of. I may be overlooking somebody.

Q. When I was there, there was an Elm City Dairy. That's gone?

A. Right.

Q. There were some questions I asked of the other gentlemen I just want to ask you as well.

Do you have a position as regards the issue of grandfathering? I mean, in other words, allow you to continue but not allowing new entries. Do you have any position on that?

A. Yes, I'm against that.

Q. Okay.

MR. YALE: I have no other questions.

JUDGE CLIFTON: Thank you, Mr. Yale. Are there other questions for Mr. Stearns? Mr. Miltner.

CROSS-EXAMINATION

BY MR. MILTNER:

Q. Good morning, Mr. Stearns.

A. Good morning.

Q. Do you believe that producer-handlers are currently contributing to disorderly marketing in Order 1?

A. No.

Q. If you had your preference, would you advise the Department to make any changes to the producer-handler provisions in Order 1?

A. No.

Q. Thank you.

JUDGE CLIFTON: Are there any other questions for Mr. Stearns, cross-examination questions? There are none. Any redirect, Mr. Carroll?

MR. CARROLL: None. Your Honor.

JUDGE CLIFTON: None. Thank you. Thank you, Mr. Stearns. You may step down.

THE WITNESS: Well, thank you.

JUDGE CLIFTON: I appreciate your testimony here. There is going to be a break for lunch for one hour, if that's fine with you, Mr. Carroll. It would mean your --

MR. CARROLL: That's fine.

JUDGE CLIFTON: -- your next clients would be on in a hour.

MR. CARROLL: That's fine.

JUDGE CLIFTON: All right. Thank you. Please be back and ready to go at 12:30.

(A recess was taken from 11:26 to 12:36.)

JUDGE CLIFTON: We're back on record at 12:36. I have just a couple of housekeeping items to discuss before we call the panel of two witnesses that are Mr. Carroll's clients.

The first is, I purposefully chose to leave a little space between the exhibit numbers. I did not use Exhibit 43 or Exhibit 44 and I will not use them. And the reason I do not want to use those numbers is I want Mr. Rooney's statement to be followed immediately by Mr. Rooney's photographs so that those are together.

So there will be a little gap. That

frequently happens in proceedings. There will not be an Exhibit 43. There will not be an Exhibit 44.

MR. ENGLISH: Your Honor, may I?

JUDGE CLIFTON: Mr. English.

MR. ENGLISH: May I suggest, partly for the benefit of those who weren't here, that when the exhibits go up on the Internet, that it then says expressly no Exhibit 43 or no Exhibit 44, so that people see that and don't go calling the Department constantly?

MR. STEVENS: That's what we intended to do. That's the intention.

JUDGE CLIFTON: Good. Thank you. That's a good suggestion.

All right. The other item that was suggested to me is that I consider changing my hours a little next week, that the core, instead of being from 8:00 a.m. to 5:00 p.m. be from 8:30 a.m. to 5:30 p.m. just to try to give people a little more time to take care of business. A lot of them are needing time to take communications with offices, get a little exercise, get a little sleep.

We lose an hour a day that way, but if it makes everybody a little more able to do everything they need to get done, I don't have any strong objection to it. I thought I would air it and see what the majority want me to do. Mr. English.

MR. ENGLISH: I have a related comment, if I may. I don't object to that. I think all of us -- subject to the fact, of course, that we have a day where witnesses need to go to get done, that we can reserve the right to keep going. But I especially agree about the 8:30 and the 5:30 as a general stop point.

If we get to a point, we have a day there's two or three witnesses that absolutely have to get done and by going to 7:00 or 8:00 we get them done, I would like to reserve the possibility of getting that done. I agree with the general principle. Let me raise a related issue and that is about Monday.

I'm not sure who is going to be here at 8:00 or 8:30 on Monday. My understanding is -- and I'll let Mr. Beshore speak specifically about the organic farmers, is that one of them will be here, but the others may not.

Mr. Scheik and Mr. Newell, who I thought would be able to get in Sunday afternoon, now can't get in until 11:00 p.m. or midnight Sunday night. And they're coming from the West Coast. So that doesn't suggest that they're going to be able to get on the stand at 8:00 or 8:30.

JUDGE CLIFTON: Why not? Because it's like 5:00 or 5:30 their time?

MR. ENGLISH: Right, because it's five or 5:30 their time, and I'll have no opportunity to speak with them at all.

JUDGE CLIFTON: That makes sense to me. As far as people getting a short night's sleep, we all do that.

MR. ENGLISH: Right. I will have no opportunity to speak to them. I want to think through what our start time is. And I guess Mr. Beshore can tell us when Dr. Cryan will be here, and so all of those things may flip again. I think Dr. Cryan may be arriving sometime that morning.

MR. BESHORE: Dr. Cryan is on the earliest plane Monday morning from Washington, D.C. to here, which arrives at the airport at 8:00, give or take, something a little before 8:00, I think, but he'll get here when he gets here from the airport.

JUDGE CLIFTON: How about Dr. Yonkers, could we start with him?

MR. BESHORE: I'm not sure when he's going to be here. I think he -- he really needs to go after Dr. Cryan. That's how his testimony is.

MR. ENGLISH: He had a family commitment and he's not going to land till like noon or 1:00 on Monday.

JUDGE CLIFTON: If we started at 8:30, could I fit in Mr. Carroll there? Could I fit in Mr. Vetne? Mr. Vetne probably not, because his clients haven't even testified.

MR. ENGLISH: I leave that to Mr. Carroll. If he's prepared to go at 8:30, I'm not going to object. What about Monday at 8:30?

MR. CARROLL: I'll have to prepare some more this weekend. I'm not sure I'd be finished.

JUDGE CLIFTON: Step up to the mic.

MR. CARROLL: I did want to hear more of the evidence because mine will be more conclusory.

JUDGE CLIFTON: Understood.

MR. BESHORE: One other note. I am aware there's a -- there will be a panel or -- several organic producers who would like to appear as a panel. One of them, I think, will be here, but not all of them will be here at 8:30 Monday morning.

JUDGE CLIFTON: Now, which one between Kathie Arnold and Tony Schilter is not a dairy farmer but has some other connection with organic dairy farming?

MR. BESHORE: I believe that Kathie Arnold is the dairy farmer. I do not know --

JUDGE CLIFTON: One person is from the Northeast Organic Dairy Producers Alliance.

MR. ROWER: Your Honor, yes, that is Kathie Arnold. She has sent a e-mail to me here asking if it could be in the -- soon after the lunch break on Monday, that she and three other dairy farmers will be here to offer their testimony.

JUDGE CLIFTON: So they all want to be a panel and they all want to be after lunch?

MR. TOSI: Well, she didn't exactly say a panel, but we'll see, I suppose.

JUDGE CLIFTON: Okay. All right. Well, that's interesting, isn't it? Well, did John Hornstra ever come? Not yet. So he may -- now, I'll tell you what we can do. There are two people who left us their phone number. Now, one is Erick Metzger, and I don't know whether either Mr. Miltner or Mr. Vetne would be ready for him to testify as early as Monday morning. But that's one.

And then the woman who said that her state was tired of subsidizing dairy production; my words, not hers.

MR. BESHORE: Dr. Orr.

JUDGE CLIFTON: Dr. Carolyn Orr said she's available. We have to give her notice. She's four hours away.

MR. ENGLISH: Could we perhaps, for her, have somebody from the Department call her and see if she would be available? Would that be possible?

JUDGE CLIFTON: I think that would be great. Okay. I'll give you her phone number. It's Dr. Carolyn Orr, O-r-r. Her phone number is (765) 893-8209. And if she could be here for whatever time we decide first thing Monday morning, that would be great. Mr. Beshore.

MR. BESHORE: I just want to make one quick comment on the proposed change in the hours of the schedule. I don't have any problem with that, with the proviso that we should be able to get done next week, and we must get done next week as far as -- I think we should do everything to get done next week.

I don't want to shorten the days and not get done, and I also don't want to shorten the days and be in a situation where we have a much shorter period of time to prepare and to cross-examine the witnesses from AIDA and that group, which will be at the end of the week in order to get done. I don't want to go until 10:00 because we've taken a couple of hours out of the front end of the week.

JUDGE CLIFTON: We, and the other -- the other consequence of not putting in as many hours on Monday, Tuesday, Wednesday is that we may have to stay Friday, when there's a possibility that we might finish Thursday, if we don't do that, or we might get out earlier Friday and have a better chance to go on planes than if we don't. So there are consequences when you -- when you shorten your workday. Mr. Miltner.

MR. MILTNER: Uh-huh. I just want to speak as to Mr. Metzger. Although he's not our witness, he may be commenting on one of our proposals as well as one of Mr. Vetne's. And I did not have discussion with him as to whether he preferred to wait until those proposals were presented or not.

So if -- if you would want to have USDA contact him about his preference, that would be my recommendation. But I don't know that his preference would be to go before those proposals have been discussed.

JUDGE CLIFTON: When I talked to him, and he said that he would come next week, he said he would be in touch with Messrs. Vetne and Miltner about when he should come. So I think he'll be guided by your best advice as to when he would fit in. And I think it best that you stay in touch rather than USDA.

MR. MILTNER: I will contact him, so the record -- we're not on the record, but he has not contacted me.

JUDGE CLIFTON: We are on the record.

MR. MILTNER: We are on the record. He's not contacted me in the interim.

JUDGE CLIFTON: Okay. Very good. Okay. You know, I'm going to be here at 8:00 Monday morning, and the reason I'm going to be here at 8:00 Monday morning is we noticed the hearing for that. And I've got something on the website that says that those are our hours. And I will be in this room during the hours I said I was, regardless.

But I can certainly -- I don't have as much demand on me during this hearing. My time is pretty much time free when we're off the record, and nobody else's is. And I know that.

So I don't -- this proposal is fine with me. I don't object to it. I am aware that it could prolong the hearing in terms of number of days or numbers of half days. Mr. Carroll.

MR. CARROLL: Does anyone have a list of --

JUDGE CLIFTON: Would you come where we can hear you, sir?

MR. CARROLL: I'm just wondering if we might sometime have available before the end of the day the list of witnesses that might be coming and their general subjects, so some of us may not even need to be here?

JUDGE CLIFTON: All right. Mr. Miltner, I would -- I don't know for sure. It looks to me like Monday is full, which makes me think Tuesday would be when your case-in-chief would begin. But I don't know that for sure because I don't know who else is going in between where we are now and when you go, Mr. English.

MR. ENGLISH: I think I advised, your Honor, at the beginning that we have two witnesses scheduled for Tuesday, Mr. Warren Erickson and Ms. Chrissie Dewey, both who will arrive early enough on Monday so they can go first thing Tuesday morning, that that won't be an issue.

I wonder, given everything else we have on for Monday, whether Dr. Yonkers may actually get on Monday. And therefore he may get on Tuesday, just to be realistic about it. But obviously once Dr. Cryan is finished and Dr. Yonkers is here, he can go on, so he might be able to start. It may be the case, so -- I just want that to be what there is.

I have, in answer to Mr. Carroll's

question, Mr. Scheik and Mr. Newell. Mr. Scheik is from the Dairy Association of California. Mr. Newell is from HP Hood. Obviously it's processor pieces. Mr. Warren Erickson is from Anderson Erickson Dairy. A-n-d-e-r-s-o-n, no hyphen, E-r-i-s-t-k -- I'm sorry. E-r-i-s-k --

JUDGE CLIFTON: No, no, you don't mean s-k.

MR. ENGLISH: I'm sorry, c-k. Thank you, your Honor. And Chrissie Dewey, D-e-w-e-y, from Harrisburg. H-a-r-r-i-s-b-u-r-g.

JUDGE CLIFTON: And how does Chrissie -- how is that?

MR. ENGLISH: C-h-r-i-s-s-y.

MR. BESHORE: I-e, I think.

MR. ENGLISH: I-e. We'll know when she gets here.

JUDGE CLIFTON: And I assume that Harrisburg Dairy is in Pennsylvania?

MR. ENGLISH: Pennsylvania, yes. A relatively small -- very small regulated handler in Pennsylvania.

JUDGE CLIFTON: Okay. Other thoughts, Mr. Beshore?

MR. BESHORE: Just for our information

now, two other witnesses that I'm aware of for Tuesday; Mr. Hollon would expect to testify, and there is a representative, whose name I do not know, of a small dairy in Michigan that I would expect to come on Tuesday.

JUDGE CLIFTON: Now, Mr. Miltner, if you would come back to the podium. When you talked to me about your case, I was thinking it was three days' worth. Am I right on that?

MR. MILTNER: We believe it's more likely two, your Honor. Okay. Two and a half was whispered behind me.

JUDGE CLIFTON: And that includes your experts?

MR. MILTNER: It does.

JUDGE CLIFTON: Two and a half days. Let's assume for a minute that you didn't even get on Tuesday, didn't even get started Tuesday. Now, I hope that doesn't happen.

MR. MILTNER: Nor do we.

JUDGE CLIFTON: But if you started Wednesday and you had Wednesday, Thursday, and half of Friday, then when is rebuttal?

MR. RICCIARDI: Well -- go ahead, I'm sorry. I'll get out of the way. You can do it.

MR. MILTNER: Well, what did --

JUDGE CLIFTON: Don't leave him.

MR. MILTNER: I want to make sure --

(Off the record.)

MR. MILTNER: There are -- Mr. Vetne, who had to return to his home on a flight a little while ago, wanted me to make sure that the Court recalled that his witnesses, which I believe are three, were planning on coming in Wednesday. And he did anticipate that those witnesses would take up no more than half a day.

JUDGE CLIFTON: And we may have some more dairy farmers who knew this week would be crowded and will show up.

MR. MILTNER: Mr. Carroll, I don't know his case, when he intended to finish his.

JUDGE CLIFTON: All right. Mr. Carroll and Mr. Vetne will both be witnesses. So they have to fit in. They may want to go after your -- your case-in-chief.

MR. MILTNER: I don't know about Mr. Vetne as a witness. But I know that his -- I guess his client witnesses -- or his producer-handler witnesses are intending to be here Wednesday.

JUDGE CLIFTON: Okay. All right. I personally don't think it's smart to shave off an hour. But I'll put it to a vote now. All in favor of amending the core hours, knowing that we don't always confine ourselves to the core because sometimes we have to go later, amending them from 8:30 -- from 8:00 to 8:30 and from 6:00 p.m. to 5:30 p.m., please raise your hand.

All those opposed, please raise your hand.

Oh, great, it's a tie.

MR. MILTNER: Mr. Vetne votes in favor.

MR. WOODY CARROLL: Can we ask the court reporters? Can we ask the court reporters?

JUDGE CLIFTON: Ah, let's go off record for just a moment.

(Off the record.)

JUDGE CLIFTON: All right. We're back on record at 12:54. I'm going to keep it 8:00 to 6:00. I'm sorry, we've got a lot to do. It would be preferable if we finish it next week. And for that reason, I'm not going to shave an hour off the core.

I am aware that this whole thing is a tremendous hardship on everybody who's participating. And I am sorry for that. But we'll keep the hours as they are, 8:00 to 6:00, as a general matter.

Okay. Mr. Miltner, when you do begin your case in chief, can you give me an idea of what witnesses you would call?

MR. MILTNER: Sure. First, there's a witness who is not our witness but we've been told is coming in. His name is Jim Oberweis. He'll be here on Tuesday. I don't expect his testimony to be lengthy. So we can pencil him in on Tuesday.

One of the members of AIDA may only be available on Tuesday and we're working very hard to confirm that. But, again, we don't anticipate that his testimony would be lengthy. His name is David Boyd. Longmont Dairy in Colorado.

JUDGE CLIFTON: Ah, my old stomping grounds.

MR. MILTNER: Our experts we would like to get on the schedule for Thursday, so we can -- I don't think that if we do that now and lock them in for Thursday there should be any issues.

JUDGE CLIFTON: All right. And how many experts do you have?

MR. MILTNER: Two.

JUDGE CLIFTON: Two. All right. And do they have written statements?

MR. MILTNER: They will have written statements.

JUDGE CLIFTON: And how early can you distribute those?

MR. MILTNER: I believe we have to distribute them the morning before.

JUDGE CLIFTON: You are going to try to distribute them on Wednesday for Thursday?

MR. MILTNER: I believe we have to distribute them the morning they testify.

JUDGE CLIFTON: Okay. And that's the earliest people will have them?

MR. MILTNER: Unless we shave some more hours off the day so we can meet with them and stuff.

MR. HOLLON: That's what the weekend is for.

MR. MILTNER: No, the weekend is to spend with my kids, Elvin.

JUDGE CLIFTON: And who are they?

MR. MILTNER: Ron Knutson, K-n-u-t-s-o-n, and Wayne Knoblauch, K-n-o-b-l-a-u-c-h.

JUDGE CLIFTON: And what was the first name on Mr. Knutson?

MR. MILTNER: Ron Ronald.

JUDGE CLIFTON: Okay. Now, you have no idea how long they'll be cross-examined, but just guessing, how many hours should I allot to each of them for direct, cross, redirect, recross, redirect, recross again?

MR. MILTNER: I would say two hours for Dr. Knoblauch and three hours for Dr. Knutson.

JUDGE CLIFTON: Are they both economists?

MR. MILTNER: They are.

JUDGE CLIFTON: Okay. Would they be your final witnesses?

MR. MILTNER: Depending on scheduling, we would hope so.

JUDGE CLIFTON: And then Friday could be for rebuttal.

MR. MILTNER: Friday could be for rebuttal. And then we have the additional producer-handler members of AIDA that would likely be sending in representatives to testify, we hope, on Wednesday. And it may make sense, if they spill over and we've completely exhausted ourselves Wednesday, to put one, perhaps two of them on before the economists, into Thursday.

JUDGE CLIFTON: All right. Thank you, Mr. Miltner. Who else knows of witnesses who will be next week who have not already been identified? Mr. Yale.

MR. YALE: I will be consulting with my client this weekend and there is the possibility that we may have one, hopefully very short, witness, but with direct and cross might be an hour or so.

JUDGE CLIFTON: Okay. And you won't know until after this weekend --

MR. YALE: Monday, right.

JUDGE CLIFTON: -- when this witness would appear?

MR. YALE: I think they can appear anytime that works for the Court towards the end of the week. I mean, we can be very flexible. But I'm not going to know for sure when or whether until the weekend.

JUDGE CLIFTON: Okay. Good. Are there any other counsel who have been participating throughout who also wish to testify besides Mr. Vetne and Mr. Carroll? I see no one.

All right. Good. Thanks. Are there any other preliminary matters before we resume the testimony of Mr. Carroll's clients? No.

All right then. I need someone to bring up a chair. I believe these two witnesses will testify as a panel. So if we could bring a chair and the witnesses can come forward.

Isn't it nice when he takes the uncomfortable one. Now, you actually have to physically pass the microphone back and forth and you really do need it pretty close to your mouth. So I'd like you each to state who you are and spell your name.

MR. MONTGOMERY: Donnie Montgomery, D-o-n-n-i-e, M-o-n-t-g-o-m-e-r-y.

MR. BOWER: David Bower, D-a-v-i-d, B-o-w-e-r.

JUDGE CLIFTON: Thank you. And which one of you wants to affirm?

MR. MONTGOMERY: Both.

JUDGE CLIFTON: Both. That will be easy. I'll do it at the same time.

(Both witnesses were affirmed.)

JUDGE CLIFTON: The record should reflect that each witness has answered yes.

Mr. Carroll, you may proceed.

DAVID BOWER, DONNIE MONTGOMERY

of lawful age, being duly affirmed, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. CARROLL:

MR. CARROLL: Thank you very much, your Honor. I'm going to address my questions to Mr. Bower to start with.

At this particular time are you in the milk business?

MR. BOWER: Yes.

MR. CARROLL: And what part of the United States are you doing business in?

MR. BOWER: We're in Southwest Virginia.

MR. CARROLL: And is it W-i-r-t-z? Is that your post office address?

MR. BOWER: Yes.

MR. CARROLL: How is that pronounced?

MR. BOWER: Wirtz.

MR. CARROLL: Wirtz, Virginia. And the name of your business is Homestead Creamery?

MR. BOWER: Yes.

MR. CARROLL: Is that correct?

MR. BOWER: (Nodding head.)

MR. CARROLL: Now, the gentleman sitting next to you, Mr. Montgomery, is he related to you in any way?

MR. BOWER: He's my cousin.

MR. CARROLL: Are you in business together?

MR. BOWER: Yes.

MR. CARROLL: Thank you. In your own words, could you explain what that business is and how it operates?

MR. BOWER: Donnie Montgomery has two sons about my age, and as we were forced to decide our career and our future in the dairy industry, we decided to try to keep the family farm. And which time as we're in right now, $11 milk comes, we really see no future, no future of ever being able to buy the farm. So we come to the conclusion that we would like to come together as two small farms. At the time we were around 70 cows a piece.

And we would like to become united and be a producer-handler. And we have not been able to achieve that in our market administration because of a technicality, and so we've done the best we can to be a united team as a little niche market, support sustainable agricultural, support an all-natural product, focusing on the local people.

We focus on home delivery, which to some is dying, but to some may drop crumbs that becomes a niche for others.

We have also worked with Krogers as a small niche market and we're strictly in glass. We do some other things that are not, but our -- the core of our business is in glass in the niche market. So together Donnie Montgomery and myself as family entities, we've run our farms and run the creamery together to try to sustain our farms to keep them in the generations.

MR. CARROLL: Okay. Are you recognized as a producer-handler by the state of Virginia?

MR. BOWER: By the state, yes.

MR. CARROLL: But not by the Federal Order?

MR. BOWER: Right.

MR. CARROLL: And do you want to change that status? Do you want to become a producer-handler under the Federal Order?

MR. BOWER: We would like for the administration to recognize that we could change the technicalities to be operations rather than ownership, so that we could be a producer-handler. But we also recognize that there is a proposal in for exempt plants to be raised to 3 million also.

We feel that as -- the Montgomery family and I, our families has come together, that we believe that we come to America for the freedoms that it offered. And to take away and grandfather in and to stop these freedoms would be a great detriment to the small farmers as we are. So we would like for the exempt plants to be raised also.

The 150 completely stifles any opportunity to serve the organic or natural or the local sustainability farming that all of the government colleges teach. So we would really plead with this Department to recognize and raise -- it does not have to be 3 million for the exempt status. Maybe it could be 1 million. 450 would not even take care of a 200 cow dairy.

So when you have a couple of farms -- and I know in hearing the testimony and being a part of this that a couple of thousand cow dairies could real easily come together and raise havoc in the marketplace.

However, a couple of hundred cow dairies or a couple of 50 cow dairies are not going to do anything. We don't have the money. We're leveraged to the hilt. So to speak, we've bet the farm. If it goes wrong, we lose everything, the farm.

So we really would plead with the administration not to leave it at 450 but at least bring it to a million or something and allow what the consumer is demanding to us.

They're coming in hoards. The Green movement is great now. They're coming and there's a niche of that. And that movement will never be as big as the Wal-Mart and the Costcos that we've heard about and these grand numbers that we've heard today.

But could we just have room for us to be made now? And then I testify for my grandchildren and great-grandchildren, that they can come together and stay in the dairy industry. If you don't allow this, the heart of the American that has made America what it is is gone.

MR. CARROLL: I wanted to ask you about your family a little bit. When did they first come to the state of Virginia?

MR. BOWER: The best we can tell, our people come from Schwarzenau, Germany, in the mid 1700s. They came for religious living, and farming was a way of life. They took that up. Exactly where that boat landed and how they walked, I'm not sure.

MR. CARROLL: Okay.

JUDGE CLIFTON: Do you know how to spell the town in Germany?

MR. BOWER: No.

JUDGE CLIFTON: Say it again.

MR. BOWER: Schwarzenau.

JUDGE CLIFTON: Okay. Schwartz I can spell. What's the last part of it? Schwartz --

MR. BOWER: It's pronounced Schwarzenau. But it's a real long word. I have no idea.

JUDGE CLIFTON: Schwarzenau.

MR. MONTGOMERY: Schwarzenau.

MR. BOWER: Schwarzenau maybe.

JUDGE CLIFTON: Schwarzenau. I think make it say Schwarzenau. Well, court reporters, do the best you can.

MR. CARROLL: Schwartz is German for blank, isn't it?

MR. BOWER: I have no idea.

MR. CARROLL: S-c-h-w-a-r-t-z, is that part of it, and then there's another?

MR. BOWER: Maybe a-u.

MR. CARROLL: All right.

JUDGE CLIFTON: So it's sort of a French-German town maybe.

MR. CARROLL: It may have been from Alsace-Lorraine. You know, they say -- the Scotch-Irish, they say those folks don't know which they are.

Is part of your thought that relatives ought to be given something when they're getting together and working together, ought to have some recognition as a family-type recognition in the marketing order?

MR. BOWER: Yeah, we've talked about -- me and Donnie and myself are cousins and when we come together -- his and son and I are the founding ones that really worked on it. And possibly down the road, my son and one of his brothers would want to do it or one of his cousins would want to do something like this.

That's why we would believe in some relaxed definition so that families that aren't father and son can be producer-handlers. And we understand that producer-handlers can be a detriment and they can hurt when they become really big. So we have no problem at all with putting the caps on it, but just relax it so that the ones of us that like to farm doesr't have to hire New York attorneys to help us do that.

MR. CARROLL: With that, your Honor, I retire from this deal. Thank you very much.

JUDGE CLIFTON: You may be proud to be a Virginian.

MR. CARROLL: I didn't mean that in a bad way. He's done a good job.

JUDGE CLIFTON: Do we want separate comments?

MR. MONTGOMERY: I would just reaffirm what Dave said. The reason I got into this was because of the young guys. I'll just share what my father-in-law told me. He said that a young fellow and a older fellow makes the best partners because the young fellow has all the ambition, too much of it sometimes; the older fellow can hold the reins on it. And maybe I didn't hold the reins enough this time, but we got into the processing business.

JUDGE CLIFTON: Thank you. Cross-examination, please. Mr. Yale, why don't you begin?

CROSS-EXAMINATION

BY MR. YALE:

MR. YALE: Benjamin F. Yale for Continental Dairy Products and Select Milk. What part of Virginia are you in?

MR. MONTGOMERY: We are in the foothills of the Blue Ridge Mountains on the east side, about 25 miles south of Roanoke.

MR. YALE: Okay. So basically western Virginia, right?

MR. MONTGOMERY: Southwestern Virginia, yeah. On the other side of the mountains would be considered the western part of the state.

MR. YALE: I didn't want to offend you. I wanted to understand your structure. You don't qualify as a producer-handler, but yet you still own the farm -- the farm is owned by one person and the plant is owned by somebody else?

Is that the --

MR. BOWER: Yes. We don't -- Donnie and his family owns his farm. My family owns our farm. And we understand the laws that's wrote now. That's why we're asking for the fact that two brothers in the future, two cousins could come together, they could own two separate dairy farms and come together with a small little bottling plant.

MR. YALE: Okay. Does somebody own a bottling plant now?

MR. BOWER: We do, together.

MR. YALE: And you take your cousin or your brother's milk and --

MR. BOWER: Yes, ours we take -- the two of us put our milk in. Two separate dairy farms go into one creamery, operating as one creamery.

MR. YALE: Now, are you -- I don't want to probe on this too far. If I become offending, I apologize, and we'll change that.

But you can't organize as a company or a legal entity in order to take advantage of that or that -- have you looked at that possibility? Is that something you cannot do?

MR. BOWER: Mr. Carroll has indicated

that he could, but it would be very complicated, very, very complicated. Possibly he could.

MR. YALE: So your concern -- you're -- really, your support is more not just the 3 million pound cap or a higher one, but also -- for PDs but also to include exempt plants?

MR. BOWER: Yes. And we -- we also understand that maybe they wouldn't be quite as high. In other words, maybe they would be held at 1 million as an exempt plant whereas the producer-handler would be 3 million.

MR. YALE: Okay. Very good. I have no other questions.

JUDGE CLIFTON: Thank you, Mr. Yale. Mr. Beshore.

MR. BESHORE: I just have one question.

CROSS-EXAMINATION

BY MR. BESHORE:

MR. BESHORE: Are you currently a pool plant?

MR. BOWER: Yes.

MR. BESHORE: And that's under Federal Order 5?

MR. BOWER: 5.

MR. BESHORE: How long have you been in

operation?

MR. BOWER: We started on January 16th of 2001.

MR. BESHORE: And you've been a pool plant during that full --

MR. BOWER: No. 150,000 is -- is our limits, and we've bounced in and out a lot. You know, of course, Christmas season would get us into eggnog in fluid 1 sales, but we're not always. However, in the last year we've been around 300,000 where we're at right now.

Our facility, however, would never allow us -- ever allow us, the way we are now, to grow to 3 million or over.

MR. BESHORE: Okay. Thank you very much.

JUDGE CLIFTON: Who else would like to examine Mr. Bower or Mr. Montgomery? Mr. Tosi.

CROSS-EXAMINATION

BY MR. TOSI:

MR. TOSI: Thank you, Mr. Bower, and, Mr. Montgomery, for coming. I'm enjoying your testimony. I'm going to ask some things just to help summarize a little bit where you're at. What you are really seeking is a modification to one of the proposals that would increase the exempt plant limitation to be something greater than 150,000?

MR. BOWER: Yes. And we understand there's a proposal that takes the exempt plants to 450, and we're just pleading that 450 would not suffice.

MR. TOSI: Okay. And the reason that that doesn't fit your situation is because you don't have the option -- even though you're blood relatives, you don't have the ability right now to -- to get the -- to meet the current Federal Order Standards for being a producer-handler?

MR. BOWER: It would be very, very complicated to do that, if we even could, because as we understand -- and I'm sure someone has that here, that it has been to be one owner. The one has to be the singular owner, singular risk all the way through. And it makes it really complicated.

We try to keep everything a farm. We don't really want to build a legacy amongst us. We like to keep things small, so Montgomery would own his farm and we would own our farm. And that's why we would like to have operations rather than ownership to be that.

So if it would be changed and would be relaxed in the terminology, we could accept and be a producer-handler, that'd be fine. If not, we'd plead with the exemption, and not only for our case but for other little, small organic, all natural farmers to have a provision where a couple could come together. And 450,000 won't handle 200 cows at the milk -- at the rate we like to see them milked.

MR. TOSI: Are you offering a specific number for an exempt plant exclusion?

MR. BOWER: We would offer 1 million.

MR. TOSI: 1 million pounds?

MR. BOWER: (Nodding head.)

MR. TOSI: Would you consider it to have had your interests satisfied if the exempt plant definition went a little bit further in some of its features that would -- that would allow, for example, a partnership like you have with your cousin, to look at that a little bit differently?

MR. BOWER: Yeah. Yes, we'd be up for that. Really, the one thing that we would strongly oppose would be any grandfathering.

MR. TOSI: And what's the harm that you see in grandfathering?

MR. BOWER: I hope to have -- I have two young sons. I hope that they can carry that forward. And I hope that the same freedom that my forefathers come across that ocean for is continued to hand down to my children and their grandchildren, so it's not socialism but freedom.

MR. TOSI: Okay. I have no other questions. And again, thank you for coming. And I know you guys have been here awhile at the hearing, and I appreciate your participation and your attendance here. Thank you.

JUDGE CLIFTON: Mr. Carroll, do you have any redirect examination?

MR. CARROLL: I have none. Thank you.

JUDGE CLIFTON: Thank you very much. I appreciate your testimony very much.

JUDGE CLIFTON: Ready for Mr. Carman, and he has escaped. No, he's here.

MR. ENGLISH: I would if I were him.

JUDGE CLIFTON: Do we need a little break? Why don't we have a little break and then I'll ask for an announcement from USDA as you.

A. Thank you.

Q. Thank you.

A. My name is Warren Taylor. I am the owner of Snowville Creamery in Pomeroy, Ohio. Snowville Creamery is an exempt plant, now processing about 130,000 pounds per month of Class I milk. We started construction of our plant after meeting with our Market Administrator and confirming plans to become a producer-handler as volume increased. We believed a reasonable payback would require at least 500,000 pounds per month in Class I sales. We began production and distribution of pasture-grazed minimum processed milk in December 2007. The business is owned entirely by myself and my wife, Victoria Taylor. It is now an informal partnership with the dairy farmer couple of Bill Dix and Stacy Hall, on whose 350 acre, 230 cow seasonal dairy farm the milk processing plant was built.

We are growing our business, constantly gaining sales. More importantly, stores see gains in their total milk sales, showing we are not just cannibalizing sales from other milk, but increasing per capita consumption in our new customers. Every week we receive additional testimonials from customers extolling the glorious taste of our milk. These testimonials include people who had been drinking soy milk, parents whose children refused to drink milk or drank very little, and people who had lost their enthusiasm for milk years ago. These testimonials demonstrate clearly and convincingly that all milk is not the same. We are producing milk that tastes dramatically different from the vast majority of milk available, conventional or organic. We have given consumers a new choice, and our dairy farmers a price well above market.

You can call me a dairy nerd. My father Bert was one of the gentlemen of the 1950 through 1985 American Dairy Industry. He earned a Diary Technology degree from Ohio State University in 1953, where he was on the dairy products judging team that won the national contest. He went on to help organize and run the annual National Dairy products judging contest for 20 years, and was honored with appointment to the Board of Directors of DIFSA, the Washington, D.C. dairy organization which preceded IDFA.

I grew up in a home where dairy products were celebrated and appreciated. We had hand-cranked ice cream regularly. Although meat was a Sunday treat, there was always plenty of milk and cottage cheese. Velveeta was unknown in our home. I was raised on fine sharp Wisconsin, New York, and Vermont cheddar. The owners of Columbus area dairy processing plants were regular visitors to our home, as we were OSU Dairy Tech professors and grad students. I received a dairy tech degree in 1974 and was at the headquarters of the world's largest fluid milk processor in 1977.

In my ten years at Safeway from 1977 to 1987, the dairy industry changed dramatically, as fluid milk consumption declined, farmer income declined, and gallon jugs became the norm. Child obesity rates began to rise as children's consumption of milk declined and 30 percent fat cheese and cheese like products became the principal end products of America's dairy cows, instead of Class I fluid drinking milk. Compromises in quality were made. We learned that when plastic jugs were introduced, widespread complaints about the flat oxidized flavor resulting from light exposure could be greatly reduced by pasteurizing at about ten degrees Fahrenheit higher temperature, say 175 instead of 165. The cooked flavor of the higher pasteurization masked the oxidized failure. Milk become a low cost commodity. After ten years at Safeway Dairy Division headquarters and a couple of years as the Director of Application Engineering for Cherry-Burrell, I started a process design consulting firm specializing in the dairy industry. It became the world's largest pure consulting firm doing food process design. We were responsible for many major projects including the last high capacity fluid milk plant in America for Santee Dairies in Los Angeles, much of Dannon Yogurt Company's process design including the process for what became the Activa probiotics drink, Daisy Brand Sour Cream's new Dallas plant, which is the largest sour cream plant in the world, and the largest fluid milk plant in all of Europe for Aria Foods. Other projects included Land of Lakes first UHT and consolidated culture products plant and a $120 million aseptic facility for Slimfast. In all of these projects, my Safeway experience, knowledge of plant operations, and understanding of the economics of scale and facility operating costs were key to our unique contribution.

As American investment in dairy plants declined, I looked to apply my knowledge to design an efficient small scale farm milk bottling plant in my community. I hoped to learn whether providing a premium pasture grazed minimally processed milk might increase per capita consumption. Other hopes included: Supporting local family farms by providing a higher value outlet for raw milk than is offered by large national cooperatives. Providing jobs for local residents with safe and satisfying working conditions, opportunity for progress and personal development, and the pride of helping provide healthful food to the community. Providing milk as fresh as practical from cow to consumer, as contrasted with the common usage of the word fresh to mean not spoiled. Promoting pasture grazed dairy farming without the use of recombinant bovine growth hormone, (rBGH), and providing customers the choice of supporting these principles.

In one of the most impoverished and unemployed counties in Ohio this is a model and prototype for future arrangements in other rural locations. The economic spinoff of this local economic development is great. We have seven full-time employees and seven part-time employees. The payroll of these local workers contributes to the local economy and tax base.

Our small local dairy is responsible and responsive to the community. We believe that providing -- we believe that providing basic needs of life should be done in a way to contribute to the common good. We give consumers the choice of supporting a more rational, sustainable, and healthful world and self, by consuming our dairy products. We believe this excellent milk will reverse children's 30 year decline in fluid milk consumption, and help solve the current health/obesity crisis. I believe the current decline in fluid milk consumption is related to minimum cost production methods and more extreme processing for the longer shelf life required when distributing from large centralized facilities.

Snowville Creamery makes it possible to give consumers truly fresh milk, on their retail grocery shore shelves the day after the cows are milked. With daily deliveries and nearby responsive processing capability, our consumers enjoy our dairy products within days of the cows producing the milk. By contrast, today's dairy products usually reach consumers one or two weeks after milking. I believe we represent an exciting and promising future, especially for smaller family farms: Local differentiated premium milk.

Market access. The economics of retail grocery store delivery with refrigerated distribution trucks are brutal. The industry cost estimate for a single delivery with a 40 foot semi truck is $250. We believe our costs are between $25 and $50 per delivery, depending upon distance between stores, and distance between our production facility. Even then we simply cannot economically supply small mom and pop stores, health food stores, or convenience stores which commonly sell $100 worth of our milk a week. The cost of delivery exceeds the profits until we are delivering at least $250 worth of milk a week. The proposals from NMPF and IDFA are based on the clear understanding that the only real cost effective high volume sales available are in the stores which are controlled and supplied largely by IDFA members. The restrictive verbiage proposed which prevents producer-handlers from co-branding is based on protecting the large lucrative supermarket business and relegating smaller producers to costly, less than desirable small regulators. That's not a level playing feed.

At the typical local store our $2.99 per half gallon competes with milk which sells for $1.99 per half gallon. At that price we both probably make about 10 percent on the retail gross as profit. At least one week per month our typical store puts their half gallon milk on sale for $1.00. Our milk goes from costing 50 percent more to costing three times as much. When this happens, our sales drop about 15 percent. Unfortunately, we get no notification when the milk will go on sale, so we cannot be prepared to adjust our deliveries to the store. We routinely must take back unsold milk when half gallons are on sale. At least one other week per month the gallon milk is put on sale for $2.99 per gallon. When this happens, half gallon sales also drop, usually about 10 percent. Again, this is disruptive to our marketing and results in unsold returns. It's not a level playing field.

One reason for low dairy farmer income is the below reasonable loss leader pricing set by vertically integrated grocery chains such as Kroger and Safeway. About 70 percent of fluid milk is sold in plastic gallon jugs at a price which is usually near cost. An indication of the disconnect between raw milk pricing and commodity fluid milk pricing is the common practice of a processing plant bottling a generic labeled milk which retails for perhaps 50 percent less than the identical milk in an identical jug with a different brand label.

JUDGE CLIFTON: Let me ask you -- you read that as 50 percent less.

THE WITNESS: Oh, excuse me. I'm sorry. 50 cents less. Thank you.

JUDGE CLIFTON: You're welcome.

A. While this is an amusing facade of consumer choice, it more accurately displays the relative impact of the alleged 15 cents per gallon raw milk difference -- raw milk cost difference which NMPF and IDFA purport cause disorderly marketing and unfair advantage. Nothing, really.

Market support. After struggling and failing to get access to large regional and national stores, we began to supply two Whole Foods Markets in Columbus last August. Within three weeks we were the biggest selling fluid milk in both stores. Whole Milk asked us to supply their two stores in Cincinnati.

JUDGE CLIFTON: Would you read that sentence again?

A. Whole Foods asked us to supply their two stores in Cincinnati. There again, we became the best selling milk in both stores in less than a month. We then began supplying the two Whole Foods Markets in Cleveland in November and were the best selling milk in those stores by December.

The difference between Whole Foods and the other grocery stores we have been serving was their sincere support of our milk, and their willingness to give Snowville Creamery shelf space commensurate with growing sales. Whole Foods is committed to encouraging local suppliers, and appreciates our principles of sustainability, animal welfare, and high quality, wholesome, minimally processed milk. As such, they are willing to allow us to succeed and even supplant their own house brand as their largest selling milk.

Given honest access to the market, and a level playing field, we can excel. We are still looking to receiving the benefits of a level playing field from major grocery stores.

We recently began supplying a grocery store chain right here in Cincinnati. In one of their larger stores there are 75 shelves of milk in the dairy case. 73 of those shelves are filled with Dean Foods milk including the Trauth Dairy label, the grocery store generic label, Horizon Organic, Nature's Basket Organic, and Over The Moon. There are only two other shelves available there, both supplied with milk from Organic Valley. These two IDFA members completely monopolized the milk case until we arrived.

It will be interesting to see if we can establish a toehold in these stores and grow our market. This grocery store chain seems sincerely committed to encouraging local food producers. Unfortunately, they only have four stores in the entire Cincinnati area which have a demographic promising to our milk and the size large enough to support the twice weekly deliveries necessary to properly supply our fresh, relatively short shelf life milk.

The proposals. As an exempt plant, I support the principles of Proposal 2 from NMPF which explains that, quote, Given growth in farm size and growing economics of size in milk processing, it is reasonable to increase the size exemption to 450,000 pounds per month, and we propose to do so, end of quote. In supporting this concept in Proposal 2, I also speak for two other Ohio exempt plants, Hartzler Family Dairy, Inc. in Wooster and H.D. Organics, Inc. in Utica. We all could serve an increasing consumer demand for local fresh premium milk if the exempt limit was raised.

While I agree with the basic premise, in today's world a fluid milk plant of only 450,000 pounds per month cannot be economically constructed and operated. Instead, I believe that 1 million-pounds per month is more realistic in providing sufficient volumes for an economical operation. Please refer to A Cost and Returns Evaluation of Alternative Dairy Products to Determine Capital Investment and Operational Feasibility of a Small-Scale Dairy Processing Facility, from the Journal of Dairy Science, 2007. This well prepared recent study found that even a facility processing 644 million pounds per month would have a substantially negative net present value or profitability. I quote the following: Fluid milk plants have closed due to inefficient economies of scale and because of the product -- because the product - beverage milk - is essentially an indistinguishable commodity. It is very difficult for a processor to position a fluid brand to strategic advantage. The exceptions seems to prove this rule.

The five farm (640,000-pound per month) fluid plant would need a 6 percent increase in present value of reserves, which translates to a 24 cents increase in the price received per gallon of milk sold. It is unlikely that the fluid processing plants would be able to overcome the baseline revenue shortfalls or the high level of expenses to reach a break-even point.

As a member of AIDA, I also support Proposals 23, 24 and 25. Producer-handlers, especially those operating below 10 million pounds per month, must depend on their milk having a value added component, due to lack of large scale efficiencies enjoyed by large processors. This added value should be reflected all the way back to producer-handler, without being diluted by pooling.

The Organic Dairy Industry has proved that value can be added on the farm by the production method. The FMMOS has been an unfair market distorting manipulation which has redistributed that wealth and value to non-organic commodity lowest cost dairy producers with which organic competes.

John Kennedy famously stated that life is not always fair. The marketplace favors the older established companies. The increasing consolidation and growing size of dairy handlers and processors confirms this fact. Neither Kroger nor Safeway have built a new high volume fluid milk plant in over 20 years. Their capital costs are long since paid off and depreciated. Any new producer-handlers entering the marketplace will find the cost of capital will likely exceed all other costs except raw milk itself. This economic disadvantage far exceeds 15 cents per gallon. There is no need to grandfather producer-handlers.

One of the last new fluid milk plants? Built in America was in Nevada, by Dean Foods, to take advantage of a market distorting manipulation of the 2005 Milk Regulatory Equity Act which was supposedly enacted to remove just such market distort advantages from producer-handlers.

Diversity and customer choice. While there always will be a commodity milk business based on lowest cost, there has always -- there also always -- should be has been other business models based on value-added differentiation, which is what most producer-handlers follow. The lowest cost commodity milk business will always serve the vast majority of consumers. But a portion of consumers want differentiated milks, particularly locally produced milks from farms following business models other than lowest cost commodity production. These customers place value on knowing the specific farm producing the milk and the farming methods used. They increasingly value pasture grazed or grass fed milk, for instance.

Let's be honest. The commodity milk market is declining with a continuous decline in fluid milk consumption. There is no sign that this trend will change.

In contrast, our local, minimally processed pasture grazed milk is growing. I have brought 25 unsolicited testimonies from consumers who find our particular and different milk has led to their increased consumption. They know that all milk is not the same, and that this milk has a much higher value to them. That value belongs to the small local farmer -- farmer whose production method created it. It will always be a small part of the fluid market, and no threat to the commodity processors or the FMMOS.

Testimony in these hearings has included the fact that smaller dairy farmers have a tremendous cost of production disadvantage, 4 to 5 dollars per hundredweight. If these farms are able to have any future, it must be through adding value or government subsidies. They cannot possibly compete with commodity milk. They are not on a level playing field. Is our future one that willingly eliminates all small dairy farms below 1,000 cows? Perhaps it is if Proposals 1 and 26 are accepted.

I believe in diversity, in a variety of business models, and choices for both dairy farmers and consumers in the marketplace. Most grocery store -- grocery stores, it should be, in Ohio offer between three and five different ultra pasteurized out of state organic milks, but few have a locally produced pasture grazed cream line milk, although customers want it. For those customers to be served, small vertically integrated producer-handlers must be an available position for entrepreneurial dairy farmers. Thank you for the opportunity to present my outlook and experience.

BY MR. RICCIARDI:

Q. Thank you, Mr. Taylor. I actually want to go through a couple of items in your statement with you, where there were word changes, so that we can confirm what actual language you want in Exhibit 95.

On page 4, the middle paragraph beginning, Snowville Creamery. Did you find that?

A. Yes.

Q. It reads, Snowville Creamery makes it possible to give consumers truly fresh milk. You read, when you read it, the word customers instead of consumers.

A. Oh.

Q. Do you want --

A. Consumers is fine.

Q. -- consumers to remain? Thank you. The judge pointed out what you read on 5. I think you've corrected that.

You mentioned during the course of your testimony a cross-out, an additional word near the bottom of page 8, under the Diversity and Consumer Choice paragraph. After the first clause, after the comma, when you read it, you deleted the word, has, and you added it in between always and then, so that it would read: There also always has been other business models.

Is that the way that you want your statement to read?

A. I think that could -- there -- it could remain as it's typed. There has also always been, yes.

Q. Okay. Bottom of page 9 in the last -- next to last paragraph -- actually, the last full paragraph, you added the word S after store. So it reads most grocery stores. Is that a change you want to make?

A. Yes, it is.

Q. And then, again, in the last sentence where it says, for those consumers, you again read customers. Do you want it to say --

A. Consumers.

Q. Consumers. Okay. Fair enough. All right. Now, a few follow-up questions for explanation on your statement before I sit down and others ask you questions.

And for the -- jumping off point for this issue. Page 6, the middle part of the page you begin the sentence, given honest access to the market, et cetera. Do you see that?

A. Yes.

Q. All right.

A. Yes.

Q. In terms of a startup business like Snowville, is it difficult to be able to market your milk and obtain shelf space in the larger grocery chains?

A. It's -- it's extremely -- it's extremely difficult. Our experience with Kroger was that we visited corporate headquarters, talked to the national dairy buyer, were volunteered that we were welcome to serve our local store and see how we did.

Q. Okay.

A. We sold 80 to 100 cases a week within a month. And they refused to give us another store. It was clear that if we'd sold 10 cases a week, we could have had many more stores.

Q. All right. Now, you -- you also indicate that currently, at least, Snowville has a status of an exempt plant?

A. Yes.

Q. Correct? And you're not currently a producer-handler?

A. We're below the volume necessary to become one.

Q. Okay. And I think you discussed it at least in general in your statement but I want to ask you specifically. Is one of the reasons you're currently not a producer-handler in that status, leaving aside the volume you just referenced, the difficulties in balancing the producer-handler with --

A. Absolutely. We take milk from the dairy farm that our plant is located on. But at this point we're only using about half of the milk. So I recognize if we were -- if we had a producer-handler status, the additional milk that that plant right now is selling to an out of state processor would be sold at Class IV.

Q. Okay. And then, lastly, before I sit down, again, Exhibit 96 we've spoken about briefly and you've referenced it on page 9 of your statement.

Again, the front sheet of it contains the names and e-mail addresses of some of the customers of Snowville Creamery, correct?

A. Yes.

Q. And the remainder of the document stapled together are the actual comments, unsolicited comments, received from those customers?

A. Yes, sir.

Q. And you have obtained their permission to share those comments with the Secretary?

A. Yes.

Q. In general, then, what is the purpose for providing this type of information to the Secretary at this hearing?

A. I think that the fundamental premise of the Federal Milk Marketing Order system is that all milk is the same, and the principle of fairness is that all farmers should be paid the same for milk. And I think that as a dairy technologist who got out of college when production methods were starting to change, there's no question but that there's -- there's tremendous differences in milk depending on breed and feed, let alone things like state of lactation.

The milk that is produced today in confinement dairies on -- with black and white cows producing C9 gallons of milk a day is fundamentally different from the milk that comes from brown cows on grass that are producing four or five gallons of milk a day.

And as such, I strongly believe that it's important that the dairy farmers that choose to use production methods that produce a more costly product, which may be more desirable to some consumers in the marketplace, receive the full value for that product.

If -- if the -- if they're forced into

the pool, the added value that they produce is actually -- a portion of that added value is taken from them and given to the very commodity producers with whom they have a very difficult time competing anyway.

So I think it's fundamental for us to recognize that this basic premise of the Federal Milk Market Order system is an anachronism. There is tremendous differentiation between the nature of milk that's been produced, and studies that were done over a decade ago at University of Wisconsin identified, for instance, five to one differences in conjugated linoleic acid between grass fed and grain fed milk.

Conjugated linoleic acid is one of the most potent immune boosting substances known to man. It's a powerful anti-inflammatory and it's widely recognized in the medical community that it's -- European studies show 70 percent reduction in women's breast cancer in women who have adequate levels of CLA. These are things that consumers recognize and no amount of the Federal Milk Market Order System saying otherwise is going to convince consumers that there is not a value of milk from grass-fed cows.

Q. So Exhibit 96 is just an effort to provide at least the information from some representative comments from some of your customers regarding the value of Snowville Creamery's milk?

A. Yes.

Q. Okay.

A. And our -- and our basic -- our most -- our greatest driver in building this plant -- my greatest driver was to prove if the -- if the dairy industry gave consumers better milk, they could reverse the per capita -- the annual per capita decline in consumption of fluid milk that has been occurring for 30 years.

MR. RICCIARDI: Okay. And then I don't have any further questions at this point. Other people may ask you questions. If I have redirect, I'll come up and ask those questions of you. Thank you.

THE WITNESS: Thank you.

JUDGE CLIFTON: Thank you, Mr. Ricciardi. Who would like to begin the cross-examination? Mr. Beshore, thank you.

CROSS-EXAMINATION

BY MR. BESHORE:

Q. Good afternoon, Mr. Taylor.

A. Good afternoon.

Q. I may just have a question or two. If my notes are correct, I think I heard you say that, quote, the basic premise of Federal Milk Marking Orders is an anachronism?

A. That all milk is the same.

Q. So that's the basic premise, that all milk is the same?

A. I believe that is a basic premise, yes.

Q. Okay. You're aware -- perhaps not -- of the Federal Milk Order pricing programs which have differentials for protein content?

A. Oh, certainly.

Q. Okay. And butterfat content?

A. Yes.

Q. Okay. And other solids content, also?

A. Yes.

Q. So that at least with respect to those aspects of pricing, the Federal Milk Market Order System does not price all milk the same, isn't that fair?

A. Oh, that's true. But that goes back -- that goes back several decades. The knowledge of the compositional differentiation in milks from grain to grass fed is -- is principally within the last ten years.

Q. Okay. So the -- your concern is that the system is based on knowledge of the contents of milk that's about ten years old?

A. No, it's 30 years old.
Q. Okay.
A. I mean, I think -- I think component pricing began about 30 years ago and was probably roundly adopted about 20 years ago.
Q. I thought I understood you to say that the new knowledge about the compositional content of milk is about ten years old?
A. That's -- that's correct.
Q. Okay. Just one other -- one other question. In -- in one of the -- one of the communiques in Exhibit 96, it appeared that somebody was writing you with a concern that your milk was no longer in the store in New Albany?
A. Yes.
Q. What store was that?
A. This is a Giant Eagle store. One of the limitations in Giant Eagle stores is we can't sample milk in the stores without paying what's basically a $150 a day fee for somebody's grandmother to be there, for the taster to be there and pay for the service.
It's very difficult. This is another one of our barriers to entering the market. It's very difficult. In Giant Eagle we can't taste, we can't sample, we can't let people experience the difference in

our milk without paying an exorbitant amount of money to the store.

Q. So when you were in the store -- when that condition of being there was implemented then, you're no longer in the store?

A. Well, we chose -- we chose to -- we chose to stop supplying the store because we weren't able to grow our sales there sufficiently. And another problem at that store is -- several other Giant Eagle stores was that it wasn't uncommon for us to come into the store, find our milk in the cold box, in the main storage cold box and the shelves empty.

You know, we were not -- we have tremendous problems being stocked in the stores. It's a common complaint that, we're out of milk, but the milk's in the main cold box and not being brought out by the store employees.

Q. Okay. So then you ceased providing your milk to the stores?

A. At that particular store. We had every intention of going back to it as we have a larger presence in Columbus.

MR. BESHORE: Okay. Thank you very much.

JUDGE CLIFTON: Mr. English, you may cross-examine Mr. Taylor.

CROSS-EXAMINATION

BY MR. ENGLISH:

Q. Good afternoon, Mr. Taylor.

A. Good afternoon.

Q. Charles English. I only have one series of questions. You testified on page 8 of your testimony about a new plant built in Nevada by Dean Foods, and you say, to take advantage of a market distorting manipulation of the 2005 Milk Regulatory Act. Since you know a lot about milk plants, do you know that that milk plant that Dean Foods built was built in 2005?

A. No, sir.

Q. Do you know whether that plant was in operation prior to the Milk Regulatory Equity Act becoming effective in April of 2006?

A. No, sir.

Q. Do you know how it is that Dean Foods with that new plant in Nevada can take advantage of market distorting manipulation by the 2005 Milk Regulatory Equity Act?

A. Nevada is not in the Federal Order.

Q. Do you know, sir, how it is that Dean Foods can take advantage of the market distorting manipulation of the 2005 Milk Regulatory Equity Act?

A. Well, because they're in -- they're

not -- the plant is located in a state that is not regulated. They don't have to pay Class I premiums for milk which they can then export from that state into other states where they sell it as Class I milk, such as California, which is not regulated.

Q. Do you know for a fact that that plant in Nevada actually sells any milk into California?

A. I have to confess, I have no -- I have no -- I have no direct knowledge of that that I could -- that I could put in front of me.

Q. And do you know if that plant sells milk in Arizona, it becomes partially regulated?

A. No, I didn't know that, sir.

Q. Do you know that if it sells milk into New Mexico, it becomes partially regulated?

A. If you say so.

Q. But you didn't know that before you made the statement?

A. No, sir.

MR. ENGLISH: I have no other questions of this witness.

JUDGE CLIFTON: Thank you, Mr. English. Who would next like to cross-examine Mr. Taylor? Mr. Carroll.

CROSS-EXAMINATION

BY MR. CARROLL:

Q. I want to compliment you, Mr. Taylor. I am John Benjamin Carroll. I'm attorney for the New England Producer-Handlers Association, composed of people like yourself, many of them, in the states of New York, Pennsylvania, New Hampshire, Vermont, Connecticut, and we have one person in Virginia, but that's outside. That's a different marketing area.

Again, I want to compliment you on what you've done. I've spent probably 30 years with producer-handlers, and I -- I know how hard it is. And I know how hard you've worked.

I want to ask you just a few questions, if I can, on the major subject of the hearing, which is the extent of any increase in the exempt category for own-farm milk. And at page 7 of your statement, in the first -- or second full paragraph you state: While we agree with the basic premise, in today's world a fluid milk plant of only 4,000 -- or 450,000 pounds per month cannot be economically constructed and operated.

Can you explain that answer?

A. Well, I -- having just done this, I spent a million dollars to build the smallest plant that I could envision after 30 years in the industry and being an expert in such matters. And having constructed the plant and operating it, operated -- operating it for a year and a half, there's very little I would do different.

If you're building a plant that's going to make a truly premium milk, I believe it has to be high temperature, short time pasteurized, for instance, as compared to vat pasteurizing. Vat pasteurizing has a cost in excess of $100,000.

You put together the infrastructure and the facility necessary to process any amount of milk, high temperature, short time process, any amount of milk and bottle, bring to market, skim milk, 2 percent and whole milk, you're spending over a million dollars. And depending on your -- your cost of money, and what -- what you're paying for milk, you put all those things together, and the economics at the half million pound per month level are -- are, I hope, about a three-year payback, if you can sell that much milk.

Q. All right.

A. But the -- but by the same token, the -- the real opportunity is doing something more than basic three-year payback. And there's tremendous risks and variabilities in the marketplace.

If we'd been given access to mainstream grocery stores, we probably would have been profitable within six months. As it is, we've been operating 18 months. We've lost a third of a million dollars and we're still in the red. These are the kind of financial risks and costs you face in trying to enter the fluid milk market.

And so the -- to me, looking back now after a year and a half, our plant's easily capable of doing a million pounds a month. The dairy farm that we're on, plus a nearby dairy farm that Bill Dix and Stacy Hall also operate have -- has about three-quarters of a million pounds available.

I think to attract capital, to give an entrepreneur the confidence to proceed, there's got to be an up side to -- to any business opportunity. And to limit the exempt status to 450,000 pounds a month is to choke it. And to limit it to that, just barely that, could encourage someone to go into it. And to limit a facility, just about any facility you could build could probably do a million pounds a month; to limit arbitrarily to 500,000 seems to be a market distortion and a real impediment to encouraging what I think is a -- is a progressive and exciting opportunity to -- to change a declining fluid milk industry.

Q. And your next sentence is: Instead, I believe 1 million pounds per month is more realistic in

providing sufficient volumes for economical operation.
Is that what you've been saying --
A. Yes.
Q. -- that 1 million is the better figure?
A. I think so.
Q. On page 8 of your statement, you have a sentence in the third -- one, two -- third paragraph, last -- next to the last sentence: Any new producer-handlers entering the marketplace will find the cost of capital will likely exceed all other costs except raw milk itself.
Could you give us more information on that?
A. Well, that's been our experience. The building a fluid milk plant is -- it's a seven-figure operation. One of the -- one of the costs that I underestimated was distribution, for instance. We now own four milk delivery trucks and a milk tanker truck. Those -- those vehicles put together was just another eighth of a million dollars. Our expense of capital right now is in the neighborhood of $150,000 a year. It is our second greatest cost, so it's important to get a return to make a profit.
A lot of -- a lot of the producer-handlers that exist in the country right now

have been in place for a generation or more. And they're in the same position as -- as a lot of the large existing processing plants. They've been paid for and depreciated.

The entry into the marketplace and the capital that it requires is a tremendous burden and -- yeah.

Q. And is the exemption necessary in order to allow those entities to engage in that type of operation?

A. I think the -- I think that if you want to have a dairy industry that really fosters innovation, creativity, entrepreneurial spirit and differentiation, we have to have an up side. And so having a reasonable exemption limit is helpful in letting a dairy farmer vertically integrate and go directly to his community with a product.

By the same token, I think there's got to be a step above and beyond that to a producer-handler status that also has a meaningful volume, and that the volumes -- the volume limits for both exemption and producer-handler operations have to be reasonable in the current marketplace and with current economics to make those businesses practical and sustainable.

Q. Now, directing your attention to one of your products, which is -- as I have -- I read your customer statement, apparently you sell a product where there's no homogenization?

A. None of our products are homogenized.

Q. Is there a reason for that?

A. Oh, yeah. Our basic premise is that -- is basically what I was taught in college in the early 1970s in dairy tech, which is that the milk comes perfect from the cow and it's our duty to mess with it as little as we can in getting it to our customer.

So we follow that premise. So we only do what is legally necessary to -- to process the milk. So we choose not to homogenize.

Q. Some years ago I participated in a study -- or one of my clients did, in a study of homogenized milk as a factor in the rising level of heart attacks in this country. And there was considerable print on it. Have you seen those studies or are you familiar with it?

A. I'm not -- I've not read actual studies on homogenization, per say, but I'm well aware of the idea that homogenized milk fat is detrimental to human health.

Q. And do you have customers that are aware of that fact and that are seeking your product for that reason?

A. Yes, sir.

MR. CARROLL: That's all. Thank you very much.

JUDGE CLIFTON: Thank you, Mr. Carroll. Who next would like to cross-examine Mr. Taylor? Mr. Tosi, do you have any questions for Mr. Taylor?

MR. TOSI: No, your Honor. We have no questions. But Mr. Taylor, thank you for coming. And I'm happy to see that you're a good Ohio State University graduate. We were there at about the same time.

THE WITNESS: Thank you. Thank you very much.

MR. TOSI: Thank you.

THE WITNESS: Yes, good to see another Buckeye here.

MR. TOSI: Yes, sir.

JUDGE CLIFTON: Is there any objection to the admission into evidence of Exhibit 95? There is none. Exhibit 95 is hereby admitted into evidence. Is there any objection to the admission into evidence of Exhibit 96? There is none. Exhibit 96 is hereby admitted into evidence.

MR. RICCIARDI: Thank you for doing my job for me, Judge. I don't have any further questions.

JUDGE CLIFTON: Mr. Carroll, did you think of something?

MR. CARROLL: I neglected one area which I've just been reminded of.

JUDGE CLIFTON: All right. You may.

RECROSS-EXAMINATION

BY MR. CARROLL:

Q. I remember you said about your positioning on grandfathering. There was a grandfathering proposal. Would you please explain that?

A. In its follow-up on your question about capital, having -- having -- having struggled to enter the marketplace and experiencing the economics over the last year and a half, I think there's tremendous barriers to entry for producer-handlers. And there's tremendous competition with commodity milk. And very few producer-handlers who are looking to capitalize on value added on-the-farm milk will actually be attempting to compete with commodity milk on a price basis.

I think that the -- I think that there's so many -- there's so many aspects to the unlevel playing field that exists in the marketplace that risking producer-handlers by grandfathering is unnecessary, since I don't really see producer-handler plants threatening the commodity market, a different commodity market for one.

And secondly, that I think, again, to -- to foster customer choice, to give the opportunity for a -- a new changing growing dairy industry, we have to have the up side, the place to go for an exempt plant, if it is successful, if it does grow its market. The producer-handler model is an important part of our total diversified dynamic dairy industry of our future, I hope.

MR. CARROLL: Thank you, sir.

THE WITNESS: Thank you.

JUDGE CLIFTON: Thank you, Mr. Carroll. Mr. Taylor, is there anything else you'd like to add, for example, prompted by questions that you were asked?

THE WITNESS: It's been -- it's been an interesting several months. For the last two years I've worked 100 hours a week, and I can count the days I've had off on the fingers of one hand.

And when I received the letter from the

Federal Milk Market Order Administrator in February explaining what was coming in these proposals, it was extremely daunting. And the amount of time, effort, and money that's been involved in defending my right to continue doing what the law said I could do when I put my million dollars on the line has nearly broken me and our business.

I got out of bed yesterday morning at 6:00 and I haven't been to sleep since Sunday morning. We had two trucks break down on Friday. We had a delivery truck flip over on 270 in Columbus this morning. I think it's absolutely despicable that the dairy industry is doing this to us. And I can tell you that everyone I tell the story to feels the same way.

There's -- every citizen, every customer that you explain that a dairy company that controls 40 percent of the milk in America says I have an unfair advantage recognizes that it's wrong, that it's terribly wrong.

Our government is to serve our people. In this case, I believe our government is serving Dean Foods, and I could not be more upset about it.

Public Laws of the United States

Public Law 109-215 of 2006, 109th Congress

An Act To ensure regulatory equity between and among all dairy farmers and handlers for sales of packaged fluid milk in federally regulated milk marketing areas and into certain non-federally regulated milk marketing areas from federally regulated areas, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the `Milk Regulatory Equity Act of 2005'.

SEC. 2. MILK REGULATORY EQUITY.

(a) Minimum Milk Prices for Handlers; Exemption - Section 8c(5) of the Agricultural Adjustment Act (7 U.S.C. 608c(5)), reenacted with amendments by the Agricultural Marketing Agreement Act of 1937, is amended by adding at the end the following new subparagraphs:

`(M) Minimum Milk Prices for Handlers -

`(i) APPLICATION OF MINIMUM PRICE REQUIREMENTS - Notwithstanding any other provision of this section, a milk handler described in clause (ii) shall be subject to all of the minimum and uniform price requirements of a Federal milk marketing order issued pursuant to this section applicable to the county in which the plant of the handler is located, at Federal order class prices, if the handler has packaged fluid milk product route dispositions, or sales of packaged fluid milk products to other plants, in a marketing area located in a State that requires handlers to pay minimum prices for raw milk purchases.

`(ii) COVERED MILK HANDLERS - Except as provided in clause (iv), clause (i) applies to a handler of Class I milk products (including a producer-handler or producer operating as a handler) that -

`(I) operates a plant that is located within the boundaries of a Federal order milk marketing area (as those boundaries are in effect as of the date of the enactment of this subparagraph);

`(II) has packaged fluid milk product route dispositions, or sales of packaged fluid milk products to other plants, in a milk marketing area located in a State that requires handlers to pay minimum prices for raw milk purchases; and

`(III) is not otherwise obligated by a Federal milk marketing order, or a regulated milk pricing plan operated by a State, to pay minimum class prices for the raw milk that is used for such dispositions or sales.

`(iii) OBLIGATION TO PAY MINIMUM CLASS PRICES - For purposes of clause (ii)(III), the Secretary may not consider a handler of Class I milk products to be obligated by a Federal milk marketing order to pay minimum class prices for raw milk unless the handler operates the plant as a fully regulated fluid milk distributing plant under a Federal milk marketing order.

APPENDIX
Page 137

`(iv) CERTAIN HANDLERS EXEMPTED — Clause (i) does not apply to —

`(I) a handler (otherwise described in clause (ii)) that operates a nonpool plant (as defined in section 1000.8(e) of title 7, Code of Federal Regulations, as in effect on the date of the enactment of this subparagraph);

`(II) a producer-handler (otherwise described in clause (ii)) for any month during which the producer-handler has route dispositions, and sales to other plants, of packaged fluid milk products equaling less than 3,000,000 pounds of milk; or

`(III) a handler (otherwise described in clause (ii)) for any month during which —

`(aa) less than 25 percent of the total quantity of fluid milk products physically received at the plant of the handler (excluding concentrated milk received from another plant by agreement for other than Class I use) is disposed of as route disposition or is transferred in the form of packaged fluid milk products to other plants; or

`(bb) less than 25 percent in aggregate of the route disposition or transfers are in a marketing area or areas located in one or more States that require handlers to pay minimum prices for raw milk purchases.

`(N) Exemption for Certain Milk Handlers — Notwithstanding any other provision of this section, no handler with distribution of Class I milk products in the marketing area described in Order No. 131 shall be exempt during any month from any minimum price requirement established by the Secretary under this subsection if the total distribution of Class I products during the preceding month of any such handler's own farm production exceeds 3,000,000 pounds.

`(O) Rule of Construction Regarding Producer-Handlers — Subparagraphs (M) and (N) shall not be construed as affecting, expanding, or contracting the treatment of producer-handlers under this subsection except as provided in such subparagraphs.'.

(b) Exclusion of Nevada From Federal Milk Marketing Orders — Section 8c(11) of the Agriculture Adjustment Act (7 U.S.C. 608c(11)), reenacted with amendments by the Agriculture Marketing Agreement Act of 1937, is amended —

(1) in subparagraph (C), by striking the last sentence; and

(2) by adding at the end the following new subparagraph:

`(D) In the case of milk and its products, no county or other political subdivision of the State of Nevada shall be within the marketing area definition of any order issued under this section.'.

(c) Records and Facility Requirements — Notwithstanding any other provision of this section, or the amendments made by this section, a milk handler (including a producer-handler or a producer operating as a handler) that is subject to regulation under this section or an amendment made by this section shall comply with the requirements of section 1000.27 of title 7, Code of Federal Regulations, or a successor regulation, relating to handler responsibility for records or facilities.

(d) Effective Date and Implementation — The amendments made by this section take effect on the first day of the first month beginning more than 15 days after the date of the enactment of this Act. To accomplish the expedited implementation of these amendments, effective on the date of the enactment of this Act, the Secretary of Agriculture shall include in the pool distributing plant provisions of each Federal milk marketing order issued under subparagraph (B) of section 8c(5) of the Agriculture Adjustment Act (7 U.S.C. 608c(5)), reenacted with amendments by the Agriculture Marketing Agreement Act of 1937, a provision that a handler described in subparagraph (M) of such section, as added by subsection (a) of this section, will be fully regulated by the order in which the handler's distributing plant is located. These amendments shall not be subject to a referendum under section 8c(19) of such Act (7 U.S.C. 608c(19)).

Speaker of the House of Representatives.

Vice President of the United States and

President of the Senate.

Approved April 11, 2006.

RETENTION OF STATUS OF PRODUCER HANDLERS OF MILK AT PRE-1985 AMENDMENT STATUS

Pub.L. 99-198, title I, Sec. 134, Dec. 23, 1985, 99 Stat. 1373, provided that: "The legal status of producer handlers of milk under the Agricultural Adjustment Act (7 U.S.C. 601 et seq.), reenacted with amendments by the Agricultural Marketing Agreement Act of 1937, shall be the same after the amendments made by this title [probably means this subtitle, subtitle C (Secs. 131-134) of title I of Pub.L. 99-198, amending subsec. (5) of this section and provisions set out as a note above] take effect as it was before the effective date of such amendments."

RETENTION OF STATUS OF PRODUCER HANDLERS OF MILK AT PRE-1981 AMENDMENT STATUS

Pub.L. 97-98, title I, Sec. 102, Dec. 22, 1981, 95 Stat. 1219, provided that: "The legal status of producer handlers of milk under the provisions of the Agricultural Adjustment Act, as reenacted and amended by the Agricultural Marketing Agreement Act of 1937 [this chapter] shall be the same subsequent to the adoption of the amendment made by the Agriculture and Food Act of 1981 [see Tables] as it was prior thereto."

RETENTION OF STATUS OF PRODUCER HANDLERS OF MILK AT PRE-1977 AMENDMENT STATUS

Pub.L. 95-113, title II, Sec. 202, Sept. 29, 1977, 91 Stat. 919, provided that: "The legal status of producer handlers of milk under the provisions of the Agricultural Adjustment Act [see Short Title note set out under section 601 of this title], as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended [act June 3, 1937, ch. 296, 50 Stat. 246, set out as a note under section 601 of this title] shall be the same subsequent to the adoption of the amendment made by the Food and Agriculture Act of 1977 [see Short Title of 1977 Amendment note set out under section 1281 of this title] as it was prior thereto."

RETENTION OF STATUS OF PRODUCER HANDLERS OF MILK AT PRE-1973 AMENDMENT STATUS

Pub.L. 91-524, title II, Sec. 206, as added by Pub.L. 93-86, Sec. 1(6), Aug. 10, 1973, 87 Stat. 224; amended Pub.L. 93-125, Sec. 1(a)(iii), Oct. 18, 1973, 87 Stat. 450, provided that: "The legal status of producer handlers of milk under the provisions of the Agricultural Adjustment Act, as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended, shall be the same subsequent to the adoption of the

RETENTION OF STATUS OF PRODUCER HANDLERS OF MILK AT PRE-1970 AMENDMENT STATUS

Pub.L. 91-524, title II, Sec. 201(b), Nov. 30, 1970, 84 Stat. 1361, provided that the legal status of producer handlers of milk under the Agricultural Adjustment Act shall be the same subsequent to the adoption of the amendments made by Pub.L. 91-524 as it was prior thereto. For termination of this provision, see Termination of 1970 Amendment note above.

STATUS OF PRODUCER HANDLERS
Pub.L. 101-624, title I, Sec. 115, Nov. 28, 1990, 104 Stat. 3381, provided that: "The legal status of producer handlers of milk under the Agricultural Adjustment Act (7 U.S.C. 601 et seq.), reenacted with amendments by the Agricultural Marketing Agreement Act of 1937, shall be the same after the amendments made by this title [enacting section 1446e of this title and amending this section and sections 4501 and 1446a of this title, section 713a-14 of Title 15, Commerce and Trade, and provisions set out as notes under this section and section 1731 of this title] take effect as it was before the effective date of the amendments [see Effective Date of 1990 Amendment note set out under section 1421 of this title]."

TERMINATION OF 1965 AMENDMENT; REVERSION OF STATUS OF PRODUCER HANDLERS OF MILK TO PRE-AMENDMENT STATUS
Pub.L. 89-321, title I, Secs. 103, 104, Nov. 3, 1965, 79 Stat. 1188, as amended by Pub.L. 90-559, Sec. 1(3), Oct. 11, 1968, 82 Stat. 996, provided that:
" 103.
"The provisions of this title [amending this section] shall not be effective after December 31, 1970.
" 104.
"The legal status of producer handlers of milk under the provisions of the Agricultural Adjustment Act, as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended, shall be the same subsequent to the adoption of the amendments made by

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AN ACT

[H. R. ...]

To maintain farm income, to stabilize prices and assure adequate supplies of agricultural commodities, to reduce surpluses, lower Government costs and promote foreign trade, to afford greater economic opportunity in rural areas, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Food and Agriculture Act of 1965". Food and Agriculture Act of 1965.

TITLE I—DAIRY

SEC. 101. The Agricultural Adjustment Act, as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended, is further amended by striking in subparagraph (B) of subsection 8c(5) all of clause (d) and inserting in lieu thereof a new clause (d) to read as follows: 49 Stat. 753. 7 USC 608c.

"(d) a further adjustment, equitably to apportion the total value of the milk purchased by any handler, or by all handlers, among producers and associations of producers, on the basis of their marketings of milk, which may be adjusted to reflect sales of such milk by any handler or by all handlers in any use classification or classifications, during a representative period of time which need not be limited to one year. In the event a producer holding a base allocated under this clause (d) shall reduce his marketings, such reduction shall not adversely affect his history of production and marketing for the determination of future bases. Allocations to producers under this clause (d) may be transferable under an order on such terms and conditions as may be prescribed if the Secretary of Agriculture determines that transferability will be in the best interest of the public, existing producers, and prospective new producers. Any increase in class one base resulting from enlarged or increased consumption and any producer class one bases forfeited or surrendered shall first be made available to new producers and to the alleviation of hardship and inequity among producers. In the case of any producer who during any accounting period delivers a portion of his milk to persons not fully regulated by the order, provision may be made for reducing the allocation of, or payments to be received by, any such producer under this clause (d) to compensate for any marketings of milk to such other persons for such period or periods as necessary to insure equitable participation in marketings among all producers";

and by adding at the end of said subparagraph (B) the following: "Notwithstanding the provisions of section 8c(12) and the last sentence of section 8c(19) of this Act, order provisions under (d) above shall not become effective in any marketing order unless separately approved by producers in a referendum in which each individual producer shall have one vote and may be terminated separately whenever the Secretary makes a determination with respect to such provisions as is provided for the termination of an order in subparagraph 8c(16)(B). Disapproval or termination of such order provisions shall not be considered disapproval of the order or of other terms of the order." 75 Stat. 305.

SEC. 102. Such Act is further amended (a) by adding to subsection 8c(5) the following new paragraph: "(H) Marketing orders applicable to milk and its products may be limited in application to milk used for manufacturing."; and (b) by amending subsection 8c(18) by adding after the words "marketing area" wherever they occur the 62 Stat. 1258.

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words "or, in the case of orders applying only to manufacturing milk, the production area".

ermination.

SEC. 103. The provisions of this title shall not be effective after December 31, 1969.

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SEC. 104. The legal status of producer handlers of milk under the provisions of the Agricultural Adjustment Act, as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended, shall be the same subsequent to the adoption of the amendments made by this title as it was prior thereto.

Stat. 31; Stat. 246. USC 601 es, 674 note.

TITLE II—WOOL

ice supports.

SEC. 201. The National Wool Act of 1954, as amended, is amended, as follows:

Stat. 910; Stat. 306. USC 1782.

(1) By deleting from section 703 "March 31, 1966" and inserting in lieu thereof "December 31, 1969".

(2) By changing the period at the end of the third sentence of section 703 to a colon and inserting the following:

"*Provided further*, That the support price for shorn wool for the 1966 and each subsequent marketing year shall be determined by multiplying 62 cents by the ratio of (i) the average of the parity index (the index of prices paid by farmers, including commodities and services, interest, taxes, and farm wage rates, as defined in section 301 (a)(1)(C) of the Agricultural Adjustment Act of 1938, as amended) for the three calendar years immediately preceding the calendar year in which such price support is determined and announced to (ii) the average parity index for the three calendar years 1958, 1959, and 1960, and rounding the resulting amount to the nearest full cent."

Stat. 1250. USC 1301.

(3) By deleting the fourth sentence of section 703.

TITLE III—FEED GRAINS

2 Stat. 994. USC 1441 e.

SEC. 301. Section 105 of the Agricultural Act of 1949, as amended, is amended by adding the following new subsection (e):

"(e) For the 1966 through 1969 crops of feed grains, the Secretary shall require, as a condition of eligibility for price support on the crop of any feed grain which is included in any acreage diversion program formulated under section 16(i) of the Soil Conservation and Domestic Allotment Act, as amended, that the producer shall participate in the diversion program to the extent prescribed by the Secretary, and, if no diversion program is in effect for any crop, he may require as a condition of eligibility for price support on such crop of feed grains that the producer shall not exceed his feed grain base: *Provided*, That the acreage on any farm which is diverted from the production of feed grains pursuant to a contract hereafter entered into under the Cropland Adjustment Program shall be deemed to be acreage diverted from the production of feed grains for purposes of meeting the foregoing requirements for eligibility for price support: *Provided further*, That the Secretary may provide that no producer of malting barley shall be required as a condition of eligibility for price support for barley to participate in the acreage diversion program for feed grains if such producer has previously produced a malting variety of barley, plants barley only of an acceptable malting variety for harvest, does not knowingly devote an acreage on the farm to barley in excess of 110 per centum of the average acreage devoted on the farm to barley in 1959 and 1960, does not knowingly devote an acreage on the farm to corn and grain sorghums in excess of the acreage devoted on the farm to

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APPENDIX
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share in the class I sales of the market. They could, however, obtain a base if transfers of existing bases were authorized under the order or in the event of an increase in the total class I sales in the market or the abandonment of bases by other producers, such producers could be assigned a base representing part of such increase or abandoned bases.

REFERENDUM

Section 101 also would add, at the end of said subparagraph (B) of subsection 8c(5), a new provision to the effect that notwithstanding the provisions of section 8c(19), order provisions under the new subparagraph (d) shall not become effective in a marketing order unless such provisions are separately approved by producers in a referendum in which each individual producer shall have one vote, and may be terminated separately whenever the Secretary determines that such provisions should be terminated as otherwise provided in subparagraph 8c(15)(B) for the termination of a complete order. This provision would prevent bloc voting by cooperatives for their members in a referendum on whether such separately considered provisions should be made a part of an order or retained in an order. It also would provide that disapproval or termination of such order provisions under the new subparagraph (d) is not to be considered disapproval of the entire order or of other terms of the order.

MANUFACTURING MILK

Section 102.—This section would add to section 8c(5) of the act a new paragraph (H) which makes it clear that orders applicable to milk and its products may be limited in application to milk used for manufacturing. Section 102 also would amend section 8c(18) of the act by inserting after the words "marketing area" in both places where they occur "or, in the case of orders applying only to manufacturing milk, the production area" to make it clear that the standards of 8c(18) would be applicable to marketing orders dealing solely with manufacturing milk on a production area basis. These amendments are designed to eliminate any question as to whether a marketing order relating to milk and its products can be established dealing solely with manufacturing milk and also to eliminate any question that the pricing standards applicable to such an order would be those set forth in section 8c(18) on a production area basis.

Section 103.—This section would limit the period within which the authority granted by the amendments specified in the bill, with respect to marketing orders, would remain effective to the period ending December 31, 1969. After December 31, 1969, the several authorities for provisions in marketing orders provided by this bill would terminate. However, the existing provisions of the Agricultural Marketing Agreement Act of 1937, as amended, would not be affected thereby and marketing order provisions based upon such presently existing authority would remain unaffected thereby.

PRODUCER-HANDLERS

Section 104.—This section would make it clear that it is not intended to alter the legal status of producer handlers of milk under the existing act.

In the course of hearings on this legislation the committee heard considerable testimony from producer-handlers of milk. Some of these handlers sell milk into and some sell outside of Federal order markets. Their position was one of opposition to the legislation, almost solely on the basis that it might be deemed to subject them to future requirements in order areas that they supply only an assigned share of the fluid milk sales in such areas or be subjected to pooling penalties.

Traditionally all Federal orders have exempted producer-handlers from such requirements and have limited regulation to those requirements designed to guarantee that, as sellers of fluid class I milk, producer-handlers use their own production as a source of supply without substantial use of the production of other dairymen.

The committee wishes to make it clear that it approves of the practice of keeping the producer-handlers' avenue of marketing open to dairy farmers without unduly burdensome restrictions and that this legislation shall not be deemed to be a justification for producer-handler inclusion in the pooling requirements of any Federal order. This is the purpose of section 104 of the bill.

This section means that this legislation is not to be regarded as a reason for, nor as any new legal authority to include producer-handlers in the pooling arrangements of Federal market orders and that if justification and legal authority for such inclusion did not exist prior to enactment of this legislation, it will not exist thereafter by virtue of any provision of this bill.

The committee wishes to express its disapproval of certain administrative restrictions on producer-handlers that have grown up under the act such as levying of assessments on milk produced over a period of 1 year, because of a violation which occurred on a single day and restrictions on the buying and selling of cattle, barns, and milking parlors, or on the manner in which business is conducted. Other than those restrictions which are necessary to define and maintain the status of producer-handlers.

At the same time we disapprove of special treatment for sellers of milk and milk products, however large or small, who do not confine the overwhelming bulk of their sales to their own production of milk or of special treatment for those producer-handlers who, singly or in the aggregate, have a volume of sales, which represents a substantial enough portion of the sales in a federally ordered market to substantially disrupt the operation of the order to the detriment of other dairymen in that market.

TITLE II—WOOL

Summary

This title amends the National Wool Act of 1954, as amended, to continue the authority for a program of incentive payments on wool and mohair.

Provisions would:

1. Continue the wool and mohair program for 4 years through December 31, 1969.
2. Set a minimum support level at 77 percent of parity.

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(b) The legal status of producer handlers of milk under the provisions of the Agricultural Adjustment Act, as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended, shall be the same subsequent to the adoption of the amendments made by this Act as it was prior thereto. 48 Stat. 31; 50 Stat. 246. 7 USC 601 note.

(c) Nothing in subsection (a) of this section 201 shall be construed as invalidating any class I base plan provisions of any marketing order previously issued by the Secretary of Agriculture pursuant to authority contained in the Food and Agriculture Act of 1965 (79 Stat. 1187), but such provisions are expressly ratified, legalized, and confirmed and may be extended through and including December 31, 1971. 7 USC 608c note.

(d) It is not intended that existing law be in any way altered, rescinded, or amended with respect to section 8c(5)(G) of the Agricultural Adjustment Act, as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended, and such section 8c(5)(G) is fully reaffirmed. 49 Stat. 755.

(e) The provisions of this section shall not be effective after December 31, 1973 except with respect to orders providing for Class I base plans issued prior to such date, but in no event shall any order so issued extend or be effective beyond December 31, 1976. Termination provisions.

SUSPENSION OF BUTTERFAT SUPPORT PROGRAM

SEC. 202. Effective only with respect to the period beginning April 1, 1971, and ending March 31, 1974— Price supports.

(a) The first sentence of section 201 of the Agricultural Act of 1949, as amended (7 U.S.C. 1446), is amended by striking the words "milk, butterfat, and the products of milk and butterfat" and inserting in lieu thereof the words "and milk". Designated nonbasic commodities. 63 Stat. 1052.

(b) Paragraph (c) of section 201 of the Agricultural Act of 1949, as amended (7 U.S.C. 1446(c)), is amended to read as follows: Milk and butterfat. 68 Stat. 899; 70 Stat. 86; 74 Stat. 1054.

"(c) The price of milk shall be supported at such level not in excess of 90 per centum nor less than 75 per centum of the parity price therefor as the Secretary determines necessary in order to assure an adequate supply. Such price support shall be provided through purchases of milk and the products of milk."

TRANSFER OF DAIRY PRODUCTS TO THE MILITARY AND TO VETERANS HOSPITALS

SEC. 203. Section 202 of the Agricultural Act of 1949, as amended (7 U.S.C. 1446a), is amended by changing "December 31, 1970" to read "December 31, 1973" both places it appears therein. 81 Stat. 464.

DAIRY INDEMNITY PROGRAM

include such additional provisions as the Secretary determines appropriate in regard to the reentry of producers who previously have discontinued their dairy farm enterprise or have transferred bases as authorized by the order;

(6) Orders would contain appropriate provisions for the alleviation of hardship and inequity among producers. For example, this could provide relief for producers who were under the order on the effective date of class I base plan provisions but who had not produced milk during the representative period. Adjustments of base also could be provided for producers otherwise eligible for a base but whose base history was unrepresentative because of such circumstances as acts of God, reduced base period marketings due to disease, pesticides, residues, condemnation of milk, or marketings during part, but not all, of the base period.

It is provided that if a producer reduces his marketings, such reduction shall not adversely affect his history for the determination of future bases, or future updating of bases, except that an order may provide that any reduction below his base allocation may be taken into account in determining his future bases or future updating of bases.

Authorization is provided for transfers of class I bases on such terms and conditions, including those which will prevent bases from taking on an unreasonable value, as may be prescribed in the order by the Secretary.

The assignment of other source milk to various use classes shall be made without regard to whether an order contains a class I base plan.

Clause (f) also authorizes provisions in an order for reducing the allocation of or payment to be received by any producer who delivers a portion of his milk to any persons not fully regulated by the order. This is to compensate for any such marketings of milk so as to insure equitable participation among all producers and discourage producers from dumping their surplus milk on other markets.

Adoption of the class I plan is still optional with each market order area and can be put into effect only if separately approved by two-thirds of the producers voting individually in a referendum on the matter. Individual producers will continue to have one vote each. The class I base plan order provisions may be terminated separately under section 8c(16) (B) if a majority of producers favor such termination. Disapproval by producers or termination of such order provisions will not be considered disapproval of the entire order or of other terms of the order.

PRODUCER-HANDLERS

The last paragraph of section 201(a) of this bill provides that the Secretary shall maintain the same policy with respect to the exemption of producer-handlers from the provisions of marketing orders authorized under section 8c(5) as under the existing act.

Traditionally, it has been the Department of Agriculture's policy to grant producer-handlers exemption from all provisions of Federal milk orders except for reporting requirements, as warranted by the conditions

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I base plans, issuance of an order providing for such a plan has not been considered a reason for not exempting producer-handlers.

Experience under Federal orders generally has demonstrated that effective regulation of the market has been insured without direct involvement of individuals who produce, process and distribute essentially milk of their own production and who buy no milk from other dairy farmers or other sources. Individuals who assume a dual role of producer and handler and who must carry their own balancing supplies have had in the past no demonstrable advantage either as a producer or a handler.

Where producer-handlers do not confine the overwhelming bulk of their sales to their own production of milk, where producer-handlers circumvent provisions limiting distribution through their own facilities or where producer-handlers who, singly or in the aggregate, have a volume of sales which represents so large a portion of the sales in a Federal order market as to disrupt the operation of the order to the detriment of other dairymen in the market, the Department of Agriculture advises that it has found it necessary to provide further conditions as a basis of exemption to maintain equity among all handlers and producers. This provision requires the Secretary to maintain the same policy as he has maintained in the past.

EXISTING CLASS I BASE PLANS CONTINUED

Section 201(b) of this bill provides that existing class I base plans issued pursuant to the authority continued in the Food and Agriculture Act of 1965 (79 Stat. 1187) are expressly ratified, legalized, and confirmed and may be extended through and including December 31, 1971.

8c(5) (G)

Section 201(c) of this bill provides that it is not intended that existing law be in any way altered, rescinded, or amended with respect to section 8c(5) (G) of the Agricultural Adjustment Act, as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended, and such section 8c(5) (G) is fully reaffirmed. Section 8c(5) (G) precludes any provision prohibiting, or in any manner limiting, in the case of the products of milk, the marketing in the order area of any milk or product thereof produced anywhere in the United States.

TERMINATION DATE

Section 201 would have no termination date and will become permanent legislation.

Section 202. Price support: This section repeals the requirement that butterfat (and the products of milk and butterfat) be supported at 75 to 90 percent of parity, leaving in effect the requirement that whole milk be supported at that level. Authority to use loans to effect such support would be repealed, leaving in effect the authority to effect such support through purchases of milk and its products. The effect of this section would be to permit the Secretary to purchase butter at lower prices than at present.

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APPENDIX
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Paragraph (5) extends the milk indemnity program for four years through December 31, 1977, and enlarges the current program to include indemnity payments for cows producing contaminated milk. This extension is necessary since in many cases it is less costly to pay an indemnity for the cow than to continue to pay indemnities for the milk until it is free from contamination. The program is discretionary with the Secretary. Since the indemnity program was first begun, through April 1973, payments to farmers have totaled $1,409,214, and payments of $110,166 have been made to manufacturers. Payments by years and by States, are summarized in the tables of the Appendix herein.

Paragraph (6) creates a new licensing program for dairy imports. The President would be authorized, but not required, to provide for the importation of dairy products only through the use of licenses issued by the Secretary of Agriculture. In issuing licenses for dairy products not currently being imported but sought to be imported after enactment of the bill, the Secretary would be required to give priority, for a 30 day application period, to domestic producers and processors who are willing to agree to actually import the products. The term "dairy products not currently being imported" is intended to mean both new classifications and quantities of dairy products. The term "domestic producers" is intended to mean domestic dairy producers (i.e. dairy farmers and associations of dairy farmers). The term "processors" is intended to mean those firms who process raw dairy products. After the expiration of the priority application period, and after the granting of licenses to the priority group, if any are sought and granted, all other license applicants shall be considered for the remaining balance of the quantity of the dairy product sought to be imported. Dairy products are defined to include (1) all forms of milk and dairy products, butterfat, milk solids-not-fat, and any combination or mixture thereof; (2) any article, compound, or mixture containing five percent or more of butter fat, or milk solids-not-fat, or any combinations of the two; and (3) casein, caseinates, lactose, and other derivatives of milk, butterfat, or milk solids-not-fat, if imported commercially for any food use. Dairy products would not include (1) industrial casein, industrial caseinates, or any other industrial products, not to be used in any form for any food use, or as an ingredient of food; or (2) articles not normally considered to be dairy products, such as candy, bakery goods, and other similar articles provided that dairy products in any form, in any such article, are not commercially extractable or capable of being used commercially as a replacement or substitute for such ingredients in the manufacture of any food product.

Paragraph (6) adds an additional section, section 205, dealing with the status of producer-handlers. It is intended by the Committee by this provision that the current legal status of producer-handlers shall be the same subsequent to the adoption of this Act as it was prior thereto. In this connection, the Committee intends to continue both this provision and the previous report language and legislative history of the 1965 and 1970 Agricultural Acts.

Wool Program (Par. 7)

H.R. 8860 would extend the National Wool Act of 1954, as amended, to extend for four years—through December 31, 1977—the period dur-

The Changing Industry

The number of farms with dairy cows has decreased from 1.8 million in 1959 to 285,740 in 1981. The rapid disappearance of small herds is most noticeable while the number of large farms is rising. Thus, dairy farmers with 30 or more cows are producing an increasing share of the total milk produced.

The shift away from small dairy farms has been the result of nearly a 3-fold increase in labor productivity since 1972. Although this increase is due, in part, to smaller inefficient farms going out of business, labor productivity has also been raised by substantial inputs of capital and energy, and increased milk production per cow. Through improved breeding, feeding, and management, milk output per cow has increased from about 4,800 pounds in 1945 to 12,495 pounds in 1984. Meanwhile, cow numbers declined from about 25 million to 10.8 million during the same time period.

Total milk production increased to 125 billion pounds in the early 1960's and then declined to about 118 billion pounds in the late 1960's and early 1970's (Table 2). Total production was about 115.5 billion pounds during 1973-75 and then increased in 1976 and 1977. Milk production in 1983, at 139.7 billion pounds, was an all time record. While production declined in 1984, gains are currently expected for most of 1985, with total milk output for the year up from 1 to 3 percent from 1984.

TABLE 2.—MILK PRODUCTION, NUMBER OF MILK COWS, PRODUCTION PER COW AND AVERAGE MILK PRICE, UNITED STATES, 1960-80

Year	Milk production (million pounds)	Milk cows on farms (thousands)	Milk production per cow (pounds)	Received by farmers [1] (per cwt)
1960	123,109	17,515	7,029	$4.21
1961	125,707	17,243	7,290	4.22
1962	126,251	16,842	7,496	4.09
1963	125,202	16,260	7,700	4.10
1964	126,967	15,677	8,099	4.15
1965	124,180	14,953	8,305	4.23
1966	119,912	14,071	8,522	4.81
1967	118,732	13,415	8,851	5.02
1968	117,225	12,832	9,135	5.24
1969	116,108	12,307	9,434	5.49
1970	117,007	12,000	9,751	5.71
1971	118,566	11,839	10,015	5.87
1972	120,025	11,700	10,259	6.07
1973	115,491	11,413	10,119	7.14
1974	115,586	11,230	10,293	8.33
1975	115,398	11,139	10,360	8.75
1976	120,180	11,032	10,894	9.66
1977	122,654	10,945	11,206	9.71
1978	121,461	10,803	11,243	10.58
1979	123,350	10,734	11,492	12.03
1980	128,406	10,799	11,891	13.05
1981	132,770	10,898	12,183	13.76
1982	135,505	11,011	12,306	13.59
1983	139,672	11,098	12,585	13.57
1984	135,444	10,840	12,495	13.42

[1] Average price per 100 pounds received by farmers for milk sold to plants and dealers.

During 1976, 1980, a
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States (Table 3).

TABLE 3.—LEAD

States
Wisconsin
California
New York
Minnesota
Pennsylvania
Michigan
Ohio
Iowa
Texas
Missouri
Washington
Total 10 States
Total U.S.

[1] Of U.S. total

Dairy manufacturing

The dairy industry is
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ON PER COW AND AVERAGE MILK

ws on ns ands)	Milk production per cow (pounds)	Received by farmers [1] (per cwt)
17,515	7,029	$4.21
17,243	7,290	4.22
16,842	7,496	4.09
16,760	7,790	4.10
15,677	8,099	4.15
14,953	8,305	4.23
14,071	8,522	4.81
13,415	8,851	5.02
12,832	9,135	5.24
12,307	9,434	5.49
12,000	9,751	5.71
11,839	10,015	5.87
11,700	10,259	6.07
11,413	10,119	7.14
11,230	10,293	8.33
1,139	10,360	8.75
1,032	10,894	9.66
0,945	11,206	9.71
0,803	11,243	10.58
0,734	11,492	12.03
0,799	11,891	13.05
0,898	12,183	13.76
1,011	12,306	13.59
1,098	12,585	13.57
0,840	12,495	13.42

During 1976, 1980, and 1984 about half of total milk production was produced in the five leading dairy States (Wisconsin, California, New York, Minnesota, and Pennsylvania) while almost two-thirds of total milk production occurred in the 10 major dairy States (Table 3).

TABLE 3—LEADING STATES, MILK PRODUCTION, 1976 AND 1980

States	1976	Percent [1]	1980	Percent [1]	1984	Percent [1]
Wisconsin	20,296	17	22,380	17	23,501	17
California	11,583	10	13,527	11	15,278	11
New York	10,198	8	10,974	9	11,405	8
Minnesota	9,239	8	9,535	7	10,331	8
Pennsylvania	7,507	6	8,496	7	9,423	7
Michigan	4,620	4	4,970	4	5,350	4
Ohio	4,435	4	4,310	3	4,600	3
Iowa	3,954	3	3,994	3	3,805	3
Texas	3,309	3	3,625	3	3,805	3
Missouri	2,919	2				
Washington			2,942	2	3,464	3
Total 10 States	78,060	65	84,803	66	90,962	67
Total U.S.	120,180	100	128,406	100	135,444	100

[1] Of U.S. total

Dairy manufacturing

The dairy industry is an important element in our total agricultural sector. Cash receipts from dairy products in 1983 were about $18.8 billion which equalled about a tenth of total farm cash receipts. Consumer expenditures for milk and dairy products accounted for annual sales of 45.8 billion in 1983. Today, dairy products make up about 12.5 percent of the total expenditures for all food.

The dairy manufacturing industry, like dairy farming, has undergone substantial structural change. In the past three decades, there has been a rapid decline in the number of plants producing every dairy product, except Italian cheese. In contrast to the general decline in the number of plants, output per plant has trended upward. For example, the average plant production of American cheese was about ½ million pounds in 1950 compared with 6.4 million pounds in 1983.

The trend has also been toward fewer and larger processing plants in the fluid market sector. The number of fluid milk plants declined from 6,726 in 1955 to 1,032 in 1981. Meanwhile, the average output per plant increased from 6.5 million pounds per year in 1955 to 51.8 million pounds in 1981 (product weight basis).

Supermarket chains have become increasingly important in the distribution of fluid milk. During the last two decades, a growing number of chainstores have started to process and package milk in their own plants. The number of plants operated by the integrated supermarkets increased over 70 percent from 1964 to 1980.

Regional dairy cooperatives have become increasingly important in the procurement, processing or manufacturing, and distribution of milk and dairy products. The consolidation and merger of cooperatives have enabled them to achieve more influence in the marketplace. Their role in procuring, assembling, and coordinating a addition, the regional cooperatives have consolidated facilities, especially cheese plants.

Consumption

Per capita civilian consumption of dairy products on a milk equivalent bass declined from 653 pounds in 1960 to 539 pounds in 1974 and then increased slightly to 548 pounds in 1979 (Table 4). Preliminary estimates for 1983 show a gain, but all of the increase was the result of additional donations. Shifts have occurred in per capita consumption among principal dairy products. Substantial decreases occurred in butter, cream, and plain whole milk between 1960 and 1980. During the same period, consumption of low fat milks and cheese increased substantially.

TABLE 4.—PER CAPITA CIVILIAN CONSUMPTION, 1960–80

Year	All dairy products [1]	Plain, whole milk	Lowfat milks [2]	Butter	Cream	Total cheese
1960	653	251	20.8	7.5	8.3	8.4
1961	641	243	22.3	7.4	8.1	8.6
1962	642	241	24.3	7.3	7.8	9.1
1963	632	240	26.8	6.9	7.5	9.2
1964	632	239	29.4	6.9	7.1	9.4
1965	620	237	31.7	6.4	6.9	9.5
1966	604	234	33.7	5.7	6.6	9.8
1967	581	224	37.6	5.5	6.1	10.1
1968	557	219	42.6	5.7	5.8	10.6
1969	569	212	47.9	5.4	5.5	10.9
1970	561	207	51.3	5.3	5.3	11.5
1971	556	200	56.5	5.1	5.3	12.1
1972	558	195	62.3	4.9	5.3	13.1
1973	551	187	67.7	4.8	5.4	13.6
1974	539	175	70.6	4.5	5.4	14.5
1975	540	173	78.1	4.7	5.5	14.4
1976	540	166	82.2	4.3	5.5	15.6
1977	542	157	87.1	4.3	5.5	16.1
1978	545	153	89.9	4.4	5.5	16.9
1979	548	147	92.5	4.5	5.6	17.2
1980	544	141	96.3	4.5	5.7	17.6
1981	542	135	98.4	4.3	5.8	18.4
1982	560	131	98.9	4.6	5.8	20.1
1983 [3]	576	130	101.0	5.1	5.9	20.6

[1] On a milk fat equivalent basis.
[2] Includes skim milk, buttermilk, flavored milk drinks, and yogurt.
[3] Preliminary.

Dairy Program Operation

Federal programs have been deeply imbedded in the economic fabric of the United States dairy industry for more than 40 years. During this time, the economic characteristics and performance of the industry have changed considerably. Although the basic structure of the Federal dairy program is largely unchanged, there have been modifications within Federal programs attempting to adapt to changes in the dairy economy.

There are four clearly interrelated Federal programs—

(1) the dairy price support program which explicitly puts a floor under the price of manufacturing grade milk and thus maintains a floor under all milk prices;

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uller	Cream	Total cheese
7.5	8.3	8.4
7.4	8.1	8.6
7.3	7.8	9.1
6.9	7.5	9.2
6.9	7.1	9.4
6.4	6.9	9.5
5.7	6.6	9.8
5.5	6.1	10.1
5.7	5.8	10.6
5.4	5.5	10.9
5.3	5.3	11.5
5.1	5.3	12.1
4.9	5.3	13.1
4.8	5.4	13.6
4.5	5.4	14.5
4.7	5.5	14.4
4.3	5.5	15.6
4.3	5.5	16.1
4.4	5.5	16.9
4.5	5.6	17.2
4.5	5.7	17.6
4.3	5.8	18.4
4.6	5.8	20.1
5.1	5.9	20.6

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(2) the milk marketing order program which establishes minimum prices for fluid grade milk in most parts of the country;

(3) import controls which protect the price support program and keep the U.S. Government from supporting world milk prices; and

(4) Federal cooperative policy which encourages the development of farmer-owned cooperatives but provides they may not use their market power to raise prices excessively.

The thrust of these dairy programs has been to deal with the level of milk prices and with problems of instability in milk prices and dairy farm incomes.

Milk marketing orders

Government participation in milk pricing arrangements began in the early 1930's. In 1984, about two-thirds of all milk sold to plants and dealers and about four-fifths of the fluid grade deliveries in the United States, were regulated by Federal milk orders. Federal milk orders are part of a broad program of marketing agreements and orders authorized by the Agricultural Marketing Agreement Act of 1937. Under this authority, the Secretary of Agriculture is authorized to help stabilize market conditions by issuing Federal orders which apply to handlers of milk and its products. In its simplest terms, a milk marketing order is a legal instrument issued to provide the ground rules for transactions between farmers and buyers of grade A milk in a specified geographic area.

At the present time, there are 46 Federal milk orders in effect. California is one major area where no Federal milk order exists. The Federal order program has been in effect since 1938 and has experienced steady growth over the years. In 1984, about 92 billion pounds of milk were regulated under Federal orders compared with 19 billion pounds of milk in 1950. In addition, a number of States have laws authorizing regulation of milk prices to producers. Some States are authorized to regulate wholesale or retail prices. In total, more than 95 percent of the milk meeting sanitary standards for fluid use is priced under either Federal or State orders.

Price support

The dairy price support program supports the national average price received by farmers for manufacturing milk. Price support activity has been carried out under authority of the Agricultural Act of 1949, as amended, which required support of prices of milk to producers at a level which will assure an adequate supply. The price support program is administered by the Agricultural Stabilization and Conservation Service, United States Department of Agriculture.

In carrying out the program, the Commodity Credit Corporation (CCC) offers to buy butter, natural cheddar cheese, and nonfat dry milk at announced prices. The process is designed to result in U.S. average prices to producers at least equal to the announced support price.

Thus, when necessary, CCC removes milk from the market in the form of those dairy products which cannot be sold in commercial channels at prices corresponding to the support prices for manufacturing milk. These products are then either sold commercially at a later date or donated to schools and other specified institutions, or donated overseas.

For many years, the dairy price support program successfully fulfilled its goal of providing adequate supplies of wholesome and nutritious fluid milk and dairy products at reasonable prices to the consumer and at minimum cost to the taxpayer. However, recent years have seen milk production far outpace demand, leaving the Federal Government to purchase unacceptable and increasing amounts of surplus dairy products.

The cost of the price support program has grown from $250 million in 1979 to near $2.6 billion in 1983 (Table 5). Even with a program paying dairy farmers to reduce their production under the Dairy Production Stabilization Act of 1983, in effect for much of fiscal year 1984, program costs for that year still reached $1.6 billion.

TABLE 5.—MILK SUPPLY AND UTILIZATION, SELECTED YEARS

	Billion pounds milk equivalent		Number of milk cows	Milk per cow	Price received by farmers for all milk	Direct cash receipt
	Supply	Utilization				

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TABLE 5.—MILK SUPPLY AND UTILIZATION, SELECTED YEARS

Year	Billion pounds milk equivalent								Number of milk cows (thousands)	Milk per cow (pounds)	Price received by farmers for all milk wholesale (hundred weight)	Gross cash receipt (million dollars)
	Supply				Utilization							
					Domestic							
	Production	Beginning stocks	Imports	Total	Food	Feed	Exports [1]	Ending stocks				
1965	124.2	5.3	0.9	130.4	121.4	2.1	2.4	4.5	14,953	8,305	$4.23	5.0
1970	117.0	[2] 5.2	1.9	124.1	115.6	1.7	1.0	5.8	12,000	9,751	5.71	6.5
1972	120.0	5.1	1.7	126.8	117.5	1.6	2.1	5.5	11,700	10,259	6.07	7.1
1975	120.2	3.8	1.9	125.9	117.6	1.6	1.0	5.7	11,032	10,894	9.66	11.4
1976	122.7	5.7	2.0	130.4	119.3	1.5	1.0	8.6	10,945	11,206	9.71	11.7
1977	121.5	8.5	2.3	132.4	121.2	1.5	1.0	8.7	10,803	11,243	10.58	12.7
1978	123.4	8.7	2.3	134.4	123.4	1.4	1.0	8.6	10,734	11,492	12.03	14.6
1979	128.4	8.6	2.1	139.1	123.7	1.4	1.0	13.0	10,799	11,891	13.05	16.6
1980	132.8	13.0	2.3	148.1	124.5	1.4	3.7	18.4	10,898	12,183	13.77	18.1
1981	135.5	18.4	2.5	156.6	130.2	1.5	4.6	20.1	11,011	12,306	13.59	18.7
1982	139.7	20.1	2.6	162.4	135.3	1.5	3.0	22.6	11,098	12,585	13.57	18.8
1983	135.4	22.6	2.7	170.7	147.6	2.8	3.6	15.7	10,840	12,495	13.42	17.7
1984												

[1] Includes shipments. [2] Excludes cream and bulk condensed stocks beginning 1970.